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► **B**

**INDIRIZZO DELLA BANCA CENTRALE EUROPEA**

**del 3 febbraio 2000**

**relativo alla gestione delle attività di riserva in valuta della Banca centrale europea da parte delle banche centrali nazionali e alla documentazione legale concernente le operazioni aventi per oggetto le attività di riserva in valuta della Banca centrale europea**

*(BCE/2000/1)*

(2000/516/CE)

(GU L 207 del 17.8.2000, pag. 24)

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► <b><u>M1</u></b>	Indirizzo della Banca centrale europea del 21 giugno 2001 (BCE/2001/5)	L 190	26	12.7.2001
► <b><u>M2</u></b>	Indirizzo della Banca centrale europea del 16 novembre 2001 (BCE/2001/12)	L 310	31	28.11.2001
► <b><u>M3</u></b>	Indirizzo della Banca centrale europea del 26 settembre 2002 (BCE/2002/6)	L 270	14	8.10.2002
► <b><u>M4</u></b>	Indirizzo della Banca centrale europea dell'11 marzo 2005 (BCE/2005/6)	L 109	107	29.4.2005
► <b><u>M5</u></b>	Indirizzo della Banca centrale europea del 15 dicembre 2005 (BCE/2005/15)	L 345	33	28.12.2005



## INDIRIZZO DELLA BANCA CENTRALE EUROPEA

del 3 febbraio 2000

**relativo alla gestione delle attività di riserva in valuta della Banca centrale europea da parte delle banche centrali nazionali e alla documentazione legale concernente le operazioni aventi per oggetto le attività di riserva in valuta della Banca centrale europea**

*(BCE/2000/1)*

(2000/516/CE)

IL CONSIGLIO DIRETTIVO DELLA BANCA CENTRALE EUROPEA,

visto il trattato che istituisce la Comunità europea (in seguito denominato «trattato»), in particolare l'articolo 105, paragrafo 2, terzo trattino, nonché gli articoli 3.1, terzo trattino, 12.1, 14.3 e 30.6 dello statuto del Sistema europeo di banche centrali e della Banca centrale europea (in seguito denominato «statuto»),

considerando quanto segue:

- (1) Ai sensi dell'articolo 30.1 dello statuto, alla Banca centrale europea (BCE) vengono conferite attività di riserva in valuta da parte delle banche centrali nazionali degli Stati membri che hanno adottato la moneta unica (BCN) e che la BCE ha il pieno diritto di detenere e gestire le riserve in valuta che le vengono trasferite.
- (2) Ai sensi degli articoli 9.2 e 12.1 dello statuto, la BCE può assolvere attraverso le BCN taluni compiti ad essa attribuiti nonché avvalersi delle stesse per eseguire determinate operazioni. La BCE ritiene che le BCN debbano di conseguenza gestire le riserve in valuta in qualità di suoi rappresentanti. La BCE reputa necessario che, nell'operare in qualità di suoi rappresentanti per la gestione delle attività di riserva in valuta ad essa conferite, le BCN debbano osservare un codice di condotta e seguire determinate altre procedure con le controparti della BCE.
- (3) La partecipazione delle BCN alla gestione delle attività di riserva in valuta conferite alla BCE e alle operazioni connesse a tale gestione comporta la necessità di predisporre la documentazione relativa alle operazioni aventi per oggetto le riserve in valuta della BCE.
- (4) In conformità degli articoli 12.1 e 14.3 dello statuto, gli indirizzi della BCE costituiscono parte integrante del diritto comunitario,

HA ADOTTATO IL SEGUENTE INDIRIZZO:

### *Articolo 1*

#### **Definizioni**

Ai fini del presente indirizzo:

- per «Stati membri partecipanti» si intendono tutti gli Stati membri che hanno adottato la moneta unica in conformità del trattato,
- per «BCN» si intendono le banche centrali nazionali degli Stati membri partecipanti.

### *Articolo 2*

#### **Ruolo di rappresentanza delle BCN**

1. Le BCN eseguono le operazioni aventi per oggetto le attività di riserva in valuta della BCE in qualità di rappresentanti di quest'ultima; con l'avvio di tali operazioni, esse riconoscono il loro ruolo di rappresentanti. Al momento di concludere ogni operazione eseguita per conto della BCE, le BCN comunicano alle parti che esse agiscono in qualità di rappresentanti della BCE, indicando sia il nome di quest'ultima sia un identificativo o numero di conto.

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2. Nell'eseguire le operazioni aventi per oggetto le attività di riserva in valuta della BCE in qualità di rappresentanti di quest'ultima, le BCN antepongono gli interessi della BCE ai propri ovvero a quelli di qualsiasi entità per la quale esse eseguono le operazioni.

3. Se una controparte della BCE richiede a una BCN di giustificare il suo potere di eseguire operazioni aventi per oggetto le attività di riserva in valuta della BCE in qualità di rappresentante di quest'ultima, la BCN fornisce prova dei poteri di rappresentanza ad essa attribuiti.

*Articolo 3***Documentazione legale**

1. Tutte le operazioni aventi per oggetto le attività di riserva in valuta della BCE sono eseguite previa adozione della documentazione legale prevista nel presente articolo.

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2. Un documento nella forma dell'allegato 1 del presente indirizzo deve essere accluso, costituendone parte integrante, a tutti i contratti standard, ad eccezione del contratto quadro per le operazioni finanziarie della FBE (edizione 2004), in forza dei quali sono eseguite le operazioni in contropartita di strumenti finanziari (comprese, a titolo esemplificativo, le operazioni di pronti contro termine, le operazioni di acquisto a pronti con patto di rivendita a termine, le operazioni di pronti contro termine con retrocessione del rateo di finanziamento o d'impiego, le operazioni di pronti contro termine con attribuzione del rateo di finanziamento o d'impiego, le operazioni di prestito titoli e le operazioni di pronti contro termine trilaterali) o le operazioni in strumenti derivati negoziati al di fuori dei mercati regolamentati aventi per oggetto le attività di riserva in valuta della BCE.

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3. Con ciascuna controparte viene stipulato un accordo quadro di compensazione in una delle forme riportate nell'allegato 2 al presente indirizzo, ad eccezione delle controparti con cui la BCE ha concluso un contratto quadro per le operazioni finanziarie della FBE (Edizione 2004) e che sono riconosciute o costituite secondo il diritto di una delle seguenti giurisdizioni: Austria, Belgio, Danimarca, Finlandia, Francia, Germania, Grecia, Italia, Lussemburgo, Paesi Bassi, Portogallo, Spagna, Svezia, Regno Unito (esclusivamente Inghilterra e Galles) o Svizzera.

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4. Le operazioni in contropartita di strumenti finanziari — comprese le operazioni pronti contro termine con retrocessione del rateo di finanziamento o d'impiego e le operazioni pronti contro termine con attribuzione del rateo di finanziamento o d'impiego — e le operazioni in strumenti derivati negoziati al di fuori dei mercati regolamentati aventi per oggetto le attività di riserva in valuta della BCE sono formalizzate mediante uno dei contratti standard elencati nell'allegato 3 al presente indirizzo, nelle forme di volta in volta approvate o modificate dalla BCE.

5. La prestazione di servizi finanziari aventi per oggetto le attività di riserva in valuta della BCE da parte di intermediari finanziari — compresi, a titolo esemplificativo, i servizi bancari, di custodia e di investimento prestati da banche corrispondenti, depositari, organi di regolamento ed enti centrali di compensazione per gli strumenti derivati negoziati nei mercati regolamentati — è regolata da contratti specifici di volta in volta approvati dalla BCE.

**▼M3****▼B***Articolo 4***Disposizioni finali**

Le banche centrali nazionali degli Stati membri partecipanti sono destinatarie del presente indirizzo.

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Il presente indirizzo ha effetto dal 3 febbraio 2000.

Il presente indirizzo è pubblicato nella *Gazzetta ufficiale delle Comunità europee*.

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## ALLEGATO 1

ALLEGATO BCE <sup>(1)</sup>▼M4

L'allegato 1 deve essere accluso, costituendone parte integrante, a ciascuno dei contratti standard, ad eccezione del contratto quadro per le operazioni finanziarie della FBE (edizione 2004), in forza dei quali sono eseguite, conformemente all'articolo 3, paragrafo 4, del presente indirizzo, le operazioni in contropartita di strumenti finanziari (comprese, a titolo esemplificativo, le operazioni di pronti contro termine, le operazioni di acquisto a pronti con patto di rivendita a termine, le operazioni di pronti contro termine con retrocessione del rateo di finanziamento o d'impiego, le operazioni di pronti contro termine con attribuzione del rateo di finanziamento o d'impiego, le operazioni di prestito titoli e le operazioni di pronti contro termine trilaterali) o le operazioni in strumenti derivati negoziati al di fuori dei mercati regolamentati aventi per oggetto le attività di riserva in valuta della BCE.

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1. Le clausole del presente allegato integrano le condizioni applicate al [*nome del contratto standard al quale si applica il presente allegato*] stipulato in data [*data del contratto*] («contratto») fra la Banca centrale europea («BCE») e [*nome della controparte*] («controparte»). Dette clausole sono allegate al contratto o sono in esso contenute e costituiscono parte integrante dello stesso. Qualora, e nella misura in cui, le disposizioni contenute nel contratto (diverse dalle clausole del presente allegato) o nell'accordo-quadro di compensazione della BCE concluso in data [*data*] («accordo-quadro di compensazione») fra la BCE e la controparte, compresi eventuali altri allegati, annessi o condizioni integrative di tale contratto, risultino incompatibili con le clausole del presente allegato, ovvero identiche o simili alle stesse nei loro effetti, queste ultime prevarranno e saranno applicate in loro vece.
2. Salvo nei casi in cui diversamente previsto dalla legge, la controparte accetta di mantenere riservati, e di non rivelare in nessuna circostanza a terzi, elementi informativi o consigli ad essa forniti dalla BCE ovvero informazioni riguardanti la BCE ottenute dalla controparte in virtù della stipula del contratto, comprese, a titolo esemplificativo, le informazioni concernenti l'esistenza stessa del contratto o le condizioni applicate al medesimo (compreso il presente allegato), o il rapporto intercorrente fra la controparte e la BCE in virtù del contratto medesimo, e di non utilizzare il nome della BCE in nessun tipo di materiale informativo o promozionale.
3. La controparte accetta di notificare per iscritto alla BCE, appena possibile: a) tutte le operazioni di fusione, per unione o incorporazione, ovvero il trasferimento della totalità o della maggior parte del suo attivo a terzi; b) la nomina di un commissario liquidatore, curatore fallimentare o amministratore con compiti di natura analoga, ovvero l'avvio di procedure di liquidazione o di ristrutturazione della controparte, od ogni altra procedura di natura analoga; c) eventuali variazioni del nome della controparte.
4. La BCE non rinuncia alla propria immunità — in ogni caso nella misura massima consentita dalla legge in vigore — da ogni procedimento legale e dalla giurisdizione di qualsiasi tribunale nonché da qualsiasi riparazione pretesa nei suoi confronti mediante ordinanza di ingiunzione, esecuzione forzata in forma specifica, restituzione di beni di sua proprietà, sequestro conservativo o pignoramento del suo attivo (sia anteriormente che successivamente alla sentenza).
5. Alla BCE non possono essere applicate clausole che prevedono una situazione di inadempimento o altre clausole, di qualsiasi natura, nelle quali si faccia riferimento al fallimento, all'insolvenza o ad altri eventi di natura analoga concernenti la BCE.
6. La controparte accetta di sottoscrivere il contratto (compreso il presente allegato) e di eseguire tutte le operazioni per proprio conto e non in qualità di rappresentante di eventuali terze parti.

<sup>(1)</sup> ► **M4** Il presente allegato è stato redatto in inglese e costituisce parte integrante dei contratti standard redatti in inglese che sono regolati dal diritto inglese o dello Stato di New York. La traduzione del testo in altre lingue è fornita a fini esclusivamente informativi e non è giuridicamente vincolante. ◀

*ALLEGATO 2***INDICE****Allegato 2a**

Accordo quadro di compensazione regolato dal diritto inglese e redatto in lingua inglese (ad uso di tutte le controparti ad eccezione delle controparti:

- i) con sede legale negli Stati Uniti d'America; o
- ii) con sede legale in Francia e in Germania che sono idonee unicamente a ricevere depositi; o
- iii) con cui la BCE ha concluso un contratto quadro per le operazioni finanziarie della FBE (edizione 2004) e che sono riconosciute o costituite secondo il diritto di una delle seguenti giurisdizioni: Austria, Belgio, Danimarca, Finlandia, Francia, Germania, Grecia, Italia, Lussemburgo, Paesi Bassi, Portogallo, Spagna, Svezia, Regno Unito (esclusivamente Inghilterra e Galles) o Svizzera

**Allegato 2b**

Accordo quadro di compensazione regolato dal diritto francese

(ad uso delle controparti con sede legale in Francia che sono idonee unicamente a ricevere depositi; redatto in lingua francese)

**Allegato 2c**

Accordo quadro di compensazione regolato dal diritto tedesco

(ad uso delle controparti con sede legale in Germania che sono idonee unicamente a ricevere depositi; redatto in lingua tedesca)

**Allegato 2d**

Accordo-quadro di compensazione regolato dal diritto dello Stato di New York

(ad uso delle controparti con sede legale negli Stati Uniti d'America; redatto in inglese)

**▼B***ALLEGATO 2a***▼M5**

Accordo quadro di compensazione regolato dal diritto inglese e redatto in lingua inglese (ad uso di tutte le controparti ad eccezione delle controparti:

- i) con sede legale negli Stati Uniti d'America; o
- ii) con sede legale in Francia e in Germania che sono idonee unicamente a ricevere depositi; o
- iii) con cui la BCE ha concluso un contratto quadro per le operazioni finanziarie della FBE (edizione 2004) e che sono riconosciute o costituite secondo il diritto di una delle seguenti giurisdizioni: Austria, Belgio, Danimarca, Finlandia, Francia, Germania, Grecia, Italia, Lussemburgo, Paesi Bassi, Portogallo, Spagna, Svezia, Regno Unito (esclusivamente Inghilterra e Galles) o Svizzera

**▼B****MASTER NETTING AGREEMENT**

Dated:

Between:

European Central Bank, Kaiserstrasse 29, D-60311 Frankfurt am Main, Germany (hereinafter referred to as the ECB), and

[Counterparty] whose [address] [registered place of business] is at [address] (hereinafter referred to as the Counterparty)

**1. Scope of agreement**

1.1. The purpose of this Agreement (hereinafter referred to as the Agreement) is to ensure that the ECB is able to net all existing positions under all outstanding transactions made between the ECB and the Counterparty, regardless of any agent or agents authorised to act on behalf of the ECB through whom the transactions giving rise to those positions may have been effected, including the central bank of any Member State of the European Union which has adopted the euro as its currency, and regardless of which office (including the head office and all branches) of the Counterparty may be involved in such transactions, and after taking into account the effect of any existing netting provisions in master or other agreements between the ECB and the Counterparty and/or provisions of mandatory law that operate with similar effect that may apply to certain of such transactions.

1.2. In this Agreement, a «netting agreement» means any agreement for the time being in effect between the Parties (and including, without limitation, this Agreement and agreements of the kind listed in Appendix 1 to this Agreement), including such modifications and additions thereto as may be agreed between the ECB and the Counterparty (hereinafter referred to as the Parties) from time to time, which contains provisions to the effect that, should any event of default as defined for the purposes of such agreement occur, there may be an early termination, liquidation, closing-out or acceleration of transactions or obligations under transactions or any analogous event (a «default termination») and the respective obligations of the Parties under such agreement may be combined, aggregated or set-off against each other so as to produce a single net balance payable by one Party to the other.

**2. General**

2.1. All transactions of whatever nature (hereinafter referred to as transactions) entered into between the Parties at any time after the date of this Agreement shall be governed by this Agreement, unless the Parties specifically agree otherwise.

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- 2.2. The Parties acknowledge that the terms of this Agreement, all transactions governed by this Agreement, any amendments to the terms of such transactions, and the single net balance payable under any netting agreement constitute a single business and contractual relationship and arrangement.
- 2.3. The Counterparty has entered into this Agreement as principal and represents and warrants that it has entered and shall enter into all transactions as principal.
- 2.4. This Agreement is supplemental to the netting agreements entered into between the Parties prior to the date of this Agreement, and all further netting agreements and transactions entered into between the Parties after the date of this Agreement shall be supplemental to this Agreement.

**3. Base currency**

The base currency for the purposes of this Agreement shall be the US dollar or, at the ECB's option, any other currency. Wherever it is necessary in accordance with the terms of this Agreement to convert amounts into the base currency, such amounts shall be converted at the daily reference rate published by the ECB for the currency to be converted into the base currency or, in the absence of such reference rate, at the rate of exchange at which the ECB can buy or sell, as appropriate, such amounts with or against the base currency on such day, all as determined by the ECB.

**4. Cross acceleration**

Should any default termination occur under any netting agreement (including under Appendix 2 to this Agreement), then the ECB shall have the right to declare, by written notice to the Counterparty, that a default termination has occurred under each other netting agreement in respect of which default termination has not occurred in accordance with the provisions thereof.

**5. Global netting**

- 5.1. Should a default termination occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each Party to the other under each netting agreement (including under Appendix 2 to this Agreement) in respect of which default termination has occurred and aggregate the sums due from each Party to the other under such netting agreements (including under Appendix 2 to this Agreement), in every case in or converted into the base currency, and only the net balance of the account shall be payable by the Party owing the larger aggregate sum.
- 5.2. Clause 5.1 shall continue to operate to the extent possible notwithstanding the unenforceability under applicable law of any provisions contained in any netting agreement (including under Appendix 2 of this Agreement).

**6. Notices and other communications**

All notices, instructions and other communications to be given under this Agreement shall be effective only upon receipt and shall be made in writing (including by electronic means).

**7. Severability**

Each provision contained herein (including, without limitation, Appendix 2 to this Agreement) shall be treated as separate from any other provision herein and shall be enforceable notwithstanding the unenforceability of any such other provision.

**8. Non-assignability**

The rights and obligations of the Counterparty under this Agreement may not be assigned, charged, pledged or otherwise transferred or dealt with by the Counterparty.

**9. Governing law and jurisdiction**

- 9.1. This Agreement shall be governed by and construed in accordance with English law.



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9.2. For the benefit of the ECB, the Counterparty hereby irrevocably submits for all purposes of or in connection with this Agreement to the jurisdiction of the District Court (*Landgericht*) of Frankfurt am Main, Germany. Nothing in this clause 9 shall limit the right of the ECB to take proceedings before the courts of any other country of competent jurisdiction.

**European Central Bank****[Name of Counterparty]**

By \_\_\_\_\_ By \_\_\_\_\_

Title \_\_\_\_\_ Title \_\_\_\_\_

(Address for the service of notices under this Agreement)

Date \_\_\_\_\_ Date \_\_\_\_\_

(In case of Luxembourg Counterparties:

In addition to clause 9 of this Agreement the Parties agree that for purpose of Article 1 of the Protocol annexed to the Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, signed in Brussels on 27 September 1998 and without prejudice to the foregoing execution of this Agreement by the parties hereto, (Luxembourg Counterparty) expressly and specifically confirms its agreement to the provisions of clause 9 of this Agreement, stipulating that the District Court (*Landgericht*) of Frankfurt am Main shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement and, for such purposes, irrevocably submits to the jurisdiction of such courts.

**Luxembourg Counterparty**

By \_\_\_\_\_

Title \_\_\_\_\_ )

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*Appendix 1*

**Netting agreements (\*)**

▼ **M4**

1. FBE Master Agreement for Financial Transactions (Edition 2004)
2. ISDA Master Agreement (Multi-currency — Cross border 1992)
3. TBMA/ISMA Global Master Repurchase Agreement (2000 version)
4. The Bond Market Association Master Repurchase Agreement

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(\*) This documentation is maintained by the ECB Legal Services and the legal departments of the national central banks.

**▼B***Appendix 2***Transactions not subject to any netting agreement**

1. The provisions of this Appendix apply to transactions entered into between the Parties that are not effectively subject to any other netting agreement.
2. Should:
  - a) a default termination occur under any netting agreement, or
  - b) an event that is defined as an event of default or other analogous event under any netting agreement occur, which event would, assuming there were outstanding transactions under any such netting agreement, result in, or entitle the ECB to take steps which would result in, a default termination under such netting agreement,

(any such event under (a) or (b) above is referred to in this Appendix as an «event of default»), then all transactions to which this Appendix applies (but not less than all, unless any such transaction may not be so closed out under applicable law) under which obligations have or would otherwise have fallen due by or after the date of such event of default (the «close out date») may by notice in writing from the ECB to the Counterparty be liquidated and closed-out as described under paragraphs 3 and 4 of this Appendix, and the ECB shall, without prejudice to paragraphs 3 and 4 of this Appendix, not be obliged to make any further payments or deliveries under any such transactions.
3. Should liquidation and close-out under paragraph 2 of this Appendix occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each Party to the other, including, as necessary, determining in respect of each transaction the ECB's total gain or loss, as the case may be, resulting from the liquidation and close-out of such transaction as at the date of such liquidation and close-out, in every case in or converted into the base currency. The ECB shall then aggregate such gains and losses and only the balance of the account shall be payable by the Counterparty, if the aggregate losses exceed the aggregate gains, or by the ECB, if the aggregate gains exceed the aggregate losses.
4. In determining in respect of each transaction the ECB's total gain or loss, the ECB shall, subject to applicable law, use a commercially reasonable method of calculation which (a) is based on, to the extent practicable and available, quotations from at least four leading dealers in the relevant market operating in the same financial centre, and (b) takes into account, where applicable, the liquidation and close-out of such transaction earlier than its scheduled value date or delivery date.
5. The Parties agree that the calculation of the net sum under paragraphs 3 and 4 of this Appendix is a reasonable pre-estimate of losses suffered.

**▼B***ALLEGATO 2b***▼M4****Accordo quadro di compensazione regolato dal diritto francese**

(ad uso delle controparti con sede legale in Francia che sono idonee unicamente a ricevere depositi; redatto in lingua francese)

**▼B****CONVENTION-CADRE DE COMPENSATION**

Date:

Entre:

La Banque centrale européenne, Kaiserstrasse 29, D-60311 Francfort-sur-le-Main, Allemagne (ci-après dénommée la «BCE») et

(ci-après dénommée la «contrepartie»)

**1. Champ d'application de la convention**

- 1.1 La présente convention (ci-après dénommée la «convention») a pour objet de permettre à la BCE de compenser l'ensemble des positions existantes dans le cadre de l'ensemble des transactions en cours effectuées entre la BCE et la contrepartie, sans distinction de l'agent ou des agents autorisés à agir pour le compte de la BCE par l'intermédiaire duquel ou desquels les transactions génératrices de ces positions ont pu être effectuées, y compris la banque centrale de tout État membre de l'Union européenne ayant adopté l'euro comme monnaie nationale, et sans distinction de l'établissement (y compris le siège social et l'ensemble des succursales) de la contrepartie impliqué dans ces transactions, et après prise en considération de l'incidence de toutes les dispositions existantes relatives à la compensation qui figurent dans la convention-cadre ou dans les autres conventions conclues entre la BCE et la contrepartie et/ou des dispositions de la législation applicable ayant un effet similaire et susceptibles de s'appliquer à certaines de ces transactions.
- 1.2 Dans la présente convention, on entend par «convention de compensation» toute convention en vigueur entre les parties (y compris, sans restriction, la présente convention et les conventions de l'espèce énumérées dans l'additif 1 de la présente convention), y compris les modifications et les avenants aux textes susceptibles d'être convenus, s'il y a lieu, entre la BCE et la contrepartie (ci-après dénommées les «parties»), qui comporte des dispositions prévoyant, lors de la survenance d'un cas de défaillance tel que défini dans le cadre de cette convention, une possibilité de résiliation, d'exigibilité anticipées ou de «close out» des transactions ou des obligations afférentes aux transactions ou de tout événement analogue (une «résiliation pour défaillance»), les obligations respectives des parties dans le cadre de cette convention pouvant dès lors être regroupées, globalisées ou compensées réciproquement de manière à donner lieu à un solde net unique payable par l'une des parties à l'autre.

**2. Dispositions d'ordre général**

- 2.1 L'ensemble des transactions de toute nature (ci-après dénommées «transactions») conclues entre les parties à tout moment après la date de la présente convention sera régi par la présente convention, sauf si les parties en décident spécifiquement autrement.
- 2.2 Les parties reconnaissent que les termes de la présente convention, l'ensemble des transactions régies par elle, toutes les modifications apportées aux termes de ces transactions et le solde net unique payable dans le cadre de toute convention de compensation constituent une relation et un accord professionnels et contractuels uniques.
- 2.3 La contrepartie a conclu cette convention en son nom propre; elle déclare et atteste qu'elle a conclu et conclura toutes les transactions en son nom propre.

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- 2.4 La présente convention complète les conventions antérieures de compensation conclues antérieurement entre les parties; toutes les autres conventions de l'espèce et transactions qui seront conclues ultérieurement entre les parties compléteront la présente convention.

**3. Devise de référence**

La devise de référence utilisée dans le cadre de cette convention sera le dollar des États-Unis ou, au choix de la BCE, une autre devise. Dans les cas où il sera nécessaire, conformément aux termes de la présente convention, de convertir les montants dans la devise de référence, la conversion s'effectuera au taux de référence quotidien publié par la BCE pour la devise à convertir dans la devise de référence ou, à défaut de ce taux de référence, au taux de change auquel la BCE peut acheter ou vendre, selon le cas, ces montants avec ou contre la devise de référence ce même jour, selon les conditions définies par la BCE.

**4. Clause de défaillance croisée**

Lors de la survenance d'une résiliation pour défaillance dans le cadre d'une convention de compensation (y compris dans le cadre de l'additif 2 de la présente convention), la BCE sera habilitée à prononcer, par notification écrite à la contrepartie, la résiliation pour défaillance de chacune des autres conventions de compensation pour lesquelles il n'y a pas eu résiliation pour défaillance dans les conditions prévues par les dispositions précitées.

**5. Compensation globale**

- 5.1 Lors de la survenance d'une résiliation pour défaillance, la BCE comptabilisera dans les meilleurs délais les montants dus par chacune des parties à l'autre au titre de chaque convention de compensation (y compris dans le cadre de l'additif 2 de la présente convention) pour laquelle est intervenue une résiliation pour défaillance et globalisera les sommes dues par chaque partie à l'autre au titre de ces conventions de compensation (y compris dans le cadre de l'additif 2 de la présente convention) libellées ou converties dans tous les cas dans la devise de référence, seul le solde net étant payable par la partie débitrice du montant brut le plus élevé.
- 5.2 La clause 5.1 restera en vigueur dans la mesure du possible nonobstant le caractère inapplicable, en vertu de la loi en vigueur, de toute disposition pouvant être contenues dans une convention de compensation (y compris dans le cadre de l'additif 2 de la présente convention).

**6. Notifications et autres communications**

L'ensemble des notifications, instructions et autres communications à donner dans le cadre de la présente convention ne prendront effet qu'à la date de leur réception et seront adressées par écrit (y compris par les moyens électroniques).

**7. Gestion séparée**

Chacune des dispositions de la présente convention (y compris, sans restriction, l'additif 2 de ladite convention) sera traitée isolément des autres dispositions et sera applicable nonobstant le caractère inapplicable de ces autres dispositions.

**8. Incessibilité**

Les droits et les obligations de la contrepartie dans le cadre de la présente convention ne peuvent être cédés, transférés ou autrement négociés par la contrepartie.

**9. Loi applicable, attribution de compétences**

- 9.1 La présente convention sera soumise au droit français et interprétée selon ledit droit.

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9.2 Dans l'intérêt de la BCE, la contrepartie soumet irrévocablement par la présente convention tous les cas afférents à celle-ci ou s'y rapportant à la compétence de la juridiction du tribunal (*Landgericht*) de Francfort-sur-le-Main, Allemagne. Aucune disposition de cette clause 9 ne limitera le droit de la BCE d'entamer une procédure judiciaire devant les tribunaux compétents d'un autre pays.

**Banque centrale européenne****Contrepartie**

Par \_\_\_\_\_

Par \_\_\_\_\_

En qualité de \_\_\_\_\_

En qualité de \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

▼ B

*Additif 1*

**Conventions de compensation**

▼ M4

1. FBE Master Agreement for Financial Transactions (Edition 2004)
2. ISDA Master Agreement (Multi-currency — Cross border 1992)
3. TBMA/ISMA Global Master Repurchase Agreement (2000 version)
4. The Bond Market Association Master Repurchase Agreement

*Additif 2***Transactions non soumises à une convention de compensation**

1. Les dispositions du présent additif s'appliquent aux transactions conclues entre les parties qui ne sont pas effectivement soumises à une autre convention de compensation.
2. Lors de la survenance:
  - a) d'une résiliation pour défaillance dans le cadre d'une convention de compensation ou
  - b) d'un événement défini comme étant un cas de défaillance ou un événement analogue dans le cadre d'une quelconque convention de compensation, lequel événement, dans l'hypothèse où des transactions seraient en cours au titre de cette convention de compensation, amènerait ou habiliterait la BCE à prendre des mesures qui entraîneraient une résiliation pour défaillance dans le cadre de ladite convention,

[les événements prévus aux points a) ou b) étant dénommés dans le présent additif «cas de défaillance»],

l'ensemble des transactions concernées par le présent additif (sans exception, sauf dans le cas où une transaction ne peut faire l'objet d'une résiliation dans ces conditions aux termes de la loi applicable) dans le cadre desquelles les obligations sont ou seraient arrivées à échéance à la date ou après la date de survenance de ce cas de défaillance (la «date de résiliation») pourront être résiliées par notification écrite de la BCE à la contrepartie dans les conditions prévues aux points 3 et 4 du présent additif et la BCE ne sera pas tenue d'effectuer, sans préjudice des points 3 et 4 du présent additif, d'effectuer d'autres paiements ou livraisons au titre de ces transactions.

3. En cas de résiliation selon les termes du point 2 du présent additif, la BCE comptabilisera dans les meilleurs délais les sommes dues par chacune des parties à l'autre, notamment, le cas échéant, en déterminant pour chaque transaction la perte ou le gain total de la BCE résultant de la résiliation de ladite transaction à la date de résiliation, le montant étant dans tous les cas libellé ou converti dans la devise de référence. La BCE globalisera ensuite ces gains et pertes et seul le solde net sera payable par la contrepartie si le total des pertes excède celui des gains, ou par la BCE si le total des gains excède celui des pertes.
4. Pour déterminer, dans le cadre de chaque transaction, le montant total du gain ou de la perte de la BCE, celle-ci utilisera, sous réserve de la législation applicable, une méthode de calcul commercialement raisonnable: a) fondée, dans la mesure du possible, sur les cotations fournies par au moins quatre intervenants de premier rang du marché considéré et opérant dans le même centre financier et b) prenant en compte, le cas échéant, la résiliation de la transaction intervenue antérieurement à la date de valeur ou de livraison prévue.
5. Les parties conviennent que le calcul de la somme nette aux termes des points 3 et 4 du présent additif constitue une estimation raisonnable des pertes encourues.



▼ B

ALLEGATO 2c

▼ M4**Accordo quadro di compensazione regolato dal diritto tedesco****(ad uso delle controparti con sede legale in Germania che sono idonee unicamente a ricevere depositi; redatto in lingua tedesca)**▼ B**EZB-AUFRECHNUNGSVERTRAG****(«MASTER NETTING AGREEMENT»)**

vom:

zwischen

der Europäischen Zentralbank, Kaiserstraße 29, D-60311 Frankfurt am Main, Deutschland (im nachfolgenden „EZB“) und

.....

(im nachfolgenden „Vertragspartner“)

**1. Anwendungsbereich dieses Vertrags**

- 1.1. Der Zweck dieses Vertrages (im Folgenden: «Vertrag») besteht darin, die Verrechnung aller bestehenden Positionen aus allen offenen Geschäften zwischen der EZB und dem Vertragspartner zu ermöglichen. Der Vertrag schließt Geschäfte ein, die die EZB über Stellvertreter (z. B. Teilnehmerzentralbanken) abschließt. Er umfasst auch ferner alle diejenigen Geschäfte, die über die Hauptverwaltung oder eine unselbständige Zweigniederlassung des Vertragspartners mit der EZB abgeschlossen werden. Der Vertrag berücksichtigt ferner alle sonst zwischen den Parteien bestehenden Rahmenverträge oder sonstigen Vereinbarungen, die Aufrechnungsklauseln enthalten, sowie zwingende gesetzliche Vorschriften mit ähnlichen Wirkungen.
- 1.2. Unter einem Aufrechnungsvertrag (Netting Agreement) im Sinne dieses Vertrags (im Folgenden: «Aufrechnungsvertrag») sind alle die zwischen den Parteien getroffenen (einschließlich dieses Vertrags sowie der im Anhang 1 zum Vertrag aufgeführten) Vereinbarungen in ihrer jeweiligen Fassung zu verstehen, die Klauseln enthalten, wonach im Fall eines wichtigen Grundes (event of default) insbesondere eine vorzeitige Beendigung eintritt oder eine Kündigung ausgesprochen werden kann (im folgenden: «Beendigung oder Kündigung aus wichtigem Grund»); ferner muss dort vereinbart sein, dass infolge einer Beendigung oder Kündigung Geschäfte oder Verpflichtungen fällig bzw. in verrechenbare, fällige Forderungen umgewandelt werden, die anschließend zusammengefasst, ver- oder aufgerechnet werden mit der Folge, dass lediglich ein einziger Nettosaldo durch eine der beiden Parteien geschuldet wird.

**2. Allgemeines**

- 2.1. Für alle Geschäfte, die die Parteien nach Unterzeichnung dieses Vertrags tätigen (im Folgenden «Einzelabschlüsse»), gelten die nachfolgenden Bestimmungen, sofern die Parteien im Einzelabschluss nichts Abweichendes vereinbaren.
- 2.2. Die Parteien sind sich darüber einig, dass dieser Vertrag in seiner jeweiligen Fassung, alle Einzelabschlüsse, die von diesem Vertrag erfasst werden, und die aus Aufrechnungsverträgen resultierenden Nettosalden ein einheitliches Vertragsverhältnis bilden.
- 2.3. Die Vertragsparteien sichern zu, dass sie den Vertrag in eigenem Namen abgeschlossen haben und alle Einzelabschlüsse ebenfalls in eigenem Namen tätigen werden.

**3. Vertragswährung («base currency»)**

Vertragswährung ist der US-Dollar oder jede andere Währung, die die Parteien vereinbaren. Die Umrechnung von auf andere Währungen lautenden Beträgen in die Vertragswährung erfolgt jeweils zum täglichen

**▼B**

Referenzkurs, den die EZB für die umzurechnende Währung veröffentlicht oder, hilfsweise, zum jeweiligen Marktkurs, zu dem die EZB an diesem Geschäftstag den umzurechnenden Währungsbetrag gegen die Vertragswährung kaufen oder verkaufen kann.

**4. Vertragsübergreifendes Kündigungs- oder Beendigungsrecht aus wichtigem Grund**

Sofern die EZB ein Kündigungs- oder Beendigungsrecht aus wichtigem Grund im Rahmen eines Aufrechnungsvertrags (sowie auch gemäß Anhang 2 zu diesem Vertrag) hat, erstreckt sich dieses Recht auch auf jeden anderen Aufrechnungsvertrag, auch wenn nach den dortigen Vereinbarungen ein vergleichbarer Kündigungs- oder Beendigungsgrund noch nicht gegeben ist.

**5. Allumfassende Aufrechnungsvereinbarung («global netting»)**

5.1. Sollte eine Beendigung oder Kündigung aus wichtigem Grund stattfinden, wird die EZB unverzüglich die aus den jeweiligen Aufrechnungsverträgen (sowie auch aus Anhang 2 zu diesem Vertrag) resultierenden Nettosalden errechnen und diese, nach Umrechnung in die Vertragswährung, zu einer einzigen Forderung oder Verbindlichkeit zusammenfassen mit der Folge, dass nurmehr dieser Betrag zwischen den Parteien geschuldet wird.

5.2. Z. 5.1 gilt ungeachtet dessen, dass Klauseln in Aufrechnungsverträgen (einschließlich Anhang 2 zu diesem Vertrag) nach dem jeweils anwendbaren Recht nicht wirksam bzw. nichtig sind.

**6. Erklärungen und andere Mitteilungen**

Alle Erklärungen, Weisungen und andere Mitteilungen im Rahmen dieses Vertrags sind nur dann wirksam, wenn sie in Schriftform oder in elektronischer Form übermittelt werden und der Gegenseite auch zugegangen sind.

**7. Teilbarkeit**

Sollte eine Bestimmung dieses Vertrags (einschließlich des Anhangs 2) ganz oder teilweise unwirksam sein oder werden, bleiben die übrigen Bestimmungen wirksam. An Stelle der unwirksamen Bestimmungen tritt eine wirksame Regelung, die dem wirtschaftlichen Zweck mit der unwirksamen Bestimmung soweit wie möglich Rechnung trägt.

**8. Abtretungsverbot**

Die Rechte und Pflichten aus dem Vertrag darf der Vertragspartner weder abtreten noch in sonstiger Weise hierüber verfügen.

**9. Anwendbares Recht und Gerichtsstand**

9.1. Dieser Vertrag unterliegt dem Recht der Bundesrepublik Deutschland.

9.2. Nicht ausschließlicher Gerichtsstand ist Frankfurt am Main.

**Europäische Zentralbank**

**Vertragspartner**

Name \_\_\_\_\_

Name \_\_\_\_\_

Titel \_\_\_\_\_

Titel \_\_\_\_\_

Ort, Datum \_\_\_\_\_

Ort, Datum \_\_\_\_\_

\_\_\_\_\_

▼ **B**

*Anlage 1*

**Liste der Aufrechnungsverträge**

▼ **M4**

1. FBE Master Agreement for Financial Transactions (Edition 2004)
2. ISDA Master Agreement (Multi-currency — Cross border 1992)
3. TBMA/ISMA Global Master Repurchase Agreement (2000 version)
4. The Bond Market Association Master Repurchase Agreement

*Anlage 2***Geschäfte, die keinem Aufrechnungsvertrag unterliegen:**

1. Vorschriften dieses Anhangs finden Anwendung auf solche Einzelabschlüsse zwischen den Parteien, die von keinem anderen Aufrechnungsvertrag erfasst werden.
2. Sofern
  - a) eine Beendigung oder Kündigung aus wichtigem Grund nach Maßgabe eines Aufrechnungsvertrags eintritt oder
  - b) ein Beendigungs- oder Kündigungsgrund nach Maßgabe eines Aufrechnungsvertrags vorliegt, der zur Beendigung führen oder zur Kündigung durch die EZB berechtigen würde, sofern Einzelabschlüsse im Rahmen dieses Aufrechnungsvertrags getätigt worden wären, (im Folgenden: «beendigendes Ereignis im Sinne dieses Anhangs»)

und die EZB eine Kündigung im Hinblick auf diesen Anhang ausgesprochen hat, dann können alle unter diesen Anhang fallenden Einzelabschlüsse gemäß den Punkten 3 und 4 dieses Anhangs durch eine schriftliche Mitteilung der EZB an den Vertragspartner beendet und abgerechnet werden, sofern diese Einzelabschlüsse Verpflichtungen enthalten, die im Zeitpunkt des Wirksamwerdens der Beendigung oder Kündigung noch nicht fällig sind. Die Hauptpflichten aus diesen Einzelgeschäften erlöschen, vorbehaltlich der nachfolgenden Punkte 3 und 4 dieses Anhangs.

3. Sollte eine Beendigung oder Kündigung gemäß Punkt 2 dieses Anhangs eintreten, wird die EZB unverzüglich die beiderseitigen Ansprüche ermitteln und hierbei, sofern erforderlich, den aus jedem Einzelabschluss für die EZB resultierenden Gewinn oder Verlust ermitteln, der sich aus der vorzeitigen Kündigung oder Beendigung an dem Tag ergibt, an dem die Kündigung oder Beendigung wirksam wird; sie wird ferner diese Positionen gegebenenfalls in die Vertragswährung umrechnen. Die EZB fasst dann diese Forderungen und Verbindlichkeiten zu einer einzigen Forderung oder Verbindlichkeit zusammen mit der Folge, dass nurmehr dieser Betrag zwischen den Parteien geschuldet wird.
4. Zur Ermittlung der Gewinne und Verluste der EZB aus den jeweiligen Einzelabschlüssen wird die EZB, vorbehaltlich des anwendbaren Rechtes, eine für beide Seiten angemessene Berechnungsmethode verwenden, die a), soweit möglich und vorhanden, auf den von mindestens vier bedeutenden Marktteilnehmern an dem maßgeblichen Finanzplatz gestellten Kursen oder Preisen beruht und b) hierbei in Rechnung stellt, dass die Beendigung oder Kündigung des jeweiligen Einzelabschlusses vorzeitig stattgefunden hat.



*ALLEGATO 2d*

**Accordo-quadro di compensazione regolato dal diritto dello Stato di New York**

**(ad uso delle controparti con sede legale negli Stati Uniti d'America; redatto in inglese)**

**MASTER NETTING AGREEMENT**

Dated as of:

Between:

European Central Bank, Kaiserstrasse 29, D-60311 Frankfurt am Main, Germany (hereinafter referred to as the ECB), and

[Counterparty] whose [address] [registered place of business] is at [address] (hereinafter referred to as the Counterparty)

**1. Scope of agreement**

1.1. The purpose of this Agreement (hereinafter referred to as the Agreement) is to ensure that the ECB is able to net all existing positions under all outstanding transactions made between the ECB and the Counterparty, regardless of any agent or agents authorised to act on behalf of the ECB through whom the transactions giving rise to those positions may have been effected, including the central bank of any Member State of the European Union which has adopted the euro as its currency, and regardless of which office (including the head office and all branches) of the Counterparty may be involved in such transactions, and after taking into account the effect of any existing netting provisions in master or other agreements between the ECB and the Counterparty and/or provisions of mandatory law that operate with similar effect that may apply to certain of such transactions.

1.2. In this Agreement, a «netting agreement» means any agreement for the time being in effect between the Parties (and including, without limitation, this Agreement and agreements of the kind listed in Appendix 1 to this Agreement), including such modifications and additions thereto as may be agreed between the ECB and the Counterparty (hereinafter referred to as the Parties), from time to time, which contains provisions to the effect that, should any event of default as defined for the purposes of such agreement occur, there may be an early termination, liquidation, closing-out or acceleration of transactions or obligations under transactions or any analogous event (a «default termination») and the respective obligations of the parties under such agreement may be combined, aggregated or netted against each other so as to produce a single net balance payable by one Party to the other.

**2. General**

2.1. All transactions of whatever nature (hereinafter referred to as transactions) entered into between the ECB and the parties at any time after the date of this Agreement shall be governed by this Agreement, unless the parties specifically agree otherwise.

2.2. The parties acknowledge that the terms of this Agreement, all transactions governed by this Agreement, any amendments to the terms of such transactions, and the single net balance payable under any netting agreement constitute a single business and contractual relationship and arrangement.

2.3. Each party represents and warrants to the other that it is a financial institution for purposes of the US Deposit Insurance Corporation Improvement Act of 1991 (hereinafter referred to as FIDICIA), and the parties agree that this Agreement shall be a netting contract, as defined in FIDICIA, and that each receipt or payment obligation under the Agreement shall be a covered contractual payment entitlement or covered contractual payment obligation respectively, as defined in and subject to FIDICIA.

**▼B**

- 2.4. The Counterparty has entered into this Agreement as principal and represents and warrants that it has entered and shall enter into all transactions as principal.
- [2.5. The Counterparty represents and warrants to, and covenants and agrees with the ECB, that:
- (a) it has the power to execute and deliver this Agreement and any other documentation relating to this Agreement to which it is a party and that it is required to deliver; it has the power to perform its obligations under this Agreement and any obligations under any netting agreement to which it is a party; it has taken all necessary action to authorise such execution, delivery and performance, including authorisations required under the US Federal Deposit Insurance Act, as amended, including amendments effected by the US Federal Institutions Reform, Recovery and Enforcement Act of 1989, and under any agreement, writ, decree or order entered into with a party's supervisory authorities; and
- (b) at all times during the term of this Agreement, it will continuously include and maintain as part of its official written books and records this Agreement, the netting agreements and evidence of all necessary authorisations] <sup>(1)</sup>.
- [2.5.] [2.6.] This Agreement is supplemental to the netting agreements entered into between the parties prior to the date of this Agreement, and all further netting agreements and transactions entered into between the Parties after the date of this Agreement shall be supplemental to this Agreement.

3. **Base currency**

The base currency for the purposes of this Agreement shall be the US dollar or, at the ECB's option, any other currency. Wherever it is necessary in accordance with the terms of this Agreement to convert amounts into the base currency, such amounts shall be converted at the daily reference rate published by the ECB for the currency to be converted into the base currency or, in the absence of such reference rate, at the rate of exchange at which the ECB can buy or sell, as appropriate, such amounts with or against the base currency on such day, all as determined by the ECB.

4. **Cross acceleration**

Should any default termination occur under any netting agreement (including under Appendix 2 to this Agreement), then the ECB shall have the right to declare, by written notice to the Counterparty, that a default termination has occurred under each other netting agreement in respect of which default termination has not occurred in accordance with the provisions thereof.

5. **Global netting**

- 5.1. Should a default termination occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each party to the other under each netting agreement (including under Appendix 2 of this Agreement) in respect of which default termination has occurred and aggregate the sums due from each party to the other under such netting agreements (including under Appendix 2 to this Agreement), in every case in or converted into the base currency, and only the net balance of the account shall be payable by the party owing the larger aggregate sum.
- 5.2. Clause 5.1 shall continue to operate to the extent possible notwithstanding the unenforceability under applicable law of any provisions contained in any netting agreement (including under Appendix 2 to this Agreement).

6. **Notices and other communications**

All notices, instructions and other communications to be given under this Agreement shall be effective only upon receipt and shall be made in writing (including by electronic means).

<sup>(1)</sup> Representation to be used where the Counterparty is a US depository institution.

**▼B**

7. **Severability**  
Each provision contained herein (including, without limitation, Appendix 2 to this Agreement) shall be treated as separate from any other provision herein and shall be enforceable notwithstanding the unenforceability of any such other provision.
8. **Non-assignability**  
The rights and obligations of the Counterparty under this Agreement may not be assigned, charged, pledged or otherwise transferred or dealt with by the Counterparty.
9. **Governing law and jurisdiction**
- 9.1. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, United States of America.
- 9.2. For the benefit of the ECB, the Counterparty hereby irrevocably submits for all purposes of or in connection with this Agreement to the jurisdiction of the District Court (*Landgericht*) of Frankfurt am Main, Germany. Nothing in this clause 9 shall limit the right of the ECB to take proceedings before the courts of any other country of competent jurisdiction.

**European Central Bank****[Name of Counterparty] <sup>(2)</sup>**

By _____	By _____
Title _____	Title _____
	[Address for the service of notices under this Agreement]
Date _____	Date _____

<sup>(2)</sup> In the case of US depository institution counterparties, to be executed by a bank officer at the level of Vice President or higher.

▼ **B**

*Appendix 1*

**Netting agreements**

▼ **M4**

1. FBE Master Agreement for Financial Transactions (Edition 2004)
2. ISDA Master Agreement (Multi-currency — Cross border 1992)
3. TBMA/ISMA Global Master Repurchase Agreement (2000 version)
4. The Bond Market Association Master Repurchase Agreement



**▼B***Appendix 2***Transactions not subject to any netting agreement**

1. The provisions of this Appendix apply to transactions entered into between the Parties that are not effectively subject to any other netting agreement.
2. Should:
  - a) a default termination occur under any netting agreement, or
  - b) an event that is defined as an event of default or other analogous event under any netting agreement occur, which event would, assuming there were outstanding transactions under any such netting agreement, result in, or entitle the ECB to take steps which would result in, a default termination under such netting agreement,

(any such event under (a) or (b) above is referred to in this Appendix as an «event of default»), then all transactions to which this Appendix applies (but not less than all, unless any such transaction may not be so closed out under applicable law) under which obligations have or would otherwise have fallen due by or after the date of such event of default (the «close out date») may by notice in writing from the ECB to the Counterparty be liquidated and closed-out as described under paragraphs 3 and 4 of this Appendix, and the ECB shall, without prejudice to paragraphs 3 and 4 of this Appendix, not be obliged to make any further payments or deliveries under any such transactions.
3. Should liquidation and close-out under paragraph 2 of this Appendix occur, the ECB shall, as soon as is reasonably practicable, take an account of what is due from each Party to the other, including, as necessary, determining in respect of each transaction the ECB's total gain or loss, as the case may be, resulting from the liquidation and close-out of such transaction as at the date of such liquidation and close-out, in every case in or converted into the base currency. The ECB shall then aggregate such gains and losses and only the balance of the account shall be payable by the Counterparty, if the aggregate losses exceed the aggregate gains, or by the ECB, if the aggregate gains exceed the aggregate losses.
4. In determining in respect of each transaction the ECB's total gain or loss, the ECB shall, subject to applicable law, use a commercially reasonable method of calculation which (a) is based on, to the extent practicable and available, quotations from at least four leading dealers in the relevant market operating in the same financial centre, and (b) takes into account, where applicable, the liquidation and close-out of such transaction earlier than its scheduled value date or delivery date.
5. The Parties agree that the calculation of the net sum under paragraphs 3 and 4 of this Appendix is a reasonable pre-estimate of losses suffered.

▼ **M4**

## ANNEXE 3

**Conventions standard pour les opérations assorties d'une garantie, pour les opérations de gré à gré sur produits dérivés et pour les dépôts**

1. Toutes les opérations assorties d'une garantie portant sur les avoirs de réserves de change de la BCE (recouvrant les conventions de prise et de mise en pension, les conventions d'achat-vente de type «buy/sell back» et «sell/buy back») doivent être juridiquement formalisées par l'une des conventions standard suivantes, telle qu'approuvée et modifiée par la BCE de temps à autre:
  - a) la convention-cadre de la FBE relative aux opérations sur instruments financiers (édition 2004) pour les opérations effectuées avec des contreparties constituées ou immatriculées en vertu du droit de l'un des pays suivants: l'Autriche, la Belgique, le Danemark, la Finlande, la France, l'Allemagne, la Grèce, l'Irlande, l'Italie, le Luxembourg, les Pays-Bas, le Portugal, l'Espagne, la Suède, le Royaume-Uni (Angleterre et pays de Galles, Irlande du Nord et Écosse) ou la Suisse;
  - b) la convention «The Bond Market Association Master Repurchase Agreement» pour les opérations effectuées avec des contreparties constituées ou immatriculées en vertu du droit des États-Unis (fédéral ou étatique),  
et
  - c) la convention «TBMA/ISMA Global Master Repurchase Agreement (2000 version)» pour les opérations effectuées avec des contreparties constituées ou immatriculées en vertu du droit d'un pays autre que ceux qui sont énumérés aux points a) et b).
2. Toutes les opérations de gré à gré sur produits dérivés portant sur les avoirs de réserves de change de la BCE doivent être juridiquement formalisées par l'une des conventions standard suivantes, telle qu'approuvée et modifiée par la BCE de temps à autre:
  - a) ► **M5** il contratto quadro per le operazioni finanziarie della FBE (edizione 2004) per le operazioni con le controparti riconosciute o costituite secondo il diritto di una delle seguenti giurisdizioni: Austria, Belgio, Danimarca, Finlandia, Francia, Germania, Grecia, Irlanda, Italia, Lussemburgo, Paesi Bassi, Portogallo, Spagna, Svezia, Regno Unito (esclusivamente Inghilterra e Galles) o Svizzera; ◀
  - b) la convention «1992 International Swaps and Derivatives Association Master Agreement (Multi-currency — Cross-border, New-York law version)» pour les opérations effectuées avec des contreparties constituées ou immatriculées en vertu du droit des États-Unis (fédéral ou étatique),  
et
  - c) la convention «1992 International Swaps and Derivatives Association Master Agreement (Multi-currency — Cross-border, English law version)» pour les opérations effectuées avec des contreparties constituées ou immatriculées en vertu du droit d'un pays autre que ceux qui sont énumérés aux points a) et b).
3. ► **M5** Tutti i depositi aventi per oggetto le attività di riserva in valuta della BCE con le controparti che sono idonee ad effettuare le operazioni in contropartita di strumenti finanziari di cui al paragrafo 1 e/o le operazioni in strumenti derivati negoziati al di fuori dei mercati regolamentati di cui al paragrafo 2 e che sono riconosciute o costituite secondo il diritto di una delle seguenti giurisdizioni, devono essere regolati dal contratto quadro per le operazioni finanziarie della FBE (edizione 2004) nelle forme di volta in volta approvate o modificate dalla BCE: Austria, Belgio, Danimarca, Finlandia, Francia, Germania, Grecia, Italia, Lussemburgo, Paesi Bassi, Portogallo, Spagna, Svezia, Regno Unito (esclusivamente Inghilterra e Galles) o Svizzera. ◀

▼ **M3**