

# Act on Close-Out Netting of Specified Financial Transactions Conducted by Financial Institutions

(Act No. 108 of June 15, 1998)

(Purpose)

Article 1 This Act aims to ensure the stable settlement of specified financial transactions and to promote the use of these transactions by clarifying the handling of close-out netting of specified financial transactions entered into by financial institutions in bankruptcy and similar proceedings, thereby contributing to increased confidence in Japan's financial system both at home and abroad and to the sound development of the national economy.

(Definitions)

Article 2 (1) In this Act, the term "specified financial transaction" means Over-the-Counter Derivatives Transactions defined in Article 2, paragraph (22) of the Financial Instruments and Exchange Act (Act No. 25 of 1948) and any other transactions specified by Cabinet Office Order, among transactions based on fluctuations or inter-market price differences (hereinafter referred to as "interest rate or other fluctuations" in this paragraphs) in market variables such as interest rates, currency values, and quotations on financial instruments markets (meaning "financial instruments market" as defined in paragraph (14) of that Article) that include transactions entered into for the exchange of cash based on interest rate or other fluctuations.

(2) In this Act, the term "financial institution" means any legal person set forth in the following:

(i) a bank defined in Article 2, paragraph (1) of the Banking Act (Act No. 59 of 1981) or long-term credit bank defined in Article 2 of the Long-term Credit Bank Act (Act No. 187 of 1952);

(ii) a Financial Instruments Business Operator defined in Article 2, paragraph (9) of the Financial Instruments and Exchange Act (provided that the legal entity is engaged in a Type I Financial Instruments Business under Article 28, paragraph (1) of that Act (unless it is a Type I Small Amount Electronic Public Offering Business Operator under Article 29-4-2, paragraph (9) of that Act)); and

(iii) any other legal person whose operations or business is licensed or registered pursuant to the laws and regulations of Japan or any other legal person that is established pursuant to special laws, as may be designated by Cabinet Order, as conducting a substantial volume of specified financial transactions for its own account or for the account of its customer.

- (3) In this Act, the term "bankruptcy and similar proceedings" means bankruptcy proceedings, rehabilitation proceedings, or reorganization proceedings.
- (4) In this Act, the term "close-out netting event" means a petition for the commencement of bankruptcy proceedings, rehabilitation proceedings, or reorganization proceedings.
- (5) In this Act, the term "master agreement" means an agreement that is entered into for the continuous execution of two or more specified financial transactions between a financial institution seeking to enter into those transaction and its counterparty, and that provides for the performance of any obligations arising from any specified financial transaction between the parties to the agreement and other basic matters related to the relevant specified financial transactions.
- (6) In this Act, the term "close-out netting" means the calculation that is made regardless of both parties' intentions, of a single claim or obligation between the parties, upon the occurrence of a close-out netting event with respect to one of the parties to specified financial transactions entered into pursuant to a master agreement, based on the net aggregate amount obtained by adding up the values, as determined pursuant to a method to be established by Cabinet Office Order, of all the specified financial transactions entered into under the master agreement.

(Relationship Between Close-Out Netting and Bankruptcy and Similar Proceedings)

Article 3 In the event that a financial institution, or a counterparty to a financial institution that has entered into specified financial transactions pursuant to a master agreement that includes a close-out netting provision has been issued an order into bankruptcy proceedings, rehabilitation proceedings, or restructuring proceedings (hereinafter referred to as "bankruptcy proceedings commencement order" in this Article), any assets or claims under any of the laws in the following items arising in connection with any specified financial transaction entered into pursuant to the master agreement are, upon the occurrence of a close-out netting event in connection with the bankruptcy proceedings commencement order, deemed by the party subject to the bankruptcy proceedings commencement order to be a single claim under the relevant provision or a single claim under that provision by its counterparty:

- (i) Bankruptcy Act (Act No. 75 of 2004): property that belongs to a bankruptcy estate or bankruptcy claims;
- (ii) Civil Rehabilitation Act (Act No. 225 of 1999): property that belongs to a rehabilitation debtor at the time of commencement of rehabilitation proceedings or rehabilitation claims; and
- (iii) Corporate Reorganization Act (Act No. 154 of 2002) or Act on Special Treatment of Corporate Reorganization Proceedings and Other Insolvency

Proceedings of Financial Institutions (Act No. 95 of 1996): property that, at the time of commencement of reorganization proceedings, belongs to a stock company or to a cooperative structured financial institution as defined in Article 2, paragraph (2) of the Act on Special Treatment of Corporate Reorganization Proceedings and Other Insolvency Proceedings of Financial Institutions or to a mutual company as defined in paragraph (6) of that Article; or reorganization claims as defined in the main clause of Article 2, paragraph (12) of the Corporate Reorganization Act or in the main clause of Article 4, paragraph (12) or in the main clause of Article 169, paragraph (12) of the Act on Special Treatment of Corporate Reorganization Proceedings and Other Insolvency Proceedings of Financial Institutions.