

Regulation for Enforcement of the Act on Close-Out Netting of Specified Financial Transactions Conducted by Financial Institutions

(Order of the Prime Minister's Office and the Ministry of Finance No. 48 of November 27, 1998)

Pursuant to the provisions of Article 2, paragraphs (1) and (6) of the Act on Close-Out Netting of Specified Financial Transactions Conducted by Financial Institutions (Act No. 108 of 1998), the Regulation for Enforcement of the Act on Close-Out Netting of Specified Financial Transactions Conducted by Financial Institutions is hereby established as follows.

(Specified Financial Transactions)

Article 1 The transactions specified by Cabinet Office Order as prescribed in Article 2, paragraph (1) of the Act on Close-Out Netting of Specified Financial Transactions Conducted by Financial Institutions (hereinafter referred to as "the Act") are as follows:

- (i) over-the-counter derivatives transactions prescribed in Article 2, paragraph (22) of the Financial Instruments and Exchange Act (Act No. 25 of 1948), and loan or deposit of cash or securities conducted for the purpose of providing collateral for those transactions (hereinafter referred to as "collateral transactions");
- (ii) financial derivatives transactions prescribed in Article 10, paragraph (2), item (xiv) of the Banking Act (Act No. 59 of 1981) and collateral transactions thereof;
- (iii) repurchase agreement and reverse repurchase agreement for securities and collateral transactions thereof;
- (iv) lending and borrowing of securities and collateral transactions thereof;
- (v) bond trading in which one party thereto is entitled to designate the delivery date, and in which the contract for the trading of bonds will be cancelled if the party does not exercise the right within a certain period, and collateral transactions thereof;
- (vi) foreign exchange futures transactions and collateral transactions thereof; and
- (vii) over-the-counter commodity derivative transactions under Article 2, paragraph (14) of the Commodity Derivatives Transaction Act (Act No. 239 of 1950) and collateral transactions thereof (excluding those that fall under item (ii)).

(Calculation of Appraisal Value)

Article 2 The values, as determined pursuant to a method to be established by Cabinet Office Order as prescribed in Article 2, paragraph (6) of the Act, are the values calculated by a fair method based on actual conditions of market variables including the interest rates, currency values, and quotations on financial instruments markets (meaning the financial instruments market under Article 2, paragraph (14) of the Financial Instruments and Exchange Act; the same applies in Article 4).

(Property Subject to Close-out Netting)

Article 3 The property specified by Cabinet Office Order prescribed in Article 4, paragraph (1) of the Act (including cases where applied *mutatis mutandis* pursuant to paragraph (4) of that Article) refers to securities and other property specified by the Commissioner of the Financial Services Agency (excluding those for which multiple security rights are established).

(Calculation of Appraisal Value of Property Subject to Close-out Netting)

Article 4 (1) The values, as determined pursuant to a method to be established by Cabinet Office Order as prescribed in Article 4, paragraph (2) of the Act, are the values calculated by a fair method based on actual conditions of market variables including the interest rates, currency values, and quotations on financial instruments markets as of the time specified in the following items in accordance with the categories of cases listed therein when a petition for commencement of reorganization proceedings is filed:

- (i) cases where it is stipulated in the clauses of a contract for creation of a security right prescribed in Article 4, paragraph (1) of the Act (referred to as a "contract for creation of a security right" in the following item) that the calculation time of appraisal value of property subject to close-out netting (meaning the property subject to close-out netting prescribed in the same paragraph; hereinafter the same applies in this Article) is to be the time when a period normally recognized as necessary for calculating reasonable estimates of the amounts of costs or losses that may arise in the future in relation to specified financial transactions and conducting other procedures for the relevant calculation has elapsed since the filing of a petition for commencement of reorganization proceedings: the time when that period has elapsed;
- (ii) cases where it is not stipulated in the clauses of a contract for creation of a security right that the calculation time of appraisal value of property subject to close-out netting is to be the time prescribed in the preceding item: when a petition for commencement of reorganization proceedings is filed.

(2) The values, as determined pursuant to a method to be established by Cabinet

Office Order as prescribed in Article 4, paragraph (2) of the Act as applied mutatis mutandis pursuant to paragraph (4) of that Article after replacement of terms, are the values calculated by a fair method based on actual conditions of market variables including the interest rates, currency values, and quotations on financial instruments markets as of the time when the property subject to close-out netting is transferred to a third party.