NEW FORCE MAJEURE PROVISIONS FOR CURRENCY TRADING AGREEMENTS

USER'S GUIDE TO THE NEW PROVISIONS

TRANSMITTAL LETTER

ACCOMPANYING PROPOSED REVISIONS TO FORCE MAJEURE PROVISIONS IN STANDARD CURRENCY TRADING AGREEMENTS

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Dear Foreign Exchange Professional:

The Foreign Exchange Committee today published recommended revisions to the Force Majeure, Act of State, Illegality and Impossibility Section of the International Foreign Exchange Master Agreement (IFEMA), the International Foreign Exchange and Options Master Agreement (FEOMA), and the International Currency Options Market Master Agreement (ICOM). The new provisions are accompanied by a user's guide and a form of contractual amendment that counterparties can execute if they wish the new provisions to apply to their agreements.

The new provisions were drafted in response to a study by the Financial Markets Lawyers Group that examined the operation of the agreements in connection with disruptions in various international financial and currency markets. During the drafting process, the subcommittee in charge of the project received extensive comment from representatives of a large group of commercial and investment banks and representatives of the Emerging Markets Traders Association (EMTA) and the International Swaps and Derivatives Association (ISDA).

The new provisions are designed to reflect current market practice and to minimize the inconsistencies in various industry documents that could result in market participants' taking contradictory positions in times of market disruption. The new provisions are intended to increase the level of legal certainty and to reduce confusion in the markets. The Foreign Exchange Committee expects that the new provisions will help strengthen best practices and facilitate the maintenance of orderly markets during disruptions.

Compared with the force majeure provisions in the current agreements, the new provisions greatly shorten the waiting period before a party may liquidate affected transactions, clarify the types of events that are covered, and more precisely specify the party or parties entitled to liquidate transactions and perform the necessary calculations.

Under the new provisions, if a force majeure event occurs in a particular currency, there is a waiting period of three business days during which neither party can liquidate transactions. After the waiting period ends, some or all transactions in that currency covered by an agreement may be liquidated at then current market prices, even if the date on which the transactions were to settle is months or years in the future. Of course, parties must mutually agree to amend their existing documentation to adopt the new provisions, and they can also mutually agree to take actions other than those specified in the new provisions.

The Foreign Exchange Committee believes that the new provisions and related materials will be useful generally in the international derivatives markets, and understands that ISDA is now also studying these issues.

The new provisions, user's guide, and form of amendment are available at the Foreign Exchange Committee's web site: *http://www.ny.frb.org/fxc*. The new provisions are not related to the Foreign Exchange Committee's document "Y2K: Best Practices in the Foreign Exchange Market," which can also be accessed on the Committee's web site.

Sincerely yours,

Paul Kimball
Chairman
The Foreign Exchange Committee

NEW FORCE MAJEURE PROVISIONS FOR CURRENCY TRADING AGREEMENTS

IFEMA

Section 6. Force Majeure, Act of State, Illegality and Impossibility

6.1 *Liquidation Rights.* If a force majeure event occurs and is still in effect, then (but subject to Section 6.2) either party may, by notice to the other party on any day or days after the waiting period expires, require the closeout and liquidation of the currency obligations under any or all of the affected transactions in accordance with the provisions of Section 5.1 and, for such purposes, the party unaffected by such force majeure event shall perform the calculation required under Section 5.1 as if it were the non-defaulting party (or, if both parties are affected parties, both parties shall so calculate in respect of all affected transactions which either party determines to liquidate and the average of the amounts so determined shall be the relevant amount in respect of each affected transaction, except that if a party fails to so determine an amount, the amount determined by the other party shall govern). If a party elects to so liquidate less than all affected transactions, it may liquidate additional affected transactions on a later day or days if the relevant force majeure event is still in effect.

6.2 *Waiting Period.* If the value date of an FX transaction which is an affected transaction under Section 6.1 falls during the waiting period of the relevant force majeure event, then such value date will be deferred to the first business day (or the first day which, but for such event, would have been a business day) after the end of that waiting period (or, in the case of split settlement, the first local banking day or the first day which, but for such event, would have been a local banking day, after the end of the waiting period). Compensation for this deferral shall be at then current market rates as determined in a commercially reasonable manner by the calculating party or parties under Section 6.1.

6.3 *Notice by Affected Party.* If a force majeure event has occurred, an affected party shall promptly give notice thereof to the other party.

6.4 *Force Majeure Event and Event of Default.* Nothing in this Section 6 shall be taken as indicating that the party treated as the defaulting party for the purpose of calculations required by Section 5.1 has committed any breach or default. If an event occurs that would otherwise constitute both a force majeure event and an event of default, that event will be treated as a force majeure event and will not constitute an event of default.

Also add the following definitions:

"Force Majeure Event," on any day determined as if such day were a value date of an FX transaction (even if it is not), means (i) either party, by reason of force majeure or act of state, is prevented from or hindered or delayed in delivering or receiving, or it is impossible to deliver or receive, any currency in respect of a currency obligation, and which event is beyond the control of such party and which such party, with reasonable diligence, cannot overcome, or (ii) it is unlawful for either party to deliver or receive a payment of any currency in respect of a currency obligation. A party whose delivery or receipt of currency has been or would be so prevented, hindered or delayed or made unlawful or impossible is an "affected party," and an FX transaction under which performance has been or would be so prevented, hindered or delayed or made unlawful or impossible is an "affected transaction," unless the parties have expressly agreed in an agreement, another writing or in regard to a particular FX transaction that other disruption events or disruption fallbacks will apply to that FX transaction; in such event, that FX transaction will be subject to such disruption events or disruption fallbacks as the parties have otherwise agreed.

"Waiting Period," in respect of a force majeure event, means the first three days after such event occurs which are business days or which, but for such event, would have been business days.

FEOMA

Section 9.
Force Majeure, Act of State, Illegality and Impossibility

9.1 *Liquidation Rights.* If a force majeure event occurs and is still in effect, then (but subject to Section 9.2) either party may, by notice to the other party on any day or days after the waiting period expires, require the closeout and liquidation of the currency obligations under any or all of the affected transactions in accordance with the provisions of Section 8.1 and, for such purposes, the party unaffected by such force majeure event shall perform the calculation required under Section 8.1 as if it were the non-defaulting party (or, if both parties are affected parties, both parties shall so calculate in respect of all affected transactions which either party determines to liquidate and the average of the amounts so determined shall be the relevant amount in respect of each affected transaction, except that if a party fails to so determine an amount, the amount determined by the other party shall govern). If a party elects to so liquidate less than all affected transactions, it may liquidate additional affected transactions on a later day or days if the relevant force majeure event is still in effect.

9.2 *Waiting Period.* If the value date of an FX transaction, or the settlement date of an option, which is an affected transaction, under Section 9.1 falls during the waiting period of the relevant force majeure event, then such value date or settlement date (as applicable) will be deferred to the first business day (or the first day which, but for such event, would have been a business day) after the end of that waiting period (or, in the case of split settlement, the first local banking day or the first day which, but for such event, would have been a local banking day, after the end of the waiting period). Compensation for this deferral shall be at then current market rates as determined in a commercially reasonable manner by the calculating party or parties under Section 9.

9.3 *Notice by Affected Party.* If a force majeure event has occurred, an affected party shall promptly give notice thereof to the other party.

9.4 *Force Majeure Event and Event of Default.* Nothing in this Section 9 shall be taken as indicating that the party treated as the defaulting party for the purpose of calculations required by Section 8.1 has committed any breach or default. If an event occurs that would otherwise constitute both a force majeure event and an event of default, that event will be treated as a force majeure event and will not constitute an event of default.

Also add the following definitions:

"Force Majeure Event," on any day determined as if such day were a value date of an FX transaction or the settlement date of an option (even if it is not), means (i) either party, by reason of force majeure or act of state, is prevented from or hindered or delayed in delivering or receiving, or it is impossible to deliver or receive, any currency in respect of a currency obligation or option, and which event is beyond the control of such party and which such party, with reasonable diligence, cannot overcome, or (ii) it is unlawful for either party to deliver or receive a payment of any currency in respect of a currency obligation or option. A party whose delivery or receipt of currency has been or would be so prevented, hindered or delayed or made unlawful or impossible is an "affected party," and an FX transaction or option under which performance has been or would be so prevented, hindered or delayed or made unlawful or impossible is an "affected transaction," unless the parties have expressly agreed in an agreement, another writing or in regard to a particular FX transaction or option that other disruption events or disruption fallbacks will apply to that FX transaction or option; in such event, that FX transaction or option will be subject to such disruption events or disruption fallbacks as the parties have otherwise agreed.

"Waiting Period," in respect of a force majeure event, means the first three days after such event occurs which are business days or which, but for such event, would have been business days.

ICOM

Section 9.
Force Majeure, Act of State, Illegality and Impossibility

9.1 *Liquidation Rights.* If a force majeure event occurs and is still in effect, then (but subject to Section 9.2) either party may, by notice to the other party on any day or days after the waiting period expires, require the closeout and liquidation of any or all of the affected options in accordance with the provisions of Section 8.1 and, for such purposes, the party unaffected by such force majeure event shall perform the calculation required under Section 8.1 as if it were the nondefaulting party (or, if both parties are affected parties, both parties shall so calculate in respect of all affected options which either party determines to liquidate and the average of the amounts so determined shall be the relevant amount in respect of each affected option, except that if a party fails to so determine an amount, the amount determined by the other party shall govern). If a party elects to so liquidate less than all affected options, it may liquidate additional affected options on a later day or days if the relevant force majeure event is still in effect.

9.2 *Waiting Period.* If the settlement date of an option which is an affected option under Section 9.1 falls during the waiting period of the relevant force majeure event, then such settlement date will be deferred to the first business day (or the first day which, but for such event, would have been a business day) after the end of that waiting period. Compensation for this deferral shall be at then current market rates as determined in a commercially reasonable manner by the calculating party or parties under Section 9.1.

9.3 *Notice by Affected Party.* If a force majeure event has occurred, an affected party shall promptly give notice thereof to the other party.

9.4 *Force Majeure Event and Event of Default.* Nothing in this Section 9 shall be taken as indicating that the party treated as the defaulting party for the purpose of calculations required by Section 8.1 has committed any breach or default. If an event occurs that would otherwise constitute both a force majeure event and an event of default, that event will be treated as a force majeure event and will not constitute an event of default.

Also add the following definitions:

"Force Majeure Event," on any day determined as if such day were the settlement date of an option (even if it is not), means (i) either party, by reason of force majeure or act of state, is prevented from or hindered or delayed in delivering or receiving, or it is impossible to deliver or receive, any currency in respect of an option, and which event is beyond the control of such party and which such party, with reasonable diligence, cannot overcome, or (ii) it is unlawful for either party to deliver or receive a payment of any currency in respect of an option. A party whose delivery or receipt of currency has been or would be so prevented, hindered or delayed or made unlawful or impossible is an "affected party," and an option under which performance has been or would be so prevented, hindered or delayed or made unlawful or impossible is an "affected option," unless the parties have expressly agreed in an agreement, another writing or in regard to a particular option that other disruption events or disruption fallbacks will apply to that option; in such event, that option will be subject to such disruption events or disruption fallbacks as the parties have otherwise agreed.

"Waiting Period," in respect of a force majeure event, means the first three days after such event occurs which are business days or which, but for such event, would have been business days.