ORIENTĂRI

BANCA CENTRALĂ EUROPEANĂ

ORIENTAREA BĂNCII CENTRALE EUROPENE

din 20 iunie 2008

privind administrarea activelor din rezervele valutare ale Băncii Centrale Europene de către băncile centrale naționale, precum și documentația juridică aferentă operațiunilor având ca obiect aceste active (reformare)

(BCE/2008/5)

(2008/596/CE)

CONSILIUL GUVERNATORILOR BĂNCII CENTRALE EUROPENE,

având în vedere Tratatul de instituire a Comunității Europene, în special articolul 105 alineatul (2) a treia liniuță,

având în vedere articolul 3.1 a treia liniuță și articolele 12.1 și 30.6 din Statutul Sistemului European al Băncilor Centrale și al Băncii Centrale Europene (denumit în continuare „Statutul SEBC”),

întrucât:

(1) În temeiul articolului 30.1 din Statutul SEBC, băncile centrale naționale (BCN) ale statelor membre care au adoptat euro pun la dispoziția Băncii Centrale Europene (BCE) active din rezervele valutare, iar BCE are dreptul deplin de a deține și a administra rezervele valutare care îi sunt transferate.

(2) În temeiul articolelor 9.2 și 12.1 din Statutul SEBC, BCE poate administra anumite activități ale sale prin intermediul BCN din zona euro și recurge la BCN din zona euro pentru executarea anumitor operațiuni ale sale. În consecință, BCE consideră că BCN din zona euro ar trebui să administreze rezervele valutare transferate BCE în calitate de mandatari ai acesteia.

(3) Participarea BCN din zona euro la administrarea activelor din rezervele valutare transferate către BCE și tranzacțiile legate de administrarea acestora necesită utilizarea documentației specifice operațiunilor având ca obiect rezervele valutare ale BCE.

(4) Orientarea BCE/2006/28 din 21 decembrie 2006 privind gestionarea activelor din rezervele valutare ale Băncii Centrale Europene de către băncile centrale naționale, precum și documentația juridică aferentă operațiunilor având ca obiect aceste active [1] a fost deja modificată o dată de la adoptarea acesteia. S-au sugerat o serie de modificări în vederea sporirii calității redactării și s-a propus reformarea Orientării BCE/2006/28 în interesul clarității și al transparenței,

ADOPTĂ PREZENTA ORIENTARE:

Articolul 1

Definiții

În sensul prezentei orientări:

— „BCN din zona euro” înseamnă BCN a unui stat membru care a adoptat euro; și

— „jurisdicții europene” înseamnă jurisdicțiile tuturor statelor membre care au adoptat euro în conformitate cu tratatul, precum și Danemarca, Suedia, Elveția și Regatul Unit (doar Anglia și Țara Galilor).

[1] JO C 17, 25.1.2007, p. 5. Orientare modificată prin Orientarea BCE/2007/6 (JO L 196, 28.7.2007, p. 46).

Articolul 2

Administrarea activelor din rezervele valutare de către BCN din zona euro în calitate de mandatari ai BCE

(1) Fiecare BCN din zona euro are dreptul de a participa la administrarea operațională a activelor din rezervele valutare transferate către BCE. O BCN din zona euro poate decide să nu participe la această administrare sau să participe la aceasta împreună cu una sau mai multe BCN din zona euro. În cazul în care o BCN din zona euro nu participă la administrarea operațională a activelor din rezervele valutare ale BCE, celelalte BCN din zona euro administrează activele care ar fi fost administrate de BCN din zona euro care a decis să nu participe.

(2) BCN din zona euro efectuează operațiuni având ca obiect active din rezervele valutare ale BCE în calitate de mandatari ai BCE. Prin inițierea unor astfel de operațiuni, se consideră că o BCN din zona euro confirmă calitatea de mandatar al BCE. În ceea ce privește toate operațiunile efectuate de BCN din zona euro în numele BCE, la momentul exprimării acordului cu privire la fiecare operațiune, BCN din zona euro aduc la cunoștința tuturor părților calitatea BCE de mandant, prin indicarea atât a denumirii acesteia, cât și a unui număr sau identificator de cont.

(3) La efectuarea, în calitate de mandatar al BCE, a operațiunilor având ca obiect active din rezervele valutare ale BCE, fiecare BCN din zona euro subordonează intereselor BCE propriile sale interese sau interesele oricărei entități pentru care efectuează operațiuni.

(4) La solicitarea unei contrapărți a BCE de a dovedi capacitatea de a efectua operațiuni având ca obiect active din rezervele valutare ale BCE în calitate de mandatar al BCE, o BCN din zona euro pune la dispoziția acelei contrapărți dovada calității de mandatar.

Articolul 3

Documentația juridică

(1) Toate operațiunile având ca obiect active din rezervele valutare ale BCE se efectuează utilizând documentația juridică standard prevăzută în prezentul articol, în forma aprobată sau modificată ocazional de BCE. Înainte ca o BCN din zona euro să poată iniția astfel de operațiuni cu o contraparte, în numele BCE, documentația juridică trebuie semnată de către contraparte și exemplarele originale trebuie înaintate BCE.

(2) Operațiunile de report (*repurchase*), de deport (*reverse repurchase*), de cumpărare/revânzare (*buy/sell-back*) și de vânzare/răscumpărare (*sell/buy-back*) având ca obiect active din rezervele valutare ale BCE se documentează prin utilizarea următoarelor contracte standard:

(a) „FBE Master Agreement for Financial Transactions" (ediția 2004) se utilizează pentru operațiunile cu contrapărțile constituite sau înregistrate în temeiul legislației oricărei jurisdicții europene și a legislației Irlandei de Nord și Scoției;

(b) „Bond Market Association Master Repurchase Agreement" (versiunea din septembrie 1996) se utilizează pentru operațiunile cu contrapărțile constituite sau înregistrate în temeiul legislației federale sau statale din Statele Unite ale Americii; și

(c) „TBMA/ISMA Global Master Repurchase Agreement" (versiunea 2000) se utilizează pentru operațiunile cu contrapărțile constituite sau înregistrate în temeiul legislației oricăror alte jurisdicții decât cele enumerate la litera (a) sau (b).

(3) Operațiunile cu instrumente derivate tranzacționate pe piețele *over-the-counter* având ca obiect active din rezervele valutare ale BCE se documentează prin utilizarea următoarelor contracte standard:

(a) „FBE Master Agreement for Financial Transactions" (ediția 2004) se utilizează pentru operațiunile cu contrapărțile constituite sau înregistrate în temeiul legislației oricărei jurisdicții europene;

(b) „1992 International Swaps and Derivatives Association Master Agreement" („Multicurrency – cross-border", versiunea reglementată de legislația statului New York) se utilizează pentru operațiunile cu contrapărțile constituite sau înregistrate în temeiul legislației federale sau statale din Statele Unite ale Americii; și

(c) „1992 International Swaps and Derivatives Association Master Agreement" („Multicurrency – cross-border", versiunea reglementată de legea engleză) se utilizează pentru operațiunile cu contrapărțile constituite sau înregistrate în temeiul legislației oricăror alte jurisdicții decât cele enumerate la litera (a) sau (b).

(4) Comitetul executiv poate decide să utilizeze unul din contractele standard prevăzute la alineatul (2) litera (c) sau la alineatul (3) litera (c) cu preferință față de contractele prevăzute la alineatul (2) litera (a) sau la alineatul (3) litera (a), în privința unui stat membru care adoptă euro, în cazul în care nu este disponibilă nicio evaluare juridică, care să fie acceptabilă pentru BCE atât în privința formei, cât și a conținutului, referitoare la utilizarea contractului standard respectiv în statul membru respectiv. Comitetul executiv informează Consiliul guvernatorilor cu promptitudine în legătură cu orice decizie luată în temeiul acestei dispoziții.

(5) Depozitele având ca obiect active din rezervele valutare ale BCE constituite la contrapărțile care: (i) sunt eligibile pentru operațiunile menționate la alineatul (2) și/sau la alineatul (3); și (ii) sunt constituite sau înregistrate în temeiul legislației oricărei jurisdicții europene, cu excepția Irlandei, se documentează prin utilizarea contractului standard „FBE Master Agreement for Financial Transactions" (ediția 2004). În cazurile care nu intră sub incidența punctelor (i) și (ii), depozitele având ca obiect active din rezervele valutare ale BCE se documentează prin utilizarea acordului-cadru de compensare (*netting*), astfel cum se precizează la alineatul (7).

(6) Fiecărui contract standard i se anexează un document în forma prevăzută în anexa I (denumită în continuare „ECB Annex") care constituie parte integrantă a fiecărui contract standard, document în temeiul căruia se efectuează operațiunile de report (*repurchase*), de deport (*reverse repurchase*), de cumpărare/revânzare (*buy/sell-back*) și de vânzare/răscumpărare (*sell/buy-back*), de împrumut de titluri de valoare, operațiunile de report tripartite (*triparty repo*) sau operațiunile cu instrumente derivate tranzacționate pe piețele over-the-counter, în afara cazului în care aceste operațiuni sunt efectuate în baza contractului standard „FBE Master Agreement for Financial Transactions" (ediția 2004).

(7) Se încheie un acord-cadru de compensare (*netting*), în una dintre formele prevăzute în anexa II, cu toate contrapărțile, cu excepția celor: (i) cu care BCE a semnat un contract standard „FBE Master Agreement for Financial Transactions" (ediția 2004); și (ii) care sunt constituite sau înregistrate în temeiul legislației oricărei jurisdicții europene, cu excepția Irlandei, după cum urmează:

(a) un acord-cadru de compensare (*netting*) reglementat de legea engleză și redactat în limba engleză în forma prevăzută în anexa IIa se încheie cu toate contrapărțile, cu excepția contrapărților prevăzute la literele (b), (c) și (d);

(b) un acord-cadru de compensare (*netting*) reglementat de legea franceză și redactat în limba franceză în forma prevăzută în anexa IIb se încheie cu contrapărțile înregistrate în Franța;

(c) un acord-cadru de compensare (*netting*) reglementat de legea germană și redactat în limba germană în forma prevăzută în anexa IIc se încheie cu contrapărțile înregistrate în Germania; și

(d) un acord-cadru de compensare (*netting*) reglementat de legislația statului New York și redactat în limba engleză în forma prevăzută în anexa IId se încheie cu contrapărțile înregistrate în Statele Unite ale Americii.

(8) Furnizarea de servicii financiare având ca obiect active din rezervele valutare ale BCE de către intermediari financiari incluzând, cu titlu exemplificativ, servicii bancare, de brokeraj, de custodie și de investiții prestate de bănci corespondente, custozi și depozitari, organisme de decontare și organisme centrale de compensare a instrumentelor derivate tranzacționate la bursă, se documentează pe baza contractelor specifice aprobate de BCE ocazional.

Articolul 4

Intrare în vigoare

(1) Începând cu 25 iunie 2008, Orientarea BCE/2006/28 se abrogă.

(2) Trimiterile la Orientarea BCE/2006/28 se interpretează ca fiind trimiteri la prezenta orientare.

(3) Prezenta orientare intră în vigoare la 25 iunie 2008.

Articolul 5

Destinatari

Prezenta orientare se aplică BCN din zona euro.

Adoptată la Frankfurt pe Main, 20 iunie 2008.

Pentru Consiliul guvernatorilor BCE
Președintele BCE
Jean-Claude TRICHET

ANEXĂ I

ECB ANNEX [1]

1. The provisions of this Annex shall be supplemental terms and conditions applying to [*name the standard agreement to which this Annex applies*] dated [*date of agreement]* (the Agreement) between the European Central Bank (the ECB) and *[name of counterparty]* (the Counterparty). The provisions of this Annex shall be annexed to, incorporated in and form an integral part of the Agreement. If and to the extent that any provisions of the Agreement (other than the provisions of this Annex) or the ECB Master Netting Agreement dated as of *[date]* (the Master Netting Agreement) between the ECB and the Counterparty, including any other supplemental terms and conditions, Annex or schedule to the Agreement, contain provisions inconsistent with or to the same or similar effect as the provisions of this Annex, the provisions of this Annex shall prevail and apply in place of those provisions.

2. Except as required by law or regulation, the Counterparty agrees that it shall keep confidential, and under no circumstances disclose to a third party, any information or advice furnished by the ECB or any information concerning the ECB obtained by the Counterparty as a result of it being a party to the Agreement, including without limitation information regarding the existence or terms of the Agreement (including this Annex) or the relationship between the Counterparty and the ECB created thereby, nor shall the Counterparty use the name of the ECB in any advertising or promotional material.

3. The Counterparty agrees to notify the ECB in writing as soon as reasonably practicable of: (i) any consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity; (ii) the appointment of any liquidator, receiver, administrator or analogous officer or the commencement of any procedure for the winding-up or reorganisation of the Counterparty or any other analogous procedure; or (iii) a change in the Counterparty's name.

4. There shall be no waiver by the ECB of immunity from suit or the jurisdiction of any court, or any relief against the ECB by way of injunction, order for specific performance or for recovery of any property of the ECB or attachment of its assets (whether before or after judgment), in every case to the fullest extent permitted by applicable law.

5. There shall not apply in relation to the ECB any event of default or other provision of any kind in which reference is made to the bankruptcy, insolvency or other analogous event of the ECB.

6. The Counterparty agrees that it has entered into the Agreement (including this Annex) as principal and not as agent for any other entity and that it shall enter into all transactions as principal.

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[1] This Annex has been drawn up in English and is incorporated into master agreements drawn up in English which are governed by English or New York law.

ANEXĂ IIa

Acord-cadru de compensare (netting) reglementat de legea engleză

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 of 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.

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 of 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 of 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 of 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.

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 _____]

Appendix 1

to Master netting agreement

Netting agreements (*)

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.

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

Appendix 2

to Master netting agreement

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) shall 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.

ANEXĂ IIb

Acord-cadru de compensare (netting) reglementat de legea franceză

CONVENTION-CADRE DE COMPENSATION

Date:

Entre:

La Banque centrale européenne, Kaiserstrasse 29, D-60311 Francfort-sur-le-Main (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 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.

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 contenue 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 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.

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 _____

Annexe 1

à la convention-cadre de compensation

Conventions de compensation

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 (September 1996 version)

Additif 2

à la convention-cadre de compensation

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 en (a) ou en (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 paragraphes 3 et 4 du présent Additif et la BCE ne sera pas tenue d'effectuer, sans préjudice des paragraphes 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 paragraphe 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 toute 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 intervenues antérieurement à la date de valeur ou de livraison prévus.

5. Les parties conviennent que le calcul de la somme nette aux termes des paragraphes 3 et 4 du présent Additif constituent une estimation raisonnable des pertes encourues.

ANEXĂ IIc

Acord-cadru de compensare (*netting*) reglementat de legea germană

EZB-AUFRECHNUNGSVERTRAG

(„Master netting agreement")

vom:

zwischen

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

_____

(im nachfolgenden „Vertragspartner")

1. **Anwendungsbereich dieses Vertrages**

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 Vertrages (im folgenden: „Aufrechungsvertrag") 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 Vertrages tätigen (in 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 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 Aufrechnungsvertrages (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 (einschl. Anhang 2 zu diesem Vertrag) nach dem jeweils anwendbaren Recht nicht wirksam bzw. nichtig sind.

6. **Erklärungen und andere Mitteilungen**

Alle Erklärungen, Weisungen und anderen Mitteilungen im Rahmen dieses Vertrages 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 Vertrages (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. Die Rechte und Pflichten aus dem Vertrag darf der Vertragspartner weder abtreten noch in sonstiger Weise hierüber verfügen.

9. 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 _____

Anhang 1

zum EZB Aufrechnungsvertrag

Liste der Aufrechnungsverträge

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.

Anhang 2

zum EZB-Aufrechnungsvertrag

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 Aufrechnungsvertrages eintritt oder

   b) ein Beendigungs- oder Kündigungsgrund nach Maßgabe eines Aufrechnungsvertrages 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 werden alle unter diesen Anhang fallenden Einzelabschlüsse gemäß den Ziffern 3 und 4 dieses Anhangs beendigt und abgerechnet, 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 Ziffern 3 und 4 dieses Anhangs.

3. Sollte eine Beendigung oder Kündigung gemäß Ziffer 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 ggf. 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.

ANEXĂ IId

Acord-cadru de compensare (netting) reglementat de legislația statului New York

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 of 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 U.S. Federal Deposit Insurance Corporation Improvement Act of 1991 (hereinafter referred to as FDICIA), and the parties agree that this Agreement shall be a netting contract, as defined in FDICIA, 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 FDICIA.

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 U.S. Federal Deposit Insurance Act, as amended, including amendments effected by the U.S. 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.] [1]

[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 of 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 of 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 of 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.

[1] Representation to be used where the counterparty is a U.S. depository institution.

European Central Bank	**[Name of Counterparty]** [1]
By _____	By _____
Title _____	Title _____
	[Address for the service of notices under this Agreement]
Date _____	Date _____

[1] In the case of US depository institution counterparties, to be executed by a bank officer at the level of Vice-President or higher.

Appendix 1

to Master netting agreement

Netting agreements

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.

Appendix 2

to Master netting agreement

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) shall 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.