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**The Financial Markets Association  
of the Czech Republic (A.C.I.)**

**2000 Supplement**

**to the 1992 ISDA Master Agreement**

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## **INTRODUCTION TO THE FINANCIAL MARKETS ASSOCIATION OF THE CZECH REPUBLIC (A.C.I.) 2000 SUPPLEMENT TO THE 1992 ISDA MASTER AGREEMENT**

The Financial Markets Association of the Czech Republic (A.C.I.) 2000 Supplement to the 1992 ISDA Master Agreement (the "Czech Supplement") is intended for use with a 1992 ISDA Master Agreement (either Multicurrency-Cross Border or Local Currency-Single Jurisdiction), published by the International Swaps and Derivatives Association, Inc. ("ISDA"), which is entered into by at least one party organized under the laws of or resident in the Czech Republic (a "Czech Master Agreement"). Parties may wish to consult the Czech Definitions for terms to be used in confirmations of individual transactions which involve the Czech Koruna or any other relevant Czech underlying cash market.

Parties may incorporate the provisions of the Czech Supplement into a Czech Master Agreement by reproducing them in Part 5 of the Schedule to that Czech Master Agreement. Alternatively, parties may incorporate all or some of the provisions of the Czech Supplement into a Czech Master Agreement by reference, using the following language in Part 5 of the Schedule to that Czech Master Agreement: "The parties agree that the provisions contained in The Financial Markets Association of the Czech Republic (A.C.I.) 2000 Supplement to the 1992 ISDA Master Agreement published by the Financial Markets Association of the Czech Republic (A.C.I.) are incorporated into and apply to this Agreement. References in those provisions to this "Czech Master Agreement" will be deemed to be references to this Agreement."

The Financial Markets Association of the Czech Republic (A.C.I.) has provided this Czech Supplement to assist the smooth and efficient functioning of privately negotiated derivatives activity involving Czech counterparties by facilitating the process of amending a Czech Master Agreement to address more effectively certain aspects of Czech law which may affect a Czech Master Agreement or, in the case of a Czech Master Agreement between two Czech parties, to allow a Czech Master Agreement to be made subject to Czech law. [During the course of the project, the Financial Markets Association of the Czech Republic (A.C.I.) received valuable guidance from members of ISDA's European Emerging Markets Task Force. The Financial Markets Association of the Czech Republic (A.C.I.) gratefully acknowledges the contributions of ISDA and its members to the preparation of the Czech Supplement.] *The precise documentation of each privately negotiated derivatives agreement remains, however, the responsibility of the parties concerned. Neither the Financial Markets Association of the Czech Republic (A.C.I.) nor ISDA assumes any responsibility for any use to which this Czech Supplement may be put, including, without limitation, any use of this Czech Supplement in connection with any privately negotiated derivatives agreement. Each party to an agreement documented under a Czech Master Agreement referring to or incorporating the terms of this Czech Supplement must satisfy itself that this Czech Supplement is appropriate for the agreement, that it has been properly used or adapted in the Schedule or other amendment to the Czech Master Agreement and that the Czech Master Agreement has otherwise been properly drafted, in each case to reflect the commercial intentions of the parties.*

Czech law relating to OTC derivatives is evolving rapidly; parties are therefore advised to monitor changes in relevant Czech law since the date of publication of this Czech Supplement. Neither the Financial Markets Association of the Czech Republic (A.C.I.) nor

ISDA has undertaken to review all applicable laws and regulations in other jurisdictions which may have some connection to a Czech Master Agreement incorporating the Czech Supplement, and therefore parties are advised to consider the implications of any relevant jurisdiction's financial, insolvency, tax or other laws that may affect the validity, construction or enforceability of a contract involving privately negotiated derivatives.

May 2000

## **THE FINANCIAL MARKETS ASSOCIATION OF THE CZECH REPUBLIC (A.C.I.) 2000 SUPPLEMENT TO THE 1992 ISDA MASTER AGREEMENT**

The following provisions may be incorporated into a 1992 ISDA Master Agreement (either Multicurrency-Cross Border or Local Currency-Single Jurisdiction), published by the International Swaps and Derivatives Association, Inc., which is entered into by at least one party organized under the laws of or resident in the Czech Republic (a "Czech Master Agreement"). Parties may incorporate the provisions of the Czech Supplement into a Czech Master Agreement by reproducing them in Part 5 of the Schedule to that Czech Master Agreement. Alternatively, parties may incorporate all or some of the provisions of the Czech Supplement into a Czech Master Agreement by reference, using the following language in Part 5 of the Schedule to that Czech Master Agreement: "The parties agree that the provisions contained in The Financial Markets Association of the Czech Republic (A.C.I.) 2000 Supplement to the 1992 ISDA Master Agreement published by the Financial Markets Association of the Czech Republic (A.C.I.) are incorporated into and apply to this Agreement. References in those provisions to this "Czech Master Agreement" will be deemed to be references to this Agreement."

### **1. Payment Netting.**

Section 2(c) of this Czech Master Agreement is amended by inserting the following as a third paragraph at the end of that section: "Each party confirms that by entering into a Transaction governed by this Agreement it gives to the other party notice of any payment netting contemplated by this Section 2(c) in respect of that Transaction, that it accepts the same from the other party and that further notice will not be required."

### **2. Notice of Transfer.**

Section 7 of this Czech Master Agreement is amended to insert the following as a new sentence at the end of that section: "For the avoidance of doubt, each party confirms that by executing this Agreement it gives notice to the other of any transfer contemplated in Section 7(a) or 7(b), that it accepts such notice from the other party, that it consents to such transfer and that further notice or consent will not be required."

### **3. Dispute Resolution - English or New York Law.**

Unless this Czech Master Agreement is expressed to be governed by Czech law, Section 13(b)\* of this Czech Master Agreement is replaced by the following:

"(b) **Jurisdiction and Dispute Resolution.** The parties irrevocably agree that:

- (i) Subject to Section 13(b)(ii), each party will have the right to refer any dispute, controversy or claim arising out of, or in any way connected to, this Agreement, its negotiation, performance, breach, existence, termination or validity ("Dispute") to

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\* All references to Section 13 in this Section 6 will be read as references to Section 11 if this Czech Supplement is modifying a Local Currency-Single Jurisdiction ISDA Master Agreement.

arbitration for final resolution in accordance with the Rules of the London Court of Arbitration ("LCIA"), and:

(A) the arbitral tribunal for that arbitration will consist of three arbitrators, two of whom will be nominated by the respective parties;

(B) the third member of the arbitral tribunal for that arbitration will be selected by the LCIA and will serve as chairman of the arbitral tribunal;

(C) the place of that arbitration will be London, England;

(D) the language of that arbitration will be English;

(E) the parties will keep confidential and not use for any collateral or other purpose not related to the resolution of the Dispute the subject matter of the arbitration and all information (whether given orally, in writing or otherwise) produced for, or arising in relation to, the arbitration, including any award arising out of it, except insofar as is necessary to implement and enforce any award or otherwise as required by law; and

(F) except in the event of termination of this Agreement, the parties will continue to perform all their obligations under this Agreement without prejudice to a final adjustment in accordance with any award until the arbitral tribunal publishes its award.

(ii) If a party (the "Claimant") refers a Dispute to arbitration pursuant to Section 13(b)(i), that referral will be effective only after 30 days have elapsed from the date of the receipt of notice by the other party (the "Respondent") and will not be effective if, prior to the end of that 30 day period, the Respondent produces a legal opinion from acceptable counsel that there is a substantial likelihood that an award issued by such an arbitral tribunal would not be enforced in a jurisdiction in which the Claimant is organized or resident or in which the Claimant holds significant assets, even if the award were granted by the arbitral tribunal. If the parties cannot agree on counsel to provide an opinion as to the enforceability of an arbitral award, the Respondent may select any law firm which has (1) international standing in the capital markets and (2) recognised experience in the jurisdiction in respect of which the opinion is being sought, and the Claimant will be deemed to have accepted such proposed counsel unless the Claimant rejects such counsel within three Local Business Days.

(iii) Once arbitration has begun pursuant to Section 13(b)(i) and until it has been concluded or suspended by agreement of the parties, the parties will not initiate any other suit, action or proceedings ("Proceedings") relating to this Agreement.

(iv) With respect to any Proceedings, each party irrevocably:

(A) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court

located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(B) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Unless the Claimant has referred the Dispute to arbitration pursuant to Section 13(b)(i) above and that referral has not been made ineffective by the production of an opinion by the Respondent pursuant to Section 13(b)(ii) above, nothing in this Agreement will preclude either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgements Act of 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction."

#### **4. Dispute Resolution - Czech Law.**

If this Czech Master Agreement is expressed to be governed by Czech law, Section 13(b)\*\* of this Czech Master Agreement is replaced by the following:

"(b) **Jurisdiction and Dispute Resolution.** The parties irrevocably agree that any dispute, controversy or claim arising out of, or in any way connected to, this Agreement, its negotiation, performance, breach, existence, termination or validity ("Dispute"), will be referred to and finally resolved by arbitration under according to Act. No. 216/1994 Coll. on arbitration and on the execution of arbitration awards and according to the Rules of the Court of Arbitration of the Chamber of Commerce of the Czech Republic and the Chamber of Agriculture of the Czech Republic ("CC CR and CA CR Court of Arbitration"). In addition:

- (i) the arbitral tribunal for that arbitration will consist of three arbitrators, two of whom will be nominated by the respective parties;
- (ii) the third member of the arbitral tribunal for that arbitration will be selected by the chairman of the CC CR and CA CR Court of Arbitration and will serve as chairman of the arbitral tribunal;
- (iii) the place of that arbitration will be Praha, Czech Republic;
- (iv) the language of that arbitration will be Czech;
- (v) the parties will keep confidential and not use for any collateral or other purpose not related to the resolution of the Dispute the subject matter of the arbitration, and all

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\*\* This reference to Section 13 in this Section 7 will be read as a reference to Section 11 if this Czech Supplement is modifying a Local Currency-Single Jurisdiction ISDA Master Agreement.

information (whether given orally, in writing or otherwise) produced for, or arising in relation to, the arbitration, including any such award arising out of it, except insofar as is necessary to implement and enforce any award or otherwise as required by law; and

(vi) except in the event of termination of this Agreement, the parties will continue to perform all their obligations under this Agreement without prejudice to a final adjustment in accordance with any award until the arbitral tribunal publishes its award.”