THE FOREIGN EXCHANGE COMMITTEE

in association with

THE BRITISH BANKERS' ASSOCIATION

and

THE CANADIAN FOREIGN EXCHANGE COMMITTEE

and

THE TOKYO FOREIGN EXCHANGE MARKET PRACTICES COMMITTEE

THE 1997

INTERNATIONAL FOREIGN EXCHANGE MASTER AGREEMENT

(IFEMA)

GUIDE

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International Foreign Exchange Master Agreement Guide (1997)

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INTERNATIONAL FOREIGN EXCHANGE MASTER AGREEMENT GUIDE (1997)

I. INTRODUCTION

Following the publication of the International Currency Options Market ("ICOM") Master Agreement in 1992 covering currency options, the British Bankers' Association ("BBA") and the Foreign Exchange Committee, an advisory committee sponsored by the Federal Reserve Bank of New York, but independent of it, and made up of representatives of participants in the foreign exchange market (the "Foreign Exchange Committee"), published the International Foreign Exchange Master Agreement (the "IFEMA") in 1993 covering spot and forward foreign exchange transactions.

In 1995, working groups established by the BBA (the "BBA Working Group") and the Foreign Exchange Committee (in the U.S., consisting of a group of lawyers calling itself the Financial Markets Lawyers Group ("FMLG")), commissioned the issuance of legal opinions covering the enforceability of the netting provisions of the IFEMA. In addition, because the foreign exchange markets are continually evolving, and because the IFEMA reflected new thinking about certain issues, in that year the BBA Working Group and the FMLG also commenced a project to update the ICOM Master Agreement. In the course of the project to update the ICOM Master Agreement, it also became apparent that the IFEMA could also be updated in certain respects to reflect new thinking and developments since 1993.

The 1997 IFEMA reflects those efforts. The 1997 IFEMA and the 1997 ICOM Master Agreement now have identical provisions, except where a difference is warranted by the nature of the different transactions covered. In addition, at the same time, the BBA and the Foreign Exchange Committee are publishing the Foreign Exchange and Options Master Agreement ("FEOMA"), which essentially combines the IFEMA and the ICOM Master Agreement and covers spot and forward foreign exchange transactions and currency options. Representatives of institutions associated with the Canadian Foreign Exchange Committee and the Tokyo Foreign Exchange Market Practices Committee assisted with these efforts.

A Guide to the 1997 ICOM Master Agreement accompanies the 1997 ICOM Master Agreement and this Guide. Since FEOMA represents a combination of the IFEMA and the ICOM Master Agreement, a separate Guide for FEOMA was not deemed necessary. This Guide may be considered as the Guide to the provisions of FEOMA relating to spot and forward foreign exchange transactions, and the 1997 ICOM Guide may be considered as the Guide to the provisions of FEOMA relating to currency options, and references to the IFEMA and the ICOM Master Agreement herein and therein generally may be considered references to FEOMA as well. Some of the changes that appear in the 1997 IFEMA are discussed below. The changes are summarized in the Appendix to this Guide.

The provisions of the IFEMA should be considered reflective of best market practice for inter-

dealer transactions. Although the IFEMA is primarily intended for use for transactions with dealer counterparties, it may be used with non-dealers if the Parties so agree. For example, new Parts XV and XVI of the Schedule permit the Parties to agree to additional representations, warranties and covenants. Such Parts make it easier to adapt the IFEMA for use with non-dealer counterparties (and, of course, may also be used for dealer counterparties if the Parties so agree).

It will be standard practice for market participants in the United States market to execute the IFEMA in the form of a Master Agreement, and participants in the London market will also frequently execute the IFEMA in the form of a Master Agreement. In the London market, however, in the absence of such execution, the IFEMA Terms (in the form currently published by the BBA) will be presumed to apply if one of the Parties is acting through an office in the United Kingdom unless there is a netting agreement between the Parties applicable to FX Transactions with provisions that are broadly similar to those in the IFEMA relating to novation netting by currency in Section 3.3(a) and/or close-out and liquidation in Section 5.1.

This Guide in no way constitutes part of, or should be interpreted as modifying, any contractual term contained in the IFEMA. Nevertheless, though the IFEMA does, and is intended to, stand on its own as a legal document, the Guide provides important commentary on current market practice and the IFEMA. The following sections of this Guide are intended (i) to provide further clarification of normal market practice and (ii) to explain various provisions of the IFEMA and the significance of their inclusion in the IFEMA. Capitalized terms used in this Guide have the meanings given to them in the 1997 IFEMA unless otherwise provided herein.

II. MARKET PRACTICE

Market participants are urged to ensure that their staff are fully conversant with local dealing practices and ethical standards before entering into FX Transactions. When dealing in the London market, particular attention should be paid to the London Code of Conduct (available, free of charge, from the Bank of England) and when dealing in the United States market, the Guidelines for the Management of Foreign Exchange Trading Activities issued by the Foreign Exchange Committee and The Principles and Practices for Wholesale Financial Market Transactions adopted by the Foreign Exchange Committee and other industry groups in 1995 (available, free of charge, from the Foreign Exchange Committee). A useful guide to dealing convention when not dealing on those markets may be found in the Association Cambiste Internationale ("ACI") Code of Conduct, which can be obtained from local FOREX clubs or the ACI Committee for Professionalism.

III. MASTER AGREEMENT PROVISIONS

A. Definitions

Every effort has been made to ensure that the definitions used in the IFEMA are in close accord with the common understanding and usage of the foreign exchange market. Nevertheless, in some cases no such understanding exists and the IFEMA, has, in consequence, provided such a definition. Practitioners should ensure that they are sufficiently familiar with the definitions used in the IFEMA to prevent any confusion or misunderstanding from arising.

The following guidance may be useful in deciding what action to take in relation to certain definitions used in the IFEMA:

1. Base Currency

If the Parties are using the IFEMA Master Agreement, Base Currency is specified by each Party in accordance with Part VII of the Schedule. If the Parties are dealing on the basis of the IFEMA Terms, Pounds Sterling will apply. Upon the occurrence of an Event of Default, or some other event, resulting in the close-out and liquidation under the IFEMA of outstanding Currency Obligations, the Base Currency of the Non-Defaulting Party is the Currency in which the net settlement payment will be calculated.

Where the Base Currency is different from the Currency of the country in which the winding up of the Defaulting Party will take place, consideration will need to be given to whether local insolvency law will permit payments in other Currencies to creditors.

2. Currency

The term "Currency" is defined in the IFEMA to include not only the lawful currency of any country, but also any composite currency, such as the European Currency Unit or Ecu. The BBA and Foreign Exchange Committee recognize that under the Treaty on European Union and the second stage of European money union, many European currencies and the Ecu would be replaced by a new currency, sometimes referred to as the "Euro." Plans for introducing the Euro are described in the *Green Paper on the Practical Arrangements for the Introduction of a Single Currency*, which was published by the European Commission on May 31, 1995. Under current proposals, there will be a period when existing national currencies and the new single currency will operate in tandem. Thereafter, national currencies in countries that have adopted the new currency will be replaced by the Euro. These proposals raise numerous issues of public international law which are beyond the scope of the IFEMA or this Guide. See generally, U.K. Financial Law Panel, *Response to the European Commission's Green Paper dated 31 May 1995 on the Practical Arrangements for the*

Introduction of a Single Currency, October 1995. The Parties to an FX Transaction under the IFEMA should be aware of developments which may affect FX Transactions settling after January 1, 1999 and should arrange their affairs accordingly.

3. Designated Office(s), Settlement Netting Office(s), Novation Netting Office(s), Matched Pair Novation Netting Office(s)

The IFEMA contemplates that the Parties will enter into FX Transactions between pairs of offices (Designated Offices). The concept of a Designated Office has been designed primarily for branches or offices of a Party that are legally obligated and entitled in respect of an FX Transaction. For example, Parties may enter into an FX Transaction at one location and yet "book" an FX Transaction at another location. It is the latter location that would be considered the Designated Office. Furthermore, Parties that are not truly multi-branch (*e.g.*, Parties that are not banks) really have only one Designated Office (usually the head office). A useful way to recognize these situations in the Schedule is to specify a booking location as a Designated Office and indicate that such Designated Office includes FX Transactions booked at that location that are entered into at other locations.

If the Parties are using the IFEMA Master Agreement, it is important that the Designated Offices which will enter into FX Transactions are agreed between the Parties before trading takes place and specified in Part II of the Schedule. Parties should also specify which pairs of Designated Offices will trade as Settlement Netting Offices (Part V.A of the Schedule), Novation Netting Offices (Part V.B of the Schedule) and Matched Pair Novation Netting Offices (Part V.C of the Schedule). Any changes relating to any of these offices should also be agreed between the Parties. See Part III.D of this Guide below for an explanation of the functions of the different types of Netting Offices chosen in Part V of the Schedule to the IFEMA.

If the Parties are dealing under the IFEMA Terms, the Parties should specify the Designated Offices in writing. If no such offices are agreed upon, then Section 2.1 of the IFEMA Terms provides that those offices which enter into FX Transactions will be deemed the Designated Offices.

Careful consideration should be given to the effect of local insolvency law and other relevant law (such as exchange control regulations) on the offices covered by the IFEMA. For example, certain jurisdictions might not accept the netting of amounts due under Section 5 or might impose exchange controls where none presently apply.

4. Effective Date

The Effective Date for the IFEMA Master Agreement is the date of the Master Agreement. The BBA Working Group and the FMLG recommend that the Parties date the Master Agreement the date it is signed. This date may be important in the event one of the Parties becomes insolvent, as some jurisdictions will not give effect to an agreement entered into within a "suspect period" prior to the date of an insolvency proceeding. For the IFEMA Terms, the Effective Date is the date agreed

in writing by the Parties, or if the Parties have not so agreed, the Effective Date is the date designated as such by the BBA.

Parties should note the importance of the Effective Date in determining the scope of the IFEMA. As mentioned in Part III.B below, all FX Transactions entered into on or after the Effective Date between two Designated Offices are governed by the IFEMA. If the Parties wish the Master Agreement to cover FX Transactions entered into before the Effective Date, they should so indicate in Part I of the Schedule.

5. Events of Default

The Events of Default are generally credit-related events, which include non-payment, insolvency, defaults under Specified Indebtedness and Specified Transactions and events affecting credit support providers (such as guarantors). The Events of Default do not include events over which the Parties do not have control such as force majeure, act of state, illegality, and impossibility, which are described in Section 6.1 of the IFEMA.

New in the 1997 IFEMA is clause (iii) of the Event of Default definition. New clause (iii) covers involuntary insolvency proceedings initiated in the home country of a Defaulting Party by a governmental authority or self-regulatory organization. New clause (iv) covers other kinds of involuntary proceedings as in clause (iii) of the 1993 IFEMA, except that new clause (iv) makes it clear that an Event of Default will occur prior to the end of the five day grace period if an appointment of a Custodian or a judgment of insolvency or bankruptcy takes place before then.

If the Parties are using the IFEMA Master Agreement, they may elect in Part XI of the Schedule to have Section 8.14 apply. If Section 8.14 applies, a Party may request adequate assurances from its counterparty as to the counterparty's ability to perform its obligations under the IFEMA. If no such assurances are forthcoming, or the relevant assurances are not, in the good faith opinion of the Party requesting the assurances, adequate, then two Business Days after the request for adequate assurances has been given that Party may close out and liquidate its Currency Obligations. Such a provision might allow a counterparty grounds to protect itself against uncertainties which do not, by themselves, otherwise constitute an Event of Default. During the pendency of the request for adequate assurances, the Party requesting adequate assurances may suspend its obligations under the IFEMA. Such requests for adequate assurances should be reasonable and there must be a demonstrably solid foundation to a request for an assurances.

Senior management are encouraged to review the desirability of making such a request and suspending payments, particularly where unsubstantiated rumor might be involved, and will wish to place particular weight on the potential effect of the request. The request for adequate assurances must be reasonable given all the facts and circumstances. In all cases, the determination of both the reasonableness of the request and the adequacy of the assurances should depend on the facts of the situation.

In addition, new Part IX of the Schedule has been added to facilitate the addition of other

Events of Default to the IFEMA if the Parties so agree.

6. Threshold Amount

Clause (x) of the definition of Event of Default provides that an Event of Default will occur if Specified Indebtedness equal to or in excess of the Threshold Amount becomes, or becomes capable of being declared, due and payable before the Specified Indebtedness would otherwise have been due and payable. The Threshold Amount for each Party using the IFEMA Master Agreement is specified in Part VIII of the Schedule, or if the Parties are dealing on the basis of the IFEMA Terms, unless otherwise agreed in writing, the Threshold Amount will be 3 percent of the Party's net worth (gross assets less gross liabilities), or if such amount cannot be determined by reference to published audited financial statements of such Party, 1,000,000 Pounds Sterling or Currency equivalent.

7. Value Date

In agreeing to an FX Transaction, a dealer will generally deal for a particular date when the movement of funds will take place. In the case of spot transactions, this will often be the second Business Day after the transaction is entered into. However, the general rule of settlement practice is affected by domestic holidays and, at times, the respective financial centers of the currencies involved may be dealing for different spot delivery dates. For example, U.S. dollars against Mexican pesos and Canadian dollars settle one Business Day following the date of the transaction, while in countries where Friday is not a Business Day, it is common for settlement in local currencies to be made on Saturday against settlement in major currencies on the preceding Business Day (so called "Split Settlement"). Where a forward foreign exchange transaction has been entered into, the Value Date will normally be the spot delivery date succeeding the whole period as agreed at the time of dealing, *e.g.*, six months plus two Business Days for Sterling against U.S. dollars.

Parties should make themselves aware of local variations in settlement cycles and, where possible, standardize settlement instructions to avoid administrative errors. If no settlement instructions are agreed upon, the Parties should exchange payment instructions at the earliest possible opportunity. Part IV of the Schedule permits a Party to specify its settlement accounts in the Schedule or to agree that standing settlement instructions will be exchanged.

B. FX Transactions

The IFEMA governs all FX Transactions between two Designated Offices of the Parties entered into on or after the Effective Date. The definition of FX Transaction provides that an FX Transaction is created when the Parties have agreed as to: the Currencies involved in the purchase

of one Currency by one Party against the sale by it to the other Party of another Currency, the amounts of such Currencies to be purchased and sold, which Party will purchase which Currency and the Value Date. The FX Transaction will usually be concluded orally by the traders, with the terms of the FX Transaction to be written in the Confirmations exchange by the Parties.

In the 1997 IFEMA the definition of FX Transaction has been amended to include cash-settled transactions, if the Parties so agree in Part VI of the Schedule. Such transactions are a relatively recent development and usually involve Currencies where there may be no local forward market. Since there may be no forward market such transactions involve special risks and the Parties and their counsel must give attention to the manner in which the close-out and liquidation provisions of Section 5 need to be modified. See Part III.F below.

Before using the IFEMA, the Parties should agree in writing which FX Transactions then outstanding between any two Designated Offices of the Parties are to be subject to the provisions of the IFEMA. In the case of the IFEMA Master Agreement, the Parties will complete Part I of the Schedule; in the case of the IFEMA Terms, the Parties will agree in a separate writing. In both cases, upon such an agreement, all outstanding FX Transactions so designated shall be governed by the Agreement and every obligation of the Parties thereunder to deliver a Currency shall be a Currency Obligation under the Agreement, including but not limited to Currency Obligations arising as a result of the novation netting provisions.

Section 2.2 provides that the IFEMA Master Agreement (which includes the Schedule) or Terms, as appropriate, the terms relating to each FX Transaction governed by the IFEMA Master Agreement or Terms, as appropriate, and insofar as such terms are recorded in a Confirmation, each such Confirmation, all amendments to such items together form the agreement between the Parties (the "Agreement") and together constitute a single agreement between the Parties. It further states that the Parties enter into FX Transactions under the Agreement in reliance upon these facts. The intent of these provisions is to provide a legal basis for the close-out and liquidation of all FX Transactions (as provided by Section 5) upon the occurrence of an Event of Default with respect to one of the Parties. These provisions are considered important to avoid the possibility that a trustee, receiver or conservator of a Defaulting Party would be upheld by a court in affirming and enforcing some FX Transactions (*e.g.*, those as to which it is in-the-money) and rejecting and repudiating others (*e.g.*, those as to which it is out-of-the-money), the practice commonly known as "cherry-picking."

C. Confirmations

Confirmations are an important defense against error and fraud. Section 2.3 provides that Confirmations should be exchanged promptly, although failure to do so will not negate the obligations arising from an FX Transaction. Any use of telephone confirmations on the trade date should be followed on the same day with written Confirmations, exchanged through a means of immediate communication such as telex, SWIFT, or fax transmissions, or by various automated dealing and confirmation systems.

If there has been a misunderstanding between the Parties as to the terms of an FX Transaction, this will usually be discovered upon the review of the Confirmations exchanged by the Parties. The non-receipt of expected Confirmations or any inconsistencies or inaccuracies in Confirmations should be questioned or objected to within the time period recognized by local market practice. It is recommended that brokers, as well as the Parties to an FX Transaction, send Confirmations of any FX Transaction which they arrange to the counterparties. In addition, Section 8.15 in the IFEMA Master Agreement, which is reflective of practice in the United States market, provides for specific timing (three Business Days, or a shorter period as appropriate, for instance, if a spot transaction is involved) for the exchange, checking and challenge of confirmations.

Section 8.15 of the IFEMA Master Agreement provides that Confirmations shall be deemed correct absent manifest error three Business Days after receipt by a Party. Such manifest error may be evidenced by the tape recording of the conversation of the traders who entered into a disputed FX Transaction. Section 8.3 provides for the tape recording of conversations and for the use of such recordings in Proceedings.

Confirmations should identify (i) the Parties to the FX Transaction and the Designated Offices through which they are respectively acting, (ii) the amounts of the Currencies being bought or sold and by which Party, (iii) the Value Date and (iv) any other term generally included in such a writing in accordance with the practice of the relevant foreign exchange market. It is also a common practice to include the agreed upon exchange rate used to calculate the amounts of Currency being bought and sold and to include settlement instructions. The IFEMA does not require Parties to send Confirmations for Currency Obligations resulting from currency novation netting and matched pair novation netting under Sections 3.3(a) and (b), respectively.

Market participants are discouraged from including other terms and conditions in the Confirmation which would have the effect of amending the Agreement. Similarly, brokers should be mindful of, and adhere to, market practice in their dealings with counterparties (including the prompt issuance of Confirmations). In the United States market, the Parties to the FX Transaction should exchange Confirmations (including for spot FX Transactions), notwithstanding the fact that the Parties may have received confirmations from a broker.

The BBA and the Foreign Exchange Committee have not included a suggested form of Confirmation as an exhibit to the IFEMA because market participants use a variety of forms of

acceptable Confirmations.

D. Settlement and Netting

Section 3.1 of the IFEMA anticipates that a Party will deliver a Currency to a bank account designated by the other Party for such purpose. Good market practice requires that at least one Business Day prior to a Value Date the Parties will verify by telephone or writing the terms of the Currency Obligations to be settled on each Value Date.

Parties may provide for settlement netting in accordance with the provisions of Section 3.2 if each Party has specified Settlement Netting Offices in Part V.A of the Schedule if the Parties are using the IFEMA Master Agreement, or in writing if the Parties are dealing under the IFEMA Terms. Under the concept of settlement netting, on a Value Date, each Party will aggregate the amounts of a Currency to be delivered by it, and only the difference between these aggregate amounts will be delivered by the Party with the larger aggregate amount.

Similarly, novation netting may be used where either Novation Netting Offices or Matched Pair Novation Netting Offices have been specified in Part V.B or Part V.C of the Schedule if the Parties are using the IFEMA Master Agreement or in writing if the Parties are dealing under the IFEMA Terms. Under novation netting by Currency in Section 3.3(a), if on a trade date the Parties enter into an FX Transaction which gives rise to a Currency Obligation for the same Value Date and in the same Currency as an existing Currency Obligation, then on such date the existing Currency Obligation is cancelled and replaced by a new Currency Obligation which is the net amount of the existing Currency Obligation and the new Currency Obligation. Under novation netting by matched pair in Section 3.3(b), the concept is similar to novation netting by Currency, except that novation netting by matched pair involves only the same pair of Currencies and the same Value Date.

Under novation netting by Currency, the Parties will make only one exchange in each Currency for which the Parties have Currency Obligations for that Value Date. Currency novation netting will occur where the succeeding FX Transaction has at least one Currency in common with the preceding FX Transaction for settlement on the same Value Date. Under novation netting by matched pair, the Parties will make only one exchange in each Currency for each pair of Currencies (for instance, U.S. dollars-Deutsche marks) for which the Parties have Currency Obligations for that Value Date. Settlement netting and/or novation netting will be suspended upon the occurrence of a Close-Out Date or if a voluntary or involuntary case or other proceeding described in clauses (ii), (iii) or (iv) of the definition of Event of Default has occurred without being dismissed in relation to either Party.

The provisions of Section 3.3 apply notwithstanding the fact that a Party may not record on its books the netted and novated amount of FX Transactions.

As noted above under the discussion of Confirmations, where FX Transactions are subject to the novation netting provisions contained in the IFEMA, no exchange of netting Confirmations is required.

E. Representations, Warranties and Covenants

The representations and warranties contained in Section 4 are made by each Party on the Effective Date and each occasion on which the Parties enter into an FX Transaction. An important representation is made pursuant to Section 4.1(v), where each Party warrants to the other that it acts only as principal in entering into each FX Transaction. This representation could not be made by a fund manager or other person acting as an agent for a principal (insofar as it may be interpreted as referring to the agent), unless the fund manager or other person was acting as an agent for an undisclosed principal in connection with FX Transactions with the other Party. New clause (vi) of Section 4.1 facilitates the addition of other representations and warranties if the Parties so agree in Part XV of the Schedule.

Where a representation or warranty is shown to have been materially false or misleading then the other Party may serve notice pursuant to clause (viii) of the definition of Event of Default, and, after the applicable grace period has elapsed, close out and liquidate the outstanding Currency Obligations.

Under Section 4.2, each Party covenants to the other that it will do all that is necessary to ensure that it has the relevant authority to be able to perform its obligations under the Agreement and that it will notify the other Party if an Event of Default occurs in respect of itself or any Credit Support Provider. New clause (iii) of Section 4.2 facilitates the addition of other covenants if the Parties so agree in Part XVI of the Schedule.

F. Close-Out and Liquidation

The provisions of Section 5 should be read carefully and understood as they set forth the rights and obligations of counterparties upon the occurrence of an Event of Default with respect to either of them. (In addition, the close-out and liquidation procedures set forth in Section 5.1 will also be followed in the event that any of the circumstances specified in Section 6.1 of the IFEMA become applicable that would prevent a Party from performing its obligations under an FX Transaction under the provisions of Section 6.1.)

Section 5.1 sets forth the steps that a Non-Defaulting Party must take in closing out and liquidating Currency Obligations. It requires that the Non-Defaulting Party close out and liquidate all outstanding Currency Obligations (except to the extent that such Party believes in good faith that applicable law prohibits the close-out and liquidation of certain Currency Obligations). This requirement is intended to support the statement made in Section 2.2 that the IFEMA Master Agreement or IFEMA Terms (as appropriate), each Confirmation (insofar as it includes the terms of an FX Transaction), and all amendments to the IFEMA constitute a single Agreement between the Parties. The single Agreement concept is intended to prevent cherry-picking by a trustee, receiver or conservator of an insolvent Defaulting Party.

Close-out means that FX Transactions are terminated under Section 5.1(a). Liquidation

means that a settlement amount is calculated in accordance with Section 5.1(b). Liquidation does not require the Non-Defaulting Party to enter into replacement transactions for the terminated FX Transactions. The decision whether to enter into replacement transactions is left to the Non-Defaulting Party. If the Non-Defaulting Party determines to enter into replacement transactions, the settlement amount would be based on the cost of such transactions. If the Non-Defaulting Party determines not to enter into replacement transactions, the settlement amount would be based on market prices, as reflected in quotations from brokers or dealers or reports or other evidence of actual trades.

As noted above, the new definition of FX Transaction and Part VI of the Schedule contemplate that the Parties may agree that cash-settled FX Transactions will be covered by the IFEMA. Such transactions tend to be made for delivery of "exotic" Currencies and, under certain circumstances, forward prices may not be available at the time of close-out. If the Parties contemplate that they will enter into cash-settled FX Transactions under the IFEMA, they should consider whether to modify the close-out provisions to take such a possibility into account, since the determination of a Close-Out Amount under Section 5.1(b)(i)(A) depends on knowing the amount of the forward Currency Obligation, and cash-settled forward foreign exchange transactions often provide that the amount of the forward Currency Obligation is not determined until two Business Days prior to the Value Date (using spot rates in effect at that time). Since cash-settled forward transactions often involve Currencies for which there is no forward market, use of publicly available forward rates will not be a viable alternative.

Since the specific method may vary, Part VI of the Schedule adopts a general approach which allows the Non-Defaulting Party to choose its own method of valuing such FX Transactions for the purpose of close-out and liquidation so long as it is commercially reasonable. Used might be replacement cost, the loss incurred by the Non-Defaulting Party as a result of the default (including loss of bargain, cost of funding and loss incurred as a result of terminating and re-establishing a hedge), or a forward yield curve constructed by the Non-Defaulting Party in good faith using such factors as it may deem reasonable, such as interbank cash deposit rates, interest rates futures prices and interest rate swap rates. Of course, the Parties are free to adopt their own provisions in Part VI relating to close-out and liquidation of cash-settled transactions.

If the Parties are using the IFEMA Master Agreement, they must elect in Part X of the Schedule whether the automatic termination provision in Section 5.1(a) will apply to either or both Parties. If a Party has elected to have the automatic termination provision apply (both Parties if they are dealing under the IFEMA Terms), in the case of certain specified Events of Default relating to the insolvency of the Defaulting Party, close-out will be automatic with respect to all outstanding Currency Obligations. If a Party has not elected to have automatic termination apply, close-out will occur upon receipt of notice by the Defaulting Party from the Non-Defaulting Party.

Section 5.1(b) provides for the calculation, aggregation and netting of market damages for each Party for each Currency Obligation closed out under Section 5.1(a). The Non-Defaulting Party should endeavor to liquidate all outstanding Currency Obligations on a single day. However, if this is impracticable, liquidation should be completed as soon as possible. The determination of market damages for each Party in each instance must be made in good faith, including the use of market rates (except as may be otherwise agreed for cash-settled FX Transactions). In addition, liquidation may

take place (whether or not occurring on a single date) after the Close-Out Date if for any reason liquidation is impracticable on the Close-Out Date, such as would be the case, for example, if automatic termination took place on a weekend or a holiday.

Liquidation is to be effected by calculating the Close-Out Amount for each Currency Obligation and converting to Base Currency (where different) to determine the Closing Gain or Closing Loss for each Value Date. Thereafter all Closing Gains and Losses payable to the Defaulting Party and vice versa are summed by Value Date and adjusted for each Value Date to present value by discounting payments due (or, prior to summation, adding interest to payments that have not been made) using the Close-Out Date as a base. All the Value Date amounts (with interest or discount as applicable) are then aggregated and netted to produce a single figure, and the net figure becomes the amount to be paid (if positive) by the Defaulting Party to the Non-Defaulting Party or to be paid (if negative) by the Non-Defaulting Party to the Defaulting Party.

New Section 5.2 applies if one Party or both are holding any cash or non-cash collateral as margin or security for their respective obligations under the Agreement. Generally, Section 5.2 allows the Parties to set off the value of such collateral (following any necessary conversion into the Non-Defaulting Party's Base Currency) against the liquidated damage amount calculated under the preceding clauses in Section 5.1.

Under Section 5.3, the Non-Defaulting Party may close out and liquidate in accordance with the provisions of Section 5.1 any other foreign exchange transactions not governed by the IFEMA then outstanding between the Parties.

Section 5.4 provides that the net amount of market damages payable pursuant to Sections 5.1 and 5.3 shall be paid by one Party to the other by the close of business on the Business Day following receipt by the Defaulting Party of notice of the Non-Defaulting Party's settlement calculations. In some countries, a judgment can be rendered only in the Currency of that country. Therefore, Section 5.4 provides that, if required by applicable law, the net amount payable by one Party to the other will be converted into a Currency other than the Non-Defaulting Party’s Base Currency. Any costs of such conversion will be borne by the Defaulting Party. If the net amount is not paid when due, Section 5.4 provides for the payment of interest at overnight LIBOR for each day for which the amount remains unpaid or at such other rate as may be prescribed by applicable law.

Section 5.5 establishes the right of one Party to suspend performance of its obligations under the IFEMA if the counterparty is currently in default in the payment or performance of any of its obligations under the IFEMA and the Non-Defaulting Party has not exercised its rights under Section 5.1. If the Parties are using the IFEMA Master Agreement and if they have elected in Part XI of the Schedule to have the provisions of Section 8.14 apply, a Party may also suspend performance of its obligations under the IFEMA during the pendency of a reasonable request to the counterparty to provide adequate assurances of its ability to perform such obligations.

Section 5.8 provides that the rights of the Non-Defaulting Party under Section 5 of the IFEMA are in addition to any other rights which the Non-Defaulting Party may have by way of agreement, operation of law or otherwise, including but not limited to a general right of set-off. The last sentence of Section 5.8 makes it clear that this Section does not limit the intent of Section 5.7

that Section 5 be the exclusive means of calculating liquidated damages.

G. Force Majeure, Act of State, Illegality and Impossibility

Section 6.1 provides that, if either Party is unable to perform, or is hindered or delayed in performing, its obligations with respect to the delivery or receipt of any Currency in respect of any Currency Obligation due to force majeure or act of state, or if it otherwise becomes illegal or impossible for either Party to make or receive any payment in respect of a Currency Obligation, then either Party may, after notice of the occurrence of such event, liquidate and close out all Currency Obligations which are affected by such event. It is worth noting that this Section is intended to apply where a Party is prevented from performing because, for example, sanctions have been imposed by one country on another or conflict has broken out.

Although such events do not constitute Events of Default, the close-out and liquidation procedures to be followed for affected Currency Obligations are those provided for in Section 5. Either of the Parties may take such action promptly upon notice to the other. It is important that the Parties have the ability to liquidate affected positions promptly in order to limit their exposure to Currency Obligations which one of the Parties may be unable to perform. If Section 6.1 is applicable to the obligations of both Parties, the Parties should mutually agree upon the close-out and liquidation of the affected Currency Obligations.

New Section 6.2 provides that, if Section 6.1 becomes applicable, the Party affected by the relevant event or condition will use all reasonable efforts to transfer the affected Currency Obligations to a different Designated Office so that the event or condition ceases to exist.

H. Parties to Rely on Their Own Expertise

Section 7 establishes that each of the Parties has relied on its own expertise and judgment in entering into each FX Transaction and as to all other subsequent actions or matters related thereto. In the 1997 IFEMA, this Section has been reworded to express current thinking, but has the same intent as in the 1993 IFEMA, which is to protect each of the Parties from a claim or action by the other Party where it is alleged that one of the Parties exercised influence or control over the decisions or actions of the other to the extent that it is liable for losses, costs, expenses or damages suffered or incurred as a result of such decisions or actions.

I. Miscellaneous

The intent of Section 8.1 is to ensure that any payment to a Party under the IFEMA in a Currency other than that in which the payment was due, whether pursuant to a judgment of any court or pursuant to the operation of Section 5 or 6, will discharge the related obligation only to the extent the recipient is able to recover the original amount of Currency owed with the amount received. This Section is intended to provide an indemnity for a payee for any obligation under the IFEMA, whether in connection with the payment of a Currency Obligation in the ordinary course, in connection with

close-out under Section 5 or Section 6 or otherwise under the IFEMA.

Pursuant to Section 8.3, the Parties agree to the tape recording of any telephone conversations between them and agree that such tape recordings can be submitted in evidence in any Proceeding relating to the IFEMA. It is standard market practice that the conversations between traders and between traders and brokers are recorded. This practice is encouraged, as such recordings can substantially reduce the number of disputes that arise between market participants and the time which it takes to resolve such disputes. In the 1993 IFEMA, Section 8.3 provided that the recordings between traders were the "preferred evidence" in the event of a dispute between the Parties arose as to the terms of an FX Transaction. Upon further reflection, the BBA Working Group and the FMLG believe that all tape recordings are some evidence of the agreement between the Parties, and that no single piece of evidence should be deemed the "preferred evidence." The trier of fact is in the best position to give all evidence its proper weight.

In the United States market in the case of any dispute relating to FX Transactions or the Currency Obligations created thereby, the Parties are encouraged to mitigate their respective losses and to act in good faith promptly to identify and resolve the dispute. It is customary in the United States market for disputes to be resolved by allocating between the Parties any losses arising out of such disputes by assessment of the relative fault of each Party in contributing to such losses. Examples of situations where a Party contributed to the loss might include a failure of a Party to verify the terms of the Confirmation or the failure of a Party in a telephone confirmation to state the correct terms of the FX Transaction, which failure might be compounded by the failure of the other Party to recognize the mistake of the first Party.

Section 8.4 provides that a Party using the IFEMA Master Agreement should specify in Part III of the Schedule (and a Party dealing under the IFEMA Terms, in writing) its address, telex number, facsimile or telephone number and the appropriate individual or department for the giving of notices under the IFEMA. Changes to such information should be given by notices made pursuant to the provisions of Section 8.4.

J. Law and Jurisdiction

Counsel in several jurisdictions, including Belgium, Canada, the Cayman Islands, Denmark, England, France, Germany, Japan, the Netherlands, Singapore, Sweden, Switzerland and the United States have opined that the netting by novation provisions and the close-out and liquidation provisions of the 1993 IFEMA are valid and enforceable under the laws of those jurisdictions. Opinions in other jurisdictions have been commissioned and some (*e.g.*, Hong Kong) will be final at or soon after the time this Guide is published. In addition, New York, English, Japanese and Canadian counsel have opined as to the enforceability of the other provisions of the 1993 IFEMA under the laws of the State of New York, England, Japan and Canada, respectively. Copies of such opinions are available from the BBA and the FMLG. The BBA and the FMLG plan to obtain updated opinions from time to time that will also cover the 1997 IFEMA.

It is expected that counterparties, and especially those physically located in New York, England or Japan, will choose one of these systems of law to govern the IFEMA. New Part XII of the Schedule permits the Parties to choose the governing law and jurisdiction in the Schedule rather than specifying it in the Master Agreement itself.

It is expected that Parties will submit to the jurisdiction of courts consistent with their choice of governing law. However, as such submission to jurisdiction is non-exclusive, Parties will be free to bring actions, suits or proceedings in other jurisdictions. Parties are urged, however, to make use of any available process for alternative dispute resolution, for instance, under the London Code of Conduct in the United Kingdom or arbitration in the United States. Parties may alternatively wish to consult the ACI Committee for Professionalism which stands ready to aid in the resolution of disputes in the foreign exchange markets.

Pursuant to Section 9.4, each Party explicitly waives any sovereign immunity it may be entitled to assert in any legal proceeding arising out of the IFEMA.

K. Schedule

As noted above, where the IFEMA is used in the form of a Master Agreement, the Parties will complete a Schedule in the form attached to the Master Agreement. The Schedule contains particulars concerning each Party, such as the address, telephone, telex and facsimile number, and contact person for notices and other communications, and each Party's Base Currency. In Parts II and V of the Schedule, the Parties must designate their branches or offices whose transactions and dealings are intended to be covered by the IFEMA as Designated Offices, Settlement Netting Offices, Novation Netting Offices and Matched Pair Novation Netting Offices, respectively.

The 1997 IFEMA has included some new features in the Schedule. These include the ability to select governing law, jurisdiction and an agent for service of process in Parts XII, XIII and XIV, respectively, and the ability to select additional Events of Default (Part IX), representations (Part XV) and covenants (Part XVI). The optional Events of Default presently set out in Part IX are those recommended by Japanese counsel under Japanese law; the Parties may, of course, agree to others if they wish. The caption to Part XV is "Certain Regulatory Representations"; this is not intended

to prevent the inclusion of other types of representations here if the Parties wish.

If the Parties agree that the representation in Part XV.A of the Schedule applies, the Parties represent that they are financial institutions and express their agreement that the IFEMA is a netting contract subject to the netting provisions of Title IV of the United States Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"), which give increased certainty as to the enforceability of netting contracts between financial institutions. In order to benefit from the provisions of FDICIA, a netting contract, such as the IFEMA, must be governed by the law of a United States jurisdiction. Under FDICIA, the term "financial institution" includes depository institutions (insured banks, thrifts and credit unions; U.S. branches and agencies of non-U.S. banking institutions; and Edge Act and agreement corporations), brokers or dealers in securities licensed as such under U.S. federal or state law, futures commission merchants licensed under U.S. federal law to engage in the business of selling futures and options in commodities, and other entities specified as financial institutions by the Federal Reserve in Regulation EE.

If the Parties agree that the representation in Part XV.B applies, they represent that neither is an ERISA plan. If either Party is a plan, the parties would need to consider whether the transactions would be prohibited transactions under ERISA and should consult ERISA counsel.

If the Parties agree that the representation in Part XVI.C applies, they represent that each is an "eligible swap participant" under the Exemption for Certain Swap Agreements issued by the Commodity Futures Trading Commission ("CFTC") in 17 C.F.R. Section 35.1 et seq. (the "Swap Exemption"). The Swap Exemption exempts certain "swap agreements" (a term which includes forward foreign exchange transactions, currency options and similar agreements) between eligible swap participants from the provisions of the U.S. Commodity Exchange Act ("CEA"). Even though FX Transactions may be excluded from CEA coverage under the "Treasury Amendment" to the CEA (a statutory exclusion applicable to transactions in foreign currency, among others), it is helpful to establish that the Swap Exemption issued by the CFTC would also be applicable.

February 6, 1997

APPENDIX

Summary of the Differences between the 1993 IFEMA and the 1997 IFEMA

1. There are various drafting and style changes that do not affect substance. The 1997 IFEMA uses all the provisions of FEOMA other than those that apply to Options.

2. The definition "Business Day" has been revised consistent with the FEOMA definition of that term dealing with FX Transactions. Clause (i) makes it clear that the Local Business Day of the Non-Defaulting Party is relevant for close-out and liquidation purposes. Clause (ii) is the same provision as in the 1993 IFEMA, providing that in relation to delivery of a Currency, a Business Day means a Local Banking Day in relation to that Currency. Clause (iii) is new and states that for any other provision, the term means a day which is a Local Banking Day for the applicable Designated Offices of both Parties, provided that neither Saturday nor Sunday is considered a Business Day for any purpose.

3. A new Event of Default for Involuntary Proceedings brought by governmental authorities in the home country of a Party has been added as clause (iii) to the definition "Event of Default."

4. Clause (iv) of the definition "Event of Default" (clause (iii) in the 1993 IFEMA) has been revised to provide that an Event of Default will occur prior to the expiration of the five day grace period in the circumstances specified in clause (B).

5. Clause (xiii) of the definition "Event of Default" has been added to make it clear that the Parties can agree to other Events of Default in Part IX of the Schedule.

6. The term "FX Transaction" has been modified so that it will cover cash-settled foreign exchange transactions if the Parties agree in Part VI of the Schedule.

7. Section 3.4(a) has been modified to cover voluntary as well as involuntary proceedings.

8. Section 4.1(vi) has been added to make it clear that the Parties can agree to other representations and warranties in Part XV of the Schedule.

9. Section 4.2(iii) has been added to make it clear that the Parties can agree to other covenants in Part XVI of the Schedule.

10. Section 5.1 has been revised to emphasize the difference between close-out, which terminates a Currency Obligation, and liquidation, which involves valuing, aggregating and netting Currency Obligations, and the fact that liquidation may take place a short time after automatic termination (if any) has occurred. LIBOR has been substituted for the "Base Currency Rate" as the reference rate used generally for calculating damages. A new clause added to Section 5.1(b)(i)(A)(3) permits the Non-Defaulting Party to use any reasonable method to convert to Base Currency if for some reason rates are not available.

11. Section 5.2 has been added providing that the Non-Defaulting Party may apply the value of cash and non-cash Credit Support to any settlement payment owed by the Defaulting Party.

12. Section 5.4 has been revised to provide that the default rate based on overnight LIBOR does not accrue until after the Defaulting Party receives notice from the Non-Defaulting Party.

13. New Section 6.2 has been added to require transfer of transactions affected by a Section 6.1 event as a condition to exercise of rights under Section 6.1 if reasonable under the circumstances.

14. Section 7 has been reworded and updated in light of current thinking.

15. The "preferred evidence" provisions have been deleted from Section 8.3.

16. Section 8.6 has been modified by adding the language of the ICOM Master Agreement requiring the Parties to negotiate in good faith to replace any unenforceable provision.

17. The section citation to Title 11, U.S.C. in Section 8.8 has been revised in light of the renumbering of that section pursuant to recent legislation.

18. Sections 9.1 and 9.2 have been revised so that choice of governing law and jurisdiction may be made in Parts XII and XIII of the Schedule. Section 9.2(b) has been added to facilitate the appointment of an agent for service of process if so agreed.

19. The Schedule has been reorganized. In addition to the changes mentioned above, Part XIV includes some new regulatory representations under U.S. law.