SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 27

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THE HIGH RISK OPPORTUNITIES HUB FUND LTD. (In Liquidation), by and through G. James Cleaver and L. Daniel Scott, Joint Official Liquidators,

Plaintiff,

-against-

Index No. 600229/00
PC No. 16039

CREDIT LYONNAIS and SOCIETE GENERALE,

Defendants.

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Ira Gammerman, J.H.O.:

This is a breach of contract action by plaintiff The High Risk Opportunities Hub Fund Ltd. (High Risk), through its liquidators, arising from certain non-deliverable forward contracts entered into with defendants Credit Lyonnais and Societe Generale. The parties have stipulated to have this action determined on motion papers supported by affidavits and documentary evidence, in lieu of depositions and a trial with live testimony.[1]

According to the complaint, High Risk was a highly leveraged Cayman Islands hedge fund in the business of speculative investing, focused mainly on investments in Russia. It asserted in its offering memorandum that "[a]n investment in the company is highly

[1]After a lengthy delay, in which it was requested that the court withhold decision, High Risk and defendant Societe Generale settled their portion of this action pursuant to stipulation.

speculative, reflecting the risks of the unregulated, highly leveraged and frequently volatile markets" in which High Risk traded.

Credit Lyonnais is a French banking corporation. It entered into the transactions at issue through its New York offices.

Between June of 1997 and August of 1998, High Risk and Credit Lyonnais entered into several transactions called non-deliverable forward contracts (NDFs). The NDFs were currency contracts that were based on the exchange rate between the United States dollar and the Russian ruble, see, generally, Indosuez International Finance BV v National Reserve Bank, 98 NY2d 238, 241 (2002). Essentially, both parties took a position with respect to the value of the dollar versus the value of the ruble, to be determined at a specified future termination date. If the value of the ruble declined, relative to the dollar, from the commencement date of the transaction to the termination date, High Risk was entitled to a payment at termination from Credit Lyonnais in U.S. dollars reflecting the amount of that decline. If the value of the ruble increased during that time period, Credit Lyonnais was entitled to a payment from High Risk.

Each NDF transaction was governed by several documents, including an International Swaps and Derivatives Association,

Inc. Master Agreement (Master Agreement), which sets forth the basic terms for NDF transactions. Among other things, the Master Agreement provided for early termination (Early Termination) upon the happening of certain events, including the insolvency of either party. The Master Agreement provided in section 6(a) that

> [i]f at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may...designate a day...as an Early Termination Date in respect of all outstanding Transactions.

The Master Agreement provided that on Early Termination, one party would pay the other a "Settlement Amount", which would be calculated as of the Early Termination Date, and include an adjustment for any outstanding obligations that had previously arisen under the Master Agreement. See, Master Agreement § 6(e)(i). The Settlement Amount was to be determined by the non-defaulting party according to certain Market Quotation procedures set forth in the Master Agreement.[2] Pursuant to the parties' agreements here, the non-defaulting party was required to obtain market quotations, whether positive or negative, as defined below, from certain "Reference Market-makers" for each terminated

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[2] The Master Agreement contains several methods for obtaining Market Quotations. Here, the parties selected the Market Quotation/Second Method procedure.

transaction.[3] The Master Agreement provided in § 14 that "'Market Quotation' means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers." It further stated that

> Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(I) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date.[4]

The Master Agreement provided that "[i]f more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the

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[3] Reference market-makers were defined as four leading dealers in the relevant market selected by the non-defaulting party in good faith. See, Master Agreement § 14.

[4] Section 2(a)(I) stated that "Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement."

quotations having the highest and lowest values." See, Master Agreement § 14.

In addition to the Master Agreement, the parties executed an ISDA Credit Support Annex, which contained the general terms for margin calls and payment procedures. The parties also entered into individual confirmation agreements (Confirmations), which set forth the terms of each individual transaction, including: 1) the dollar notional amount of the transaction; 2) the Floating Rate Index B, which was the exchange rate as of the trade date, against which the eventual dollar/ruble exchange rate was to be measured on the termination date; 3) the trade date and the termination date; and 4) the source of the dollar/ruble exchange rate on the termination date.[5]

Each Confirmation also contained a "Deferral or Reduction of Payment" provision (Deferral/Reduction Clause), which stated that

> The payment obligations of [Credit Lyonnais] pursuant to this Transaction shall be deferred or reduced or, on account of fees, taxes, commissions or similar charges or costs imposed due to an Exchange Risk, reduced by an amount determined by [Credit Lyonnais] in a

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[5] The parties here chose to reference the Moscow Interbank Currency Exchange, which was quoted by Reuters. The Confirmations provided several steps for ascertaining the Exchange Rate including starting with a quote from Reuters or if no such quote was available, obtaining quotes from Moscow banks. If no bank quote was available of a given day, then the parties turned to "the best rate obtainable by the Calculation Agent."

> commercially reasonable manner in an amount which is directly attributable to Exchange Risk until [Credit Lyonnais] determines, in its reasonable discretion, that such Exchange Risk no longer exists.

Exchange Risk was defined in the Confirmations as

> the promulgation or imposition of any law, order, decree or any other governmental action by any Russian governmental authority which prohibits, restricts, limits or otherwise imposes any charges or costs upon the ability of market participants located in Russia to (i) transfer [United States Dollars] to parties located outside of Russia, (ii) obtain [United States Dollars] in a lawful market located in Russia or (iii) convert Rubles into [United States Dollars].

It is undisputed that there were eight outstanding NDFs between High Risk and Credit Lyonnais as of August 17, 1998 with a total notional amount of approximately 60.8 million dollars. It is also undisputed that on August 17, 1998, the Russian Federation and its Central Bank issued a joint statement (Joint Statement) that, among other things, announced a ninety-day moratorium on payments under forward currency contracts.

High Risk contends that the restrictions set forth in the Joint Statement caused the value of the ruble to fall precipitously relative to the value of the dollar, resulting in High Risk becoming increasingly "in the money" with respect to its NDF Contracts with Credit Lyonnais. High Risk further states that the decline in the value of the ruble resulted in it making

substantial margin calls on Credit Lyonnais.[6] According to High Risk, the Credit Support Annex required the party that was "out of the money" on a net basis covering all the open transactions, in this case Credit Lyonnais, to transfer margin to the other party whenever the value of the transactions exceeded certain amounts and where there was already a shortfall in posted collateral. High Risk asserts that Credit Lyonnais responded to the margin calls by asserting that Credit Lyonnais's obligation to make any margin payments were negated because Exchange Risk had occurred.

The parties unsuccessfully attempted to resolve their differences as to whether Exchange Risk, assuming it had occurred, applied to margin payments. However, it is undisputed that on August 25th, 1998 Credit Lyonnais made a single margin payment of approximately $11 million, while reserving its rights.

On September 1, 1998, non-party Credit Suisse First Boston (Europe) Limited ("CSFB"), filed for High Risk's involuntary liquidation before the Grand Court of the Cayman Islands. CSFB was a counter-party to certain debt transactions with High Risk,

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[6]A margin call, in this context, is a demand by one of the parties to the NDF Contract on the other for the transfer of cash or cash equivalents, the amount of which is calculated pursuant to the Credit Support Annex.

known as "GKO" transactions. High Risk was "out of the money" on those transactions. High Risk asserts that CSFB's petition to have High Risk liquidated was based on CSFB's assertion that High Risk failed to meet certain margin calls made by CSFB in connection with the GKO transactions. On that same day, High Risk's shareholders resolved to place it in voluntary liquidation. The liquidation became final on September 24, 1998.

In the meantime, on September 3, 1998, Credit Lyonnais notified High Risk that it was declaring an Early Termination of the eight NDF transactions on the grounds that High Risk's insolvency constituted an Event of Default as set forth in the Master Agreement. Credit Lyonnais set the next day, September 4, 1998, as the Early Termination Date.

On September 4th, Credit Lyonnais contacted thirteen market-makers in an effort to obtain cumulative valuations of the NDF contracts, pursuant to section 6(e)(i) of the Master Agreement. It is undisputed that Credit Lyonnais instructed the market-makers, in writing, to consider the existence of Exchange Risk as a factor in valuating the NDFs. It is also undisputed that Credit Lyonnais followed the written requests with telephone calls to several of the market-makers.

Some of the Market-makers were unable or unwilling to

provide valuations of the NDFs. However, Credit Lyonnais eventually received four quotations upon which it relied to determine the value of the NDFs. Merrill Lynch and Goldman Sachs both valued the contracts at zero. JP Morgan valued the contracts at $403,180 and Societe Generale valued the contracts at $4,097,381. Pursuant to the terms of the Master Agreement, Credit Lyonnais dropped the highest and lowest of the quotes and then averaged the value of the two remaining quotes, which came to $201,590. It then deemed that to be the Settlement Amount owed to High Risk.

On September 9, 1998, Credit Lyonnais requested that High Risk return its collateral in excess of the Settlement Amount, totaling $11,193,080.20. It is undisputed that the collateral was not returned.

High Risk commenced this action, through its liquidators, in January of 2000, asserting claims against Credit Lyonnais and Societe Generale, which was another party to NDF transactions with High Risk. In its first and second causes of action, High Risk asserted that Credit Lyonnais and Societe Generale, respectively, caused High Risk's insolvency by failing to post margin payments after the Joint Statement was issued. On July 10, 2001, I dismissed the second cause of action, against Societe

Generale, on the grounds that High Risk failed to allege sufficient facts to support its claim that it became insolvent because it was unable to meet its obligations to third-parties because of a failure by Societe Generale to post margin payments.[7]

The third and fourth causes of action in the complaint are for breach of contract, alleging that Credit Lyonnais and Societe Generale, respectively, improperly determined the Settlement Amounts owed to High Risk under the various NDFs. High Risk and Societe Generale eventually settled their dispute. Therefore, at this point, all that remains to consider is the third cause of action against Credit Lyonnais.

As described above, there were eight outstanding NDFs between High Risk and Credit Lyonnais as of September 4, 1998, the Early Termination date chosen by Credit Lyonnais. The dispute remaining here is whether Credit Lyonnais properly valued those NDFs through the Market Quotation procedure. The parties agree that while the NDF transactions themselves are complex, the legal issue here is a fairly straightforward contract interpretation question, based on the provisions of § 14 of the Master

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[7] High Risk and Credit Lyonnais stipulated that High Risk would stay the prosecution of its analogous claim against Credit Lyonnais, i.e. the first cause of action.

Agreement, which sets forth the Market Quotation procedure and based on the Exchange Risk provisions of the Confirmations.

Section 14 of the Master Agreement, pertaining to Market Quotations, while not perfectly drafted, is unambiguous.[8] It required the terminating party, in this case Credit Lyonnais, to contact Reference Market-makers in order to determine the value of each NDF as of the Termination Date.

In order to make such a valuation, each Market-maker was, in effect, required to state how much Credit Lyonnais would have to pay or expect to be paid to have the market-maker step into the shoes of Credit Lyonnais with respect to each particular transaction. This amount depended of course on whether Credit Lyonnais was "in the money" or "out of the money" with respect to the given transaction. The Market-maker was not actually being asked to enter into such a transaction, but just to give its opinion on what the transaction was worth to Credit Lyonnais,

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[8] This section of the Master Agreement is commonly used in conjunction with NDF transactions. As such, the parties have submitted a significant number of expert affidavits and other documentary evidence in connection with the customary interpretation of this section in the relevant industry. However, the parties agree that the court need not consider such evidence unless the court determines that the contract is ambiguous, which each party contends it is not. See, Gershon v CDC Ixis Capital Markets, Inc, 1 AD3d 137, 138 (1st Dept 2003). As noted above, the contract is not ambiguous and the additional evidence is therefore not considered.

positively or negatively, as of the Termination Date.

The issue here is whether the quotations obtained by Credit Lyonnais were obtained in "good faith" as required by Section 14 of the Master Agreement. Credit Lyonnais contends that Exchange Risk was in effect on the Termination Date, which meant that its payment obligations to High Risk were deferred or reduced, which therefore significantly reduced the value of the NDFs on the Early Termination Date. It argues that the Market-makers correctly considered that factor, resulting in a termination payment amount of $201,590.

High Risk argues that Credit Lyonnais improperly influenced the Market-makers with respect to how much weight to afford the Exchange Risk factor. High Risk asserts that in its telephone calls to the Market-makers, Credit Lyonnais pressed the Market-makers to apply unduly large discounts to the value of the NDFs. It asserts that this occurred even in situations where a given Market-maker had indicated to Credit Lyonnais that such discounts were inappropriate either because Exchange Risk was not a factor to be considered or because the discount urged by Credit Lyonnais was too large.[9]

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[9] Although the parties in the papers submitted addressed whether Exchange Risk occurred, and if so, its effects on valuation, it is not necessary to resolve these issues.

As noted above, section 14 of the Master Agreement is unambiguous. Written agreements that are "complete, clear and unambiguous" must be enforced according to the plain meaning of their terms, Excel Graphics Technologies, Inc v CFG/AGSCB 75 Ninth Ave, LLC, 1 AD3d 65, 69 (1st Dept 2003), citing R/S Assoc v New York Job Dev Auth., 98 NY2d 29, 32 (2002). Moreover, contract provisions must be read so as to harmonize them, if possible, so that no provision is left without force or effect, see, James v Jamie Towers Housing Co, Inc, 294 AD2d 268, 269 (1st Dept 2002), affd 99 NY2d 639 (2003); Isaacs v Westchester Wood Works, Inc, 278 AD2d 184, 185 (1st Dept 2000). Here, the Market Quotation procedure in the Master Agreement, by its terms, served to determine the final Settlement Amount that would be owed by one party to another under the NDFs as of the Early Termination Date. Of course, this value had to ultimately derive from comparing the value of the dollar to that of the ruble, according to the applicable exchange rate, which was the purpose of the NDFs.

The Market Quotation procedure does not mention Exchange Risk. Instead, Exchange Risk is described in the Deferral/Reduction Clause in the individual Confirmations, which were executed after the Master Agreement. The Deferral/Reduction Clause, by its express terms, deferred or reduced the amount of a given payment, "until Credit Lyonnais, in its reasonable

discretion determine[d] that...Exchange Risk no longer exist[ed]." See, Confirmations, § 3(a). In other words, once the period of Exchange Risk ended, Credit Lyonnais was still obligated to fulfill its payment obligations.[10]

As noted above, Section 14 of the Master Agreement required Credit Lyonnais to obtain market quotations in "good faith". The Market-makers' function was to provide an independent opinion as to the value of the NDFS, and it was for the Market-makers to evaluate how much weight, if any, to accord to the Exchange Risk factor. Exchange Risk may have had some potential to affect the value of the NDFS, even assuming that the effect was temporary, because payments could be deferred or reduced.[11]

I find that Credit Lyonnais failed to obtain adequate market quotations in good faith pursuant to section 14 of the Master Agreement because it interfered with the Market-makers' independence in valuing the NDFs as of the termination date. Credit Lyonnais did so through its telephone communications with the Market-makers in which it repeatedly emphasized the importance of considering Exchange Risk, expressed its own

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[10] Credit Lyonnais asserts that, in theory, Exchange Risk could have lasted indefinitely, although it does not assert that it did so here.

[11] High Risk has not demonstrated that Credit Lyonnais determined in bad faith that Exchange Risk had occurred.

opinion as to the effect that Exchange Risk should have on the value of the NDFs, and encouraged the Market-makers to discount the value of the contracts. Even assuming that Exchange Risk existed on the Termination Date, which is vigorously disputed here, it was for the Market-makers, not Credit Lyonnais, to independently determine how to assess that factor in valuing the NDFs. The examples set forth below are illustrative.[12]

1. Banque Paribas

On September 4, 1998, Dave Greenberg of Credit Lyonnais telephoned one of the Market-makers, Banque Paribas (Paribas), seeking to obtain a market quotation. Mr. Greenberg spoke to Salu Manzoor of Paribas, and told Mr. Manzoor that Credit Lyonnais needed a quote with regards to the price that Paribas would hypothetically pay to step into High Risk's shoes with respect to the NDFs.[13]

During the conversation, Mr. Greenberg pointed out that Credit Lyonnais had determined that Exchange Risk had occurred,

[12] The telephone conversations cited in this decision were recorded and neither side disputes the accuracy of the transcripts provided to the court.

[13] The request should have been with respect to stepping into the shoes of Credit Lyonnais, according to the terms of the Master Agreement. However, it is a distinction without a difference in this case.

and stated that this meant that its payment obligations could be deferred or reduced. Based on that, Mr. Greenberg then told Mr. Manzoor to try to put a "haircut", i.e., a discount, on the value of the NDFs, in light of the Exchange Risk factor. Mr. Greenberg noted that Exchange Risk was a "very important feature" which should be "reflected" in the quotation.

Mr. Manzoor responded by stating that the Exchange Risk factor could be difficult to quantify because Credit Lyonnais itself was responsible for determining whether Exchange Risk existed and for how long. Mr. Greenberg responded that if that was Mr. Manzoor's "belief", then it should be reflected in the market quotations. Mr. Greenberg reiterated a few moments later that if Mr. Manzoor believed that Credit Lyonnais was responsible for determining the deferral or reduction and that such a factor didn't "make it very...interesting for [Paribas]", then that lack of interest should be "reflected" in the price that Paribas placed on the NDFs. After further discussion, Mr. Manzoor stated that he needed to discuss the matter with legal counsel.

In a later conversation that day, Mr. Manzoor told Mr. Greenberg that Paribas could provide only a "good indication" of the value of the NDFs, rather than a firm quotation, to ensure that Paribas would not become obligated to actually enter into a

transaction with Credit Lyonnais. A few moments later, Mr. Greenberg asked Mr. Manzoor what percentage discount Paribas would apply in valuing the NDFs, based on Exchange Risk. After further discussion, Mr. Manzoor stated that it would likely apply a 10% "haircut".

In their next conversation, Mr. Greenberg stated that his managing director had told him to make sure that Paribas provided a "firm quotation", even though Paribas would not actually be required to enter into a transaction with Credit Lyonnais. Mr. Manzoor responded by stating that he would have to turn the matter over to legal counsel. Eventually, Paribas notified Credit Lyonnais that it was unable to provide firm quotes for the NDFs.

2. Chase Manhattan

On that same day, Mr. Greenberg sought a market quotation from Ian Edwards of Chase, with whom he had spoken previously about the "theoretical" value of the NDFs. Mr. Edwards told Mr. Greenberg that he had been instructed not to provide a quotation.

Despite this, Mr. Greenberg and another Credit Lyonnais representative, Omar Abukhadra, then spoke to another Chase representative, Bill Gilbert. Mr. Abukhadra requested a valuation of the NDFs which included a "factoring in" of the Exchange Risk

clause. However, Mr. Gilbert informed them that in his opinion, Exchange Risk did not affect the value of the NDFs.

Mr. Abukhadra disagreed and stated that Exchange Risk affected the NDFs "a lot" because Credit Lyonnais could defer or reduce its payments. However, Mr. Gilbert reiterated that the Exchange Risk provision did not affect the NDFs and that he would value the NDFs as "clean", ie, with no discount. After further discussion, Mr. Gilbert declined to provide a market quotation.

3. Salomon Brothers

Mr. Greenberg spoke to David Rosa of Salomon, telling him that Credit Lyonnais needed a "firm market quotation". In discussing the Exchange Risk provision, Mr. Greenberg stated: "I just implore you to sort of skim...read through the confirmation and you'll see some provisions in there which I think are material okay?" Mr. Rosa responded that he would have legal counsel review it. Eventually, however, Salomon informed Credit Lyonnais that it could not give firm prices on the NDFs given the "current market environment".

4. Union Bank of Switzerland

Mr. Greenberg spoke to Behzad Goharian of UBS on September 4th. He pointed out the Exchange Risk provision to Mr. Goharian,

describing it as "critical factor" in evaluating the NDFs. Despite this, UBS eventually declined to provide a quotation, stating that "due to the convertibility clause" in the Confirmations, there was no market for the NDFs.

5. JP Morgan

On August 26, 1998, Mr. Greenberg spoke to Nick Cox of JP Morgan about the Exchange Risk provision and its effect on the value of the NDFs. This conversation took place before Credit Lyonnais formally requested a market quotation.

Mr. Greenberg stated that Credit Lyonnais had determined that Exchange Risk had occurred and opined that while this did not permit Credit Lyonnais to "cancel" the NDFs, it did permit it to delay payment indefinitely. He also stated that it would "probably" not be "prudent" to ignore Exchange Risk in trying to determine a value for the NDFs.

In a later conversation, Mr. Cox stated that he would probably apply a discount of approximately 80%, due to Exchange Risk. However, as set forth above, JP Morgan eventually valued the NDFs at $403,180, which it described as representing approximately a 99% discount.

6. Goldman Sachs

Mr. Greenberg spoke to Scott Gush of Goldman Sachs on September 4, 1998 and requested a market quotation. Mr. Greenberg stated that Credit Lyonnais had determined that Exchange Risk was in effect and requested that Goldman Sachs value the NDFs in that context, taking into account that payment might be for an "uncertain amount" at an "undetermined" time. Mr. Greenberg stated that while the Exchange Risk clause was somewhat ambiguous, he needed Goldman Sachs's "best efforts" to assign a value to the NDFs, including the possibility of putting a "distressed" value on them if necessary. Mr. Greenberg acknowledged that but for Exchange Risk, Credit Lyonnais would "probably owe a fair amount of money" on the NDFs. Goldman Sachs eventually provided a quote of zero, stating that it did so in light of the wording of the Exchange Risk clause.

7. Merrill Lynch

Mr. Abukhadra and Mr. Greenberg spoke to Alex Lomakin of Merrill Lynch. Mr. Abukhadra pointed out the Exchange Risk provision, stating that it allowed Credit Lyonnais to defer and reduce its payments if it incurred anything that it considered to be a cost on it. Merrill Lynch eventually provided a market quotation of zero.

8. Societe Generale

Mr. Greenberg spoke to Tom Athan of Societe Generale on September 4, 1998 and requested a market quotation. Mr. Athan pointed out that Credit Lyonnais had initially declined to provide a market quotation in connection with Societe Generale's NDFs with High Risk. Mr. Greenberg responded that Credit Lyonnais had decided to provide a quote to Societe Generale and requested that Societe Generale provide a quote with respect to the NDFs between Credit Lyonnais and High Risk. Societe Generale eventually provided a quote of approximately four million dollars, as set forth above.

It is clear from the examples cited above, as well as the full text of each telephone conversation, that Credit Lyonnais went beyond simply requesting market quotations from the Market-makers. Credit Lyonnais followed the initial requests with phone calls in which it repeatedly emphasized that it had declared Exchange Risk to be in effect and that it believed Exchange Risk could significantly affect the value of the NDFs. This resulted in a situation where some Market-makers declined to provide valuations and others did so under only after concerted efforts by Credit Lyonnais to persuade the Market-maker to substantially discount those valuations. Thus, Credit Lyonnais did not obtain

good faith market quotations as contemplated by the parties' agreements. Instead, they obtained quotations which discounted the cumulative value of the NDFs by more than forty million dollars. Under the circumstances set forth above, that result is not valid and was obtained in breach of the parties' contracts.

It is possible that had Early Termination not occurred, the value of the ruble versus the dollar might have changed significantly before the natural termination date occurred for each NDF. However, I cannot speculate that such an event would have occurred, and to do so would be to disregard the terms of the parties' agreements. Moreover, Credit Lyonnais had the option to allow the contracts to proceed until their natural termination date which would have set the value as of that later date, rather than declaring early termination. Credit Lyonnais chose not to do so.

The Master Agreement provided that in the event that adequate Market Quotations were not obtained, as here, the parties were required to follow a valuation procedure called Loss. This required one or both of the parties to determine the value of the NDFs themselves, rather than by reference to Market-makers.

On September 4, 1998, the eight outstanding NDFs had a

notional value of $60,828,562.43. High Risk asserts that it was "in the money" on these NDFs for a total of $41,337,108, as of September 4, 1998 and it states that this figure is supported by Credit Lyonnais's own internal marks. Credit Lyonnais disputes this assertion only on the grounds that it believed that Exchange Risk was in effect on that date, which it believed caused the value of the NDFs to be zero. Otherwise, Credit Lyonnais does not dispute that its internal marks valued the NDFs as being in High Risk's favor for $41,337,108 on the Early Termination date, i.e. September 4, 1998.

Based on the foregoing, I find that High Risk has demonstrated that it was "in the money" in the amount of $41,337,108. However, it is undisputed that High Risk failed to refund collateral payments posted by Credit Lyonnais totaling $11,394,670.20. Therefore, the amount owed to High Risk by Credit Lyonnais must be reduced by the amount of the collateral.

I also find that High Risk is entitled to interest from September 9, 1998 through December 6, 2002. September 9th was the date that Credit Lyonnais informed High Risk of the amount of the termination payment as calculated by Credit Lyonnais. <u>See</u>, Master Agreement § 6(d). On December 6, 2002, High Risk and Societe Generale began requesting that the court withhold decision on

their motions pending settlement efforts, which resulted in a very lengthy delay in the disposition of the instant motions.

Accordingly, it is

ORDERED that the motion for summary judgment by defendant Credit Lyonnais is denied; and it is further

ORDERED that plaintiff's motion for summary judgment is granted; and it is further

ORDERED that plaintiff's first cause of action is severed; and it is further

ORDERED that upon presentation of the requisite papers, the clerk is directed to enter judgment for the plaintiff on the third cause of action in the amount of $29,942,437.80, with interest from September 9, 1998 to December 6, 2002 as set forth above.

DATED: 7/6/05

ENTER:

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J.H.O.

IRA GAMMERMAN