

## PSA/ISMA Global Master Repurchase Agreement: Swiss Annex

### Supplemental Terms and Conditions

#### 1. Purpose

- (a) The purpose of these Supplemental Terms and Conditions (hereinafter referred to as the Swiss Annex) is to supplement the PSA/ISMA Global Master Repurchase Agreement (hereinafter referred to as the GMRA or, collectively with the Swiss Annex, the Agreement), in order to take into account the specific characteristics of the Swiss repo market<sup>1</sup>, and to comply with the requirements of Swiss law.
- (b) Unless herein explicitly provided to the contrary, the GMRA (and the applicable Annexes according to clause 9 (aa) and (bb) of this Swiss Annex) is hereby amended by the provisions of the Swiss Annex. However, in case of inconsistency or discrepancy between any provision of the GMRA and those of the Swiss Annex, the latter shall prevail. Terms capitalized in this Swiss Annex and not otherwise defined shall have the same meaning as ascribed in the GMRA.
- (c) For the sake of clarity, references made to any paragraph of the Agreement designate the corresponding Arab numbers of the GMRA and references made to any clause of the Agreement designate the corresponding Arab numbers of the Swiss Annex.

#### 2. Scope of the Agreement

- (a) The Agreement applies solely to Repurchase Transactions, exclusive of Buy/Sell Back Transactions. Therefore, the definition of a «Transaction» of paragraph 1 (b) of the GMRA shall only designate Repurchase Transactions under this Agreement.
- (b) The Agreement applies to the following Transactions:
  - SIS (SEGAINTERSETTLE AG) settled Transactions;
  - Any other Transaction which the parties agree to submit to this Agreement.

#### 3. Execution of the Swiss Annex

- (a) Upon the unilateral signature of both the GMRA and this Swiss Annex, each signing party hereby submits to the provisions of the Agreement. It moreover acknowledges the validity of the Agreement with respect to all other actual and future unilaterally signing parties, and as the base of all the Transactions entered or to be entered into with such counterparties.
- (b) Each unilaterally executed Agreement shall be deposited by the relevant signing party with SIS and SIS will immediately notify such execution to the existing signing parties. The executed Agreement enters into force vis-à-vis the other signing parties following notification by SIS, which is deemed to become effective at the latest three Business Days after SIS's notification.

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<sup>1</sup> This Agreement is designed for participation in the "Swiss Repo Market" according to the standardized settlement terms as provided for by the SIS settlement system. It is concluded on a multilateral basis (cf. clause 3) and not suitable for bilateral execution.

#### **4. Business Days**

Sub-paragraphs (i) to (iv) of paragraph (2) (d) of the Agreement are deleted and replaced by the following provision:

«any day on which a Transaction may be settled in the relevant Base Currency.»

#### **5. Form of Confirmation**

Paragraph 3 (b) of the Agreement is amended by replacing the words from «shall promptly deliver (...)» to the end of the sentence by «shall on the same Business Day deliver to the other party a confirmation of such a Transaction In Writing (as defined below in paragraph 14 (a) (i) of the Agreement (as amended by clause 12 of this Swiss Annex)) or by facsimile (a "Confirmation")»

#### **6. Margin Maintenance**

The following provisions are applicable to every Transaction settled by SIS:

- (a) Paragraph 2 (aa) of the Agreement is amended by deleting from part (i) of the definition of 'Net Margin' the phrase «(including accrued interest on such Cash Margin which has not been paid to the other party)».
- (b) Paragraph 2 (aa) of the Agreement is amended by deleting from part (ii) of the definition of 'Net Margin' the phrase «(including accrued interest on such Cash Margin which has not been paid by the other Party)».
- (c) Paragraph 4 (f) of the Agreement is amended by adding at the end of such paragraph the following sentence:

«Such interest may however not be calculated and paid through the SIS system and can therefore only be agreed upon and settled separately.»

#### **7. Payments and Transfers**

In the case of any Transaction under this Agreement which is to be settled through SIS, part (ii) of paragraph 6 (a) of the Agreement is amended by replacing the words «Euroclear and Cedel» by the words «SIS» and by deleting parts (iii) and (iv).

#### **8. Substitution**

The first two sentences of paragraph 8 (d) of the Agreement also apply to (i) a request by a party which has transferred Cash Margin to the other party, that such Cash Margin be exchanged, before it is repaid by such other party, for the transfer of Margin Securities having a Market Value at the time of such transfer at least equal to that of such Cash Margin or (ii) a request by a party which has transferred Margin Securities to the other party, that Equivalent Margin Securities be exchanged, before they are transferred back by such other party, for the transfer of Cash Margin in an amount at the time of transfer at least equal to the Market Value of such Equivalent Margin Securities.

#### **9. Elections under Annex I of the GMRA**

Whenever the Swiss Annex is applicable, the following elections (with respect to Annex I - Supplemental Terms or Conditions, paragraph 1) shall apply:

- (a) Paragraph 1. Buy/Sell Back Transactions may not be effected under this Agreement and, accordingly, Annex III will not apply.
- (b) Paragraph 1. Agency Transactions may not be effected under this Agreement and, accordingly, Annex IV will not apply.
- (c) Paragraph 2 (c). The Base Currency shall be, unless otherwise agreed, the Swiss franc (CHF).
- (f) Paragraph 2 (y). The pricing source for calculation of the Market Value shall be any generally accepted source which publishes on a regular basis quotations for the relevant Securities and upon which the parties have agreed. If no quotation is available on any valuation day, the reference quotation of the agreed pricing source will be applicable. In case of interest bearing Securities, accrued interest must be included in the price calculation.
- (g) Paragraph 2 (kk). The Spot Rate definition of paragraph 2(kk) shall apply.
- (h) Paragraph 3 (b). Seller or Buyer to deliver confirmation.
- (i) Paragraph 4 (f). Interest on Cash Margin shall not apply, unless provided for separately in accordance with clause 6 (d) of this Swiss Annex.
- (j) Paragraph 4 (g). Margin Transfers, whether Securities or cash, shall be due on the same Business Day if the margin call is made by the other party until 12:00 a.m. (CET) at the latest. For margin calls made later than this time, delivery shall be due on the following Business Day.

Whenever the Swiss Annex is applicable, the following elections (with respect to Annex I - Supplemental Terms or Conditions, paragraph 2) shall apply:

- (a) The equities Annex (Annex I, Part 2 to the GMRA)
- (b) The Net Paying Securities Annex (Annex VIII to the GMRA)
- (c) The EMU Annex
- (d) Securities issued by a company which holds directly or indirectly 20 % or more of the share capital or the voting rights in a party to this Agreement, Securities issued by a company the share capital and voting rights of which are detained by such party in the same proportion, as well as Securities issued by a party are not accepted as Purchased Securities, New Purchased Securities or Margin Securities.

## **10. Events of Default and Act of Insolvency**

Whenever one or both Parties to any Transaction under this Agreement is or are subject to the bankruptcy and/or composition chapters of the Swiss Federal Law on Debt Collection and Bankruptcy or the specific provisions of the Swiss banking legislation pertaining to composition proceedings applicable to banks, paragraph 2 (a) of the Agreement is amended by the addition of the following sub-paragraph (vii):

- «(vii) For the avoidance of doubt, the opening of a bankruptcy ('Konkurseröffnung') against such party by decision of a bankruptcy court or the filing by or against such party of a composition proceeding or any other insolvency related proceeding, in which case, without limiting paragraph 10 (a) (iv) of the Agreement, the occurrence of an Act of Insolvency referred to in this sub-paragraph (vii) shall constitute an immediate Event of Default with respect to which it shall not be necessary to serve a Default Notice.»

## **11. Interest**

(a) In any case, subject to Paragraph 7 (a) of the Agreement, where the Contractual Currency is the Swiss Franc (CHF) or euro, Paragraph 2 (u) of the Agreement shall be amended by adding the following provisions:

(i) in respect of the Swiss Franc (CHF):

«'Lombard Rate' means, in relation to any sum in Swiss Francs (CHF), the interest rate published and fixed daily by the Swiss National Bank for its collateralized overnight lending to Swiss banks, as quoted on Page 8629 on the Telerate Service or any succeeding page thereafter on the date on which it is to be determined.»

(ii) in respect of the euro:

«'EURIBOR' means, in relation to any sum in euro, the one-month interest rate published and fixed daily by Bridge on Page 248 on the Telerate Service (or such other page as may replace that page on that service) as of 11:00 a.m. (CET) on the date on which it is to be determined»

(b) Paragraph 12 of the Agreement is amended by inserting after «(...) LIBOR» the words «,plus 2%,»

(c) In any case, subject to Paragraph 7 (a) of the Agreement, where the Contractual Currency is the Swiss Franc (CHF) or euro, Paragraph 12 of the Agreement (as amended by clause 11 (b) of this Swiss Annex) is amended by replacing the phrase starting from «(...) LIBOR, plus 2%,» on the fourth line, to the end of the paragraph, by the following wording:

(i) in respect of the CHF:

«(...) the Lombard Rate, as defined in paragraph 2(u) of the Agreement (as amended by clause 11. (a) (i) of this Swiss Annex), on a 360 day count basis for the actual number of days elapsed since and including the date on which payment was due, but excluding the effective payment date».

(ii) in respect of the euro:

«(...) EURIBOR, as defined in paragraph 2(u) of this Swiss Annex (as amended by clause 11. (a) (ii) of this Swiss Annex), plus 2%, on a 360 day count basis for the actual number of days elapsed since and including the date on which payment was due, but excluding the effective payment date»

## **12. Notices**

Paragraph 14 (a) (i) of the Agreement is amended by the addition of the following sentence after the words «(...) in writing;»:

«for the avoidance of any doubt, the term 'In Writing' includes any communication by letter (mail or courier), SWIFT, tested telex or tested transmission of electronic data.»

## **13. Swiss Stamp Duty**

Transactions entered into under this Agreement meet the requirements of Directive S-02.140 of the Swiss Federal Tax Administration «Repurchase Agreement (Repo- and Reverse Repo Transactions)» and are not subject to Swiss stamp duty.

#### **14. Swiss Withholding Tax on Price Differentials**

- (a) When the Seller is a bank in Switzerland within the meaning of the Swiss banking or withholding tax legislation and the Buyer is neither a Swiss bank within the meaning of Swiss banking legislation nor a foreign bank nor a regulated broker, then the Price Differential to be credited to the Buyer is subject to Swiss federal withholding tax.
- (b) Notwithstanding any right the Buyer may have to claim back the whole or part of the amount so deducted, (in accordance with the Swiss federal withholding tax law, the directives applicable thereto, a double tax treaty or otherwise), the Seller is liable to withhold from the Price Differential the full Swiss withholding tax.
- (c) Paragraph 6 (b) of this Agreement containing the obligation to pay additional amounts in the case of withholding (gross-up obligation) is herewith expressly excluded and does not apply in case of Swiss federal withholding tax on the Price Differential.

#### **15. Compensatory Amounts (Income Payments)**

- (a) In any case where either Purchased Securities or Margin Securities are Net Paying Securities, the last phrase of paragraph 5 of the Agreement is amended by replacing such phrase, after the end of subparagraph (ii), by the following wording:

«to avoid any doubt, references in this paragraph to the amount of any income paid by the issuer of any Securities shall be to an amount (whether the original income paid by the issuer or an entirely equal amount paid by Buyer [for Purchased Securities] or credited by the second party [for Margin Securities], both herein referred to as Compensatory Amounts) paid or credited after deduction of any tax which it is the legal duty of Buyer or the second party to withhold. The beneficiary of the Compensatory Amount must be placed in the same situation as if the Securities had not been transferred to the Buyer or the second party.»

- (b) Swiss Securities:

If the term of a particular Transaction extends over an Income Payment Date and the Buyer has to transfer or credit a Compensatory Amount (as defined in paragraph 5 of the Agreement, the latter as amended by clause 15 (a) of this Swiss Annex) to the Seller and if the corresponding distribution (whether in the form of interest, dividend or otherwise) by the issuer of such Security is subject to Swiss federal withholding tax, an additional remittance of Swiss federal withholding tax on such Compensatory Amount shall be ensured or effected to the relevant tax authorities as provided below:

- (i) If the Buyer is a bank in Switzerland within the meaning of Swiss banking legislation, the Buyer will be liable to ensure or effect the additional remittance of Swiss federal withholding tax.
- (ii) If the Buyer is a Swiss party but not a bank within the meaning of Swiss banking legislation or is a party domiciled outside of Switzerland, the Swiss Seller will be liable to ensure or effect the additional remittance of Swiss federal withholding tax.

- (c) Foreign Securities:

If a Compensatory Amount relates to Securities issued by a foreign (i.e. non-Swiss) issuer and the distribution on such foreign Securities is subject to a foreign withholding tax, the Swiss regulations regarding Securities Lending and Borrowing will apply:

- (i) If the Buyer and the Seller are both domiciled in Switzerland, the Compensatory Amount will be the same as the original amount paid by the Issuer of the relevant Securities to the Buyer. However, when the relevant Securities are US Securities, the regulations pertaining to the supplemental US withholding tax (as in force at that time in Switzerland) shall apply.

- (ii) If the Buyer is domiciled outside Switzerland the Compensatory Amount payable by the Buyer to the Swiss Seller, as well as any other withholding tax-related rights and obligations, are governed by the Swiss regulations regarding Securities Lending and Borrowing and the tax tables enclosed therewith.
- (iii) If the Buyer is domiciled in Switzerland, the Compensatory Amount payable by the Buyer to the foreign Seller is governed by the relevant double tax treaty (if any) and, as the case may be, the Swiss regulations applicable thereto.

**16. Priority of repurchase master agreements**

- (a) Through the custody of SIS two Repurchase Master Agreement may be signed on a multilateral basis by each party: (i) the Schweizer Rahmenvertrag für Repo-Geschäfte and/or (ii) this Agreement (GMRA and Swiss Annex).
- (b) If a party has signed both Repurchase Master Agreements mentioned in clause 16. (a) of this Swiss Annex and, unless otherwise agreed to the contrary between the parties, the following shall apply:
  - (i) If the parties of a Transaction are both domiciled in Switzerland, the Schweizer Rahmenvertrag für Repo-Geschäfte shall be applicable.
  - (ii) If one or both parties of a Transaction are not domiciled in Switzerland the Agreement shall be applicable.
- (c) The signature of any agreement mentioned in clause 16. (a) of this Swiss Annex by a party has no effect on other executed repurchase master agreement(s) such party may have already entered or may enter into with the same counterparty(ies). In this case any Transaction between the parties is subject to the other executed repurchase master agreement(s), unless the parties have agreed otherwise.