

CONSIDERATIONS FOR GOVERNMENTS IN DEVELOPING A MASTER REPURCHASE AGREEMENT

THIRD EDITION

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GOVERNMENT FINANCE OFFICERS ASSOCIATION

HOW TO USE THIS DOCUMENT

The Government Finance Officers Association (GFOA) recommends that all public entities contemplating the use of repurchase agreements review and become familiar with the materials confined in the accompanying document.

This is an attempt to provide information on how repurchase agreements function and to give examples of generally accepted documentation that should be part of any repurchase agreement. We call your attention to a few key items that should be considered as part of your repurchase agreement activity:

- ▶ **Master Repurchase Agreement Documentation.** A signed agreement should be part of your investment program.
- ▶ **Safekeeping.** A proper program should have independent safekeeping from the agent used as the seller of a repo. This safekeeping can include tri-party repurchase agreements. The buyer in general should independently negotiate safekeeping agreements for its benefit and control.
- ▶ **Mark-to-market valuation.** This is the responsibility of the purchaser regarding the securities involved in the repurchase agreement. The purchaser should determine what securities are appropriate and value the securities. Typically, the safekeeping agent will perform the valuation as part of the contractual relationship.
- ▶ **Rely on your own legal counsel.** The documentation and information provided as part of this packet should not be considered as a substitute for your own legal counsel's opinion and evaluation. Each entity desiring to use a repurchase agreement, as part of an investment program, should determine the legality of the investment based on local statute and investment policy statement.

Careful attention to the accompanying document will be instrumental in developing a thoughtful repurchase agreement investment program.

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FOREWORD

This booklet is the third edition of the Government Finance Officers Association (GFOA) publication entitled Considerations for Governments in Developing a Master Repurchase Agreement which was published originally in 1986. Revision of the booklet was prompted by changes in the regulatory environment and in the level of dialogue desired by broker/dealers and investors. The purpose of this booklet is to provide public cash managers with the documents and information needed to construct sound and informed master repurchase agreements.

This booklet contains a copy of the most recent prototype master repurchase agreement issued by The Bond Market Association (TBMA). The booklet also presents GFOA's sample Annex to the TBMA agreement which highlights and explains additional items of concern underlying a repurchase transaction. The Annex is for illustration only; it has not been approved by the TBMA or the GFOA Executive Board. Moreover, not all the provisions of the Annex may be germane to the needs of each investing state, province or local government.

Readers are encouraged to consult with appropriate legal counsel to obtain expert advice regarding master repurchase agreements and any annexes thereto. Investing entities should consider the enclosed documents as items of negotiation with selling institutions. Furthermore, public investors should recognize that a master repurchase agreement and its annexes cannot prevent a dealer or a depository default and must therefore be implemented in the context of a complete program of investment risk control.

Special thanks go to the members of GFOA's Committee on Cash Management for their efforts in developing this booklet, and, in particular: James F. Beasley; Donald Gray, Jr.; Kathryn L. Hewitt; Ralph J. Madalena, Esq.; Kent Rock; and William B. Smith. In addition, many thanks to William B. Deyo, Jr., Esq. of Nixon Peabody, LLP for his assistance regarding certain legal issues.

Jeffrey L. Esser
Executive Director
Government Finance Officers Association

INTRODUCTION

In September 1986, the Government Finance Officers Association (GFOA) published the first edition of *Considerations for Governments in Developing a Master Repurchase Agreement*. The primary purposes of the booklet were to inform governmental investors about a prototype repurchase agreement issued by the Public Securities Association, now known as The Bond Market Association (TBMA), and to provide information concerning supplemental protections not offered by the TBMA agreement. These supplemental protections were presented in the form of an annex to the TBMA agreement for actual use in transactions. Since 1986, however, several changes have taken place both in the regulatory environment and in the level of dialogue desired by broker/dealers and investors entering as parties in repurchase agreements (repos).

Changes in the Regulatory Environment

The Government Securities Act (GSA) became law in 1986, and regulations pursuant to the Act were finalized by the Treasury Department in July of 1987. The new regulations imposed changes in the rules governing hold-in-custody repurchase transactions (where the seller maintains custody of the underlying securities) in regard to documentation of the agreement, disclosure of protection limitations, confirmation and substitution of underlying securities.

The changes required that repurchase agreements for hold-in-custody transactions now be obtained in writing and that brokers and dealers advise counterparties of potential loss exposure by disclosing the unavailability of certain federal protections. The regulations also stipulate that the specific securities underlying such transactions must be confirmed at initiation of a transaction and upon substitution, if any. Finally, dealers must maintain possession or control of securities subject to hold-in-custody repurchase agreements overnight and, unless the customer has consented in the master repurchase agreement to substitution of securities, during the trading day.

The final government securities regulations imposed new requirements for the control of securities subject to hold-in-custody repurchase transactions. These requirements apply to government securities brokers and dealers other than financial institutions in all hold-in-custody transactions. However, these requirements currently apply to financial institutions where they either retain custody of securities other than in safekeeping or retain the right to substitute

securities, regardless of how custody is maintained. (The Department of the Treasury recommended in March 1988 that the safekeeping exception be eliminated.)

Greater clarity in the interpretation of laws governing repurchase agreements has marked another change in the regulatory environment. Recent case law emphasizes the hybrid nature of repurchase transactions. They are subject to the anti-fraud provisions of the federal securities laws. For some purposes they may be treated as collateralized loans, but for most purposes the courts have supported the stated intention of the parties that a repurchase transaction is a purchase accompanied by an agreement to sell back.

This means that the purchased securities need not be liquidated “in a commercially reasonable manner” as required by the U.C.C., although a requirement of fair dealing may be implied.

Revisions to the TBMA Prototype Agreement

Implementation of the Treasury regulations led to an August 1987 revision in The Bond Market Association’s prototype agreement. Changes to the TBMA document were incorporated to assure compliance with the new federal regulations. Further changes were made to the TBMA prototype agreement in 1996, which are detailed in Exhibit A. *Public investors should note that Paragraph 9 of the revised or amended TBMA agreement explicitly grants the seller the right to substitute.* Final Treasury regulations do not grant this right to the seller; rather, they state that substitution may not take place without the explicit permission of the buyer. The TBMA Agreement will override the Treasury regulations unless additional substitution language is incorporated in an annex to the agreement.

Why do governments need master repurchase agreements?

A master repurchase agreement is an “umbrella” contract that governs all individual repurchase agreement transactions between an investing government and a depository or securities dealer. The master agreement provides the general terms under which each transaction will be conducted.

For example, the master agreement establishes the legal responsibilities of both parties in each transaction, recites what laws will govern the transaction, and provides contractual rights for the investing government in the event that the other party defaults. In an event of default, these contractual rights are particularly important to governments, because receivers and bankruptcy courts tend to recognize the claims of parties to a written contract more readily than those whose interests are undocumented. Of course, a master repur-

chase agreement does not prevent defaults, fraud or security losses. However, the master agreement establishes legal rights and documentation that no prudent investor can afford to overlook.

To protect public funds invested through repurchase agreements, public investment officials have concluded that several precautionary measures are necessary. These safety measures include: (a) careful selection of banks and securities dealers, (b) purchased securities margin procedures and pricing practices, (c) delivery of purchased securities to the investing government's custodian or safekeeping agent, and (d) use of a master repurchase agreement.

History of repurchase agreements

Repurchase agreements (repos) are financial transactions in which the investing government (Buyer) exchanges cash for ownership of specific securities (Purchased Securities). Generally, the repurchase transaction is a short-term investment transaction. Overnight repurchase agreements mature in one day. Other repos are written to mature in specific multi-day periods; these are called term repurchase agreements. Others are written as open transactions, with indefinite terms subject to liquidation by either party. Ordinarily, the securities used for repurchase agreements are government securities and may be those securities otherwise allowable for direct purchases by the investing government. The Seller in a repurchase agreement can be a commercial bank, a savings institution or a securities dealer. Interest rates are determined competitively, and are negotiable.

Repurchase agreements became popular in the state and local government sector in the early 1970s, when interest rates rose to double-digit levels for the first time in this century. During that era, bank time deposits were restricted to minimum maturities of 30 days, making repos an attractive short-term investment alternative for public cash managers holding short-term, temporary funds. Most of these early repurchase agreement transactions were conducted with minimal documentation, but fortunately the stability of the financial system was such that during the first 10 years of their use by governments, no losses were experienced on repurchase agreements.

As the repo marketplace expanded, the U.S. financial system simultaneously underwent a process of deregulation which increased the risks of default by depositories, and introduced greater market price volatility in the securities industry. The combination of these two historical forces ultimately produced a series of financial failures by banks and securities dealers during the period of 1982-1985. Dozens of public-sector and private-sector investors consequently suffered losses arising from repurchase agreement transactions with defaulting securities dealers. As the securities industry and the investment commu-

nity learned from these mistakes, it has become apparent that master repurchase agreements are necessary to protect investors. To avoid confusion, some common features must be identified as necessary, standard components of the master agreement.

Following the defaults of Drysdale Government Securities and Lombard Wall, Inc. in 1982, the government securities dealer community implemented several important reforms. Delivery procedures became more rigorous with Delivery vs. Payment (DVP) accepted as the industry standard. Under DVP, the purchased securities must be delivered to the buyer when cash is transferred. Procedures for accrued interest also were developed. Importantly, several major brokerage houses and securities dealers began to document their trading relationships within the primary dealer community. These pioneering master repurchase agreements were used by primary dealers and a few other private investors, but generally, the public sector failed to follow suit. At that time, local attorneys were unfamiliar with securities law and unwilling to trust the documents that had been prepared by the securities dealers, which presumably were drafted to protect the interests of the securities dealers first.

In 1984, two defaults by small securities dealers conducting business with numerous municipalities and school districts again focused national attention on the need for public investors to improve their repurchase agreement procedures. One development that resulted from these failures was the creation of statewide guidelines for repurchase agreement transactions by the Office of the Comptroller of the State of New York. Those guidelines included a model repurchase agreement for municipalities and school districts in the State of New York, which included a tripartite form that provided for third-party custodians to hold the securities transferred under the repurchase agreement.

Also in 1984, amendments were enacted to the U.S. bankruptcy code which provided that the securities purchased from a dealer under a repurchase agreement would be exempted from the ordinary stay provisions under the Bankruptcy Act. Previously, bankruptcy judges had frozen the assets of defaulting securities dealers, notwithstanding the claims of investors that their repurchase agreements were buy-sell transactions and not secured loans. Although the Bankruptcy Act amendment sidestepped the issue of purchase-and-sale and called repurchase agreements “transfers of securities,” the new law’s exemption of contractual agreements again reinforced the value of operating pursuant to a written master repurchase agreement. Public cash managers should understand, however, that the bankruptcy code amendments do not apply to commercial banks, since their insolvency is controlled by bank regulators.

In 1985, with the collapse of E.S.M. Government Securities of Fort Lauderdale, Florida, pressures within the securities industry proved sufficient

to propel the TBMA to complete its multi-year study of the possibility of developing a prototype master repurchase agreement. Although the task forces that worked on this project required another year to complete their efforts, the disarray in the investment community was so confusing that many governmental investors avoided repurchase transactions altogether until appropriate procedural improvements had been developed. Simultaneously, a few pioneering governments (including the cities of Seattle, Washington, and Buffalo, New York) developed their own master repurchase agreements. Without standardization, however, it became evident that the legal costs of various investors and dealers each independently developing their own repurchase agreements could outweigh the aggregate benefits of the safety provided by these documents. Accordingly, most governmental jurisdictions awaited the completion of TBMA's prototype repurchase agreement project.

The GFOA in its annual conference in Chicago, in June 1985, adopted a policy resolution reaffirming the value of repurchase agreements, but recognizing the risks associated with the instrument. In April 1986, the TBMA released its prototype master repurchase agreement and, in May 1986, GFOA distributed the document to several thousand public-sector investment officials for their review and consideration. After considering its potential legal liability, GFOA did not endorse the TBMA document. Instead, the association's 1985 policy resolution was amended by the membership during the GFOA annual conference in Los Angeles on June 3, 1986. (1986 amendment appears in boldface):

Repurchase agreements (repos) are the sale by a bank or dealer of government or other securities with the simultaneous agreement to repurchase the security on a later date. Repos are commonly used by public entities to secure money market rates of interest.

The Government Finance Officers Association affirms that repurchase agreements are an integral part of an investment program of state and local governments. Furthermore, public finance officers are encouraged to develop policies and procedures to insure the safety of such investments.

Governmental entities and investment officers should exercise special caution in selecting parties with whom they will conduct repurchase transactions and be able to identify the parties acting as principals to the transaction.

Proper purchased securities margin pricing practices are necessary to protect the public funds invested in repurchase agreements. Risk is significantly reduced by delivery of underlying securities through physical delivery or safekeeping with the purchaser's custodian or safekeeping agent. Excess purchased securities margin, commonly called "haircuts," or marking-to-market practices should be mandatory procedures.

To protect public funds, the GFOA will work with securities dealers, banks, and their respective associations, to promote improved repurchase agreement procedures through master repurchase agreements that protect purchasers' interests, universal standards for delivery procedures and written risk disclosure.

GFOA recommends general use of master repurchase agreements, subject to appropriate legal and technical review. Governments using the prototype agreement developed by The Bond Market Association should include appropriate supplemental provisions regarding delivery, substitution, margin maintenance, margin amounts, seller representations and governing law.

What are the usual provisions in a master repurchase agreement?

Theoretically, no two master repurchase agreements are identical, because the parties differ. Many governments also introduce other provisions in their own master repurchase agreement documents. Later, this booklet will identify areas where variations are likely to occur. For now, however, it is useful to begin with a review of the common elements contained in most master repurchase agreements:

Definitions. Special terms are used in master repurchase agreements. It is important that definitions be provided for such terms as act of insolvency, default, purchased securities, margin amount, confirmation, income, margin excess, market value, price differential, pricing rate, purchase date, purchase price, repurchase date, repurchase price, etc. Investors and attorneys unfamiliar with securities law may wish to add specific definitions for terms that they consider ambiguous.

Execution procedures. The agreement should indicate how a repurchase transaction would be initiated, whether confirmations are necessary, and how the agreement would terminate.

Representations. Master agreements typically provide certain representations between Buyers and Sellers. These representations may include expectations of the two parties, and a reaffirmation of legal authority to transact business.

Event of default. One of the most important segments of the master repurchase agreement is a concise listing of events of default. This section identifies those conditions under which special remedies become necessary. Events of default may include acts of insolvency, misrepresentation, failure to deliver, and other events that would threaten the interests of one of the parties. The section identifying events of default also usually establishes the liabilities of the defaulting party.

Governing law. Most master repurchase agreements establish the State of New York as the jurisdiction governing transactions. However, many public cash managers believe it important also to provide that the laws of their respective states shall govern repurchase agreement transactions, since the authority to invest is a matter of state law. Otherwise, local attorneys may be reluctant to approve the document as to form.

Purchased securities. The agreement should identify what securities constitute eligible instruments for delivery under the repurchase transaction.

Substitution. Most master repurchase agreements include a paragraph indicating whether the Seller may substitute securities, and if so, the limitations on such substitutions. The agreement should identify who will pay for the cost of transferring substituted securities.

Excess purchased securities margin (haircuts). Many master repurchase agreements provide for excess security value as a protection for investors. Although the TBMA prototype repurchase agreement does not specifically include hair-cut ratios, most governmental investors will want to include amendments or an annex that specifies appropriate valuation ratios. If these ratios are not adopted in the master agreement, each individual transaction must have them specified, which introduces the possibility of administrative oversight or error.

Marking-to-market. Master repurchase agreements should provide for “margin maintenance” or some other method for valuing and adjusting the amount of purchased securities held under the repurchase agreement, so that price declines in the marketplace are compensated by the Seller delivering additional securities to safekeeping. For example, if interest rates rise, the value of Treasury bonds can decline and additional securities must be delivered to protect the investor. For overnight transactions, such marking-to-market usually is unnecessary, provided that the original purchased securities provided sufficient purchaser’s margin. For open repos and term repos, however, margin maintenance is essential, particularly in volatile markets. Most major dealer defaults have occurred during periods of rising interest rates and declining government securities prices. Accordingly, an event of dealer default is likely to be accompanied by price losses in the purchased securities. The safekeeping agent should value the purchased securities daily.

Supplemental terms and conditions. Some master agreements may require amendment. The TBMA prototype, featured herein beginning on page 37, might be supplemented through an annex. In other cases, the master agreement may require subsequent revision because of changing market practices or new investor concerns. Care must be taken to ensure that supplemental language is legally binding on both parties.

Reverse repurchase agreements. Some governments engage in reverse repurchase agreement transactions in which they deliver securities to receive cash. Additional language to facilitate each activity may be required by corporate counsel in some jurisdictions.

What are the advantages and disadvantages of the TBMA prototype repurchase agreement?

After two years of study, the primary dealers' committee of The Bond Market Association (TBMA) completed its prototype repurchase agreement. This document, which now incorporates revisions mandated by the Government Securities Act of 1986, offers both advantages and disadvantages. The primary advantage of the document is that it has undergone extensive legal review by many parties and is the result of an exhaustive review by users in various industries. Accordingly, it represents the most widely accepted legal form presently available in the industry. Numerous securities dealers and banks have announced that they accept the TBMA prototype repurchase agreement as to form, which simplifies greatly the process of entering into contracts based on the TBMA prototype. Because the instrument is standardized, investment officials are spared the inevitable legal debates between attorneys over the meaning of specific language because the TBMA document already has been adopted by consensus. Investors therefore can focus on specific provisions that they believe are needed by their jurisdiction to better protect their assets, and these provisions can be added in the annex.

On the other hand, the TBMA prototype repurchase agreement is a consensus document and therefore suffers from the "least common denominator" problem associated with any document that must meet the needs of disparate groups. For example, the document fails to provide explicitly for delivery of purchased securities to the investor or to a custodian. Many governments would find this inadequate. Likewise, substitutions are allowed by the TBMA document, and this may violate many governments' investment policies.

The TBMA document does not include a specific margin (haircut) schedule, recognizing that different parties may approach the issue of margin ratios differently. As noted earlier, the TBMA document references New York State law as governing the transaction. While some municipal and state entities may find this desirable (as New York State law may be referenced in the agreements of any state or municipality in order to provide consistency in the interpretation of the repurchase agreement), others may find it inadequate. For public investors who find these general provisions to be problematic, it becomes necessary to develop and include language in an annex to protect the interests of their constituents.

After considerable deliberation, the Government Finance Officers Association's Committee on Cash Management, recommended to the Executive Board that GFOA not endorse explicitly the TBMA prototype repurchase agreement. Instead, GFOA's policy statement on repurchase agreements was amended to encourage widespread use of master repurchase agreements and to urge public investors using the TBMA prototype document to supplement that instrument with additional protections regarding delivery, substitution, margin maintenance, margin amount, Seller representations and governing law. To provide assistance in this regard, the subcommittee on investments of the Committee on Cash Management has developed illustrative language to be included in an annex for governmental investors (see Exhibit D). Neither the subcommittee, the full committee, nor the association can warrant that implementation of this annex language will eliminate investment risks. Instead, the subcommittee urges individual public investors to confer with their legal counsel and other appropriate experts to address these matters of concern in the most prudent and cost-effective ways available to them. The subcommittee recognizes that public investors in some locations may be unable, as a practical matter, to implement all precautionary measures. GFOA will continue to work with industry groups to promote improved practices and precautions to protect public fund.

EXHIBIT A

Master Repurchase Agreement September 1996 Version Guidance Notes

The following Guidance Notes are included with the permission of The Bond Market Association. The notes summarize the key changes from the August 1987 version of the TBMA Master Repurchase Agreement.

Master Repurchase Agreement Guidance Notes



September 1996 Version

Guidance Notes Summarizing Key Changes from August 1987 Version

The Bond Market Association (the Association), is publishing a revised version of its Master Repurchase Agreement (the “Agreement”), which was last amended in August 1987. The revisions to the Agreement are designed to reflect a number of important legal and marketplace developments since the last amendments, while at the same time preserving the key features of the August 1987 version of the Agreement that have led to its widespread acceptance by market participants.

As in the past, the Agreement will continue to provide, on a reciprocal basis, the basic legal protections that are essential for repo market participants, including (i) explicit characterization of transactions as purchases and sales, (ii) mark-to-market procedures and (iii) express liquidation rights and other default remedies, particularly in the bankruptcy context. The Agreement has been refined, however, to reflect user experience with its provisions and has been updated in the following significant respects —

Expansion of Repo Market. The revised Agreement includes changes designed to reflect the substantial expansion of the repo market since 1987. While prior versions of the Agreement were developed in the context of a repo market predominantly focused on U.S. Treasury and agency securities, the revised Agreement now encompasses a broad range of debt and other securities of both public and private issuers and sets out in a new Annex III detailed terms and conditions for international transactions.

Legal Developments. The Agreement has been revised to incorporate a number of changes that reflect market participants’ experience in exercising liquidation and similar closeout rights in the context of counterparty insolvency. In addition, revisions have been made to address changes in law, including anticipated amendments to Article 8 of the New York Uniform Commercial Code.

Standardization of Frequently Negotiated Provisions. A new Schedule of Optional Provisions attached hereto has been prepared for use in connection with Annex I to the Agreement (Supplemental Terms and Conditions). This Schedule contains standard language that parties may elect to use in connection with frequently negotiated supplemental terms, such as provisions defining “business day,” establishing “repricing” conventions different from those set out in the Agreement and specifying designated branches or offices through which the parties may be acting. In addition, an optional Annex IV has been prepared for use in Transactions where a party is acting as agent for one or more disclosed principals. An optional Annex V containing margin provisions for use with “forward start” repos has also been prepared. In addition, an Annex VI has been developed to address Buy/Sell Back Transactions which have become a growing part of the international market.

The Association wishes to emphasize that the publication of the revised Agreement should not be construed as a suggestion that counterparties no longer conduct business pursuant to the August 1987 version of the Agreement — which has in fact been very effective in meeting its intended objectives and continues to be endorsed by the Association. Nevertheless, the Association views the revised Agreement as better suited to current market conditions than the August 1987 version and strongly encourages its use in establishing new counterparty relationships. The Association does not, however, consider it necessary for counterparties to abandon existing contractual arrangements based on the August 1987 version absent a mutual determination that the revised Agreement would be preferable.

To assist users of the Agreement, the Association has prepared the following guidance notes that explain and summarize on a section-by-section basis the key changes from the August 1987 version. These guidance notes should not be relied upon by any party to determine, without appropriate legal, accounting or other relevant professional advice, whether the Agreement is suitable to its particular circumstances and needs. Capitalized terms not otherwise defined have the meanings given to them in the Agreement.

Paragraph 1: Applicability

Paragraph 1 of the Agreement has been revised to accommodate the growing breadth of the repo market. The definition of “Securities” has been modified to cover all financial instruments and other assets, including commercial paper and unsecuritized receivables, regardless of whether they are “securities” under commercial, regulatory or bankruptcy law or for other purposes. Because the definition of “Transaction” in the Agreement remains unchanged and covers a broad range of transactions, if parties desire to exclude particular types of transactions from the Agreement, a supplemental provision to that effect should be included in Annex I to the Agreement. As in the 1987 version, however, “dollar rolls” are not intended to be covered by the Agreement.

Paragraph 2: Definitions

Act of Insolvency

The language of this definition has been revised to clarify that an “Act of Insolvency” includes (i) the commencement of any case or proceeding under moratorium and delinquency laws, (ii) the appointment or election of a conservator, and (iii) the convening of a creditors’ meeting for the purposes of commencing a voluntary case or proceeding. Although the Association views the current definition as encompassing each of these events, the revisions are intended to eliminate any potential ambiguity and confirm the broad coverage of the definition, and are not intended to constitute a substantive change.

Buyer's Margin Amount and Seller's Margin Amount

The definition of "Buyer's Margin Amount" has been restructured and simplified through the use of a newly-defined term, "Buyer's Margin Percentage." This change, and a parallel change in the definition of "Seller's Margin Amount," is intended to highlight the distinction between the margin percentage for a Transaction (which is now separately defined as the Buyer's/Seller's Margin Percentage) and the number obtained by applying that percentage to the Repurchase Price (which is defined as the Buyer's/Seller's Margin Amount). As in the August 1987 version of the Agreement, "Buyer's Margin Percentage" and "Seller's Margin Percentage" are defined as percentages (which may be equal) agreed to by Buyer and Seller. The definitions explicitly confirm, moreover, that in the absence of any such agreement, the applicable percentage will be calculated by dividing the Market Value of the Purchased Securities on the Purchase Date by the Purchase Price on the Purchase Date for the relevant Transaction. As in the past, parties typically will find it desirable to establish appropriate margin percentages in Annex I.

Income

This definition has been revised to make it clear, in accordance with market practice and consistent with the intent of the drafters of the prior versions of the Agreement, that distributions in respect of any Security are not treated as Income under the Agreement unless and until such distributions are paid by the issuer.

Margin Notice Deadline

This new definition is used in the new margin maintenance provision (Paragraph 4(c)) described below.

Prime Rate

This definition, which applies in certain default situations under Paragraph 11, has been revised to provide that if more than one prime rate for U.S. commercial banks is published in The Wall Street Journal, the average of such rates shall be treated as the Prime Rate under the Agreement.

Purchase Date

A minor revision to this definition has been made to clarify its application to Transactions that are agreed to by the parties on a date prior to applicable Purchase Date for such Transactions.

Purchase Price

This definition has been amended to address the issue of "repricing" Transactions. The revised definition expressly confirms the ability of the parties to agree that the Purchase Price for a Transaction will not be adjusted as a result of transfers of cash under Paragraph 4 (Margin Maintenance) or Paragraph 5 (Income) of the Agreement. In the absence of any such agreement between the parties, the Purchase Price will continue to be adjusted to reflect such transfers in the manner prescribed under the August 1987 version of the Agreement. For the convenience of parties agreeing not to adjust the Purchase Price in some or all of their Transactions, the Schedule of Optional Provisions includes an optional form of "Purchase Price Maintenance" provision for inclusion in Annex I.

Paragraph 4: Margin Maintenance

New Paragraph 4(c) clarifies timing issues arising under the margin maintenance provisions by establishing a specific “Margin Notice Deadline” for same-day satisfaction of margin calls. If a notice of a margin call is given at or before the Margin Notice Deadline, the party receiving such notice must satisfy its margin maintenance obligation no later than the close of business in the relevant market on the business day on which notice is given. If the Margin Notice Deadline is not met, the party receiving such notice has until the close of business in the relevant market on the next business day following such notice. “Margin Notice Deadline” is defined as the time agreed to by the parties as the deadline for giving notice requiring same-day satisfaction of the margin maintenance obligations. In the absence of an agreement by the parties, the deadline is established in accordance with market practice.

Paragraph 5: Income Payments

Paragraph 5 has been revised to make clear its application in the context of Securities that pay Income to holders on a payment date other than the record date. As amended, the Paragraph confirms that Seller is entitled to receive from Buyer an amount equal to all payments or distributions of Income made on or in respect of the Purchased Securities to the full extent it would be so entitled if the Purchased Securities had not been sold to Buyer (except insofar as Seller may have otherwise received them). The Paragraph has also been amended to address the possibility of non-cash distributions in respect of the Purchased Securities. In addition, to avoid any ambiguity, language has been added in the final sentence of the Paragraph to make clear that Buyer is not obligated to transfer or credit Income to Seller if an Event of Default with respect to Seller has occurred and is then continuing. These changes codify market practice in this area and confirm the sale treatment of Transactions. In accordance with this sale treatment, it is intended that Buyer would have the right to vote or provide any consent with respect to the Purchased Securities.

Paragraph 6: Security Interest

Paragraph 6 contains a technical change intended to confirm that the term “proceeds” includes all Income in respect of the Purchased Securities.

Paragraph 7: Payment and Transfer

The provision giving the term “transfer” the same meaning contained in Section 8-313 of the New York Uniform Commercial Code has been deleted in response to anticipated revisions to the New York Uniform Commercial Code. The Association continues to view New York law as well suited to serve as the governing law of the Agreement, based on the deter-

mination that New York has, in comparison with other available U.S. jurisdictions, a significant percentage of repo transactions occurring within it and a highly developed body of commercial and securities law. Parties may wish to provide delivery instructions in Annex I or Annex II to the Agreement.

Paragraph 8: Segregation of Purchased Securities

The segregation provisions have been amended in response to anticipated revisions to the New York Uniform Commercial Code. In addition, the Buyer's right to sell or transfer the Purchased Securities, consistent with existing market practice, has been expressly confirmed.

Paragraph 10: Representations

The representations in Paragraph 10 remain unchanged in substance. A technical change has been made, however, to reflect that parties may wish to utilize new Annex IV in Transactions where a party is acting as agent for one or more disclosed principals. As in the August 1987 version of the Agreement, it is intended that neither party to the Agreement will be relying on the advice of the other, that each party will have made its own decisions regarding the entering into of Transactions under the Agreement and that each party understands the risks, terms and conditions of each Transaction. If a party does wish to rely on the other party, a supplemental provision to that effect should be included in Annex I to the Agreement.

Paragraph 11: Events of Default

A number of revisions have been made to Paragraph 11 to reflect user experience with the Agreement in the default context.

Definition of "Event of Default"

The definition of "Event of Default" has been revised to include a failure by Buyer or Seller to perform on the Purchase Date. This Event of Default could be triggered either in a conventional Transaction or in a "forward start" repo.

In addition, the applicable cure periods for other Events of Default have been revised. In the case of a failure to pay Income under Paragraph 5, a one business day cure period has been added. In the case of a failure to meet a margin call under Paragraph 4 the cure period previously contained in Paragraph 11 has been eliminated and the deadline for meeting margin calls is established pursuant to new Paragraph 4(c) described above.

In the case of a failure by Buyer or Seller to perform on the Repurchase Date, the non-defaulting party's right to exercise its default rights will no longer be subject to a one business day notice requirement. This change has been made because market participants have found

the notice requirement contained in the August 1987 version of the Agreement to be a potential obstacle to the swift exercise of their rights where a default occurs in the context of an impending Act of Insolvency. In this regard, the Association notes that Paragraph 11 has not generally been invoked under the August 1987 version of the Agreement to deal with “fails” that occur in the ordinary course of business.

Notice and Declaration of Default

The notice requirements that previously were set forth in Paragraphs 11(a) and 11(d) (and which overlapped to some extent) have been consolidated into a single notice requirement in Paragraph 11(a) in connection with the declaration of an Event of Default. The notice provision has also been revised to make clear that, while the nondefaulting party is required to give notice as promptly as practicable, its inability to do so (e.g., as a result of a failure by the defaulting party to answer its telephones or maintain other lines of communication) will not preclude the immediate exercise of the nondefaulting party’s rights.

As in the August 1987 version of the Agreement, the option to declare an Event of Default is automatically deemed to be exercised immediately and the notice requirement does not apply upon the occurrence of an Act of Insolvency. A conforming change has also been made in Paragraph 11(a) to provide for the cancelation of Transactions for which the Purchase Date has not yet occurred.

Recognized Market and Sources for Quotations

Paragraph 11(d) has been revised to address issues that may arise in connection with the exercise by the nondefaulting party of its liquidation rights in light of the substantial expansion of the categories of Securities for which there is an active repo market.

Paragraph 11(d) now contains an express acknowledgment that, unless otherwise agreed by the parties, the Securities subject to any Transaction under the Agreement are instruments traded in a “recognized market.” This express acknowledgment is consistent with market participants’ understanding under the August 1987 version of the Agreement that they would have the right upon the occurrence of an Event of Default to effect “deemed” purchases and sales of Securities. Moreover, because the existence of an active repo market for a class of Securities also tends to demonstrate the existence of a “recognized market,” the presumption established by the Agreement (which applies absent an agreement to the contrary between the parties) conforms to underlying market reality.

Paragraph 11(d) also now expressly provides that, in the absence of a generally recognized source for prices or bid or offer quotations for any Security, the nondefaulting party is entitled in its sole discretion to establish the source therefor and the provision clarifies that all prices, bids and offers shall be determined together with accrued Income except to the extent contrary to market practice with respect to the relevant Securities (e.g., Government National Mortgage Association (GNMA) securities). In addition, Paragraph 11(d) (ii) has been revised to refer to closing “offer” quotations rather than closing “bid” quotations in the context of the acquisition of Replacement Securities.

Clarifications and Conforming Changes

A number of clarifying and conforming changes have also been made in Paragraph 11. The Association views these changes as generally consistent with its understanding of the parties' rights under the August 1987 version of the Agreement.

Paragraph 11(b) has been revised to make clear that upon the exercise or deemed exercise of the option in Paragraph 11(a), the Repurchase Price of the Purchased Securities is determined on the Repurchase Date as determined in accordance with Paragraph 11(a). In addition, all Income paid after such exercise or deemed exercise is retained by the nondefaulting party and applied to the aggregate unpaid Repurchase Prices and other amounts owing by the defaulting party.

A clause has been added to Paragraph 11(d) (i) to make it clear that any sale of Purchased Securities by the nondefaulting party must be conducted in a commercially reasonable manner and Paragraph 11(d) (ii) has been revised to make it reciprocal to Paragraph 11(d) (i).

Paragraphs 11(e) and 11(f) have been revised to eliminate unnecessary wording and to make other clarifying changes.

Paragraph 11 (g) has been revised to include, in subclause (ii), a specific reference to the nondefaulting party's right to recover damages equal to the cost (including fees, expenses and commissions) of entering into replacement transactions and entering into or terminating hedge transactions. Subclause (iii) continues to make clear, consistent with the August 1987 version of the Agreement, the nondefaulting party's right to recover any other loss, damage, cost or expense directly arising or resulting from the occurrence of an Event of Default in respect of a Transaction, regardless of whether the nondefaulting party enters into or terminates, as the case may be, any such replacement or hedge transaction. This revised language is intended, among other things, to clarify the nature of the nondefaulting party's rights with respect to Transactions for which the Purchase Date has not yet occurred.

Paragraph 11(h) has been added to consolidate all of the references to the nondefaulting party's right to interest on deficiencies (previously contained in Paragraphs 11(b), 11(e) and 11(g)) in a single provision.

Paragraph 13: Notices and Other Communications

The revisions to Paragraph 13 are intended to be clarifying in nature and to conform the notice provision of the Agreement to the provisions of other Association standard agreements. It is intended that notices will generally be effective upon receipt, with standard exceptions used by market participants covering circumstances in which a notice is received by a party on a day on which it is not open for business or in which the sender of the notice uses reasonable efforts to provide notice but is unable to prove receipt. In addition, the par-

ties may wish to provide in Annex II for additional instructions for wire transactions or other deliveries.

Paragraph 15: Non-assignability; Termination

A provision has been added as subparagraph (b) permitting a party to assign its right in all or any part of its interest in any sum payable to it following an Event of Default. In addition, a clause has been added to Paragraph 15(a) to make clear that any assignment without the prior written consent of the other party is null and void.

Paragraph 18: Use of Employee Plan Assets

This Paragraph has not been revised from the August 1987 version of the Agreement. It contains only those provisions that the Association views as essential in light of U.S. Department of Labor Prohibited Transaction Exemption 81-8, which may apply to written repurchase agreements with pension plans subject to the Employee Retirement Income Security Act of 1974 (“ERISA”). Some parties may find the inclusion of additional provisions relating to ERISA desirable under some circumstances.

Paragraph 19: Intent

In light of the expanded scope of the Agreement, a technical change has been made in Paragraph 19(a) to provide that a Transaction is not intended to fall within the Bankruptcy Code definition of a “securities contract” if the assets subject to such Transaction would render such definition inapplicable.

A new Paragraph 19(c) has been added to confirm the parties’ understanding that, if one or both of them is an “insured depository institution” (as defined in the Federal Deposit Insurance Act (“FDIA”)), then each Transaction is a “qualified financial contract” (as defined in FDIA), to the extent applicable. This provision is intended to assist parties involved in Transactions with an insured depository institution in obtaining the benefits of FDIA protections applicable in the event that the Federal Deposit Insurance Corporation is appointed conservator or receiver.

A new Paragraph 19(d) has been added to confirm the parties’ understanding that, if both of them are “financial institutions” (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”)), then the Agreement is a “netting contract” (as defined in FDICIA) and each payment entitlement and payment obligation is a “covered contractual payment entitlement” or “covered contractual payment obligation,” respectively. This provision is intended to assist financial institutions in obtaining netting of their obligations under the Agreement in the context of a bankruptcy or other default.

Paragraph 20: Disclosure Relating to Certain Federal Protections

Paragraph 20(c) has been revised to reflect the dissolution of the Federal Savings and Loan Insurance Corporation.

Guidance Notes for Annexes

Designation of Annexes to Form a Part of the Agreement

The Annexes to the Agreement have been formatted with blank spaces at the beginning in which to insert the names of the parties and the date of the Agreement. Parties should consider whether they also wish to require separate signatures on each Annex, in particular to help prove, as an evidentiary matter, that a particular party has entered into a particular Annex. Even if not all Annexes are signed, the parties may wish to sign Annex I, which has been revised to permit the parties to designate the Annexes that will apply to Transactions under the Agreement.

Annex I: Use of Optional Provisions

The Schedule of Optional Provisions attached hereto contains forms of clauses that parties may elect to use in connection with Annex I of the Agreement. These clauses provide standard language for frequently negotiated supplemental terms.

Business Day. A standard “business day” definition has been provided.

Margin Maintenance for International Transactions. For counterparties that elect to use Annex III, a margin maintenance clause provides for next-day satisfaction of margin calls with respect to International Transactions. If the Margin Notice Deadline is met, the party receiving a notice of a margin call must satisfy its margin maintenance obligation no later than the close of business in the relevant market on the next business day following the business day on which notice is received. If the Margin Notice Deadline is not met, the party receiving such notice has until the close of business on the second business day following the business day on which notice is received. This provision applies, as the parties may designate, to either (i) any International Transaction in which the Purchase Price and the Repurchase Price are denominated in the official currency of any country designated by the parties in the Schedule, or (ii) any International Transaction cleared and settled in any country so designated by the parties.

Purchase Price Maintenance. A Purchase Price maintenance clause has been provided for use by parties who choose not to “reprice” some or all of their Transactions under Paragraph 4(c) of the Agreement. In the event that Income payments are transferred pursuant to Paragraph 5 of the Agreement, the Purchase Price will not be adjusted and Buyer will instead transfer to or credit to the account of Seller such payments. The parties may also provide that in the event cash is transferred under Paragraph 4 (Margin Maintenance), the Purchase Price will not be adjusted and such cash will instead be treated as Additional Purchased Securities.

Security-Specific Haircuts. A Market Value provision has been included for parties who

wish to use margin “haircuts” when making Market Value determinations under the margin maintenance provisions. The parties are free to specify both the types of Securities and the percentage reductions to be applied to the price obtained in making the determination with respect to the specified Securities. An alternative provision allows the parties to use a uniform “haircut” percentage to be agreed by the parties.

Branches and Offices. A designated offices provision allows the parties to specify the branches or offices through which they will enter into Transactions to be governed by the Agreement. If the parties agree to use Annex III, a Transaction involving a branch or office designated by a party is treated as an International Transaction to which the provisions of Annex III apply.

Consent to Jurisdiction. The Schedule includes a provision under which the parties submit to the non-exclusive jurisdiction of any United States Federal or New York State court and waive any immunity (sovereign or otherwise) with respect to actions brought under the Agreement. This provision is designed to address in particular the possibility that foreign parties using the Agreement might not otherwise be subject to such jurisdiction. Parties may in some cases also wish to require non-U.S. signatories to appoint an agent in the United States for purposes of receiving service of process.

Additional Event of Default. An additional Event of Default has been included in the Schedule that parties may elect to use. A failure to perform as a result of sovereign action or inaction (directly or indirectly) would trigger an Event of Default. In addition, parties may find it desirable to include a cross-default provision that covers the default by either party with respect to any other indebtedness or any other agreement between the parties.

In general, parties should also keep in mind the need to specify the circumstances in which the failure to perform any covenant contained in an Annex to the Agreement will constitute an Event of Default.

Counterparty Netting in Connection with Annex III. An alternative termination mechanism has been prepared with respect to Paragraph 11 of the Agreement for use with counterparties that have agreed to use Annex III and who are subject to the Capital Adequacy Directive (the “CAD”) of the United Kingdom Securities and Futures Authority. This mechanism, which offers alternative remedies in lieu of the otherwise applicable subparagraphs (b), (c), (d) and (e) of Paragraph 11, is designed to qualify the Agreement for netting treatment in the United Kingdom under the CAD.

Annex III: International Transactions

Annex III contains additional terms and conditions that govern International Transactions. The central objective of Annex III is to provide guidance with respect to issues presented by payments or parties in different jurisdictions. It has been prepared in conjunction with a

review of the revised Global Master Repurchase Agreement published in November 1995 by PSA and the International Securities Market Association (the “PSA/ISMA Global Master Repurchase Agreement”). The Bond Market Association continues to encourage market participants to consider usage of the PSA/ISMA Global Master Repurchase Agreement, where appropriate, as the standard master repurchase transaction agreement involving International Transactions. Annex III is presented, however, as an alternative contract that facilitates the substantive provisions of the Master Agreement, governed under New York law, to be used in the international context.

Definitions

Base Currency. The parties may agree on a currency as the base currency for purposes of calculating the Margin Deficit and Margin Excess pursuant to the margin maintenance provisions. In the absence of any such agreement between the parties, the U.S. dollar is designated as the base currency.

Business Day. This definition modifies the definition included in the Schedule of Optional Provisions to the Agreement to apply more precisely in relation to payments in different jurisdictions.

International Security. An International Security is defined broadly to include any Security denominated in a currency other than U.S. dollars, capable of being cleared through a clearing facility outside the United States or issued by an issuer organized under the laws of a jurisdiction other than the United States (or any political subdivision thereof). The intent of this definition is to provide parties with the flexibility to use Annex III for a wide range of Transactions if they so desire.

International Transaction. An International Transaction is defined to include any Transaction involving an International Security, a party organized under the laws of a jurisdiction other than the United States (or any political subdivision thereof) or having its principal place of business outside the United States or a branch or office outside the United States designated in Annex I by a party organized under the laws of the United States (or any political subdivision thereof) as an office through which that party may act when entering into Transactions governed by the Agreement.

Manner of Transfer

Paragraph 2 of Annex III sets forth the requirements for transfers of International Securities, which may be made by transfer through Euroclear or CEDEL, any other agreed securities clearing system or such other means as the parties may agree.

Contractual Currency

Paragraph 3 of Annex III requires all payments to be made in the Contractual Currency (defined as the currency in which the relevant International Securities are denominated unless otherwise agreed). The party entitled to receive a payment may, at its option, accept payment in a currency other than the Contractual Currency, in which case this Paragraph seeks to minimize the exchange risks to which the party receiving payment is subject.

Payments made in any currency other than the Contractual Currency discharge the payor's payment obligation only to the extent the recipient is able to purchase the Contractual Currency with the amount tendered in the other currency. Except where an Event of Default with respect to the payee has occurred, the party making payment remains liable for any shortfalls in amounts due in the Contractual Currency, including shortfalls after any judgments or orders against that party in another currency have been converted to the Contractual Currency. If the amount in the Contractual Currency received upon conversion of the tendered currency exceeds the amount due, the recipient, except where an Event of Default with respect to the payor has occurred, must refund the difference. The enforceability of these provisions will be subject to applicable law and judicial practice.

Taxes

Because payments made by one party to a party in another country may be subject to withholding tax, Paragraph 5 of Annex III provides, consistent with similar provisions in other types of agreements involving cross-border payments under financial instruments, that if a party obligated to make a payment (the "Payor") is required to withhold tax on that payment, the Payor must "gross up" the payment so that the other party (the "Payee") will be made whole. For this purpose, a tax imposed by reason of a connection between the Payee and the taxing jurisdiction generally is excluded from the definition of a "Tax" for which a gross-up payment is required to be made. Similarly, any change in such a tax will not trigger the change of tax law provision of Paragraph 6.

In those cases where the delivery of a certificate or other document by the Payee would reduce or eliminate the rate of withholding tax, the Payee is required to deliver that document or certificate upon reasonable request by the Payor and to notify the Payor if the certificate or document ceases to be true for reasons other than a change in tax law. The Payor is not required to gross up to the extent that the Payee fails to comply with those requirements. Paragraph 5 thus places the risk of withholding tax upon the Payor in the first instance, but shifts that risk to the Payee to the extent that the imposition of withholding tax results from a failure by the Payee to take reasonable steps to reduce or eliminate the tax, including advising the Payor of facts likely to be within the sole knowledge of the Payee. It is anticipated that the parties will agree to alternative arrangements should they so desire.

Paragraph 5 also provides a general rule that the amount required to be paid or credited to Seller by Buyer under Paragraph 5 of the Agreement (relating to Income payments) is equal to the amount of Income required to be paid under the terms of a Security in the absence of withholding tax, regardless of whether either party receives or would receive a lesser amount due to a deduction or withholding made on the underlying Income payments by the issuer of the Security. Alternative approaches were considered, including a rule limiting the amount that Buyer is required to pay or credit to Seller to the amount of after-tax Income that Seller would have received had Seller continued to hold the Security, as is provided in The Bond Market Association Master Securities Loan Agreement (May 1993 version). This alternative approach was not adopted for several reasons, including the advantages of providing a default rule based upon facts within the knowledge of both Buyer and Seller rather than a rule based upon Seller's individual tax situation, the difficulty of providing a simple

and unambiguous rule in cases where Seller's net after-tax income may be greater than the cash receivable from Seller from the issuer of the Security (e.g., where the withholding tax that would be imposed upon Income paid to Seller is refundable, or where Seller is entitled to foreign tax credits or benefits under an integrated tax system), and the use of a "gross" approach by some market participants. It is expected that the parties will negotiate alternative payment obligations with respect to a Security where Seller would have received Income payments from the issuer of the Security subject to deduction or withholding of tax if Seller had continued to hold the Security, which alternative may include the alternative "net" approach described in this paragraph.

Tax Event

Paragraph 6 of Annex m allows a party to terminate an International Transaction, upon notice to the other party, in the event that any action relating to withholding tax taken by a revenue authority or brought in a court of competent jurisdiction or any change in tax law or practice has a material adverse effect on that party in the context of the International Transaction. This provision is based upon the comparable provision of the PSA/ISMA Global Master Repurchase Agreement, but provides that the tax must be one required to be collected by withholding or deduction (e.g., a gross income tax) and that the action or change of law must take place after the date the International Transaction is entered into.

In order to ensure that an International Transaction is not terminated unless there is a substantial likelihood that the change of tax law will have a material adverse effect on the notifying party, the other party may require the notifying party to provide an opinion of counsel that a change of tax law has taken place and affects the notifying party. The parties may wish to consider adding a provision requiring the affected party to use reasonable efforts to transfer any affected International Transaction to another branch or office if the International Transaction would no longer be affected by the change of tax law after the transfer, as is provided in the Master Agreement published by the International Swap Dealers Association, Inc. (now the International Swaps and Derivatives Association, Inc.). Such a provision was not included in Paragraph 6 because repos generally are of a shorter term than transactions documented under an ISDA Master Agreement and because market participants have different views as to the desirability of such a transfer provision.

In some cases, a party may prefer to bear the cost of a change of tax law rather than terminate an International Transaction. If that party is the party affected by the change of tax law, such party may elect not to provide the notice referred to above, in which case the provisions of Paragraph 6 will not be invoked. If that party is the other party, such other party may override the notifying party's election to terminate the International Transaction, but in so doing such other party will agree to indemnify the notifying party against the relevant adverse effect. The relevant adverse effect may include, for example, a gross up obligation on payments made by the notifying party to the other party under Paragraph 5 of Annex III.

Events of Default

Paragraph 8 of Annex III provides an additional Event of Default for International Transactions: the failure, after one business day's notice, to perform any covenant or obligation required under Annex III. The nondefaulting party is also entitled, in addition to its rights under Paragraph 11 of the Agreement, to convert any currency into a different currency and offset obligations of the defaulting party denominated in different currencies against each other.

Annex IV: Party Acting as Agent

Annex IV adapts the terms of the Agreement to govern agency Transactions and addresses a number of practical and legal issues in this context. The central objective of Annex IV is to assist parties entering into Transactions in determining who, as between the agent and its principal(s), is liable for performance under the Agreement. It has been modeled after an annex to The Bond Market Association Master Securities Loan Agreement (May 1993 version) covering agency securities loan transactions.

Paragraphs 1 and 2 require the party acting as agent to disclose the identity of the principal(s) for whom it intends to act as agent and to represent and warrant that each such principal has authorized it to execute and deliver the Agreement, to enter into the Transactions and to perform the obligations of the principal(s) thereunder.

Paragraph 3 sets forth general rules limiting the agent's liability under the Agreement. Where the agent has, through compliance with the provisions of the Agreement, taken the steps necessary to permit the other party to the Agreement to assess the creditworthiness of its principal(s), the agent's obligations do not include a guarantee of performance by its principal(s) and the other party's remedies do not include a right of setoff with respect to any obligations between the agent, acting for its own account, and the other party.

Paragraph 4 provides that when an agent acts on behalf of multiple principals, the Agreement presumes that the Transactions will be treated as multiple Transactions on behalf of separate principals, unless the parties agree in writing to treat the Transactions as if they were Transactions by a single principal. This Paragraph also sets forth the rights and obligations of the agent with respect to each situation.

Paragraph 5 sets forth a general rule of construction for the term "Seller" or "Buyer," as the case may be, in the Agreement in the context of agency Transactions, subject to the limitation of an agent's liability in Paragraph 3 of Annex IV. This Paragraph explicitly acknowledges that each principal has the rights, responsibilities, privileges and obligations of a "Seller" or "Buyer," as the case may be, that enters directly into Transactions with another party, and that the agent has been designated as the sole agent of each principal for performance of Seller's obligations to Buyer or Buyer's obligations to Seller, as the case may be, and for receipt of performance by Buyer of its obligations to Seller or Seller of its obliga-

tions to Buyer, as the case may be. The terms “party” and “either party” are deemed to refer to both the agent and the principal(s), including *inter alia* in the context of a default. The effect of this construction of the terms “party” and “parties” is that a bankruptcy or similar default by the agent will also be deemed a default by the principal(s).

Annex V: Margin for Forward Transactions

Annex V contains several provisions that can be used to adapt the margin maintenance provisions of the Agreement to govern Forward Transactions. A Forward Transaction is defined as any Transaction agreed to by the parties as to which the Purchase Date has not yet occurred. The central objective of these provisions is to assist parties entering into Forward Transactions in determining the exposure each party has prior to the occurrence of the Purchase Date and imposing margin obligations during the period between the date the parties agree to enter into the Forward Transaction and the Purchase Date for the Forward Transaction.

The parties may agree upon a minimum dollar amount or percentage threshold below which margin calls will not be permitted. The parties may also agree, with respect to any or all Forward Transactions, to provide for Transaction-by-Transaction margin maintenance obligations. Finally, the parties may agree that one party will deposit a minimum dollar amount or percentage with the other party, either on an initial or ongoing basis.

This Annex incorporates the Margin Notice Deadline requirement for same-day satisfaction of margin maintenance obligations in connection with Forward Transactions. A provision requires Forward Collateral (together with any Income thereon and proceeds thereof) to be transferred by the holder thereof upon the occurrence of the relevant Purchase Date and the performance by the parties of their respective obligations on such date. The transfer need not be made if such transfer would trigger margin maintenance obligations.

Annex V provides an additional Event of Default for Forward Transactions: the failure, after one business day’s notice, to perform any covenant or obligation required under Annex V. The nondefaulting party is also entitled, in addition to its rights under Paragraph 11 of the Agreement, to sell any or all Forward Collateral and apply the proceeds thereof to, or give the defaulting party credit for such Forward Collateral against, any amounts owing by the defaulting party to receive any Forward Collateral (together with any Income thereon and proceeds thereof) held by the defaulting party and to purchase Replacement Securities in the event that any Forward Collateral is not so transferred.

Annex VI: Buy/Sell Back Transactions

Buy/Sell Back Transactions have become common in many foreign markets and are recognized in other standard agreements such as the PSA/ISMA Global Master Repurchase Agreement. Accordingly, PSA has prepared a new Annex VI to adapt the Agreement for use

in connection with Buy/Sell Back Transactions. The principal economic difference between Buy/Sell Back Transactions and more traditional repo Transactions covered by the Agreement is that, in Buy/Sell Backs, Income payments on the Purchased Securities are retained by the Buyer rather than paid to the Seller (and the Sell Back Price is adjusted accordingly).

The Bond Market Association encourages U.S. counterparties to take particular care in assessing whether to enter into Buy/Sell Back Transactions. Because such Transactions are documented as “buys” and “sells” yet retain many of the economic features of a financing, they may raise authority, accounting and recordkeeping issues for some counterparties. The Bond Market Association considered it desirable, however, to provide a form of documentation that could be used to avoid uncertainty in cases where documentation for such Transactions is required. In this regard, the Annex requires that at least one Confirmation in a Transaction identify it as a Buy/Sell Back.

The Annex has been modeled after a similar annex prepared as part of the PSA/ISMA Global Master Repurchase Agreement. As in the case of the PSA/ISMA Global Master Repurchase Agreement, the Annex requires that each Transaction be identified as a Buy/Sell Back Transaction in the relevant Confirmation and permits the Confirmation to be in the form of either a single document or two separate documents. The provisions of the Annex relating to Accrued Interest, while substantively conforming to the economic terms of the PSA/ISMA Global Master Repurchase Agreement, have been redrafted to reflect the prevailing market convention in the United States of including accrued interest in the Purchase Price for a Transaction (as is contemplated under the definition of “Purchase Price” currently set out in Paragraph 2 of the Agreement).

Annex VII: Transactions with Registered Investment Companies

Annex VII is intended for use in transactions involving registered investment companies or any series or portfolio thereof (“Funds”). Funds have become major participants in the repo market, and are subject to various restrictions imposed by the Investment Company Act of 1940 (the “1940 Act”) and related interpretations by the Securities and Exchange Commission (the “SEC”) and its staff. Annex VII addresses these concerns by providing standardized language that parties may elect to use in connection with transactions involving Funds as either Buyers or Sellers. The Annex has been prepared by The Bond Market Association in consultation with the Investment Company Institute.

The Bond Market Association has also prepared, for use in connection with Annex VII to the Agreement, a new Schedule of Optional Provisions that parties may elect to use in connection with frequently negotiated supplemental terms, such as provisions specifying representations regarding the financial condition of Buyer and Seller, providing additional representations to be made by the parties, designating authorized persons who may act for the parties and establishing limitations on liability for Transactions involving certain Funds.

Paragraph 1: Multiple Funds

Paragraph 1 of Annex VII addresses the requirement contained in the 1940 Act that the assets and liabilities of each Fund, including any Fund that is a series or portfolio of an investment company, be segregated from the assets and liabilities of all other Funds. Funds must identify the particular Fund to which each Transaction relates and such Fund should be specified in the related Confirmation. The rights, obligations and remedies of either party with respect to a particular Fund are deemed distinct from those applicable to any other Fund, including the margin maintenance obligations of the parties contained in Paragraph 4 of the Agreement, the single agreement provisions of Paragraph 12 of the Agreement and the parties' remedies upon the occurrence of an Event of Default. In addition, Annex VII makes clear that the parties have no right to set off claims related to Transactions entered into by a particular Fund against claims related to Transactions entered into by any other Fund.

In the event the Agreement does apply to multiple Funds, the first page of the Agreement should include a cross-reference to Schedule VII.A where the Fund(s) would be designated as a party. Alternatively, Funds may wish to have the Agreement denominated in the name of the Fund's investment adviser, on behalf of the various Funds identified in Schedule VII.A to Annex VII.

Paragraph 2: Margin Percentage

To address the SEC requirement that Funds engage in repo transactions only if the repo is fully collateralized and the Funds adopt appropriate standards in connection therewith, Paragraph 2 of Annex VII requires that, in any Transaction in which a Fund is acting as Buyer, the Buyer's Margin Percentage may be designated by the parties in the Annex or otherwise agreed by the parties. In any transaction in which a Fund is acting as Seller, the Buyer's Margin Percentage is to be agreed to by Buyer and Seller. In each case, however, such percentage cannot be fixed at less than 100%.

Paragraph 3: Confirmations

Paragraph 3 of the Annex provides that, for any Transaction in which a Fund is acting as Buyer, Seller will provide the Fund with a Confirmation, as is the customary practice in repos involving Funds.

Paragraph 4: Financial Condition

The SEC requires a Fund's investment adviser, following guidelines approved by the Fund's board of directors or trustees, to assure itself periodically that the brokers and dealers with whom it is entering into repos continue to maintain a sound financial condition. To address this concern, Paragraph 4 of Annex VII requires that the Fund periodically be provided with appropriate financial information and imposes a reciprocal obligation upon the Fund to make available and deliver to the other party upon request such information. In addition, this Paragraph contains an acknowledgment that, with respect to each Transaction entered into under the Agreement, each Fund has made an independent evaluation of the creditworthiness of the other party.

Paragraph 5: Segregation of Purchased Securities

To address the 1940 Act requirement that Funds maintain their assets with their designated custodians, Paragraph 6 of the Annex provides that, for any Transaction in which a Fund is acting as Buyer, the Purchased Securities must be maintained in the Fund's custodial account as designated by the Fund in Schedule VII.A to Annex VII.

Schedule of Optional Provisions

The Schedule of Optional Provisions attached hereto contains forms of clauses that parties may elect to insert in Schedule VII.A and use in connection with Annex VII. These clauses provide standard language for frequently negotiated terms used by market participants in connection with repos involving Funds.

Alternative reciprocal representations have been included regarding the financial condition of the parties. The first representation provides that, as of the date a party agrees to enter into each Transaction under the Agreement, there has been no material adverse change in its financial condition which was not disclosed to the other party in writing since the date of the latest statement of financial condition provided pursuant to Paragraph 4 of Annex VII. The second representation is limited to only those changes in financial condition that would materially adversely affect a party's ability to perform its obligations under the Agreement.

A clause containing additional representations has also been prepared, providing that, with respect to each Transaction under the Agreement, each of Seller and Buyer has the right to transfer the Purchased Securities in accordance with the terms of the Agreement and that, upon such transfer, such Securities will be free and clear of any prior liens on the Purchase Date and on the Repurchase Date, respectively.

The Schedule includes alternative provisions relating to authorized persons of the parties. The first permits each party to designate in the Schedule those persons who are authorized to act on its behalf under the Agreement. The second requires each party to provide the other with a list of persons so authorized, which list may be supplemented or amended from time to time.

A limitation of liability clause has been provided that limits the potential liability applicable to the trustees, officers, employees and interestholders of Funds that are organized as business trusts (or series thereof).

An additional Event of Default has been included in the Schedule that parties may elect to use. Under this provision, the revocation or suspension of any authorization referred to in Paragraph 10(iv) of the Agreement would trigger an Event of Default.

In addition, the Schedule contains an optional provision relating to payments and transfers of cash and Securities.

Schedule of Optional Provisions for Annex I

[]. **Definitions.** For purposes of the Agreement and this Annex I, the following terms shall have the following meanings:

“Margin Notice Deadline”, _____ ([relevant city] time).

“Business Day” or “business day”, with respect to any Transaction (other than an International Transaction) hereunder, a day on which regular trading [may] occur in the principal market for the Purchased Securities subject to such Transaction [, which includes shortened trading days, days on which trades are permitted to occur but do not in fact occur and days on which the Purchased Securities are subject to percentage of movement or volume limitations]; provided, however, that for purposes of calculating Market Value, such term shall mean a day on which regular trading occurs in the principal market for the assets the value of which is being determined. Notwithstanding the foregoing, (i) for purposes of Paragraph 4 of the Agreement, “business day” shall mean any day on which regular trading occurs in the principal market for any Purchased Securities or for any assets constituting Additional Purchased Securities under any outstanding Transaction hereunder and “next business day” shall mean the next day on which a transfer of Additional Purchased Securities may be effected in accordance with Paragraph 7 of the Agreement, and (ii) in no event shall a Saturday or Sunday be considered a business day.

[]. **Margin Maintenance.** Notwithstanding Paragraph 4 of the Agreement, with respect to any International Transaction [in which the Purchase Price and the Repurchase Price are denominated in the official currency of] [cleared and settled in] one of the following countries, transfers required to be made by Seller of cash or Additional Purchased Securities and Buyer of cash or Purchased Securities pursuant to Paragraph 4 of the Agreement shall be made by the close of business on the next business day following the business day on which notice is given, in the case of notice given at or before the Margin Notice Deadline, or by the close of business on the second business day following the business day on which notice is given, in the case of notice given after the Margin Notice Deadline:

[]. **Purchase Price Maintenance.**

(a) The parties agree that in any Transaction hereunder whose term extends over an Income payment date for the Securities subject to such Transaction, Buyer shall on the date such Income is paid transfer to or credit to the account of Seller an amount equal to such Income payment or payments pursuant to Paragraph 5(i) and shall not

apply the Income payment or payments to reduce the amount to be transferred to Buyer or Seller upon termination of the Transaction pursuant to Paragraph 5 (ii) of the Agreement.

- (b) Notwithstanding the definition of Purchase Price in Paragraph 2 of the Agreement and the provisions of Paragraph 4 of the Agreement, the parties agree (i) that the Purchase Price will not be increased or decreased by the amount of any cash transferred by one party to the other pursuant to Paragraph 4 of the Agreement and (ii) that transfer of such cash shall be treated as if it constituted a transfer of Securities (with a Market Value equal to the U.S. dollar amount of such cash) pursuant to Paragraph 4(a) or (b), as the case may be (including for purposes of the definition of “Additional Purchased Securities”).

[]. **Market Value.**

[Notwithstanding Paragraph 2(j) of the Agreement, the parties agree that in determining Market Value for purposes of Paragraph 4 of the Agreement, the price obtained pursuant to Paragraph 2(j) of the Agreement for the following types of Securities shall be reduced by the applicable percentage:

Security	Percentage Reduction
_____	_____
_____	_____
_____	_____
_____	_____]

[Notwithstanding Paragraph 2 (j) of the Agreement, the parties agree that in determining Market Value for purposes of Paragraph 4 of the Agreement, the price obtained pursuant to Paragraph 2 (j) of the Agreement shall be reduced by a percentage agreed to by Buyer and Seller.]

[]. **Designated Offices.**

- (a) The parties agree that Seller may act through the following branches or offices when entering into Transactions governed by the Agreement:

- (b) The parties agree that Buyer may act through the following branches or offices when entering into Transactions governed by the Agreement:

[]. Submission to Jurisdiction and Waiver of Immunity.

- (a) Each party irrevocably and unconditionally (i) submits to the non-exclusive jurisdiction of any United States Federal or New York State court sitting in Manhattan, and any appellate court from any such court, solely for the purpose of any suit, action or proceeding brought to enforce its obligations under the Agreement or relating in any way to the Agreement or any Transaction under the Agreement and (ii) waives, to the fullest extent it may effectively do so, any defense of an inconvenient forum to the maintenance of such action or proceeding in any such court and any right of jurisdiction on account of its place of residence or domicile.
- (b) To the extent that either party has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set off or any legal process (whether service or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) with respect to itself or any of its property, such party hereby irrevocably waives and agrees not to plead or claim such immunity in respect of any action brought to enforce its obligations under the Agreement or relating in any way to the Agreement or any Transaction under the Agreement.

- []. Additional Event of Default.** In addition to the Events of Default set forth in Paragraph 11 of the Agreement, it shall be an additional “Event of Default” if, as a result of sovereign action or inaction (directly or indirectly), Buyer or Seller becomes unable to perform any absolute or contingent obligation to make a payment or transfer or to receive a payment or transfer in respect of any Transaction under the Agreement or to comply with any other material provision of the Agreement relating to such Transaction.

- []. Alternative Termination Provision for U.K. and Certain Other Counterparties Seeking Regulatory Netting Treatment Under Capital Adequacy Directive.** The parties agree that a nondefaulting party that exercises or is deemed to exercise its right to declare an Event of Default under Paragraph 11(a) of the Agreement may elect, in lieu of application of subparagraphs (b) through (e) of Paragraph 11, to exercise its remedies through application of the following provisions:

“(b) Upon the nondefaulting party’s exercise or deemed exercise of the option referred to in subparagraph (a) of this Paragraph (and the deemed occurrence of the Repurchase Date as provided therein), the performance of the respective obligations of the parties with respect to Transactions shall be effected only in accordance with the provisions of subparagraphs (c) through (i) of this Paragraph.

- (c) The value of the Purchased Securities to be transferred and the aggregate Repurchase Prices to be paid by each party, and any other amounts owed or owing in connection with Transactions under this Agreement, shall be established by the nondefaulting party for all outstanding Transactions as at the Repurchase Date determined in accordance with subparagraph (a) of this Paragraph (and for this purpose, the value of Purchased Securities transferable by the nondefaulting party shall be the price therefor, obtained from a generally recognized source or the most recent closing bid from such source and the value of Purchased Securities transferable by the defaulting party shall be the price therefor, obtained from a generally recognized source or the most recent closing offer quotation from such source, in each case as determined by the nondefaulting party).
- (d) On the basis of the values and other amounts established in accordance with subparagraph (c) of this Paragraph, an account shall be taken (as at the Repurchase Date determined in accordance with subparagraph (a) of this Paragraph) of the amounts owing by each party to the other under this Agreement (which amounts shall be equal, in the case of each party's claims against the other in respect of transfers of Securities, to the value of such Securities established in accordance with subparagraph (c) of this Paragraph) and the amounts owing by one party shall be set off and applied against the amounts owing by the other, and only the balance of the account shall become immediately due and payable (by the party owing the greater amount pursuant to the foregoing.) For purposes of this calculation, all sums not denominated in the Base Currency shall be converted into the Base Currency on the relevant date at the Spot Rate prevailing at the relevant time.
- (e) Unless otherwise provided in Annex I, the parties acknowledge and agree that (1) the Securities subject to any Transaction hereunder are instruments traded in a recognized market, (2) in the absence of a generally recognized source for prices or bid or offer quotations for any Security, the nondefaulting party may establish the source therefor in its sole discretion and (3) all prices, bids and offers shall be determined together with accrued Income (except to the extent contrary to market practice with respect to the relevant Securities)."

Schedule of Optional Provisions for Annex VII

[]. **Financial Condition. [Alternative 1]** [Each of the parties acknowledges that its agreement to enter into each Transaction under the Agreement shall constitute a representation and warranty that there has been no material adverse change in its financial condition that such party has not disclosed to the other party in writing since the date of the latest statement provided by such party to the other party pursuant to Paragraph 4 of Annex VII.]

[Alternative 2] [Each of the parties acknowledges that its agreement to enter into each Transaction under the Agreement shall constitute a representation and warranty that there has been no change in its financial condition that would materially adversely affect its ability to perform its obligations under the Agreement that such party has not disclosed to the other party in writing since the date of the latest statement provided by such party to the other party pursuant to Paragraph 4 of Annex VII.]

[]. **Additional Representations.** In addition to the representations and warranties set forth in Paragraph 10 of the Agreement, (a) Seller represents and warrants to Buyer that, with respect to each Transaction, it will have the right to transfer the Purchased Securities (including any substituted or Additional Purchased Securities) to Buyer in accordance with the terms of the Agreement and that, upon such transfer, such Securities will be free and clear of any prior lien, claim, security interest or other encumbrance on the Purchase Date, and (b) Buyer represents and warrants to Seller that, with respect to each Transaction, it will have the right to transfer the Purchased Securities (after adjustment for any substituted or Additional Purchased Securities) to Seller in accordance with the terms of the Agreement and that, upon such transfer, such Securities will be free and clear of any prior lien, claim, security interest or other encumbrance on the Repurchase Date.

[]. **Authorized Persons. [Alternative 1]** [The following persons, and such other persons as are designated by such persons, are authorized to act for Seller (or Buyer, as the case may be) under the Agreement, until notice to the Fund by Seller (or Buyer, as the case may be):

The following persons, and such other persons as are designated by such persons, are authorized to act for the Fund under the Agreement, until notice to Seller (or Buyer, as the case may be) by such Fund:

_____]

[Alternative 2] [Each party shall provide the other with a list of persons authorized to act for such party under the Agreement, which list of authorized persons may be supplemented or amended from time to time.]

- []. **Limitation of Liability.** For any Transaction involving a Fund organized as a business trust (or a series thereof) where the trustees, officers, employees or interestholders of such business trust (or series thereof) may be held personally liable for its obligations, Seller (or Buyer, as the case may be) acknowledges and agrees that, to the extent such trustees are regarded as entering into the Agreement, they do so only as trustees and not individually and that the obligations of the Agreement are not binding upon any such trustee, officer, employee or interestholder individually, but are binding only upon the assets and property of said Fund (or series thereof). Seller (or Buyer, as the case may be) hereby agrees that such trustees, officers, employees or interestholders shall not be personally liable under the Agreement and that Seller (or Buyer, as the case may be) shall look solely to the property of the Fund (or series thereof) for the performance of the Agreement or payment of any claim under the Agreement.

- []. **Additional Event of Default.** In addition to the Events of Default set forth in Paragraph 11 of the Agreement, it shall be an additional “Event of Default” if a revocation or suspension of any authorization obtained by Buyer or Seller pursuant to Paragraph 10(iv) of the Agreement occurs.

- []. **Payment and Transfer.** In accordance with Paragraph 7 of the Agreement, the parties agree that (i) Buyer shall pay the Purchase Price and Seller shall pay the Repurchase Price only against delivery or transfer of the Purchased Securities (after adjustment for any substituted or Additional Purchased Securities); (ii) any transfer of Securities or cash required by Paragraph 4 of the Agreement shall be made free to the other party; and (iii) any release of Purchased Securities permitted by Paragraph 9 of the Agreement shall be made only against delivery or transfer of the substituted Securities. Any transfer on a book-entry system shall be made in compliance with the rules of such system and applicable law.

EXHIBIT B

TBMA Master Repurchase Agreement

The following is the prototype master repurchase agreement revised by The Bond Market Association (TBMA) in September 1996 to reflect legal and market-place changes.

Master Repurchase Agreement



September 1996 Version

Dated as of _____

Between: _____

and _____

1. Applicability

From time to time the parties hereto may enter into transactions in which one party (“Seller”) agrees to transfer to the other (“Buyer”) securities or other assets (“Securities”) against the transfer of funds by Buyer, with a simultaneous agreement by Buyer to transfer to Seller such Securities at a date certain or on demand, against the transfer of funds by Seller. Each such transaction shall be referred to herein as a “Transaction” and, unless otherwise agreed in writing, shall be governed by this Agreement, including any supplemental terms or conditions contained in Annex I hereto and in any other annexes identified herein or therein as applicable hereunder.

2. Definitions

- (a) “Act of Insolvency”, with respect to any party, (i) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (ii) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, which (A) is consented to or not timely contested by such party, (B) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (C) is not dismissed within 15 days, (iii) the making by such party of a general

assignment for the benefit of creditors, or (iv) the admission in writing by such party of such party's inability to pay such party's debts as they become due;

- (b) "Additional Purchased Securities", Securities provided by Seller to Buyer pursuant to Paragraph 4(a) hereof;
- (c) "Buyer's Margin Amount", with respect to any Transaction as of any date, the amount obtained by application of the Buyer's Margin Percentage to the Repurchase Price for such Transaction as of such date;
- (d) "Buyer's Margin Percentage", with respect to any Transaction as of any date, a percentage (which may be equal to the Seller's Margin Percentage) agreed to by Buyer and Seller or, in the absence of any such agreement, the percentage obtained by dividing the Market Value of the Purchased Securities on the Purchase Date by the Purchase Price on the Purchase Date for such Transaction;
- (e) "Confirmation", the meaning specified in Paragraph 3(b) hereof;
- (f) "Income", with respect to any Security at any time, any principal thereof and all interest, dividends or other distributions thereon;
- (g) "Margin Deficit", the meaning specified in Paragraph 4(a) hereof;
- (h) "Margin Excess", the meaning specified in Paragraph 4(b) hereof;
- (i) "Margin Notice Deadline", the time agreed to by the parties in the relevant Confirmation, Annex I hereto or otherwise as the deadline for giving notice requiring same-day satisfaction of margin maintenance obligations as provided in Paragraph 4 hereof (or, in the absence of any such agreement, the deadline for such purposes established in accordance with market practice);
- (j) "Market Value", with respect to any Securities as of any date, the price for such Securities on such date obtained from a generally recognized source agreed to by the parties or the most recent closing bid quotation from such a source, plus accrued Income to the extent not included therein (other than any Income credited or transferred to, or applied to the obligations of, Seller pursuant to Paragraph 5 hereof) as of such date (unless contrary to market practice for such Securities);
- (k) "Price Differential", with respect to any Transaction as of any date, the aggregate amount obtained by daily application of the Pricing Rate for such Transaction to the Purchase Price for such Transaction on a 360 day per year basis for the actual number of days during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) the date of determination (reduced by any amount of such Price Differential previously paid by Seller to Buyer with respect to such Transaction);

- (l) “Pricing Rate”, the per annum percentage rate for determination of the Price Differential;
- (m) “Prime Rate”, the prime rate of U.S. commercial banks as published in The Wall Street Journal (or, if more than one such rate is published, the average of such rates);
- (n) “Purchase Date”, the date on which Purchased Securities are to be transferred by Seller to Buyer;
- (o) “Purchase Price”, (i) on the Purchase Date, the price at which Purchased Securities are transferred by Seller to Buyer, and (ii) thereafter, except where Buyer and Seller agree otherwise, such price increased by the amount of any cash transferred by Buyer to Seller pursuant to Paragraph 4(b) hereof and decreased by the amount of any cash transferred by Seller to Buyer pursuant to Paragraph 4(a) hereof or applied to reduce Seller’s obligations under clause (ii) of Paragraph 5 hereof;
- (p) “Purchased Securities”, the Securities transferred by Seller to Buyer in a Transaction hereunder, and any Securities substituted therefor in accordance with Paragraph 9 hereof. The term “Purchased Securities” with respect to any Transaction at any time also shall include Additional Purchased Securities delivered pursuant to Paragraph 4(a) hereof and shall exclude Securities returned pursuant to Paragraph 4(b) hereof;
- (q) “Repurchase Date”, the date on which Seller is to repurchase the Purchased Securities from Buyer, including any date determined by application of the provisions of Paragraph 3(c) or 11 hereof;
- (r) “Repurchase Price”, the price at which Purchased Securities are to be transferred from Buyer to Seller upon termination of a Transaction, which will be determined in each case (including Transactions terminable upon demand) as the sum of the Purchase Price and the Price Differential as of the date of such determination;
- (s) “Seller’s Margin Amount”, with respect to any Transaction as of any date, the amount obtained by application of the Seller’s Margin Percentage to the Repurchase Price for such Transaction as of such date;
- (t) “Seller’s Margin Percentage”, with respect to any Transaction as of any date, a percentage (which may be equal to the Buyer’s Margin Percentage) agreed to by Buyer and Seller or, in the absence of any such agreement, the percentage obtained by dividing the Market Value of the Purchased Securities on the Purchase Date by the Purchase Price on the Purchase Date for such Transaction.

3. Initiation; Confirmation; Termination

- (a) An agreement to enter into a Transaction may be made orally or in writing at the initiation of either Buyer or Seller. On the Purchase Date for the Transaction, the Purchased Securities shall be transferred to Buyer or its agent against the transfer of the Purchase Price to an account of Seller.
- (b) Upon agreeing to enter into a Transaction hereunder, Buyer or Seller (or both), as shall be agreed, shall promptly deliver to the other party a written confirmation of each Transaction (a "Confirmation"). The Confirmation shall describe the Purchased Securities (including CUSIP number, if any), identify Buyer and Seller and set forth (i) the Purchase Date, (ii) the Purchase Price, (iii) the Repurchase Date, unless the Transaction is to be terminable on demand, (iv) the Pricing Rate or Repurchase Price applicable to the Transaction, and (v) any additional terms or conditions of the Transaction not inconsistent with this Agreement. The Confirmation, together with this Agreement, shall constitute conclusive evidence of the terms agreed between Buyer and Seller. If a specific objection is made promptly after receipt thereof. In the event of any conflict between the terms of such Confirmation and this Agreement, this Agreement shall prevail.
- (c) In the case of Transactions terminable upon demand, such demand shall be made by Buyer or Seller, no later than such time as is customary in accordance with market practice, by telephone or otherwise on or prior to the business day on which such termination will be effective. On the date specified in such demand, or on the date fixed for termination in the case of Transactions having a fixed term, termination of the Transaction will be effected by transfer to Seller or its agent of the Purchased Securities and any Income in respect thereof received by Buyer (and not previously credited or transferred to, or applied to the obligations of, Seller pursuant to Paragraph 5 hereof) against the transfer of the Repurchase Price to an account of Buyer.

4. Margin Maintenance

- (a) If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Buyer is less than the aggregate Buyer's Margin Amount for all such Transactions (a "Margin Deficit"), then Buyer may by notice to Seller require Seller in such Transactions, at Seller's option, to transfer to Buyer cash or additional Securities reasonably acceptable to Buyer ("Additional Purchased Securities"), so that the cash and aggregate Market Value of the Purchased Securities, including any such Additional Purchased Securities, will thereupon equal or exceed such aggregate Buyer's Margin Amount (decreased by the amount of any Margin Deficit as of such date arising from any Transactions in which such Buyer is acting as Seller).
- (b) If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Seller exceeds the aggregate

Seller's Margin Amount for all such Transactions at such time (a "Margin Excess"), then Seller may by notice to Buyer require Buyer in such Transactions, at Buyer's option, to transfer cash or Purchased Securities to Seller, so that the aggregate Market Value of the Purchased Securities, after deduction of any such cash or any Purchased Securities so transferred, will thereupon not exceed such aggregate Seller's Margin Amount (increased by the amount of any Margin Excess as of such date arising from any Transactions in which such Seller is acting as Buyer).

- (c) If any notice is given by Buyer or Seller under subparagraph (a) or (b) of this Paragraph at or before the Margin Notice Deadline on any business day, the party receiving such notice shall transfer cash or Additional Purchased Securities as provided in such subparagraph no later than the close of business in the relevant market on such day. If any such notice is given after the Margin Notice Deadline, the party receiving such notice shall transfer such cash or Securities no later than the close of business in the relevant market on the next business day following such notice.
- (d) Any cash transferred pursuant to this Paragraph shall be attributed to such Transactions as shall be agreed upon by Buyer and Seller.
- (e) Seller and Buyer may agree, with respect to any or all Transactions hereunder, that the respective rights of Buyer or Seller (or both) under subparagraphs (a) and (b) of this Paragraph may be exercised only where a Margin Deficit or Margin Excess, as the case may be, exceeds a specified dollar amount or a specified percentage of the Repurchase Prices for such Transactions (which amount or percentage shall be agreed to by Buyer and Seller prior to entering into any such Transactions).
- (f) Seller and Buyer may agree, with respect to any or all Transactions hereunder, that the respective rights of Buyer and Seller under subparagraphs (a) and (b) of this Paragraph to require the elimination of a Margin Deficit or a Margin Excess, as the case may be, may be exercised whenever such a Margin Deficit or Margin Excess exists with respect to any single Transaction hereunder (calculated without regard to any other Transaction outstanding under this Agreement).

5. Income Payments

Seller shall be entitled to receive an amount equal to all Income paid or distributed on or in respect of the Securities that is not otherwise received by Seller, to the full extent it would be so entitled if the Securities had not been sold to Buyer. Buyer shall, as the parties may agree with respect to any Transaction (or, in the absence of any such agreement, as Buyer shall reasonably determine in its discretion), on the date such Income is paid or distributed either (i) transfer to or credit to the account of Seller such Income with respect to any Purchased Securities subject to such Transaction or (ii) with respect to Income paid in cash, apply the Income payment or payments to reduce the amount, if any, to be transferred to Buyer by Seller upon termination of such Transaction. Buyer shall not be obligated to take

any action pursuant to the preceding sentence (A) to the extent that such action would result in the creation of a Margin Deficit, unless prior thereto or simultaneously therewith Seller transfers to Buyer cash or Additional Purchased Securities sufficient to eliminate such Margin Deficit, or (B) if an Event of Default with respect to Seller has occurred and is then continuing at the time such Income is paid or distributed.

6. Security Interest

Although the parties intend that all Transactions hereunder be sales and purchases and not loans, in the event any such Transactions are deemed to be loans, Seller shall be deemed to have pledged to Buyer as security for the performance by Seller of its obligations under each such Transaction, and shall be deemed to have granted to Buyer a security interest in, all of the Purchased Securities with respect to all Transactions hereunder and all Income thereon and other proceeds thereof.

7. Payment and Transfer

Unless otherwise mutually agreed, all transfers of funds hereunder shall be in immediately available funds. All Securities transferred by one party hereto to the other party (i) shall be in suitable form for transfer or shall be accompanied by duly executed instruments of transfer or assignment in blank and such other documentation as the party receiving possession may reasonably request, (ii) shall be transferred on the book-entry system of a Federal Reserve Bank, or (iii) shall be transferred by any other method mutually acceptable to Seller and Buyer.

8. Segregation of Purchased Securities

To the extent required by applicable law, all Purchased Securities in the possession of Seller shall be segregated from other securities in its possession and shall be identified as subject to this Agreement. Segregation may be accomplished by appropriate identification on the books and records of the holder, including a financial or securities intermediary or a clearing corporation. All of Seller's interest in the Purchased Securities shall pass to Buyer on the Purchase Date and, unless otherwise agreed by Buyer and Seller, nothing in this Agreement shall preclude Buyer from engaging in repurchase transactions with the Purchased Securities or otherwise selling, transferring, pledging or hypothecating the Purchased Securities, but no such transaction shall relieve Buyer of its obligations to transfer Purchased Securities to Seller pursuant to Paragraph 3, 4 or 11 hereof, or of Buyer's obligation to credit or pay Income to, or apply Income to the obligations of, Seller pursuant to Paragraph 5 hereof.

Required Disclosure for Transactions in Which the Seller Retains Custody of the Purchased Securities

Seller is not permitted to substitute other securities for those subject to this Agreement and therefore must keep Buyer's securities segregated at all times, unless in this Agreement Buyer grants Seller the right to substitute other securities. If Buyer grants the right to substitute, this means that Buyer's securities will likely be commingled with Seller's own securities during the trading day. Buyer is advised that, during any trading day that Buyer's securities are commingled with Seller's securities, they [will]* [may]** be subject to liens granted by Seller to [its clearing bank] * [third parties] ** and may be used by Seller for deliveries on other securities transactions. Whenever the securities are commingled, Seller's ability to resegment substitute securities for Buyer will be subject to Seller's ability to satisfy [the clearing]* [any]** lien or to obtain substitute securities.

* Language to be used under 17 C.F.R. §403.4(e) if Seller is a government securities broker or dealer other than a financial institution.

** Language to be used under 17 C.F.R. §403.5(d) if Seller is a financial institution.

9. Substitution

- (a) Seller may, subject to agreement with and acceptance by Buyer, substitute other Securities for any Purchased Securities. Such substitution shall be made by transfer to Buyer of such other Securities and transfer to Seller of such Purchased Securities. After substitution, the substituted Securities shall be deemed to be Purchased Securities.
- (b) In Transactions in which Seller retains custody of Purchased Securities, the parties expressly agree that Buyer shall be deemed, for purposes of subparagraph (a) of this Paragraph, to have agreed to and accepted in this Agreement substitution by Seller of other Securities for Purchased Securities; provided, however, that such other Securities shall have a Market Value at least equal to the Market Value of the Purchased Securities for which they are substituted.

10. Representations

Each of Buyer and Seller represents and warrants to the other that (i) it is duly authorized to execute and deliver this Agreement, to enter into Transactions contemplated hereunder and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance, (ii) it will engage in such Transactions as principal (or, if agreed in writing, in the form of an annex hereto or otherwise, in advance of any Transaction by the other party hereto, as agent for a disclosed principal), (iii) the person signing this Agreement on its behalf is duly authorized to do so on its behalf (or on behalf of any such disclosed principal), (iv) it has obtained all authorizations of any governmental

body required in connection with this Agreement and the Transactions hereunder and such authorizations are in full force and effect and (v) the execution, delivery and performance of this Agreement and the Transactions hereunder 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. On the Purchase Date for any Transaction Buyer and Seller shall each be deemed to repeat all the foregoing representations made by it.

11. Events of Default

In the event that (i) Seller fails to transfer or Buyer fails to purchase Purchased Securities upon the applicable Purchase Date, (ii) Seller fails to repurchase or Buyer fails to transfer Purchased Securities upon the applicable Repurchase Date, (iii) Seller or Buyer fails to comply with Paragraph 4 hereof, (iv) Buyer fails, after one business day's notice, to comply with Paragraph 5 hereof, (v) an Act of Insolvency occurs with respect to Seller or Buyer, (vi) any representation made by Seller or Buyer shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, or (vii) Seller or Buyer shall admit to the other its inability to, or its intention not to, perform any of its obligations hereunder (each an "Event of Default"):

- (a) The nondefaulting party may, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), declare an Event of Default to have occurred hereunder and, upon the exercise or deemed exercise of such option, the Repurchase Date for each Transaction hereunder shall, if it has not already occurred, be deemed immediately to occur (except that, in the event that the Purchase Date for any Transaction has not yet occurred as of the date of such exercise or deemed exercise, such Transaction shall be deemed immediately canceled). The nondefaulting party shall (except upon the occurrence of an Act of Insolvency) give notice to the defaulting party of the exercise of such option as promptly as practicable.
- (b) In all Transactions in which the defaulting party is acting as Seller, if the nondefaulting party exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Paragraph, (i) the defaulting party's obligations in such Transactions to repurchase all Purchased Securities, at the Repurchase Price therefor on the Repurchase Date determined in accordance with subparagraph (a) of this Paragraph, shall thereupon become immediately due and payable, (ii) all Income paid after such exercise or deemed exercise shall be retained by the nondefaulting party and applied to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder, and (iii) the defaulting party shall immediately deliver to the nondefaulting party any Purchased Securities subject to such Transactions then in the defaulting party's possession or control.
- (c) In all Transactions in which the defaulting party is acting as Buyer, upon tender by the nondefaulting party of payment of the aggregate Repurchase Prices for all such Transactions, all right, title and interest in and entitlement to all Purchased Securities

subject to such Transactions shall be deemed transferred to the nondefaulting party, and the defaulting party shall deliver all such Purchased Securities to the nondefaulting party.

- (d) If the nondefaulting party exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Paragraph, the nondefaulting party, without prior notice to the defaulting party, may:
- (i) as to Transactions in which the defaulting party is acting as Seller, (A) immediately sell, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the nondefaulting party may reasonably deem satisfactory, any or all Purchased Securities subject to such Transactions and apply the proceeds thereof to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Securities, to give the defaulting party credit for such Purchased Securities in an amount equal to the price therefor on such date, obtained from a generally recognized source or the most recent closing bid quotation from such a source, against the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder; and
 - (ii) as to Transactions in which the defaulting party is acting as Buyer, (A) immediately purchase, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the nondefaulting party may reasonably deem satisfactory, securities (“Replacement Securities”) of the same class and amount as any Purchased Securities that are not delivered by the defaulting party to the nondefaulting party as required hereunder or (B) in its sole discretion elect, in lieu of purchasing Replacement Securities, to be deemed to have purchased Replacement Securities at the price therefor on such date, obtained from a generally recognized source or the most recent closing offer quotation from such a source.

Unless otherwise provided in Annex I, the parties acknowledge and agree that (1) the Securities subject to any Transaction hereunder are instruments traded in a recognized market, (2) in the absence of a generally recognized source for prices or bid or offer quotations for any Security, the nondefaulting party may establish the source therefor in its sole discretion and (3) all prices, bids and offers shall be determined together with accrued Income (except to the extent contrary to market practice with respect to the relevant Securities).

- (e) As to Transactions in which the defaulting party is acting as Buyer, the defaulting party shall be liable to the nondefaulting party for any excess of the price paid (or deemed paid) by the nondefaulting party for Replacement Securities over the Repurchase Price for the Purchased Securities replaced thereby and for any amounts payable by the defaulting party under Paragraph 5 hereof or otherwise hereunder.
- (f) For purposes of this Paragraph 11, the Repurchase Price for each Transaction hereunder in respect of which the defaulting party is acting as Buyer shall not increase above the

amount of such Repurchase Price for such Transaction determined as of the date of the exercise or deemed exercise by the nondefaulting party of the option referred to in subparagraph (a) of this Paragraph.

- (g) The defaulting party shall be liable to the nondefaulting party for (i) the amount of all reasonable legal or other expenses incurred by the nondefaulting party in connection with or as a result of an Event of Default, (ii) damages in an amount equal to the cost (including all fees, expenses and commissions) of entering into replacement transactions and entering into or terminating hedge transactions in connection with or as a result of an Event of Default, and (iii) any other loss, damage, cost or expense directly arising or resulting from the occurrence of an Event of Default in respect of a Transaction.
- (h) To the extent permitted by applicable law, the defaulting party shall be liable to the nondefaulting party for interest on any amounts owing by the defaulting party hereunder, from the date the defaulting party becomes liable for such amounts hereunder until such amounts are (i) paid in full by the defaulting party or (ii) satisfied in full by the exercise of the nondefaulting party's rights hereunder. Interest on any sum payable by the defaulting party to the nondefaulting party under this Paragraph 11(h) shall be at a rate equal to the greater of the Pricing Rate for the relevant Transaction or the Prime Rate.
- (i) The nondefaulting party shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or applicable law.

12. Single Agreement

Buyer and Seller acknowledge that, and have entered hereinto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and have been made in consideration of each other. Accordingly, each of Buyer and Seller agrees (i) to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, (ii) that each of them shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transactions hereunder and (iii) that payments, deliveries and other transfers made by either of them in respect of any Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Transactions hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

13. Notices and Other Communications

Any and all notices, statements, demands or other communications hereunder may be given by a party to the other by mail, facsimile, telegraph, messenger or otherwise to the address specified in Annex II hereto, or so sent to such party at any other place specified in a notice

of change of address hereafter received by the other. All notices, demands and requests hereunder may be made orally, to be confirmed promptly in writing, or by other communication as specified in the preceding sentence.

14. Entire Agreement; Severability

This Agreement shall supersede any existing agreements between the parties containing general terms and conditions for repurchase transactions. Each provision and agreement herein shall be treated as separate and independent from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

15. Non-assignability; Termination

- (a) The rights and obligations of the parties under this Agreement and under any Transaction shall not be assigned by either party without the prior written consent of the other party, and any such assignment without the prior written consent of the other party shall be null and void. Subject to the foregoing, this Agreement and any Transactions shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement may be terminated by either party upon giving written notice to the other, except that this Agreement shall, notwithstanding such notice, remain applicable to any Transactions then outstanding.

- (b) Subparagraph (a) of this Paragraph 15 shall not preclude a party from assigning, charging or otherwise dealing with all or any part of its interest in any sum payable to it under Paragraph 11 hereof.

16. Governing Law

This Agreement shall be governed by the laws of the State of New York without giving effect to the conflict of law principles thereof.

17. No Waivers, Etc.

No express or implied waiver of any Event of Default by either party shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by any party shall constitute a waiver of its right to exercise any other remedy hereunder. No modification or waiver of any provision of this Agreement and no consent by any party to a departure herefrom shall be effective unless and until such shall be in writing and duly executed by both of the parties hereto. Without limitation on any of the foregoing, the failure to give a notice pursuant to Paragraph 4(a) or 4(b) hereof will not constitute a waiver of any right to do so at a later date.

18. Use of Employee Plan Assets

- (a) If assets of an employee benefit plan subject to any provision of the Employee Retirement Income Security Act of 1974 (“ERISA”) are intended to be used by either party hereto (the “Plan Party”) in a Transaction, the Plan Party shall so notify the other party prior to the Transaction. The Plan Party shall represent in writing to the other party that the Transaction does not constitute a prohibited transaction under ERISA or is otherwise exempt therefrom, and the other party may proceed in reliance thereon but shall not be required so to proceed.
- (b) Subject to the last sentence of subparagraph (a) of this Paragraph, any such Transaction shall proceed only if Seller furnishes or has furnished to Buyer its most recent available audited statement of its financial condition and its most recent subsequent unaudited statement of its financial condition.
- (c) By entering into a Transaction pursuant to this Paragraph, Seller shall be deemed (i) to represent to Buyer that since the date of Seller’s latest such financial statements, there has been no material adverse change in Seller’s financial condition which Seller has not disclosed to Buyer, and (ii) to agree to provide Buyer with future audited and unaudited statements of its financial condition as they are issued, so long as it is a Seller in any outstanding Transaction involving a Plan Party.

19. Intent

- (a) The parties recognize that each Transaction is a “repurchase agreement” as that term is defined in Section 101 of Title 11 of the United States Code, as amended (except insofar as the type of Securities subject to such Transaction or the term of such Transaction would render such definition inapplicable), and a “securities contract” as that term is defined in Section 741 of Title 11 of the United States Code, as amended (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).
- (b) It is understood that either party’s right to liquidate Securities delivered to it in connection with Transactions hereunder or to exercise any other remedies pursuant to Paragraph 11 hereof is a contractual right to liquidate such Transaction as described in Sections 555 and 559 of Title 11 of the United States Code, as amended.
- (c) The parties agree and acknowledge that if a party hereto is an “insured depository institution,” as such term is defined in the Federal Deposit Insurance Act, as amended (“FDIA”), then each Transaction hereunder is a “qualified financial contract,” as that term is defined in FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).
- (d) It is understood that this Agreement constitutes a “netting contract” as defined in and

subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”) and each payment entitlement and payment obligation under any Transaction hereunder shall constitute a “covered contractual payment entitlement” or “covered contractual payment obligation”, respectively, as defined in and subject to FDI-CIA (except insofar as one or both of the parties is not a “financial institution” as that term is defined in FDICIA).

20. Disclosure Relating to Certain Federal Protections

The parties acknowledge that they have been advised that:

- (a) in the case of Transactions in which one of the parties is a broker or dealer registered with the Securities and Exchange Commission (“SEC”) under Section 15 of the Securities Exchange Act of 1934 (“1934 Act”), the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 (“SIPA”) do not protect the other party with respect to any Transaction hereunder;
- (b) in the case of Transactions in which one of the parties is a government securities broker or a government securities dealer registered with the SEC under Section 15C of the 1934 Act, SIPA will not provide protection to the other party with respect to any Transaction hereunder; and
- (c) in the case of Transactions in which one of the parties is a financial institution, funds held by the financial institution pursuant to a Transaction hereunder are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, as applicable.

[Name of Party]

[Name of Party]

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Annex I

Supplemental Terms and Conditions

This Annex I forms a part of the Master Repurchase Agreement dated as of _____, 19____ (the “Agreement”) between _____ and _____. Capitalized terms used but not defined in this Annex I shall have the meanings ascribed to them in the Agreement.

1. Other Applicable Annexes. In addition to this Annex I and Annex II, the following Annexes and any Schedules thereto shall form a part of this Agreement and shall be applicable thereunder:

[Annex III (International Transactions)]

[Annex IV (Party Acting as Agent)]

[Annex V (Margin for Forward Transactions)]

[Annex VI (Buy/Sell Back Transactions)]

[Annex VII (Transactions Involving Registered Investment Companies)]

Annex II

Names and Addresses for Communications Between Parties

Annex III

International Transactions

This Annex III (including any Schedules hereto) forms a part of the Master Repurchase Agreement dated as of _____ 19____ (the “Agreement”) between _____ and _____. Capitalized terms used but not defined in this Annex III shall have the meanings ascribed to them in the Agreement.

1. Definitions. For purposes of the Agreement and this Annex III:

(a) The following terms shall have the following meanings:

“Base Currency”, United States dollars or such other currency as Buyer and Seller may agree in the Confirmation with respect to any International Transaction or otherwise in writing;

“Business Day” or “business day”:

- (i) in relation to any International Transaction which (A) involves an International Security and (B) is to be settled through CEDEL or Euroclear, a day on which CEDEL or, as the case may be, Euroclear is open to settle business in the currency in which the Purchase Price and the Repurchase Price are denominated;
- (ii) in relation to any International Transaction which (A) involves an International Security and (B) is to be settled through a settlement system other than CEDEL or Euroclear, a day on which that settlement system is open to settle such International Transaction;
- (iii) in relation to any International Transaction which involves a delivery of Securities not falling within (i) or (ii) above, a day on which banks are open for business in the place where delivery of the relevant Securities is to be effected; and
- (iv) in relation to any International Transaction which involves an obligation to make a payment not falling within (i) or (ii) above, a day other than a Saturday or Sunday on which banks are open for business in the principal financial center of the country of which the currency in which the payment is denominated is the official currency and, if different, in the place where any account designated by the parties for the making or receipt of the payment is situated (or, in the case of ECU, a day on which ECU clearing operates);

“CEDEL”, CEDEL Bank, société anonyme;

“Contractual Currency”, the currency in which the International Securities subject to

any International Transaction are denominated or such other currency as may be specified in the Confirmation with respect to any International Transaction;

“Euroclear”, Morgan Guaranty Trust Company of New York, Brussels Branch, as operator of the Euroclear System;

“International Security”, any Security that (i) is denominated in a currency other than United States dollars or (ii) is capable of being cleared through a clearing facility outside the United States or (iii) is issued by an issuer organized under the laws of a jurisdiction other than the United States (or any political subdivision thereof);

“International Transaction”, any Transaction involving (i) an International Security or (ii) a party organized under the laws of a jurisdiction other than the United States (or any political subdivision thereof) or having its principal place of business outside the United States or (iii) a branch or office outside the United States designated in Annex I by a party organized under the laws of the United States (or any political subdivision thereof) as an office through which that party may act;

“LIBOR”, in relation to any sum in any currency. the offered rate for deposits for such sum in such currency for a period of three months which appears on the Reuters Screen LIBO page as of 11:00 A.M., London time, on the date on which it is to be determined (or, if more than one such rate appears, the arithmetic mean of such rates);

“Spot Rate”, where an amount in one currency is to be converted into a second currency on any date, the spot rate of exchange of a comparable amount quoted by a major money-center bank in the New York interbank market, as agreed by Buyer and Seller, for the sale by such bank of such second currency against a purchase by it of such first currency.

(b) Notwithstanding Paragraph 2 of the Agreement, the term “Prime Rate” shall mean, with respect to any International Transaction, LIBOR plus a spread, as may be specified in the Confirmation with respect to any International Transaction or otherwise in writing.

2. Manner of Transfer. All transfers of International Securities (i) shall be in suitable form for transfer and accompanied by duly executed instruments of transfer or assignment in blank (where required for transfer) and such other documentation as the transferee may reasonably request, or (ii) shall be transferred through the book-entry system of Euroclear or CEDEL, or (iii) shall be transferred through any other agreed securities clearing system or (iv) shall be transferred by any other method mutually acceptable to Seller and Buyer.

3. Contractual Currency.

(a) Unless otherwise mutually agreed, all funds transferred in respect of the Purchase Price or the Repurchase Price in any International Transaction shall be in the Contractual Currency.

- (b) Notwithstanding subparagraph (a) of this Paragraph 3, the payee of any payment may, at its option, accept tender thereof in any other currency; provided, however, that, to the extent permitted by applicable law, the obligation of the payor to make such payment will be discharged only to the extent of the amount of the Contractual Currency that such payee may, consistent with normal banking procedures, purchase with such other currency (after deduction of any premium and costs of exchange) for delivery within the customary delivery period for spot transactions in respect of the relevant currency.
- (c) If for any reason the amount in the Contractual Currency so received, including amounts received after conversion of any recovery under any judgment or order expressed in a currency other than the Contractual Currency, falls short of the amount in the Contractual Currency due in respect of the Agreement, the party required to make the payment shall (unless an Event of Default has occurred and such party is the nondefaulting party) as a separate and independent obligation (which shall not merge with any judgment or any payment or any partial payment or enforcement of payment) and to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall.
- (d) If for any reason the amount of the Contractual Currency received by one party hereto exceeds the amount in the Contractual Currency due such party in respect of the Agreement, then (unless an Event of Default has occurred and such party is the nondefaulting party) the party receiving the payment shall refund promptly the amount of such excess.
- 4. Notices.** Any and all notices, statements, demands or other communications with respect to International Transactions shall be given in accordance with Paragraph 13 of the Agreement and shall be in the English language.
- 5. Taxes.**
- (a) Transfer taxes, stamp taxes and all similar costs with respect to the transfer of Securities shall be paid by Seller.
- (b) (i) Unless otherwise agreed, all money payable by one party (the “Payor”) to the other (the “Payee”) in respect of any International Transaction shall be paid free and clear of, and without withholding or deduction for, any taxes or duties of whatsoever nature imposed, levied, collected, withheld or assessed by any authority having power to tax (a “Tax”), unless the withholding or deduction of such Tax is required by law. In that event, unless otherwise agreed, Payor shall pay such additional amounts as will result in the net amounts receivable by Payee (after taking account of such withholding or deduction) being equal to such amounts as would have been received by Payee had no such Tax been required to be withheld or deducted; provided that for purposes of Paragraphs 5 and 6 the term “Tax” shall not include any Tax that would not have been imposed but for the existence of any present or former connection between Payee and the jurisdiction imposing such Tax other than the mere receipt of payment from Payor or the performance of Payee’s obligations under

an International Transaction. The parties acknowledge and agree, for the avoidance of doubt, that the amount of Income required to be transferred, credited or applied by Buyer for the benefit of Seller under Paragraph 5 of the Agreement shall be determined without taking into account any Tax required to be withheld or deducted from such Income, unless otherwise agreed.

- (ii) In the case of any Tax required to be withheld or deducted from any money payable to a party hereto acting as Payee by the other party hereto acting as Payor, Payee agrees to deliver to Payor (or, if applicable, to the authority imposing the Tax) any certificate or document reasonably requested by Payor that would entitle Payee to an exemption from, or reduction in the rate of, withholding or deduction of Tax from money payable by Payor to Payee.
- (iii) Each party hereto agrees to notify the other party of any circumstance known or reasonably known to it (other than a Change of Tax Law, as defined in Paragraph 6 hereof) that causes a certificate or document provided by it pursuant to subparagraph (b) (ii) of this Paragraph to fail to be true.
- (iv) Notwithstanding subparagraph (b) (i) of this Paragraph, no additional amounts shall be payable by Payor to Payee in respect of an International Transaction to the extent that such additional amounts are payable as a result of a failure by Payee to comply with its obligations under subparagraph (b) (ii) or (b) (iii) of this Paragraph with respect to such International Transaction.

6. Tax Event

- (a) This Paragraph 6 shall apply if either party notifies the other, with respect to a Tax required to be collected by withholding or deduction, that —
 - (i) any action taken by a taxing authority or brought in a court of competent jurisdiction after the date an International Transaction is entered into, regardless of whether such action is taken or brought with respect to a party to the Agreement; or
 - (ii) a change in the fiscal or regulatory regime after the date an International Transaction is entered into,(each, a “Change of Tax Law”) has or will, in the notifying party’s reasonable opinion, have a material adverse effect on such party in the context of an International Transaction.
- (b) If so requested by the other party, the notifying party will furnish the other party with an opinion of a suitably qualified adviser that an event referred to in subparagraph (a) (i) or (a) (ii) of this Paragraph 6 has occurred and affects the notifying party.
- (c) Where this Paragraph 6 applies, the party giving the notice referred to in subparagraph (a) above may, subject to subparagraph (d) below, terminate the International

Transaction effective from a date specified in the notice, not being earlier (unless so agreed by the other party) than 30 days after the date of such notice, by nominating such date as the Repurchase Date.

- (d) If the party receiving the notice referred to in subparagraph (a) of this Paragraph 6 so elects, it may override such notice by giving a counter-notice to the other party. If a counter-notice is given, the party which gives such counter-notice will be deemed to have agreed to indemnify the other party against the adverse effect referred to in subparagraph (a) of this Paragraph 6 so far as it relates to the relevant International Transaction and the original Repurchase Date will continue to apply.
- (e) Where an International Transaction is terminated as described in this Paragraph 6, the party which has given the notice to terminate shall indemnify the other party against any reasonable legal and other professional expenses incurred by the other party by reason of the termination, but the other party may not claim any sum constituting consequential loss or damage in respect of a termination in accordance with this Paragraph 6.
- (f) This Paragraph 6 is without prejudice to Paragraph 5 of this Annex III; but an obligation to pay additional amounts pursuant to Paragraph 5 of this Annex III may, where appropriate, be a circumstance which causes this Paragraph 6 to apply.

7. Margin. In the calculation of “Margin Deficit” and “Margin Excess” pursuant to Paragraph 4 of the Agreement, all sums not denominated in the Base Currency shall be deemed to be converted into the Base Currency at the Spot Rate on the date of such calculation.

8. Events of Default.

- (a) In addition to the Events of Default set forth in Paragraph 11 of the Agreement, it shall be an additional “Event of Default” if either party fails, after one business day’s notice, to perform any covenant or obligation required to be performed by it under this Annex III, including, without limitation, the payment of taxes or additional amounts as required by Paragraph 5 of this Annex III.
- (b) In addition to the other rights of a nondefaulting party under Paragraph 11 of the Agreement, following an Event of Default, the nondefaulting party may, at any time at its option, effect the conversion of any currency into a different currency of its choice at the Spot Rate on the date of the exercise of such option and offset obligations of the defaulting party denominated in different currencies against each other.

Schedule III.A

International Transactions Relating to [Relevant Country]

This Schedule III.A forms a part of Annex III to the Master Repurchase Agreement dated as of _____, 19 (the “Agreement”) between _____ and _____ . Capitalized terms used but not defined in this Schedule III.A shall have the meanings ascribed to them in Annex III.

[Insert provisions applicable to relevant country.]

Annex IV

Party Acting as Agent

This Annex IV forms a part of the Master Repurchase Agreement dated as of _____, 19____ (the “Agreement”) between _____ and _____. This Annex IV sets forth the terms and conditions governing all transactions in which a party selling securities or buying securities, as the case may be (“Agent”), in a Transaction is acting as agent for one or more third parties (each, a “Principal”). Capitalized terms used but not defined in this Annex IV shall have the meanings ascribed to them in the Agreement.

- 1. Additional Representations.** In addition to the representations set forth in Paragraph 10 of the Agreement, Agent hereby makes the following representations, which shall continue during the term of any Transaction: Principal has duly authorized Agent to execute and deliver the Agreement on its behalf, has the power to so authorize Agent and to enter into the Transactions contemplated by the Agreement and to perform the obligations of Seller or Buyer, as the case may be, under such Transactions, and has taken all necessary action to authorize such execution and delivery by Agent and such performance by it.
- 2. Identification of Principals.** Agent agrees (a) to provide the other party, prior to the date on which the parties agree to enter into any Transaction under the Agreement, with a written list of Principals for which it intends to act as Agent (which list may be amended in writing from time to time with the consent of the other party), and (b) to provide the other party, before the close of business on the next business day after orally agreeing to enter into a Transaction, with notice of the specific Principal or Principals for whom it is acting in connection with such Transaction. If (i) Agent fails to identify such Principal or Principals prior to the close of business on such next business day or (ii) the other party shall determine in its sole discretion that any Principal or Principals identified by Agent are not acceptable to it, the other party may reject and rescind any Transaction with such Principal or Principals, return to Agent any Purchased Securities or portion of the Purchase Price, as the case may be, previously transferred to the other party and refuse any further performance under such Transaction, and Agent shall immediately return to the other party any portion of the Purchase Price or Purchased Securities, as the case may be, previously transferred to Agent in connection with such Transaction; provided, however, that (A) the other party shall promptly (and in any event within one business day) notify Agent of its determination to reject and rescind such Transaction and (B) to the extent that any performance was rendered by any party under any Transaction rejected by the other party, such party shall remain entitled to any Price Differential or other amounts that would have been payable to it with respect to such performance if such Transaction had not been rejected. The other party acknowledges that Agent shall not have any obligation to provide it with confidential information regarding the financial status of its Principals; Agent agrees, however, that it will assist the other party in obtaining from Agent’s Principals such information regarding the financial status of such Principals as the other party may reasonably request.

- 3. Limitation of Agent's Liability.** The parties expressly acknowledge that if the representations of Agent under the Agreement, including this Annex IV, are true and correct in all material respects during the term of any Transaction and Agent otherwise complies with the provisions of this Annex IV, then (a) Agent's obligations under the Agreement shall not include a guarantee of performance by its Principal or Principals and (b) the other party's remedies shall not include a right of setoff in respect of rights or obligations, if any, of Agent arising in other transactions in which Agent is acting as principal.
- 4. Multiple Principals.**
- (a) In the event that Agent proposes to act for more than one Principal hereunder, Agent and the other party shall elect whether (i) to treat Transactions under the Agreement as transactions entered into on behalf of separate Principals or (ii) to aggregate such Transactions as if they were transactions by a single Principal. Failure to make such an election in writing shall be deemed an election to treat Transactions under the Agreement as transactions on behalf of separate Principals.
- (b) In the event that Agent and the other party elect (or are deemed to elect) to treat Transactions under the Agreement as transactions on behalf of separate Principals, the parties agree that (i) Agent will provide the other party, together with the notice described in Paragraph 2(b) of this Annex IV, notice specifying the portion of each Transaction allocable to the account of each of the Principals for which it is acting (to the extent that any such Transaction is allocable to the account of more than one Principal); (ii) the portion of any individual Transaction allocable to each Principal shall be deemed a separate Transaction under the Agreement; (iii) the margin maintenance obligations of Buyer and Seller under Paragraph 4 of the Agreement shall be determined on a Transaction-by-Transaction basis (unless the parties agree to determine such obligations on a Principal-by-Principal basis); and (iv) Buyer's and Seller's remedies under the Agreement upon the occurrence of an Event of Default shall be determined as if Agent had entered into a separate Agreement with the other party on behalf of each of its Principals.
- (c) In the event that Agent and the other party elect to treat Transactions under the Agreement as if they were transactions by a single Principal, the parties agree that (i) Agent's notice under Paragraph 2(b) of this Annex IV need only identify the names of its Principals but not the portion of each Transaction allocable to each Principal's account; (ii) the margin maintenance obligations of Buyer and Seller under Paragraph 4 of the Agreement shall, subject to any greater requirement imposed by applicable law, be determined on an aggregate basis for all Transactions entered into by Agent on behalf of any Principal; and (iii) Buyer's and Seller's remedies upon the occurrence of an Event of Default shall be determined as if all Principals were a single Seller or Buyer, as the case may be.
- (d) Notwithstanding any other provision of the Agreement (including, without limitation, this Annex IV), the parties agree that any Transactions by Agent on behalf of an employee benefit plan under ERISA shall be treated as Transactions on behalf of sepa-

rate Principals in accordance with Paragraph 4(b) of this Annex IV (and all margin maintenance obligations of the parties shall be determined on a Transaction-by-Transaction basis).

- 5. Interpretation of Terms.** All references to “Seller” or “Buyer”, as the case may be, in the Agreement shall, subject to the provisions of this Annex IV (including, among other provisions the limitations on Agent’s liability in Paragraph 3 of this Annex IV), be construed to reflect that (i) each Principal shall have, in connection with any Transaction or Transactions entered into by Agent on its behalf, the rights, responsibilities, privileges and obligations of a “Seller” or “Buyer”, as the case may be, directly entering into such Transaction or Transactions with the other party under the Agreement, and (ii) Agent’s Principal or Principals have designated Agent as their sole agent for performance of Seller’s obligations to Buyer or Buyer’s obligations to Seller, as the case may be, and for receipt of performance by Buyer of its obligations to Seller or Seller of its obligations to Buyer, as the case may be, in connection with any Transaction or Transactions under the Agreement (including, among other things, as Agent for each Principal in connection with transfers of Securities, cash or other property and as agent for giving and receiving all notices under the Agreement). Both Agent and its Principal or Principals shall be deemed “parties” to the Agreement and all references to a “party” or “either party” in the Agreement shall be deemed revised accordingly (and any Act of Insolvency with respect to Agent or any other Event of Default by Agent under Paragraph 11 of the Agreement shall be deemed an Event of Default by Seller or Buyer, as the case may be).

Annex V

Margin for Forward Transactions

This Annex V forms a part of the Master Repurchase Agreement dated as of _____, 19_____. (the “Agreement”) between _____ and _____ . Capitalized terms used but not defined in this Annex V shall have the meanings ascribed to them in the Agreement.

1. Definitions. For purposes of the Agreement and this Annex V, the following terms shall have the following meanings:

“Forward Exposure”, the amount of loss a party would incur upon canceling a Forward Transaction and entering into a replacement transaction, determined in accordance with market practice or as otherwise agreed by the parties;

“Forward Transaction”, any Transaction agreed to by the parties as to which the Purchase Date has not yet occurred;

“Net Forward Exposure”, the aggregate amount of a party’s Forward Exposure to the other party under all Forward Transactions hereunder reduced by the aggregate amount of any Forward Exposure of the other party to such party under all Forward Transactions hereunder;

“Net Unsecured Forward Exposure”, a party’s Net Forward Exposure reduced by the Market Value of any Forward Collateral transferred to such party (and not returned) pursuant to Paragraph 2 of this Annex V.

2. Margin Maintenance.

(a) If at any time a party (the “In-the-Money Party”) shall have a Net Unsecured Forward Exposure to the other party (the “Out-of-the-Money Party”) under one or more Forward Transactions, the In-the-Money Party may by notice to the Out-of-the-Money Party require the Out-of-the-Money Party to transfer to the In-the-Money Party Securities or cash reasonably acceptable to the In-the-Money-Party (together with any Income thereon and proceeds thereof, “Forward Collateral”) having a Market Value sufficient to eliminate such Net Unsecured Forward Exposure. The Out-of-the-Money Party may by notice to the In-the-Money Party require the In-the-Money Party to transfer to the Out-of-the-Money Party Forward Collateral having a Market Value that exceeds the In-the-Money Party’s Net Forward Exposure (“Excess Forward Collateral Amount”). The rights of the parties under this subparagraph shall be in addition to their rights under subparagraphs (a) and (b) of Paragraph 4 and any other provisions of the Agreement

(b) The parties may agree, with respect to any or all Forward Transactions hereunder, that

the respective rights of the parties under subparagraph (a) of this Paragraph may be exercised only where a Net Unsecured Forward Exposure or Excess Forward Collateral Amount, as the case may be, exceeds a specified dollar amount or other specified threshold for such Forward Transactions (which amount or threshold shall be agreed to by the parties prior to entering into any such Forward Transactions).

- (c) The parties may agree, with respect to any or all Forward Transactions hereunder, that the respective rights of the parties under subparagraph (a) of this Paragraph to require the elimination of a Net Unsecured Forward Exposure or Excess Forward Collateral Amount, as the case may be, may be exercised whenever such a Net Unsecured Forward Exposure or Excess Forward Collateral Amount exists with respect to any single Forward Transaction hereunder (calculated without regard to any other Forward Transaction outstanding hereunder).
- (d) The parties may agree, with respect to any or all Forward Transactions hereunder, that
 - (i) one party shall transfer to the other party Forward Collateral having a Market Value equal to a specified dollar amount or other specified threshold no later than the Margin Notice Deadline on the day such Forward Transaction is entered into by the parties or
 - (ii) one party shall not be required to make any transfer otherwise required to be made under this Paragraph if, after giving effect to such transfer, the Market Value of the Forward Collateral held by such party would be less than a specified dollar amount or other specified threshold (which amount or threshold shall be agreed to by the parties prior to entering into any such Forward Transactions).
- (e) If any notice is given by a party to the other under subparagraph (a) of this Paragraph at or before the Margin Notice Deadline on any business day, the party receiving such notice shall transfer Forward Collateral as provided in such subparagraph no later than the close of business in the relevant market on such business day. If any such notice is given after the Margin Notice Deadline, the party receiving such notice shall transfer such Forward Collateral no later than the close of business in the relevant market on the next business day.
- (f) Upon the occurrence of the Purchase Date for any Forward Transaction and the performance by the parties of their respective obligations to transfer cash and Securities on such date, any Forward Collateral in respect of such Forward Transaction, together with any Income thereon and proceeds thereof, shall be transferred by the party holding such Forward Collateral to the other party; provided, however, that neither party shall be required to transfer such Forward Collateral to the other if such transfer would result in the creation of a Net Unsecured Forward Exposure of the transferor.
- (g) The Pledgor (as defined below) of Forward Collateral may, subject to agreement with and acceptance by the Pledgee (as defined below) thereof, substitute other Securities reasonably acceptable to the Pledgee for any Securities Forward Collateral. Such substitution shall be made by transfer to the Pledgee of such other Securities and transfer to the Pledgor of such Securities Forward Collateral. After substitution, the substituted Securities shall constitute Forward Collateral.

3. Security Interest.

- (a) In addition to the rights granted to the parties under Paragraph 6 of the Agreement, each party (“Pledgor”) hereby pledges to the other party (“Pledgee”) as security for the performance of its obligations hereunder, and grants Pledgee a security interest in and right of setoff against, any Forward Collateral and any other cash, Securities or property, and all proceeds of any of the foregoing, transferred by or on behalf of Pledgor to Pledgee or due from Pledgee to Pledgor in connection with the Agreement and the Forward Transactions hereunder.
- (b) Unless otherwise agreed by the parties, a party to whom Forward Collateral has been transferred shall have the right to engage in repurchase transactions with Forward Collateral or otherwise sell, transfer, pledge or hypothecate Forward Collateral, including in respect of loans or other extensions of credit to such party that may be in amounts greater than the Forward Collateral such party is entitled to as security for obligations hereunder, and that may extend for periods of time longer than the periods during which such party is entitled to Forward Collateral as security for obligations hereunder; provided, however, that no such transaction shall relieve such party of its obligations to transfer Forward Collateral pursuant to Paragraph 2 or 4 of this Annex V or Paragraph 11 of the Agreement.

4. Events of Default.

- (a) In addition to the Events of Default set forth in Paragraph 11 of the Agreement, it shall be an additional “Event of Default” if either party fails, after one business day’s notice, to perform any covenant or obligation required to be performed by it under Paragraph 2 or any other provision of this Annex.
- (b) In addition to the other rights of a nondefaulting party under Paragraphs 11 and 12 of the Agreement, if the nondefaulting party exercised or is deemed to have exercised the option referred to in Paragraph 11(a) of the Agreement
 - (i) The nondefaulting party, without prior notice to the defaulting party, may (A) immediately sell, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the nondefaulting party may reasonably deem satisfactory, any or all Forward Collateral subject to any or all Forward Transactions hereunder and apply the proceeds thereof to any amounts owing by the defaulting party hereunder or (B) in its sole discretion elect, in lieu of selling all or a portion of such Forward Collateral, to give the defaulting party credit for such Forward Collateral in an amount equal to the price therefor on such date, obtained from a generally recognized source or the most recent closing bid quotation from such a source, against any amounts owing by the defaulting party hereunder.
 - (ii) Any Forward Collateral held by the defaulting party, together with any Income thereon and proceeds thereof, shall be immediately transferred by the defaulting party to the nondefaulting party. The nondefaulting party may, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of

an Act of Insolvency), and without prior notice to the defaulting party, (i) immediately purchase, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the nondefaulting party may reasonably deem satisfactory, securities (“Replacement Securities”) of the same class and amount as any Securities Forward Collateral that is not delivered by the defaulting party to the nondefaulting party as required hereunder or (ii) in its sole discretion elect, in lieu of purchasing Replacement Securities, to be deemed to have purchased Replacement Securities at the price therefor on such date, obtained from a generally recognized source or the most recent closing offer quotation from such a source, whereupon the defaulting party shall be liable for the price of such Replacement Securities together with the amount of any cash Forward Collateral not delivered by the defaulting party to the nondefaulting party as required hereunder.

Unless otherwise provided in Annex I, the parties acknowledge and agree that (1) the Forward Collateral subject to any Forward Transaction hereunder are instruments traded in a recognized market, (2) in the absence of a generally recognized source for prices or bid quotations for any Forward Collateral, the nondefaulting party may establish the source therefor in its sole discretion and (3) all prices and bids shall be determined together with accrued Income (except to the extent contrary to market practice with respect to the relevant Forward Collateral).

5. **No Waivers, Etc.** Without limitation of the provisions of Paragraph 17 of the Agreement, the failure to give a notice pursuant to subparagraph (a), (b), (c) or (d) of Paragraph 2 of this Annex V will not constitute a waiver of any right to do so at a later date.

Annex VI

Buy/Sell Back Transactions

This Annex VI forms a part of the Master Repurchase Agreement dated as of _____, 19____ (the “Agreement”) between _____ and _____. Capitalized terms used but not defined in this Annex VI shall have the meanings ascribed to them in the Agreement

1. In the event of any conflict between the terms of this Annex VI and any other term of the Agreement, the terms of this Annex VI shall prevail.
2. Each Transaction shall be identified at the time it is entered into and in the relevant Confirmation as either a Repurchase Transaction or a Buy/Sell Back Transaction.
3. In the case of a Buy/Sell Back Transaction, the Confirmation delivered in accordance with Paragraph 3 of the Agreement may consist of a single document in respect of both of the transfers of funds against Securities which together form the Buy/Sell Back Transaction or separate Confirmations may be delivered in respect of each such transfer.
4. **Definitions.** The following definitions shall apply to Buy/Sell Back Transactions:
 - (a) “Accrued Interest”, with respect to any Purchased Securities subject to a Buy/Sell Back Transaction, unpaid Income that has accrued during the period from (and including) the issue date or the last Income payment date (whichever is later) in respect of such Purchased Securities to (but excluding) the date of calculation. For these purposes unpaid Income shall be deemed to accrue on a daily basis from (and including) the issue date or the last Income payment date (as the case may be) to (but excluding) the next Income payment date or the maturity date (whichever is earlier);
 - (b) “Sell Back Differential”, with respect to any Buy/Sell Back Transaction as of any date, the aggregate amount obtained by daily application of the Pricing Rate for such Buy/Sell Back Transaction to the Purchase Price for such Buy/Sell Back Transaction on a 360 day per year basis (unless otherwise agreed by the parties for the Transaction) for the actual number of days during the period commencing on (and including) the Purchase Date for such Buy/Sell Back Transaction and ending on (but excluding) the date of determination;
 - (c) “Sell Back Price”, with respect to any Buy/Sell Back Transaction:
 - (i) in relation to the date originally specified by the parties as the Repurchase Date pursuant to Paragraph 2(q) of the Agreement, the price agreed by the Parties in relation to such Buy/Sell Back Transaction, and

(ii) in any other case (including for the purposes of the application of Paragraph 4 or Paragraph 11 of the Agreement), the product of the formula $(P + D) - (IR + C)$, where —

P =the Purchase Price

D =the Sell Back Differential

IR =the amount of any Income in respect of the Purchased Securities paid by the issuer on any date falling between the Purchase Date and the Repurchase Date

C =the aggregate amount obtained by daily application of the Pricing Rate for such Buy/Sell Back Transaction to any such Income from (and including) the date of payment by the issuer to (but excluding) the date of calculation.

5. When entering into a Buy/Sell Back Transaction the parties shall also agree on the Sell Back Price and the Pricing Rate to apply in relation to such Buy/Sell Back Transaction on the scheduled Repurchase Date. The parties shall record the Pricing Rate in at least one Confirmation applicable to such Buy/Sell Back Transaction.
6. Termination of a Buy/Sell Back Transaction shall be effected on the Repurchase Date by transfer to Seller or its agent of Purchased Securities against the payment by Seller of (i) in a case where the Repurchase Date is the date originally agreed to by the parties pursuant to Paragraph 2(q) of the Agreement, the Sell Back Price referred to in Paragraph 4(c) (i) of this Annex; and (ii) in any other case, the Sell Back Price referred to in Paragraph 4(c) (ii) of this Annex.
7. For the avoidance of doubt, the parties acknowledge and agree that the Purchase Price and the Sell Back Price in Buy/Sell Back Transactions shall include Accrued Interest (except to the extent contrary to market practice with respect to the Securities subject to such Buy/Sell Back Transaction, in which event (i) an amount equal to the Purchase Price plus Accrued Interest to the Purchase Date shall be paid to Seller on the Purchase Date and shall be used, in lieu of the Purchase Price, for calculating the Sell Back Differential, (ii) an amount equal to the Sell Back Price plus the amount of Accrued Interest to the Repurchase Date shall be paid to Buyer on the Repurchase Date, and (iii) the formula in Paragraph 4(c) (ii) of this Annex VI shall be replaced by the formula “ $(P + AI + D) - (IR + C)$ ”, where “AI” equals Accrued Interest to the Purchase Date).
8. Unless the parties agree in Annex I to the Agreement that a Buy/Sell Back Transaction is not to be repriced, they shall at the time of repricing agree on the Purchase Price, the Sell Back Price and the Pricing Rate applicable to such Transaction.
9. Paragraph 5 of the Agreement shall not apply to Buy/Sell Back Transactions. Seller agrees, on the date such Income is received, to pay to Buyer any Income received by Seller in respect of Purchased Securities that is paid by the issuer on any date falling between the Purchase Date and the Repurchase Date.

10. References to “Repurchase Price” throughout the Agreement shall be construed as references to “Repurchase Price or the Sell Back Price, as the case may be.”

11. In 11 of the Agreement, references to the “Repurchase Prices” shall be construed as references to “Repurchase Prices and Sell Back Prices.”

Annex VII

Transactions Involving Registered Investment Companies

This Annex VII (including any Schedules hereto) forms a part of the Master Repurchase Agreement dated as of _____, 19____ (the “Agreement”) between _____ (“Counterparty”) and each investment company identified on Schedule VII.A hereto (as such schedule may be amended from time to time) acting on behalf of its respective series or portfolios identified on such Schedule VII.A, or in the case of those investment companies for which no separate series or portfolios are identified on such Schedule VII.A, acting for and on behalf of itself (each such series, portfolio or investment company, as the case may be, hereinafter referred to as a “Fund”). In the event of any conflict between the terms of this Annex VII and any other term of the Agreement, the terms of this Annex VII shall prevail. Capitalized terms used but not defined in this Annex VII shall have the meanings ascribed to them in the Agreement

- 1. Multiple Funds.** For any Transaction in which a Fund is acting as Buyer (or Seller, as the case may be), each reference in the Agreement and this Annex VII to Buyer (or Seller, as the case may be) shall be deemed a reference solely to the particular Fund to which such Transaction relates, as identified to Seller (or Buyer, as the case may be) by the Fund and as may be specified in the Confirmation therefor. In no circumstances shall the rights, obligations or remedies of either party with respect to a particular Fund constitute a right, obligation or remedy applicable to any other Fund. Specifically, and without otherwise limiting the scope of this Paragraph: (a) the margin maintenance obligations of Buyer and Seller specified in Paragraph 4 or any other provisions of the Agreement and the single agreement provisions of Paragraph 12 of the Agreement shall be applied based solely upon Transactions entered into by a particular Fund, (b) Buyer’s and Seller’s remedies under the Agreement upon the occurrence of an Event of Default shall be determined as if each Fund had entered into a separate Agreement with Counterparty, and (c) Seller and Buyer shall have no right to set off claims related to Transactions entered into by a particular Fund against claims related to Transactions entered into by any other Fund.
- 2. Margin Percentage.** For any Transaction in which a Fund is acting as Buyer, the Buyer’s Margin Percentage shall always be equal to at least _____%, or such other percentage as the parties hereto may from time to time mutually determine; provided, that in no event shall such percentage be less than 100%. For any Transaction in which a Fund is acting as Seller, the Buyer’s Margin Percentage shall be such percentage as the parties hereto may from time to time mutually determine; provided, that in no event shall such percentage be less than 100%.
- 3. Confirmations.** Unless otherwise agreed, Counterparty shall promptly issue a Confirmation to the Fund pursuant to Paragraph 3 of the Agreement. Upon the transfer of substituted or Additional Purchased Securities by either party, Counterparty shall promptly provide notice to the Fund confirming such transfer.

- 4. Financial Condition.** Each party represents that it has delivered the following financial information to the other party to the Agreement: in the case of a party that is a registered broker-dealer, its most recent statements required to be furnished to customers by Rule 17a-5(c) under the 1934 Act; in the case of a party that is a Fund, its most recent audited or unaudited financial statements required to be furnished to its shareholders by Rule 30d-1 under the Investment Company Act of 1940; in the case of any other party, its most recent audited or unaudited statements of financial condition or other comparable information concerning its financial condition.

Each party represents that the financial statements or information so delivered fairly reflect its financial condition and, if applicable, its net capital ratio, on the date as of which such financial statements or information were prepared. Each party agrees that it will make available and deliver to the other party, promptly upon request, all such financial statements that subsequently are required to be delivered to its customers or shareholders pursuant to Rule 17a-5(c) or Rule 30d-1, as the case may be, or, in the case of a party that is neither a registered broker-dealer nor a Fund, all such financial information that subsequently becomes available to the public.

Each Fund acknowledges and agrees that it has made an independent evaluation of the creditworthiness of the other party that is required pursuant to the Investment Company Act of 1940 or the regulations thereunder. Each Fund agrees that its agreement to enter into each Transaction hereunder shall constitute an acknowledgment and agreement that it has made such an evaluation.

- 5. Segregation of Purchased Securities.** Unless otherwise agreed by the parties, any transfer of Purchased Securities to a Fund shall be effected by delivery or other transfer (in the manner agreed upon pursuant to Paragraph 7 of the Agreement) to the custodian or subcustodian designated for such Fund in Schedule VII.A hereto (“Custodian”) for credit to the Fund’s custodial account with such Custodian. If the party effecting such transfer is the Fund’s Custodian, such party shall, unless otherwise directed by the Fund, (a) transfer and maintain such Purchased Securities to and in the Fund’s custodial account with such party and (b) so indicate in a notice to the Fund.

Schedule VII.A

Supplemental Terms and Conditions of Transactions Involving Registered Investment Companies

This Schedule VII.A forms a part of Annex VII to the Master Repurchase Agreement dated as of _____, 19____ (the “Agreement”) between _____ and _____. Capitalized terms used but not defined in this Schedule VII.A shall have the meanings ascribed to them in Annex VII.

1. This Agreement is entered into by or on behalf of the following Funds, and unless otherwise indicated by the appropriate Fund in connection with a Transaction, the following Custodians are designated to receive transfers of Purchased Securities on behalf of such Funds for credit to the appropriate Fund’s custodial account:

Name of Fund

Custodian

- []. Limitation of Liability. If the Fund is organized as a business trust (or a series thereof), the parties agree as follows: [insert appropriate language limiting liability of trustees, officers and others].



40 Broad Street
New York, NY 10004-2373
Telephone 212.440.9400
Fax 212.440.5260
www.bondmarkets.com



Amendment to the Master Repurchase Agreement

1987 or 1996 Version

AMENDMENT, dated as of _____, 1997 to the Master Repurchase Agreement, dated as of _____ (the "Agreement"), between _____ and _____. Capitalized terms used but not defined in this Amendment shall have the meanings ascribed to them in the Agreement.

The parties hereto hereby agree to amend Section 9 of the Agreement by adding at the end of the paragraph the following paragraphs (c) and (d):

- (c) In the case of any Transaction for which the Repurchase Date is other than the business day immediately following the Purchase Date and with respect to which Seller does not have any existing right to substitute substantially the same Securities for the Purchased Securities, Seller shall have the right, subject to the proviso to this sentence, upon notice to Buyer, which notice shall be given at or prior to 10 am (New York time) on such business day, to substitute substantially the same Securities for any Purchased Securities; provided, however, that Buyer may elect, by the close of business on the business day notice is received, or by the close of the next business day if notice is given after 10 am (New York time) on such day, not to accept such substitution. In the event such substitution is accepted by Buyer, such substitution shall be made by Seller's transfer to Buyer of such other Securities and Buyer's transfer to Seller of such Purchased Securities, and after substitution, the substituted Securities shall be deemed to be Purchased Securities. In the event Buyer elects not to accept such substitution, Buyer shall offer Seller the right to terminate the Transaction.
- (d) In the event Seller exercises its right to substitute or terminate under sub-paragraph (c), Seller shall be obligated to pay to Buyer, by the close of the business day of such substitution or termination, as the case may be, an amount equal to (A) Buyer's actual cost (including all fees, expenses and commissions) of (i) entering into replacement transactions; (ii) entering into or terminating hedge transactions; and/or (iii) terminating transactions or substituting securities in like transactions with third parties in connection with or as a result of such substitution or termination, and (B) to the extent Buyer determines not to enter replacement transactions, the loss incurred by Buyer directly arising or resulting from such substitution or termination. The foregoing amounts shall be solely determined and calculated by Buyer in good faith.

This Amendment shall be effective January 1, 1998.

Except as amended by this Amendment, the Agreement shall remain in full force and effect.

[Name of Party]

[Name of Party]

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ANNEX I

Supplemental Terms and Conditions



Supplemental Guidance Notes to Annex I

Supplemental Terms and Conditions

The Bond Market Association (formerly PSA) would like to call your attention to an important accounting development that will impact the funding markets.

On June 28, 1996, the Financial Accounting Standards Board issued Statement No. 125, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities ("FASB 125"), which institutes new accounting rules for generally accepted accounting principles ("GAAP") applicable to all transactions involving transfers of financial assets, including repurchase agreement and buy/sell back transactions and transfers of collateral constituting financial assets in connection with secured financing transactions.

Under FASB 125, the accounting for repurchase transactions may change depending on the terms of the transaction. In particular, if the repo buyer has the right to sell or re-pledge the repo securities, and if a repo seller does not maintain control over the repo securities - by not having the right to substitute securities or terminate the transaction on short notice - the repo buyer will generally be required to record both the securities as well as an obligation to return the securities, thereby "grossing up" its balance sheet. The repo seller will generally be required to reclassify the repo securities from securities inventory to receivable for securities pledged as collateral.

Paragraph 8 of the Master Repurchase Agreement (the "Agreement") provides that a repo buyer is free to transfer, sell, pledge or re-hypothecate the repo securities. Paragraph 9(a) of the Master Repurchase Agreement provides that the parties to a Repurchase Transaction can agree that the repo seller has substitution rights with respect to the repo securities. In order to enable market participants to mitigate the potential impacts of FASB 125 on their balance sheets, a significant number of Association members active in the repo markets requested that the Association publish a standard provision that allows a repo seller to retain effective control over the transferred repo securities by documenting a right of substitution on the part of the repo seller or a right to terminate a transaction prior to maturity on short notice to the repo buyer. Market participants also preferred not to fundamentally alter the existing trading practices and economic expectations of the repo market.

Attached is Annex I (Supplemental Terms and Conditions) that incorporate this suggested standard provision, previously published as Repo Trading Practices Guideline Update No. 96-1.

The optional substitution/termination provision contained in both of these forms is intended to both provide for a right of substitution/termination on the part of the repo seller and prescribe a methodology for quantifying economic loss suffered by the repo buyer as a direct consequence of the repo seller's exercise of its substitution/termination right. The provision is intended to make the repo buyer economically "whole". In other words, although the repo

seller would maintain effective control over the asset transferred in the repo transaction, the repo buyer would not suffer economically because the loss provision is intended to place the buyer in the same position it would have been had the transferor not effectuated that control through the exercise of the substitution/termination right.

The attached Annex I also contains a short time frame for notice of substitution. The provision reflects the current Association Restated Repo Trading Practices Guidelines (Paragraph M.3.) by providing that notice of substitution should be provided by 10 am (New York time) for substitutions to occur on the same business day, and if notice of substitution is given after 10 am (New York time), substitution would occur on the next business day. The Funding Division Trading Practices Committee views such period as the minimal time frame necessary to effectuate the exercise of the contractual right and determine the appropriate dollar amount consistent with the contractual “make whole” provision. Parties may agree on different notice periods.

As always, the Association recommends that market participants consult with their legal and accounting advisors concerning the desirability of use of this Annex I (Supplemental Terms and Conditions) with respect to its firm’s particular needs and circumstances.



Annex I

Supplemental Terms and Conditions

This Annex I forms a part of the Master Repurchase Agreement dated as of _____, 19____ (the “Agreement”) between and _____. Capitalized terms used but not defined in this Annex I shall have the meanings ascribed to them in the Agreement

1. Other Applicable Annexes. In addition to this Annex I and Annex II, the following Annexes and any Schedules thereto shall form a part of this Agreement and shall be applicable thereunder:

[Annex III (International Transactions)]

[Annex IV (Party Acting as Agent)]

[Annex V (Margin for Forward Transactions)] [Annex VI (Buy/Sell Back Transactions)]

[Annex VII (Transactions Involving Registered Investment Companies)]

2. The following 2 paragraphs shall be added to Paragraph 9 of the Agreement:

(c) In the case of any Transaction for which the Repurchase Date is other than the business day immediately following the Purchase Date and with respect to which Seller does not have any existing right to substitute substantially the same Securities for the Purchased Securities, Seller shall have the right, subject to the proviso to this sentence, upon notice to Buyer, which notice shall be given at or prior to 10 am (New York time) on such business day, to substitute substantially the same Securities for any Purchased Securities; provided, however, that Buyer may elect, by the close of business on the business day notice is received, or by the close of the next business day if notice is given after 10 am (New York time) on such day, not to accept such substitution. In the event such substitution is accepted by Buyer, such substitution shall be made by Seller’s transfer to Buyer of such other Securities and Buyer’s transfer to Seller of such Purchased Securities, and after such substitution, the substituted Securities shall be deemed to be Purchased Securities. In the event Buyer elects not to accept such substitution, Buyer shall offer Seller the right to terminate the Transaction.

(d) In the event Seller exercises its right to substitute or terminate under sub-paragraph (c), Seller shall be obligated to pay to Buyer, by the close of the business day of such substitution or termination, as the case may be, an amount equal to (A) Buyer’s actual cost (including all fees, expenses and commissions) of (i) entering into replacement transactions; (ii) entering into or terminating hedge transactions; and/or (iii) terminating transactions or substituting securities in like transactions with third parties in connection with

or as a result of such substitution or termination, and (B) to the extent Buyer determines not to enter into replacement transactions, the loss incurred by Buyer directly arising or resulting from such substitution or termination. The foregoing amounts shall be solely determined and calculated by Buyer in good faith.

ANNEX II

Names and Addresses for Communications Between Parties

EXHIBIT C

GFOA Addition to TBMA Agreement

The language on the following page has been included at the suggestion of the GFOA Committee on Cash Management.

21. Conflict

In the event of a conflict between this "Master Repurchase Agreement" and any Annex, the Annex shall prevail over the inconsistent portion of the "Master Repurchase Agreement."

EXHIBIT D

GFOA Provisions for Annex I

The following language was developed by the GFOA Cash Management Committee as an example of Annex I provisions that could be used in conjunction with The Bond Market Association's master repurchase agreement. The annex language is presented in the left-hand column while comments explaining the rationale for specific provisions are presented in the right-hand column. Comments and explanatory notes are printed in italics. In some instances, more than one option is presented for the same provision of the sample annex.

Annex Language

1. Governing Law.

(Two options are presented.)

(Option I)

The laws of the State of New York govern all transactions pursuant to this agreement. The parties acknowledge that all Purchased Securities shall be lawful for the purpose of governmental investment by the Buyer.

(Option II)

The laws of ___ govern all transactions pursuant to this agreement.

The parties acknowledge that all Purchased Securities shall be lawful for the purpose of Governmental investment by the Buyer.

(If one of the previous options is chosen, the following additional language could be considered.)

Because Buyer is a governmental entity and is prohibited by applicable law from making loans, the parties hereby (i) agree that all transactions conducted pursuant to this agreement must be interpreted as purchases and sales of securities and (ii) expressly reconfirm the provisions of Paragraph 6 of the Agreement.

Comments

GFOA concurs with the TBMA’s recommended choice of New York law to govern the repurchase agreement of municipalities in all states, provided it is lawful for the parties to do so. The primary benefits of adopting New York state law are twofold.

First, there is a highly developed body of commercial and securities law in New York which can be referenced. Although the issue is not resolved, there is now recognized case precedent applying New York case law which upholds the “buy-sell” interpretation of certain repurchase transactions.

Second, New York law expressly recognizes the role of financial intermediaries in the transfer of registered and book-entry securities. Provisions in New York law assure protection and consistency/uniformity in the manner and method by which interests in investment securities are transferred.

If a municipality encounters difficulty on the local level with using New York state law to govern transactions under this agreement (e.g., a local in-state bank wishing to conduct business only with the laws of its state) then language could be used as presented in option II. Use of this language clarifies that local law governs both the investment authority of the parties and also the interpretation of the TBMA Agreement and the manner and method by which transfers of securities are effected. If using this alternative, jurisdictions should be careful to consult their legal counsel regarding protections offered by local law.

The optional language regarding buy-sell transactions (for use with Options I or II) is considered important by public investors in some states wherein constitutional law prohibits the lending of money to private parties.

With any Annex language regarding governing law, Paragraph 6 of the TBMA prototype agreement should be reconfirmed because otherwise, according to some attorneys, important protections therein may be lost.

Annex Language

2. Permissible Purchased Securities.

a) Allowable instruments

Only the following instruments may be Purchased Securities pursuant to this agreement:

(example)

- 1) U.S. Treasury bills, bonds, and notes.
- 2) U.S. Agency securities.
- 3) FNMA obligations.
- 4) Federal Home Loan Bank obligations.

b) Pricing availability

Unless the parties shall agree to the use of third-party custodian responsible for margin maintenance, all Purchased Securities should be marketable instruments for which price information is regularly available in financial newspapers of national circulation or other media suitable to the Buyer.

Comments

The governing law and the buyer’s individual investment policy statement should determine what securities could be used for a repurchase agreement. US Government and Agency securities are commonly used to include zero-coupon securities such as strips. The important factor in the securities used is to understand the maturity of the securities and the potential volatility in prices given interest rate changes. All purchased securities should be quality marketable instruments for which price information is regularly available and a ready market exists for the sale and purchase of the securities.

Frequently broker/dealers are unaware of which investment instruments are allowed or prohibited by statute or by investment policies. While the Buyer is responsible for determining the legality of its investments, the Buyer should provide all counter parties with information regarding permissible investments. Government entities should include some restrictions regarding the maturity and investment grade of permissible securities.

Governing statutes and investment policy statements should dictate permissible securities and should include appropriate language for repurchase agreements.

The specified instruments listed above are securities for which general pricing information is regularly available. If alternative methods of verifying price (e.g., electronic media) are available, then other instruments would be acceptable.

Annex Language

c) Frequency of Purchased Securities Valuation

Comments

A repurchase agreement (repo) is a transaction between a bank or securities dealer and an investor in which the bank (dealer) sells the securities to the investor (governmental entity) with a simultaneous agreement to buy the securities back from the investor at a specific time and at a price that will result in a predetermined yield to the investor. Securities sold are usually U.S. Treasury obligations, although agency securities and other alternative securities are also used. Repo transactions can be effected overnight, for a specified number of days, or as a continuing open contract. The repo market encompasses a broad range of debt and other securities.

Public funds have used repos since the 1970s. In September 1996, The Bond Market Association (TBMA) published a revised version of its Master repurchase Agreement, which previously had been amended in 1987. The revised agreement includes modifications designed to reflect the expansion of the repo market and changes in the law with respect to liquidation and closeout. Policies of governmental entities regarding securitization and safekeeping for deposits and investments, including repos, must be disclosed under the Governmental Accounting Standards Board (GASB) Statement 3.

The valuation of securities is an important factor in managing the risk of default in repurchase transactions. To protect the buyer from a decline in the price of the security during the term of the repo agreement, the seller usually delivers underlying securities in an amount necessary to sufficiently cover the governmental entity's investment plus accrued interest usually a margin of 102% of the investment to include accrued interest, if required. The value of the securities must be monitored frequently to insure that the market value remains above the principal and interest earned to date in case of default of a counterparty. If the counterparty does not default, the value of the securities will not affect the repo agreement.

The frequency of the valuation depends on the duration of the investment, security types

Annex Language

Comments

and any established margin percentage. Less frequent valuations should require higher margin percentages since the risk exposure period is longer; the risk of market price declines is greater over longer time periods.

It is recommended that government entities establish a policy and procedure for monitoring the value of the purchased securities to insure that it does not drop below the margin value of the repo. Though unnecessary for overnight investments, government entities should periodically revalue longer-term purchased securities and continuous repo transactions to avoid incurring a loss. Government entities should use third-party financial sources in their valuation process to price and transfer purchased securities.

In order to facilitate the determination of market value when negotiating a master repurchase agreement, government entities should specify both the types of securities that are acceptable for the transaction and the pricing source for the securities. Price information for the securities should be readily available from a generally recognized source. As of any specific date during the transaction, the purchased securities should be priced at market value (including the value of the accrued interest) before applying any margin percentage because the investor may need to liquidate the securities in the secondary market in the event the seller does not complete the repurchase agreement transaction.

Annex Language

3. Seller's Financial Condition.

(a) Seller shall maintain compliance with applicable federal regulatory standards and guidelines regarding capital adequacy and net capitalization.

(b) Any transaction undertaken pursuant to this agreement shall proceed only if Seller furnishes or has furnished to Buyer its most recent available audited statement of financial condition and its most recent subsequent unaudited statements of financial condition.

(If section (b) is included the following additional language could be considered.)

Notwithstanding the foregoing, if the Seller fails to furnish its most recent audited and/or unaudited financial statements, the Buyer shall provide written notice to the Seller of such failure and the Seller must provide the appropriate financial statements within () calendar days of receipt of such notice.

(c) By entering into a transaction pursuant to this agreement, Seller shall be deemed to represent to Buyer that since the date of Seller's latest financial statements, there has been no material adverse change in Seller's financial condition which Seller has not disclosed in writing to Buyer, and Seller further agrees to provide Buyer with future audited and unaudited statements of financial condition as they are issued.

4. Delivery.

Notwithstanding the provisions of paragraph 7 (Payment and Transfer), all transactions shall be accomplished through "delivery vs. payment," unless the parties otherwise agree prior to the transfer of funds.

Comments

These sections include important protection to public cash managers. Depositories and dealers must pledge that they will maintain compliance with regulatory standards. Failure to meet these conditions could be considered an event of default.

On the other hand, public cash managers should recognize that the substantial reports required under this section may be difficult to obtain. Public cash managers should not rely simply on the seller's assurances and should monitor the timely flow of financial information.

If a broker/dealer defaults on a repurchase agreement with a governmental entity, all other financial liabilities of the firm might be deemed immediately payable. The optional language therefore has been requested by representatives of the broker/dealer community who are concerned with cross-default regarding other contracts.

The subcommittee on investments strongly recommends Delivery vs. Payment (DVP) as the mechanism for accomplishing the transfer of securities required under the master repurchase agreement. However, if public cash managers believe that there exists a prohibitive cost to DVP for overnight investing they should strongly consider the use of highly rated government investment pools, money market mutual funds or other bank sweep related products.

Annex Language

Comments

The subcommittee also recommends that delivery be accomplished through physical transfer or Federal Reserve book-entry in the name of the Buyer preferably to an account maintained by a third-party custodian or safekeeping agent. In addition to the master repurchase agreement, it also may be necessary to implement a third-party custodial or safekeeping agreement, sometimes known as a tripartite agreement, between the Seller, the Buyer and the custodian/safekeeping agent.

5. Substitution. (three options are presented)

For purposes of education and clarification, a distinction should be made between Delivery v. Payment (DVP) repurchase transactions and hold-in-custody repos. In a DVP repurchase transaction, the buyer or his agent takes delivery of the purchased securities and therefore no Substitution can take place without the buyer's permission unless the Buyer has entered into a triparty repo agreement. With hold-in-custody repurchase transactions, the seller or his agent maintains custody, however, the subcommittee strongly recommends DVP as the mechanism for accomplishing the transfer of securities required under the agreement.

An amendment to the TBMA Agreement (see p. 72) gives Seller the right to substitute on short notice to Buyer, but also permits Buyer to reject the substitution and instead terminate the repo. Public entities whose authority to do repos is based on the power to purchase the margin securities are well advised to reject any substitution in order to avoid any argument that the repo is a collateralized loan. The amendment was made in response to FASB No. 125 which treats repos as secured loans unless sellers have rights of substitution.

The Annex presents three of various options that a public cash manager may wish to consider. These are merely representative of the options available, users of the agreement may wish to design their own substitution language.

Taking delivery does not necessarily eliminate the need for substitution language.

Annex Language

(Option I)—Notwithstanding the provisions of paragraph 9, no security may be substituted for the Purchased Securities.

(Option II)—If Buyer consents to substitution of Purchased Securities, such substituted securities shall consist of the similar or same securities as previously purchased, and the Seller shall be responsible for all costs associated with accomplishing such substitutions.

(Option III)—In the event that Seller proposes to substitute securities for any Purchased Securities, Seller shall be responsible for all costs associated with such transfer, and shall obtain written consent of Buyer prior to the substitution.

The maturity and quality of securities offered as substitutes may not exceed the maturity and quality of the original Purchased Securities.

Comments

Option I provides that no substitutions are allowable. In states whose constitutions require buy-sell transactions, this option generally is preferred. Other investors, who transact only overnight repos, also prefer this language.

For investors who do permit substitutions, higher yields should be obtained in exchange for the flexibility afforded the dealer. Some jurisdictions permit only Treasury bills to be substituted, which allows the Seller to remarket attractive securities only if the Seller replaces the purchased securities with high-quality Treasury bills.

Option II is designed for those jurisdictions which permit substitutions but strictly want to limit permissible substitutes to the most secure instruments.

Option III is designed to permit the dealer or bank to substitute securities, but prohibits the Seller from substituting with riskier instruments. For example, the seller could not substitute long-term Treasury bonds, if the original Purchased Securities were Treasury bills. This provision controls only the price risk associated with increasing interest rates, and would not protect the investor against credit risks or other market risks. The design of allowable substitutions must be negotiated with the seller, but the public cash manager government should make sure that any substituted securities are less risky or equivalent to the original underlying securities; otherwise the agreement should provide for adjustment of return for any subsequent increases in risk.

Public cash managers using the term duration may prefer to define the term. Duration is sometimes a better measure of market risk than maturity or market value, particularly for bonds and mortgage-backed instruments. (The use of the term duration is not a direct replacement for the stated maturity of a security).

Annex Language

In the course of preparing this update, the subcommittee became aware that GFOA members were being contacted by their broker/dealers regarding the changes to the accounting treatment for repurchase transactions under the Financial Accounting Standards Board (FASB) Statement 125, "Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities." These broker/dealers were requesting that the public cash manager enter into an optional substitution/termination provision to the TBMA Master Repurchase Agreement. If agreed to, the provision would allow the broker/dealer (the repo seller) to retain effective control over the purchased securities. Alternatively, the repo seller could elect to terminate the transaction prior to maturity on short notice to the Seller.

Although governments may not be bound by FASB pronouncements, Statement 125 affects counterparties to repurchase transactions with governments and may change the nature of the underlying repurchase agreement from a buy-sell transaction to a collateralized loan. Treating repurchase transactions as collateralized loans could make their use inappropriate for local governments in many states unless permitted to purchase corporate securities with a specific rating.

In those jurisdictions where substitution of securities is permitted, entering into such an agreement may not be a problem. In fact, a loss provision is provided that is intended to place the repo buyer in the same position it would have been had the repo seller not exercised the substitution/termination right. This provision, of course, should be reviewed by legal counsel in order to assure no loss is incurred.

However, in those jurisdictions where substitution is restricted, the effect of the new rule may be troublesome dependent upon the relationship established with the broker/dealer, the jurisdiction's comptroller's position with respect to the change in accounting treatment of the transaction, and whether or not the government has the ability to avoid the restriction on substitution. In conclusion, legal guidance coupled with good business judgment will be needed in order to make the appropriate determinations in these jurisdictions.

Annex Language

While a standard repurchase agreement has become a useful investment for many public entities, there are circumstances where the inventor may find a flex repo a more useful investment. A flex repo is designed to provide the investor the ability to invest a specific sum of money for a relatively long period of time almost always for more than one year, at a specific interest rate, and the ability to make periodic draws to fund specific payments. (For a thorough discussion of Flexible Repurchase Agreements, please see Public Investor, Vol. 17 No. 10, January 1, 1999).

Flex repos, due to the longer term and draw down provisions, have historically contained a provision whereby the seller has the right to substitute securities of the type allowed for the original purchased securities. This substitution provision is administered by the third party custodian, and assures the investor of adequate value when such a substitution occurs. The substituted securities are then treated the same as the original purchased securities, and are, under the agreement, saleable by the purchaser in the event the seller defaults. This substitution of securities has always been considered allowable and not considered an unusual or an agreement-modifying occurrence until the issuance of FASB Statement No. 125.

In the event the flex repo transaction was considered a collateralized loan, for example, due to the failure of a broker/ dealer to perform, this may cause delay and the uncertainties of a bankruptcy court proceeding upon the public fund manager.

This brings up the possibility of entering into a flex repo where there is a provision that does not allow for security substitution. The securities dealer would only be allowed to take back enough of the original securities that are applicable to any draw downs while still leaving enough of the original issue to provide the purchaser with its buyer's margin for the remainder of its funds. This may well not be considered a security substitution under FASB No. 125, but a potential buyer should seek a legal opinion before entering into such a transaction.

Annex Language

Comments

Given the foregoing discussion on substitution, it is important to note that the issue of substitution of securities in a repurchase agreement may be rendered mute by the pronouncements made by the Southern District Court in New York in the case of Granite Partners, L.P. v. Bear, Stearns & Co. (commonly referred to as Askin Capital) decided in 1998. Here, the court fully discussed the history and usage of repo agreements, as well as the language contained in the TBMA Repo Agreement and concluded that, indeed, a repo transaction is a purchase and sale of securities and cannot be a collateralized loan. As a result, in those jurisdictions subject to the application of New York law, substitution may no longer be inappropriate.

6. Margin Ratios

Public cash managers should recognize that requiring excessive margin can result in reduced income. To the extent that dealers are required to deliver unnecessary purchased securities margin their interest income is diminished and the rates they offer on repos are likely to decline.

The subcommittee on investments recommends that public cash managers impose a 102% margin requirement on the market value of the purchased securities used in repo agreements, subject to local governing law and/or their investment policy provisions.

However, margin ratios protect funds only overnight. To protect repo investments against prolonged market price declines, daily marking-to-market is required. Entities which fail to mark-to-market daily must increase their margin ratios proportionately. To illustrate how the margin ratios should be applied, consider the case of a \$1,000,000 term repurchase agreement. Suppose the purchased securities are a two-year Treasury note now selling at a price of \$99. To meet the provisions of this annex, the market value of the Treasury note must equal \$1,020,000 (\$1 million times 102 percent). With a price of \$99, the face value of the securities must equal at least \$1,031,000, ignoring accrued interest.

Annex Language

Comments

7. Margin Maintenance. For term repurchase agreements, a custodian, safekeeping agent, or the Seller shall maintain the required margin amount, or the required margin ratios shall be increased as mutually agreed in writing to compensate for possible market price losses or gains.

At the close of the day, the purchased securities must now equal 102 percent of the original investment of \$1 million plus accrued repo interest (\$200). If the new price on the two-year note declines to a price of \$98.50, the face amount of the notes delivered must then be increased to \$1,036,000.

As noted above, a major weakness in public portfolio management is a failure of public cash managers to monitor daily the market value of their repo margin securities. This paragraph provides that the required margin amount be maintained, or the required ratios be increased, as an additional protection for public funds.

8. Authorized Personnel. Only those persons identified below may execute transactions pursuant to this agreement. These signatories are those who are legally authorized to sign by resolution of the appropriate governing body or by corporate ordinance.

Investing municipalities should be certain to permit use only of authorized signatures. These signatures should be documented and secured so as to avoid unauthorized transactions.

Seller

Buyer
