



**CROSS-PRODUCT MASTER AGREEMENT (CROSS-AFFILIATE VERSION 2)
GUIDANCE NOTES**

June 2003

The Bond Market Association (TBMA), the British Bankers' Association (BBA), EMTA, the Foreign Exchange Committee, the Investment Dealers Association of Canada (IDA), the International Primary Market Association (IPMA), the International Swaps and Derivatives Association (ISDA), the Japan Securities Dealers Association (JSDA) and the London Investment Banking Association (LIBA) (collectively referred to as the "**Publishing Associations**") consider that managing counterparty risk across different financial product types, widely used industry master agreements and related entities is a goal that should be pursued to reduce financial system risk. The Cross-Product Master Agreement (Cross-Affiliate Version 2) ("**CPMA 2**") builds on the framework established by the bilateral Cross-Product Master Agreement published in February of 2000 ("**CPMA 1**"), and is designed to extend the benefits of CPMA 1 to multiple, affiliated entities and a single common counterparty. The Publishing Associations are recommending that market participants take note of this initiative and consider using CPMA 2 where appropriate, keeping in mind that the requirements for netting,¹ particularly across affiliated entities, may differ from jurisdiction to jurisdiction.

The following Guidance Notes (including the examples and exhibits set out below) are intended to assist users of CPMA 2. These Guidance Notes are important to facilitate a more complete understanding of the purpose and operation of CPMA 2, the Schedule and the Annexes thereto, and reflect extensive discussions by market participants. These Guidance Notes assume a familiarity with CPMA 1 and, in particular, the guidance notes (including the examples therein) for CPMA 1; prospective users of CPMA 2 unfamiliar with CPMA 1 should consult each of those documents in conjunction with these Guidance Notes.

The use of CPMA 2, the Schedule and the Annexes thereto poses a number of legal, accounting, tax, regulatory and other issues, and these Guidance Notes do not address any such issues, but instead are designed only to explain the operation of CPMA 2. These Guidance Notes should not be relied upon by any party to determine, without appropriate legal, accounting, tax, regulatory and other relevant professional advice, whether CPMA 2 is suitable to its particular circumstances and needs with respect to particular counterparties. These Guidance Notes are not intended to supplement or change in any way the meaning of the language of CPMA 2. The Publishing Associations make no representation as to whether CPMA 2 is appropriate in any specific circumstances and in particular are not recommending that the use of CPMA 2 affect the determination of margin requirements between the parties to CPMA 2.

Defined terms not otherwise defined in these Guidance Notes are used as defined in CPMA 2.

¹ The meaning of the terms "netting" and "set-off" may differ in various jurisdictions. The terms are used interchangeably in these Guidance Notes and the use of one term or the other in CPMA 2 or the Guidance Notes is not intended to be dispositive of the legal characterization of these terms in any specific jurisdiction.

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A. BACKGROUND

After the publication of CPMA 1 in early 2000, the Publishing Associations sponsored a number of seminars and workshops to help users understand CPMA 1 and to promote the use of CPMA 1. In addition, several Publishing Associations have obtained opinions of counsel in a number of jurisdictions relating to the enforceability of CPMA 1 in insolvency proceedings of a party, and relating to the interplay of CPMA 1 with other master agreements published by the Publishing Associations. Furthermore, shortly after publication of CPMA 1, Anthony Gooch and Linda Klein published a supplement to their Euromoney Documentation Series on documentation for derivatives that analyzes CPMA 1 in detail.²

During the drafting process for CPMA 1, it was recognized that CPMA 1, while an important risk management tool, had inherent limitations due to its bilateral nature; many institutions transact business out of multiple, affiliated entities, and thus CPMA 1 could not provide a comprehensive tool to manage risk across those multiple entities. Accordingly, a working group was organized under the auspices of TBMA shortly after the publication of CPMA 1 to analyze the issues in developing a form of cross-product, cross-entity master agreement that would build upon the CPMA 1 framework. The working group determined to develop CPMA 2—a cross-product, cross-entity master agreement that applies on a non-reciprocal basis to a single defaulting party. The Publishing Associations expect that CPMA 2 will provide a valuable tool to institutions seeking to manage risk across entities.

B. THE BASIC FRAMEWORK: PARTIES AND AGREEMENTS COVERED BY CPMA 2; CROSS-AFFILIATE NETTING APPROACHES

As described above, CPMA 2's most significant change from CPMA 1 is to include and extend *rights* to multiple affiliated non-defaulting parties (the "**Party A Entities**", composed of "**Party A**" and the "**Party A Affiliates**") with respect to a single defaulting party ("**Party B**"). CPMA 2 is non-reciprocal in that it supplies additional rights *only* upon a *Party B* default. The Party A Affiliates are selected in Part I of the Schedule either as entities specifically named (box 1), or as all affiliates of Party A (box 2).³ The Parties may exclude certain Party A Entities under either box 1 or 2 from being a Party A Affiliate for the purpose of one of the approaches in Annexes I and II. The Party A Affiliates may execute CPMA 2 by including signature lines for each specified Party A Affiliate on the signature page at the end of CPMA 2. Alternatively, the Party A Affiliates may designate Party A as their agent, and have Party A execute CPMA 2 and the Schedule on its own behalf and again as agent for the Party A Affiliates. The Party A Affiliates, if they are not specifically identified as such through the use of Box 2, should carefully consider enforceability issues.

CPMA 2 provides that one Party A Entity, the "**Designated Party A Entity**" designated by the Parties in Part III of the Schedule, is generally responsible for delivering and receiving notices to and from Party B. Additionally, the Designated Party A Entity is authorized to make

² Reprinted in ANTHONY C. GOOCH & LINDA B. KLEIN, DOCUMENTATION FOR DERIVATIVES (4th ed. 2002) at 1281-1358 ("**Gooch and Klein**").

³ The definition of "Party A Affiliate" provided in Box 2 of Part I of the Schedule is adapted from the definition of "Affiliate" in the 2002 ISDA Master Agreement, and includes any entity controlled, directly or indirectly, by Party A, any entity that controls, directly or indirectly, Party A or any entity directly or indirectly under common control with Party A, with "control" defined as the ownership of a majority of the voting power of the entity. Parties should carefully consider whether this definition is appropriate in the context of CPMA 2 and make any necessary modifications. Options are provided in Box 2 to exclude from the definition of Party A Affiliate entities no longer affiliated with Party A at the time of a Close-Event, as well as to exclude from the definition of Party A Affiliate specified entities for purposes of specified provisions of the Schedule or Annexes.

determinations of any calculations of any amounts due either under CPMA 2 or the Principal Agreements. The designation of a Designated Party A Entity is intended to provide operational efficiency, and is subject to change from time to time at the option of the Party A Entities. By its own terms, nothing in CPMA 2, including the designation of a Designated Party A Entity, makes any Party A Entity liable for the obligations of any other Party A Entity (except as specifically provided under Annex II, discussed below).

CPMA 2 follows the basic architecture and philosophy of CPMA 1 by providing a contractual superstructure under which the Parties to CPMA 2 designate at the time of its execution those underlying master agreements or other transactions which they wish CPMA 2 to govern (“**Principal Agreements**”). In Part II to the Schedule, the Parties may elect to include all master agreements between the Parties (box 1),⁴ to include transactions (including long-form confirmations) that incorporate the terms of a master agreement by reference (box 2) and/or to identify the specific Principal Agreements to be covered (boxes 3 and 4).⁵ If the Parties elect one of the “catch-all” approaches, they may also exclude specified agreements (box 5). Parties should consider carefully which agreements are included as Principal Agreements and the potential implications of a Close-Out.⁶ As with CPMA 1, Parties may, by means of an optional provision (Part VIII.2 of the Schedule), also include within the scope of CPMA 2 transactions that are not otherwise subject to a master agreement (and that may have been agreed to orally and may or may not be subject to written or electronic confirmations) (“**Uncovered Transactions**”).

Parties may also elect to enter into either Annex I or Annex II to CPMA 2, each of which provides a mechanism to net exposures between the Party A Entities and Party B. Annex I documents the Pledge of Receivables/Cross-Collateralization Approach, under which Party B grants a security interest in collateral pledged to any Party A Entity to secure its obligations to all Party A Entities, and grants a security interest in its rights against each Party A Entity (including its rights to Final Net Settlement Amounts owed by the Party A Entities) as security for its obligations to all of the Party A Entities. This approach thus provides property rights to the Party A Entities to achieve netting across entities regardless of mutuality and may require filings and similar actions to be fully enforceable.

Annex II documents the Cross Guarantee Approach, under which each Party A Entity provides a limited guarantee to each other Party A Entity of Party B's performance under the Principal Agreements. The guarantee is limited to the lower of the amount payable by such Party A Entity to Party B and the amount payable by Party B to such other Party A Entity. Party B is then obligated to indemnify each limited guarantor, and this obligation is then netted against each limited guarantor's obligations to Party B. This approach thus provides a contractual

⁴ If any Party A Entity has executed a CPMA 1 with Party B, the parties may wish to specify that upon the execution of CPMA 2, such CPMA 1 is terminated. Alternately, the parties may designate such CPMA 1 as a Principal Agreement, and exclude the Principal Agreements governed by such CPMA 1 from Principal Agreement status under CPMA 2. The result of the second alternative would be that the Principal Agreements covered by the CPMA 1 would be closed-out and set off pursuant to that agreement, with the resulting “Final Net Settlement Amount” under such CPMA 1 being treated as a Settlement Amount under CPMA 2.

⁵ The list of types of Principal Agreements is illustrative and not exclusive and parties may include additional types of agreements. For the convenience of market participants, attached as Exhibit 1 hereto is a short form of letter agreement that parties to an executed CPMA 2 can utilize each time they subsequently enter into a new master agreement that they wish to include as an additional Principal Agreement if they have not selected one of the “catch-all” approaches.

⁶ For example, there may be liquidity implications where the International Deposit Netting Agreement (IDNA) is included as a Principal Agreement and transactions covered by CPMA 2 represent a major source of funding for a party. For this reason, the IDNA has not been included in Box 3.

basis for offset, and is intended to provide mutuality through the indemnification obligations of Party B.

Each of the cross-affiliate netting approaches documented in the Annexes and described in more detail below presents a number of complicated legal, accounting, tax, regulatory and other issues. The Parties are advised to consult counsel to determine which, if any, of the approaches should be adopted.

C. PARTY A ENTITIES' RIGHTS UPON A CLOSE-OUT EVENT (SECTION 2)

Section 2 of CPMA 2 provides that upon the occurrence of a close-out event ("**Close-Out Event**") in relation to Party B with respect to any one Principal Agreement, or the breach by Party B of a representation, warranty or covenant under CPMA 2 itself, each Party A Entity, may accelerate, close out, liquidate, cancel or terminate (*i.e.*, "**Close Out**") all (but not fewer than all) transactions under all Principal Agreements that may legally be Closed Out.⁷ Unless the Parties have elected Part VIII.6 of the Schedule to apply, each Party A Entity may, however, only exercise these Close-Out rights if each other Party A Entity also elects to Close Out its Principal Agreements with Party B. This mechanism, essentially the same as in CPMA 1, amends the Principal Agreements by specifying additional triggers for Close-Out of all Principal Agreements and effectively overrides notice, cure period and other provisions that would otherwise postpone an immediate termination or acceleration of the transactions under the Principal Agreements. Unlike CPMA 1, the right to Close Out the Principal Agreements is only available to the Party A Entities, reflecting the non-reciprocal nature of CPMA 2. Party B does, however, retain any rights that it may have to exercise remedies under individual Principal Agreements pursuant to the terms of such Principal Agreements.

The definition of Close-Out Event in CPMA 2 includes any event on the basis of which a Party A Entity has the "contractual right" to Close Out all of the transactions under a Principal Agreement. This language is meant to follow the broad usage of "contractual right" as set forth in Sections 555, 556, 559 and 560 of the U.S. Bankruptcy Code (the "**Bankruptcy Code**"), which include, among other things, rights, whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice. An event that would create a contractual right to Close Out a Principal Agreement is a Close-Out Event under CPMA 2 notwithstanding any impediment, such as a bankruptcy stay or other injunction, to Closing Out the transactions under that Principal Agreement.⁸

Close-Out is effected by the provision of a "**Close-Out Notice**" by the Designated Party A Entity to Party B listing all Principal Agreements that are being Closed Out (and listing as a courtesy those Principal Agreements otherwise Closed Out by their own terms). A suggested form for the Close-Out Notice is provided as Exhibit 2 attached hereto. After a Close-Out Notice is given, the Party A Entities are entitled to determine Settlement Amounts and effect all netting

⁷ Even though a Party A Entity may take a conservative approach in determining which Principal Agreements may "legally" be Closed Out, a decision by a Party A Entity not to Close Out a Principal Agreement should not estop such Party A Entity from taking the position that such Principal Agreement may legally be Closed Out. For example, a Party A Entity may determine that the "safe harbor" provisions of the U.S. Bankruptcy Code might not protect the exercise of Close-Out rights in respect of a Principal Agreement and seek relief from the bankruptcy court to determine that the "safe harbors" do apply. The Party A Entity's decision not to Close Out such Principal Agreement should not estop such Party A Entity from seeking such relief or otherwise affect such Party A Entity's rights in any such proceeding.

⁸ If no Principal Agreement contains an insolvency event of default (which may be more likely if the only Principal Agreements are Uncovered Transactions), Parties may wish to include such an event as an additional Close-Out Event in Part IX of the Schedule.

pursuant to Sections 3 and 4 without any further notice to Party B until all Final Net Settlement Amounts have been determined.

(a) Party A Entity-by-Party A Entity Close-Out

By adopting the optional provision in Part VIII.6 to the Schedule, the Parties may choose to allow each Party A Entity individually to determine after a Close-Out Event has occurred whether it wishes to Close Out all of its Principal Agreements with Party B. If a Party A Entity has opted not to participate in the CPMA 2 Close-Out mechanism pursuant to this provision, all Principal Agreements to which such Party A Entity is a party would not be included in the set-off procedures described below.

(b) Right to Close Out Need Not Be Exercised

As is the case with either party in CPMA 1, the Party A Entities have the option after a Close-Out Event to Close Out Principal Agreements according to their own terms without any reference to CPMA 2. If all Principal Agreements (and Uncovered Transactions where Part VIII.2 of the Schedule applies) have Closed Out automatically and the Party A Entities wish to have Sections 3 and 4 of CPMA 2 apply thereto, Section 2.2(b) provides that the Designated Party A Entity should promptly notify Party B that it is electing to have those provisions of CPMA 2 apply.

CPMA 2 follows CPMA 1 in treating a Close-Out Event under a Principal Agreement as continuing and allowing the Party A Entities to choose to exercise their rights under Section 2 of CPMA 2 until the earlier of such time as the conditions constituting the Close-Out Event have ceased to exist or the Settlement Amount due under such Principal Agreement has been paid in full. With respect to a breach of a representation or warranty or a violation of a covenant under Section 5 of CPMA 2, the Party A Entities' rights under Section 2 of CPMA 2 continue until such breach or violation has been cured. If, however, the Parties elect to adopt the optional provision in Part VIII.5 of the Schedule,⁹ the Party A Entities' right to Close Out the Principal Agreements upon a Close-Out Event will continue regardless of whether such Close-Out Event has ceased to be continuing.

D. DETERMINING THE SETTLEMENT AMOUNTS (SECTION 3)

As with CPMA 1, the calculation and determination of the amounts owed under each Principal Agreement (each such amount, a "**Settlement Amount**") proceeds according to each Principal Agreement's contractual terms, including leaving undisturbed the rights of a party to apply any margin, collateral or other credit support to any amounts otherwise owing under each Principal Agreement. CPMA 2 makes it clear that any requirement that a calculation statement or other notice be given after determination of the Settlement Amount before any amount is due and payable under a Principal Agreement is overridden by CPMA 2. Each Party A Entity may choose whether or not to apply credit support in determining a Settlement Amount in accordance with the Principal Agreement. If the Principal Agreements are Closed-Out pursuant to CPMA 2, the Settlement Amounts are not due immediately upon their calculation, but rather are deferred until the various set-off mechanisms of Section 4 (discussed below) have reduced the amounts due to one or more Final Net Settlement Amount(s) due from Party B to one or more of the Party A Entities or from one or more of the Party A Entities to Party B.

CPMA 2 treats as a Settlement Amount available for netting with other Settlement Amounts each unpaid amount due and payable with respect to a Principal Agreement that cannot be Closed-Out under its own terms because the scheduled obligations (contingent or otherwise) of

⁹ This provision is adapted from a suggested modification of CPMA 1 found in Gooch and Klein at 1345.

the Parties thereunder have already matured and therefore can no longer be “Closed-Out” pursuant to CPMA 2 (such agreements are defined in CPMA 2 as “**Unsettled Fully Matured Principal Agreements**”).¹⁰ An Unsettled Fully Matured Principal Agreement is deemed to have been Closed-Out under CPMA 2 as of the date upon which the last unpaid amount thereunder became due.

E. SET-OFF AND SETTLEMENT PROCEDURES (SECTION 4)

(a) The Set-Off Process

As under CPMA 1, Section 4.1 of CPMA 2 defers each obligation between a Party A Entity and Party B to settle a Settlement Amount (with interest accruing at the contractual overdue interest rate specified in the relevant Principal Agreement, or, if no such rate is specified, at the Base Rate) from the date on which it would be due under the Principal Agreement (as amended by CPMA 2) until a date on which there is owed another Settlement Amount between such Party A Entity and Party B that offsets the first Settlement Amount in whole or in part. On such date, the relevant Settlement Amounts are set off, one against the other, to determine a “**Net Set-Off Amount**”. That Net Set-Off Amount (with interest accruing thereon at the Base Rate) is then carried forward for set off against the next Settlement Amount between such Party A Entity and Party B.

(b) Determination of the Final Net Settlement Amount(s)

Pursuant to Section 4.4(a) of CPMA 2, on the first date on which all Settlement Amounts in respect of a Party A Entity have been determined (a “**Final Settlement Date**”), the Designated Party A Entity shall determine the Final Net Settlement Amount as the single amount (if any) payable by such Party A Entity or Party B in respect of all Principal Agreements between such Party A Entity and Party B. Each Final Net Settlement Amount will be equal to either the last Net Set-Off Amount, or, if each such Settlement Amount with respect to such Party A Entity is owed to the same party, the aggregate of all such Settlement Amounts.

(c) Payment of the Final Net Settlement Amount(s)

Pursuant to Section 4.4(a) of CPMA 2, the Designated Party A Entity is entitled to provide to Party B a statement showing the calculation of each Final Net Settlement Amount any time following its determination. The Designated Party A Entity must, however, provide a calculation statement no later than promptly after a Final Net Settlement Amount has been determined with respect to each Party A Entity that has one or more Closed-Out Agreements. Interest will accrue on the Final Net Settlement Amount at the Base Rate until the calculation statement is delivered.

Settlement of each Final Net Settlement Amount is due on the same Business Day as the relevant calculation statement is received if the calculation statement is delivered by 10:00 a.m. on such Business Day, or else on the following Business Day (either such business day, the “**Final Settlement Date**”, as applicable) and interest will accrue on the Final Net Settlement Amount(s) from the Final Settlement Date until the date they are paid at the Base Rate plus 1% per annum.

The intent of the last sentence of 4.4(b) is to clarify that all branches of a multibranch Party are liable for a Final Net Settlement Amount owed by one branch.

¹⁰ This addition is adapted from a provision suggested in Gooch and Klein at 1350.

(d) Exclusions

As under CPMA 1, Section 3.3 of CPMA 2 provides that, if in the good faith judgment of any Party A Entity it is unlawful to include any Settlement Amount in the set-off process, that Settlement Amount will be excluded. (If the legal impediment is removed before the Final Net Settlement Amount with respect to the relevant Party A Entity is determined, then that Settlement Amount would no longer be excluded.) This assures that a Final Net Settlement Amount can be determined for each Party A Entity.

F. CROSS-AFFILIATE SET-OFF ANNEXES

As noted above, the cross-affiliate set-off approaches provided in Annexes I and II provide additional netting and set-off rights to the Party A Entities in the event of a Close-Out Event. On the signature page, Parties may elect to have either or neither Annex apply (but not to have both Annexes apply). *The enforceability and desirability of each of the annexes will depend on the specific circumstances of the Parties, who are advised to consult counsel before adopting either of them.*

(a) Annex I—Pledge of Receivables/Cross-Collateralization

By electing to use the optional Pledge of Receivables/Cross-Collateralization approach provided in Annex I, Party B grants a security interest to each Party A Entity in the following (“**Collateral**”): (i) all property in which any Party A Entity has been or will be granted a security interest to secure obligations owed to it by Party B under each Principal Agreement (“**Principal Agreement Collateral**”), (ii) all of Party B’s right, title and interest in and to each Final Net Settlement Amount determined pursuant to Section 4.4(a) of CPMA 2 and all of Party B’s right, title and interest in and to each Principal Agreement (subject to the netting, offset and recoupment rights thereunder or under the CPMA 2) (“**Receivables Collateral**”), and (iii) all property delivered by or on behalf of Party B to any Party A Entity, held or carried by any Party A Entity for the account of Party B, or due from any Party A Entity to Party B other than Principal Agreement Collateral, Receivables Collateral or other property delivered under or in connection with a Principal Agreement (“**Other Collateral**”).

The Collateral secures each obligation of Party B to the Party A Entities under or in connection with all Principal Agreements and CPMA 2, including each obligation to pay a Settlement Amount, a Net Set-Off Amount or a Final Net Settlement Amount or to deliver any Principal Agreement Collateral to any Party A Entity (the “**Obligations**”).

Each Party A Entity to which any Obligations are owed may foreclose upon any Collateral for application against such Obligations. The Party A Entity that is party to a particular Principal Agreement, however, has priority over all the other Party A Entities with respect to the Principal Agreement Collateral related to such Principal Agreement. Since the security interest in Receivables Collateral consisting of Party B’s rights in and to a Principal Agreement is subject to the rights of netting, offset and recoupment under such Principal Agreement or under CPMA 2, the applicable Party A Entity may exercise its rights to net, set off and recoup obligations under such Principal Agreement without regard to the existence of the security interest of the other Party A Entities in such Receivables Collateral and the Party A Entities may exercise their rights to net and set off under CPMA 2 without regard to the existence of the security interest.¹¹ Moreover, the applicable Party A Entity has priority over all other Party A

¹¹ To make the security interest prior to the netting, offset and recoupment rights under the Principal Agreements or CPMA 2, the Parties could use Part IX of the Schedule to amend the definition of “Receivables Collateral” to delete the phrase “or under the Agreement” from the parenthetical or to delete the entire parenthetical.

Entities with respect to Receivables Collateral consisting of Party B's rights in and to a Principal Agreement with such Party A Entity. With respect to Other Collateral, each Party A Entity enjoys equal priority.¹²

In the event that any Obligation of Party B to a Party A Entity is satisfied by the application of Principal Agreement Collateral held by another Party A Entity, such other Party A Entity must promptly transfer such Principal Agreement Collateral to the Party A Entity. If a Party A Entity exercises its rights against Receivables Collateral by collecting on such Receivables Collateral from another Party A Entity that is the account debtor thereon, such other Party A Entity shall immediately transfer to such Party A Entity the amount to be collected thereunder.

If one or more Party A Entities have a lien on Principal Agreement Collateral held in a futures or securities account at another Party A Entity, the Party A Entities should consider, among other things, adding provisions to Part IX of the Schedule to comply with applicable law, rules or regulations subordinating such lien to the rights of futures or securities clearing organizations or other third parties in such Principal Agreement Collateral to the extent the obligations of such other Party A Entity to such clearing organizations or other third parties secured by such Principal Agreement Collateral have not been satisfied in full.

In order to perfect the Party A Entities' security interest in the Collateral, it is necessary that each Party A Entity comply with any filing or notice requirements in the relevant jurisdiction with respect to Party B and the Collateral. In order to facilitate perfection of the security interest and maintenance thereof under applicable law, Section 2.4(d) of Annex I provides that Party B grants each Party A Entity power of attorney to make filings and take other actions necessary to accomplish the purposes of CPMA 2 and Section 2.1 of Annex I, and amends the representations and warranties and covenants. Parties should consider whether the information with respect to Party B's type and jurisdiction of organization to be provided on the signature page pursuant to Section 2.4(e) of Annex I is adequate with respect to the organizational form of Party B.

Section 2.4(g) of Annex I provides that references to Principal Agreement Collateral "held by" a party include Principal Agreement Collateral held directly or indirectly by such party or over which such party has direct or indirect control.

Section 2.4(h) of Annex I provides that each Party intends that each transfer under any Principal Agreement is a "margin payment," "settlement payment" and "transfer" as defined in the Bankruptcy Code. Parties may elect not to adopt this provision if they are concerned with its possible effect on title transfer characterization under English law.

If the Parties have elected the laws of England and Wales as the governing law in Part IV of the Schedule or if any Collateral is subject to the laws of England and Wales, additional provisions set forth in Section 3 of Annex I are automatically applicable, and Party B should execute the deed block on the signature page. Parties should consult with counsel as to the application of other relevant local law in determining whether CPMA 2 should be executed as a deed even if the laws of England and Wales has not been selected as the governing law.

As indicated on the signature page, Parties should not use the Pledge of Receivables/Cross Collateralization approach in conjunction with either of the bilateral credit support/set-off

¹² If a Principal Agreement governed by CPMA 2 grants a security interest in collateral under such Principal Agreement to parties not party to such Principal Agreement or otherwise conflicts with the priorities set forth in Section 2.2(b) of Annex I, the Parties should consider amending such provisions and/or adding conforming terms in Part IX of the Schedule.

approaches provided in Part VIII.9 of the Schedule, as the Pledge of Receivables/Cross Collateralization is broader than the bilateral approaches.

In any event, Parties are advised to consult counsel on the enforceability and perfection of the security interest granted under this approach. Notwithstanding the use in Annex I of the term “fixed charge”, Parties should, with the aid of counsel, consider the effect of the particular factual circumstances on the nature of the charge granted. Parties should also consult counsel prior to exercising any remedies against Collateral under this approach or under Part VIII.9 of the Schedule.

(b) Annex II—Cross Guarantee

By electing to use the optional Cross Guarantee approach provided in Annex II, each Party A Entity (a “**Limited Guarantor**”) guarantees to each other Party A Entity (each, with respect to such Limited Guarantor, a “**Guaranteed Party**”) the payment by Party B of all amounts owed from time to time by Party B to such Guaranteed Parties under CPMA 2 and the Principal Agreements (the “**Guaranteed Obligations**”). Such guarantee is limited at any time with respect to each Limited Guarantor and Guaranteed Party, however, to the lower of (i) the amount payable at such time under CPMA 2 and the Principal Agreements by such Limited Guarantor to Party B and (ii) the amount payable at such time by Party B to the Guaranteed Party under CPMA 2 and the Principal Agreements (the “**Guarantee Limit**”).

Upon demand, each Limited Guarantor becomes obligated to make payments under its guarantee. When such payment is made, the Guaranteed Party to whom such payment has been made will be deemed to have renounced any right of proof in any bankruptcy, liquidation or winding up proceeding in favor of the Limited Guarantor that has made the payment. Party B, upon such demand and delivery of a Section 2 Notice, becomes obligated to indemnify each such Limited Guarantor for such payments. Each Limited Guarantor is then entitled to set off its obligation to make a payment under any Principal Agreement or CPMA 2 to Party B against Party B’s indemnity obligation. If any Settlement Amount, Net Set-Off Amount, or Final Net Settlement Amount is set off against such indemnification obligation of Party B to such Limited Guarantor, such amount is reduced to the extent of such application for purposes of Section 4 of CPMA 2.

Parties are advised to consult counsel on the operation and consequences of adopting the Cross Guarantee approach.

G. LEGAL EFFECTIVENESS AND CHARACTERIZATION

As with CPMA 1, Section 6 of CPMA 2 and Part IV of the Schedule allow the Parties to choose New York or English law as the governing law and provide for the Parties to incorporate by reference provisions of a Principal Agreement in respect of service of process, procedural defenses, and certain other matters. Parties may also choose to include the text of such provisions in Part IX of the Schedule. Parties may also wish to include in CPMA 2 provisions for exclusive jurisdiction, service of process, waiver of jury trial and waiver of immunities that will amend any similar provisions in the Principal Agreements, particularly if there is a concern that disputes regarding a Principal Agreement may be brought in one forum and the same substantive dispute (*e.g.*, valuation of a Settlement Amount) may be raised in relation to CPMA 2 in a different forum. An example of such provisions is provided in Exhibit 3 attached to these Guidance Notes. Although CPMA 2 is designed to work specifically under the law of New York or of England and Wales because most standard industry master agreements are so governed, Parties may, after consultation with relevant counsel, wish to consider applying the law of another jurisdiction to govern CPMA 2.

With a view to enhancing the enforceability of CPMA 2 in the event Party B becomes a debtor in a U.S. insolvency proceeding, optional representations contained in Part VIII.7 of the Schedule

may be included. Part VIII.7.1 of the Schedule states that Party B is a “financial institution” under the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. §§ 4401-4407 (“**FDICIA**”), and regulations thereunder, and that the Parties intend CPMA 2 to be a “netting contract” and each payment entitlement and payment obligation thereunder to be a “covered contractual payment entitlement” or “covered contractual payment obligation” as defined in FDICIA.

Part VIII.7.2 of the Schedule provides that a payment under CPMA 2 is intended by the Parties to be a “margin payment”, “settlement payment”, “transfer” or “payment amount” under those provisions of the Bankruptcy Code (applicable to certain entities) that protect certain types of financial products from the stay and avoidance powers of a trustee in a U.S. bankruptcy proceeding.

Part VIII.7.3 of the Schedule provides that each Principal Agreement is intended by the Parties to be a “swap agreement,” “forward contract,” “securities contract”, “repurchase agreement” or “commodity contract” under those provisions of the Bankruptcy Code that protect certain types of financial products from the stay and avoidance powers of a trustee in bankruptcy.

Part VIII.7.4 of the Schedule allows the Parties to incorporate CPMA 2 into each Principal Agreement that is a swap agreement, and provides that each transfer under CPMA 2 is a “transfer” “under” and “in connection with” each such Principal Agreement.

Part VIII.7.5 of the Schedule provides that each Principal Agreement under CPMA 2 will be a “qualified financial contract” within the meaning of the Federal Deposit Insurance Act.

In addition to using the provided characterization provisions, the Parties may wish to tailor the provisions to specific types of Principal Agreements and take into account other applicable law.

Part VIII.7.6 of the Schedule provides that Party B represents and warrants that each transfer made or obligation incurred pursuant to each Principal Agreement is being made without intent to hinder, delay, or defraud any entity to which it is or will become, on or after the date that such transfer is made or such obligation is incurred, indebted, is being made in exchange for reasonably equivalent value and will not cause it to become insolvent, that it is not engaged in business or a transaction, or is about to engage in business or a transaction, for which its remaining property is an unreasonably small capital, and that it is solvent and able to pay, and is paying, its debts as they mature, and anticipates that it will continue to be able to pay its debts as they mature for the foreseeable future. The language of this representation is designed to provide protection against the risk that a transfer under CPMA 2 or the Principal Agreements could be avoided as a fraudulent transfer under Section 548 of the Bankruptcy Code or applicable state law.

Part VIII.7.7 of the Schedule provides a non-reliance provision with respect to Party B.

*Parties are advised to consult counsel on the enforceability of CPMA 2 in respect of particular counterparties, including in the event of bankruptcy or insolvency, regardless of the governing law that is chosen.*¹³

¹³ TBMA has obtained opinions of New York and English counsel on the enforceability outside of bankruptcy of CPMA 2 governed by New York or English law. Parties need to consider, when entering into CPMA 2, choice of law issues that may arise in the context of cross-border transactions and may wish to refer to the Supplemental Guidance Notes published by TBMA in June 1997 relating to the TBMA Master Repurchase Agreement (1996 version) and the TBMA/ISMA Global Master Repurchase Agreement (1995 version) for a discussion of such issues at www.bondmarkets.com/agrees/master_repo_supp_gn.pdf.

H. OTHER PROVISIONS

Section 7 contains a provision similar to that in CPMA 1 relating to the transfer and assignment of rights of Party B under CPMA 2 in the event of a merger, consolidation or amalgamation of Party B and for the assignment of the right to receive a Final Net Settlement Amount under Section 4. Section 7, responding to changes in Article 9 of the Uniform Commercial Code that limit the enforceability of anti-assignment provisions, also provides that, in the event the restrictions on assignment in CPMA 2 are unenforceable under applicable law, all Principal Agreements must be assigned together.¹⁴ Section 7 also imposes upon Party B a duty to notify in writing each Party A Entity prior to any transfer of CPMA 2 or any Principal Agreement.

Section 8 of CPMA 2 provides that notices may be given by telephone, mail, facsimile, e-mail, electronic message, telex, messenger or otherwise, and that such notices are to be deemed delivered in accordance with the type of notice chosen. Notices delivered in person, by courier or via e-mail will be deemed delivered on the date delivered. Telex notices will be deemed delivered on the date an answerback is received. Notices by certified or registered mail will be deemed delivered on the date of delivery or the date that delivery is attempted. Notices by electronic messaging system will be deemed delivered on the date of receipt. Telephonic notice or other notices by oral communication must either be confirmed in writing by one of the other options of notice provided or be recorded, and will be deemed effective on the date the oral communication occurred. In addition, Section 8 provides that, upon the occurrence of a Close-Out Event, any notice may be delivered to the Chief Legal Officer or General Counsel of the recipient. Any Party may provide for a change of details for its address, telex, telephone or facsimile number or electronic messaging system or e-mail by notifying the other Parties. Parties should, in providing notice, give due consideration to evidentiary rules which may apply to such notice in any judicial proceedings.

Section 9.1 of CPMA 2 provides that CPMA 2 and the Principal Agreements are part of a single business relationship, and that the performance of Party B of each and every payment or delivery obligation under each Principal Agreement and CPMA 2 is a condition precedent to the performance of any Party A Entity of any obligation under the Principal Agreements, and Section 9.2 of CPMA 2 provides that the exercise by any Party A Entities of any right under CPMA 2 or otherwise shall not discharge or otherwise affect the obligation of any guarantor or other third party credit support provider for any obligation of Party B. Before relying upon the enforceability of this provision, Parties should consider the provisions of the relevant guarantee or credit support if the guarantor or credit support provider is not a party to CPMA 2.

Section 9.3 of CPMA 2 provides that any determinations or calculations made by the Designated Party A Entity under CPMA 2 or any Principal Agreement are conclusive absent manifest error. Section 9.4 of CPMA 2 provides that Party B is liable for all reasonable out-of-pocket expenses incurred by the Party A Entities in the enforcement of their rights under CPMA 2.

Section 9.5 of CPMA 2 provides that an express or implied waiver of any Close-Out Event by any Party A Entity shall not constitute a waiver of any other Close-Out Event, and no exercise of any remedy will constitute a waiver of its right to exercise any other remedy under CPMA 2. Additionally, the modification or waiver of any provision of CPMA 2 must be in writing. Section 9.6 of CPMA 2 provides for the severability of each of the provisions therein. In Part III of the

¹⁴ Parties that have selected New York law as the governing law in Part IV of the Schedule may wish to consider adding a provision to Part IX of the Schedule selecting the laws of England and Wales, which does not contain similar limits on the enforceability of anti-assignment provisions, to govern Section 7.

Schedule, the Parties may authorize the Designated Party A Entity to execute any amendment, modification or waiver of CPMA 2 on behalf of all the Party A Entities.

I. ADDITIONAL OPTIONAL PROVISIONS

(a) Optional Adjustment Relating to Interest Provision

The Parties may elect to reduce the obligations of the Party A Entities in respect of interest to the same extent that interest may not lawfully be included in calculating the obligations of Party B in respect of any Settlement Amount, Net Set-Off Amount or Final Net Settlement Amount by adopting the optional provision set forth as Part VIII.8 of the Schedule.¹⁵

(b) Incorporation of Certain Provisions from Principal Agreements

Part VII of the Schedule provides Parties with a mechanism to incorporate by reference specified provisions (e.g., provisions relating to gross-up and liability for withholding taxes, payment of stamp taxes, contractual currency or indemnity and expenses) of a specified Principal Agreement (e.g. an ISDA Master Agreement).

(c) Additional Terms

Parties may include additional provisions or amendments to CPMA 2 in Part IX of the Schedule. In particular, if before entering into CPMA 2 Parties have included in a Principal Agreement a provision for the mandatory set-off and netting of amounts owed by the Parties to one another under that and other Principal Agreements (*i.e.*, cross-product netting across separate contracts), it would be prudent to include in Part IX of the Schedule to CPMA 2 an additional Section stating that any such provision is superseded and replaced by CPMA 2.¹⁶

J. EXAMPLES

The following examples are intended to illustrate the operation of the provisions of CPMA 2.¹⁷ The examples do not provide conclusive guidance regarding the operation of the provisions of CPMA 2, nor do they consider the interactions of all the possible combinations of optional provisions and approaches the Parties may wish to adopt. *In particular, these examples do not constitute advice on the legal effectiveness of any provision of CPMA 2.* Parties should obtain appropriate legal and regulatory advice regarding the operation of CPMA 2's provisions and the effect of applicable laws.

For simplicity, each of the following examples assumes but does not illustrate that interest on Settlement Amounts, Net Set-Off Amounts and Final Net Settlement Amounts will be calculated and applied pursuant to Section 4.5 of CPMA 2.

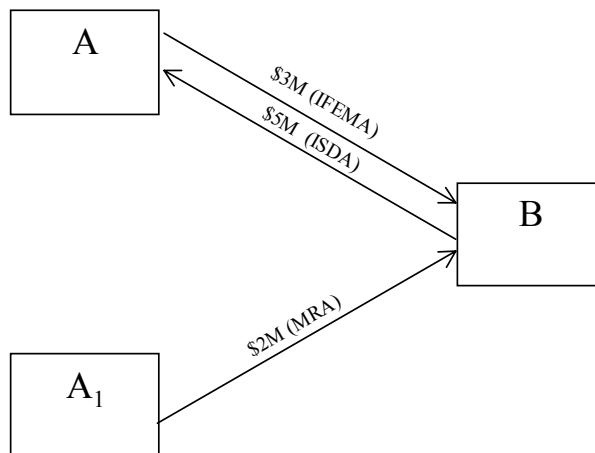
¹⁵ See Gooch and Klein at 1354.

¹⁶ See note 4 above.

¹⁷ Parties should also consult the examples provided in the Guidance Notes to CPMA 1 for further illustration of the mechanisms shared by CPMA 1 and CPMA 2.

EXAMPLE 1: PLEDGE OF RECEIVABLES/CROSS-COLLATERALIZATION

1.1 Positions upon Close-Out of the Principal Agreements:



The Facts

Party A, Party A₁ (an affiliate of Party A) and Party B have entered into the following transactions: (i) a U.S. dollar/Hungarian forint forward contract, with a final settlement date of July 1, 2004, documented under the International Foreign Exchange Master Agreement between Party A and Party B (the “**IFEMA**”); (ii) an interest rate swap, with a final settlement date of March 1, 2004, documented under the ISDA Master Agreement (2002 version) between Party A and Party B (the “**ISDA**”); and (iii) a repo transaction, with a maturity date of May 12, 2004, documented under the TBMA Master Repurchase Agreement between Party A₁ and Party B (the “**MRA**”, and, together with the IFEMA and the ISDA, the “**Principal Agreements**”).

The Parties have not entered into any transactions other than those under the Principal Agreements. Party A, Party A₁ and Party B have also entered into a CPMA 2 which designates the Principal Agreements as such, Party A as “Party A”, Party A₁ as a “Party A Affiliate” and Party B as “Party B.” The Parties have also agreed to adopt Annex I to CPMA 2 (“Pledge Of Receivables/Cross-Collateralization”).

On March 4, 2004, Party B does not pay Party A the \$5 million then due as a final payment amount under the ISDA after the required notice from Party A.

Close-Out of the Principal Agreements

The failure to pay after notice is an event of default under the ISDA, and as such is a Close-Out Event under CPMA 2. Each of the Party A Entities elects to Close Out the other Principal Agreements, and the Designated Party A Entity (designated in Part III of the Schedule) provides Party B with a Close-Out Notice stating that Party A and Party A₁ are exercising their rights under Section 2 of CPMA 2 to Close Out the IFEMA and the MRA effective March 5, 2004.

Determination of the Settlement Amounts

Pursuant to Section 3.1 of CPMA 2, the Designated Party A Entity determines that the Settlement Amount owed under the IFEMA (according to its terms) is \$3 million due from Party A to Party B on March 5, 2004, and that the \$5 million due from Party B to Party A under the

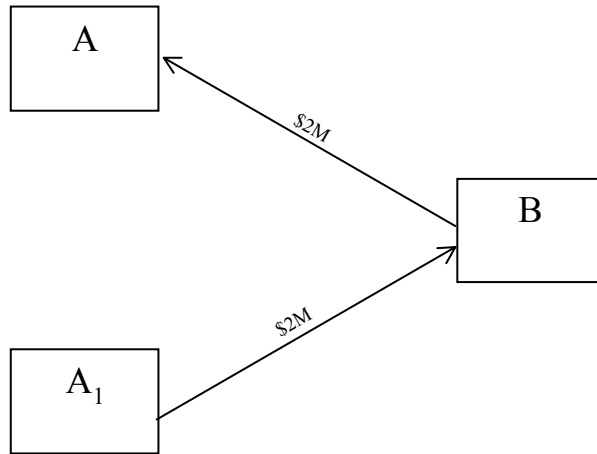
ISDA (an “**Unsettled Fully Matured Principal Agreement**” deemed to have been Closed Out for purposes of CPMA 2 on March 4, 2004) is a Settlement Amount. The Designated Party A Entity determines that the Settlement Amount owed under the MRA (according to its terms) is \$2 million owed by Party A₁ to Party B due on March 5, 2004.

Determination of the Final Net Settlement Amounts

On March 5, 2004, both a Set-Off Date and a Final Settlement Date with respect to Party A, Party A sets off the amounts owed under the IFEMA and the ISDA and the Designated Party A Entity determines a Final Net Settlement Amount of \$2 million owed by Party B to Party A.

On the same day, which is also the Final Settlement Date with respect to Party A₁, the Designated Party A Entity determines that the Final Net Settlement Amount owed by Party A₁ to Party B is \$2 million.

1.2 *Positions after the determination of the Final Settlement Amounts:*



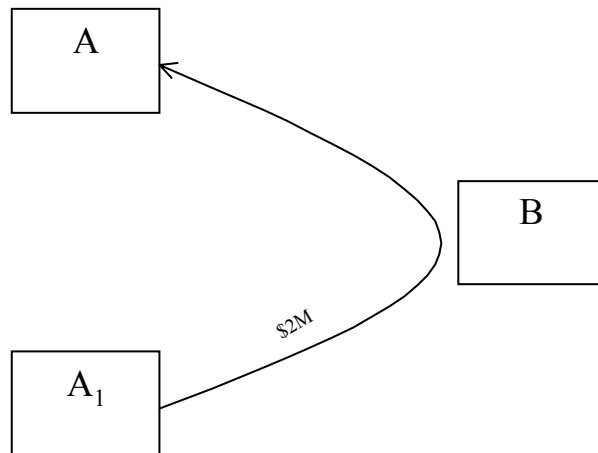
Exercise of Remedies Pursuant to Annex I

Party B's right to receive a Final Net Settlement Amount from Party A₁ constitutes "**Receivables Collateral**" and "**Collateral**" under Annex I and secures Party B's obligation to pay a Final Net Settlement Amount to Party A (which falls within the definition of "**Obligations**" in Annex I).

Party A, as a "**Secured Party**" pursuant to Section 2.3(a) of Annex I, has the right to satisfy Party B's obligation to pay the Party A Final Net Settlement Amount by collecting on Party B's rights to payments of the Party A₁ Final Net Settlement Amount. Party A collects from Party A₁ the \$2 million due from Party A₁ to Party B and applies it against the \$2 million due to it from Party B (pursuant to Section 2.3(c) of Annex I, Party A₁ agrees to pay this amount to Party A).

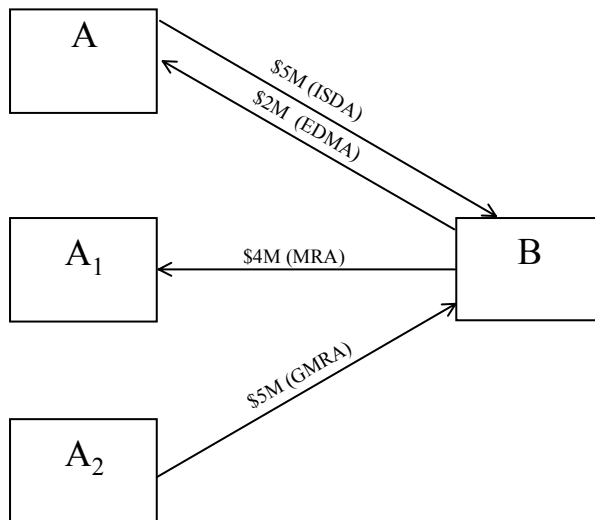
Pursuant to Section 2.5 of Annex I, the Party A Entities are entitled to defer the exercise of any rights under Section 4 of CPMA 2 until all remedies with respect to the Collateral have been exercised. Since the exercise of such remedies in this example reduces each Final Net Settlement Amount to zero, Section 4.4 of CPMA 2 is no longer operative.

1.3 *Satisfaction of the Final Net Settlement Amounts by collecting on the Receivables Collateral:*



EXAMPLE 2: CROSS-GUARANTEE

2 *Positions upon Close-Out of the Principal Agreements:*



The Facts

Party A, Party A₁ (an affiliate of Party A), Party A₂ (an affiliate of Party A) and Party B have entered into the following transactions: (i) a currency swap, with a final settlement date of June 17, 2004, documented under the ISDA Master Agreement (2002 version) between Party A and Party B (the “**ISDA**”); (ii) an energy derivative with a settlement date of February 4, 2004, documented under an energy derivatives master agreement not in an industry standard form between Party A and Party B (the “**EDMA**”); (iii) a repo transaction, with a maturity date of March 1, 2004, documented under the TBMA Master Repurchase Agreement between Party A₁ and Party B (the “**MRA**”); and (iv) a GILT repo transaction with a maturity date of May 6, 2004, documented under the TBMA/ISMA Global Master Repurchase Agreement between Party A₂ and Party B (the “**GMRA**”, and, together with the ISDA, the EDMA and the MRA, the “**Principal Agreements**”).

The Parties have not entered into any transactions other than those under the Principal Agreements. Party A, Party A₁, Party A₂ and Party B have also entered into a CPMA 2 which designates the Principal Agreements as such, and designates Party A as “Party A”, Party A₁ and Party A₂ as “Party A Affiliates” and Party B as “Party B.” The Parties have also agreed to adopt Annex II to CPMA 2 (“Cross-Guarantee”).

On January 5, 2004, Party B fails to meet a margin call after the notice required under the MRA.

Close-Out of the Principal Agreements

The failure to meet a margin call after notice is an event of default under the MRA and as such is a Close-Out Event under CPMA 2. Each of the Party A Entities elects to Close Out the

Principal Agreements, and the Designated Party A Entity provides Party B with a Close-Out Notice stating that Party A, Party A₁ and Party A₂ are exercising their rights under Section 2 of CPMA 2 to Close-Out all of the Principal Agreements.

Determination of the Settlement Amounts and Final Net Settlement Amounts

Pursuant to Section 3.1 of CPMA 2, the Designated Party A Entity determines the Settlement Amounts owed by or to Party B for each Principal Agreement under the terms of such Principal Agreement, with the result that, as of January 5, 2004, Party A owes Party B \$5 million under the ISDA and Party B owes Party A \$2 million under the EDMA. As of January 5, 2004, Party B owes Party A₁ \$4 million under the MRA and Party A₂ owes Party B \$5 million under the GMRA.

On January 5, 2004, the Designated Party A Entity sets off the amounts owed under the ISDA and the EDMA to determine a Final Net Settlement Amount of \$3 million owed by Party A to Party B, and determines Final Net Settlement Amounts of \$4 million owed to Party A₁ by Party B and \$5 million owed by Party A₂ to Party B.

Demand under the Limited Guarantee and Determination of the Guarantee Limits

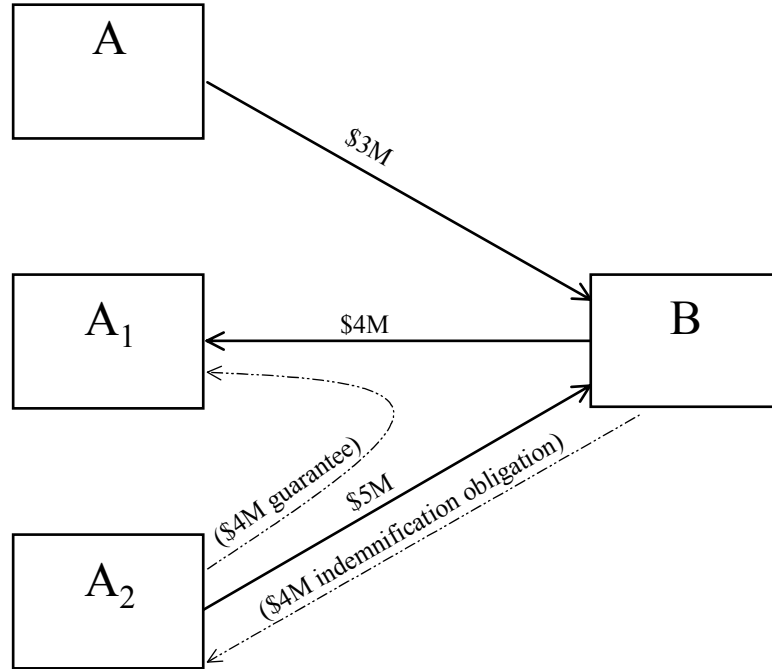
Pursuant to Section 2.1 of Annex II, each Party A Entity (each, a “Limited Guarantor”) has guaranteed to each other Party A Entity (each, a “Guaranteed Party”) all of Party B’s obligations from time to time to such Guaranteed Party (the “Guaranteed Obligations”).

Party A₁ is thus entitled pursuant to Section 2.2 of Annex II to demand payment from Party A and Party A₂ of the Final Net Settlement Amount owed to it by Party B. The liability at any time under the guarantee by each Limited Guarantor to any Guaranteed Party is limited, however, to the lower of (i) the amount payable at such time by such Limited Guarantor to Party B and (ii) the amount payable by Party B to the Guaranteed Party (the “Guarantee Limit”). Thus, the initial Guarantee Limit for Party A’s guarantee to Party A₁ is \$3 million and for Party A₂’s guarantee to Party A₁ is \$5 million.

Party A₁ elects to demand full payment of the \$4 million from Party A₂ on January 5, 2004 (the Party A Entities could have had Party A₁ demand that Party A and Party A₂ each pay a portion of the \$4 million). Party A₂ therefore pays \$4 million to Party A₁, thereby satisfying the obligation of Party B to pay a Final Net Settlement Amount to Party A₂.

Pursuant to Section 2.3 of Annex II, because a Close-Out Notice has already been given, the demand by Party A₁ obligates Party B to indemnify Party A₂ for the amount Party A₂ was obligated to pay Party A₁ under the guarantee. Party A₂ is entitled to set off its obligation to pay Party B a Final Net Settlement Amount of \$5 million against the \$4 million indemnification obligation, leaving it owing Party B a reduced Final Net Settlement Amount of \$1 million.

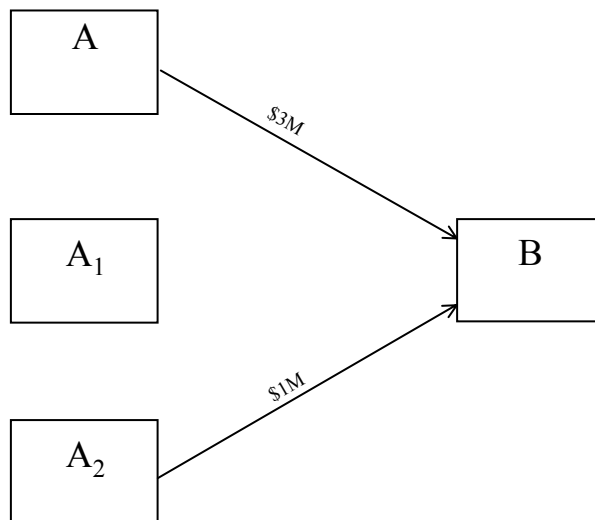
2.2 *Position Upon Demand under the Guarantee:*



Determination of the Final Net Settlement Amounts

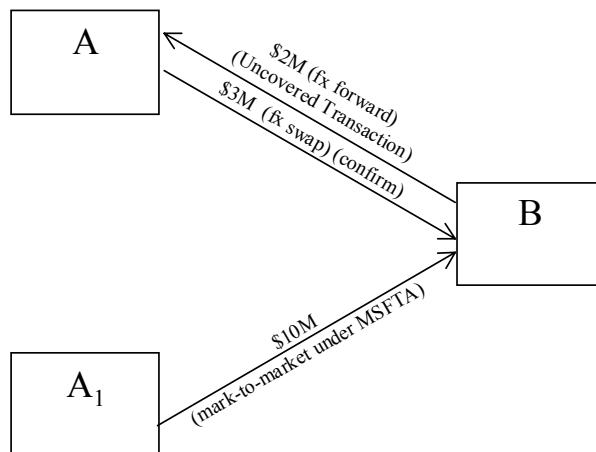
Before 10:00 a.m. on January 6, 2004, the Designated Party A Entity provides Party B with a calculation statement that notifies it that Party A and Party A₂ owe it Final Net Settlement Amounts of \$3 million and \$1 million, respectively, each due and payable by the end of business on the Final Settlement Date, that day with respect to each.

2.3 *Position on the Final Settlement Date:*



EXAMPLE 3: PARTY A ENTITY-BY-PARTY A ENTITY CLOSE-OUT

3.1 Positions under the Principal Agreements:



The Facts

Party A, Party A₁ (an affiliate of Party A) and Party B have entered into the following transactions: (i) a non-deliverable currency forward, with a settlement date of June 5, 2004, that is documented by a confirmation that only contains the economic terms of the trade and that was sent by Party A to Party B (the “**Uncovered Transaction**”); (ii) a currency swap, with a settlement date of July 5, 2004, that is documented by a long-form confirmation which incorporates the general terms of the ISDA Master Agreement (2002 version) between Party A and Party B (the “**Confirmation Trade**”); and (iii) a forward sale of mortgage-backed securities with a settlement date of January 4, 2005, documented under the TBMA Master Securities Forward Transaction Agreement between Party A₁ and Party B (the “**MSFTA**”).

The Parties have not entered into any transactions other than the Uncovered Transaction, the Confirmation Trade, and the forward sale under the MSFTA. Party A, Party A₁ and Party B have also entered into a CPMA 2, which indicates that the documents described in provisions 1 and 2 of Part II of the Schedule are “Principal Agreements”, and designates Party A as “Party A”, Party A₁ as a “Party A Affiliate” and Party B as “Party B.” Party A, Party A₁ and Party B have also included in CPMA 2 optional Parts VIII.2 and VIII.6 of the Schedule (“Terminating Transactions Not Documented by a Master Agreement” and “Party A Entity-by-Party A Entity Close-Out”), but have not adopted either of the cross-affiliate Annexes.

All three transactions are covered by CPMA 2. The MSFTA, because it is a Master Agreement between Party A₁ and Party B that covers forward contracts, is a Principal Agreement within the description of Part II.1 of the Schedule. The Confirmation Trade, because it incorporates the general terms of the ISDA Master Agreement, is a Principal Agreement within the description of Part II.2 of the Schedule. Finally, the non-deliverable forward, as an “Uncovered Transaction” pursuant to Part VIII.2 of the Schedule, is treated as a Principal Agreement.

On February 2, 2004, Party B delivers a copy of its annual financial statements to Party A pursuant to the terms of the Confirmation Trade. Party A and Party B have agreed in the

Confirmation Trade that the annual financial statements are covered by the “Section 3(d)” representation of the ISDA Master Agreement incorporated by reference into the Confirmation Trade, which requires that information subject to it be, as of the date of such information, true, accurate and complete in every material respect.

Close-Out of the Principal Agreements

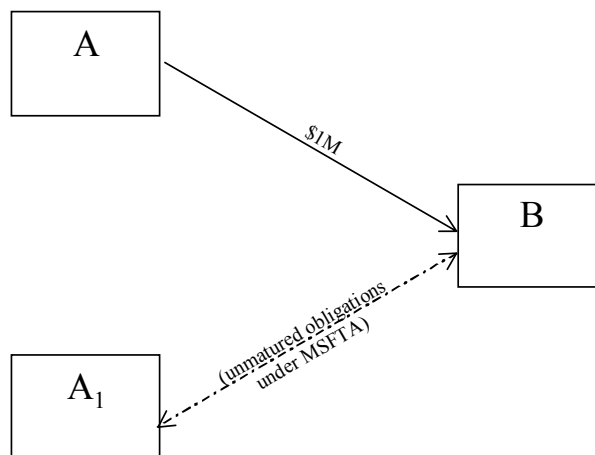
On February 15, 2004, the Party A Entities become aware that the annual financial statements of Party B contain information that was materially false as of its production. This is a Close-Out Event under the Confirmation Trade (Misrepresentation under Section 3(d)), and therefore under CPMA 2 as well. Pursuant to Part VIII.6 of the Schedule, each Party A Entity has the right to Close Out all of the Principal Agreements (including Uncovered Transactions) between it and Party B. Accordingly, Party A elects to Close Out the Uncovered Transaction and the Confirmation Trade, and Party A₁ elects *not* to Close Out the MSFTA (which is \$10 million in the money to Party B).

The Designated Party A Entity notifies Party B that Party A has exercised its rights under Section 2 of CPMA 2 to Close Out the Uncovered Transaction and the Confirmation Trade. The MSFTA, which has not been Closed Out, continues to operate pursuant to its own terms.

Determination of the Settlement Amounts and Final Net Settlement Amount

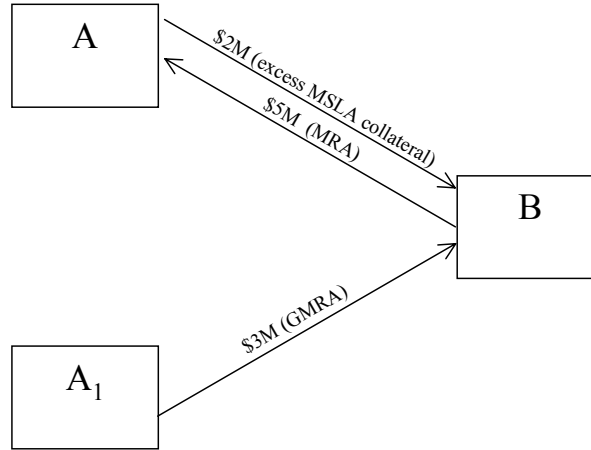
Also on February 15, 2004, pursuant to Section 3.1 of CPMA 2, the Designated Party A Entity determines that Party B owes Party A a Settlement Amount of \$2 million under the Uncovered Transaction and that Party A owes Party B \$3 million under the Confirmation Trade. After netting the Settlement Amounts and determining a Final Net Settlement Amount of \$1 million owed by Party A to Party B, the Designated Party A Entity, pursuant to Section 4.4(b), delivers a calculation statement after 10:00 a.m. on February 15, 2004. The Final Net Settlement Amount is due on the Final Settlement Date of February 16, 2004. The obligations from Party A₁ to Party B and from Party B to Party A₁ under the MSFTA will not be due until that transaction matures on January 4, 2005.

3.2 *Positions on the Final Settlement Date:*



EXAMPLE 4: BILATERAL CREDIT SUPPORT

4.1 Positions upon Close-Out of the Principal Agreements:



The Facts

Party A, Party A₁ (an affiliate of Party A) and Party B have entered into the following transactions: (i) a securities loan transaction, with a maturity date of May 12, 2004, documented under the TBMA/SIA Master Securities Loan Agreement (2000 version) between Party A and Party B (the “**MSLA**”); (ii) a repo transaction, with a maturity date of May 25, 2004, documented under the TBMA Master Repurchase Agreement between Party A and Party B (the “**MRA**”); and (iii) a GILT repo transaction with a maturity date of May 6, 2004, documented under the TBMA/ISMA Global Master Repurchase Agreement between Party A₁ and Party B (the “**GMRA**”, and, together with the MSLA and the MRA, the “**Principal Agreements**”).

The Parties have not entered into any transactions other than those under the Principal Agreements. Party A, Party A₁ and Party B have also entered into a CPMA 2 which designates the Principal Agreements as such, Party A as “Party A”, Party A₁ as a “Party A Affiliate” and Party B as “Party B.” The Parties have not adopted either of the cross-affiliate Annexes, but have adopted Parts VIII.9.1 and VIII.9.2 of the Schedule (“Bilateral Credit Support; Certain Set-off Rights”).¹⁸

On April 1, 2004, Party B fails to meet a margin call after the notice required under the MRA.

¹⁸ Parties should not adopt any of the provisions in Section 9 of Part VIII of the Schedule if they have elected to have Annex I apply. There may be circumstances, however, where the Parties may wish to consider entering into provisions of Section 9 of Part VIII and Annex II (e.g. where the Parties wish to provide for Collateral pledged or charged as credit support for Party B’s obligations under one Principal Agreement to also support Party B’s obligations under other Principal Agreements and CPMA 2 or where the Parties wish to provide for the fair market value of securities or other property obtained under a Closed-Out Agreement or Credit Support Document to be treated as a Settlement Amount).

Close-Out of the Principal Agreements

The failure to meet a margin call after notice is an event of default under the MRA and as such is a Close-Out Event under CPMA 2. Each of the Party A Entities elects to Close Out the Principal Agreements, and the Designated Party A Entity provides Party B with a Close-Out Notice stating that Party A and Party A₁ are exercising their rights under Section 2 of CPMA 2 to Close Out all of the Principal Agreements.

Determination of the Settlement Amounts

On April 2, 2004, Party A applies \$102 million of collateral it holds pursuant to the MSLA against the \$100 million of securities owed by Party B to Party A thereunder, leaving \$2 million in excess collateral held by Party A. Pursuant to Section 3.1 of CPMA 2, the Designated Party A Entity determines the Settlement Amount under the MSLA to be zero.¹⁹ Also on April 2, 2004, the Designated Party A Entity determines the Settlement Amount with respect to the MRA (in accordance with its terms) to be \$5 million owed to it by Party B on April 2. The Designated Party A Entity determines, also on April 2, 2004, that Party A₁ owes Party B a \$3 million Settlement Amount under the GMRA.

Determination of the Final Net Settlement Amounts

On April 2, 2004, the Designated Party A Entity determines a Final Net Settlement Amount of \$5 million owed to Party A by Party B. Pursuant to Part VIII.9.2(a) of the Schedule, the \$2 million collateral return obligation of Party A to Party B secures the obligation of Party B to pay Party A a Final Net Settlement Amount. Pursuant to Part VIII.9.2(b) of the Schedule, Party A applies the \$2 million collateral against the Final Net Settlement Amount, which reduces the latter to \$3 million.

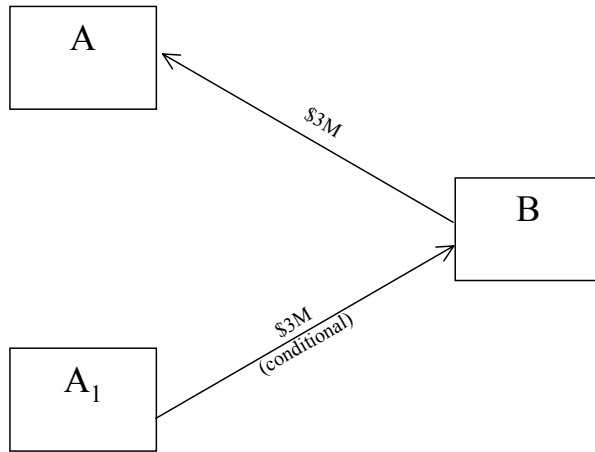
Also on April 2, 2004, the Designated Party A Entity determines a Final Net Settlement Amount of \$3 million owed by Party A₁ to Party B.

After 10:00 a.m. on April 2, 2004, the Designated Party A Entity gives a statement to Party B detailing the calculation of the Final Net Settlement Amounts, each of which are due on the Final Settlement Date for each, which is April 3, 2004.

Although the Parties have not adopted either of the cross-affiliate Annexes, Party A₁'s obligation to pay Party B a \$3 million Final Net Settlement Amount is conditional on Party B's obligation to pay Party A a \$3 million Final Net Settlement Amount pursuant to Section 9.1 of CPMA 2 and Party A₁ is entitled to withhold payment until Party B pays Party A.

¹⁹ Under the MSLA, as in many standard form New York law-governed documents, "excess collateral" must be returned by the secured party after the obligation to pay the net payment amount under agreement has been met. That obligation to return property is *not* a Settlement Amount under CPMA 2. On this point, see also the Guidance Notes to CPMA 1 at 8. However, if the parties choose Annex I to apply, any excess collateral held by a Party A Entity is "Principal Agreement Collateral" and any obligation of Party B to return excess collateral to a Party A Entity is an "Obligation."

4.2 *Positions on the Final Settlement Date:*



**Form of Amendment to the Cross-Product
Master Agreement 2 to Include
Additional Principal Agreements**

Amendment, dated as of [SPECIFY DATE OF AMENDMENT] (the “Amendment”), to the Cross-Product Master Agreement (Cross-Affiliate Version 2), dated as of [SPECIFY DATE OF AGREEMENT] (the “Agreement”), between [SPECIFY NAME OF PARTY] (“Party A”), the Party A Affiliates (as defined in the Agreement) and [SPECIFY NAME OF COUNTERPARTY] (“Party B”)

WHEREAS, Party A, the Party A Affiliates and Party B wish to amend the Agreement to include certain additional Principal Agreements (as defined in the Agreement) within the scope of the Agreement,

NOW, THEREFORE, Party A, the Party A Affiliates and Party B agree to amend the Agreement as follows:

1. Amendment to the Agreement

Part II of the Schedule is hereby amended to include the following agreement(s), which agreement(s) shall, as of the effective date of this Amendment, each be deemed to be a “**Principal Agreement**” under the Agreement:

[#.] [Specify name of master agreement]

2. Representations and Warranties

Each Party represents and warrants to the other that:

- (a) it is duly authorized to execute and deliver this Amendment and to perform its obligations under the Agreement and has taken all necessary actions to authorize such execution, delivery and performance,
- (b) the person signing this Amendment on its behalf is duly authorized to do so on its behalf,
- (c) this Amendment constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, conservatorship, receivership, moratorium or other similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law), and
- (d) it has not assigned, transferred, created or permitted to exist any lien or other encumbrance on, or otherwise disposed of or purported to assign, transfer, create or permit to exist any lien or other encumbrance on, or otherwise dispose of any of its rights to any amounts that may be owed to it under any Principal Agreement to any party not party to the Agreement, and, so long as the Agreement is in effect, it will not assign, transfer, create or permit to exist any lien or other encumbrance on, or otherwise dispose of, or purport to assign, transfer, create or permit to exist any lien or other encumbrance on or otherwise dispose of any of its rights to any amounts that may be owed to it under any Principal Agreement, to any party not party to the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date first set forth above.

[NAME OF PARTY A]

By:
Name:
Title:

[NAME OF EACH PARTY A AFFILIATE]

By:
Name:
Title:

[NAME OF PARTY B]

By:
Name:
Title:

Form of Section 2 Notice

[Name of Party B]
[Address]

Re: Notice Pursuant to Section 2 of the Cross-Product Master Agreement (Cross-Affiliate Version 2) (the “Agreement”), dated as of [●], between [name of Party A], the Party A Affiliates (as defined in the Agreement) and [name of Party B]

Ladies and Gentlemen:

[Notice under Section 2.2(a):

We hereby notify you pursuant to Section 2.2(a) that: [a Close-Out Event, namely (specify the event) in the following Principal Agreement has occurred: (specify the Principal Agreement)] [a breach of an obligation, namely (specify the breach) under the following Uncovered Transaction has occurred: (specify the Uncovered Transaction)]¹ [the event specified in Section 2.1(b) of the Agreement, namely (specify the representation or warranty which has been breached), has occurred] [a violation of the following covenant made under the Agreement has occurred: (specify the covenant that has been violated)].

We further notify you that [each of the Party A Entities]² has exercised their right, pursuant to Section 2.1 of the Agreement, to Close Out the Principal Agreements covered by the Agreement. The Close-Out of the Principal Agreements shall be effective on [●], notwithstanding any provision to the contrary in any such Principal Agreement. Defined terms not otherwise defined herein are used herein as defined in the Agreement.

[The following Principal Agreement(s) have been previously Closed Out according to their terms:
] ³

[Notice under Section 2.2(b):⁴

We hereby notify you pursuant to Section 2.2(b) of the Agreement that the settlement of the Settlement Amounts under all Principal Agreements will be settled at the times and in the manner set forth in Sections 3.3 and 4 of the Agreement. Defined terms not otherwise defined herein are used herein as defined in the Agreement.]

We [are in the process of determining the Settlement Amounts for all Principal Agreements that have been Closed Out and will notify you of each Final Net Settlement Amount under the

¹ To be used only if Part VIII.2 of the Schedule has been included in CPMA 2.

² The applicable Party A Entities should be cited instead if Part VIII.6 of the Schedule has been included in CPMA 2.

³ Include this optional provision only if one or more Principal Agreements have automatically Closed Out or otherwise have been previously Closed Out.

⁴ To be used only if all Principal Agreements have Closed Out automatically by their terms and Part VIII.4 of the Schedule has not been included in CPMA 2.

Agreement once it has been determined] or [have attached a statement showing the calculation of each Final Net Settlement Amount under the Agreement].

Sincerely yours,

[NAME OF DESIGNATED PARTY A ENTITY]

By:
Name:
Title:

**Sample Provisions for Exclusive Jurisdiction, Service of Process,
Waiver of Jury Trial and Waiver of Immunities**

The following provisions may be included in Part IX of the Schedule by Parties wishing to include provisions in CPMA 2 relating to exclusive jurisdiction, service of process, waiver of trial by jury and waiver of immunities that would override similar provisions in the Principal Agreements:

“The following provisions are applicable to the Agreement and shall amend and supersede any provisions in each Principal Agreement relating to jurisdiction by courts over the parties, service of process, waiver of jury trial and waiver of immunities (i) upon the giving of a Section 2 Notice or (ii) where all Principal Agreements have Closed Out automatically by their terms, upon the application of Sections 3.3 and 4 hereof to such Principal Agreements:

Exclusive Jurisdiction. With respect to any suit, action or other proceedings arising out of or in relation to this Agreement (“**Proceedings**”), each Party (i) [agrees that the Supreme Court of the State of New York, County of New York, or the United States District Court for the Southern District of New York shall have exclusive jurisdiction][submits to the exclusive jurisdiction of the courts of England] and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and specifically consents to personal jurisdiction in such courts in any Proceeding and waives the right to object, with respect to such Proceedings, that such court does not have jurisdiction over such Party. Although each Party may bring substantive Proceedings only in the courts specified above and must not seek judgment on the merits in any other courts, each Party may seek protective seizure or similar provisional measures in other courts. If by seeking such measures in other courts a Party would become or becomes obliged to seek judgment on the merits in such other courts, Proceedings may not be taken or continued in such other courts. Nothing in this section shall limit the right of any Party to bring one or more actions, suits, provisional remedies or other proceedings in any other court of competent jurisdiction to enforce any judgment obtained in the Proceedings referred to above.

- (a) *Service of Process.* Each Party A Entity irrevocably appoints [•] located in [the State of New York][England] as its agent for service of process. Party B irrevocably appoints [•] located in [the State of New York][England] as its agent for service of process. If for any reason any Party's process agent is unable to act as such, such Party will promptly notify each other Party and within thirty days will appoint a substitute process agent acceptable to the other Party. Until such substitute process agent is appointed, service on the original process agent will continue to constitute good service. Nothing in this Agreement will affect the right of any Party to serve process in any other manner permitted by law.
- (b) *Waiver of Jury Trial.* Each Party irrevocably waives any and all rights to trial by jury in any Proceedings.

Waiver of Immunities. Each Party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the fullest extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.”