Resolution No. [44] of the year 2014
With respect to promulgating a
Regulation for
Close-Out Netting under a Market
Contract

The Governor of Central Bank of
Bahrain:
Having reviewed the Legislative Decree
No. (64) of 2006 with respect to
promulgating the Central Bank and
Financial Institutions Law, particularly
Article (108) thereof,
And upon the proposal of the Chairman
of the Regulatory Policy Committee,
The following has been resolved:

First article
The provisions of the attached regulation
shall be enacted with respect to the
Close-Out Netting under a Market
Contract

Second article
The CBB Directorates shall implement
this resolution and its regulation, which
shall come into effect the next day after
the day it is published in the Official
Gazette

Rasheed M. Al Maraj
Governor
Issued on: 15th Safar 1436
Corresponding to: 7th December 2014

قرار رقم (44) لسنة 2014
بإصدار لائحة المقاصة
بموجب عقد السوق

محافظ مصرف البحرين المركزي:
بعد الاطلاع على قانون مصرف البحرين
المركزي والمؤسسات المالية الصادر بالقانون رقم
(44) لسنة 2006، وعلى الأخص المادة
(108) منه،
وبناء على عرض رئيس لجنة السياسات الرقابية
بمصرف البحرين المركزي،

قرر الآتي:

المادة الأولى
يُعمل بأحكام اللائحة المراقبة لهذا القرار في شأن
المقاصة بموجب عقد السوق.

المادة الثانية
على الإدارات المختصة في مصرف البحرين
المركزي تنفيذ هذا القرار واللائحة المراقبة له،
ويتم بهما اعتباراً من اليوم التالي لتاريخ نشرهما
في الجريدة الرسمية.

محافظ مصرف البحرين المركزي
ريشيد محمد المعراج
صدر بتاريخ: 15 صفر 1436ـ
الموافق: 7 ديسمبر 2014 م
Regulation in respect of Close-Out Netting under a Market Contract

Article (1)

1. Definitions

In implementing the provisions of this Regulation, the following terms and expressions shall have the meanings assigned to them unless the context otherwise requires:

**CBB**: The Central Bank of Bahrain.

**The Law**: the Central Bank and Financial Institutions Law.

**Market Contract**: For the purposes of this Regulation only, the expression “Market Contract” as used in Article 1 and Article 108 of the Law shall be a reference to “qualified financial contract” as used in this Regulation.

**Cash**: Money credited to an account in any currency, or a similar claim for repayment of money, such as a money market deposit.

**Collateral**: Means any of the following:

1. cash in any currency.
2. securities of any kind, including (without limitation) debt and equity securities.
3. guarantees, letters of credit and obligations to reimburse.
(4) any asset commonly used as collateral in the Kingdom of Bahrain.

collateral arrangement: Any margin, collateral or security arrangement or other credit enhancement related to or forming part of a netting agreement or one or more qualified financial contracts entered into thereunder, 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.

Insolvent party: The party in relation to which an insolvency proceeding under the laws of Kingdom of Bahrain has been instituted.

Liquidator: The liquidator, receiver, trustee, conservator or other person or entity which administers the affairs of an insolvent party during an insolvency proceeding under the laws of the Kingdom of Bahrain.

Netting: The occurrence of any or all of the following:
(1) the termination, liquidation and/or acceleration of any payment or delivery obligations or entitlements under one or more qualified financial contracts entered into under a netting agreement.

(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 and/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, whether by operation of set-off or otherwise.

Netting agreement:

(1) 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 entered into under the agreement by the parties to the agreement.

(2) any master agreement between two parties that provides for netting of the amounts due under two or more master netting agreements.

Netting agreement:

(1) 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 entered into under the agreement by the parties to the agreement.

(2) any master agreement between two parties that provides for netting of the amounts due under two or more master netting agreements.
(3) any collateral arrangement related to or forming part of one or more of the foregoing.

**Party:** A person constituting one of the parties to a netting agreement.

**Non-insolvent party:** is the party other than the insolvent party.

**Person:** includes partnerships, corporations, CBB regulated entities such as banks, insurance companies and broker-dealers, or any other body corporate whether organized under the laws of the Kingdom of Bahrain or under the laws of any other jurisdiction and any international or regional development bank or other international or regional organization.

**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, pursuant to which 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. Qualified financial contracts include (without limitation):

1. a currency, cross-currency or interest 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.
(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 securities buy/sell-back agreement, including any such contract or agreement relating to mortgage loans, interests in mortgage loans or mortgage-related securities.

(21) a commodities contract, including an agreement to buy, sell, borrow or lend commodities, such as a commodities repurchase or reverse repurchase agreement, a commodities lending agreement or a commodities buy/sell-back agreement.

(22) a credit or collateral arrangement.

(23) an agreement to clear or settle securities transactions or to act as a depository for securities.

(24) any other agreement, contract or transaction similar to any agreement, contract or transaction referred to in paragraphs (1) to (23) of this definition with respect to one or more reference items or indices relating to (without rights to the emissions or reduction of emissions.

(17) any of the economic statistics derivatives, such as a derivative of inflation.

(18) any of the property index derivatives.

(19) any of the spot, future, forward or other securities or commodities transactions.

(20) any securities contract, including a margin loan and an agreement to buy, sell, borrow or lend securities, such as a repurchase or reverse repurchase agreement, a securities lending agreement or a securities buy/sell-back agreement.

(21) any commodities contract, including an agreement to buy, sell, borrow or lend commodities, such as a repurchase or reverse repurchase agreement, a commodities lending agreement or a commodities buy/sell-back agreement.

(22) a credit or collateral arrangement.

(23) an agreement to clear or settle securities transactions or to act as a depository for securities.

(24) any other agreement, contract or transaction similar to any agreement, contract or transaction referred to in paragraphs (1) to (23) of this definition with respect to one or more reference items or indices relating to (without rights to the emissions or reduction of emissions.

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(24) any other agreement, contract or transaction similar to any agreement, contract or transaction referred to in paragraphs (1) to (23) of this definition with respect to one or more reference items or indices relating to (without rights to the emissions or reduction of emissions.
limitation) interest rates, currencies, commodities, energy products, electricity, equities, weather, bonds and other debt instruments, 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.

(25) 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 (24) of this definition.

(26) any agreement, contract or transaction designated as such by the CBB under this Regulation.

Title transfer collateral arrangement:
A margin, collateral or security arrangement related to a netting agreement based on the transfer of title to collateral, whether 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.
2- Powers of the CBB.

The CBB may, by notice issued under this Article, designate as "qualified financial contracts" any agreement, contract or transaction, or type of agreement, contract or transaction, in addition to those listed in this Regulation.

3- Enforceability of a Qualified Financial Contract.

A qualified financial contract shall not be and shall be deemed never to have been void or unenforceable by reason of any laws relating to games, gaming, gambling, wagering or lotteries.

4- Relationship between this Regulation and the Law.

For the purposes of this Regulation only, the expression “Market Contract” as used in Article (1) and Article (108) of the Law shall be a reference to “qualified financial contract” as used in this Regulation.

Part I: Enforceability of a Netting agreement.

Article (2)

(1) General rule.

The provisions of a netting agreement will be enforceable in accordance with their terms, including against an insolvent party, and, where applicable, against a guarantor or other person providing security for a party and will not be stayed, avoided or otherwise limited by
(1) any action of the liquidator,

(2) any other provision of law relating to bankruptcy, reorganization, composition with creditors, receivership, conservatorship or, any other insolvency proceeding an insolvent party may be subject to, or

(3) any other provision of law that may be applicable to an insolvent party, subject to the conditions contained in the applicable netting agreement.

2- Limitation on obligation to make payment or delivery:

After commencement of insolvency proceedings in relation to a party, the only obligation, if any, of either party to make payment or delivery under a netting agreement shall be equal to its net obligation to the other party as determined in accordance with the terms of the applicable netting agreement.

3 - Limitation on right to receive payment or delivery:

After commencement of insolvency proceedings in relation to a party, the only right, if any, of either party to receive payment or delivery under a netting agreement shall be equal to its net entitlement with respect to the other party as determined in accordance with the terms of the applicable netting agreement.
4- Limitation on powers of the liquidator:
Any powers of the liquidator to assume or repudiate individual contracts or transactions will not prevent the termination, liquidation and/or acceleration of all payment or delivery obligations or entitlements under one or more qualified financial contracts entered into under or in connection with a netting agreement, and will apply, if at all, only to the net amount due in respect of all of such qualified financial contracts in accordance with the terms of such netting agreement.

5- Limitation of insolvency laws prohibiting set-off:
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 and/or terminated payment or delivery obligations or entitlements under one or more qualified financial contracts entered into thereunder will not be affected by any applicable insolvency laws limiting the exercise of rights to set off, offset or net out obligations, payment amounts or termination values owed between an insolvent party and another party.
6- Preferences and fraudulent transfers:

The liquidator of an insolvent party may not avoid:

1. any transfer, substitution or exchange of cash, collateral or any other interests under or in connection with a netting agreement from the insolvent party to the non-insolvent party.

2. any payment or delivery obligation incurred by the insolvent party and owing to the non-insolvent party under or in connection with a netting agreement on the grounds of it constituting a preference by the insolvent party to the non-insolvent party, unless there is clear and convincing evidence that the non-insolvent party: (1) made such transfer or (2) incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the insolvent party was indebted or became indebted, on or after the date: (1) such transfer was made, or (2) such obligation was incurred.

7- Preemption:

No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, administrative agency or liquidator shall limit or delay application of otherwise enforceable netting agreements in accordance with paragraphs (1), (2) and (3) of this article.
8- Realization, appropriation and liquidation of collateral:
Unless otherwise agreed by the parties, the realization, appropriation and/or liquidation of collateral under a collateral arrangement shall take effect or occur without any requirement that prior notice shall be given to, or consent be received from, any party, person or entity, provided that this subsection is without prejudice to any applicable provision of law requiring that the realization, appropriation and/or liquidation of collateral is conducted in a commercially reasonable manner.

9- Scope of this provision:
(1) For the purposes of this Article, 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 qualified financial contracts in terms of Article (1) of this Regulation, provided, however, that, for the purposes of this Article, 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 Article (1) of this Regulation.

(2) For the purposes of this Article, a collateral arrangement shall be deemed to be a collateral arrangement notwithstanding the fact that such collateral arrangement may contain provisions relating to agreements, contracts or transactions that are not a netting agreement or qualified financial contract.
contract entered into thereunder in terms of Article (1) of this Regulation, provided, however, that, for the purposes of this Article, such collateral arrangement shall be deemed to be a collateral arrangement only with respect to those agreements, contracts or transactions that fall within the definition of "netting agreement" or "qualified financial contract" entered into thereunder in Article (1) of this Regulation.

(3) For the purposes of this Article, a netting agreement and all qualified financial contracts entered into thereunder shall constitute a single agreement.

(4) For the purposes of this Article, the term "netting agreement" shall include the term "multibranch netting agreement" (as defined in Article (3) of this Regulation), provided, however, that in a separate insolvency of a branch or agency of a foreign party (as defined in Article (3) of this Regulation) in the Kingdom of Bahrain the enforceability of the provisions of the multibranch netting agreement shall be determined in accordance with Article (3) of this Regulation.
Part II : Multibranch Netting

Article (3)

1- Additional Definitions:

In this Part II of the Regulation, the following terms and expressions shall have the meanings assigned to them, unless the context otherwise requires:

Branch/agency net payment entitlement: means - with respect to a multibranch netting agreement - the amount, if any, that would have been owed by the non-insolvent party to the foreign party after netting only those qualified financial contracts entered into by the non-insolvent party with the branch or agency of the foreign party in the Kingdom of Bahrain under such multibranch netting agreement.

Branch/agency net payment obligation: means- with respect to a multibranch netting agreement- the amount, if any, that would have been owed by the foreign party to the non-insolvent party after netting only those qualified financial contracts entered into by the non-insolvent party with the branch or agency of the foreign party in the Kingdom of Bahrain under such multibranch netting agreement.

Foreign party: is a party whose home country is a country other than the Kingdom of Bahrain.
Global net payment entitlement: The amount, if any, owed by the non-insolvent party (or that would be owed if the relevant multibranch netting agreement provided for payments to either party, upon termination of qualified financial contracts thereunder, under any and all circumstances) to the foreign 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.

Global net payment obligation: the amount, if any, owed by the foreign party as a whole to the non-insolvent 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.

Home country: The country where a party to a netting agreement is organized or incorporated.

Home office: The home country office of a party to a netting agreement.

Multibranch netting agreement: A netting agreement between two parties under which at least one party enters into qualified financial contracts through - in addition to its home office – one or more of its branches or agencies located in countries other than its home country.

Party: A person constituting one of the parties to a multibranch netting agreement.
2- Enforceability of a Multibranch Netting Agreement in an Insolvency of a Branch or Agency of a Foreign Party.

(1) Limitation on the non-insolvent party's right to receive payment.

a- The liability of an insolvent branch or agency of a foreign party or its liquidator in the Kingdom of Bahrain under a multibranch netting agreement shall be calculated as of the date of the termination of the qualified financial contracts entered into under such multibranch netting agreement in accordance with its terms and shall be limited to the lesser of (1) the global net payment obligation and (2) the branch/agency net payment obligation. The liability under this Article of the insolvent branch or agency of the foreign party or its liquidator shall be reduced by any amount otherwise paid to or received by the non-insolvent party in respect of the global net payment obligation pursuant to such multibranch netting agreement which if added to the liability of the liquidator under this Article would exceed the global net payment obligation.

b- The liability of the liquidator of an insolvent branch or agency of a foreign party under a multibranch netting agreement to the non-insolvent party shall be reduced by the fair market value of, or the amount of any proceeds of, collateral that secures or supports the obligations of the foreign party under the multibranch netting agreement and has been applied to satisfy the obligations of

2- نفاذ اتفاقية المقاصة متعددة الفروع في حالة إعسار فرع أو وكيل الطرف الأجنبي.

(1) قيد على حق الطرف غير المعسر في استلام الدفعات

أ- تحسب قيمة التزام فرع أو وكيل الطرف الأجنبي المعسر أو المصفي الخاص به في مملكة البحرين بموجب اتفاقية مقاصة متعددة الفروع اعتبارًا من تاريخ إنهاء العقود المالية المؤهلة المبرمة بموجب اتفاقية المقاصة متعددة الفروع تلك وفقًا للشروط الواردة فيها، وتتحصص قيمة الالتزام المذكور في أقل الالتزامين التاليين:
(1) التزام كلي بصافي الدفعات أو (2) التزام الفرع/الوكيل بصافي الدفعات. ويخصم من قيمة التزام فرع أو وكيل الطرف الأجنبي المعسر أو المصفي الخاص به الناشئ بموجب هذه المادة قيمة أي مبلغ يُدفع في حالات أخرى للطرف غير المعسر أو يستلمه عن الالتزام الكلي بصافي الدفعات بموجب اتفاقية المقاصة متعددة الفروع والتي تتجاوز قيمة الالتزام الكلي بصافي الدفعات إذا أضيفت إلى قيمة الالتزام المقصي بموجب هذه المادة.

ب- تُخصم من قيمة التزام المصفي لفرع أو وكيل الطرف الأجنبي بموجب اتفاقية مقاصة متعددة الفروع تجاه الطرف غير المعسر قيمة مساوية للقيمة السوقية العادلة للضمان الذي يؤمن أو يدعم التزامات الطرف الأجنبي في اتفاقية مقاصة متعددة الفروع أو قيمة العائد من هذا الضمان، والذي تم تنفيذه لدفع الالتزامات الطرف الأجنبي
the foreign party pursuant to the multibranch netting agreement to the non-insolvent party.

(2) Limitation on the foreign party's rights to receive payment based on payments made in accordance with insolvency proceedings relating to the foreign party in other jurisdictions.

The liability of the non-insolvent party under this Article shall be reduced by any amount otherwise paid to or received by the liquidator or any other liquidator or receiver of the foreign party in its home country or any other country in respect of the global net payment entitlement pursuant to such multibranch netting agreement which if added to the liability of the non-insolvent party under this Article would exceed the global net payment entitlement. The liability of the non-insolvent party under this Article to the liquidator pursuant to such multibranch netting agreement also shall be reduced by the fair market value of, or the amount of any proceeds of, collateral that secures or supports the obligations of the non-insolvent party and has been applied to satisfy the obligations of the non-insolvent party pursuant to such multibranch netting agreement to the foreign party.

3- Limitation on the terms of the multibranch netting agreement relating to a collateral arrangement.

The non-insolvent party to a multibranch netting agreement which has a perfected security interest in collateral, or other...
valid title, lien or security interest in collateral enforceable against third parties pursuant to such multibranch netting agreement, may retain all such collateral and upon termination of such multibranch netting agreement in accordance with its terms apply such collateral in satisfaction of any claims secured by the collateral, provided that the total amount so applied to such claims shall in no event exceed the global net payment obligation, if any. Any excess collateral shall be returned to the foreign party.

الإنشاء في ضمان أو أي حق ملكية أو رهن آخر قابل للتنفيذ بحق أطراف أخرى وفقاً لاتفاقية مقاصة متعددة الفروع، أن يحتفظ بكامل هذا الضمان ويجوز له عند إنهاء اتفاقية المقاصة متعددة الفروع تلك ووفقاً لشروطها أن ينفذ تلك الضمانات للوفاء بأية مطالبات مضمونة على الألا يتجاوز إجمالي القيمة المنفذة لسداد المطالبات في أي حال من الأحوال الالتزام الكلي بصافي الدفعات، إن وجد. ويجب إعادة ما زاد من الضمان إلى الطرف الأجنبي.