

27, 2003 (the “Final Hearing”) to consider the Motion as it relates to the Final Order; and upon the record of the Interim Hearing, the Final Hearing and all pleadings filed with the Court; and after due deliberation and sufficient cause appearing therefore;

THE COURT HEREBY FINDS THAT:

A. Commencing on July 14, 2003 and concluding in the early morning hours of July 15, 2003 (the “Petition Date”), each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code.³ The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas announced the formation of two official unsecured creditors’ committees; one for Mirant Corporation (“Mirant”) and the other for Mirant Americas Generation, LLC (“MAG”). The appointment lists of members of both official unsecured creditors’ committees were filed in their respective chapter 11 cases on July 25, 2003.

B. The Court has jurisdiction over these chapter 11 cases under 28 U.S.C. §§ 157(b) and 1334. Consideration of this Final Order constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein are sections 105, 362, 363, 364, 365, 555, 556, 559, and 560 of the Bankruptcy Code and Bankruptcy Rules 4001(b), (c), (d), and 6006(a).

³ Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the “Canadian Debtors”) to commence plenary insolvency proceedings (the “Canadian Proceedings”) in the Court of Queen’s Bench of Alberta Judicial District of Calgary (the “Canadian Court”) pursuant to the *Companies’ Creditors Arrangement Act* (the “CCAA”). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

C. On July 14, 2003, the Court entered an order (the "Interim Order") in the case of debtor Mirant Americas Energy Marketing, L.P. ("MAEM") granting the Debtors interim relief on an emergency basis with respect to the Motion only as it relates to the provision of credit support and the granting of security interests. On July 15, 2003, the Court entered an order (the "Supplemental Order") in the case of MAEM implementing certain provisions of the Interim Order regarding the Postpetition Assurance Agreements. As this Court granted the Debtors' motion for an order requesting that their bankruptcy estates be jointly administered on July 15, 2003, this Final Order is applicable in the Debtors' administratively consolidated cases.

D. On August 6, 2003, the Debtors filed with this Court and served a *Notice of Final Hearing on the Motion for Interim Order Authorizing the Debtors to (I) Comply With Terms of Prepetition Trading Contracts, (II) Enter Into Post-Petition Trading Contracts in the Ordinary Course of Business, (III) Provide Credit Support Relating to Both Pre- and Post-Petition Trading Contracts, and (IV) Setting a Final Hearing to Consider the Entry of a Final Order Affirming the Interim Order and Authorizing the Assumption of Prepetition Trading Contracts.*

On August 12, 2003, the Debtors also filed with this Court and served a *Supplemental Notice of Final Hearing on the Motion for Interim Order Authorizing the Debtors to (I) Comply with the Terms of Prepetition Trading Contracts, (II) Enter Into Post-Petition Trading Contracts in the Ordinary Course of Business, (III) Provide Credit Support Relating to Both Pre- and Post-Petition Trading Contracts, and (IV) Setting A Final Hearing to Consider the Entry of a Final Order Affirming the Interim Order and Authorizing the Assumption of Prepetition Trading Contracts.*

E. In connection with the operation of their core businesses, the Debtors have historically engaged in asset risk management and optimization activities as well as proprietary trading activities pursuant to their internal risk management policy, as amended or modified from time to time (collectively, the “Trading Activities”). As a result of their historic Trading Activities, the Debtors maintain a portfolio consisting of active physical commodities and financial products trading positions (the “Existing Positions”).

F. Prior to the Petition Date, in connection with their Trading Activities, the Debtors utilized and entered into with their counterparties various industry standard trading contracts, including, but not limited to, ISDA, EEI, WSPP, GISB and/or NAESB master agreements, and various other master agreements, “long-form confirmations,” netting agreements, master netting agreements, collateral agreements and/or credit support agreements or annexes relating thereto (including all related schedules, exhibits, annexes and confirmations) and any transactions thereunder, as may have been amended, restated or supplemented from time to time (collectively, the “Prepetition Trading Contracts”). For the avoidance of doubt, Prepetition Trading Contracts include, and are limited to, only those contracts that, as of the Petition Date (i) are “forward contracts,” “commodity contracts” and/or “swap agreements” as such terms are defined in sections 101 or 761 of the Bankruptcy Code; (ii) are with counterparties that are “forward contract merchants” as defined in section 101(26) of the Bankruptcy Code or are otherwise entitled to the benefits of sections 555, 556, 559, or 560 of the Bankruptcy Code; and (iii) provide for liquidation or termination by a “forward contract merchant,” “commodity broker,” or “swap participant” under sections 556 or 560 of the Bankruptcy Code because of a condition of the kind specified in section 365(e)(1) of the Bankruptcy Code.

G. This Final Order preserves for the counterparties continuing to do business with the Debtors, without diminution, the rights the counterparties had at the Petition Date.

H. Utilization of Prepetition Trading Contracts, and the conducting of business pursuant to the terms of the Prepetition Trading Contracts, is necessary and critical to the Debtors' ability to engage in Trading Activities.

I. Prior to the Petition Date, the Debtors and certain counterparties to the Prepetition Trading Contracts entered into Assurance and Amendment Agreements ("Prepetition Assurance Agreements"), for the purpose of, among other things, limiting the risks and uncertainties that may arise with respect to the Prepetition Trading Contracts after the Petition Date. Following entry of the Interim Order, the Debtors and certain counterparties to the Prepetition Trading Contracts entered into Postpetition Assurance Agreements (together with the Prepetition Assurance Agreements, the "Assurance Agreements") in form and substance substantially similar to the form of agreement annexed to the Supplemental Order. Any counterparty that agreed or agrees with the Debtors to accept the benefits and protections of the Interim Order pursuant to the terms of their respective Assurance Agreement is referred to herein individually as a "Protected Counterparty" and collectively, "Protected Counterparties."

J. The Assurance Agreements provide, among other things, the parameters under which the Protected Counterparties agree to continue their relationships with the Debtors under the Prepetition Trading Contracts. The Assurance Agreements further indicate the Debtors' desire and intent to conduct postpetition trading activity in the ordinary course of business and grant appropriate credit support.

K. The Debtors were willing to enter into the Assurance Agreements and grant certain protections to the Protected Counterparties, including agreeing to seek authority to assume the Prepetition Trading Contracts of the Protected Counterparties and to pay the prepetition claims arising thereunder, because such Protected Counterparties possessed the right to terminate or liquidate their respective Prepetition Trading Contracts notwithstanding the commencement of these cases. The Debtors have determined in the exercise of their business judgment that their relationships with the Protected Counterparties are integral to the on-going and future success of the Debtors' operations and maintaining the value of the Debtors' estates. The Debtors' ability to continue their trading operations depends upon the continuation of their Prepetition Trading Contracts with the Protected Counterparties.

L. Absent immediate entry of the Interim Order, counterparties to the Prepetition Trading Contracts, consistent with industry practice, were likely to exercise their contractual rights to liquidate or terminate pursuant to sections 556 and/or 560 of the Bankruptcy Code, as the case may be.

M. The Debtors acknowledge and this Court finds that the Protected Counterparties (as defined herein) are "forward contract merchants," "commodities brokers," and/or "swap participants" as such terms are used in sections 556 and/or 560 of the Bankruptcy Code.

N. The Debtors further acknowledge and this Court finds that the Prepetition Trading Contracts by and between the Debtors and the Protected Parties are "forward contracts," "commodity contracts" and/or "swap agreements," as the case may be, as such terms are defined in sections 101 or 761 of the Bankruptcy Code and, as such, are therefore "safe harbor" contracts. As safe harbor contracts, the right of forward contract merchants, commodity brokers

and/or swap participants to cause the liquidation and/or termination of the Prepetition Trading Contracts because of a condition of the kind specified in section 365(e)(1) of the Bankruptcy Code, is not and cannot be stayed, avoided or otherwise limited by operation of any provision of the Bankruptcy Code or order of this Court pursuant to sections 556 and/or 560 of the Bankruptcy Code.

O. The Debtors further acknowledge and this Court finds that the Prepetition Trading Contracts by and between the Debtors and the Protected Parties are “executory contracts” as such term is used in section 365 of the Bankruptcy Code.

all P. Prior to the Petition Date and consistent with the terms of the Prepetition Trading Contracts ^{*they*} (as may have been amended by a Prepetition Assurance Agreement) and industry standards, the Debtors were required to provide to certain counterparties collateral, margin (initial, variation, maintenance, etc.) or similar security in the form of letters of credit, cash or other collateral (the “Prepetition Collateral”) to secure obligations owing to the counterparties in connection with the Trading Activities.

Q. Counterparties will not agree to maintain Existing Positions, continue Trading Activities, or engage in new Trading Activities solely on the basis of an unsecured debt allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense pursuant to section 364(a) or (b) of the Bankruptcy Code.

all R. Accordingly, the circumstances of these cases require the Debtors to provide to ~~counterparties~~ ^{*Protected Counterparties*} (i) collateral pursuant to section 364(c)(2) of the Bankruptcy Code and consistent with the terms of the Prepetition Trading Contracts and the Assurance Agreements to secure the Debtors’ obligations arising from postpetition market movements of Existing Positions; (ii)

liquidated damages for failure to make or receive postpetition deliveries and/or payments and postpetition Trading Activities; and (iii) superpriority administrative claims under section 364(c)(1) of the Bankruptcy Code on account of the Debtors' obligations arising from postpetition market movements of Existing Positions and postpetition Trading Activities to protect the ~~counterparties~~ ^{Protected Counterparties} from the risk of the Debtors' nonperformance.

S. The Debtors represent, and for the purpose of this Final Order, the Court accepts that the terms of both the Prepetition Assurance Agreements and Postpetition Assurance Agreements are fair, reasonable, and adequate given that the Debtors are in chapter 11.

T. Based upon the record presented to the Court by the Debtors, it appears that each of the Assurance Agreements were negotiated in good faith and at arm's length between the Debtors and the Protected Counterparties, and any credit extended pursuant to the Assurance Agreements by the Protected Counterparties is deemed to have been extended or made in good faith within the meaning of section 364(e) of the Bankruptcy Code.

U. The Debtors further acknowledge and this Court finds that assumption of the Prepetition Trading Contracts is in the best interest of the Debtors and their estates.

V. Good, adequate, and sufficient cause has been shown to justify the granting of the final relief herein, and the entry of this Final Order.

It is now therefore

ORDERED, ADJUDGED, AND DECREED:

1. This Final Order only protects "forward contract merchants" under section 101(26) of the Bankruptcy Code or "swap participants" under section 101(53C) of the Bankruptcy Code that are, in such capacity, counterparties to "forward contracts" under section

101(25) of the Bankruptcy Code or “swap agreements” under 101(53B) of the Bankruptcy Code, respectively, with one or more of the Debtors ^{being} and those counterparties entitled to the benefits of sections 555, 556, 559, or 560 of the Bankruptcy Code. *WML*

2. As used herein, the term “Debtor” will mean the Debtor party that is the direct obligor to a Prepetition Trading Contract or a Postpetition Trading Contract (as defined below), as the case may be. The term “Counterparty” will mean the non-Debtor party to a Prepetition Trading Contract or a Postpetition Trading Contract, as the case may be.

3. The Debtors are authorized (and each Counterparty will be entitled to rely upon such authorization) to:

- a. engage in Trading Activities in the ordinary course of business without further order of the Court, including but not limited to engaging in Trading Activities pursuant to the terms of the Prepetition Trading Contracts (as ^{has been} may have been amended by a Prepetition Assurance Agreement or Postpetition Assurance Agreement, the terms of each are hereby approved) both in connection with Existing Positions and by entering into new transactions, including but not limited to any and all terms relating to offsetting, netting and/or cross-netting; *WML*
- b. enter into new ISDA, EEI, WSPP, GISB and/or NAESB master agreements, and various other master agreements, “long-form confirmations.” netting agreements, master netting agreements, collateral agreements and/or credit support agreements or annexes relating thereto (including all related schedules, exhibits, annexes and confirmations) and any transactions thereunder, as may be amended, restated or supplemented from time to time, with existing or new Counterparties after the Petition Date in the ordinary course of business without further order of the Court (the “Postpetition Trading Contracts”) and to engage in Trading Activities pursuant thereto; and
- c. enter into Master Netting Agreements (as such term is defined in the Motion).

4. With respect to each Counterparty, the Debtor will:

- a. pending assumption or rejection of the Prepetition Trading Contracts, perform all obligations arising under Prepetition Trading Contracts, including, but not limited to, the (i) making of all payments when due, including without limitation, payments due for prepetition deliveries, postpetition deliveries on account of Existing Positions, postpetition deliveries on account of postpetition Trading Activities, financial product payments, or liquidated damages for failure to make or receive delivery and/or payments; provided, however, that the Debtor's authority to make payments due for prepetition deliveries or otherwise pay prepetition obligations is limited to Protected Counterparties or Counterparties who the Debtor or the Court determines are forward contract merchants, commodities brokers and/or swap participants, (ii) providing of collateral or maintenance or variation margin in connection with Existing Positions, including, without limitation, postpetition market movements in respect of Prepetition Trading Contracts, and (iii) providing of collateral or initial, maintenance or variation margin or payments in advance in connection with postpetition Trading Activities; and
- b. perform all obligations arising under Postpetition Trading Contracts, including, but not limited to, the (i) making of all payments when due, including without limitation, payments due for postpetition deliveries on account of postpetition Trading Activities, financial product payments, or liquidated damages for failure to make or receive delivery and/or payments, and (ii) providing of collateral or initial, maintenance or variation margin or payments in advance in connection with postpetition Trading Activities.

5. As security and assurance of the Debtor's obligations arising under Prepetition

Trading Contracts and Postpetition Trading Contracts:

- a. Counterparties are each granted, for their own benefit, effective as of the Petition Date and without the necessity of the execution by the Debtor, or filing, of security agreements, pledge agreements, mortgages, financing statements or otherwise, pursuant to section 364(c)(2) of the Bankruptcy Code, enforceable first-priority liens and security interests on any collateral, including, without limitation, initial, maintenance or variation margin or payments in advance and whether in the form of cash, letters of credit or otherwise provided to such Counterparty whether prior to, on, or after the date of this Final Order; and
- b. the obligations, liabilities and indebtedness of the Debtor arising from postpetition market movements in respect of Existing Positions and postpetition Trading Activities pursuant to Prepetition Trading Contracts

(Other than rejection damages under Code § 502(e))

or Postpetition Trading Contracts will have the status of a superpriority administrative expense, in accordance with section 364(c)(1) of the Bankruptcy Code, subject only to superpriority administrative claims granted in respect of any debtor-in-possession financing facility and any professional fee carve-out in respect thereof and fees due to the Office of the United States Trustee under 28 U.S.C. § 1930, and will be paid at the prices set forth in the Prepetition Trading Contracts or Postpetition Trading Contracts.

- c. Protected Counterparties or Counterparties under Prepetition Trading Contracts may net amounts and obligations against amounts and obligations under other Prepetition Trading Contracts and Postpetition Trading Contracts with the Debtor and vice versa. In this regard, there will be no distinction between transactions entered into prepetition and postpetition.

6. Only the assets of the particular Debtor that is the primary obligor under the relevant Prepetition Trading Contract or Postpetition Trading Contract shall be available to secure the obligations thereunder; provided, however, that nothing in this paragraph 5 shall impair the rights of the Debtors under any prior or subsequent Order governing cash management procedures in these cases or authorizing debtor in possession financing and nothing herein shall affect the rights of any party in interest to seek to further modify or object to the terms of any Order governing cash management procedures or to object to any order authorizing debtor in possession financing, nor will paragraph 5 increase or diminish any now existing collateral rights of the Counterparties listed on Exhibit "A."

7. MAG is not a party to any Postpetition Trading Contract and will not become a party to any Postpetition Trading Contract, absent further order of the Court upon notice and a hearing, with an opportunity by parties in interest to object.

8. The security interests and superpriority administrative status provided by this Final Order will not be altered or otherwise affected by any amendment, modification,

supplement, extension, renewal, restatement or refinancing of any pre- or postpetition indebtedness, any rejection of a Prepetition Trading Contract nor by any action or inaction taken by any parties in respect of the collateral subject to the liens of the Counterparties.

9. If any or all of the provisions of this Final Order are stayed, modified in a manner adverse to a Counterparty or vacated, or this Final Order otherwise terminates, such stay, modification, vacation, or termination will not affect (a) the validity of any indebtedness, obligation or liability incurred by the Debtors to each of the Counterparties before the receipt of written notice by the Counterparties of the effective date of such stay, modification or vacation or before any termination; (b) the validity or enforceability of the security interests, superpriority claims and netting and termination rights authorized or created hereby or pursuant to the Prepetition Trading Contracts, Postpetition Trading Contracts or any related documents; and (c) the rights of the Protected Counterparties to exercise remedies as set forth in the Prepetition Trading Contracts or the Postpetition Trading Contracts, as the case may be, and each Counterparty will be entitled to the benefits of the provisions of section 364(e) of the Bankruptcy Code, and the rights and protections referenced in the foregoing (a), (b), and (c) are intended to survive conversion or dismissal to the fullest extent legally permissible.

10. To the extent that the value of Prepetition Collateral (including, with respect to letters of credit, the face amount of the letter of credit) held by a Counterparty exceeds the aggregate amount of obligations owing by a Debtor to such Counterparty on account of Existing Positions (including amounts owing on account of postpetition market movements), such excess value will secure all obligations owing by the Debtor to such Counterparty on account of the Debtor's postpetition Trading Activities pursuant to the terms of the Prepetition Trading

Contracts or the Postpetition Trading Contracts. To the extent that the Prepetition Collateral is insufficient to secure a Debtor's obligations to any one or more Counterparties under the Prepetition Trading Contracts, and/or a Debtor is required to post collateral under a Postpetition Trading Contract, the Debtors individually and/or collectively are authorized to provide additional collateral to secure such obligations to all Counterparties without further order of the Court.

11. Any bank that has issued a letter of credit prior to the Petition Date may extend or replace such letter of credit in its discretion; provided, however, that such extension or replacement will not change, alter, or otherwise modify the priority or characterization of such bank's claim against the Debtors arising in connection with the letter of credit and any and all claims arising under an extended or replacement letter of credit will have the priority and character as if the extended or replacement letter of credit was issued prior to the Petition Date.

12. Except as may otherwise be set forth in a Prepetition Assurance Agreement or a Postpetition Assurance Agreement:

- a. any Counterparty that has entered or enters into new transactions postpetition under Prepetition Trading Contracts or Postpetition Trading Contracts knowingly with a Debtor on or after the second business day following written notice of the entry of the Interim Order is deemed to have accepted the benefits and protections of the Interim Order and this Final Order (the "Waiver Event"), but Waiver Event will not include accepting or making deliveries or payments entered into prepetition or liquidating or terminating the same; and
- b. upon the occurrence of a Waiver Event, each Counterparty is deemed to have waived the contractual right to cause the liquidation of a commodity contract or forward contract as such terms are used in section 556 of the Bankruptcy Code or termination of a swap agreement as such terms are used in section 560 of the Bankruptcy Code, each because of a condition of the kind specified in section 365(e)(1) of the Bankruptcy Code; provided, however, that such waiver as it relates to such Counterparty is

deemed null and void and without further effect in the event that (i) a Debtor delivers written notice to a Counterparty of the Debtor's intent to reject a Prepetition Trading Contract pursuant to section 365 of the Bankruptcy Code (a "Rejection Notice"); (ii) the Debtor fails to meet any margin or collateral requirements or otherwise fails to make any payments pursuant to the terms of any Prepetition Trading Contract or Postpetition Trading Contract; or (iii) this Final Order is stayed, modified in a manner ^{determined} adverse to a Counterparty or vacated, or otherwise terminates and each of the events in clauses (i), (ii) and (iii) hereof will be deemed to be a condition of the kind specified in section 365(e)(1) of the Bankruptcy Code.

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13. In the event that a Debtor delivers a Rejection Notice to a Counterparty, solely with respect to such Counterparty on and after receipt by the Counterparty of the Rejection Notice, the Debtor will not be required to (i) make any additional payments in respect of prepetition deliveries or Existing Positions, and/or (ii) provide any additional collateral or maintenance or variation margin; provided that nothing in this paragraph limits the Counterparty's rights as a result of the Debtor's failure to make such payment or provide such collateral or margin. With respect to any Counterparty, service by fax, by-hand delivery or overnight courier of a Rejection Notice will be deemed good and sufficient written notice of the Rejection Notice.

14. Notwithstanding anything to the contrary, in the event that a Debtor delivers a Rejection Notice to a Counterparty or this Court otherwise enters an order authorizing the rejection of a Prepetition Trading Contract pursuant to section 365 of the Bankruptcy Code, the determination of any settlement payments or termination payments owing under such Prepetition Trading Contract will be made pursuant to the terms of the Prepetition Trading Contract and measured as of the date such contract is actually terminated.

15. For the purposes of section 365 of the Bankruptcy Code, all of the Prepetition

Trading Contracts collectively between a Debtor and a Protected Counterparty will constitute a single unified contract and the Debtor must assume or reject such Prepetition Trading Contracts as a single unified contract and may not assume or reject underlying individual trading contracts or transactions. For avoidance of doubt, the terms “single unified contract” contained in this paragraph 14 only apply to the Debtors’ decision to assume or reject and for no other purposes including, without limitation, netting, cross-netting, or defaults under any of the Prepetition Trading Contracts.

16. Solely with respect to Protected Counterparties, the automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to allow immediate and unconditional enforcement of remedies by any Protected Counterparty upon the occurrence of any default under the Prepetition Trading Contracts or Postpetition Trading Contracts (as may be modified by the Prepetition Assurance Agreements or Postpetition Assurance Agreements as the case may be) by the Debtors and the Counterparties rights thereunder will not be modified, stayed, avoided or otherwise limited by order of the Bankruptcy Court or any court proceeding under title 11 of the United States Code. The Debtors waive the right and will not seek relief, including without limitation under section 105(a) of the Bankruptcy Code, to the extent that any such relief would in any way restrict or impair the rights of any Protected Counterparty under the Prepetition Trading Contracts (as amended by a Prepetition Assurance Agreement or Postpetition Assurance Agreement), Postpetition Trading Contracts or this Order; provided that such waiver will not preclude the Debtors from contesting whether a default has occurred under any Prepetition Trading Contract or Postpetition Trading Contract.

17. To the extent that a Counterparty causes the liquidation or termination of a

Prepetition Trading Contract and/or Postpetition Trading Contract pursuant to the terms hereof, any margin or collateral held by the Counterparty will be applied first to satisfy the Debtor's prepetition obligations owing under such contracts and second to satisfy the Debtor's postpetition obligations owing under such contracts.

18. Nothing will preclude a Counterparty from executing a Postpetition Assurance Agreement after the occurrence of a Waiver Event, in which case the Postpetition Assurance Agreement will control and such Counterparty will be deemed to be a Protected Counterparty.

19. The Prepetition Assurance Agreements, the Postpetition Assurance Agreements, and the provisions of this Final Order will be binding upon the Debtors, the Counterparties and their respective successors and assigns (including any trustees appointed for the Debtors' estates) and inure to the benefit of the Counterparties and Debtors (including, without limitation, any trustees hereafter appointed for the Debtors' estates in a proceeding under chapters 11 or 7 of the Bankruptcy Code) and their respective successors and assigns.

20. Notwithstanding any other provisions in this Order, the benefits and protections of this Final Order will be extended to all Existing Positions and future Trading Activities, regardless of the termination or liquidation of any Prepetition Trading Contract or Postpetition Trading Contract.

21. Nothing contained herein will affect the enforceability of, and the Debtors' obligations to abide by and comply with, any and all bylaws, rules and regulations of any exchange on which the Debtors engage in Trading Activities, all of which remain in full force and effect with respect to the Debtors, the Counterparties, the Trading Activities, the Existing Positions, the Prepetition Trading Contracts, the Postpetition Trading Contracts, the Prepetition

Assurance Agreements, the Prepetition Collateral, and the Postpetition Assurance Agreements. In enforcing such bylaws, rules and regulations, each exchange may avail itself of any and all remedies provided to such exchange by such bylaws, rules and regulations. The automatic stay of section 362 of the Bankruptcy Code is hereby modified to the extent necessary to effectuate the provisions of this paragraph.

22. Nothing contained herein will constitute a representation, warranty, or other endorsement of the Debtors' financial solvency or ability to consummate or fulfill any Prepetition Trading Contracts or Postpetition Trading Contracts by any exchange on which the Debtors engage in Trading Activities, all of which representations, warranties and endorsements are specifically disavowed. No such exchange will be held liable to any Counterparty for damages as a result of the Debtors' breach of, or inability to consummate or fulfill, any Prepetition Trading Contracts or Postpetition Trading Contracts.

23. Nothing contained herein will restrict the rights of Refco, LLC to avail itself of any and all remedies provided to such future commission merchant under its agreement with any Debtor.

24. The Debtors are authorized to enter into Postpetition Assurance Agreements substantially in the form attached as Exhibit "A" to the Supplemental Order. The form of the Postpetition Assurance Agreement is approved and is consistent with the termination, liquidation, and netting provisions provided in the Interim Order. Any Counterparty executing the form of Postpetition Assurance Agreement will be characterized as a Protected Counterparty within the meaning of this Final Order, and to the extent that the terms of the form Postpetition Assurance Agreement are more favorable than those provided to any other Counterparty that

previously executed a Postpetition Assurance Agreement, that Counterparty is deemed to have the protections provided in the approved form Postpetition Assurance Agreement.

25. The Prepetition Trading Contracts with the Counterparties listed on Exhibit “A” annexed hereto (including but not limited to the Protected Counterparties) are hereby assumed pursuant to section 365 of the Bankruptcy Code (the “Assumed Contracts”). Except as may otherwise be set forth in an Assurance Agreement, each Counterparty to an Assumed Contract is deemed to have permanently waived, relinquished, and discharged any further utilization and enforcement of any contractual right to cause the liquidation or termination of such Assumed Contract because of a condition of the kind specified in section 365(e)(1) of the Bankruptcy Code, during the pendency of these cases.

26. Nothing contained herein will be construed as authorizing or approving the Debtors’ assumption of any Prepetition Trading Contract with a Counterparty that is not listed on Exhibit “A” annexed hereto.

27. The Debtors may assume additional Prepetition Trading Contracts by filing, with the Court and serving on the Limited Service List and the Counterparty to the Prepetition Trading Contract proposed to be assumed, a Notice of Assumption, substantially in the form annexed hereto as Exhibit “B.” If no objection is interposed within ten business days following the filing and service of the relevant Notice of Assumption, such Prepetition Trading Contract shall be deemed to be an Assumed Contract pursuant to the terms of this Order without further order or a hearing. If an objection is timely interposed, a hearing shall be held to consider approval of the Debtors’ proposed assumption of the Prepetition Trading Contract that is the subject of such objection.

27. Nothing in this Order ^(including decretal paragraph 16) shall prevent any entity not listed on Exhibit "A" or not treated by the Debtors as a Counterparty from asserting that it is entitled to the protection or benefit of 11 U.S.C. § 362(b) or § 556 or any other provision of Title 11 of the United States Code, nor shall this Order enhance the rights, protections or benefits of any such entity. *lll*

28. This Amended and Restated Final Order is effective ^{as of} ~~none~~ ~~pro~~ ~~time~~ to August 27, 2003, the original date of the entry of the Final Order *and reflects the court's original intent.* *lll*

DATED: July 14, 2004

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HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE