

**TBMA/ISMA GLOBAL MASTER REPURCHASE AGREEMENTS (2011 VERSION)
CANADIAN ANNEX**

AMENDMENTS TO THE AGREEMENT

1. In the event of any conflict between the terms of this Annex, any other term of the Agreement or any Annex to the Agreement, or any term or condition of a Confirmation, the terms of this Annex shall prevail.

2. *Interest Act* (Canada). This paragraph is included solely to comply with the requirements of Section 4 of the *Interest Act* (Canada);

If any rate of interest payable under this Agreement or any Confirmation is expressed to be calculated on the basis of a period less than a full calendar year, the yearly rate of interest to which such rate is equivalent is the product obtained by multiplying such rate by a fraction, the numerator of which is the actual number of days in the calendar year and the denominator of which is the number of days comprising such other basis.

3. Without limiting the provisions of paragraph 2(a) or 10 of the Agreement, in respect of a party incorporated in Canada:

- a. An Act of Insolvency shall include the commencement of a corporate law proceeding by the party or another person that proposes or intends to propose the compromise of claims of creditors; and
- b. the occurrence of such proceeding shall, upon the service of a Default Notice, constitute an Event of Default for the purpose of paragraph 10 of the Agreement.

Applicable Not Applicable

4. Without limiting the provisions of paragraph 2(a) or 10 of the Agreement, in respect of a party in Canada that is a trustee or administrator of a trust (whether or not contracting in the name of the trust):

- a. An Act of Insolvency shall include the termination or winding-up of the trust or the fund by the trustee, manager or administrator or by or under the supervision of any Competent Authority or the taking of any step to commence such a process pursuant to the constating documents of the party or otherwise; and
- b. the occurrence of such event shall, upon the service of a Default Notice, constitute an Event of Default for the purpose of paragraph 10 of the Agreement.

Applicable Not Applicable

5. **Choice of Language.** This provision applies if a party is located in the Province of Québec, Canada. The parties hereto confirm their express wish that this Agreement, as well as all other documents related to it, including notices, waivers, consents or other communications under or in connection with this Agreement, are to be drawn up and executed in the English language only and declare themselves

satisfied with this; les parties aux présentes confirment leur volonté expresse de voir la présente convention de même que tous les documents, y compris tous avis, renonciation, consentement ou autre communication, s'y rattachant, rédigés et signés en langue anglaise seulement et s'en déclarent satisfaits.

6. **Execution Outside Québec.** This provision applies if a party is located in the Province of Québec, Canada and is part of Québec's civil administration. The parties agree that this Agreement, including any document requiring execution entered into in connection with it, will be effective only upon its execution by Party [A/B] outside of Québec and that, accordingly, the Agreement will be deemed to have been entered into outside of Québec.

7. **Quebec Derivatives Act Representation.** To the extent that any Transaction may be construed as a "derivative", as such term is interpreted under the Derivatives Act (Quebec), related regulations and applicable policy statements (e.g. if forward transactions are included), each of the parties represents and warrants immediately before the entering into of each such Transaction that it is an "accredited counterparty", as such term is understood under such law, regulations and policy statements.

GUIDANCE NOTES TO THE CANADIAN ANNEX

For domestic Canadian Transactions, Transactions which involve Canadian dollar denominated securities, or cross-border Transactions in which one of the parties (i) is a resident of Canada, (ii) has a principal place of business in Canada, or (iii) expects to perform or account for all or part of the Transaction (including by the selection of a Designated Office or address for notice or service) in Canada, the parties should consider the use of this Annex. These notes indicate in which circumstances it is appropriate to use each clause.

Interest Act Provision (paragraph 2 above)

This clause should be used domestic Canadian Transactions, Transactions which involve Canadian dollar denominated securities, or cross-border Transactions in which one of the parties (i) is a resident of Canada, (ii) has a principal place of business in Canada, or (iii) expects to perform or account for all or part of the Transaction (including by the selection of a Designated Office or address for notice or service) in Canada.

Section 4 of the *Interest Act* requires any interest rate expressed in an agreement to be expressed as an annual rate, meaning on the basis of the actual number of days in the year. This provision has the effect of expressing as an annual rate any rate in the Agreement or a Transaction that is not so expressed. It does not change the rate of interest payable, simply the expression of that rate.

Corporate Plan of Arrangement Amendment (paragraph 3 above)

This amendment is required only where the Party is incorporated under Canadian law.

This amendment is included in order to ensure that corporate plan of arrangement proceedings commenced by the insolvent party itself under Canadian business corporation legislation are covered as Acts of Insolvency.

In choosing Applicable or Not Applicable note that this provision is relevant only where the corporation is incorporated under legislation that provides for a plan of arrangement procedure, namely incorporated under the *Canada Business Corporations Act*, the Ontario *Business Corporations Act* or similar business corporations legislation in other provinces of Canada. Such a procedure does not apply to financial institutions such as banks, insurance companies, or other entity types such as trusts. It may apply to a business corporation that is a partner in a limited partnership.

It may be necessary to consider additional amendments to this definition where dealing with special entity types, such as railway companies, municipal corporations, sovereigns and sovereign entities, or special purpose corporations.

Voluntary or Involuntary Wind-up of Trusts (paragraph 4 above)

In choosing Applicable or Not Applicable note that this amendment is required only where the Canadian party is a mutual fund trust or other investment trust or a pension fund (or the trustee or administrator of such a trust fund). Such an entity type may be terminated or wound-up pursuant to provisions of the trust documentation or, whether the entity is regulated, by or under the supervision of the regulator, including in cases where it is in insolvent circumstances. This additional Act of Insolvency is recommended in such circumstances.

Québec Language Legislation (paragraphs 5 and 6 above)

Paragraph 5. Québec legislation (the *Charter of the French Language*) requires that standard form written contracts between non-governmental parties be written in the French language unless the parties expressly request the use of the English language or any other language. Therefore it is

customary to include an express choice of language clause in contracts with Québec counterparties and it is actually quite common to see it in contracts with other counterparties as well. The provision set out below reflects this choice of the English language.

Paragraph 6. Written contracts entered into with Québec's civil administration must be in French. Civil administration includes the Government of Québec, any of its departments or agencies, Hydro-Québec and municipalities. An exception to this requirement exists for written contracts entered into outside of Québec. To qualify for this exception, the contract must be concluded outside of Québec. Under Quebec law, contracts are concluded where the acceptance is received and therefore even if the party signs outside of Quebec, the contract might be considered to be concluded in Quebec. It may be difficult to ensure where acceptance will be received, so this provision is intended to assist in that determination. When a party enters into an Agreement with a governmental entity organized in Québec, it should sign the agreement outside of Québec after the Québec party has signed the agreement.

Other Amendments

These amendments do not include every amendment it may be appropriate to use with a particular Canadian party. Other amendments may be appropriate depending upon such factors as the type of entity the party is and the regulatory status of each of the parties under applicable Canadian law. For example, if a party is relying on an international dealer registration in order to conduct this business with Canadian parties, it may be appropriate to obtain representations as to status as a "permitted investor" from the other party.

Also, if any transactions are derivatives (e.g. forward transactions), then parties should consider obtaining a representation related to applicable exemptions under securities and derivatives laws and regulations. The exact representation will depend on the province where the party is located or with which it has a nexus, and, in some cases, on the type of entity the party is for purposes of entering into the Transaction.