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GUIDANCE NOTES FOR USE WITH THE TBMA/ISMA GLOBAL MASTER REPURCHASE AGREEMENT (2000 VERSION)

These guidance notes:

- are designed to assist users of the TBMA/ISMA Global Master Repurchase Agreement (2000 Version) (the *"Agreement")* in completing the Agreement and in arranging transactions under the Agreement;
- do not form part of the Agreement; and
- summarise the key provisions of the Agreement but are not intended to summarise all of the provisions of the Agreement.

A. INTRODUCTION

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

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

As with the standard form master repurchase agreement *("MRA")* prepared by TBMA for use in the US repo market, the Agreement provides market participants with a substantial degree of flexibility in structuring the commercial aspects of both the Agreement and transactions made under it. For ease of reference a note of the matters which the Agreement expressly leaves to be agreed between the parties in respect of the Agreement as a whole appears in Annex I to the Agreement, while a note of equivalent matters in respect of particular transactions appears in Annex II to the Agreement (which provides a form for use as a confirmation).

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

It is intended that TBMA and ISMA seek legal opinions from counsel in various jurisdictions on the enforceability of the Agreement. The jurisdictions to be covered by the opinions include:

(i) Legal opinions sought by TBMA and ISMA jointly (indicating the annexes - in addition to annexes I and II - whose impact on the Agreement's enforceability is considered by the opinion):

	GMRA (incl. effect of the CPMA** on the GMRA)	AFMA Annex	Bills of Exchange Annex	Canadian Annex ***	Dutch Annex	Equities Annex	Gilts Annex	Italian Annex	Japanese Annex ***	RITS Annex	Swiss Annex
Austria	X		X			X	X	X	X		
Belgium	X		X			X	X	X	X		
Canada	X		X	X		X	X	X	X		
England	X		X			X	X	X	X		
Finland	X		X			X	X	X	X		
France	X		X			X	X	X	X		
Germany	X		X			X	X	X	X		
Holland	X		X		X	X	X	X	X		
Ireland	X		X			X	X	X	X		
Italy	X		X			X	X	X	X		
Japan	X		X			X	X	X	X		
Luxemburg/ Luxembourg	X		X			X	X	X	X		
Portugal	X		X			X	X	X	X		
Spain*	X		X			X	X	X	X		
Switzerland	X		X			X	X	X	X		X
USA (Federal/New York)	X		X			X	X	X	X		

*currently no opinion available
** the Cross Product Master Agreement
*** The Canadian and Japanese Annexes will not have been published at the date of publication of the 2000 Version.

(ii) Legal opinions sought by ISMA (indicating the annexes - in addition to Annexes I and II - whose impact on the Agreement's enforceability is considered by the opinion):

	GMRA (incl. effect of the CPMA on the GMRA)	AFMA Annex	Bills of Exchange Annex	Equities Annex	Gilts Annex	Italian Annex	Japanese Annex **	RITS Annex
Abu Dhabi	X		X	X	X	X	X	
Australia	X	X	X	X	X	X	X	X
Bahamas	X		X	X	X	X	X	
Bahrain	X		X	X	X	X	X	
Bermuda	X		X	X	X	X	X	
British Virgin Islands	X		X	X	X	X	X	
Cayman Islands	X		X	X	X	X	X	
Denmark	X		X	X	X	X	X	
Greece*	X		X	X	X	X	X	
Hong Kong	X		X	X	X	X	X	
Kuwait	X		X	X	X	X	X	
Netherlands Antilles	X		X	X	X	X	X	
New Zealand	X		X	X	X	X	X	
Saudi Arabia	X		X	X	X	X	X	
Singapore	X		X	X	X	X	X	
South Africa	X		X	X	X	X	X	
Sweden	X		X	X	X	X	X	
Turkey	X		X	X	X	X	X	

*currently no opinion available
**The Japanese Annex will not have been published at the date of publication of the 2000 Version.

Exhibit III to these guidance notes, which will be updated periodically, contains a list of the opinions currently available for the 2000 Version.

B. SPECIFIC COMMENTS

1. *Non-UK parties*

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

2. *Withholding tax*

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

The representation that appeared in paragraph 9(i) of the 1995 Version has been deleted to reflect UK tax changes.

3. *Withholding: repo return and cash margin*

Section 730 of the UK Taxes Act 1988 deems the differential between the sale price and the repurchase price under a normal repo transaction to be "interest" for UK tax purposes on a deemed loan made by the buyer to the seller. Parties should take their own advice as to whether a transaction or series of transactions could or might give rise to annual interest. If interest is "annual" or "yearly" interest then, subject to various exceptions, it will be payable subject to withholding of UK basic rate income tax (currently 20%) where it has a UK source (broadly, where the seller is UK tax resident or trading in the UK). Paragraph 6(b) places a liability on the payer of the interest (i.e. the seller) "unless otherwise agreed", to gross up in respect of any withholding. Similarly, interest payable under paragraph 4(f) in respect of cash margin may, if it is annual or yearly interest, be payable subject to withholding if it has a UK source.

4. *Agency transactions*

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

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

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

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

5. *Base currency*

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

C. PROVISIONS OF THE AGREEMENT

Applicability (paragraph 1)

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

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

The 1995 Version was not designed to cover equities, US Treasury instruments and net paying securities. Since the date of its publication, annexes or wording have been developed to accommodate such securities. The reference in the Heading to the Agreement to the exclusion of such securities has therefore been removed. Parties seeking to enter into transactions involving equities, US Treasury instruments and/or net paying securities should first investigate and ensure that the documentation is appropriate for their circumstances.

Definitions (paragraph 2)

The 2000 Version incorporates revisions to the definitions made both to accommodate new defined terms and to update or incorporate certain specific definitions (e.g. those relating to EMU).

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

This definition includes those events to be considered to be clear indications of a counterparty's inability to perform its obligations under an agreement of this type.

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

This definition has undergone significant revision. This is dealt with in detail in the section below dealing with paragraph 10 of the Agreement.

"Designated Office" (paragraph 2(p))

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

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

"Income" (paragraph 2(w))

The definition of Income has been revised in the 2000 Version to clarify that payments of principal in respect of the underlying securities do not constitute Income for the purposes of the Agreement.

"Market Value" (paragraph 2(cc))

This definition is used for the purposes of margining and substitution. In the case of suspended securities, paragraph 2(cc) provides that the value of such securities (for the purposes of the margining calculations in paragraph 4 only) will be nil, so that the suspension of purchased securities will or may cause a transaction exposure in respect of the transaction concerned. However, it would be clearly inequitable for the purposes of set-off or substitution for the value of such securities to be nil and accordingly for these purposes the value is treated as the market value of the relevant securities on the business day immediately preceding the date of suspension.

"Price Differential" (paragraph 2(ii))

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

Initiation; Confirmation; Termination (paragraph 3)

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

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

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

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

Margin Maintenance (paragraph 4)

The Agreement fixes the amount of margin at the outset of each transaction by reference to the value of the securities at the purchase date and the purchase price to give the "Margin Ratio", which is defined as the market value of the purchased securities at the time when the transaction was entered into divided by the purchase price. The parties may choose a different margin ratio for any or all transactions entered into under the Agreement.

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

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

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

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

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

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

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

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

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

Income Payments (paragraph 5)

This paragraph provides that when a transaction extends over an income payment date the buyer will on the date of the income payment transfer to the seller an amount equal to that income payment. A similar provision applies to margin securities held over an income payment date.

Payment and Transfer (paragraph 6)

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

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

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

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

The 2000 Version has introduced a new paragraph 6(j), which only applies if the parties have specified in Annex I that it is to apply. If it is specified to apply, then a condition precedent is introduced as a result of which a party may withhold its payments and deliveries under the Agreement (other than its obligations under paragraph 10) if a specified potential event of default occurs with respect to the counterparty. A potential event of default occurs when one of the events specified in paragraph 10 (which contains the events of default) has occurred in relation to the counterparty but the first party has not given the notice necessary to turn that event into an event of default under the Agreement. Users should note that this condition precedent will not be triggered by all of the events set out in paragraph 10, only by those selected by the parties in Annex I.

Contractual Currency (paragraph 7)

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

Substitution (paragraph 8)

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

Representations (paragraph 9)

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

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

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

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

Events of Default (paragraph 10)

This paragraph specifies ten events of default that may be (broadly) summarised as follows:

- failure to pay the purchase price on the purchase date or the repurchase price on the repurchase date;
- failure to deliver purchased securities on the purchase date or equivalent securities on the repurchase date (this event of default has been introduced by the 2000 Version and will only apply if the parties have specified in Annex I that it is to apply);
- failure to pay any sum due in circumstances where the "mini close-out" provisions of paragraph 10(g) or (h) have been applied (again this event of default has been introduced by the 2000 Version);
- failure to comply with the margin maintenance provisions;
- failure to pay manufactured dividends;
- act of insolvency;
- incorrect or untrue representations;
- admission by a party of its inability or intention not to perform obligations under the Agreement;
- suspension from membership of regulatory organisation etc.; and
- failure to perform other obligations under the Agreement which is not remedied after 30 days' notice by the non-defaulting party.

Except in the case of certain acts of insolvency (where default is automatic) the non-defaulting party has the discretion to decide whether these events are to be treated as events of default giving rise to termination of the Agreement. If it decides to treat an event as an event of default then it will need to serve a notice to that effect (a "Default Notice") on the other party.

The parties are free to agree upon further events of default if they so wish.

As indicated above, two new events of default have been introduced into the 2000 Version. The first (contained in paragraph 10(a)(ii) of the Agreement and the second of the events of default described above) is optional and therefore will only apply if the parties specifically agree to apply it. If the parties do wish and agree to apply it, they should specify this in Annex I. This event of default has been included to take into account a desire expressed by a number of market participants to enable an event of default to be called where the other party fails to deliver securities. In the discussions leading up to the inclusion of this provision, it was recognised that "settlement fails" do frequently occur in the market, and that their occurrence is not generally an indicator of credit deterioration or indeed impending insolvency of the non delivering party. For that reason, a number of market participants were reluctant to include this new event of default. Those favouring the inclusion of the new wording believed strongly that there could be circumstances in which a failure to deliver is in fact a first indicator of credit deterioration or impending insolvency, although they recognised that this would not generally be the context in which a failure to deliver occurred. They wished, however, to be able to act upon the occurrence of a failure to deliver where they saw it as occurring in a credit deterioration or impending insolvency context.

The second new event of default (contained in paragraph 10(a)(iii) of the Agreement and the third of the events of default described above) clarifies that where the "mini close-out provisions" of paragraph 10(g) or (h) have been applied, a failure to pay the mini close-out amount due can be treated immediately as an event of default.

The occurrence of an event of default has the effect of accelerating outstanding transactions, converting delivery obligations in respect of securities to cash sums based on the market value of those securities (converted into the base currency where necessary) and then applying set-off. Any balance outstanding after set-off has been applied will be payable on the next following business day. The defaulting party will be liable for the non-defaulting party's expenses in connection with the event of default, together with interest.

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

- require the repayment of the purchase price or repurchase price if it has paid it; or
- if it has a transaction exposure in respect of the relevant transaction, require the payment of cash margin; or

- by written notice, declare that only that transaction shall be terminated.

Under the 1995 Version in the event of a close-out following an event of default, for the purposes of the close-out calculation, securities were valued at close of business one (or, in certain circumstances, two) dealing days following the day on which the event of default occurred, except where an actual sale or purchase of securities had taken place before that time.

The 2000 Version has been amended to allow the non-defaulting party to calculate the close-out amount by reference to an actual sale or purchase price or, if the non-defaulting party chooses, the market value of the securities, in either case at any time during the five dealing days following the occurrence of the event of default. (As with the 1995 Version, in each case transaction costs are also taken into account.) In addition, where an actual sale or purchase is not for the whole amount of the relevant securities, the 2000 Version contemplates the possibility of more than one sale or purchase, although subject to the five dealing days time limit.

Where the non-defaulting party chooses to apply the market value of the securities, market value is derived from quotations obtained from market participants. If, however, the non-defaulting party determines that it is not commercially reasonable to obtain quotations (e.g. where the position is so large that this will materially affect the quotations that could be obtained) or that it is not commercially reasonable to utilise the quotations obtained (e.g. where the securities are very illiquid and there is considerable disparity between the quotations obtained), it may instead determine the market value to be the "Net Value" of the securities. The "Net Value" is a fair market value reasonably determined by the non-defaulting party and derived from such pricing sources and based on such pricing methods as the non-defaulting party considers appropriate.

Paragraph 10(h)(iii) of the Agreement has been revised to clarify that where a "mini close-out" occurs, the period for determining the value of the relevant securities for the purposes of the mini close-out calculation commences at the time the notice calling the mini close-out is given.

Users should note that by entering into the 2000 Version (and indeed, this is also true of the 1995 Version), they agree that "buy-ins" will be dealt with under the 2000 Version and not according to the buy-in rules applicable to cash trades. In the case of both an event of default and a mini close-out, the close-out prices are obtained by reference to market prices. There is thus no separate procedure for buying in the securities and charging the buy-in price to the counterparty.

The prohibition on claiming consequential loss contained in the 1995 Version has been retained in the 2000 Version, but there is clarification as to what can be claimed. Where an event of default or a mini close-out occurs, the defaulting party is required to pay to the non-defaulting party certain fees, costs and other expenses incurred by the other party as a result of the defaulting party's failure. These costs include the costs associated with entry into replacement transactions or unwinding or replacing any hedging transactions. For example, where an event of default occurs during the term of a transaction and the cost of entering into a replacement repo for the remainder of the original term has increased due to an increase in the repo rate, the non-defaulting party would be entitled to receive an amount equal to the additional cost. Where the non-defaulting party decides not to enter into replacement transactions but to replace or unwind any hedging transactions, the non-defaulting party is entitled to receive its good faith determination of its loss or expenses in connection with such replacement or unwinding of any hedging contracts. In both cases where the non-defaulting party achieves a gain as a result of the defaulting party's failure, the non-defaulting party must account to the defaulting party for such gain.

Tax Event (paragraph 11)

This paragraph provides that in the event of any action taken by a revenue authority or brought in a court of competent jurisdiction or a change in tax law or practice which has a material adverse effect on a party in the context of a transaction, that party may elect to terminate that transaction. If it does so elect, the other party may override the election to terminate the transaction, but in so doing will agree to indemnify the affected party against the adverse effect.

Interest (paragraph 12)

This paragraph provides for interest to accrue on late payments.

Single Agreement (paragraph 13)

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

Notices and Other Communications (paragraph 14)

While these are broadly standard provisions in agreements of this type, an amendment has been introduced into the 2000 Version. This amendment takes into account the practical difficulties that can be experienced by parties seeking to serve default notices on defaulting parties in extreme market conditions. The new provision provides that where the non-defaulting party has made all practical efforts to deliver the default notice in one of the normal ways, but has not been able to effect delivery, it can complete a "Special Default Notice", the effect of which will be to deem an event of default to occur on the date specified in the "Special Default Notice".

Entire Agreement; Severability (paragraph 15)

These are standard provisions in agreements of this type.

Non-assignability; Termination (paragraph 16)

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

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

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

Governing Law (paragraph 17)

The Agreement is governed by English law and the parties submit to the jurisdiction of the English courts. This is without prejudice to the ability of any party to take proceedings in courts of other countries of competent jurisdiction.

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

No Waivers etc. (paragraph 18)

These are standard provisions in agreements of this type.

Waiver of Immunity (paragraph 19)

These are standard provisions in agreements of this type.

Recording (paragraph 20)

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

Third Party Rights (paragraph 21)

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

Optional Wording (Annex I)

The Annex also provides optional wording to be included in relation to the inclusion of net paying securities under the 2000 Version and the inclusion in the 2000 Version of existing transactions between the parties which have been documented under the 1995 Version.

Forward Transactions (Annex I)

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

Confirmation (Annex II)

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

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

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

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

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

Where a buy/sell back transaction crosses an income payment date the buyer does not have the obligation to make a manufactured payment to the seller equivalent to the coupon. There is instead an adjustment to the sell back price to reflect the fact that the seller will not receive a manufactured coupon. If section 737A of the UK Taxes Act 1988 applies, the buyer can be deemed to have made a manufactured payment in these circumstances and adverse UK tax consequences may arise.

Agency Transactions (Agency Annex)

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

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

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

If an event of default occurs in relation to the agent, the other party may elect that it shall be treated as an event of default in respect of the principal. This is because, although the non-defaulting party should be protected legally in the event of the insolvency of the agent (as the transaction is with the principal and not the agent), it may, as a practical matter, be difficult to enforce rights where the agent has defaulted.

Exhibit I

Summary of the principal changes to the 1995 Version made in the 2000 Version

Applicability (paragraph 1) - The prohibition on transactions involving net paying securities and US Treasury instruments has been deleted and optional wording has been included in paragraph 1(b) of Annex I to permit transactions in net paying securities.

Condition Precedent (paragraph 6 (j)) - An optional provision has been inserted which allows a party to withhold further payments or deliveries if an event has occurred in relation to the other party which would, if a default notice were given, constitute an event of default. The provision applies in respect of those events specified by the parties in Annex I.

Events of Default (paragraph 10(a)) - Two additional events of default have been introduced. The first makes a failure to deliver securities on the purchase date or a failure to deliver equivalent securities on the repurchase date an event of default. The event of default is optional and will only apply if so specified in Annex I. The second makes a failure to pay amounts due under paragraphs 10(g) and (h), the "mini close-out" provisions, an event of default.

Default Valuation (paragraph 10(e)) - This allows the non-defaulting party to calculate the close-out values of securities by reference to an actual sale or purchase price or market quotations for the securities during the five dealing days following the occurrence of the event of default, or where these cannot be obtained or would not produce a commercially reasonable result, by reference to a fair market value determined by the non-defaulting party.

Mini Close-out (paragraph 10(h)) - This has been revised to clarify that where a "mini close-out" occurs, the period for determining the value of the relevant securities for the purposes of the "mini close-out" calculation commences at the time the notice calling the mini close-out is given.

Replacement Cost (paragraph 10(k)) - Where an event of default or a "mini close-out" occurs under paragraphs 10(g) or 10(h) the defaulting party or seller (the "first party") is required to pay the fees, costs and other expenses incurred by the other party as a result of the first party's failure, including costs associated with entry into replacement transactions or unwinding or replacing any hedging transactions. If the other party does not to enter into replacement transactions but replaces or unwinds any hedging transactions, the other party is entitled to receive an amount equal to its loss or expenses in connection with the same.

Notices (paragraph 14(c)) - The special default notice provision has been introduced.

Continuity of Contract (paragraph 16(e)) - This paragraph provides for continuity of contract in the event that any further member states of the European Union participate in European monetary union.

Third Party Rights (paragraph 21) - Following the introduction of new legislation in England relating to the rights of third parties under contracts, a standard exclusion of third party rights has been introduced.

Forward Transactions (Annex I paragraph 2(b)) - Optional wording has been incorporated into Annex I relating to forward transactions.

Exhibit II

In addition to Annex I and Annex II, the texts of which have been published together with the form of the Agreement, as at the date of this Exhibit, the following further annexes have been published for use with the 2000 Version[2]:

(i) Published by TBMA and ISMA jointly:

• Agency Annex	Supplemental terms and conditions for agency transactions. There is also an addendum to the Agency Annex incorporating amendments for transactions with multiple principals.
• Bills of Exchange Annex	Supplemental terms and conditions where the securities are UK Treasury bills, local authority bills, bills of exchange.
• Buy/Sell Back Annex	Supplemental terms and conditions for buy/sell back transactions.
• Equities Annex	Supplemental terms and conditions where the securities are equity securities.
• Italian Annex	Supplemental terms and conditions where the securities are Italian domestic securities.
• Dutch Annex	Supplemental terms and conditions for transactions with counterparties in Holland.

(ii) Published by other bodies:

• AFMA Annex	Supplemental terms and conditions for use with Australian counterparties.
• RITS Annex	Supplemental terms and conditions for use with the Australian Reserve Bank Information and Transfer System.

[2] The revised annexes for use with the 2000 Version may not be available as of the date of publication of the 2000 Version.

- Swiss Annex — Supplemental terms and conditions for transactions with counterparties in Switzerland.
- Gilts Annex — Supplemental terms and conditions where the securities are UK gilt-edged securities.

Exhibit III

As of the date of this Exhibit, the following opinions in respect of the 2000 Version have been obtained by:

(i) TBMA and ISMA, jointly:

(ii) ISMA: