

2011 Global Master Repurchase Agreement Protocol

published on May 13, 2011

by the International Capital Market Association

The International Capital Market Association (**ICMA**) has published this 2011 Global Master Repurchase Agreement Protocol (this **Protocol**) to enable the parties to a 1995 Global Master Repurchase Agreement (**GMRA 1995**) or a 2000 Global Master Repurchase Agreement (**GMRA 2000**) to effect certain amendments to such GMRA 1995 or GMRA 2000 (each an **Agreement**).

Accordingly, a party to an Agreement may adhere to this Protocol and be bound by its terms by completing and delivering a letter substantially in the form of Exhibit 1 to this Protocol (an **Adherence Letter**) to ICMA, as agent, as set forth below.

1. AMENDMENTS

- 1.1 By adhering to this Protocol in the manner set out in section 2 below, a party to an Agreement (an **Adhering Party**) shall effect the amendment to each such Agreement between it and any other Adhering Party, in each case on the terms and subject to the conditions of this Protocol and the relevant Adherence Letter.
- 1.2 The amendments that a party may effect to an Agreement pursuant to this Protocol are set forth in Annexes 1 and 2 respectively (each an **Annex**). Each Adhering Party should specify in its Adherence Letter its election that either or both of these Annexes are applicable.

2. ADHERENCE AND EFFECTIVENESS

- (a) Adherence to this Protocol will be evidenced by the execution and delivery, in accordance with section 5(f) below, to ICMA, as agent, of an Adherence Letter by an Adhering Party.
- (b) Each Adhering Party will deliver two copies of the Adherence Letter, one a manually signed original and the other a conformed copy containing, in place of each signature, the printed or typewritten name of each signatory. Each Adhering Party agrees that, for evidentiary purposes, a conformed copy of an Adherence Letter certified by an appropriate officer of ICMA will be deemed to be an original.
- (c) Any amendment pursuant to this Protocol of an Agreement will be effective on receipt by ICMA, as agent, of an Adherence Letter from each party to that Agreement.

- (d) This Protocol is intended for use without negotiation, but without prejudice to any amendment, modification or waiver in respect of an Agreement that the parties may otherwise effect in accordance with the terms of that Agreement.
- (e) In adhering to this Protocol, an Adhering Party may not specify additional provisions, conditions or limitations in its Adherence Letter or otherwise. Any purported adherence that ICMA, as agent, determines in good faith is not in compliance with this section will be void.

3. WARRANTIES

3.1 Each Adhering Party warrants and undertakes to each other Adhering Party with which it has an Agreement, on a continuing basis and in respect of such Agreement, that:

- (a) it is duly authorised and empowered to perform its duties under the Adherence Letter and that Agreement, as amended by the Adherence Letter and this Protocol;
- (b) it is acting as principal in respect of the Adherence Letter or, where it has entered into an Agreement as agent in accordance with the provisions of that Agreement, as agent;
- (c) the text of this Adherence Letter and its Annexes confirms exactly to the text of the standard form of Adherence Letter and Annexes posted by ICMA on its website.

4. EVIDENCE OF CAPACITY AND AUTHORITY

Each Adhering Party shall deliver to ICMA, as agent, such evidence as it deems appropriate to evidence its capacity to adhere to this Protocol and the authority of anyone signing on its behalf and, where it is acting as agent, evidence of its authority to act as agent.

5. MISCELLANEOUS

(a) ***Entire Agreement; Restatement.***

- (i) This Protocol constitutes the entire agreement and understanding of the Adhering Parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise contemplated or provided in an Annex or elsewhere in this Protocol) with respect thereto.
- (ii) Except for any amendment to an Agreement made pursuant to this Protocol, all terms and conditions of that Agreement will continue in full force and effect in accordance with its provisions on the effective date of that amendment.

(b) ***Amendments.*** No amendment, modification or waiver in respect of the matters contemplated by this Protocol will be effective unless made in accordance with the terms of the Agreement and then only with effect between the parties to that Agreement.

- (c) **Limited Right to Revoke.** Adherence to this Protocol is irrevocable except that an Adhering Party may, by subsequently delivering to ICMA, as agent, a notice substantially in the form of Exhibit 2 to this Protocol (a **Revocation Notice**), designate a date earlier than May 13, 2013 (a **Cut-off Date**) as the last date on which any counterparty may adhere to this Protocol in respect of any Agreement between them, and:
- (i) any designated Cut-off Date that would otherwise fall on a Business Day that is less than three days following the day on which the Revocation Notice is effectively delivered will be deemed to occur on the day that is three days following the date of such effective delivery. Any designated Cut-off Date that would otherwise fall on a day that is not a day on which ICMA's office is open will be deemed to occur on the next day that the ICMA office is open;
 - (ii) upon the effective designation of a Cut-off Date by an Adhering Party, this Protocol will not amend or otherwise affect any Agreement between that Adhering Party and its counterparty which adheres to this Protocol after that Cut-off Date occurs or is deemed to occur. The foregoing is without prejudice to any amendment to any Agreement between two Adhering Parties effected pursuant to this Protocol on or before the day on which that Cut-off Date occurs or is deemed to occur, which will continue in full force and effect;
 - (iii) each Revocation Notice must be delivered in duplicate, one a manually signed original and the other a conformed copy containing, in place of each signature, the printed or typewritten name of each signatory;
 - (iv) each Adhering Party agrees that, for evidentiary purposes, a conformed copy of a Revocation Notice certified by an appropriate officer of ICMA will be deemed to be an original; and
 - (v) any purported revocation that ICMA, as agent, determines in good faith is not in compliance with this section will be void and ICMA shall notify the affected parties promptly and in writing.
- (d) **Headings.** The headings used in this Protocol and any Adherence Letter are for purposes of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Protocol or any Adherence Letter.
- (e) **Governing Law.** This Protocol and each Adherence Letter will, as between two Adhering Parties and in respect of each Agreement between them, be governed by and construed in accordance with English law.
- (f) **Notices.** Any Adherence Letter or Revocation Notice must be in writing and delivered in person or by courier on any business day between 9:00 a.m. and 5:00 p.m. local time to the GMRA Protocol Services, ICMA at Talacker 29, Zurich 8001, Switzerland. An Adherence Letter or a Revocation Notice will be deemed effectively delivered on the date it is delivered unless on the date of that delivery the receiving ICMA office is closed or that communication is delivered after 3:00 p.m. Zurich time, in which case that communication will be deemed effectively delivered on the next day the ICMA office is open.

- (g) **Limitation of liability:** neither ICMA nor any of its officers, servants or agents will incur any liability to any Adhering Party or any other person or be responsible for any loss, damage, expense or claim whatsoever suffered or incurred by any Adhering Party or any other person as a result of performing or failing to perform any of its functions under this Protocol except to the extent that such liability, loss, damage, claim or expense is shown to be attributable to the fraud or wilful default of ICMA. Neither ICMA nor any of its officers, servants or agents shall be liable for any loss of business, profit or consequential damage of any kind whatsoever.

Form of Adherence Letter

[Letterhead of Adhering Party]

[Date]

**International Capital Market Association
Talacker 29
8001 Zurich
Switzerland**

Dear Sirs,

2011 Global Master Repurchase Agreement Protocol - Adherence

The purpose of this letter is to confirm our adherence to the 2011 Global Master Repurchase Agreement Protocol as published by the International Capital Market Association on May 13, 2011 (the **Protocol**). This letter constitutes an Adherence Letter as referred to in the Protocol.

The definitions and provisions contained in the Protocol are incorporated into this Adherence Letter, which supplements and forms part of each [GMRA 1995] [GMRA 2000]¹ between us and each other Adhering Party.

1. APPLICABLE TERMS

[Annex 1 to the Protocol, which amends the GMRA 1995, shall be applicable.]²

[Annex 2 to the Protocol, which amends the GMRA 2000, shall be applicable.]³

2. APPOINTMENT AS AGENT AND RELEASE

We hereby appoint ICMA as our agent for the limited purposes of the Protocol and accordingly we waive, and hereby release ICMA from, any rights, claims, actions or causes of action whatsoever (whether in contract, tort or otherwise) arising out of or in any way relating to this Adherence Letter or our adherence to the Protocol or any actions contemplated as being required by ICMA.

3. CONTACT DETAILS

Our contact details for purposes of this Adherence Letter are:

Name:

Address:

Telephone:

¹ Delete as applicable

² Delete as applicable

³ Delete as applicable

Fax:
Email:

We consent to the publication of the conformed copy of this letter by ICMA and to the disclosure by ICMA of the contents of this letter.

Yours faithfully,

[ADHERING PARTY]⁴

By: _____

Name: _____

Title: _____

⁴ Specify legal name of Adhering Party. A separate Adherence Letter should be lodged for each legal entity that is a party to a 1995 GMRA or 2000 GMRA and wishes to be bound by the terms of the Protocol.

Form of Revocation Notice

[Letterhead of Adhering Party]

[Date]

**International Capital Market Association
Talacker 29
8001 Zurich
Switzerland**

Dear Sirs,

2011 Global Master Repurchase Agreement Protocol – Revocation Notice

The purpose of this letter is to notify you that we wish to designate as the last date on which any counterparty may indicate its adherence to the 2011 Global Master Repurchase Agreement Protocol, in respect of any [GMRA 1995] [GMRA 2000]¹ between us, the following date (the ***Cut-off Date***):

[SPECIFY DATE]

This letter constitutes a Revocation Notice as referred to in the 2011 Global Master Repurchase Agreement Protocol.

We consent to the publication of the conformed copy of this notice by ICMA on and after the Cut-off Date and to the disclosure by ICMA of the contents of this letter.

Yours faithfully,

[ADHERING PARTY]²

By: _____

Name: _____

Title: _____

¹ Delete as applicable

² Specify legal name of Adhering Party.

ANNEX 1

GMRA 1995

The GMRA 1995 is amended as follows:

1. Paragraph 2(a) is deleted and replaced with the following:
 - “(a) “Act of Insolvency” shall occur with respect to any party hereto upon -
 - (i) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement, or composition with, creditors; or
 - (ii) a secured party taking possession of, or carrying out other enforcement measures in relation to, all or substantially all assets of such party, provided the relevant process is not dismissed, discharged, stayed or restrained within 15 days; or
 - (iii) its becoming insolvent or becoming unable to pay its debts as they become due or failing or admitting in writing its inability generally to pay its debts as they become due; or
 - (iv) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property; or
 - (v) the presentation or filing of a petition in respect of it (other than by the other party to this Agreement in respect of any obligation under this Agreement) in any court or before any agency or the commencement of any proceeding by any Competent Authority alleging or for the bankruptcy, winding-up or insolvency of such party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition not having been stayed or dismissed within 15 days of its filing (except in the case of a petition presented by a Competent Authority or for winding-up or any analogous proceeding, in respect of which no such 15 day period shall apply); or
 - (vi) the appointment of a receiver, administrator, liquidator, conservator, custodian or trustee or analogous officer of such party or over all or any material part of such party's property; or
 - (vii) the convening of any meeting of its creditors for the purpose of considering a voluntary arrangement as referred to in section 3 of the Insolvency Act 1986 (or any analogous proceeding);”.
2. A new paragraph 2(fA) is added immediately following paragraph 2(f) as follows:

“(fA) “Competent Authority”, a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over a party in the jurisdiction of its incorporation or establishment or the jurisdiction of its head office;”.

3. Paragraphs 2(j) and (k) are deleted and replaced with the following:

“(j) “Default Market Value”, the meaning specified in paragraph 10;

(k) “Default Notice”, a written notice served by the non-Defaulting Party on the Defaulting Party under paragraph 10(b) designating a day as an Early Termination Date;”.

4. A new paragraph 2(mA) is added immediately following paragraph 2(m) as follows:

“(mA)“Early Termination Date”, the date designated as such in a Default Notice or as otherwise determined in accordance with paragraph 10(b);”.

5. Paragraph 10 is deleted in its entirety and is replaced with the following:

“10. **Events of Default**

(a) If any of the following events (each an “Event of Default”) occurs in relation to either party (the “Defaulting Party”, the other party being the “non-Defaulting Party”) whether acting as Seller or Buyer -

(i) Buyer fails to pay the Purchase Price upon the applicable Purchase Date or Seller fails to pay the Repurchase Price upon the applicable Repurchase Date; or

(ii) if the parties have specified in Annex I that this sub-paragraph shall apply, Seller fails to deliver Purchased Securities on the Purchase Date or Buyer fails to deliver Equivalent Securities on the Repurchase Date, in either case within the standard settlement time for delivery of the Securities concerned; or

(iii) Seller or Buyer fails to pay when due any sum payable under sub-paragraph (h) or (i) below; or

(iv) Seller or Buyer fails to:

(A) make a Margin Transfer within the minimum period in accordance with paragraph 4(g);

(B) to pay any amount or to transfer any Securities in accordance with paragraphs 4(j) or (k); or

(v) Seller or Buyer fails to comply with paragraph 5; or

(vi) an Act of Insolvency occurs with respect to Seller or Buyer; or

- (vii) any representations made by Seller or Buyer are incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated; or
- (viii) Seller or Buyer admits to the other that it is unable to, or intends not to, perform any of its obligations hereunder or in respect of any Transaction; or
- (ix) Seller or Buyer being declared in default or being suspended or expelled from membership of or participation in, any securities exchange or suspended or prohibited from dealing in securities by any Competent Authority, in each case on the grounds that it has failed to meet any requirements relating to financial resources or credit rating; or
- (x) Seller or Buyer fails to perform any other of its obligations hereunder and does not remedy such failure within 30 days after notice is given by the non-Defaulting Party requiring it to do so,

then sub-paragraphs (b) to (g) below shall apply.

- (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 a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in Annex I with respect to the Defaulting Party, then an Early Termination Date in respect of all outstanding Transactions will occur at the time immediately preceding the occurrence with respect to the Defaulting Party of an 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.
- (c) If an Early Termination Date occurs, the Repurchase Date for each Transaction hereunder shall be deemed to occur on the Early Termination Date and, subject to the following provisions, all Cash Margin (including interest accrued) shall be repayable and Equivalent Margin Securities shall be deliverable, in each case on the Early Termination Date (and so that, where this sub-paragraph applies, performance of the respective obligations of the parties with respect to the delivery of Securities, the payment of the Repurchase Prices for any Equivalent Securities and the repayment of any Cash Margin shall be effected only in accordance with the provisions of sub-paragraph (d) below).
- (d) (i) The Default Market Values of the Equivalent Securities and any Equivalent Margin Securities to be transferred, the amount of any Cash Margin (including the amount of interest accrued) to be transferred and the Repurchase Prices to be paid by each party shall be established by the non-Defaulting Party for all Transactions as at the Early Termination Date;

- (ii) on the basis of the sums so established, an account shall be taken (as at the Early Termination Date) of what is due from each party to the other under this Agreement (on the basis that each party's claim against the other in respect of the transfer to it of Equivalent Securities or Equivalent Margin Securities under this Agreement equals the Default Market Value therefor and including amounts payable under paragraphs 10(g) and 12) and the sums due from one party shall be set off against the sums due from the other and only the balance of the account shall be payable (by the party having the claim valued at the lower amount pursuant to the foregoing). For the purposes of this calculation, all sums not denominated in the Base Currency shall be converted into the Base Currency at the Spot Rate; and
 - (iii) as soon as reasonably practicable after effecting the calculation above, the non-Defaulting Party shall provide to the Defaulting Party a statement showing in reasonable detail such calculations and specifying the balance payable by one party to the other and such balance shall be due and payable on the Business Day following the date of such statement provided that, 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.
- (e) For the purposes of this Agreement, the “Default Market Value” of any Equivalent Securities or Equivalent Margin Securities shall be determined by the non-Defaulting Party on or as soon as reasonably practicable after the Early Termination Date in accordance with sub-paragraph (f) below, and for this purpose -
- (i) the “Appropriate Market” means, in relation to Securities of any description, the market which is the most appropriate market for Securities of that description, as determined by the non-Defaulting Party;
 - (ii) “Deliverable Securities” means Equivalent Securities or Equivalent Margin Securities to be delivered by the Defaulting Party;
 - (iii) “Net Value” means at any time, in relation to any Deliverable Securities or Receivable Securities, the amount which, in the reasonable opinion of the non-Defaulting Party, represents their fair market value, having regard to such pricing sources (including trading prices) and methods (which may include, without limitation, available prices for Securities with similar maturities, terms and credit characteristics as the relevant Equivalent Securities or Equivalent Margin Securities) as the non-Defaulting Party considers appropriate, less, in the case of Receivable Securities, or plus, in the case of Deliverable Securities, all Transaction Costs which would be incurred or reasonably anticipated in connection with the purchase or sale of such Securities;

- (iv) “Receivable Securities” means Equivalent Securities or Equivalent Margin Securities to be delivered to the Defaulting Party; and
 - (v) “Transaction Costs” in relation to any transaction contemplated in paragraph 10(e) or (f) means the reasonable costs, commissions, fees and expenses (including any mark-up or mark-down or premium paid for guaranteed delivery) incurred or reasonably anticipated in connection with the purchase of Deliverable Securities or sale of Receivable Securities, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out the transaction.
- (f) If -
- (i) on or about the Early Termination Date the non-Defaulting Party has sold, in the case of Receivable Securities, or purchased, in the case of Deliverable Securities, Securities which form part of the same issue and are of an identical type and description as those Equivalent Securities or Equivalent Margin Securities (regardless as to whether or not such sales or purchases have settled), the non-Defaulting Party may elect to treat as the Default Market Value -
 - (A) in the case of Receivable Securities, the net proceeds of such sale after deducting all reasonable costs, commissions, fees and expenses incurred in connection therewith (provided that, where the Securities sold are not identical in amount to the Equivalent Securities or Equivalent Margin Securities, the non-Defaulting Party may, acting in good faith, either (x) elect to treat such net proceeds of sale divided by the amount of Securities sold and multiplied by the amount of the Equivalent Securities or Equivalent Margin Securities as the Default Market Value or (y) elect to treat such net proceeds of sale of the Equivalent Securities or Equivalent Margin Securities actually sold as the Default Market Value of that proportion of the Equivalent Securities or Equivalent Margin Securities, and, in the case of (y), the Default Market Value of the balance of the Equivalent Securities or Equivalent Margin Securities shall be determined separately in accordance with the provisions of this paragraph 10(f)); or
 - (B) in the case of Deliverable Securities, the aggregate cost of such purchase, including all reasonable costs, commissions, fees and expenses incurred in connection therewith (provided that, where the Securities purchased are not identical in amount to the Equivalent Securities or Equivalent Margin Securities, the non-Defaulting Party may, acting in good faith, either (x) elect to treat such aggregate cost divided by the amount of Securities sold and multiplied by the amount of the Equivalent Securities or Equivalent Margin Securities as the Default Market Value or (y) elect to treat the aggregate cost of purchasing the Equivalent Securities or Equivalent Margin Securities

actually purchased as the Default Market Value of that proportion of the Equivalent Securities or Equivalent Margin Securities, and, in the case of (y), the Default Market Value of the balance of the Equivalent Securities or Equivalent Margin Securities shall be determined separately in accordance with the provisions of this paragraph 10(f));

- (ii) on or about the Early Termination Date the non-Defaulting Party has received, in the case of Deliverable Securities, offer quotations or, in the case of Receivable Securities, bid quotations in respect of Securities of the relevant description from two or more market makers or regular dealers in the Appropriate Market in a commercially reasonable size, using pricing methodology which is customary for the relevant type of security (as determined by the non-Defaulting Party) the non-Defaulting Party may elect to treat as the Default Market Value of such Securities -
 - (A) the price quoted (or where a price is quoted by two or more market makers, the arithmetic mean of such prices) by each of them for, in the case of Deliverable Securities, the sale by the relevant market maker or dealer of such Securities or, in the case of Receivable Securities, the purchase by the relevant market maker or dealer of such Securities provided that such price or prices quoted may be adjusted in a commercially reasonable manner by the non-Defaulting Party (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 (and for this purpose, "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 circumstance a "Pool Factor Distortion");
 - (B) after deducting, in the case of Receivable Securities, or adding, in the case of Deliverable Securities the Transaction Costs which would be incurred or reasonably anticipated in connection with such a transaction; or
- (iii) if, acting in good faith the non-Defaulting Party either –
 - (A) has endeavoured but been unable to sell or purchase Securities in accordance with sub-paragraph (i) above or to obtain quotations in accordance with sub-paragraph (ii) above (or both); or
 - (B) 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, or that it would not be commercially reasonable to use any quotations which it has obtained under sub-paragraph (ii) above,

the non-Defaulting Party may determine the Net Value of the relevant Equivalent Securities or Equivalent Margin Securities (which shall be specified) and may treat such Net Value as the Default Market Value of the relevant Equivalent Securities or Equivalent Margin Securities.

- (g) The Defaulting Party shall be liable to the non-Defaulting Party for the amount of all reasonable and legal and other professional expenses incurred by the non-Defaulting Party in connection with or as a consequence of an Event of Default, together with interest thereon at the Applicable Rate or, in the case of an expense attributable to a particular Transaction, the Pricing Rate for the relevant Transaction if that Pricing Rate is greater than the Applicable Rate.
- (h) If Seller fails to deliver Purchased Securities to Buyer on the applicable Purchase Date Buyer may -
 - (i) if it has paid the Purchase Price to Seller, require Seller immediately to repay the sum so paid;
 - (ii) if Buyer has a Transaction Exposure to Seller in respect of the relevant Transaction, require Seller from time to time to pay Cash Margin at least equal to such Transaction Exposure;
 - (iii) at any time while such failure continues, terminate the Transaction by giving written notice to Seller. On such termination the obligations of Seller and Buyer with respect to delivery of Purchased Securities and Equivalent Securities shall terminate and Seller shall pay to Buyer an amount equal to the excess of the Repurchase Price at the date of Termination over the Purchase Price.
- (i) If Buyer fails to deliver some or all Equivalent Securities to Seller on the applicable Repurchase Date Seller may -
 - (i) if it has paid the Repurchase Price to Buyer, require Buyer immediately to repay the sum so paid;
 - (ii) if Seller has a Transaction Exposure to Buyer in respect of the relevant Transaction, require Buyer from time to time to pay Cash Margin at least equal to such Transaction Exposure;
 - (iii) at any time while such failure continues, by written notice to Buyer declare that that Transaction or part of that Transaction corresponding to the Equivalent Securities that have not been delivered (but only that Transaction or part of Transaction) shall be terminated immediately in accordance with sub-paragraph (c) above (disregarding for this purpose references in that sub-paragraph to transfer of Cash Margin and delivery of

Equivalent Margin Securities and as if references to the Repurchase Date were to the date on which notice was given under this sub-paragraph).

- (j) The provisions of this Agreement constitute a complete statement of the remedies available to each party in respect of any Event of Default.
- (k) Subject to paragraph 10(l), neither party may claim any sum by way of consequential loss or damage in the event of a failure by the other party to perform any of its obligations under this Agreement.
- (l)
 - (i) Subject to sub-paragraph (ii) below, if as a result of a Transaction terminating before its agreed Repurchase Date or a Forward Transaction terminating before its Purchase Date under paragraphs 10(b), 10(h)(iii) or 10(i)(iii), the non-Defaulting Party, in the case of paragraph 10(b), Buyer, in the case of paragraph 10(h)(iii), or Seller, in the case of paragraph 10(i)(iii), (in each case the “first party”) incurs any loss or expense in entering into replacement transactions or in otherwise hedging its exposure arising in connection with a Transaction so terminating, the other party shall be required to pay to the first party the amount determined by the first party in good faith and without double counting to be equal to the loss or expense incurred in connection with such replacement transactions or hedging (including all fees, costs and other expenses) less the amount of any profit or gain made by that party in connection with such replacement transactions or hedging; provided that if that calculation results in a negative number, an amount equal to that number shall be payable by the first party to the other party.
 - (ii) If the first party reasonably decides, instead of entering into such replacement transactions, to replace or unwind any hedging transactions which the first party entered into in connection with the Transaction so terminating, or to enter into any replacement hedging transactions, the other party shall be required to pay to the first party the amount determined by the first party in good faith to be equal to the loss or expense incurred in connection with entering into such replacement or unwinding (including all fees, costs and other expenses) less the amount of any profit or gain made by that party in connection with such replacement or unwinding; provided that if that calculation results in a negative number, an amount equal to that number shall be payable by the first party to the other party.
- (m) Each party shall immediately notify the other 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.
- (n) 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).

ANNEX 2

GMRA 2000

The GMRA 2000 is amended as follows:

1. Paragraph 2(a) is deleted and replaced with the following:
 - “(a) “Act of Insolvency” shall occur with respect to any party hereto upon -
 - (i) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement, or composition with, creditors; or
 - (ii) a secured party taking possession of, or carrying out other enforcement measures in relation to, all or substantially all assets of such party, provided the relevant process is not dismissed, discharged, stayed or restrained within 15 days; or
 - (iii) its becoming insolvent or becoming unable to pay its debts as they become due or failing or admitting in writing its inability generally to pay its debts as they become due; or
 - (iv) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property; or
 - (v) the presentation or filing of a petition in respect of it (other than by the other party to this Agreement in respect of any obligation under this Agreement) in any court or before any agency or the commencement of any proceeding by any Competent Authority alleging or for the bankruptcy, winding-up or insolvency of such party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition not having been stayed or dismissed within 15 days of its filing (except in the case of a petition presented by a Competent Authority or for winding-up or any analogous proceeding, in respect of which no such 15 day period shall apply); or
 - (vi) the appointment of a receiver, administrator, liquidator, conservator, custodian or trustee or analogous officer of such party or over all or any material part of such party's property; or
 - (vii) the convening of any meeting of its creditors for the purpose of considering a voluntary arrangement as referred to in section 3 of the Insolvency Act 1986 (or any analogous proceeding);”.
2. A new paragraph 2(gA) is added immediately following paragraph 2(g) as follows:

“(gA) “Competent Authority”, a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over a party in the jurisdiction of its incorporation or establishment or the jurisdiction of its head office;”.

3.(a) Paragraph 2(l) is deleted and replaced with the following:

“(l) “Default Notice”, a written notice served by the non-Defaulting Party on the Defaulting Party under paragraph 10(b) designating a day as an Early Termination Date;”.

(b) Paragraph 2(m) is deleted.

4. A new paragraph 2(qA) is added immediately following paragraph 2(q) as follows:

“(qA) “Early Termination Date”, the date designated as such in a Default Notice or as otherwise determined in accordance with paragraph 10(b);”.

5. Paragraph 10 is deleted in its entirety and is replaced with the following:

“10. Events of Default

(a) If any of the following events (each an “Event of Default”) occurs in relation to either party (the “Defaulting Party”, the other party being the “non-Defaulting Party”) whether acting as Seller or Buyer -

(i) Buyer fails to pay the Purchase Price upon the applicable Purchase Date or Seller fails to pay the Repurchase Price upon the applicable Repurchase Date; or

(ii) if the parties have specified in Annex I that this sub-paragraph shall apply, Seller fails to deliver Purchased Securities on the Purchase Date or Buyer fails to deliver Equivalent Securities on the Repurchase Date, in either case within the standard settlement time for delivery of the Securities concerned; or

(iii) Seller or Buyer fails to pay when due any sum payable under sub-paragraph (h) or (i) below; or

(iv) Seller or Buyer fails to:

(A) make a Margin Transfer within the minimum period in accordance with paragraph 4(g);

(B) to pay any amount or to transfer any Securities in accordance with paragraphs 4(j) or (k); or

(v) Seller or Buyer fails to comply with paragraph 5; or

(vi) an Act of Insolvency occurs with respect to Seller or Buyer; or

- (vii) any representations made by Seller or Buyer are incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated; or
- (viii) Seller or Buyer admits to the other that it is unable to, or intends not to, perform any of its obligations hereunder or in respect of any Transaction; or
- (ix) Seller or Buyer being declared in default or being suspended or expelled from membership of or participation in, any securities exchange or suspended or prohibited from dealing in securities by any Competent Authority, in each case on the grounds that it has failed to meet any requirements relating to financial resources or credit rating; or
- (x) Seller or Buyer fails to perform any other of its obligations hereunder and does not remedy such failure within 30 days after notice is given by the non-Defaulting Party requiring it to do so,

then sub-paragraphs (b) to (g) below shall apply.

- (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 a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in Annex I with respect to the Defaulting Party, then an Early Termination Date in respect of all outstanding Transactions will occur at the time immediately preceding the occurrence with respect to the Defaulting Party of an 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.
- (c) If an Early Termination Date occurs, the Repurchase Date for each Transaction hereunder shall be deemed to occur on the Early Termination Date and, subject to the following provisions, all Cash Margin (including interest accrued) shall be repayable and Equivalent Margin Securities shall be deliverable, in each case on the Early Termination Date (and so that, where this sub-paragraph applies, performance of the respective obligations of the parties with respect to the delivery of Securities, the payment of the Repurchase Prices for any Equivalent Securities and the repayment of any Cash Margin shall be effected only in accordance with the provisions of sub-paragraph (d) below).
- (d) (i) The Default Market Values of the Equivalent Securities and any Equivalent Margin Securities to be transferred, the amount of any Cash Margin (including the amount of interest accrued) to be transferred and the Repurchase Prices to be paid by each party shall be established by the non-Defaulting Party for all Transactions as at the Early Termination Date;

- (ii) on the basis of the sums so established, an account shall be taken (as at the Early Termination Date) of what is due from each party to the other under this Agreement (on the basis that each party's claim against the other in respect of the transfer to it of Equivalent Securities or Equivalent Margin Securities under this Agreement equals the Default Market Value therefor and including amounts payable under paragraphs 10(g) and 12) and the sums due from one party shall be set off against the sums due from the other and only the balance of the account shall be payable (by the party having the claim valued at the lower amount pursuant to the foregoing). For the purposes of this calculation, all sums not denominated in the Base Currency shall be converted into the Base Currency at the Spot Rate; and
 - (iii) as soon as reasonably practicable after effecting the calculation above, the non-Defaulting Party shall provide to the Defaulting Party a statement showing in reasonable detail such calculations and specifying the balance payable by one party to the other and such balance shall be due and payable on the Business Day following the date of such statement provided that, 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.
- (e) or the purposes of this Agreement, the "Default Market Value" of any Equivalent Securities or Equivalent Margin Securities shall be determined by the non-Defaulting Party on or as soon as reasonably practicable after the Early Termination Date in accordance with sub-paragraph (f) below, and for this purpose -
- (i) the "Appropriate Market" means, in relation to Securities of any description, the market which is the most appropriate market for Securities of that description, as determined by the non-Defaulting Party;
 - (ii) "Deliverable Securities" means Equivalent Securities or Equivalent Margin Securities to be delivered by the Defaulting Party;
 - (iii) "Net Value" means at any time, in relation to any Deliverable Securities or Receivable Securities, the amount which, in the reasonable opinion of the non-Defaulting Party, represents their fair market value, having regard to such pricing sources (including trading prices) and methods (which may include, without limitation, available prices for Securities with similar maturities, terms and credit characteristics as the relevant Equivalent Securities or Equivalent Margin Securities) as the non-Defaulting Party considers appropriate, less, in the case of Receivable Securities, or plus, in the case of Deliverable Securities, all Transaction Costs which would be incurred or reasonably anticipated in connection with the purchase or sale of such Securities;

- (iv) “Receivable Securities” means Equivalent Securities or Equivalent Margin Securities to be delivered to the Defaulting Party; and
 - (v) “Transaction Costs” in relation to any transaction contemplated in paragraph 10(e) or (f) means the reasonable costs, commissions, fees and expenses (including any mark-up or mark-down or premium paid for guaranteed delivery) incurred or reasonably anticipated in connection with the purchase of Deliverable Securities or sale of Receivable Securities, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out the transaction.
- (f) If -
- (i) on or about the Early Termination Date the non-Defaulting Party has sold, in the case of Receivable Securities, or purchased, in the case of Deliverable Securities, Securities which form part of the same issue and are of an identical type and description as those Equivalent Securities or Equivalent Margin Securities (regardless as to whether or not such sales or purchases have settled), the non-Defaulting Party may elect to treat as the Default Market Value -
 - (A) in the case of Receivable Securities, the net proceeds of such sale after deducting all reasonable costs, commissions, fees and expenses incurred in connection therewith (provided that, where the Securities sold are not identical in amount to the Equivalent Securities or Equivalent Margin Securities, the non-Defaulting Party may, acting in good faith, either (x) elect to treat such net proceeds of sale divided by the amount of Securities sold and multiplied by the amount of the Equivalent Securities or Equivalent Margin Securities as the Default Market Value or (y) elect to treat such net proceeds of sale of the Equivalent Securities or Equivalent Margin Securities actually sold as the Default Market Value of that proportion of the Equivalent Securities or Equivalent Margin Securities, and, in the case of (y), the Default Market Value of the balance of the Equivalent Securities or Equivalent Margin Securities shall be determined separately in accordance with the provisions of this paragraph 10(f)); or
 - (B) in the case of Deliverable Securities, the aggregate cost of such purchase, including all reasonable costs, commissions, fees and expenses incurred in connection therewith (provided that, where the Securities purchased are not identical in amount to the Equivalent Securities or Equivalent Margin Securities, the non-Defaulting Party may, acting in good faith, either (x) elect to treat such aggregate cost divided by the amount of Securities sold and multiplied by the amount of the Equivalent Securities or Equivalent Margin Securities as the Default Market Value or (y) elect to treat the aggregate cost of purchasing the Equivalent Securities or Equivalent Margin Securities

actually purchased as the Default Market Value of that proportion of the Equivalent Securities or Equivalent Margin Securities, and, in the case of (y), the Default Market Value of the balance of the Equivalent Securities or Equivalent Margin Securities shall be determined separately in accordance with the provisions of this paragraph 10(f));

- (ii) on or about the Early Termination Date the non-Defaulting Party has received, in the case of Deliverable Securities, offer quotations or, in the case of Receivable Securities, bid quotations in respect of Securities of the relevant description from two or more market makers or regular dealers in the Appropriate Market in a commercially reasonable size, using pricing methodology which is customary for the relevant type of security (as determined by the non-Defaulting Party) the non-Defaulting Party may elect to treat as the Default Market Value of such Securities -
 - (A) the price quoted (or where a price is quoted by two or more market makers, the arithmetic mean of such prices) by each of them for, in the case of Deliverable Securities, the sale by the relevant market maker or dealer of such Securities or, in the case of Receivable Securities, the purchase by the relevant market maker or dealer of such Securities provided that such price or prices quoted may be adjusted in a commercially reasonable manner by the non-Defaulting Party (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 (and for this purpose, "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 circumstance a "Pool Factor Distortion");
 - (B) after deducting, in the case of Receivable Securities, or adding, in the case of Deliverable Securities the Transaction Costs which would be incurred or reasonably anticipated in connection with such a transaction; or
- (iii) if, acting in good faith the non-Defaulting Party either -
 - (A) has endeavoured but been unable to sell or purchase Securities in accordance with sub-paragraph (i) above or to obtain quotations in accordance with sub-paragraph (ii) above (or both); or
 - (B) 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, or that it would not be commercially reasonable to use any quotations which it has obtained under sub-paragraph (ii) above,

the non-Defaulting Party may determine the Net Value of the relevant Equivalent Securities or Equivalent Margin Securities (which shall be specified) and may treat such Net Value as the Default Market Value of the relevant Equivalent Securities or Equivalent Margin Securities.

- (g) The Defaulting Party shall be liable to the non-Defaulting Party for the amount of all reasonable and legal and other professional expenses incurred by the non-Defaulting Party in connection with or as a consequence of an Event of Default, together with interest thereon at the Applicable Rate or, in the case of an expense attributable to a particular Transaction, the Pricing Rate for the relevant Transaction if that Pricing Rate is greater than the Applicable Rate.
- (h) If Seller fails to deliver Purchased Securities to Buyer on the applicable Purchase Date Buyer may -
 - (i) if it has paid the Purchase Price to Seller, require Seller immediately to repay the sum so paid;
 - (ii) if Buyer has a Transaction Exposure to Seller in respect of the relevant Transaction, require Seller from time to time to pay Cash Margin at least equal to such Transaction Exposure;
 - (iii) at any time while such failure continues, terminate the Transaction by giving written notice to Seller. On such termination the obligations of Seller and Buyer with respect to delivery of Purchased Securities and Equivalent Securities shall terminate and Seller shall pay to Buyer an amount equal to the excess of the Repurchase Price at the date of Termination over the Purchase Price.
- (i) If Buyer fails to deliver some or all Equivalent Securities to Seller on the applicable Repurchase Date Seller may -
 - (i) if it has paid the Repurchase Price to Buyer, require Buyer immediately to repay the sum so paid;
 - (ii) if Seller has a Transaction Exposure to Buyer in respect of the relevant Transaction, require Buyer from time to time to pay Cash Margin at least equal to such Transaction Exposure;
 - (iii) at any time while such failure continues, by written notice to Buyer declare that that Transaction or part of that Transaction corresponding to the Equivalent Securities that have not been delivered (but only that Transaction or part of Transaction) shall be terminated immediately in accordance with sub-paragraph (c) above (disregarding for this purpose references in that sub-paragraph to transfer of Cash Margin and delivery of

Equivalent Margin Securities and as if references to the Repurchase Date were to the date on which notice was given under this sub-paragraph).

- (j) The provisions of this Agreement constitute a complete statement of the remedies available to each party in respect of any Event of Default.
- (k) Subject to paragraph 10(l), neither party may claim any sum by way of consequential loss or damage in the event of a failure by the other party to perform any of its obligations under this Agreement.
- (l)
 - (i) Subject to sub-paragraph (ii) below, if as a result of a Transaction terminating before its agreed Repurchase Date or a Forward Transaction terminating before its Purchase Date under paragraphs 10(b), 10(h)(iii) or 10(i)(iii), the non-Defaulting Party, in the case of paragraph 10(b), Buyer, in the case of paragraph 10(h)(iii), or Seller, in the case of paragraph 10(i)(iii), (in each case the “first party”) incurs any loss or expense in entering into replacement transactions or in otherwise hedging its exposure arising in connection with a Transaction so terminating, the other party shall be required to pay to the first party the amount determined by the first party in good faith and without double counting to be equal to the loss or expense incurred in connection with such replacement transactions or hedging (including all fees, costs and other expenses) less the amount of any profit or gain made by that party in connection with such replacement transactions or hedging; provided that if that calculation results in a negative number, an amount equal to that number shall be payable by the first party to the other party.
 - (ii) If the first party reasonably decides, instead of entering into such replacement transactions, to replace or unwind any hedging transactions which the first party entered into in connection with the Transaction so terminating, or to enter into any replacement hedging transactions, the other party shall be required to pay to the first party the amount determined by the first party in good faith to be equal to the loss or expense incurred in connection with entering into such replacement or unwinding (including all fees, costs and other expenses) less the amount of any profit or gain made by that party in connection with such replacement or unwinding; provided that if that calculation results in a negative number, an amount equal to that number shall be payable by the first party to the other party.
- (m) Each party shall immediately notify the other 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.
- (n) 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).