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GUIDANCE NOTES FOR USE WITH THE GLOBAL MASTER REPURCHASE AGREEMENT (2011 VERSION)

These guidance notes:

- are designed to assist users of the Global Master Repurchase Agreement (2011 Version) (the *"Agreement")* in completing the Agreement and in arranging transactions under the Agreement;
- do not form part of the Agreement; and
- summarise the key provisions of the Agreement but are not intended to summarise all of the provisions of the Agreement.

A. INTRODUCTION

The Agreement has been produced by the Securities Industry and Financial Markets Association ("SIFMA") and the International Capital Market Association ("ICMA"). The Agreement has been prepared as a standard form and any person proposing to use it should ascertain that it is suitable for the circumstances in which it is proposed to be used. Neither SIFMA nor ICMA assume responsibility for use of the Agreement or any of the annexes in any particular circumstances. Parties using the document may wish to incorporate amendments. However, SIFMA and ICMA will only permit this document to be used in an amended form if the amendments are made in such a way that they are clearly identifiable, for example by a side letter or mark-up.

The Agreement was first published in November 1992 and revised in November 1995 (the *"1995 Version"*). A second revised version (the *"2000 Version"*) was published in October 2000. A third revised version (the "*2011 Version*") (to which these guidance notes relate) was published in May 2011. In Exhibit I to these guidance notes, there is a summary of the principal changes to the 2000 Version which have been made in the 2011 Version. The 2011 Version has been prepared by a working group of ICMA's European Repo Council.

The Agreement provides market participants with a substantial degree of flexibility in structuring the commercial aspects of both the Agreement and transactions made under it. For ease of reference a note of the matters which the Agreement expressly

to be agreed between the parties in respect of the Agreement as a whole appears in Annex I to the Agreement, while a note of equivalent matters in respect of particular transactions appears in Annex II to the Agreement (which provides a form for use as a confirmation).

The Agreement is designed for use with repurchase transactions (repos) but may also be used for buy/sell back transactions. The Buy/Sell Back Annex contains additional terms applicable to buy/sell back transactions effected under the Agreement. Use of the Agreement for buy/sell backs may help parties, where documentation is required, to obtain the most favourable capital treatment of transactions under the European Union Capital Adequacy Directive (recast).

ICMA has sought legal opinions from counsel in various jurisdictions on the enforceability of the 2011 Version of the Agreement. The jurisdictions covered by the opinions include:

- Anguilla
- Australia
- Austria
- Bahamas
- Bahrain
- Barbados
- Belgium
- Bermuda
- Brazil
- British Virgin Islands
- Canada
- Cayman Islands
- China
- Croatia
- Cyprus
- Czech Republic
- Denmark
- England
- Estonia
- Finland
- France
- Germany
- Greece
- Guernsey
- Hong Kong
- Hungary
- India
- Indonesia
- Ireland
- Israel
- Italy
- Japan
- Jersey
- Kuwait
- Latvia
- Lithuania
- Luxembourg
- Malta
- Mexico
- Netherlands
- Curaçao and Sint Maarten (formerly Netherlands Antilles)
- New Zealand
- Norway
- Oman
- Philippines
- Poland
- Portugal
- Saudi Arabia
- Scotland
- Singapore
- Slovakia
- Slovenia
- South Africa
- South Korea
- Spain
- Sweden
- Switzerland
- Taiwan
- Thailand
- Turkey
- United Arab Emirates
- USA

A list of the opinions available for the 2011 Version (and older versions) of the Agreement is available at www.icmagroup.org.

B. SPECIFIC COMMENTS

1. *Non-UK parties*

The Agreement has been drafted with a view to compliance with United Kingdom legal and regulatory requirements and on the basis of the application of United Kingdom taxation. If this Agreement is used by parties who are subject to other legal, regulatory or taxation regimes, local legal, regulatory and taxation advice in the relevant jurisdictions should be sought.

2. *Withholding tax*

The Agreement is primarily designed for use with gross paying securities, i.e. where the coupon on the securities may be paid by the issuer gross in all circumstances and the paying or collecting arrangements made in relation to the coupon do not result in the seller receiving the coupon under deduction of tax. Equally, it is primarily designed for use with margin securities which, if held across a coupon date or record date, would be gross paying securities. Parties proposing to use the Agreement with net paying securities, including net paying margin securities, should first investigate and satisfy themselves as to the suitability of the Agreement in the context of the transactions proposed to be entered into by them as well as to any further or other amendments that they should include.

3. *Withholding: repo return and cash margin*

For counterparties within the charge to UK corporation tax, if Part 6 Chapter 10 of the Corporation Tax Act 2009 applies, any amount recorded as finance return or finance charge (as appropriate) in relation to the advance represented by the repo, is treated as interest for UK tax purposes.

Section 607 of the Income Tax Act 2007 deems the differential between the sale price and the repurchase price under a normal repo transaction to be "interest" for UK income tax purposes on a deemed loan made by the buyer to the seller. Parties should take their own advice as to whether a transaction or series of transactions could or might give rise to annual interest. If interest is "annual" or "yearly" interest then, subject to various exceptions, it will be payable subject to withholding of UK basic rate income tax (currently 20%) where it has a UK source (broadly, where the seller is UK tax resident or trading in the UK). Paragraph 6(b) places a liability on the payer of the interest (i.e. the seller) "unless otherwise agreed", to gross up in respect of any withholding. Similarly, interest payable under paragraph 4(f) in respect of cash margin may, if it is annual or yearly interest, be payable subject to withholding if it has a UK source.

4. *Agency transactions*

The Agreement contains an annex, the Agency Annex, to be published shortly, which permits one party to act as agent for an identified principal and which contains additional provisions required for agency transactions. The provisions permit a party to act as agent for more than one principal and as principal for its own account provided that each agency transaction is specified as such at the time at which it is entered into and is effected for a single designated principal whose identity is disclosed to the other party.

The annex contains a provision whereby a party is entitled to call an event of default if an event of default occurs in relation to the agent.

The Agency Annex does not cover transactions for unnamed principals, block transactions (i.e. single transactions which are allocated among two or more underlying principals) or transactions which are to be allocated to principals after they have been entered into. However, SIFMA and ICMA have published a form of Addendum to the Agency Annex, which, if entered into by the parties provides for multiple principals, block transactions and allocation after the date of agreement between the agent and the counterparty as to the terms of a transaction. Parties who propose to utilise this Addendum should first satisfy themselves as to their legal and contractual position in the period prior to allocation being made.

In the interest of simplicity, the Agency Annex does not permit transactions where both parties are acting as agents.

5. *Base currency*

The parties must determine the base currency for the Agreement by specifying it in Annex I. Base currency is used for the purposes of the set-off provisions and the margining provisions of the Agreement. The choice of base currency is a matter for the parties. Relevant factors are likely to include the location and jurisdiction of incorporation of the parties and the currency of the purchase and repurchase prices and of the securities likely to be covered by the Agreement. Parties should note that an exchange rate exposure may arise in some circumstances on the insolvency of a counterparty where the base currency is not the currency of the place of incorporation. This is because, in the event that the counterparty goes into liquidation and the non-defaulting party claims for any excess owed to it after the set-off provisions have been applied in accordance with paragraph 10(d)(ii), the claim is in a currency other than the currency of the place of incorporation of the counterparty, the law applicable to the liquidation may require its conversion into that currency.

C. PROVISIONS OF THE AGREEMENT

Applicability (paragraph 1)

This paragraph sets out the general scope and applicability of the Agreement. It contemplates the inclusion in Annex I of supplemental terms and conditions and written modifications of the Agreement. Annex I provides a note of the matters which are expressly left to be agreed between the parties in the Agreement and also permits additional supplemental terms and conditions to be included.

If it is intended that the parties will carry out buy/sell backs and/or agency transactions under the Agreement, this must be stated in Annex I, and, if so, the provisions of the Buy/Sell Back Annex and/or the Agency Annex will be applicable. If parties do not wish the Agreement to be used for these transactions, the relevant paragraph in Annex I should be deleted.

The Agreement was not designed to cover equities, US Treasury instruments and net paying securities. Since the 1995 Version, annexes or wording have been developed to accommodate such securities. Therefore in the 2011 Version (as in the 2000 Version), there is no reference in the Heading to the Agreement to the exclusion of such securities. However, parties seeking to enter into transactions involving equities, US Treasury instruments and/or net paying securities should first investigate and ensure that the documentation is appropriate for their circumstances.

Definitions (paragraph 2)

The 2011 Version incorporates revisions to the definitions made both to accommodate new defined terms and to update or incorporate certain specific definitions. A selection of definitions are discussed below, and more detail on the revisions to the definitions is provided in Exhibit I to these guidance notes.

"Act of Insolvency" (paragraph 2(a))

This definition includes those events to be considered to be clear indications of a counterparty's inability to perform its obligations under an agreement of this type. The range of events has been expanded in the 2011 Version and other revisions have been made – see Exhibit I to these guidance notes for details.

"Default Market Value" (paragraph 2(m))

The procedure for determining the "Default Market Value" of securities has been revised in the 2011 Version. Further detail is provided in the section below dealing with paragraph 10 of the Agreement and in Exhibit I to these guidance notes.

"Designated Office" (paragraph 2(p))

The Agreement requires parties to specify the branches or offices through which they will enter transactions to be governed by the Agreement. This will enable parties, for credit and regulatory capital purposes, to enter into transactions only through branches or offices in jurisdictions in respect of which legal opinions as to the efficacy of the netting provisions of the Agreement have been obtained.

If parties use a branch or office in another jurisdiction, supervisors may not recognise the netting provisions of the Agreement for capital adequacy purposes with the consequence that gross exposures to counterparties may be required to be taken into account.

"Income" (paragraph 2(y))

The definition of Income has been revised in the 2011 Version to provide that distributions which are a payment or repayment of principal in respect of the underlying securities constitute Income for the purposes of the Agreement. This means that if an installment of principal is repaid during the term of a repo the procedure set out in paragraph 5 in relation to income payments will apply and require the benefit of the repaid installment to be passed on in the same way as with income or dividends. A corresponding change has been made to the definition of "Equivalent Securities" in paragraph 2(u) of the 2011 Version so that principal installments repaid during the term of a repo and which have been dealt with under the paragraph 5 income procedure are excluded from the term.

"Market Value" (paragraph 2(ee))

This definition is used for the purposes of margining and substitution. In the 2011 Version, this definition has been amended so that it no longer provides that the value of suspended securities will be nil for the purposes of the margining calculations in paragraph 4, with the result that the suspension of purchased securities will not necessarily cause a transaction exposure in respect of the transaction concerned. The definition has also been amended to allow the parties to apply a "Margin Percentage" (the percentage, if any, agreed by the parties acting in a commercially reasonable manner) when valuing securities, to allow the parties to agree a source or other method for valuing securities, and to provide that securities will now be valued having regard to market practice for valuing such securities.

"Price Differential" (paragraph 2(kk))

In order to calculate the price differential for a transaction, the parties are required to apply the pricing rate to the purchase price on a 360, 365 or other day basis in accordance with the applicable market convention which determines whether interest is calculated in any jurisdiction on the basis of a year of 360 days, 365 days or any other number of days.

"Transaction Exposure" (paragraph 2(xx))

The definition of Transaction Exposure has been substantially amended in the 2011 Version and now sets out two alternative methods of calculation for the parties to choose from by making the relevant election in Annex I:

- Method (A) reflects the method of calculation used under the 2000 Version, where exposure is equal to: (i) the product of the accrued Repurchase Price at such time and the applicable Margin Ratio (broadly, the Market Value of the Purchased Securities at the time the relevant transaction was entered into, divided by the Purchase Price) less (ii) the Market Value of Equivalent Securities at such time.

- Method (B) is a new method of calculation, which, it is understood, reflects the practice of a number of market participants. Under this method, instead of applying a Margin Ratio to the Repurchase Price, a haircut may be applied to the Market Value of Equivalent Securities. Exposure is equal to: (i) the accrued Repurchase Price at such time; less (ii) the "Adjusted Value" of Equivalent Securities (being the Market Value of Equivalent Securities at such time after adjustment for any discount ("haircut") for the relevant securities, if any, as agreed by the parties).

If the result of the relevant calculation is positive, the buyer has a Transaction Exposure equal to the result of the calculation. If the result is negative, the seller has a Transaction Exposure equal to the absolute value of the result of the calculation. However, under Method (A), the Transaction Exposure is capped at the Repurchase Price as at the date of determination.

Method (A) worked example:

*Transaction Exposure = (R * MR) - MV*

If:

- R (the accrued Repurchase Price at the time of calculation) = GBP 95
- MR (the Margin Ratio) = 11/10
- MV (the Market Value of Equivalent Securities at the time of calculation) = GBP 90

then the Buyer would have a Transaction Exposure to the Seller equal to GBP 14.5 (being (GBP 95 * 11/10) – GBP 90).

Method (B) worked example:

Transaction Exposure = R – V

where V = MV (1 – H)

If:

- R (the accrued Repurchase Price at the time of calculation) = GBP 95
- MV (the Market Value of Equivalent Securities at the time of calculation) = GBP 90
- H (the haircut) = 0.1

then the Buyer would have a Transaction Exposure to the Seller equal to GBP 14 (being (GBP 95 – ((GBP 90)*(1 – 0.1))).

Initiation; Confirmation; Termination (paragraph 3)

This paragraph describes the mechanics of initiating, confirming and terminating a transaction. The Agreement contemplates that either party may initiate a transaction orally or in writing and that one or both parties (depending on whether the transaction is between a dealer and a customer, or between two dealers) shall deliver a written confirmation. The confirmation may be substantially in the form of Annex II and must contain certain prescribed information together with such additional terms as the parties may agree.

In the case of a buy/sell back transaction, the Buy/Sell Back Annex permits the parties to deliver a single confirmation which relates to both legs of the buy/sell back transaction or a separate confirmation for each leg of the transaction. The confirmation or confirmations relating to a buy/sell back transaction must specify the pricing rate applicable to that transaction.

If a transaction is a buy/sell back transaction and/or an agency transaction, this must be specified in the confirmation.

Termination of on demand transactions may be initiated by either the buyer or the seller. Termination will occur after not less than the minimum period customarily required for settlement or delivery of money or equivalent securities of the relevant kind from the date of demand.

Margin Maintenance (paragraph 4)

The Agreement fixes the amount of margin at the outset of each transaction by reference to the value of the securities at the purchase date and the purchase price to give the "Margin Ratio", which is defined as the market value of the purchased securities at the time when the transaction was entered into divided by the purchase

price. The parties may choose a different margin ratio for any or all transactions entered into under the Agreement.

If a transaction relates to different types of securities and the parties attribute the purchase price among the different types, the definition of margin ratio permits a separate margin ratio to be applied to each type of security.

This paragraph requires margin to be calculated on a global basis for all transactions outstanding under the Agreement to give an overall "Net Exposure".

A margin call is satisfied by making a "Margin Transfer", which may be by way of cash or securities. The combination of cash and securities in any margin transfer is at the option of the party making the transfer, but any securities transferred must be reasonably acceptable to the other party. Where cash is transferred, the parties may specify the currency, the rate at which interest shall accrue on that cash and the interest payment dates.

If a party (the "Transferor") is obliged to make a Margin Transfer of securities which are equivalent to those previously transferred as margin securities ("Equivalent Margin Securities") but is unable to do so on the relevant day, having made all reasonable efforts, for any reason relating to the securities or the clearing system through which the securities are to be transferred then it will immediately pay to the other party cash margin at least equal to the market value of the Equivalent Margin Securities. Unless the parties otherwise agree, such cash margin shall not bear interest. Additionally, if the non-delivery of the Equivalent Margin Securities is continuing for two business days or more, the other party may, by notice, require the Transferor to pay an amount (the "Cash Equivalent Amount") determined by the other party as equal to the Default Market Value of the Equivalent Margin Securities in accordance with paragraph 10(f) of the Agreement.

The parties may elect not to include a particular transaction in the global margin calculation but instead to provide margin separately in such manner as the parties shall agree.

By mutual agreement between the parties, the parties may also elect to reprice a transaction rather than apply the margin maintenance provisions. A repricing may be achieved by way of adjustment to the purchase price or the securities.

Paragraph 4(k) provides for the elimination of an exposure by, in effect, adjusting the repurchase price for the securities. This is done by terminating the original transaction and replacing it with a new transaction in which the purchased securities are equivalent to the purchased securities in the original transaction. The purchase price for the new transaction shall be the market value of those securities at the date of the repricing as adjusted by the margin ratio. The repurchase date, the pricing rate and the margin ratio are identical to those of the original transaction.

Paragraph 4(l) provides for the elimination of an exposure by, in effect, adjusting the identity and/or the amount of the securities. This is done by terminating the original transaction and replacing it with a new transaction in respect of new securities with a market value substantially equal (recognising that some discrepancy may arise from the need to deliver convenient quantities of the new securities) to the repurchase price under the original transaction (that is, the original purchase price as increased by the price differential accrued up to the date of the adjustment). The parties will need to agree upon the identity of the new securities at the relevant time; they may include some or all of the securities purchased under the original transaction, in which case only those deliveries of securities necessary to reflect the differences will be made.

In the case of repricing by way of adjustment to the securities, paragraph 4(l)(i) provides that the original transaction shall be terminated on the adjustment date on such terms as the parties shall agree and, except for the items specified in paragraph 4(l), the terms of the new transaction shall also be agreed by the parties.

This leaves the parties with flexibility to effect the adjustment in whichever way they wish. For example, if the parties wish to avoid either an early payment of the price differential on the original transaction or compounding of the pricing rate, they can provide for the purchase price under the new transaction to be equal to the purchase price of the original transaction. The price differential for the new transaction would then be adjusted by adding the accrued price differential in respect of the original transaction.

Income Payments (paragraph 5)

This paragraph provides that where an income payment date occurs during the term of a transaction, or afterwards if the income payment date occurs before equivalent securities have been delivered to the seller or, if earlier, an Early Termination Date or the termination of the Transaction under paragraph 10(i) of the Agreement has occurred, then the buyer will on the date of the income payment transfer to the seller an amount equal to that income payment. A similar provision applies to margin securities held over an income payment date.

Payment and Transfer (paragraph 6)

This paragraph deals with the transfer of title and with the practicalities of payment and transfer.

All transfers of securities under the Agreement (whether on the first or second leg of a transaction or by way of transfer, adjustment or return of margin) pass absolute title to those securities to the transferee.

The provisions for the method of the transfer of securities are flexible; the method of transfer may be as agreed between the parties (sub-paragraph 6(a)(iii)).

All monies payable must be paid gross unless withholding or deduction is required by law (paragraph 6(b)). In that case, there must be a "grossing up".

Paragraph 6(j) applies if the parties have specified in Annex I that it is to apply. If it is specified to apply, then a condition precedent is introduced which states that a party may withhold its payments and deliveries under the Agreement (other than its obligations under paragraph 10) if any of the events specified in paragraph 10 (which contains the events of default) has occurred and is continuing in relation to the counterparty.[2]

Contractual Currency (paragraph 7)

All payments made in respect of the purchase price and the repurchase price must be made in the contractual currency (i.e. the currency specified on a transaction by transaction basis). The contractual currency should be distinguished from the base currency which is specified (in Annex I) for the purposes of the Agreement as a whole, and which is used in the calculation of set-off and margin (paragraph 10(d)(ii)).

Substitution (paragraph 8)

This permits the seller or the transferor of margin, if the parties agree, to substitute other securities for any purchased securities or margin securities. The new securities must have a market value at least equal to the securities which they replace.

Representations (paragraph 9)

This paragraph includes the customary representations for agreements of this type. Representation (b) is that each party will engage in transactions as principal (unless the transaction is an agency transaction).

If a transaction is not an agency transaction, it is important that this representation can be given in order for the set-off mechanism in paragraph 10 to be effective. In order for set-off to be effective on the insolvency of a UK party to the Agreement, the debts owed by and to each party must be owed by and to it acting in the same capacity.

Where one party is acting as an agent and the Agency Annex applies, representation (b) is amended to include a representation that the party has complied with the conditions of the Agency Annex.

Representation (g) is a representation that each party is not relying on the advice of the other, that it has made its own decisions regarding the entering into of any transactions under the Agreement and that it understands the terms, conditions and risks of each transaction. Each party should check whether this representation is accurate, both at the time of entering the Agreement and any transaction.

Events of Default (paragraph 10)

This paragraph specifies ten Events of Default that may be (broadly) summarised as follows:

- failure to pay the purchase price on the purchase date or the repurchase price on the repurchase date;
- failure to deliver purchased securities on the purchase date or equivalent securities on the repurchase date, in either case within the standard settlement time for delivery of those securities (this Event of Default will only apply if the parties have specified in Annex I that it is to apply);
- failure to pay any sum due in circumstances where the "mini close-out" provisions of paragraph 10(h) or (i) have been applied;
- failure to comply with the margin maintenance provisions;
- failure to pay manufactured dividends;
- act of insolvency;
- incorrect or untrue representations;
- admission by a party of its inability or intention not to perform obligations under the Agreement;
- being declared in default by or being suspended from membership of any securities exchange or being prohibited from dealing in securities by any competent authority, on the grounds of failure to meet requirements relating to financial resources or credit rating; and
- failure to perform any other obligation(s) under the Agreement which is not remedied after 30 days' notice by the non-defaulting party.

The parties are free to agree upon further Events of Default if they so wish.

The methodology in calling an Event of Default has been amended in the 2011 Version. Under the 2000 Version to have an Event of Default you need both the occurrence of the relevant event and a notice by the non-defaulting party (except in the case of certain acts of insolvency where default is automatic). In the 2000 Version, the occurrence of the Event of Default lead automatically to a termination of the Agreement. Under the 2011 Version the occurrence of the relevant event is itself defined as an Event of Default, without the need for a notice, but the occurrence of an

[2] Provisions of this kind are currently the subject of ongoing litigation. In addition, regulatory authorities are considering such provisions both in the context of resolution regimes and regulatory capital.

Event of Default will not trigger a termination of the Agreement unless the non-defaulting party gives notice designating an "Early Termination Date". Under the 2000 Version the presentation of a petition for the winding up of a party, or the appointment of a liquidator, triggers an automatic termination. Under the 2011 Version, however, the parties have to elect whether they want this event to lead to an automatic termination – now termed an "Automatic Early Termination".

The new procedure for the designation of an Early Termination Date is set out in paragraph 10(b) of the Agreement. If at any time an Event of Default has occurred and is continuing, the non-defaulting party may, by not more than 20 days' notice to the defaulting party specifying the relevant Event of Default, designate an Early Termination Date in respect of all outstanding transactions. The non-defaulting party therefore has more flexibility regarding the selection of the close out date. Where Automatic Early Termination has been specified in Annex I with respect to the defaulting party, the Early Termination Date in respect of all outstanding transactions will be automatically triggered by the occurrence of certain acts of insolvency in relation to the defaulting party, namely the presentation of a petition for winding up or the appointment of a liquidator.

Additionally, paragraph 10(d)(ii) now explicitly provides that the calculation of the close out amount payable will take into account amounts payable under paragraphs 10(g) (relating to expenses and interest thereon) and 12 (Interest).

The occurrence of an Early Termination Date triggers the acceleration of outstanding transactions, conversion of delivery obligations in respect of securities to cash sums based on the market value of those securities (converted into the base currency where necessary) and the application of set-off. The non-defaulting party must provide to the defaulting party a statement showing in reasonable detail such calculations and specifying the balance payable by one party to the other. Such balance will be payable on the business day following the date of such statement however (to the extent permitted by applicable law) interest shall accrue on such amount from and including the Early Termination Date to, but excluding, the date of payment. The defaulting party will be liable for the non-defaulting party's expenses in connection with the Event of Default, together with interest.

Where there has been a failure to deliver the purchased securities to the buyer on the purchase date or to deliver equivalent securities to the seller on the repurchase date, as indicated above, that will only be an Event of Default if the parties have specified in Annex I that it is to be. Where it is not an Event of Default, and also where it is an Event of Default but the non-defaulting party chooses not to give a default notice designating an Early Termination Date, the non-defaulting party is entitled to:

- require the repayment of the purchase price or repurchase price if it has paid it; or

- if it has a transaction exposure in respect of the relevant transaction, require the payment of cash margin; or
- by written notice, declare that only that transaction or, in the case of a partial failure to deliver equivalent securities, the part of that transaction which corresponds to the equivalent securities that have not been delivered, shall be terminated.

The procedure for the calculation of the close-out amount has been amended in the 2011 Version, amongst other things, to provide more flexibility to the non-defaulting party as to the default valuation time.

The non-defaulting party calculates the close-out amount by reference to an actual sale or purchase price or, if the non-defaulting party chooses, the market value of the securities, in either case at any time "on or about the Early Termination Date" (as opposed to the requirement under the 2000 Version that this be during the five dealing days following the occurrence of the Event of Default). As under the 2000 Version, in each case transaction costs are also taken into account and, where an actual sale or purchase is not for the whole amount of the relevant securities, the possibility of more than one sale or purchase is contemplated.

Where the non-defaulting party chooses to apply the market value of the securities, market value is derived from quotations obtained from market participants.

Additional provisions have been included in the 2011 Version to allow for adjustments to be made to the value of any security: (x) to reflect accrued but unpaid coupons not reflected in the price or prices quoted in respect of such securities; and (y) in respect of any Pool Factor Affected Security, to reflect the realisable value of such security, taking into consideration the Pool Factor Distortion (paragraph 10(f)(ii)(A)). A Pool Factor Affected Security is a security, other than an equity security, in respect of which the decimal value of the outstanding principal divided by the original principal balance of such security is less than one (as indicated by any pool factor applicable to such security), such circumstances a "Pool Factor Distortion". For example, if a mortgage-backed security has an original principal amount of USD 100 and a current outstanding principal amount of USD 60, indicated by a pool factor of 0.6, because a proportion of the mortgages underlying that issue of securities have matured and the value has been released to the holders of the securities, then that security would be a Pool Factor Affected Security. Any such adjustments are to be made in a commercially reasonable manner.

If, however, the non-defaulting party has endeavoured but been unable to sell or purchase securities or to obtain quotations, or has determined that it would not be commercially reasonable to sell or purchase securities at the prices bid or offered or to obtain such quotations (e.g. where the position is so large that this will materially affect the quotations that could be obtained) or that it is not commercially reasonable to utilise

the quotations obtained (e.g. where the securities are very illiquid and there is considerable disparity between the quotations obtained), it may instead determine the market value to be the "Net Value" of the securities. The "Net Value" is a fair market value reasonably determined by the non-defaulting party and derived from such pricing sources (including trading prices) and based on such pricing methods as the non-defaulting party considers appropriate, less transaction costs which would be incurred or reasonably anticipated in connection with the purchase or sale of such securities.

Users should note that by entering into the 2011 Version (and indeed, this is also true of the 2000 Version), they agree that "buy-ins" will be dealt with under the 2011 Version and not according to the buy-in rules applicable to cash trades under section 450 of the ICMA rules and recommendations. In the case of both an Event of Default and a mini close-out, the close-out prices are obtained by reference to market prices. There is thus no separate procedure for buying in the securities and charging the buy-in price to the counterparty.

The prohibition on claiming consequential loss contained in the 2000 Version has been retained in the 2011 Version. Where an Event of Default or a mini close-out occurs, the defaulting party is required to pay to the non-defaulting party certain fees, costs and other expenses incurred by the other party as a result of the defaulting party's failure. These costs include the costs associated with entry into replacement transactions or unwinding or replacing any hedging transactions. For example, where an Event of Default occurs during the term of a transaction and the cost of entering into a replacement repo for the remainder of the original term has increased due to an increase in the repo rate, the non-defaulting party would be entitled to receive an amount equal to the additional cost. Where the non-defaulting party decides not to enter into replacement transactions but to replace or unwind any hedging transactions, the non-defaulting party is entitled to receive its good faith determination of its loss or expenses in connection with such replacement or unwinding of any hedging contracts. In both cases where the non-defaulting party achieves a gain as a result of the defaulting party's failure, the non-defaulting party must account to the defaulting party for such gain.

A new contractual set-off clause has been included at paragraph 10(n) of the 2011 Version, which provides that the close-out amount payable to one party (the payee) by the other (the payer) following an Event of Default may, at the option of the non-defaulting party, be set off against any amount payable by the payee to the payer under any other agreement between them.

Tax Event (paragraph 11)

This paragraph provides that in the event of any action taken by a revenue authority or brought in a court of competent jurisdiction or a change in tax law or practice which has a material adverse effect on a party in the context of a transaction, that party may elect

to terminate that transaction. If it does so elect, the other party may override the election to terminate the transaction, but in so doing will agree to indemnify the affected party against the adverse effect.

Interest (paragraph 12)

This paragraph provides for interest to accrue on late payments.

Single Agreement (paragraph 13)

This paragraph provides the acknowledgement that the Agreement and each transaction under it constitute a single contractual relationship. These provisions may assist in establishing that set-off is available in some insolvency proceedings.

Notices and Other Communications (paragraph 14)

These are broadly standard provisions in agreements of this type. An amendment has been introduced into the 2011 Version which expressly contemplates the delivery of notices by email. References to the delivery of notices by telex have been deleted.

As in the 2000 Version, the notices provisions in the 2011 Version take into account the practical difficulties that can be experienced by parties seeking to serve default notices on defaulting parties in extreme market conditions. The relevant provision states that where the non-defaulting party has made all practical efforts to deliver the default notice in one of the normal ways, but has not been able to effect delivery, it can complete a "Special Default Notice", the effect of which will be to deem an event of default to occur on the date specified in the Special Default Notice. Under the 2011 Version, any Special Default Notice must designate the Early Termination Date.

Entire Agreement; Severability (paragraph 15)

These are standard provisions in agreements of this type.

Non-assignability; Termination (paragraph 16)

Rights and obligations under the Agreement and/or any transactions are not assignable by one party without the consent of the other party. It should be noted that any assignment may affect the enforceability of the set-off provisions in the event of a party's insolvency.

There is one exception to this prohibition. Paragraph 16(b) permits a party to assign its right in a net sum payable to it following termination after an event of default.

A new paragraph 16(e) has been introduced into the 2000 Version which provides for continuity of contract in the event that any further member states of the European Union participate in European monetary union.

Governing Law (paragraph 17)

The Agreement is governed by English law and, under the 2011 Version, the parties submit to the exclusive jurisdiction of the English courts (including in respect of any non-contractual obligations arising out of the Agreement).

There is provision for the appointment of process agents; this will be appropriate where one or more of the parties does not have an office in the UK.

No Waivers etc. (paragraph 18)

These are standard provisions in agreements of this type.

Waiver of Immunity (paragraph 19)

These are standard provisions in agreements of this type.

Recording (paragraph 20)

Each party consents to the tape recording of telephone calls between them. This is recommended by a number of regulatory authorities.

Third Party Rights (paragraph 21)

Following the coming into force of the Contracts (Rights of Third Parties) Act 1999 in the UK, a paragraph has been included in the 2000 Version preventing third parties from acquiring rights under the Agreement to the extent they would otherwise have been able to under such Act.

Optional Wording (Annex I)

The Annex also provides optional wording to be included in relation to the inclusion of net paying securities under the 2011 Version and the inclusion in the 2011 Version of existing transactions between the parties which have been documented under the 2000 Version or the 1995 Version. Additionally, new optional wording has been introduced in Annex I to the 2011 Version in relation to negative rate transactions.

Forward Transactions (Annex I)

Where the parties have entered into a forward transaction, optional wording has been introduced in the 2000 Version which allows them to amend the terms of the transaction up until two business days prior to the purchase date. The parties may, subject to agreement between them, adjust the purchase price or the number of purchased securities to be delivered. Margining provisions have also been included to allow parties to call for margin in respect of a forward transaction from the date which is the last day on which delivery arrangements would normally be commenced in respect of that transaction for delivery on the purchase date. The provision also allows Income to be taken into account for the purposes of determining the margin requirement.

Confirmation (Annex II)

Annex II contains a pro forma of a Confirmation for use under the Agreement.

Buy/Sell Back Transactions (Buy/Sell Back Annex)

This Annex enables the Agreement to be used for buy/sell back transactions and contains the amendments to the Agreement for these transactions.

The transaction must be identified as a buy/sell back in the confirmation. As noted above, the confirmation relating to a buy/sell back may be in the form of a single document or two separate confirmations. The confirmation (or at least one of them where there are two) must specify the pricing rate applicable to the transaction.

Buy/sell back transactions are not terminable on demand. The purchase price and the sell back price are to be quoted exclusive of accrued interest.

Where a buy/sell back transaction crosses an income payment date the buyer does not have the obligation to make a manufactured payment to the seller equivalent to the coupon. There is instead an adjustment to the sell back price to reflect the fact that the seller will not receive a manufactured coupon. If section 602 of the Income Tax Act 2007 applies, the buyer can be deemed to have made a manufactured payment in these circumstances and adverse UK tax consequences (including the imposition of withholding tax in certain circumstances) may arise.

Agency Transactions (Agency Annex) – to be published shortly

An agency transaction is a transaction in which one of the parties is acting as agent for an identified principal. The Agency Annex does not cover transactions for unnamed principals. As noted above, the Agency Annex does not cover transactions for block transactions or transactions which are to be allocated to principals after they have been entered into unless the separately published Addendum to this annex is adopted. The Agency Annex does not permit transactions where both parties are acting as agents.

An agent must have authority to enter into transactions on behalf of the principal and authority to perform all of the principal's obligations under the Agreement. The confirmation relating to an agency transaction must specify that it is an agency transaction.

An agency transaction is deemed to be entered into between the other party and the principal on whose behalf the agent has entered into the transaction. The provisions of the Agreement apply as between the principal and the other party as if the principal were a party to a separate agreement on the same terms.

If an event of default occurs in relation to the agent, the other party may elect that it shall be treated as an event of default in respect of the principal. This is because,

although the non-defaulting party should be protected legally in the event of the insolvency of the agent (as the transaction is with the principal and not the agent), it may, as a practical matter, be difficult to enforce rights where the agent has defaulted.

Exhibit I

Summary of the principal changes to the 2000 Version made in the 2011 Version

Highlights of the changes made in the 2011 GMRA include the following:

- The methodology in calling an Event of Default has been amended. Under the 2000 GMRA to have an Event of Default you need both the occurrence of the relevant event and a notice by the non-Defaulting Party. The occurrence of the Event of Default leads automatically to a close out. Under the 2011 GMRA the relevant event is an Event of Default but it will not trigger a close out unless the non-Defaulting Party gives notice. So a cross default can now potentially occur even if a close out has not been initiated. Under the 2000 GMRA the presentation of a petition for the winding up of a party, or the appointment of a liquidator, triggers an automatic close out. Now, under the 2011 GMRA, the parties have to elect whether they want this event to lead to an automatic close out.

- Increased flexibility is afforded to the non-Defaulting Party as regards the default valuation time and valuation procedures.

- The definition of Act of Insolvency has been expanded.

- The concept of a Margin Percentage has been introduced, which will allow parties to adjust the value attributed to Margin Securities if they agree to do so.

- A procedure has been introduced which allows for payment of a Cash Equivalent Amount on a return of collateral where Equivalent Margin Securities are not available.

- A contractual set-off clause has been included, which provides that the close-out amount payable to one party (the payee) by the other (the payer) following an Event of Default may, at the option of the non-Defaulting Party, be set off against any amount payable by the payee to the payer under any other agreement between them.

Greater detail is provided below.

Paragraph 2 (Definitions):

➢ **Act of Insolvency.** The definition of Act of Insolvency has been amended to:

  – include the situation where a secured party takes possession of, or carries out other enforcement measures in relation to, all or substantially all of the assets of

a party, provided that the process is not dismissed, discharged, stayed or restrained within 15 days;

– provide for an additional trigger upon a party's becoming insolvent or becoming unable to pay its debts as they become due or failing to pay its debts as they become due (the trigger relating to a party admitting in writing its inability to pay its debts as they become due is also retained);

– reduce the number of days from 30 to 15 for petitions (alleging or for the bankruptcy, winding up or insolvency of a party) to be stayed or dismissed. Additionally, an Act of Insolvency will occur on the commencement of proceedings by a Competent Authority (to which the 15 day period does not apply); and

– include the appointment of a conservator or custodian over all or any material part of a party's property as a trigger – this clarifies the position in the 2000 Version, where a custodian or conservator may not have been regarded as an analogous officer to a receiver, administrator, liquidator or trustee.

- **Applicable Rate.** A definition of Applicable Rate has been included to complement the amendments to the default interest provisions of the Agreement. Following an Event of Default, the Applicable Rate will be the rate selected in a commercially reasonable manner by the non-Defaulting Party (rather than LIBOR), which will allow much more flexibility to the non-Defaulting Party to determine the appropriate rate. In all other circumstances, the rate will be the rate agreed between the parties (and may be specified in Annex I or in a Confirmation).

- **Business Day.** The Business Day definition has been simplified, and the specific references to Clearstream and Euroclear settlement have been removed, so that:

– in relation to the settlement of a Transaction or the delivery of Securities through a settlement system, a Business Day will be a day on which that settlement system is open for business;

– in relation to the settlement of a Transaction or delivery of Securities otherwise than through a settlement system, a Business Day will be a day on which banks are open for business in the place where the relevant Securities are to be delivered and, if different, the place in which the relevant payment is to be made; and

– in relation to the payment of any other amount, a Business Day will be a day, other than a Saturday or Sunday, on which banks are open for business in the principal financial centre of the country of which the currency in which the payment is denominated is the official currency and, if different, in the place

where any account designated by the parties for the making or receipt of the payment is situated (or, in the case of a payment in euro, a day on which TARGET2 operates).

- **Cash Equivalent Amount**. A definition of Cash Equivalent Amount has been included, which cross-refers to the meaning given in paragraph 4(h) (see below for details).
- **Competent Authority**. A definition of Competent Authority has been included, referring to a regulator, supervisor or similar official with primary insolvency, rehabilitative or regulatory jurisdiction over a party in the jurisdiction of its incorporation or establishment or jurisdiction of its head office.
- **Default Notice**. The definition of Default Notice has been amended to convert such notice into one that is used to designate a day as an "Early Termination Date" for the purposes of the Agreement.
- **Early Termination Date**. A definition of Early Termination Date has been included. This will be the date designated as such in the Default Notice, or as otherwise determined in accordance with paragraph 10(b). The Early Termination Date will be the date on which close out is designated to occur.
- **Electronic Messaging System**. A definition of Electronic Messaging System has been included, which specifically covers email. This new definition complements other changes which allow for notices or other communications to be given through an Electronic Messaging System.
- **Equivalent Securities**. The definition of Equivalent Securities and the related definition of "equivalent to" have been amended to exclude Distributions from redemption proceeds.
- **Forward Transaction**. A definition of Forward Transaction has been included, which cross-refers to the meaning specified in Annex I.
- **Income**. The definition of Income now expressly includes distributions which are a payment or repayment of principal in respect of the relevant securities (previously such distributions were excluded).
- **Margin Percentage**. A definition of Margin Percentage has been included. In relation to any Margin Securities or Equivalent Margin Securities, this will be a percentage, if any, agreed to by the parties acting in a commercially reasonable manner. The application of a Margin Percentage will allow parties to attribute a lower value to Margin Securities than their market value, thereby requiring a higher value of Margin Securities to satisfy a margin call.

- **Margin Securities**. The definition of Margin Securities has been amended to refer to Securities of the type and value (having applied a Margin Percentage, if any) reasonably acceptable to the party calling for the Margin Transfer.

- **Market Value**. The definition of Market Value now contemplates the application of a Margin Percentage when valuing Margin Securities. The definition also now allows the parties to agree a source or other method for valuing the relevant Securities. Securities will now be valued pursuant to market practice for valuing such Securities. The definition in the 2000 Version provided that Securities that are suspended will be deemed to have a nil value for the purposes of margin maintenance – this provision has been deleted in the 2011 Version.

- **Net Margin**. The definition of Net Margin has been amended to incorporate the concept of the Cash Equivalent Amount, so that such amounts will be included in a determination of Net Margin.

- **Spot Rate.** The definition of Spot Rate has been amended so that, following an Event of Default, the source for the rate will be a pricing source or bank in the London inter-bank market, specified by the non-Defaulting Party. For all other purposes, the source for the rate will be as agreed between the parties. However, if no source is agreed between the parties, the source will be selected by the Buyer.

- **TARGET2**. A definition of TARGET2 has been included to replace the definition of TARGET.

- **Transaction Exposure**. The definition of Transaction Exposure has been substantially amended and now sets out two alternative methods of calculation for the parties to choose from by making the relevant election in Annex I:

  - Method (A) reflects the method of calculation used under the 2000 Version, where exposure is equal to: (i) the product of the accrued Repurchase Price at such time and the applicable Margin Ratio *less* (ii) the Market Value of Equivalent Securities at such time.

  - Method (B) is a new method of calculation, which, it is understood, reflects the practice of a number of market participants. Under this method, exposure is equal to: (i) the accrued Repurchase Price at such time; less (ii) the "Adjusted Value" of Equivalent Securities (being the Market Value of Equivalent Securities at such time after adjustment for any discount ("haircut") for the relevant securities, if any, as agreed by the parties).

  If the result of the relevant calculation is positive, the buyer has a Transaction Exposure equal to the result of the calculation. If the result is negative, the seller has a Transaction Exposure equal to the absolute value of the result of the

calculation. However, under Method (A), the Transaction Exposure is capped at the Repurchase Price as at the date of determination.

(In relation to Forward Transactions, note that the definition of Transaction Exposure set out in Annex I is retained and is unchanged.)

Paragraph 4 (Margin Maintenance)

The margin maintenance provisions set out in paragraph 4 have been amended to contemplate the payment of cash in the place of Equivalent Margin Securities in certain circumstances, as follows.

- Newly inserted paragraph 4(h) provides that, where a party (the Transferor) is obliged to transfer Equivalent Margin Securities and, having made all reasonable efforts to do so, is, for any reason relating to the Securities or the clearing system through which the Securities are to be transferred, unable to transfer Equivalent Margin Securities, then it shall immediately pay to the other party Cash Margin at least equal to the Market Value of such Equivalent Margin Securities. Unless the parties otherwise agree, such Cash Margin shall not bear interest.
- Additionally, if the failure is continuing for two Business Days or more, the other party may, by notice to the Transferor, require the Transferor to pay an amount (the "Cash Equivalent Amount") equal to the Default Market Value of the Equivalent Margin Securities determined by the other party in accordance with paragraph 10(f), which applies as if the other party were the non-Defaulting Party and references to the Early Termination Date were to the effective date of the notice.

Paragraph 5 (Income Payments)

The provisions relating to Income Payments have been amended so that if an Income Payment Date occurs after the Repurchase Date, but before Equivalent Securities have been delivered to the Seller (or, if earlier, the Early Termination Date or termination of the Transaction under paragraph 10(i)) then the Buyer must pay the Seller an amount equal to (and in the same currency as) the amount paid by the issuer, on the date such income is paid by the issuer. Consequential amendments have also been made to refer to the payment of Cash Equivalent Amounts, where applicable.

Paragraph 6 (Payment and Transfer)

Paragraph 6 has been amended to refer to any agreed book entry or other securities clearance system (instead of just Euroclear and Clearstream). An exemption from the requirement that a transfer of Securities must be made free and clear of liens has been included, to allow for liens granted to the operator of the clearance system through

which the relevant Securities are transferred. An equivalent amendment has been made to the representation of no liens in paragraph 9.

Paragraph 6(j) now makes it a condition precedent to any obligation of a party (other than an obligation upon a close-out of the Agreement) that none of the events specified in paragraph 10(a) (Events of Default) has occurred and is continuing with respect to the other party, rather than requiring parties specifically to designate those events in Annex I for this purpose (as was the case in the 2000 Version). As under the 2000 Version, Paragraph 6(j) is optional – it applies only if the parties have so specified in Annex I.

Paragraph 8 (Substitution)

An amendment has been made to paragraph 8 to clarify that the Market Value for new Margin Securities is determined as at the time the exchange is agreed.

Paragraph 9 (Representations)

The representation in paragraph 9(h) to the effect that any transfer of Securities is made free and clear of liens has been amended to carve out liens granted to the operator of the clearance system through which the relevant Securities are transferred.

Paragraph 10 (Events of Default)

Changes have been made to paragraph 10, amongst other things, to amend the methodology in calling an Event of Default, to build in the concept of the Early Termination Date, to allow more flexibility to the non-Defaulting Party as to the default valuation time and to include a new broad contractual set-off clause. Further details are as follows.

- **General changes.** Changes have been made throughout paragraph 10 to reflect the new definition of Early Termination Date (the Repurchase Date for each Transaction shall be deemed to occur on the Early Termination Date). Amendments have also been made to refer to the payment of Cash Equivalent Amounts, where applicable.

- **Methodology for calling an Event of Default.** The methodology in calling an Event of Default has been amended. Under the 2000 Version to have an Event of Default you need both the occurrence of the relevant event and a notice by the non-Defaulting Party: in other words, an Event of Default, as defined, only occurs when the notice is given. The occurrence of such an Event of Default leads automatically to a close out. Under the 2011 Version the relevant event is itself defined as the Event of Default, but it will not trigger close out unless the non-Defaulting Party

gives notice. So a cross default could now potentially occur under other agreements of the Defaulting Party even if a close out has not been initiated. The new methodology also gives the non-Defaulting Party more flexibility regarding the selection of the close out date. Under the 2000 Version the presentation of a petition for the winding up of a party, or the appointment of a liquidator, triggers an automatic close out. Under the 2011 Version, the parties have to elect whether they want this event to lead to an automatic close out – now termed an Automatic Early Termination.

- **Changes to the composition of certain Events of Default**. In addition, certain changes have been made to the list of events comprising Events of Default.

  - Sub-paragraph (a)(ii) has been amended so that this Event of Default is triggered when the relevant party fails to deliver Purchased Securities or Equivalent Securities on the due date "within the standard settlement time for delivery of the Securities concerned".

  - Sub-paragraph (a)(iv) has been amended to describe more specifically the Events of Default relating to margin maintenance, rather than simply cross-referring to the obligations in paragraph 4. It will be an Event of Default if the Seller or Buyer fails to:

    - make a Margin Transfer within the minimum period in accordance with paragraph 4(g) or, in the case of an obligation to deliver Equivalent Margin Securities, either to deliver the relevant Equivalent Margin Securities or to pay Cash Margin in accordance with paragraph 4(h)(i) or to pay the Cash Equivalent Amount in accordance with paragraph 4(h)(ii); or

    - where paragraph 4(i) applies, to provide margin in accordance with that paragraph; or

    - to pay any amount or to transfer any Securities in accordance with paragraphs 4(k) or (l).

  - Sub-paragraph (a)(ix) has been largely replaced to reflect the new definition of Competent Authority and other changes. It will be an Event of Default if a party is declared in default or is suspended or expelled from membership or participation in any securities exchange, or if a party is suspended or prohibited from dealing in securities by any Competent Authority, in each case on the ground that it has failed to meet any requirements relating to financial resources or credit rating.

- **Designation of Early Termination Date.** The new procedure for the designation of an Early Termination Date (which initiates close out) is set out in paragraph 10(b).

If at any time an Event of Default has occurred and is continuing the non-Defaulting Party may, by not more than 20 days' notice to the Defaulting Party specifying the relevant Event of Default, designate an Early Termination Date in respect of all outstanding Transactions. Where Automatic Early Termination has been specified in Annex I with respect to the Defaulting Party, the Early Termination Date in respect of all outstanding Transactions is automatically triggered by the occurrence with respect to the Defaulting Party of the Act of Insolvency which is the presentation of a petition for winding-up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party.

- **Calculation statement.** A new paragraph 10(d)(iii) has been included, which requires the non-Defaulting Party to provide to the Defaulting Party, as soon as reasonably practicable after effecting the close out calculations, a statement showing in reasonable detail such calculations and specifying the balance payable by one party to the other. Such balance shall be due and payable on the Business Day following the date of such statement. However (to the extent permitted by applicable law) interest shall accrue on such amount on a 360 day, 365 day or other day basis in accordance with the applicable market convention (or as otherwise agreed by the parties), for the actual number of days during the period from and including the Early Termination Date to, but excluding, the date of payment. Additionally, paragraph 10(d)(ii) now explicitly provides that the calculation of the close out amount payable will take into account amounts payable under paragraphs 10(g) (relating to expenses and interest thereon) and 12 (Interest).

- **Determination of Default Market Value.**

  - Paragraph 10(e) (formerly 10(d)) has been amended to provide more flexibility to the non-Defaulting Party when determining the Default Market Value of any Equivalent Securities or Equivalent Margin Securities as part of the close out procedure – which the non-Defaulting Party is required to do "on or as soon as reasonably practicable after the Early Termination Date". Accordingly, the definition "Default Valuation Time" (which in the 2000 Version was the close of business on the fifth dealing day after the occurrence of the Event of Default, in most cases) has been deleted. The definition of "Net Value" has been amended to include trading prices as price sources that the non-Defaulting Party may have regard to and also extend Transaction Costs to include not just those which would be incurred, but also those which are reasonably anticipated. The definition "Transaction Costs" has been broadened to include any mark-up or mark-down or premium paid for guaranteed delivery and also to cover costs not just incurred, but also those which are reasonably anticipated.

- A number of amendments have been made to the Default Market Value procedures in paragraph 10(f).
  - Sub-paragraph (i): This first potential valuation method, which allows the non-Defaulting Party to elect to use actual sale or purchase prices as a basis for the determination of the Default Market Value, now applies where the non-Defaulting Party has sold or purchased, as applicable, relevant Securities on or about the Early Termination Date - in the 2000 Version, the relevant time period was between the occurrence of the Event of Default and the Default Valuation Time. In addition, this provision has been amended to provide that reasonable commissions, as well as reasonable costs, fees and expenses incurred in connection with the sale/purchase may be taken into account to determine the net proceeds of any sale or purchase. An amendment also now requires the non-Defaulting Party to act in "good faith".
  - Sub-paragraph (ii): This second valuation method, which allows the non-Defaulting Party to elect to reference received bid or offer quotations as a basis for the determination of the Default Market Value, has been amended to:
    - reference "pricing methodology which is customary for the relevant type of security";
    - provide for the adjustment, in a commercially reasonable manner, of any quoted price or prices (x) to reflect accrued but unpaid coupons not reflected in the price or prices quoted in respect of such securities and (y) in respect of any Pool Factor Affected Security, to reflect the realisable value of such Security, taking into consideration the Pool Factor Distortion ("Pool Factor Affected Security" means a security other than an equity security in respect of which the decimal value of the outstanding principal divided by the original principal balance of such Security is less than one (as indicated by any pool factor applicable to such security), such circumstances a "Pool Factor Distortion"); and
    - extend Transaction Costs, which are deducted or added, as applicable, as part of the calculation, to include not just those which would be incurred, but also those which are reasonably anticipated.
  - Sub-paragraph (iii): This third valuation method, which provides a fallback method of determining the Default Market Value, has also been amended. Under the 2000 Version, this method is only available to the non-Defaulting Party where (a) he has endeavoured but is unable to sell or purchase Securities or obtain quotations in accordance with the two methods described above, or (b) he has determined that it would not be commercially

reasonable to obtain such quotations, or that it would not be commercially reasonable to use any quotations which it has so obtained. Under the 2011 Version, this method will also be available where the non-Defaulting Party has determined that it would not be commercially reasonable to sell or purchase Securities at the prices bid or offered.

- The non-Defaulting Party is no longer required to give the Defaulting Party a "Default Valuation Notice" under this paragraph.

- **Interest on expenses.** Paragraph 10(g) (formerly 10(f)) has been amended so that interest on the expenses incurred by the non-Defaulting Party will accrue at the Applicable Rate (instead of LIBOR).

- **Partial termination.** Paragraph 10(i) (formerly 10(h)) now expressly provides for the situation where a Buyer fails to deliver all Equivalent Securities to the Seller on the applicable Repurchase Date. Where a Buyer delivers some, but not all, required Equivalent Securities, the relevant Transaction may be terminated in part.

- **Hedging costs.** Paragraph 10(l) (formerly 10(k)) has been broadened to allow the innocent party recover any loss or expense incurred, not just in entering into replacement transactions, but also in "otherwise hedging its exposure", following the termination of a Transaction before its agreed Repurchase Date (or, newly included, in the case of a Forward Transaction, before its Purchase Date) under paragraphs 10(b), 10(h)(iii) or 10(i)(iii).

- **Requirement to notify if Event of Default occurs.** Paragraph 10(m) (formerly 10(l)) has been amended to reflect the changes made to the methodology in calling an Event of Default. A party is now required to notify the other party immediately if an Event of Default, or an event which, "upon the service of a notice or the lapse of time, or both" would be an Event of Default, occurs in relation to it.

- **New contractual set-off clause.** A new contractual set-off clause has been included at paragraph 10(n), which broadly provides that the close-out amount payable to one party (the payee) by the other (the payer) following an Event of Default may, at the option of the non-Defaulting Party, be set off against any amount payable by the payee to the payer under any other agreement between them. Full extract below:

  "Any amount payable to one party (the Payee) by the other party (the Payer) under paragraph 10(d) may, at the option of the non-Defaulting Party, be reduced by its set off against any amount payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement between the Payee and the Payer or

instrument or undertaking issued or executed by one party to, or in favour of, the other party. If an obligation is unascertained, the non-Defaulting Party may in good faith estimate that obligation and set off in respect of the estimate, subject to accounting to the other party when the obligation is ascertained. Nothing in this paragraph shall be effective to create a charge or other security interest. This paragraph shall be without prejudice and in addition to any right of set off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise)."

Paragraph 12 (Interest)

Paragraph 12 has been amended so that default interest accrues at the Applicable Rate (instead of LIBOR) and the day count basis is determined in accordance with applicable market convention or as otherwise agreed by the parties (instead of referencing the applicable ISMA convention).

Paragraph 14 (Notices)

Amendments have been made to paragraph 14 to allow notices or other communications to be sent by Electronic Messaging System (which expressly includes email) and to delete the specific provision which dealt with notices or communications sent by telex. In addition, consequential amendments have been made to reflect the new methodology in calling an Event of Default (i.e. references to Default Notices are deleted, provisions in relation to Early Termination Notices are inserted).

Paragraph 17 (Governing law)

The governing law and jurisdiction provisions in paragraph 17 have been updated to reflect the Rome II Regulation (EC/864/2007), which allows parties to choose the law applicable to most torts and other non-contractual obligations in certain circumstances. In addition, exclusive jurisdiction is now given to the English courts. Finally, additional provisions have been included which provide that, if a party fails to comply with its obligation to appoint a replacement agent for service of process, then the other party will be entitled to appoint one on the first party's behalf and at the first party's expense.

Annex I: Supplemental Terms or Conditions

Annex I has been amended to complement the amendments described above. In particular, note that new elections are included in respect of Transaction Exposure Method and Automatic Early Termination. In addition, a new (optional) supplemental provision has been included to deal with negative rate transactions. This provision

states that, in the case of Transactions in which the Pricing Rate will be negative, the parties agree that if Seller fails to deliver the Purchased Securities on the Purchase Date then – (i) Buyer may by notice to Seller terminate the Transaction (and may continue to do so for every day that Seller fails to deliver the Purchased Securities); and (ii) for every day that Seller fails to deliver the Purchased Securities the Pricing Rate shall be zero.