

AFMA

Investment Manager Supplement

August 1998 version
(as amended in November 2008)

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*, that *named client* as principal and the *investment manager* as agent for 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 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*.
- 2.3 The *investment manager* may not otherwise enter into *dealings* with the *counterparty* on the *investment manager's* own account without the prior written consent of the *counterparty*. If such consent is given, then the *investment manager* is a *client* in its principal capacity for the purpose of such *dealings*.

- 2.4 When acting in its capacity as an investment manager and not as a *client*, the *investment manager* is not personally liable for the obligations of *clients* under the *client's 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) (other than where the *investment manager* is itself the *client*) before entering into the first *transaction* on behalf of that *client*, the *investment manager* agrees to provide the *counterparty* with a *client's representation letter* signed by the *client*.

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*, that *named client* as principal and the *investment manager* as agent for 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 a replacement item 8 of the Details (see appendix A for the form of this) or a revised list of the *named clients* in some other agreed form.

4 Unnamed clients

The *investment manager* agrees to give the *counterparty* such information in relation to any *unnamed clients* as is agreed between the *investment manager* and the *counterparty* at the reasonable request of the *counterparty*.

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* 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* (except to the extent that the *investment manager* is itself the *client* 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* in which the *client* 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* 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* 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* 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 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*:
- (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*, as the agent of the *client*, as the case may be (except to the extent that the *investment manager* is itself the *client* 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* in which the *client* 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 the identity of each *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*, that *unnamed client* as

principal and the *investment manager* as agent for that *unnamed client*.

Transactions and master agreements

- 5.8 Each *transaction* forms part of 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.

Acceptance by investment manager only

- 5.10 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, on 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* or the *counterparty*, as the case may be. 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 (References in this clause 7.3 to “the *client*” are references to the *client* which is a party to the applicable *client’s master agreement*). In addition to the events of default listed in the Master Agreement referred to in item 3 of the Details, the following events constitute an event of default (an “**Event of Default**”) under a *client’s master agreement*:

- (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* under this supplement in connection with the *client’s master agreement* if the failure is not remedied on or before the thirtieth day after notice of the 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 the *client’s master agreement*) 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 acting in the capacity of a trustee 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 entity is technically insolvent within the meaning of the Superannuation Industry (Supervision) Regulations (“**SIS Regulations**”); or
- (iii) the *client* as trustee of the superannuation entity takes steps to initiate winding up proceedings under the SIS Regulations;
- (e) if the *investment manager* ceases to be the investment manager of the *client* and, before that event occurs either the *investment manager* or a new investment manager of the *client* does not provide evidence to the *counterparty* satisfying the *counterparty* that the new investment manager is authorised to settle the *client's* transactions and to close out open positions (and has within its control sufficient assets of the *client* to enable it to do so);

- (f) a written representation made by the *client* separately from this agreement (for example, in a document commonly referred to as a “Financial Markets Trading Letter”) to either the *counterparty* or the *investment manager* in connection with the *client*, the *client's* master agreement, the *investment manager* or a transaction proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated.

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.

Prohibition on assignment

- 7.5 The *investment manager* may not assign or otherwise deal with its rights under this supplement without the *counterparty's* consent.

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.

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*.

trustees and responsible entities of the *scheme* to enter into and perform obligations under the *client's master agreement*); and

9 Representations

9.1 (References in this clause 9 to “the *client*” are references to the *client* which is a party to the applicable *client's master agreement*). In respect of each *client's master agreement*, the *investment manager* represents that:

- (a) it is not in breach of the *investment manager's agreement* or its obligations to the *client* in a way that affects the *investment manager's agreement* or the *client's master agreement* or its or the *client's* ability to perform obligations under either of them; and
- (b) the *client* has authorised the *investment manager* to enter into the *client's master agreement* and each *transaction* which forms part of the *client's master agreement* or which the *investment manager* purports to create under the *client's master agreement*; and
- (c) if the *client* is acting in the capacity of a trustee of a *related scheme* (including as a responsible entity):
 - (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 the *client's 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

- (iv) the *client* has the right to be fully indemnified out of the assets of the *scheme* for all obligations it incurs under the *client's 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 the *client* is acting in the capacity of a trustee of a superannuation entity regulated by the SIS Act and the superannuation fund is a *related scheme*:
 - (i) the entry into and performance of the *client's* obligations under the *client's 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 Australian Prudential Regulation Authority (**APRA**) (or any successor body); and
- (e) if the *client* is acting 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 the *client's master agreement* does not contravene the Life Insurance Act 1995 or regulations under it; and

- (ii) the *client* is in compliance with all capital, solvency and prudential rules and guidelines issued by APRA (or any successor body); and
- (iii) the assets of the fund may be applied against the *client's* obligations under the *client's master agreement*; and
- (f) it is authorised to give on behalf of the *client* (if it is of a type referred to in clause 9.1(c), (d) or (e)) each representation by the *client* contained in the *client's master agreement*; and
- (g) it maintains insurance appropriate to the type and nature of its business as an investment manager; and
- (h) if its agency on behalf of the *client* is terminated, the *investment manager* remains authorised by the *client* to settle *transactions* and to close out open positions;
- (i) all authorisations that are required by it in connection with the *investment manager's agreement* and the *client's master agreement* have been obtained and are in full force and effect, and all conditions applying to the authorisations have been complied with; and
- (j) the *client* is a "wholesale client" as defined in the Corporations Act 2001.

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 with the *client*, every three months after the date referred to in clause 2.1 and on the date the applicable *client's master agreement* is created. In addition, the representations in clauses

9.1(c)(ii), (iii) and (iv) are repeated each day.

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; or
- (d) any action or proposal in connection with the retirement, removal or replacement of a *client* (who is a party to a *client's master agreement* in the capacity as trustee or responsible entity) as the trustee or responsible entity.

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*.

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.

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 2.2), 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*).

client's representation letter means a letter substantially in the form of appendix B.

the **counterparty** is named in the Details.

a **custodian** means a custodian nominated by the *investment manager* through which a *transaction* is, or 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.

An entity is **related** to another entity if it is controlled, directly or indirectly, by that entity, or controls, directly or indirectly, that entity or if both entities are under direct or indirect common control. For this purpose, "control" of any entity means ownership of the majority voting power of that entity.

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 registered scheme (as defined in the Corporations Act 2001) or a trust (including a superannuation entity).

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 [[2002] 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.

By completing the following item 8 and signing below the *investment manager* and the *counterparty* confirm that item 8 of the Details of the Investment Manager Supplement are replaced with the following. This takes effect from [the time of the oral agreement referred to in clause 3.3 of the Investment Manager Supplement] [the date of this Agreement][insert date][the date of this Appendix A] (or, if the *investment manager* has purported to enter into a *transaction* under the Investment Manager Supplement on behalf of a *client* added by this Appendix A prior to that date, the date of that *transaction*):

8 Named clients
.....
.....
.....

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

.....
Signature for the *counterparty*

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

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

.....
Date

.....
Date

Appendix B

Client's representation letter

To: [name of *counterparty*]

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

By signing this document the *client*:

1. acknowledges that it is aware of the [2002] 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

office held

.....

.....

Office (held (please print)

Name (block letters)

Name (block letters)