

[21.38] **Copy of Investment Manager Supplement - Provisions**

# Investment Manager Supplement

August 1998 version

## Provisions

The meaning of words printed *like this* is explained at the end of this supplement.

### 1 What is the effect of this supplement?

Incorporating this supplement into the Master Agreement identified in the Details creates the following separate agreements:

- (a) the *investment manager's agreement*; and
- (b) in respect of each *named client*, a separate *client's master agreement* between the *counterparty*, the *investment manager* and that *named client*.

Further *client's master agreements* may be created under clauses 3.3 and 5.7.

### 2 Intention of parties

- 2.1 This supplement applies to all *dealings* between the *investment manager* and the *counterparty* on or after the date this supplement becomes part of the Master Agreement identified in the Details.
- 2.2 The *investment manager* may not enter into *dealings* with the *counterparty* on the *investment manager's* own account without the express prior consent of the *counterparty*.
- 2.3 However, the *investment manager* may enter *transactions* with the *counterparty* in the *investment manager's* capacity as trustee or responsible entity of a *related scheme*. When involved in a *transaction* in that capacity the *investment manager* is a *client*.
- 2.4 When acting in its capacity as an investment manager, the *investment manager* is not personally liable for the obligations of *clients* under any *master agreement*.

### 3 Named clients

- 3.1 The *investment manager* may not enter into *transactions* on behalf of:

- (a) a *related life company*; or
- (b) a trustee or responsible entity of a *related scheme*; or
- (c) any other category of *client* agreed by the *investment manager* and the *counterparty* in writing

unless it is a *named client*.

- 3.2 For each *client* of a type referred to in clauses 3.1(a) or (b):

- (a) the *investment manager* agrees to provide the *counterparty* with evidence of the power of that *client* to enter into *transactions* and other information and documents as is reasonably requested by the *counterparty*; and
- (b) before entering into the first *transaction* on behalf of that *client*, the *investment manager* agrees to procure that the *client* provides the *counterparty* with an acknowledgement substantially in the form of appendix B.

For each other *named client* the *investment manager* agrees to use reasonable efforts to procure that the *counterparty* is provided with evidence of the power of the *named client* to enter into *transactions* and other information and documents as is reasonably requested by the *counterparty*.

3.3 Additional *named clients* may be agreed on at any time. Once the *counterparty* and *investment manager* agree on a new *named client*, a separate *client's master agreement* is created between the *counterparty*, the *investment manager* and that *named client*. If agreed orally, the *counterparty* and the *investment manager* agree to promptly confirm the agreement in writing. The agreement (or the confirmation) must include adopting replacement items 7 and 8 of the Details (see appendix A for the form of this).

#### 4 Frequency and range schedule

The *investment manager* agrees to give the *counterparty* an updated frequency and range schedule in the form of appendix A or another form agreed between them:

- (a) at least annually on the anniversary of the signing of the *investment manager's agreement*; and
- (b) if any of the details in the last supplied frequency and range schedule change significantly (for example, the categories of *unnamed clients*, the weighting between those categories or between *named clients*, the portfolio type or the attributable proportion of *blockbookings*); and
- (c) if the frequency and range schedule sets out the names of *named clients* and *separate clients*, when additional *named clients* (see clause 3.3) or *separate clients* are agreed; and
- (d) at other times on reasonable request from the *counterparty*.

*Blockbookings* need not necessarily be allocated in the proportions set out in the frequency and range schedule. The frequency and range schedule is indicative only of overall trading patterns.

If item 8 of the Details specifies different client groups, then the *investment manager*

agrees to identify to the *counterparty*, at or before the time of a *blockbooking*, the client group to which the *blockbooking* applies.

#### 5 Allocation of dealings

##### *Blockbookings*

5.1 The *investment manager* may enter into *blockbookings*.

##### Pre-dealing allocation

5.2 If the *investment manager* has allocated all or part of a *dealing* to a *client* or *separate client* at or before the time of the *dealing*:

- (a) the *investment manager* enters the *dealing*, or that part of it, as the agent of the *client* or *separate client*, as the case may be (except to the extent that the *investment manager* is itself the *client* in a capacity contemplated by clause 2.3 in which case the *investment manager* is the principal); and
- (b) a separate *transaction* is created under the *client's master agreement* for that *client* or the *separate client's master agreement* in which the *client* or the *separate client*, as the case may be, is the principal in respect of that part of the *dealing* allocated to it.

##### Post-dealing allocation

5.3 If the *investment manager* has not allocated all of a *dealing* to one or more *clients* or *separate clients* at or before the time of the *dealing*:

- (a) the *counterparty* is taken to have made an irrevocable continuing offer to the *investment manager* (capable of acceptance, subject to clause 5.4, in whole or in part at different times) to enter into one or more *transactions* with one or more *clients* or *separate clients* in respect of any part of the unallocated part of the *dealing*; and

(b) the *investment manager* agrees to allocate the unallocated part of the *dealing* to one or more *clients* or *separate clients* within the time allowed by any relevant market convention (or, if there is no such convention or if the convention does not allow a particular time, by the close of business on the business day following the day the *dealing* is entered). However, the time for allocation is extended if:

- (i) the *counterparty* agrees to a longer time; or
- (ii) the *investment manager* is unable to allocate because of factors outside its control (as long as it allocates within 36 hours of the time within which allocation should normally have occurred (ie the time specified above) had it not been for the occurrence of factors outside its control).

5.4 Despite clause 5.3, the sum of the proportions of a *dealing* allocated to all *clients* and *separate clients* must equal 100%. The *investment manager* agrees to give the *counterparty* written notice if it has not fully allocated by 10am (Sydney time) on the business day following the business day by which allocation must be made under clause 5.3(b).

5.5 When the *investment manager* allocates all or part of a *dealing* referred to in clause 5.3 to a *client* or *separate client*:

- (a) the *investment manager* is taken to have accepted the offer referred to in clause 5.3(a) in respect of that part of the *dealing* allocated to the *client* or *separate client*, as the agent of the *client* or *separate client*, as the case may be (except to the extent that the *investment manager* is itself the *client* in a capacity contemplated by clause

2.3 in which case the *investment manager* is the principal); and

- (b) a separate *transaction* is created under the *client's master agreement* for that *client* or the *separate client's master agreement* in which the *client* or *separate client*, as the case may be, is the principal in respect of that part of the *dealing* allocated to it.

Despite clause 5.3(b), such an acceptance may occur after the time by which clause 5.3(b) requires the allocation to occur. However, this does not limit the *investment manager's* liability for failure to comply with clause 5.3(b).

#### **Recording of allocations**

5.6 The *investment manager* agrees to allocate *dealings* by recording in its books the identity of each *client* or *separate client* to which the *dealing* is allocated and, in the case of *blockbookings*, the proportion of the *dealing* allocated to each of them.

#### **Additional client's master agreements**

5.7 When the *investment manager* allocates part of a *dealing* to an *unnamed client* and no part of a previous *dealing* has ever been allocated to that *unnamed client*, a separate *client's master agreement* is created between the *counterparty*, the *investment manager* and that *unnamed client*.

#### **Transactions and master agreements**

5.8 Each *transaction* forms part of and amends the *master agreement* under which it is created.

#### **Indemnity from investment manager**

5.9 The *investment manager* indemnifies the *counterparty* against liability, loss and expenses (including consequential and economic loss) the *counterparty* incurs because the *investment manager* fails to comply with clause 5.3(b).

This is a continuing obligation, independent of the *investment manager's* other obligations. It is not necessary for the *counterparty* to incur expense or make payment before enforcing this indemnity. Amounts are payable under this indemnity on demand.

#### **Prohibition on assignment**

- 5.10 The *investment manager* may not assign or otherwise deal with its rights under this clause 5 without the *counterparty's* consent. Only the *investment manager* can accept an offer under clause 5.3.

### **6 Information about transactions**

#### *Named clients*

- 6.1 The *investment manager* agrees to provide the *counterparty* with the information specified in item 4 of the Details with respect to *transactions* entered into by *named clients*.

#### *All clients*

- 6.2 Promptly after allocation, the *investment manager* agrees to give the *counterparty* details of any *custodian* for a *dealing*.

It is acknowledged that *custodians* have no principal liability (in their capacity as *custodian*) under *transactions*.

- 6.3 If an event of default, potential event of default or termination event occurs under a *master agreement*, then, upon becoming aware of it, the *investment manager* agrees to:
- (a) immediately inform the *counterparty*; and
  - (b) on request from the *counterparty*, provide the *counterparty* with full particulars of the *client* and all outstanding *transactions* under that *master agreement* and do all things reasonably requested by the

*counterparty* to assist the *counterparty* to recover any amount payable by the *client*.

### **Confirmations**

- 6.4 Each *transaction* with a *named client* must be separately confirmed if expressly required under item 4 of the Details. Any notification under item 4 is a notification of an allocation to that *named client*. For other *transactions* a single confirmation may be issued in connection with the allocation of a *dealing* to one or more *clients* where each uses the same *custodian*.

### **7 Miscellaneous**

#### *Terms of master agreements*

- 7.1 The terms of all *master agreements* are the same (other than their parties). If the *investment manager* is identified in a particular way (eg, as "Party A" or "Party B"), then each *client* has the same identification. A reference in a *client's* *master agreement* to a "party" is a reference to the relevant *client*. A reference to the *investment manager* in this supplement is always to be read as a reference to the *investment manager* identified in the Details.

#### *Consequences of separate master agreements*

- 7.2 The implications of there being separate *master agreements* created under this supplement include:
- (a) the parties may exercise rights differently under each *master agreement* (eg, by terminating one of them while one or more of the others remain in effect); and
  - (b) subject to clause 8, any netting or set off rights operate separately in relation to *transactions* entered into with each *client*; and

- (c) an event of default, potential event of default or termination event under one *master agreement* may not necessarily be such an event under any other *master agreement*.

### Events of Default

7.3 In addition to the events of default listed in the Master Agreement referred to at item 3 of the Details, the following events constitute an event of default (an “**Event of Default**”) with respect to a *client*:

- (a) failure by the *investment manager* to comply with or perform any agreement or obligation to be complied with or performed by the *investment manager* in accordance with this supplement in connection with that *client* if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the *investment manager*;
- (b) a representation made or repeated or deemed to have been made or repeated by the *investment manager* in connection with that *client* in this Supplement proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;
- (c) any portion of the *client’s* business is placed under judicial management pursuant to section 158 or 159 of the Life Insurance Act 1995;
- (d) if the *client* is a party to a *client’s master agreement* in the capacity of a superannuation entity regulated by the Superannuation Industry (Supervision) Act 1993 (“**SIS Act**”):
  - (i) an acting trustee is appointed under Part 17 of the SIS Act and a scheme is formulated pursuant to that Act for the winding up of the superannuation fund; or

- (ii) the superannuation fund is technically insolvent within the meaning of the Superannuation Industry (Supervision) Regulations (“**SIS Regulations**”); or
- (iii) the *client* as trustee of the superannuation fund takes steps to initiate winding up proceedings under the SIS Regulations.

### Consent

7.4 The *counterparty*, each *client* who is or becomes party to a *client’s master agreement* and the *investment manager* consent to the creation of each *client’s master agreement* and the amendment of the *master agreements*, in accordance with this supplement.

### 8 Settlement of transactions

Separate *transactions* of *unnamed clients* or (unless the *transactions* have been confirmed separately) *named clients* having the same *custodian* for settlement and which were originally constituted by the same *dealing* may be settled (if agreed by the *investment manager* and *counterparty*) as if they were a single *transaction*.

Such a settlement under any *master agreement* also may be netted (if agreed by the *investment manager* and *counterparty*) against other settlements under the same or any other *master agreement* due on the same day involving the same booking name and *custodian*. (However, the *investment manager* may allow netting to take place only if permitted by, and must do so in accordance with, each relevant *master agreement*, each relevant *client’s* constituent documents and the law).

Nothing in this clause affects the rights of *clients* among themselves or as between them and the *investment manager*.

## 9 Representations

9.1 The *investment manager* represents that:

- (a) it is not in breach of this agreement or its obligations to any *client* who is a party to a *client's master agreement* in a way that affects this agreement or a *client's master agreement* or its or any relevant *client's* ability to perform obligations under either of them; and
- (b) each *client* has given an authorisation to the effect that the *investment manager* may enter into the *client's master agreement* applicable to that *client* and each *transaction* which forms part of that *master agreement* or which the *investment manager* purports to create under that *master agreement*; and
- (c) if a *client* acts as trustee or responsible entity of a *related scheme* under a *client's master agreement*:
  - (i) the *client* is not in breach of trust in any way which may affect the *client's* right of indemnity from the relevant trust fund; and
  - (ii) the *client* has the power to enter into and perform its obligations under that *master agreement*; and
  - (iii) the *client* is the sole trustee or responsible entity of the *scheme* (or, if there is another trustee or responsible entity, the *client* has been duly authorised by all trustees and responsible entities of the *scheme* to enter into and perform obligations under the *client's master agreement*); and
  - (iv) the *client* has the right to be fully indemnified out of the assets of the *scheme* for all obligations it incurs under that

*master agreement* before the claims of beneficiaries (if the *counterparty* asks, the *investment manager* agrees to use reasonable endeavours to procure that the *client* exercises that right of indemnity); and

- (v) the *scheme* is able to meet its debts as they fall due; and
- (d) if a *client* is a party to a *client's master agreement* in the capacity of a superannuation entity regulated by the Superannuation Industry (Supervision) Act 1993 and the superannuation fund is a *related scheme*:
  - (i) the entry into and performance of the *client's* obligations under that *master agreement* does not contravene that Act or regulations under it; and
  - (ii) the *client* is in compliance with all capital and prudential rules and guidelines issued by the Insurance and Superannuation Commission (**ISC**) (or any successor body); and
- (e) if a *client* is a party to a *client's master agreement* in the capacity of a *related life company* acting in respect of a statutory fund:
  - (i) the entry into and performance of the *client's* obligations under that *master agreement* does not contravene the Life Insurance Act 1995 or regulations under it; and
  - (ii) the *client* is in compliance with all capital and prudential rules and guidelines issued by the ISC (or any successor body); and

- (iii) the assets of the fund may be applied against the *client's* obligations under that *master agreement*; and
  - (f) it is authorised to give on behalf of each *client* of a type referred to in clause 9.1(c), (d) or (e) each representation by each such *client* contained in the *client's master agreement* applicable to that *client*; and
  - (g) it maintains insurance appropriate to the type and size of *dealings* it enters into in its business as an investment manager; and
  - (h) if its agency on behalf of a *client* is terminated, the *investment manager* remains authorised to settle *transactions* and to close out open positions.
- 9.2 The *investment manager* also makes the representations in item 5 of the Details (this does not limit the representations in clause 9.1).
- 9.3 The representations in clauses 9.1 and 9.2 are taken to be repeated each time a *transaction* is entered into and every three months after the date referred to in clause 2.1.

## 10 Undertakings

- 10.1 The *investment manager* agrees to immediately notify the *counterparty* on becoming aware of:
- (a) any action or proposal in connection with the retirement, removal or replacement of the *investment manager* as agent for any *client* who is a party to a *client's master agreement* if the retirement, removal or replacement is relevant to any *transaction* under that *client's master agreement*; or

- (b) any action or proposal which results or could result in a change in control of the *investment manager*; or
- (c) a breach of trust by a *client* which is acting as a trustee which may affect the *client's* right of indemnity from the relevant trust fund.

10.2 The *investment manager* agrees not to enter into a *transaction* on behalf of a *client* unless at the date of the *transaction* it believes on reasonable grounds that the *client's* assets which are within the *investment manager's* authority to invest are sufficient and available to meet the obligations incurred under the *transaction*. Also it agrees to immediately notify the *counterparty* if it becomes aware that a *client* may not be able to meet its obligations under the *client's master agreement* applicable to that *client*.

10.3 The *investment manager* agrees to maintain systems, records and procedures that enable it to:

- (a) perform its obligations under this supplement; and
- (b) prove the details of each allocation.

## 11 Meaning of words

a **blockbooking** is a *dealing* which aggregates the requirements of more than one *client* or *separate client*.

a **client** means a *named client* or an *unnamed client*. A reference to a *client* which acts as a trustee or responsible entity of a *scheme* (including in entering into a *transaction*) is a reference to the *client* in its capacity as trustee or responsible entity of that *scheme*. A *client* which is a life insurance company is taken to enter *transactions* in a different capacity for each of its statutory funds. A reference to a *client* does not include a *separate client*.



**client's master agreement** means in respect of a *client* acting in a particular capacity, a *master agreement* between the *counterparty*, that *client* as principal in that capacity and the *investment manager* as agent for that *client*. If the *investment manager* also is a *client* (see clause 2.3), then there is a *client's master agreement* for the *investment manager* in each capacity in which it is a *client* (as well as the *investment manager's agreement*).

the *counterparty* is named in the Details.

a **custodian** means a custodian nominated by the *investment manager* and through which a *transaction* is to be settled.

a **dealing** is an agreement between the *investment manager* and the *counterparty* on what is or is intended to be the terms of one or more *transactions*.

**including** or **for example**, when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

the **investment manager** is named in the Details.

**investment manager's agreement** means an agreement on the terms of this Supplement between the *counterparty* and the *investment manager* as principal.

a **master agreement** means an agreement entered into on the terms of the Master Agreement identified in the Details and this supplement.

each **named client** is named in the Details. *Named clients* also include those agreed under clause 3.3.

**related life company** means a life insurance company related to the *investment manager*.

**related scheme** means a *scheme* which either:

- (a) is established by the *investment manager* or an entity related to the *investment manager*; or
- (b) has the *investment manager* or an entity related to the *investment manager* as trustee or responsible entity.

**scheme** means a trust (including a regulated superannuation fund, an approved deposit fund, a pooled superannuation trust, or a public sector superannuation scheme, within the meaning of the Superannuation Industry (Supervision) Act 1993) or a managed investment scheme within the meaning of the Corporations Law.

a **separate client** is a client of the *investment manager* on behalf of which the *investment manager* enters *transactions* on a named basis with the *counterparty* but not under a master agreement created pursuant to this Supplement (ie not under a *client's master agreement*).

**separate client's master agreement** means a master agreement between a *separate client* and the *counterparty*.

**transaction** means a financial markets transaction.

an **unnamed client** is a client of the *investment manager* which is not specifically named in *dealings* but for whom the *investment manager* keeps individual records.

## Appendix A

This document relates to the Investment Manager Supplement attached to the [[Master Agreement of International Swaps and Derivatives Association Inc dated .....] **or** [describe the master agreement if different] to which [ ..... ] (“*investment manager*”) and [ ..... ] (“*counterparty*”) are parties.

<sup>1</sup> By completing the following item 7 and signing below the *investment manager* and the *counterparty* confirm that item 7 of the Details of the Investment Manager Supplement are replaced with the following:

**7 Named clients** .....

.....

.....

.....

.....  
Signature for the *investment manager*

.....  
Signature for the *counterparty*

.....  
Name of signatory (please print)

.....  
Name of signatory (please print)

.....  
Date

.....  
Date

<sup>2</sup> By completing the following item 8 and signing below the *investment manager* confirms that item 8 of the Details is now replaced by the following:

**8 Frequency and range schedule** The *investment manager* provides the following indication of the types of *clients* to whom *blockbookings* will be allocated (and indicative allocations). The *investment manager* agrees that this information is given and must be provided under clause 4 for [unnamed clients only] [all *clients* (ie, both *named clients* and *unnamed clients*)].

**Part 1**

**Name of client group:** [complete]

Section A	<b>Category of unnamed clients</b>	<b>Portfolio size (funds under management) (\$ millions)</b>	<b>Number of unnamed clients in this category</b>	<b>Indicative blockbooking allocation (this is not the allocation under clause 5.2 or 5.3)</b>
	[complete]	[complete]	[complete]	[complete]

<sup>1</sup> Delete the section dealing with *named clients* (ie all text from <sup>1</sup> to immediately before <sup>2</sup>) if only the frequency and range schedule is being updated.

<sup>2</sup> Delete the section dealing with the frequency and range schedule (ie all text from <sup>2</sup> onwards) if only the *named clients* are being changed. Note that if the list of *named clients* is being changed using the frequency and range schedule, the change is not effective until the *counterparty* signs to confirm it.

<b>Section B</b>	<i>Named clients</i>	<b>Portfolio size</b>	<b>N/A</b>	<b>Indicative blockbooking allocation</b>
	[complete]	[complete]	[complete]	[complete]
<b>Section C</b>	<i>Separate clients</i>	<b>Portfolio size</b>	<b>N/A</b>	<b>Indicative blockbooking allocation</b>
	[complete]	[complete]	[complete]	[complete]
				<u>100%</u>

**Part 2**

**Name of client group:** [complete]

<b>Section A</b>	<b>Category of unnamed clients</b>	<b>Portfolio size (funds under management) (\$ millions)</b>	<b>Number of unnamed clients in this category</b>	<b>Indicative blockbooking allocation (this is not the allocation under clause 5.2 or 5.3)</b>
	[complete]	[complete]	[complete]	[complete]

<b>Section B</b>	<i>Named clients</i>	<b>Portfolio size</b>	<b>N/A</b>	<b>Indicative blockbooking allocation</b>
	[complete]	[complete]	[complete]	[complete]

<b>Section C</b>	<i>Separate clients</i>	<b>Portfolio size</b>	<b>N/A</b>	<b>Indicative blockbooking allocation</b>
	[complete]	[complete]	[complete]	[complete]
				<u>100%</u>

.....  
Signature for the *investment manager*

.....  
Name of signatory (please print)

.....  
Date

If this replacement item 8 changes the list of *named clients*, that change is not effective until the *counterparty* signs below to confirm the change:

.....  
Signature for the *counterparty*

.....  
Name of signatory (please print)

.....  
Date

## Appendix B

To: [name of *counterparty*]

Client: [name of *client*] (*client*)

By signing this document the *client*:

1. acknowledges that it is aware of the Master Agreement of International Swaps and Derivatives Association Inc (*client's master agreement*) between or to be between the *client*, the *counterparty* and [name of investment manager] (*investment manager*); and
2. represents to the *counterparty* that the *client* has the power to enter into and perform obligations under the *client's master agreement*; and
3. represents to the *counterparty* that the *client* has authorised the *investment manager* to enter into the *client's master agreement* and transactions under it on behalf of the *client*; and
4. repeats the representations made by the *client* and (to the extent they are relevant to the *client's master agreement*) the *investment manager* in the *client's master agreement*; and
5. undertakes to tell the *investment manager* if it is unable to repeat any of these representations; and
6. acknowledges that the *client*, through the *investment manager*, may enter all types of *transactions* under the *client's master agreement* [other than [insert details of any types of transactions that may not be entered under that document]]; and
7. acknowledges that the *counterparty* enters the *client's master agreement* and transactions under it in reliance on this document.

Signed by the *client*

The common seal of

Date: .....

is affixed in the presence of

... if by authorised officer:

.....  
Signature

.....  
signature of authorised  
person

.....  
signature of authorised  
person

.....  
Name (please print)

.....  
office held

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office held

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Office (held (please print)

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Name (block letters)

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Name (block letters)