



KINGDOM OF SAUDI ARABIA

Capital Market Authority

# Close-out Netting and related Collateral Arrangements Regulation

Issued by the Board of the Capital Market Authority

Pursuant to its Resolution Number 00-00-0000 dated 0/0/0000H corresponding to  
0/0/0000G

Based on the Capital Market Law issued by Royal Decree No. M/30 dated 2/6/1424H  
And the Bankruptcy Law issued by Royal Decree No. M/50 dated 28/5/1439H

Arabic is the official language of the Capital Market Authority

Important Notice:

The current version of these Rules, as may be amended, can be found at the Authority website:

[www.cma.org.sa](http://www.cma.org.sa)



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## CHAPTER I: PRELIMINARY PROVISIONS

### Article 1: Scope of Application

The objective of this Regulation is to regulate Netting Agreements and related Financial Collateral Arrangements in connection with one or more Qualified Financial Contracts that falls under the Authority's supervision, and entered into with at least one Party being a Capital Market Institution, and to ensure their enforceability in accordance with their terms both outside the scope of Bankruptcy Proceedings and following the commencement of any such proceedings, in accordance to the powers of the Authority under the Capital Market Law and the Bankruptcy Law, including the provisions of Article Two Hundred Fourteen of the Bankruptcy Law and Article Seventy-Nine of its implementing regulation.

### Article 2: Definitions

- a) Any reference to the "Law" in this Regulation shall mean the Capital Market Law issued by Royal Decree No. (M/30) dated 2/6/1424H.
- b) Without prejudice to Paragraph (c) of this Article, expressions and terms in this Regulation have the meaning which they bear in the Law and the Glossary of Defined Terms Used in the Regulations and Rules of the Capital Market Authority, unless the contrary intention appears.
- c) For the purpose of this Regulation, the following expressions and terms shall have the meaning they bear as follows unless the contrary intention appears:
  - **Netting:** the operation of a set of provisions in a Netting Agreement between two Parties that may be commenced by notice given by one Party to the other upon the occurrence of an event of default with respect to the other Party or other termination event or that may, occur automatically - in certain circumstances- as specified in the Netting Agreement; and has the following effect:
    - (1) The termination, liquidation or acceleration of any present or future payment or delivery obligations or entitlements under or in connection with one or more Qualified Financial Contracts to which a Netting Agreement applies.
    - (2) The calculation or estimation of a close-out value, market value, liquidation value or replacement value in respect of each obligation or entitlement or group of obligations or entitlements terminated, liquidated or accelerated under paragraph (1) of this definition.
    - (3) The conversion of any values calculated or estimated under paragraph (2) of this definition into a single currency.
    - (4) The determination of the net balance of the values calculated under paragraph (2) of this definition, as converted under paragraph (3) of this definition, by the operation of netting or



set-off, giving rise to the obligation of one Party to pay an amount equal to the net balance to the other Party.

- **Netting Agreement:** any agreement between two Parties that provides for Netting of present or future payment or delivery obligations or entitlements arising under or in connection with one or more Qualified Financial Contracts to which the agreement (“**Netting Agreement**”) applies; and it includes without limitation:
  - (1) Any agreement between two Parties that provides for netting of the amounts due under two or more Netting Agreements.
  - (2) Any Financial Collateral Arrangement related to or forming part of one or more of the foregoing agreements.
- **Qualified Financial Contract:** any financial agreement, contract or transaction, including any terms and conditions incorporated by reference in any such financial agreement, contract or transaction, under or in relation to which any payment or delivery obligations are due to be performed at a certain time or within a certain period of time and whether or not subject to any condition or contingency; and these are the Qualified Financial Contracts referred to in Annex (1) of this Regulation.
- **Movable Property Security Law:** the Movable Property Security Law issued by Royal Decree No. (M/94) dated 15/08/1441H.
- **Law of Systemically Important Financial Institutions:** the Law of Systemically Important Financial Institutions issued by Royal Decree No. (M/38) dated 25/04/1442H.
- **Bankruptcy Proceedings:** the procedures stipulated in Article Two of the Bankruptcy Law, which includes any of the following:
  - (1) Protective settlement.
  - (2) Financial restructuring.
  - (3) Liquidation.
  - (4) Small debtors' protective settlement.
  - (5) Small debtors' financial restructuring.
  - (6) Small debtors' liquidation.
  - (7) Administrative liquidation.
- **Bankruptcy Trustee:** a designated person to manage any of the Bankruptcy Proceedings in accordance with the Bankruptcy Law, this includes the bankruptcy trustee as defined in the Bankruptcy Law.
- **Bankruptcy Commission:** the bankruptcy commission established pursuant to Article (Nine) of the Bankruptcy Law.
- **Party:** a person constituting one of the parties to a Netting Agreement or Multibranch Netting Agreement.
- **Non-bankrupt Party:** a Party where it is the counterparty to a Bankrupt Party.



- **Bankrupt Party:** the Party in relation to which any of the Bankruptcy Proceedings had commenced pursuant to the Bankruptcy Law.
- **Cash:** money credited to an account in any currency, or a similar claim for repayment of money, such as a money market deposit.
- **Collateral:** any money or asset or other credit support, including without limitation, any of the following:
  - (1) Cash in any currency.
  - (2) Any kind of securities, which includes, without limitation, shares and debt instruments.
  - (3) Guarantees, letters of credit and obligations to reimburse.
  - (4) Any asset used as collateral in the Kingdom, without prejudice to the provisions of the Movable Property Security Law and any other relevant laws.
- **Financial Collateral Arrangement:** any arrangement for the provision of Collateral or margin or other credit enhancement related to or forming part of a Netting Agreement, or one or more Qualified Financial Contracts to which a Netting Agreement applies, including without limitation:
  - (1) a pledge or any other form of security interest in Collateral, whether possessory or non-possessory.
  - (2) a Title Transfer Collateral Arrangement.
  - (3) any guarantee, letter of credit or reimbursement obligation by or to a party to one or more Qualified Financial Contracts, in respect of those Qualified Financial Contracts; or a Netting Agreement.
- **Title Transfer Collateral Arrangement:** any arrangement for the provision of Collateral or margin, relating to a Netting Agreement or a Qualified Financial Contract under which the title of the Collateral or margin is transferred, by outright sale or by way of security, including - without limitation- a sale and repurchase agreement, securities lending agreement, securities buy/sell-back agreement or an irregular pledge.
- **Foreign Multibranch Party:** is an entity that is not organized, or headquartered in the Kingdom and that has entered into one or more Qualified Financial Contracts through its branch or agency in the Kingdom, and has entered into one or more Qualified Financial Contracts in its Domicile.
- **Domicile:** the Domicile of each Party to a Multibranch Netting Agreement is the country where its headquarters is located.
- **Multibranch Netting Agreement:** a Netting Agreement between two Parties under which at least one Party is a Foreign Multibranch Party with a branch or agency in the Kingdom.
- **Bankrupt Local Branch:** a branch or agency in the Kingdom of a Foreign Multibranch Party that is subject to any Bankruptcy Proceeding pursuant to the Bankruptcy Law in the Kingdom, regardless of whether the Foreign Multibranch Party is subject to any bankruptcy proceeding in its Domicile or in any other country.
- **Local Bankruptcy Trustee:** a natural or corporate person appointed as a Bankruptcy Trustee for the Bankrupt Local Branch under Bankruptcy Proceedings in the Kingdom.



- **Foreign Bankruptcy Trustee:** a natural or corporate person appointed, permanently or for a limited period only, as a bankruptcy trustee or other insolvency practitioner for a Foreign Multibranch Party under bankruptcy proceedings in its Domicile or in any other country.
- **Global Net Payment Obligation:** the amount, if any, owed by the Foreign Multibranch Party as a whole to the Non-Bankrupt Party after giving effect to the netting provisions of a Multibranch Netting Agreement with respect to all Qualified Financial Contracts subject to Netting under such Multibranch Netting Agreement.
- **Global Net Payment Entitlement:** the amount, if any, owed by the Non-Bankrupt Party to the Foreign Multibranch Party as a whole after giving effect to the netting provisions of a Multibranch Netting Agreement with respect to all Qualified Financial Contracts subject to Netting under such Multibranch Netting Agreement.
- **Local Net Payment Obligation:** means -with respect to a Multibranch Netting Agreement- the amount, if any, that would have been owed by the Foreign Multibranch Party to the Non-Bankrupt Party after Netting only those Qualified Financial Contracts entered into by the Non-Bankrupt Party with the Bankrupt Local Branch to which a Multibranch Netting Agreement applies.
- **Local Net Payment Entitlement:** means -with respect to a Multibranch Netting Agreement- the amount, if any, that would have been owed by the Non-Bankrupt Party to the Foreign Multibranch Party after Netting only those Qualified Financial Contracts entered into by the Non-Bankrupt Party with the Bankrupt Local Branch to which a Multibranch Netting Agreement applies.



## CHAPTER II: NETTING

### Article 3: Enforceability of a Qualified Financial Contract

A Qualified Financial Contract shall be enforceable and valid in accordance with its terms against any of the Parties thereto and the enforceability and validity of a Qualified Financial Contract shall not be affected by any subsequent change to any of the circumstances in which the Qualified Financial Contract was concluded.

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## CHAPTER III: GENERAL PROVISIONS

### Article 4: General Provisions

The provisions of a Netting Agreement will be enforceable in accordance with their terms, including against a Bankrupt Party, and, where applicable, against a guarantor or other natural or corporate person providing Collateral or security for any obligation of a Bankrupt Party, and may not be stayed, avoided or otherwise limited due to the following:

- (1) any action taken or power exercised by a Bankruptcy Trustee or the Bankruptcy Commission.
- (2) any other provision applicable to a Bankrupt Party by virtue of its being subject to Bankruptcy Proceedings according to the Bankruptcy Law.

Paragraphs (1) and (2) above shall not affect the competent authority's powers, according to the Law of Systemically Important Financial Institutions, to stay the right to terminate, liquidate or accelerate any present or future payment or delivery obligations or entitlements under or in connection with one or more Qualified Financial Contracts to which a Netting Agreement applies.

### Article 5: Limitation on the Obligation of Payment or Delivery

After the initiation of a Bankruptcy Proceedings in relation to one Party, the only obligation, if any, of either Party to make payment or delivery in respect of all entitlements and obligations terminated, liquidated or accelerated pursuant to the application of Netting under a Netting Agreement shall be its obligation to pay a net amount to the other Party as determined in accordance with the terms of the Netting Agreement.

### Article 6: Limitation on Right to Receive Payment or Delivery

After the initiation of a Bankruptcy Proceedings in relation to one Party, the only right, if any, of either Party to receive payment or delivery in respect of all entitlements and obligations terminated, liquidated or accelerated pursuant to the application of a Netting under a Netting Agreement shall be equal to its right to receive a net amount from the other Party as determined in accordance with the terms of the Netting Agreement.

### Article 7: Limitation on Powers of the Bankruptcy Trustee and the Bankruptcy Commission

Any powers of the Bankruptcy Trustee or the Bankruptcy Commission to assume or repudiate individual contracts or transactions will not prevent the termination, liquidation or acceleration of all





payment or delivery obligations or entitlements under one or more Qualified Financial Contracts to which a Netting Agreement applies, and will apply, if at all, only to the remaining net amount in respect of all such Qualified Financial Contracts after the liquidation or acceleration of all payment or delivery obligations or entitlements of the Parties in accordance with the terms of the Netting Agreement; where such remaining net amount will be considered as bankruptcy assets subject to the provisions of the Bankruptcy Law.

## **Article 8: Limitation of Bankruptcy Laws Prohibiting Netting**

Taking into account the provisions set forth in Annex (1) of this Regulation, the provisions of a Netting Agreement which provide for the determination of a net balance of the close-out values, market values, liquidation values or replacement values calculated in respect of accelerated or terminated payment or delivery obligations or entitlements under one or more Qualified Financial Contracts to which a Netting Agreement applies will not be affected by any applicable Bankruptcy Law provisions in the Kingdom limiting the exercise of rights to set off, offset or net out obligations, payment amounts or termination values owed between a Bankrupt Party and another party.

## **Article 9: Preferences and Fraudulent Transactions**

The Bankruptcy Trustee or the Bankruptcy Commission are not entitled to nullify, suspend or refrain from executing any of the obligations or transactions stipulated in this Article on the ground that they constitute preference of an outstanding debt or related to a fraudulent transaction in respect of a Non-Bankrupt Party, unless there is a clear and sufficient evidence that the Bankrupt Party conducted any of these obligations or transactions with actual intent to hinder, delay, or defraud any entity to which the Bankrupt Party was indebted or became indebted, on or after the date such transaction was made, or such obligation was incurred, and such obligations and operations are as follows:

- 1) transfer, substitution or exchange of Cash, Collateral or any other interests from the Bankrupt Party to the Non-Bankrupt Party under or in connection with a Netting Agreement; or
- 2) any payment or delivery obligation incurred by the Bankrupt Party and owing to the Non-Bankrupt Party under or in connection with a Netting Agreement.

## **Article 10: Preemption**

No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, competent authority, Bankruptcy Trustee or the Bankruptcy Commission pursuant to the Bankruptcy Law, shall limit or delay the application of otherwise enforceable Netting Agreements in accordance with Articles (4), (5) and (6) of this Regulation.



## Article 11: Realization, Appropriation and Liquidation of Collateral

Unless otherwise agreed by the Parties, the realization, appropriation or liquidation of Collateral under a Financial Collateral Arrangement shall take effect or occur without any requirement that prior notice shall be given to, or consent be received from, any Party, natural or corporate person or entity, provided that this paragraph is without prejudice to the provision of any applicable Laws in the Kingdom related to the realization, appropriation or liquidation of Collateral to be conducted in a commercially reasonable manner.

## Article 12: Scope of this Chapter

- a) A Netting Agreement shall be deemed to be a netting agreement notwithstanding the fact that such Netting Agreement may contain provisions relating to agreements, contracts or transactions that are not considered Qualified Financial Contracts according to Annex (1) of this Regulation. Provided that, for the purposes of this Chapter, such Netting Agreement shall be deemed to be a Netting Agreement only with respect to those agreements, contracts or transactions that fall within the definition of "Qualified Financial Contract" in terms of Article Two and Annex (1) of this Regulation.
- b) A Financial Collateral Arrangement shall be deemed to be a Financial Collateral Arrangement notwithstanding the fact that such Financial Collateral Arrangement may contain provisions relating to agreements, contracts or transactions that are not a Netting Agreement or Qualified Financial Contract to which a Netting Agreement applies in terms of Article Two of this Regulation, provided that, for the purposes of this Chapter, such Financial Collateral Arrangement shall be deemed to be a Financial Collateral Arrangement only with respect to those agreements, contracts or transactions that fall within the definition of "Netting Agreement" or "Qualified Financial Contract" in terms of Article Two of this Regulation.
- c) For the purposes of this Chapter, a Netting Agreement and all Qualified Financial Contracts to which a Netting Agreement applies shall constitute a single agreement.
- d) For the purposes of this Chapter, the term "Netting Agreement" shall include the term "Multibranch Netting Agreement" (as defined in Article Two of this Regulation), provided, however, that in a separate bankruptcy of a branch or agency of a foreign party (as defined in Article Two of this Regulation) in the Kingdom, the enforceability of the provisions of the Multibranch Netting Agreement shall be determined in accordance with Article thirteen of this Regulation.



## CHAPTER IV: MULTIBRANCH NETTING

### Article 13: Enforceability of a Multibranch Netting Agreement against a Bankrupt Local Branch

- a) The liability of a Bankrupt Local Branch to a Non-Bankrupt Party under a Multibranch Netting Agreement shall be calculated as of the date of the termination of the Qualified Financial Contracts to which the Multibranch Netting Agreement applies in accordance with its terms and shall be limited to the lesser of:
  - 1- the Global Net Payment Obligation; and
  - 2- the Local Net Payment Obligation.
- b) The liability of the Bankrupt Local Branch under paragraph (a) shall be reduced but not below zero by:
  - 1- any amount otherwise paid to or received by the Non-Bankrupt Party in respect of the Global Net Payment Obligation pursuant to such Multibranch Netting Agreement which if added to the liability of the Bankrupt Local Branch under paragraph (a) would exceed the Global Net Payment Obligation.
  - 2- the fair market value of, or the amount of any proceeds of, Collateral that secures or supports the obligations of the Foreign Multibranch Party under the Multibranch Netting Agreement and has been applied by the Non-Bankrupt Party to satisfy the obligations of the Foreign Multibranch party pursuant to the Multibranch Netting Agreement.
- c) The liability of the Non-Bankrupt Party to the Bankrupt Local Branch under a Multibranch Netting Agreement shall be assessed and calculated as of the date of termination of the Qualified Financial Contracts to which the Multibranch Netting Agreement applies in accordance with its provisions and terms and shall be limited to the lesser of:
  - 1- the Global Net Payment Entitlement; and
  - 2- the Local Net Payment Entitlement.
- d) The liability of the Non-Bankrupt Party under paragraph (c) shall be reduced but not below zero by any amount otherwise paid to or received by:
  - 1- the Local Bankruptcy Trustee on behalf of the Bankrupt Local Branch; and
  - 2- any Foreign Bankruptcy Trustee on behalf of the Foreign Multibranch Party.

in respect of the Global Net Payment Entitlement under the Multibranch Netting Agreement which, if added to the liability of Non-Bankrupt Party under paragraph (c), would exceed the Global Net Payment Entitlement.



- e) The liability of a Non-Bankrupt Party under paragraph (c) of this Article shall be reduced, but not below zero, by the fair market value of, or the amount of any proceeds of, Collateral that secures or supports the obligations of the Non-Bankrupt Party under the Multibranch Netting Agreement and has been applied by the Foreign Multibranch Party or any Bankruptcy Trustee acting on its behalf to satisfy the obligations of the Non-Bankrupt Party under the Multibranch Netting Agreement to the Foreign Multibranch Party.

#### **Article 14: Financial Collateral Arrangement for a Multibranch Netting Agreement**

If the Non-Bankrupt Party to a Multibranch Netting Agreement has taken Collateral under a Financial Collateral Arrangement that secures or supports the obligations of the Foreign Multibranch Party under the Multibranch Netting Agreement, the Non-Bankrupt Party may retain such Collateral and apply it in satisfaction of the obligation of the Foreign Multibranch Party in respect of the Global Net Payment Obligation. The Non-Bankrupt Party must return any excess Collateral to the Foreign Multibranch Party.

## ANNEXES

### Annex (1)

#### Qualified Financial Contracts:

1. a currency, cross-currency or interest rate swap or profit rate swap.
2. a basis swap.
3. a spot, future, forward or other foreign exchange transaction.
4. a cap, collar or floor transaction.
5. a commodity swap.
6. a forward rate agreement.
7. a currency or interest rate future.
8. a currency or interest rate option.
9. an equity derivative, such as an equity or equity index swap, equity forward, equity option or equity index option.
10. a derivative relating to bonds or other debt securities or to a bond or debt security index, such as a total return swap, index swap, forward, option or index option.
11. a credit derivative, such as a credit default swap, credit default basket swap, total return swap or credit default option.
12. an energy derivative, such as an electricity derivative, oil derivative, coal derivative or gas derivative, including a derivative on physical transmission rights, financial transmission rights or transmission capacity.
13. a weather derivative, such as a weather swap or weather option.
14. a bandwidth derivative.
15. a freight derivative.
16. an emissions derivative, such as an emissions allowance or emissions reduction transaction.
17. an economic statistics derivative such as an inflation derivative.
18. a property index derivative.
19. a spot, future, forward or other securities or commodities transaction.
20. a securities contract, including a margin loan and an agreement to buy, sell, borrow or lend securities, such as a securities repurchase or reverse repurchase agreement, a securities lending agreement or a repurchase based on sale/ purchase of securities or a securities buy/sell-back agreement.
21. an agreement to clear or settle securities transactions or to act as a depository for securities.

22. a commodities contract, including an agreement to buy, sell, borrow or lend commodities, such as commodities repurchase or reverse repurchase agreement, a commodities lending agreement or a commodities buy/sell-back agreement.
23. contracts and transactions of certificates of deposit.
24. preferred stocks contracts and transactions.
25. any other agreement, contract or transaction similar to any agreement, contract or transaction referred to in paragraphs (1) to (24) of this Annex with respect to one or more reference items or indices relating to, without limitation, interest rates, currencies, commodities, energy products, electricity, equities, fund interest, weather, bonds and other debt instruments, sukuk, precious metals, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial or economic consequence, or economic or financial indices or measures of economic or financial risk or value.
26. any swap, forward, option, contract for differences or other derivative in respect of, or combination of, one or more agreements or contracts referred to in paragraphs (1) to (25) of this Annex.
27. any contract or transaction (including a murabaha, musawama or wa'ad) which individually or together with any other such contract or transaction has been or is entered into with a view to having an economic effect similar to any instrument, contract or transaction referred to in paragraphs (1) to (26) of this Annex in a manner intended to take account of Shari'a compliance requirements.
28. any agreement, contract or transaction designated as such by the Authority under this Regulation.