MAS 639

6 June 2007
* Last revised on 17 February 2014

NOTICE TO BANKS
BANKING ACT, CAP 19

Exposures to Single Counterparty Groups

Introduction

1. This Notice is issued pursuant to section 29(1) of the Banking Act (Cap.19) ["the Act"] and applies to all banks in Singapore.

2. It sets out the limits on a bank's exposures to a single counterparty group, the types of exposures to be included in or excluded from those limits, the basis for computation of exposures, the approach for aggregating exposures to counterparties that pose a single risk to the bank, the recognition of credit risk mitigation and aggregating of exposures at the bank group level.

Definitions

3. For the purposes of this Notice —

"Accounting Standards" has the same meaning as in section 4(1) of the Companies Act (Cap 50);

"associated company" has the same meaning as "associate" under the Accounting Standards;

"bank group" means a bank in Singapore, its subsidiaries and any other company treated as part of the bank's group of companies according to Accounting Standards and in the case of a bank incorporated outside Singapore, only where such subsidiary or company is reflected as an investment in the books of the bank in Singapore in relation to its operations in Singapore;

"capital funds", in relation to a bank incorporated outside Singapore or its bank group, means the net head office funds of the bank and such other liabilities as defined in MAS Notice 601;

"DBU operations", in relation to a bank, means any operations of the bank in Singapore, other than operations of the Asian Currency Unit;

"eligible total capital", in relation to a bank incorporated in Singapore, has the same meaning as "Eligible Total Capital" in MAS Notice 637, on a standalone ("Solo") level;

"eligible total capital", in relation to a bank group, has the same meaning as "Eligible Total Capital" in MAS Notice 637, on a consolidated ("Group") level;

"entity" means any individual, corporation, association or body of persons, whether corporate or unincorporated, sole-proprietorship, partnership or limited liability partnership as defined under Limited Liability Partnership Act 2004;

"exempt exposure" means any exposure set out in Appendix 1;

"financially dependent" has the same meaning as in regulation 24(3) of the Banking Regulations (Rg 5)[1];

"financial assistance" includes the making of a loan, the giving of a guarantee, the provision of security, the release of an obligation and the release of a debt;

"netting" means bilateral netting, including —

(*a*) netting by novation, where obligations between two counterparties to deliver a given amount on a given date under a netting transaction are automatically amalgamated with all other obligations under other netting transactions to deliver on the same value date, thereby extinguishing former netting transactions with a single legally binding new transaction; and

(*b*) close-out netting, which applies where some or all of the ongoing netting transactions between two counterparties are terminated due to the default of either counterparty or upon the occurrence of a termination event as defined in the netting agreement, whereupon the values of such transactions are combined and reduced to a single payable sum;

"netting agreement" means any agreement which effects netting between two counterparties, or any other arrangement to effect netting, which does not contain a walkaway clause;

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[1] The Authority takes the view that entities falling within the following situations are likely to be financially dependent on each other:

(*a*) where one entity derives 50% or more of its operating revenues from another entity;

(*b*) where two or more entities have given cross-guarantees for each other's liabilities;

(c) an individual and his family members except where the individual and the family members have resources of their own to meet their obligations without depending on each other and credit facilities granted are not for the use of other family members;

(d) partners or participants of a partnership, joint venture or other common enterprise, except where the partners or participants have resources of their own to meet their obligations without depending on each other and credit facilities granted are not for the use of other partners or participants.

"netting transaction" refers to any off-balance sheet derivative transaction of a bank in Singapore covered under a netting agreement, including:

(*a*) any interest rate contract;

(*b*) any exchange rate or gold contract;

(*c*) any contract based on individual equities or equity indices, precious metals or commodities; and

(*d*) any credit derivative transaction;

"PSE" or "public sector entities" means:

(*a*) a regional government or local authority that is able to exercise one or more functions of the central government at the regional or local level;

(*b*) an administrative body or non-commercial undertaking responsible to, or owned by, a central government, regional government or local authority, which performs regulatory or non-commercial functions;

(*c*) a statutory board in Singapore (other than the Authority); or

(*d*) a town council in Singapore established pursuant to the Town Councils Act (Cap 392A);

[MAS Notice 639 (Amendment) 2009]

"Rating Agency" means Standard and Poor's, Moody's or Fitch Ratings;

"single counterparty group" means any counterparty, a director group, a financial group, a substantial shareholder group or any third party single counterparty group;

"subsidiary", in relation to a bank incorporated outside Singapore, has the same meaning as section 5 of the Companies Act, except that the control of, or holding of shares in, any corporation by the bank in Singapore, is by way of investments reflected in the books of the bank in Singapore in respect of its operations in Singapore;

"third party single counterparty group" means any group of persons prescribed under regulation 24(1)(b) of the Banking Regulations;

"walkaway clause" means any provision which permits a party to a netting agreement that is not in default to make limited payments or no payments at all, to a defaulting party under the same netting agreement, even if the party that is in default is a net creditor under the netting agreement but does not include any provision which provides for an enforceable set-off arrangement.

4. The expressions used in this Notice, shall, except where defined in this Notice or where the context otherwise requires, have the same meanings as in the Act and in the Banking Regulations.

5. Subject to paragraph 2(c) of Appendix 3, where a bank incorporated in Singapore is required to comply with any requirements in this Notice involving its eligible total capital, it shall use its eligible total capital figures submitted to the Authority under MAS Notice 637 as at the end of the quarter falling two quarters ago[2].

[MAS Notice 639 (Amendment) 2014]

Large Exposures and Substantial Exposures Limits to Single Counterparty Group

Solo Level

6. Subject to paragraphs 8, 9 and 28, a bank in Singapore shall not permit —

(*a*) the aggregate of its exposures to a single counterparty group to exceed —

(i) in the case of a bank incorporated in Singapore, 25% or such other percentage of its eligible total capital as may be approved by the Authority[3]; or

(ii) in the case of a bank incorporated outside Singapore, 25% or such other percentage of its capital funds as may be approved by the Authority[4],

(hereinafter referred to as "large exposures limit"); and

(*b*) the aggregate of exposures exceeding 10% of its eligible total capital or capital funds, as the case may be, to any single counterparty group[5], to exceed 50% or such other percentage of its total exposures as may be approved by the Authority (hereinafter referred to as "substantial exposures limit").

Group Level

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[2] For example, eligible total capital as at 31st December will be the basis for section 29 compliance for the period 1st April to 30th June.

[3] While the Authority may raise the limits for a bank or bank group, as the case may be, on a case-by-case basis, it will not ordinarily approve any application for higher exposure limits unless the application is supported by strong justification.

[4] For a bank incorporated outside Singapore, the large exposures and substantial exposures limits do not apply to the substantial shareholder group.

[5] For an entity that belongs to more than one single counterparty group, a bank (or bank group) should include its exposure to that entity in each of the single counterparty group for the purpose of the large exposures limit. Where a bank's (or bank group's) exposure to more than one of these single counterparty groups constitute a substantial exposure, the bank's (or bank group's) exposure to the entity in common, need only be accounted for once, for the purpose of the substantial exposures limit.

7. Subject to paragraphs 8, 9 and 28, a bank in Singapore shall aggregate its exposures to a single counterparty group (other than the exposures to the financial group of the bank), with the exposures of its subsidiaries[6] and the exposures of all other companies treated as part of the bank group to the same counterparty group and shall not permit —

(*a*) the aggregate of the exposures of the bank group to the single counterparty group to exceed —

(i) in the case of a bank incorporated in Singapore, 25% or such other percentage of the eligible total capital of the bank group as may be approved by the Authority; or

(ii) in the case of a bank incorporated outside Singapore, 25% or such other percentage of the capital funds of the bank group as may be approved by the Authority,

(hereinafter referred to as "large exposures limit"); and

(*b*) the aggregate of the exposures of a bank group exceeding 10% of the eligible total capital or capital funds, as the case may be, to any single counterparty group, to exceed 50% or such other percentage of its bank group's total exposures as may be approved by the Authority (hereinafter referred to as "substantial exposures limit").

8. Notwithstanding that an entity may not be included in a director group, a financial group, a substantial shareholder group or any third party single counterparty group, a bank in Singapore shall aggregate the exposures of one or more entities with that of a director group, a financial group, a substantial shareholder group or any third party single counterparty group, as the case may be, if there are reasons for the bank to regard these exposures as connected in such a way so as to pose a single risk to the bank. The Authority may also require a bank to aggregate any of its exposures, where the Authority is of the view that these exposures pose a single risk to the bank.

9. The substantial exposures limit, at both the bank standalone and bank group level, shall not apply to a bank incorporated outside Singapore whose total Singapore dollar credit facilities to its non-bank customers do not exceed $100 million.

Exclusion from Large Exposures and Substantial Exposures Limits

10. For the purpose of complying with the large exposures and substantial exposures limits at the bank standalone or bank group level in paragraphs 6 and 7, a bank in Singapore when aggregating its exposures or the exposures of the bank group, as the case may be, —

(*a*) may exclude one or more exempt exposures; and

[6] A subsidiary of the bank may include an insurer or asset management company which holds assets in its insurance or investors' funds. Exposures to counterparties arising from such assets held for the benefit of any third party (other than the bank or any other company in the bank group) shall be excluded from the large exposures and substantial exposures limits.

(*b*) need not aggregate exposures to an entity or a sub-group of entities in a third party single counterparty group or substantial shareholder group with the other entities of the group if the entity or sub-group of entities, as the case may be, fulfill the criteria for disaggregating exposures of financially independent entities set out in Appendix 2.

11. Any entity or sub-group of entities disaggregated from a third party single counterparty group or substantial shareholder group shall be treated by a bank as a single counterparty group for the purposes of complying with paragraphs 6 and 7.

Submission of Quarterly Reports

12. Any bank which has, or whose subsidiary or any other company treated as part of the bank group has, any existing transaction with one or more entities in a sub-group of entities within a third party single counterparty group or substantial shareholder group which has been disaggregated pursuant to paragraph 10(b) and would otherwise be in breach of the large exposures limit or substantial exposures limit if not for paragraph 10(b), shall furnish to the Authority, not later than 15 days from 31st March, 30th June, 30th September and 31st December, or such other period as the Authority may approve, a report containing —

(a) a list of all the entities involved in the transaction and all other external group entities, highlighting the identity of the controlling entity; and

(b) the exposures of the bank and every entity in the bank group, to each entity in the sub-group and every other external group entity (as defined in Appendix 2).

[MAS Notice 639 (Amendment) 2009]

13. A bank incorporated in Singapore, may exclude an exposure from its aggregate exposures or the aggregate exposures of the bank group, as the case may be, to a single counterparty group if the exposure has been deducted from its eligible total capital at the bank standalone or bank group level.[7]

Limits on Unsecured Credit Facilities at Solo or Group Level

14. Subject to paragraphs 15 and 29, a bank in Singapore shall not —

(*a*) subject to paragraph (*b*), permit its aggregate unsecured credit facilities (other than credit card and charge card facilities)[8] and the aggregate unsecured credit facilities of its bank group (other than credit card and charge card facilities) to any director group (other than persons in limb (*d*)(i) of the definition of "director group") to exceed $5,000;

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[7] For example, a bank incorporated in Singapore may exclude from the computation of its aggregate exposures, its capital investments in a company or its securitisation exposures where these are deducted from eligible total capital for purposes of computation of regulatory capital.

[8] Credit card and charge card facilities are subject to the requirements in the Banking (Credit Card and Charge Card) regulations.

(*b*) permit its aggregate unsecured credit facilities (other than credit card and charge card facilities) and the aggregate unsecured credit facilities of its bank group (other than credit card and charge card facilities) to all the persons defined in limb (*d*)(i) of the definition of director group to exceed $5,000, unless the giving of the additional unsecured credit facilities over the limit has been approved by the board of directors of the bank or such other persons as may be authorised by the board to approve such unsecured credit facilities[9]; in such a case, its aggregate unsecured credit facilities (other than credit card and charge card facilities) and the aggregate unsecured credit facilities of its bank group (other than credit card and charge card facilities) to any director group shall not exceed

(i) in the case of a bank incorporated in Singapore, 2% of the eligible total capital of the bank or the bank group, as the case may be; or

(ii) in the case of a bank incorporated outside Singapore, 2% of the capital funds of the bank or the bank group, as the case may be; and

(*c*) grant, whether on its own or collectively with any entity in the bank group, to any of its officers (other than a director) or employees, or any other person who receives remuneration from the bank (other than for professional services rendered to the bank or any company connected with the bank as defined in regulation 24(3) of the Banking Regulations (Rg 5)), any unsecured credit facility which in the aggregate and outstanding at any one time exceeds one year's emoluments[10] of that officer, employee or person.

15. For the purposes of complying with paragraph 14, a bank need not include any unsecured credit facility granted to any entity within the director group which is —

(a) an entity carrying on banking business (whether in Singapore or elsewhere) or merchant bank approved under section 28 of the Monetary Authority of Singapore Act (Cap 186); and

(b) a related corporation of the first-mentioned bank,

provided that in the case of a bank incorporated in Singapore, the bank may only exclude such an unsecured credit facility to its subsidiary if the residual maturity of the credit facility does not exceed one year.

[MAS Notice 639 (Amendment) 2009]

Limits for Investments in Index or Investment Fund[11].

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[9] [deleted] [MAS Notice 639 (Amendment) 2009]

[10] "Emoluments", in relation to an individual, means the salary and bonuses of the individual in the previous year but does not include any allowances.

[11] "Investment funds" includes a collective investment scheme and any closed-end fund, as defined in section 2 of the Securities and Futures Act (Cap 286).

16. A bank in Singapore shall not permit the aggregate of its exposures arising from investments in any index or investment fund to exceed —

(*a*) in the case of a bank incorporated in Singapore, 2% or such other percentage of the eligible total capital of the bank as may be approved by the Authority; or

(*b*) in the case of a bank incorporated outside Singapore, 2% or such other percentage of the capital funds of the bank as may be approved by the Authority.

Limits for Internal Monitoring and Reporting

17. A bank incorporated in Singapore shall monitor its unsecured exposures to each substantial shareholder group exceeding 5% of its eligible total capital, on a Solo and Group level, and submit a report of such exposures to its board of directors on a quarterly basis.

Measurement of Exposures

18. A bank in Singapore shall apply the basis for computation of exposures set out in Appendix 3.

19. In view of potential changes to the shareholding structure of a counterparty and its financial relationship with other entities, a bank in Singapore should review the profile of its counterparties at least once every 12 months, but in any case, a review shall be conducted by the bank no later than 15 months from the last review[12].

Use of Credit Ratings by Rating Agencies

20. Where there are two credit ratings for any particular counterparty, a bank in Singapore shall use the poorer credit rating for that counterparty. Where there are more than two credit ratings for any particular counterparty, the bank shall use the higher of the two poorest ratings.

Application of Certain Credit Risk Mitigation Techniques

Bilateral Netting of Exposures for Off-balance Sheet Derivatives Transactions

21. A bank incorporated in Singapore which meets the requirements set out in MAS Notice 637[13] for recognising bilateral netting in respect of netting transactions entered into with a counterparty covered under a netting agreement, shall be deemed to have met the conditions for the purposes of computing its exposures from off-balance sheet derivatives

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[12] The Authority expects a bank to monitor more closely, developments affecting its counterparties with larger exposures particularly those with exposures that are close to the limits set out in this Notice.

[13] For the avoidance of doubt, a bank incorporated in Singapore needs to meet all the conditions except those found in section 6 of Annex 7N to MAS Notice 637 if it intends to recognise bilateral netting for the purposes of this Notice.

[MAS Notice 639 (Amendment) 2009]

transactions with the same counterparty on a net basis, for determining exposures to any counterparty under this Notice.

[MAS Notice 639 (Amendment) 2009]

22. A bank incorporated outside Singapore that is covered under netting agreements signed at its head office with any counterparty shall, if it intends to compute exposures from off-balance sheet derivatives transactions with that counterparty on a net basis for the purpose of this Notice, —

(*a*) provide the Authority with written notification from its head office when it begins recognising netting for the purposes of this Notice and such notification shall confirm that—

(i) there are systems and processes in place at the head office to track gross and net exposures to each netting counterparty, including those of the Singapore branch;

(ii) the head office is subject to a large exposures regime in its home jurisdiction that is broadly equivalent to those set by the Authority, and which is applied to its exposures on a global basis including exposures of the bank in Singapore;

(iii) the head office complies with the rules relating to the recognition of bilateral netting for the purposes of capital adequacy set by its home supervisory authority;

(iv) there is a legally enforceable, valid and effective master netting agreement in place which would cover the exposures of the bank in Singapore to each netting counterparty; and

(*b*) maintain records and documents confirming the bank's compliance with the conditions in sub-paragraph (*a*) and to make these available upon MAS' request.

(*c*) comply with any other conditions that MAS may impose on a case-by-case basis.

23. A bank incorporated outside Singapore that is covered under a netting agreement which deals only with transactions between the bank in Singapore and any counterparty shall, if it intends to compute exposures from off-balance sheet derivatives transactions on a net basis for the purpose of this Notice, —

(*a*) provide the Authority with written notification from its head office when it begins recognising netting for the purposes of this Notice and such notification shall confirm that —

(i) there are systems and processes in place at the head office to track gross and net exposures to each netting counterparty, including those of the Singapore branch;

(ii) the head office is subject to a large exposures regime in its home jurisdiction that is broadly equivalent to those set by the Authority, and which is applied to its exposures on a global basis including exposures of the bank in Singapore;

(iii) there is a legally enforceable, valid and effective master netting agreement in place which would cover the exposures of the bank in Singapore to each netting counterparty*;*

(iv) the netting arrangements meet the relevant conditions in Appendix 4; and

(*b*) maintain records and documents confirming the bank's compliance with the conditions in sub-paragraph (*a*) and to make these available upon MAS' request;

(*c*) comply with any other conditions that MAS may impose on a case-by-case basis.

24. For the purposes of determining the net exposure from off-balance sheet derivatives transactions to a counterparty, a bank incorporated outside Singapore which satisfies the requirements in paragraph 22 or 23, as the case may be, may offset its exposures in its operation of an Asian Currency Unit approved under section 77 of the Act ("ACU") with those in its DBU operations ("referred to as combined exposure") to that counterparty prior to determining the net amount.

25. Where the combined exposures of a bank which satisfies the requirements in paragraph 23 to a counterparty is higher than the gross exposure to the same counterparty in its DBU operations, the bank may use the lower amount in determining its net exposure from off-balance sheet derivatives transactions to that counterparty.

26. For the purposes of paragraphs 22 and 23, the written notification shall be signed by an executive officer of an independent internal function[14] of the bank's head office or an executive officer of the external auditors of the head office.

27. If the Authority is of the view that a bank is unable to comply with the minimum requirements set out in paragraphs 21 to 26 for the purpose of recognising the netting of its off-balance sheet derivatives transactions under section 29 of the Act, the bank shall immediately cease computing exposures on a net basis.

Exposures Secured Against Collateral

28. For the purposes of complying with the large exposures and substantial exposures limits, a bank in Singapore may offset from the gross exposure, the portion of the exposure which is secured against qualifying collateral, to compute its resulting exposure to a counterparty. The list of qualifying collateral and conditions to be fulfilled before the collateral may be used for offsetting purposes, are set out at Appendix 5.

[14] For example, the bank's internal audit function.

29. A bank in Singapore may also offset any collateral[15] satisfying the conditions set out in paragraph 2 of Appendix 5, for the purpose of —

(*a*) complying with the unsecured credit facilities limits in paragraph 14, or

(*b*) monitoring any unsecured exposure to a substantial shareholder group exceeding 5% of the bank's eligible total capital.[16]

30. Where the gross exposure and collateral are denominated in different currencies, the value of the collateral shall be subject to a haircut based on the figures for "FX" set out in Table 1 of Appendix 3.

Substitution of Exposures

31. Subject to paragraph 32 to 40, for the purpose of complying with the large exposures and substantial exposures limits, a bank in Singapore that has obtained credit protection may substitute its exposure to any counterparty, with its exposure to the provider of credit protection.

32. A bank in Singapore may substitute its exposures to a counterparty with that of the provider of credit protection if the provider of credit protection satisfies the following criteria:

(*a*) the provider of credit protection shall have a minimum credit rating of "A-" (or its equivalent) at the inception of the credit protection and at least a credit rating of "BBB-" (or its equivalent) over the tenor of the credit protection;

(*b*) the provider of credit protection shall be rated equal to or better than, the counterparty;

(*c*) the provider of credit protection shall not be the head office of the bank or parent bank, the bank's sister branches, subsidiaries and associated companies, any holding company of the bank, the subsidiaries and associated companies of any holding company of the bank or any entity in the substantial shareholder group or financial group of the bank (collectively referred to as "related parties"), unless the following conditions are met, whereupon the bank may record an exposure to the ultimate third party provider of credit protection —

(i) the credit protection is obtained from a third party provider of credit protection by a related party of the bank in Singapore on its behalf;

(ii) there is documentary evidence indicating that the credit protection covers the relevant exposures of the bank in Singapore;

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[15] Acceptable collateral includes any cash deposit, property and any marketable debt or equity security (other than any security issued by the counterparty, a related corporation of the counterparty, or any entity in the substantial shareholder group or financial group of the bank) but does not include any guarantee or letter of credit.

[16] This is applicable only to banks incorporated in Singapore.

(iii) relevant records and documents are made available to the Authority upon request; and

(iv) in the case of a bank incorporated outside Singapore, the bank shall provide a written confirmation from its head office that the bank is subject to a large exposures regime in its home jurisdiction that is broadly equivalent to those set by the Authority, and which is applied to its exposures on a global basis including the exposures of the bank in Singapore; and

(*d*) the ultimate provider of credit protection shall not be financially dependent on the counterparty and vice versa.

33. A bank may only substitute an exposure to a counterparty which is covered by any of the following types of credit protection with an exposure to the provider of credit protection —

(*a*) any guarantee which satisfies the conditions at Appendix 6A; and

(*b*) any single name credit default swap, total return swap or first-to-default credit derivative providing credit protection equivalent to a guarantee, which satisfies the conditions at Appendix 6B.

34. A bank in Singapore that has obtained credit protection via an instrument set out in paragraph 33 may substitute its exposure to a counterparty with its exposure to the provider of credit protection if there is no mismatch in the currency or maturity of the credit protection with the underlying exposure.

35. Where a maturity mismatch exists such that the residual maturity of the credit protection is shorter than that of the underlying exposure, a bank in Singapore may substitute its exposure to a counterparty with its exposure to the provider of credit protection subject to the haircuts described in Appendix 7 if the following conditions are met –

(*a*) the original maturity of the credit protection is at least 1 year; and

(*b*) the residual maturity of the credit protection is longer than 3 months.

36. Where a mismatch exists between the currencies in which the credit protection and the underlying exposure are denominated, a bank in Singapore may substitute its exposure to a counterparty with its exposure to the provider of credit protection subject to a haircut of 8% of the notional value of the credit protection.

37. In the case where there are both currency and maturity mismatches between the exposure of a bank in Singapore to its counterparty and the credit protection, the haircut for currency mismatches shall be cumulatively added to the haircut for maturity mismatches.

38. For the purposes of paragraph 33, a bank in Singapore shall recognise protection for only one asset in a first-to-default credit derivative basket over the entire tenor of the credit derivative. A bank shall recognise a first-to-default credit derivative only if the credit derivative contract is terminated upon the occurrence of a specified credit event. In

the event of a default, where the defaulted name under a first-to-default credit derivative is not the counterparty of the bank for whom protection has been bought, the bank shall record the full amount of its exposure to the underlying counterparty upon the termination of the credit derivative contract[17].

39. The resulting exposure of a bank in Singapore to the provider of credit protection shall be aggregated with the bank's other exposures to this same counterparty, for the purpose of compliance with the limits set out in this Notice.

40. Where the provider of credit protection is an entity to whom exposures of a bank in Singapore are exempt exposures under sub-paragraphs (*a*), (*b*), (*d*), (*e*) and (*f*) of Appendix 1, the bank may treat any exposure acquired indirectly by the bank as a result of substitution of exposures through credit risk mitigation as an exempt exposure.

Operation of Asian Currency Unit

41. A bank incorporated outside Singapore need not comply with the requirements in this Notice (other than paragraph 14) in respect of exposures and credit facilities from its operation of an Asian Currency Unit.

Effective Date and Transitional Provisions

42. Subject to paragraph 43, this Notice shall take effect on 11th June 2007. MAS Notice 623 dated 11th November 2002 and MAS Notice 629 dated 4th January 2006 is hereby cancelled with effect from 11th June 2007.

43. A bank in Singapore carrying on banking business immediately before 31st March 2007 shall continue to comply with the requirements set out in MAS Notices 623, 625 and 629 relating to the repealed section 29 of the Act until 30th March 2009 or unless the bank has elected to comply with the new section 29 of the Act pursuant to section 67 of the Banking (Amendment) Act 2007 (Act 1 of 2007), whichever is the earlier. Where the bank in Singapore has so elected, the bank shall comply with this Notice from the date of election specified in the notice of election.

44. Notwithstanding paragraph 42, a bank need only commence furnishing the relevant reports required under paragraphs 12 and 17, for the quarter ending 30 June 2009.

[MAS Notice 639 (Amendment) 2009]

* Notes on history of amendments
1 MAS Notice 639 (Amendment) 2009 with effect from 31 December 2009
2 MAS Notice 639 (Amendment) 2014 with effect from 17 February 2014

[17] A bank shall not recognise a second-to-default and other nth-to-default credit derivatives as eligible credit risk mitigation instruments for the purposes of section 29.

Appendix 1

Exempt Exposures

For the purposes of this Notice, the following exposures are exempt exposures:

(*a*) an exposure to the Singapore Government[18] and to the Authority;

(*b*) an exposure to a central bank[19] or a central government of a sovereign country that is rated "AAA" (or its equivalent);

(*c*) an exposure of an overseas branch or subsidiary of a bank incorporated in Singapore, to the central bank or central government of the jurisdiction where the branch or subsidiary is located, where :

(i) the exposure is to meet the statutory liquidity and reserves requirement or other statutory requirements imposed by the central bank in that jurisdiction; or

(ii) the exposure is denominated in the local currency of the jurisdiction and its original maturity is not greater than three months. The amount to be exempted is limited to the amount of local currency denominated liabilities of the branch or subsidiary concerned;

(d) an exposure to any public sector entity rated "AAA" (or its equivalent);

(e) an exposure to the following multilateral development banks ("MDBs"):

(i) the African Development Bank;

(ii) the Asian Development Bank;

(iii) the Caribbean Development Bank;

(iv) the Council of Europe Development Bank;

(v) the European Bank for Reconstruction and Development;

(vi) the European Investment Bank;

(vii) the European Investment Fund;

(viii) the Inter-American Development Bank;

(viiia) the International Finance Facility for Immunisation;

(ix) the Islamic Development Bank;

(x) the Nordic Investment Bank; and

(xi) the World Bank Group,

[MAS Notice 639 (Amendment) 2009]

(f) an exposure to the Bank for International Settlements, the International Monetary Fund, the European Central Bank and the European Community;

[MAS Notice 639 (Amendment) 2014]

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[18] For the avoidance of doubt, an exposure to a statutory board in Singapore is not considered an exposure to the Singapore Government.

[19] This includes any entity which performs the role of a central bank.

(g) an exposure guaranteed by or hedged by a credit derivative where the provider of credit protection is any entity listed in sub-paragraph *(a), (b), (d), (e), and (f)* above, which fulfills the conditions in Appendix 6A or 6B, as the case may be;

(h) an exposure to a bank, whether or not licensed in Singapore, except that in the case of an exposure of a bank incorporated in Singapore to a subsidiary which is a bank, whether in Singapore or elsewhere, the residual maturity of the exposure shall not exceed one year;

(i) an exposure to a merchant bank approved under section 28 of the Monetary Authority of Singapore Act (Cap 186) which is a related corporation of the bank licensed in Singapore ("merchant bank subsidiary"), except that in the case of an exposure of a bank incorporated in Singapore to its merchant bank subsidiary, the residual maturity of the exposure shall not exceed one year;

(j) an exposure of a bank incorporated outside Singapore to its head office or any other branch or subsidiary of its head office arising from a central risk management function performed by the head office, branch or subsidiary, subject to the bank—

(i) providing the Authority with written notification from its head office[20] confirming that —:

(A) all fair value losses are undertaken by the head office or other entities of the bank group as the case may be; and

(B) the head office is subject to a large exposures regime in its home jurisdiction that is broadly equivalent to those set by the Authority, and which is applied to its exposures on a global basis including exposures of the branch in Singapore;

(ii) maintaining relevant records and documents evidencing the sub-paragraph (*j*)(i)(A), and making these available upon request by the Authority; and

(k) an exposure to a counterparty arising from the clearing or settlement of any transaction, where the bank has fulfilled its obligation under the transaction but the counterparty has not, up to two business days from the date of settlement; and

(l) an exposure arising from granting intra-day facilities to or entering into an overnight repurchase or reverse repurchase transaction with a counterparty.

[20] The written notification shall be signed off by an executive officer from an independent internal function of the head office such as Internal Audit or an executive officer from the external auditors of the head office.

Appendix 2

Criteria for Disaggregating Exposures to Financially Independent Entities in a Third Party Single Counterparty Group or Substantial Shareholder Group

1. Where the controlling entity is not a foreign government or foreign central bank, the exposures of a bank to an entity or a sub-group of entities in a third party single counterparty group or substantial shareholder group (referred to as "Group") can be disaggregated from the exposures of the bank to the Group, where all the following requirements are met:

(a) the entity or each entity in the sub-group, as the case may be, has sufficient financial resources (either on its own or together with the financial resources provided by the other entities in the sub-group) to fully service its liabilities, and does not depend on any other entity in the Group that does not fall within the sub-group ("external group entity") for financial assistance in meeting its liabilities[20A];

(b) the entity or each entity in the sub-group, as the case may be, is not dependent on by any external group entity for financial assistance in meeting the external group entity's liabilities;

(c) proceeds received by the entity or each entity in the sub-group, as the case may be, from the credit facilities granted by the bank are only used by the entity or other entities in the sub-group for the operations of the entity or other entities in the sub-group, as the case may be, and are not transferred to any external group entity;

(d) the entity or each of the entities in the sub-group, as the case may be, does not receive the proceeds of any credit facilities, whether in whole or in part, obtained by any external group entity from the bank;

(e) the entity or each of the entities in the sub-group, as the case may be, is not dependent on any external group entity, whether singly or in aggregate with other external group entities, for more than 50% of its operating revenues;

(f) the entity or each of the entities in the sub-group, as the case may be, is not dependent on by any external group entity, either singly or in aggregate with other entities in the sub-group, for more than 50% of the external group entity's operating revenues[20B];

[20A] In the case of a loan provided by a shareholder ("shareholder loan") to an entity to be disaggregated, the accounting treatment may be used as a guide in determining whether the shareholder and the entity are financially independent. Where the shareholder loan was accounted for as debt (e.g. amount due to shareholder/amount due from entity), they would not be financially independent. On the other hand, where the shareholder loan was accounted for as equity (e.g. cost of investment in subsidiary/associated company), a bank may treat the shareholder and the entity as financially independent, unless there are reasons to suggest otherwise (such as the injection of capital to support a financially weak entity).

[MAS Notice 639 (Amendment) 2009]

[20B] Where the entity or sub-group of entities is held by one or more intermediate holding companies (an intermediate holding company being a company which primary purpose is to own or hold shares in other companies), this criteria need not be satisfied for the purposes of determining whether the entity or sub-group of entities may be disaggregated from the intermediate holding company or companies, as the case may be.

[MAS Notice 639 (Amendment) 2009]

(g) the entity or each of the entities in the sub-group, as the case may be, does not use any name, logo or trade mark in a manner which indicates or represents that the entity is related to or associated with any external group entity;

(h) none of the names, logos or trademarks of the entity or any of the entities in the sub-group is used by any external group entity in a manner which indicates or represents that the external group entity is related to or associated with the entity or any of the entities in the sub-group;

(i) a majority of the directors of the entity or each of the entities in the sub-group, as the case may be, do not fall within any of the following categories:

(i) the controlling person;

(ii) family members of the controlling person;

(iii) employees of the controlling person;

(iv) concurrently directors of the controlling person;

(v) employees of any other external group entity.

(j) no external group entity that is a controlling person or family member of such a controlling person, is an executive officer or chairman of the board of directors of the entity or any of the entities in the sub-group;

(k) no chief executive officer of any external group entity that is a controlling person is an executive officer or chairman of the board of directors of the entity or any of the entities in the sub-group; and

(l) apart from being in the Group, the entity or each of the entities in the sub-group, as the case may be, and any external group entity are not financially dependent on each other.

2. Where the controlling person is a foreign government or foreign central bank, the exposures of an entity or a sub-group of entities in a Group can be disaggregated from the exposures of the Group where the criteria in 1*(a)* to *(f)*, and *(l)* are met.

Appendix 3

Basis of Computation of Exposures

1. For the purpose of compliance with the exposure limits set out in this Notice, a bank shall record an exposure arising from:

(*a*) **an actual outstanding position or claim against a single counterparty group**, including:

(i) any loan or advance granted;

(ii) any bills purchased or any discounted bills held;

(iii) any linked spot and forward purchases of securities that function economically like a secured loan[21];

(iv) any debt securities purchased or sold[22];

(v) any financial derivative purchased or sold over-the-counter[23];

(vi) any margin held with any exchange, clearing house or other counterparty.

A bank shall measure these exposures based on their carrying value, i.e. the same measurement basis that has been applied to the exposures in the preparation of the bank's financial statements. The same measurement basis is to be used consistently and in a manner which complies with the requirements of the Singapore Financial Reporting Standards. The same measurement basis shall be applied to both the numerator and denominator in computing large exposures and substantial exposures;

(*b*) **any contingent liability or commitment arising from the normal course of business as a result of utilisation of limits available or drawing down of undrawn advised facilities which the bank has committed to provide,** including:

(i) any undrawn credit facilities;

(ii) any direct credit substitutes such as guarantees issued by the bank, bills accepted but not held by the bank;

(iii) any transaction related contingent items such as standby letters of credit, performance bonds, bid bonds or warranties;

(iv) any short-term self-liquidating trade related credits such as documentary credit collateralised by underlying shipments.

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[21] For a repurchase transaction, a bank shall recognise an exposure to the issuer based on the carrying value of security. For a reverse repurchase transaction, a bank shall recognise an exposure to the counterparty, equivalent to the amount due from the counterparty which may be offset by the value of any security if these are qualifying collateral.

[22] This refers to exposures from pre-settlement risk (marked-to-market gain) and settlement risk.

[23] This refers to the marked-to market gain and potential future exposure (please see paragraph (*f*)).

A bank shall measure these contingent liabilities and commitments based on the facility limit that has been granted to the counterparty, excluding any amount that has been utilised or drawn down;

(*c*) **any assets whose value depends on an issuer performing its obligations, or whose value otherwise depends on that issuer's financial soundness**, including securities, warrants and options.

A bank shall record an exposure to the issuer of the security based on its carrying value i.e. the same measurement basis that has been applied to the exposures in the preparation of the bank's financial statements, provided that the same measurement basis is used consistently and in a manner which complies with the requirements of the Singapore Financial Reporting Standards.

Where the issuer is a foreign government, a bank may net long and short positions arising from the purchase and sale of securities issued by the government across different series and maturities for the purpose of computing its exposure to that government, where these are exposures in the bank's trading book;

(*d*) **any outstanding claims on a special purpose vehicle ("SPV") as part of a securitisation transaction,** including on-balance sheet exposure to securities issued e.g. asset-backed securities, mortgage-backed securities and collateralised debt obligations, and off-balance sheet exposures e.g. through credit enhancements, liquidity facilities, interest rate or currency swaps or credit derivatives, regardless of whether it was retained by the bank at, or repurchased by the bank after, the origination of the securitisation.

(i) subject to sub-paragraph (ii), a bank shall record an exposure to the issuer of each of the underlying assets based on the relative size of the issuers' contribution to the pool of securitised assets;

(ii) where the exposure to the SPV does not exceed, in the case of a bank incorporated in Singapore, 2% of the bank's eligible total capital or in the case of a bank incorporated outside Singapore, 2% of its capital funds, the bank may record the exposure as an exposure to the SPV;

(iii) a bank may count an exposure to the SPV in place of the underlying assets under extenuating circumstances where the bank is unable to look through the SPV to its underlying assets. Where this occurs, the bank shall document the reason(s) for its inability to look through the SPV. Such documentation shall be made available for review by the Authority at all times;

(*e*) **any commitments due to underwriting.**

(i) In the case of securities underwriting, a bank shall record an amount equivalent to the commitment limit multiplied by 20% as an

exposure to the issuer of the securities underwritten. On the earlier of the issue date or eight weeks from the date of launch of the issue, the amount of securities that has not been sold shall be counted as an exposure to the issuer;

(ii) In the case of notes issuance facilities and revolving underwriting facilities, a bank shall record an amount equivalent to the facility limit multiplied by 50% as an exposure to the issuer;

(*f*) **any potential future exposure over the remaining life for over-the-counter off-balance-sheet items**. The potential future exposure for these items shall be computed by applying an add-on factor to the effective notional principal amount as set out in the table below.

Table 1: Add-on for Potential Future Exposure

Residual Maturity	Interest Rate	FX & Gold	Equity	Precious Metals (Except Gold)	Other Commodities
One year or less	0.0%	1.0%	6.0%	7.0%	10.0%
Over one year to five years	0.5%	5.0%	8.0%	7.0%	12.0%
Over five years	1.5%	7.5%	10.0%	8.0%	15.0%

The Authority may allow a bank to use its internal models to derive appropriate add-ons if these models have been —

(i) accepted, approved or validated by its home supervisory authority for managing large exposures or for capital adequacy purposes; or

(ii) approved or validated by the Authority for capital adequacy purposes.

Exclusions

2. A bank may exclude the following from the computation of exposures:

(a) unadvised or uncommitted facilities and internal limits. For uncommitted facilities, a bank in Singapore should obtain a legal opinion that its facility documentation confers upon the bank an unconditional right to refuse drawdown. The Authority expects all banks in Singapore to have proper procedures in place to enable them to exercise their rights to decline drawdown requests for uncommitted facilities.

(b) accrued interest, accrued expenses and fees outstanding. Nevertheless, a bank in Singapore may include these items if they wish to do so, or if such sums are material.

(c) in the case of a bank incorporated in Singapore computing the aggregate of its exposures to its financial group, the amount of capital investments referred to in paragraph 6.1.3(p)(iii) of MAS Notice 637, provided that those capital investments [24] are correspondingly excluded from the

[24] For avoidance of doubt, the amounts excluded from the computation of the eligible total capital of the bank shall be the capital investments referred to in paragraph 6.1.3(p)(iii) of MAS Notice 637, as at the end of the quarter falling two quarters ago.

computation of the eligible total capital of the bank, for the purpose of computing the large exposures limit.

[MAS Notice 639 (Amendment) 2014]

Appendix 4

Conditions Applicable to a Bank Incorporated Outside Singapore for Netting Arrangements

1 Introduction

1.1 This Appendix sets out the conditions applicable to a bank incorporated outside Singapore which is covered under a netting agreement dealing only with transactions between the bank in Singapore and a counterparty, and which intends to recognise bilateral netting in respect of netting transactions entered into with the counterparty for the purposes of computing its exposures to a single counterparty group under this Notice.

2 Conditions

2.1 Subject to this paragraph and paragraphs 3 and 4, a bank may recognise the netted exposures in respect of any netting transaction for the purposes of computing its exposures to a single counterparty group under this Notice only when the bank —

(*a*) has entered into a valid, effective and enforceable netting agreement necessary to effect the netting with a counterparty;

(*b*) has obtained a written independent legal opinion confirming that the netting agreement is valid, effective and enforceable for each of the following jurisdictions, where applicable*:*

(i) the jurisdiction in which the counterparty is incorporated or established;

(ii) if the head office or a foreign branch of the counterparty has entered or will be entering into the netting transaction, the jurisdiction in which the head office or branch of the counterparty, as the case may be, is located;

(iii) the jurisdiction whose law governs the netting agreement; and

(iv) the jurisdiction whose law governs any netting transaction subject to the netting agreement if different from sub-paragraph (iii),

(referred to as "relevant jurisdictions") and which satisfies the requirements set out in paragraph 3; and

(*c*) provides to the Authority a summary listing[25] of the source and date of each legal opinion obtained for the purposes of paragraph 2.1(*b*), stating in each case, whether such legal opinion was commissioned specifically by the bank, by the bank collectively with any other party, or by some other third party. The summary listing should be provided at least once every 12

[25] This can be prepared by either the external or internal legal adviser of the bank.

months, but in any case shall be provided no later than 15 months from the previous submission;

2.2 The bank may be required by the Authority to provide copies of or access to, the netting agreement and the legal opinions obtained for the purposes of paragraph 2.1(*b*).

3 Legal Opinions obtained for purposes of paragraph 2.1(*b*)

3.1 A legal opinion may —

(*a*) be in the form of a memorandum of law and addressed directly to the bank or the sponsors of a particular netting agreement or form of netting agreement[26]; or

(*b*) be the product of a number of parties (including the bank) pooling together to seek a collective opinion on a particular netting agreement.

3.2 Each legal opinion shall confirm that in an event of default as defined under the netting agreement, including liquidation, bankruptcy or other similar circumstance of either the counterparty or the bank, the courts and administrative authorities[27] of the relevant jurisdiction will find that the bank's claims and obligations pursuant to the relevant netting transactions would be limited to a net sum calculated in accordance with the netting agreement under the law of the relevant jurisdiction.

3.3 In addition, each legal opinion should[28]—

(a) highlight the material clauses in the netting agreement that provides for the netting ("material netting clauses");

(b) confirm that the unenforceability or illegality of any clause (other than a material netting clause) in the netting agreement is unlikely to undermine the material netting clauses referred to in sub-paragraph (a) above;

(c) state the circumstances under which the netting agreement may be relied upon including:

(i) the legal form of, or activities conducted by, the counterparty; and

(ii) whether certain counterparties (such as a bank, an insurance company or a local authority) may be subject to special rules relating to insolvency as a result of the legal form of, or activities conducted by, the counterparties;

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[26] The Authority would normally consider independent legal opinions commissioned and collated by the International Swaps and Derivatives Association (ISDA) as meeting the conditions set out in paragraphs 3.1 to 3.6 of this Appendix.

[27] This includes a court-appointed administrator and an administrator appointed by a regulatory authority.

[28] This is not intended to be an exhaustive list of all the matters that should be covered in a legal opinion obtained for the purposes of paragraph 2.1(*b*).

(*d*) state whether the netting or other default provisions in the netting agreement are enforceable or enforceable differently (and if so, the extent of the difference) in a non-liquidation event, such as administration, judicial management, receivership, voluntary arrangement and a scheme of arrangement;

(*e*) state to what extent, if at all, the netting needs to be reflected in the records of the counterparties in order for it to be valid, effective and enforceable;

(*f*) state whether a court or other relevant administrative authority in the jurisdiction covered by the legal opinion would uphold the rate chosen for the conversion of foreign currency obligations for the purpose of calculating the close-out amount and whether there are any statutory or other applicable rules that may affect this aspect of the netting agreement;

(*g*) state whether under the law of the jurisdiction covered by the legal opinion, it is necessary for the enforceability of the netting that all netting transactions be regarded as part of a single agreement, and if so, whether there is anything in the close-out methodology which may be held to be inconsistent with the treatment of all netting transactions as part of a single agreement and the effect it may have on the netting;

(*h*) state whether there is any reason to believe that the netting agreement would be unenforceable because of the law of another jurisdiction;

(*i*) state whether there is any preference specified in the netting agreement for automatic rather than optional close-out, and if so, whether such preference would affect the enforceability of the netting agreement;

(*j*) state whether there are legal problems in exercising any discretion or flexibility provided for in the netting agreement, and if so, whether such problems affect the enforceability of the netting agreement; and

(*k*) if other clauses are added to a standard form agreement, confirm that such additional clauses do not throw any reasonable doubt or affect the overall validity, effectiveness or enforceability of the netting agreement.

3.4 The Authority is aware that it may not be possible for a bank to obtain a legal opinion that provides a definitive view on the validity, effectiveness and enforceability of the netting agreement without certain assumptions or qualifications. The presence *per se* of assumptions and qualifications within the legal opinion will not render the legal opinion unsatisfactory for the purposes of this Notice. However, the assumptions underlying the legal opinion shall not be unduly restrictive. They shall be specific, of a factual nature and be adequately explained within the legal opinion. Likewise, where qualifications are made, these shall be specific and their effect shall be adequately explained within the legal opinion. A bank shall examine and assess the assumptions and qualifications in the legal opinion.

3.5 If the bank determines that —

(*a*) the absence of any of the information listed in paragraph 3.3; or
(*b*) any of the assumptions or qualifications in the legal opinion,

gives rise to reasonable doubt as to the validity, effectiveness or enforceability of the netting agreement, the bank shall not recognise netting in respect of the netting transactions covered under the netting agreement for the purposes of computing its exposures to a single counterparty group under this Notice.

3.6 In this regard, where there is more than one relevant jurisdiction in relation to a netting agreement, the bank shall not recognise netting in respect of any netting transaction for the purposes of computing its exposures to a single counterparty group under this Notice if the bank has any reasonable doubt, based on its own evaluation of the legal opinions, as to whether the netting agreement is valid, effective and enforceable in any relevant jurisdiction considering the potential for conflicts of laws and whether action may be taken by insolvency officials in other jurisdictions.

3.7 The bank shall review each legal opinion and obtain updates thereto, either in the form of a fresh legal opinion or a letter from an external firm of lawyers confirming that the opinion on the validity, effectiveness and enforceability of the netting agreement remains unchanged. Each legal opinion should be reviewed at least once every 12 months, but in any case shall be reviewed no later than 15 months from the previous review. The bank shall also document the sources of the legal opinions, and the expertise of the persons giving the legal opinions.

3.8 Notwithstanding paragraph 2.1(*b*), where any relevant jurisdiction does not recognise netting or recognises netting only in a limited form, the bank shall report netting transactions for which that jurisdiction is a relevant jurisdiction on a gross basis under this Notice. All other transactions under the same netting agreement may be reported on a net basis.

[MAS Notice 639 (Amendment) 2009]

3.9 The bank shall alert the Authority when it becomes aware of any relevant jurisdiction that does not recognise netting or recognises netting only in a limited form (whether as to certain products or with counterparties of certain legal forms or counterparties performing certain activities).

3.10 Where a bank is aware that a supervisory authority of the counterparty of the bank (whether the supervisory authority is the home or host supervisor) is not satisfied that a netting agreement is legally valid, effective or enforceable under the law of the jurisdiction of that supervisory authority, the bank shall not recognise netting in respect of any netting transaction covered by such netting agreement for the purposes of computing its exposures to a single counterparty group under this Notice, notwithstanding any legal opinion obtained by the bank.

4 Policies, Systems and Controls

4.1 A bank that recognises netting in respect of any netting transaction for the purposes of computing its exposures to a single counterparty group under this Notice shall have in place a netting policy that sets out, as a minimum, the following:

(*a*) the person(s) responsible for setting and reviewing policy on netting;

(*b*) the frequency of review of the netting policy;

(*c*) the person(s) responsible for approving the application of a netting agreement to any netting transaction (including determining whether the netting agreement is covered by an existing legal opinion or whether separate legal opinions are required);

(*d*) how the bank monitors legal developments affecting its netting agreements and the need to obtain additional legal opinions;

(*e*) what the bank is to include in its netting agreements to ensure that its interests, rights and obligations are duly reflected;

(*f*) the processes for determining and reporting net exposures to individual counterparties.

4.2 The bank shall also have in place adequate systems and controls to monitor the netting transactions, including systems and controls to ensure that—

(*a*) only netting transactions entered into by the bank with a counterparty that is covered by a netting agreement are netted for the purposes of computing its exposures to a single counterparty group under this Notice;

(*b*) net exposures to individual counterparties are accurately determined and reported[29];

(*c*) documentary evidence of the netting transactions subject to netting are appropriately safeguarded and the bank is able to produce such documentary evidence, if required by the Authority;

[MAS Notice 639 (Amendment) 2009]

(*d*) the legal opinions are not superseded by subsequent changes in the laws of the relevant jurisdictions. The following shall be duly documented and should be updated at least once every 12 months, but in any case, shall be updated no later than 15 months from the previous update:

(i) the types of counterparties and netting transactions covered by each netting agreement; and

[29] A bank should have systems in place that are capable of aggregating net exposures to each counterparty on a global basis including against each branch of the counterparty.

(ii) the relevant jurisdictions for each netting agreement to which the bank is a party. The bank shall note any jurisdiction for which any doubt may exist as to the legal validity, effectiveness or enforceability of netting and what action the bank has taken as a result;

(*e*) counterparty limits are monitored in terms of such net exposures; and

(*f*) potential roll-off exposures, which occur upon maturity of short-dated obligations that are netted against longer dated claims, are monitored.

Appendix 5

Recognition of Collateral

1. "Qualifying collateral" means any cash deposit pledged, charged or secured as collateral and any security issued by entities listed in sub-paragraphs (*a*), (*b*), (*d*), (*e*) and (*f*) of Appendix 1.

2. A bank shall ensure the following conditions are fulfilled before offsetting collateral in its computation of exposures:

(*a*) all collateral arrangements shall be properly documented, and the bank shall take all steps necessary to fulfill statutory and contractual requirements to ensure that it is able to enforce its security interest;

(*b*) the bank shall have proper internal legal procedures relating to the liquidation of collateral upon the default of the counterparty, with a view towards timely liquidation;

(*c*) if the securities are held by a custodian, the bank shall satisfy itself that there is adequate segregation between the collateral instruments and the custodian's own assets;

(*d*) the market value of the collateral shall be readily determinable or marked to market on a regular basis; and

(*e*) the value of the collateral shall not have a material positive correlation with the credit quality of the counterparty.

Appendix 6A

Requirements for Recognition of Guarantees

1 A bank shall ensure that the following conditions are met before it recognises a guarantee:

(*a*) the guarantee shall be an explicitly documented obligation assumed by the guarantor;

(*b*) all documentation used for the guarantee shall be binding on all parties and legally enforceable in all relevant jurisdictions[30];

(*c*) the guarantee shall represent a direct claim on the guarantor;

(*d*) the extent of the credit protection cover is clearly defined and incontrovertible;

(*e*) other than in the event of non-payment by the bank of money due in respect of the guarantee, if applicable, there is an irrevocable obligation on the part of the guarantor to pay out a pre-determined amount upon the occurrence of a credit event, as defined under the guarantee;

(*f*) the guarantee shall not contain any clause, the fulfillment of which is outside the direct control of the bank, that—

(i) would allow the guarantor to unilaterally cancel the guarantee[31];
(ii) would increase the effective cost of the guarantee as a result of deteriorating credit quality in the hedged exposure;
(iii) could prevent the guarantor from being obliged to pay out in a timely manner in the event that the counterparty fails to make any payment(s) due; or
(iv) could allow, where applicable, the maturity of the guarantee agreed ex-ante to be reduced ex-post by the guarantor;

(g) the bank shall be able in a timely manner pursue the guarantor for any monies outstanding under the documentation governing the transaction

[30] Such documentation shall be subject to sufficient legal review. Further reviews should be required as necessary to ensure continuing enforceability of legal documentation in relevant jurisdictions, such as the jurisdiction whose law governs the credit protection agreement and the jurisdiction whose law governs any transaction covered under the credit protection agreement.

[31] This does not include any guarantee with a cancellation clause where it is provided that any obligation incurred or transaction entered into prior to any cancellation, unilateral or otherwise, continues to be guaranteed by the guarantor. When the exposure is no longer covered by the guarantee, the bank shall record an exposure to the counterparty.

between the bank and the counterparty (referred to hereafter as "Documentation") on the default of, or non-payment by, the counterparty[32];

(h) the guarantee shall cover all types of payments that the counterparty is expected to make under the Documentation, except where the exposure is an exempt exposure or in the case of accrued interest, accrued expenses or fees outstanding, where these are deemed immaterial; and

2 Where the amount of credit protection afforded by the guarantee is less than the amount of the underlying exposure, and the secured and unsecured portions of the underlying exposure are of equal seniority i.e. a bank and the guarantor share losses on a pro-rata basis, the bank may recognise an exposure to the guarantor for the portion of the original exposure that is hedged.

[32] The guarantee payments may be in the form of the guarantor making a lump sum payment of all monies to the bank or the guarantor assuming the future payment obligations of the counterparty covered by the guarantee, as specified in the relevant documentation governing the guarantee.

Appendix 6B

Requirements for Recognition of Credit Derivatives

1 A bank shall ensure that the following conditions are met before it recognises any credit derivative:

(*a*) the terms and conditions of any credit protection obtained via a credit derivative shall be set out in writing by both the bank and the provider of credit protection;

(*b*) all documentation used for credit derivatives shall be binding on all parties and legally enforceable in all relevant jurisdictions[33];

(*c*) the credit derivative shall represent a direct claim on the provider of credit protection;

(*d*) the extent of the credit protection cover is clearly defined and incontrovertible;

(*e*) other than in the event of non-payment by a buyer of credit protection of money due in respect of the credit derivative, there is an irrevocable obligation on the part of the provider of the credit protection to pay out a pre-determined amount upon the occurrence of a credit event, as defined under the credit protection contract.;

(*f*) the credit derivative contract shall not contain any clause, the fulfillment of which is outside the direct control of the bank, that:

(i) would allow the provider of credit protection to unilaterally cancel the credit protection cover;

(ii) would increase the effective cost of the credit protection cover as a result of deteriorating credit quality in the hedged exposure;

(iii) could prevent the provider of credit protection from being obliged to pay out in a timely manner in the event that the counterparty fails to make any payment due[34]; or

(iv) could allow, where applicable, the maturity of the credit protection agreed ex-ante to be reduced ex-post by the provider of credit protection;

(*g*) the credit events specified by the contracting parties shall at a minimum cover[35]:

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[33] Such documentation shall be subject to sufficient legal review. Further reviews should be required as necessary to ensure continuing enforceability of legal documentation in relevant jurisdictions such as the jurisdiction whose law governs the credit protection agreement and the jurisdiction whose law governs any transaction subject to the credit protection agreement.

[34] This does not preclude an obligation by the buyer of credit protection to satisfy requirements relating to providing a Notice of Publicly Available Information, as is the case for the triggering of credit protection under standard Credit Default Swap contracts.

(i) failure to pay the amounts due under terms of the underlying exposure that are in effect at the time of such failure (with a grace period that is closely in line with the grace period in the underlying exposure);

(ii) bankruptcy, insolvency or inability of the counterparty to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due, and analogous events;

(iii) restructuring of the underlying obligation involving forgiveness or postponement of principal, interest or fees that results in a credit loss event (i.e. charge-off, specific provision or other similar debit to the profit and loss account); and

(*h*) in the event when only the restructuring of the underlying exposure is not specified as a credit event in the contract, partial recognition of the credit derivative under a substitution approach will be allowed. If the credit protection cover provided by the credit derivative is less than or equal to the amount of the underlying exposure, only 60% of the amount of the hedge can be attributed to the provider of credit protection while the residual exposure is attributed to the counterparty for the purposes of section 29. If the amount of the credit derivative is larger than that of the underlying exposure, the amount of eligible hedge is capped at 60% of the amount of the underlying exposure;

(*i*) the credit derivative shall not terminate prior to the maturity of the underlying exposure or expiration of any grace period required for a default on the underlying exposure to occur as a result of a failure to pay;

(*j*) the maturity of the underlying exposure and the maturity of the credit derivative shall both be defined conservatively[36];

(*k*) a robust valuation process to estimate loss reliably shall be put in place in order to estimate loss reliably for credit derivatives that allow for cash

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[35] The Authority would normally consider the requirements in paragraph (g) to have been met even if the requirements are not specifically set out so long as the obligations of the provider of credit protection covered under the credit derivative contract would include those requirements.

[36] The effective maturity of the underlying shall be gauged as the longest possible remaining time before the counterparty is scheduled to fulfill its obligation, taking into account any applicable grace period. For the credit derivative, embedded options which may reduce the term of the credit derivative shall be taken into account so that the shortest possible effective maturity is used. Where a call is at the discretion of the protection seller, the maturity will always be at the first call date. If the call is at the discretion of the protection buying bank but the terms of the arrangement at origination of the credit derivative contain a positive incentive (e.g. there is a step-up in cost in conjunction with a call feature) for the bank to call the transaction before contractual maturity, the remaining time to the first call date will be deemed to be the effective maturity.

settlement. There shall be a clearly specified period for obtaining post-credit event valuations of the underlying obligation[37];

(*l*) where the right or ability of the bank to transfer the underlying exposure to the provider of credit protection is required for settlement, the terms of the underlying exposure shall provide that any required consent to such transfer may not be unreasonably withheld;

(*m*) the identity of the parties responsible for determining whether a credit event has occurred shall be clearly defined. This determination shall not be the sole responsibility of the provider of credit protection. The protection buying bank shall have the right or ability to inform the protection seller of the occurrence of a credit event;

(*n*) the underlying obligation and the reference obligation specified in the credit derivative contract for the purpose of determining the cash settlement value or the deliverable obligation or for the purpose of determining whether a credit event has occurred may be different only if:-

(i) the reference obligation ranks *pari passu* with or is junior to the underlying obligation; and

(ii) the underlying obligation and reference obligation share the same obligor (i.e. the same legal entity) and legally enforceable cross-default or cross-acceleration clauses are in place; and

[MAS Notice 639 (Amendment) 2009]

(*o*) there is no material positive correlation between the creditworthiness of the provider of credit protection and the counterparty.

2 Where the amount of the credit protection afforded by the credit derivative is less than the amount of the underlying exposure, and the secured and unsecured portions of the underlying exposure are of equal seniority, a bank may recognise an exposure to the provider of credit protection for the portion of the original exposure that is hedged.

[37] The Authority would normally consider the cash settlement methodology provided in the ISDA Credit Derivatives Definitions as satisfying this requirement.

Appendix 7

Applicable Haircut for Maturity Mismatch between a Purchased Credit Derivative and the Underlying Exposure

Haircuts shall be estimated via the following method:

Pa = P x (t – 0.25) / (T – 0.25)

where:

Pa = value of the credit protection adjusted for maturity mismatch

P = value of the credit protection adjusted for any haircuts

t = min (T, residual maturity of the credit protection arrangement) expressed in years

T = min (5, residual maturity of the exposure[38]) expressed in years

[MAS Notice 639 (Amendment) 2009]

[38] In the case of a basket of exposures with different maturities, a bank shall use the longest maturity of any of the exposures as the maturity of all the exposures being hedged.

[MAS Notice 639 (Amendment) 2009]