

DRAFT

- (i) deleting the words "or becoming capable at such time of being declared," which deletion shall apply only with respect to reverse repurchase transactions or other similar transactions (such as securities lending transactions) where the party has borrowed securities; and
- (ii) adding the following at the end thereof:

*"provided, however, that, notwithstanding the foregoing, an Event of Default shall not occur under either (1) or (2) above if (A) (I) the default, or other similar event or condition referred to in (1) or the failure to pay referred to in (2) is a failure to pay or deliver caused by an error or omission of an administrative or operational nature, and (II) funds or the asset to be delivered were available to such party to enable it to make the relevant payment or delivery when due and (III) such payment or delivery is made within three (3) Local Business Days following receipt of written notice from an interested party of such failure to pay, or (B) such party was precluded from paying, or was unable to pay, using reasonable means, through the office of the party through which it was acting for purposes of the relevant Specified Indebtedness, by reason of force majeure, act of State, illegality or impossibility."*

The definition of "*Specified Indebtedness*" shall be amended in its entirety to read as follows:

*"Specified Indebtedness"* means any obligation (whether present or future, contingent or otherwise) in respect of (i) borrowed money (other than indebtedness in respect of bank deposits received in the ordinary course of business) and (ii) Financial Market Transactions. For purposes herein, Financial Market Transactions shall mean any transaction of a type specified in clause (a) or (b) of the definition of Specified Transaction which is entered into between such party and an entity other than the party to this Agreement, or any Credit Support Provider or Specified Entity of such party. For the purposes of determining whether the Threshold Amount has been exceeded in respect of any Financial Market Transaction, the portion attributable to Financial Market Transactions shall be the amount owed and not paid or delivered when due (whether on any regularly scheduled payment or delivery date, on early termination or otherwise) to the other party under the terms relating to such Financial Market Transaction.

With regard to Party A, "*Threshold Amount*" means, at any time, three percent (3%) of its shareholders' equity (as calculated in accordance with generally accepted accountancy principles applicable to Party A).

With regard to the Fund, "*Threshold Amount*" means at any time either of the lesser of USD 25,000,000 (or its equivalent in any other currency) or three percent (3%) of the Net Asset Value of the Fund; *provided* that with respect to any Financial Market Transaction entered into between the Fund or any Credit Support Provider or Specified Entity of the Fund, and any Affiliate of Party A, the Threshold Amount shall be zero.

~~With regard to Party B, "*Threshold Amount*" means USD 1,000,000 or the equivalent in any other currency.~~

- (d) The "*Credit Event Upon Merger*" provision in Section 5(b)(v) will apply to both parties. [client counsel questions wording, can we clarify what constitutes for the LLC and Inc?]
- (e) The "*Bankruptcy*" provisions of Section 5(a)(vii) shall apply to Party A and Party B.
- (f) The "*Automatic Early Termination*" provisions of Section 6(a) will not apply to Party A or Party B.

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