

2011 Global Master Repurchase Agreement Protocol (Revised)

first published on 7 June 2013

by the International Capital Market Association

The International Capital Market Association (**ICMA**) has published this 2011 Global Master Repurchase Agreement Protocol (Revised) (this **Protocol**) to enable the parties to a 1995 Global Master Repurchase Agreement (**GMRA 1995**) or a 2000 Global Master Repurchase Agreement (**GMRA 2000**) (each an **Agreement**) to amend the terms of each such Agreement to reflect certain provisions of the 2011 Global Master Repurchase Agreement, as published by ICMA (the **GMRA 2011**), and to enable the parties to a GMRA 1995, a GMRA 2000 or a GMRA 2011 (also an **Agreement**) to insert a definition of Euro in each such 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

General

- 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 relevant amendment(s) to each 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.

The Annexes

- 1.2 **Annex 1 (GMRA 1995 – Close-out amendments).** Annex 1 (*GMRA 1995 – Close-out amendments*) to this Protocol (**Annex 1**) sets out amendments that may be effected to an Agreement which is a GMRA 1995 which are intended to conform certain provisions of such Agreement relating to, *inter alia*: (i) the methodology in calling an event of default; and (ii) the procedure for closing out transactions and determining the amount payable by one party to the other party, with the provisions in the GMRA 2011.
- 1.3 **Annex 2 (GMRA 2000 – Close-out amendments).** Annex 2 (*GMRA 2000 – Close-out amendments*) to this Protocol (**Annex 2**) sets out amendments that may be effected to an Agreement which is a GMRA 2000 which are intended to conform certain provisions of such Agreement relating to, *inter alia*: (i) the methodology in calling an event of default; and (ii) the procedure for closing out transactions and determining the amount payable by one party to the other party, with the provisions in the GMRA 2011.

- 1.4 **Annex 3 (Set-off).** Annex 3 (Set-off) to this Protocol (**Annex 3**) sets out an amendment that may be effected to an Agreement which is a GMRA 1995 or a GMRA 2000 to insert a contractual set-off clause in line with the contractual set-off clause contained in the GMRA 2011.
- 1.5 **Annex 4 (Euro definition).** Annex 4 (*Euro definition*) to this Protocol (**Annex 4**) sets out an amendment that may be effected to an Agreement which is a GMRA 1995, a GMRA 2000 or a GMRA 2011 to insert a definition of Euro.
- 1.6 **Annex 5 (Changes to LIBOR references).** Annex 5 (*Changes to LIBOR references*) (**Annex 5**) sets out amendments that may be effected to an Agreement which is a GMRA 1995 or a GMRA 2000 to replace references to LIBOR with references to a new definition of Applicable Rate (to the extent that such amendment has not already been made under Annex 1 or Annex 2).
- 1.7 Annex 1, Annex 2, Annex 3, Annex 4 and Annex 5 are collectively referred to as the **Annexes** and each an **Annex**.

Elections in the Adherence Letter

- 1.8 Each Adhering Party should specify in its Adherence Letter whether the amendments set out in an Annex are to be applicable or not applicable by ticking the relevant boxes in such Adherence Letter.
- 1.9 In respect of any Agreement between two Adhering Parties, where, in relation to an Annex, both parties have specified in their Adherence Letters that such Annex is applicable, the amendments set out in that Annex will take effect and apply to such Agreement (and such Agreement shall be amended accordingly), in each case on the terms and subject to the conditions of this Protocol and the relevant Adherence Letter.

Preservation of Express Provisions

- 1.10 Subject to paragraph 1.11 below, nothing in this Protocol shall amend any Express Provision (as defined below) in an Agreement and, for the avoidance of doubt, any amendment set out in this Protocol which would, but for this provision, apply so as to amend an Express Provision shall not apply.
- 1.11 In relation to any Grace Period Express Provision (as defined below), subject to paragraph 1.13 below, any amendments made pursuant to this Protocol will be modified so as to permit the relevant grace period to continue to apply, *mutatis mutandis*, to such Grace Period Express Provision upon its amendment.
- 1.12 **Express Provision** means, in respect of an Agreement, any provision expressly set out in any confirmation in respect of a Transaction that is governed by the Agreement, any Annex to the Agreement, or any amendment or modification to the Agreement, that provides for:
 - (a) a procedure or mechanism that differs from that set out in the pre-printed form of the GMRA 1995 or GMRA 2000, as applicable, for determining the Default Market Value of Equivalent Securities or Equivalent Margin Securities (each as defined in the Agreement);

- (b) a procedure or mechanism that differs from that set out in the pre-printed form of the GMRA 1995 or the GMRA 2000, as applicable, for determining the amount that would be payable by one party to the other party under paragraph 10(b) of the Agreement; or
- (d) any grace period in the description of any Event of Default (as defined in the Agreement) (**a Grace Period Express Provision**).

Reduced amendments where Event of Default for Act of Insolvency has been modified from pre-printed form

1.13 Where, in respect of an Agreement between two Adhering Parties:

- (a) in that Agreement, any modification has been made to paragraph 10(a) (iv) of the pre-printed form of the GMRA 1995 or paragraph 10(a) (vi) of the pre-printed form of the GMRA 2000, as the case may be; and
- (b) both Adhering Parties have specified in their Adherence Letters that the amendments set out in Annex 1 (in the case of an Agreement which is a GMRA 1995) or Annex 2 (in the case of an Agreement which is a GMRA 2000) are applicable,

then the only amendment set out in Annex 1 or Annex 2, as the case may be, that shall apply is the amendment to the Spot Rate definition in paragraph 2 (*Definitions*) of the Agreement; no other amendment contemplated in Annex 1 or Annex 2, as the case may be, shall amend any provision of the Agreement.

2. ADHERENCE AND EFFECTIVENESS

- (a) Adherence to this Protocol will be evidenced by the execution and delivery, in accordance with section 5(g) below, to ICMA, as agent, of an Adherence Letter by an Adhering Party. The closing date of this Protocol (the **Closing Date**) is 1 September 2017, however ICMA shall have the right, in its sole and absolute discretion, to designate an alternative date as the Closing Date, which may be earlier or later than 1 September 2017, upon thirty calendar days' notice on its website at www.icmagroup.org (or by other suitable means). After the Closing Date, ICMA will not accept any further Adherence Letters to the Protocol.
- (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 the later of the Adhering Parties in respect of that Agreement to adhere.
- (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. REPRESENTATIONS AND WARRANTIES

3.1 Each Adhering Party represents and warrants 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 execute and deliver the Adherence Letter and perform its duties under the Adherence Letter and the 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 person signing the Adherence Letter on its behalf is duly authorised to do so on its behalf;
- (d) it has obtained all authorisations of any governmental or regulatory body required in connection with the Adherence Letter and the Agreement as amended by the Adherence Letter and this Protocol and such authorisations are in full force and effect;
- (e) the execution, delivery and performance of the Adherence Letter and the Agreement (as amended by the Adherence Letter and this Protocol) will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected;
- (f) the text of its Adherence Letter and the Annexes conform 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, appropriate evidence of its capacity to adhere to this Protocol and the authority of anyone signing on its behalf and, where the Adhering Party is acting as agent, appropriate 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 no earlier than 20 November 2013 (such designated date, a **Party Specific 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 Party Specific 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 Party Specific 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 Party Specific 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 Party Specific 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 Party Specific 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 5(c) 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) **Definitions.** Capitalised terms used but not otherwise defined in this Protocol shall have the meanings given to them in the relevant Agreement.

- (f) **Governing law and jurisdiction.** This Protocol, each Adherence Letter, the amendments to each Agreement and any non-contractual obligations arising out of or in connection with any of the foregoing shall, as between two Adhering Parties and in respect of each Agreement between them, be governed by, and interpreted in accordance with, the laws of England.

The English courts shall, as between two Adhering Parties and in respect of each Agreement between them, have exclusive jurisdiction in relation to all disputes (including claims for set-off and counterclaims) arising out of or in connection with this Protocol, each Adherence Letter and the amendments to each Agreement, including, without limitation, disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, any of the foregoing; and (ii) any non-contractual obligations arising out of or in connection with any of the foregoing. For such purposes, each Adhering Party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.

- (g) **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 Dreikönigstrasse 8, 8002 Zurich, Switzerland marked for the attention of the Legal Department, Protocol Services. 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.
- (h) **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. Without limiting the generality of paragraph (f) (*Governing law and jurisdiction*) above, this paragraph (h) (*Limitation of liability*), the Protocol and any non-contractual obligations arising out of or in connection with any of the foregoing shall be governed by, and interpreted in accordance with, the laws of England.

EXHIBIT 1

to 2011 Global Master Repurchase Agreement Protocol (Revised)

Form of Adherence Letter

[Letterhead of Adhering Party]

[Date]

**GMRA Protocol Services
 International Capital Market Association
 Dreikönigstrasse 8
 8002 Zurich
 Switzerland**

Dear Sirs,

2011 Global Master Repurchase Agreement Protocol (Revised) - Adherence

The purpose of this letter is to confirm our adherence to the 2011 Global Master Repurchase Agreement Protocol (Revised) as first published by the International Capital Market Association on or about 7 June 2013 (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 Agreement between us and each other Adhering Party.

1. APPLICABLE TERMS

Pursuant to section 1.8 of the Protocol, our elections are as follows¹:

	Applicable	Not Applicable
Annex 1 (<i>GMRA 1995 – Close-out amendments</i>)		
Annex 2 (<i>GMRA 2000 – Close-out amendments</i>)		
Annex 3 (<i>Set-off</i>)		
Annex 4 (<i>Euro definition</i>)		
Annex 5 (<i>Changes to LIBOR references</i>)		

¹ Tick the appropriate boxes to make your elections.

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:

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]¹

By: _____

Name: _____

Title: _____

¹ Specify legal name of Adhering Party. A separate Adherence Letter should be lodged for each legal entity that is a party to an Agreement and wishes to be bound by the terms of the Protocol.

EXHIBIT 2
to 2011 Global Master Repurchase Agreement Protocol (Revised)

Form of Revocation Notice

[Letterhead of Adhering Party]

[Date]

**GMRA Protocol Services
International Capital Market Association
Dreikönigstrasse 8
8002 Zurich
Switzerland**

Dear Sirs,

**2011 Global Master Repurchase Agreement Protocol (Revised) – 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 (Revised), in respect of any Agreement between us, the following date (the ***Party Specific Cut-off Date***):

[SPECIFY DATE]

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

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

Yours faithfully,

[ADHERING PARTY]¹

By: _____

Name: _____

Title: _____

¹ Specify legal name of Adhering Party.

ANNEX 1

GMRA 1995 – Close-out amendments

1. Amendments to Paragraph 2 (Definitions)

- 1.1 A new paragraph 2(bA) is added immediately following paragraph 2(b) as follows:

"(bA) "Applicable Rate", in relation to any sum in any currency:

(a) for the purposes of paragraph 10, the rate selected in a commercially reasonable manner by the non-Defaulting Party; and

(b) for any other purpose, the rate agreed by the parties acting in a commercially reasonable manner;"

- 1.2 The definition of "Default Market Value" in paragraph 2(j) is deleted and replaced with the following:

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

- 1.3 The definition of "Default Notice" in paragraph 2(k) is deleted and replaced with the following:

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

- 1.4 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(aA);"

- 1.5 The definition of "Spot Rate" in paragraph 2(kk) is deleted and replaced with the following:

"(kk) "Spot Rate", where an amount in one currency is to be converted into a second currency on any date, unless the parties otherwise agree

(i) for the purposes of paragraph 10, the spot rate of exchange obtained by reference to a pricing source or quoted by a bank, in each case specified by the non-Defaulting Party, in the London inter-bank market for the purchase of the second currency with the first currency at such dates and times determined by the non-Defaulting Party; and

(iii) for any other purpose, the latest available spot rate of exchange obtained by reference to a pricing source or quoted by a bank, in each case agreed by the parties (or in the absence of such agreement, specified by Buyer), in the London inter-bank market for the purchase of the second currency with the first currency on the day on which the calculation is to be made or, if that day is not a day on which banks are open for business in London, the spot rate of exchange quoted at close

of business in London on the immediately preceding day in London on which such a quotation was available;"

2. Amendments to Paragraph 10 (Events of Default)

- 2.1 The descriptions of the Events of Default set out in sub-paragraphs (i) to (viii) (inclusive) of paragraph 10(a) shall be amended by deleting the words "and the non-Defaulting Party serves a Default Notice on the Defaulting Party" or "the non-Defaulting Party serves a Default Notice on the Defaulting Party", as the case may be, in each place they appear therein and, if a comma appears immediately before those words, that comma shall also be deleted.
- 2.2 The amendments described in section 2.1 above shall also apply, *mutatis mutandis*, to the description of any other Event of Default including, without limitation, any additional Event of Default set out in any Annex or amendment or modification to the Agreement or in the confirmation in respect of any Transaction governed by the Agreement.
- 2.3 Paragraph 10(a)(iv) shall be amended by deleting the words "and (except in the case 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 in which case no such notice shall be required)".
- 2.4 The last line of paragraph 10(a) shall be amended by deleting the words "sub-paragraphs (b) to (d) below" and replacing them with the words "sub-paragraphs (aA) to (d) below".
- 2.5 A new paragraph 10(aA) shall be added immediately after paragraph 10(a) as follows:

"10(aA) 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."

Automatic Early Termination shall be deemed to have been specified in Annex I to the Agreement between the Defaulting Party and the non-Defaulting Party with respect to the Defaulting Party.

- 2.6 Paragraph 10(b) shall be deleted in its entirety and replaced with the following:
- "10(b) 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 (c) below)."

2.7 Paragraph 10(c) shall be deleted in its entirety and replaced with the following:

"10(c) (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(d) 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."

2.8 New paragraphs 10(cA) and 10(cB) shall be inserted immediately after paragraph 10(c) as follows:

"10(cA) 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 (cB) 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(cA) or (cB) 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.

10(cB) 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(cB)); 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(cB));
- (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 endeavored 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."

2.9 Paragraph 10(d) shall be amended by replacing the words "reasonable legal" with the words "reasonable and legal"; and deleting each reference to "LIBOR" and replacing it with a reference to "the Applicable Rate".

2.10 Paragraph 10(f) shall be amended by:

- (a) inserting the words "some or all" immediately after the words "If Buyer fails to deliver" in the first line;
- (b) in sub-paragraph (iii), deleting the words "(but only that Transaction)" and replacing them with the words "or part of that Transaction corresponding to the Equivalent Securities that have not been delivered (but only that Transaction or part of Transaction)"; and
- (c) in sub-paragraph (iii), inserting the words "and as if references to the Repurchase Date were references to the date on which notice was given under this sub-paragraph" at the end of the sentence.

2.11 Paragraph 10(h) shall be amended by deleting the words "Neither party" and replacing them with the words "Subject to paragraph 10(hA), neither party".

2.12 A new paragraph 10(hA) shall be inserted immediately after paragraph 10(h) as follows:

"10(hA)(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(aA), 10(e)(iii) or 10(f)(iii), the non-Defaulting Party, in the case of paragraph 10(aA), Buyer, in the case of paragraph 10(e)(iii), or Seller, in the case of paragraph 10(f)(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."

2.13 Paragraph 10(i) shall be amended by deleting the words "service of a Default Notice," and replacing them with the words "service of a notice or the lapse of time, or both,".

ANNEX 2

GMRA 2000 – Close-out amendments

1. Amendments to Paragraph 2 (Definitions)

- 1.1 A new paragraph 2(bA) is added immediately following paragraph 2(b) as follows:

"(bA) "Applicable Rate", in relation to any sum in any currency:

(a) for the purposes of paragraph 10, the rate selected in a commercially reasonable manner by the non-Defaulting Party; and

(b) for any other purpose, the rate agreed by the parties acting in a commercially reasonable manner;"

- 1.2 The definition of "Default Notice" in 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(aA) designating a day as an Early Termination Date;"

- 1.3 Paragraph 2(m) (definition of "Default Valuation Notice") and paragraph 2(n) (definition of "Default Valuation Time") are deleted.

- 1.4 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(aA);"

- 1.5 The definition of "Spot Rate" in paragraph 2(rr) is deleted and replaced with the following:

"(rr) "Spot Rate", where an amount in one currency is to be converted into a second currency on any date, unless the parties otherwise agree

(i) for the purposes of paragraph 10, the spot rate of exchange obtained by reference to a pricing source or quoted by a bank, in each case specified by the non-Defaulting Party, in the London inter-bank market for the purchase of the second currency with the first currency at such dates and times determined by the non-Defaulting Party; and

(ii) for any other purpose, the latest available spot rate of exchange obtained by reference to a pricing source or quoted by a bank, in each case agreed by the parties (or in the absence of such agreement, specified by Buyer), in the London inter-bank market for the purchase of the second currency with the first currency on the day on which the calculation is to be made or, if that day is not a day on which banks are open for business in London, the spot rate of exchange quoted at close of business in London on the immediately preceding day in London on which such a quotation was available;"

2. Amendments to Paragraph 10 (Events of Default)

- 2.1 The descriptions of the Events of Default set out in sub-paragraphs (i) to (x) (inclusive) of paragraph 10(a) shall be amended by deleting the words "and the non-Defaulting Party serves a Default Notice on the Defaulting Party" or "the non-Defaulting Party serves a Default Notice on the Defaulting Party", as the case may be, in each place they appear therein and, if a comma appears immediately before those words, that comma shall also be deleted.
- 2.2 The amendments described in section 2.1 above shall also apply, *mutatis mutandis*, to the description of any other Event of Default including, without limitation, any additional Event of Default set out in any Annex or amendment or modification to the Agreement or in the confirmation in respect of any Transaction governed by the Agreement.
- 2.3 Paragraph 10(a)(vi) shall be amended by deleting the words "and (except in the case 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 in which case no such notice shall be required)".
- 2.4 The last line of paragraph 10(a) shall be amended by deleting the words "sub-paragraphs (b) to (f) below" and replacing them with the words "sub-paragraphs (aA) to (f) below".
- 2.5 A new paragraph 10(aA) shall be added immediately after paragraph 10(a) as follows:

"10(aA) 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."

Automatic Early Termination shall be deemed to have been specified in Annex I to the Agreement between the Defaulting Party and the non-Defaulting Party with respect to the Defaulting Party.

- 2.6 Paragraph 10(b) shall be deleted in its entirety and replaced with the following:

"10(b) 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 (c) below). ”

2.7 Paragraph 10(c) shall be deleted in its entirety and replaced with the following:

"10(c) (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 therefore and including amounts payable under paragraphs

10(f) 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.".

2.8 Paragraph 10(d) shall be amended by:

(a) inserting the words "by the non-Defaulting Party on or as soon as reasonably practicable after the Early Termination Date" immediately after the words "the "Default Market Value" of any Equivalent Securities or Equivalent Margin Securities shall be determined".

(b) deleting in its entirety sub-paragraph (ii), which set out the definition of "Default Valuation Time";

(c) in sub-paragraph (iv), inserting the words "(including trading prices)" immediately after the words "having regard to such pricing sources"; and inserting the words "or reasonably anticipated" immediately after the words "which would be incurred"; and

- (d) in sub-paragraph (vi), replacing the word "commission" with the word "commissions"; inserting the words "or premium paid for guaranteed delivery" immediately after the words "including any mark-up or mark-down); and inserting the words "or reasonably anticipated" immediately after the word "incurred").

2.9 Paragraph 10(e) shall be deleted in its entirety and replaced with the following:

"10(e) 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(e)); 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(e));

- (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 endeavored 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."

- 2.10 Paragraph 10(f) shall be amended by replacing the words "reasonable legal" with the words "reasonable and legal"; and deleting each reference to "LIBOR" and replacing it with a reference to "the Applicable Rate".

2.11 Paragraph 10(h) shall be amended by:

- (a) inserting the words "some or all" immediately after the words "If Buyer fails to deliver" in the first line; and
- (b) in sub-paragraph (iii), deleting the words "(but only that Transaction)" and replacing them with the words "or part of that Transaction corresponding to the Equivalent Securities that have not been delivered (but only that Transaction or part of Transaction)".

2.12 Sub-paragraph (i) of paragraph 10(k) shall be amended by:

- (a) inserting the words "or a Forward Transaction terminating before its Purchase Date" immediately after the words "terminating before its agreed Repurchase Date";
- (b) inserting the words "or in otherwise hedging its exposure arising in connection with a Transaction so terminating" immediately after the words "any loss or expense in entering into any replacement transactions";
- (c) inserting the words "and without double counting" immediately after the words "amount determined by the first party in good faith"; and
- (d) inserting the words "or hedging" immediately after the words "in connection with such replacement transactions" in each place they appear therein.

2.13 Paragraph 10(l) shall be amended by deleting the words "service of a Default Notice," and replacing them with the words "service of a notice or the lapse of time, or both,".

ANNEX 3

Set-off

Without prejudice to any existing rights of set off provided for in the Agreement, the following new paragraph shall be inserted at the end of paragraph 10 of the Agreement, and shall be numbered accordingly:

"Any amount payable to one party (the "Payee") by the other party (the "Payer") under paragraph 10(c) 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 4

Euro definition

The following new definition shall be inserted in paragraph 2 (*Definitions*) of the Agreement:

"EUR", "euro" and "€" each mean the single currency unit of the member states of the European Union that have the euro as their lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union;"

ANNEX 5

Changes to LIBOR references

1. GMRA 1995

1.1 In respect of an Agreement which is a GMRA 1995:

- (a) the following new definition shall be inserted in paragraph 2 (*Definitions*):

"Applicable Rate", in relation to any sum in any currency:

(a) for the purposes of paragraph 10, the rate selected in a commercially reasonable manner by the non-Defaulting Party; and

(b) for any other purpose, the rate agreed by the parties acting in a commercially reasonable manner;"

- (b) the definition of "LIBOR" in paragraph 2 (*Definitions*) shall be deleted; and

- (c) in sub-paragraph (d) of paragraph 10 (*Events of Default*) and in paragraph 12 (*Interest*), each reference to "LIBOR" shall be deleted and replaced with a reference to "the Applicable Rate".

2. GMRA 2000

2.1 In respect of an Agreement which is a GMRA 2000:

- (a) the following new definition shall be inserted in paragraph 2 (*Definitions*):

""Applicable Rate", in relation to any sum in any currency:

(a) for the purposes of paragraph 10, the rate selected in a commercially reasonable manner by the non-Defaulting Party; and

(b) for any other purpose, the rate agreed by the parties acting in a commercially reasonable manner;"

- (b) the definition of "LIBOR" in paragraph 2 (*Definitions*) shall be deleted; and

- (c) in sub-paragraph (f) of paragraph 10 (*Events of Default*) and in paragraph 12 (*Interest*), each reference to "LIBOR" shall be deleted and replaced with a reference to "the Applicable Rate".