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Securities Industry and Financial Markets Association

Supplemental Guidance Notes

THE MASTER REPURCHASE AGREEMENT (1996 VERSION) AND
PSA/ISMA GLOBAL MASTER REPURCHASE AGREEMENT (1995 VERSION)

Two standard forms of master repurchase (**"repo"**) agreements have been developed by industry groups: The Master Repurchase Agreement (1996 version) (the **"MRA"**) is published by The Bond Market Association and is governed by the laws of the State of New York. The Global Master Repurchase Agreement (1995 Version) (the **"GMRA"**) is published by PSA and the International Securities Market Association (**"ISMA"**) and is governed by the laws of England.

These guidance notes provide a framework for analyzing the key differences between the MRA and the GMRA and the implications of using the respective forms in international repurchase transactions, that is, on a cross-border basis or where the securities or other assets subject to the repurchase agreement (**"repo securities"**) are issued by non-U.S. issuers or are maintained, for example, with a depository or clearing system outside the United States. These guidance notes have been prepared by The Bond Market Association, in conjunction with ISMA, and in consultation with Clifford Chance, Freshfields and Cleary Gottlieb, Steen & Hamilton, for the benefit of The Bond Market Association's members who are active in the international repo market. These guidance notes supplement the September 1996 Guidance Notes to the MRA published by The Bond Market Association and the November 1995 Guidance Notes to the GMRA published by PSA and ISMA.

These guidance notes provide an analytical framework but should not be relied upon by any party to determine, without appropriate legal, accounting, tax or other relevant professional advice, whether to engage in particular transactions or whether the MRA or GMRA is suitable to its particular circumstances and needs.

TABLE OF CONTENTS

1. Introduction

The GMRA has been developed as the standard agreement for international transactions in non-U.S. markets.[1] In that regard, PSA and ISMA encourage market participants to consider use of the GMRA where appropriate as the standard master repurchase agreement involving international transactions. The MRA with Annex III for International Transactions is, however, an alternative contract that facilitates the provisions of the MRA, governed by New York law, to be used when that may be desired or preferable. For example, where the repos between two U.S. counterparties are primarily in respect of U.S. securities and an MRA is already in place between them, it may be most convenient for transactions in foreign securities to be included by use of Annex III. It also may be more convenient for two U.S. counterparties without any master agreement in place to enter into an MRA for foreign securities.

a. Questions to consider

Nevertheless, repo participants should exercise caution and seek appropriate advice prior to engaging in international transactions whether the GMRA or MRA is used. In each case, a party should determine whether:

- The master repo agreement is legal and binding against its counterparty.
  - Does the counterparty have the legal capacity and authority to enter into the agreement and the transactions thereunder?
  - Under the governing law of the contract are its terms enforceable against the counterparty?
- The party will obtain those rights, vis-à-vis the counterparty and third parties, in property (such as repo securities and margin) it intends to acquire by the terms of the master repo agreement.
- The party can exercise its remedies upon default as specified in the master repo agreement, including in the event of insolvency of the counterparty.
- There are particular market conventions affecting the manner in which the transactions are conducted.
- There are any special tax or accounting issues.
- There are regulatory or other legal constraints in engaging in the international repo transactions with the intended counterparty.

b. The main differences between the MRA and GMRA

There are a number of differences between the MRA and GMRA. Each document was developed in consideration principally of the market practices and legal developments in New York and London, respectively. The main differences between the two standard form agreements are:

- Difference in governing law (MRA is governed by N.Y. law, the GMRA by English law).
- Structural difference in remedies in the event of default (the GMRA structures the remedies based on close-out and set-off rights by the buyers and sellers of securities; the MRA relies on termination and liquidation or replacement of securities and deemed liquidation or replacement).

[1] Standard annexes have been produced for a number of jurisdictions. At the time of publication of these guidance notes, ISMA obtained reasoned legal opinions on the GMRA regarding the enforceability in insolvency of the close-out and default provisions from counsel in the Bahamas, Bahrain, Barbados, Bermuda, the British Virgin Islands, Canada, the Cayman Islands, Finland, Hong Kong, Japan, Luxembourg, Malaysia, the Netherlands Antilles, Singapore, South Africa and Switzerland and on the enforceability of the GMRA as a whole, from counsel in Australia, Belgium, Denmark, England, Germany, Ireland, the Netherlands, Sweden and the United States.

- Differences in agency provisions (the MRA allows each party to be represented by an agent and allows for "block" trades in which an agent acts for multiple principals; the GMRA accommodates transactions wherein only one party acts as an agent and only on behalf of a single principal).

- Market-based differences in: the Events of Default; Margin Calculations; Margin for Forward Transactions; Hold-in-Custody Provisions.

- MRA provisions addressing regulatory status of certain U.S. counterparties.

- The GMRA has specific annexes the parties may wish to consider, such as the annex for the gilt repo market in the U.K. and the Australian or the Belgian annex under which the GMRA becomes subject to the local law.

2. How Conflicts of Laws Affects the Choice of Documentation

The first set of issues market participants should address is whether the proposed documentation is legally enforceable and whether a party will be able to obtain the rights and remedies it desires in respect of property to be transferred under the master repo agreement. To answer these questions, the governing law of a repo agreement will not be the only relevant body of law.

The governing law defines whether the parties' contractual undertakings to one another are binding, assuming each has the capacity and authority to enter into and perform its obligations. The law of a different jurisdiction may determine whether a party has the necessary legal capacity and authority. The law of yet another jurisdiction may determine the parties' legal rights in property covered by the contract (e.g., in repo or margin securities) in relation to others, including third-party creditors of the counterparty. Finally, if either party becomes insolvent, yet another jurisdiction or jurisdictions may determine the scope and distribution of the insolvent's estate.

a. The role of the Forum State

The decision on which laws apply to each of these matters, including whether the parties' contractual choice of a governing law will be applied to the contract itself, is a matter for the courts of the Forum State. If either party were to seek judicially to enforce its rights under a repo agreement, including in the context of a counterparty's insolvency proceeding, the laws applicable to the issues presented would be selected according to the conflict of law rules of the jurisdictional forum where the case is brought (the "Forum State"). In an international repo transaction, the Forum State might be the state of establishment or residence of either party or the state(s) in which the repo securities are held (e.g., the location of a depository) or any other jurisdiction with a meaningful connection to the parties or the repo securities.

b. The governing law

The MRA is stated to be governed by New York law and the GMRA is stated to be governed by English law.

A party may choose one governing law over another for a repo agreement for a number of reasons, such as:

i) If it is thought action for enforcement of a contractual right may be more likely taken in New York or in England, choice of that jurisdiction's law as the governing law can simplify any potential litigation.

ii) The law of New York or of England may be the law governing the parties' rights in the repo securities (see d. below) and therefore that law may also be selected to govern the contractual rights of the parties as well in order to simplify legal analysis.

iii) One party may be averse to potential litigation in one of the jurisdictions and therefore not only choose the other jurisdiction's law to govern but also refuse contractually to submit to the jurisdiction of courts in the other country.

iv) If it is important that the Federal Deposit Insurance Corporation Improvement Act of 1991 (**"FDICIA"**) is applicable to the repo agreement in order to assure enforceability of termination and liquidation provisions in the event of insolvency proceedings of a U.S. counterparty, then the agreement must be governed by U.S. law (state or federal).[2] FDICIA allows for the parties to net and potentially close-out their obligations at any time notwithstanding any other state or federal law to the contrary.

The advantages of FDICIA are that its protections cover more types of counterparties than do the U.S. Bankruptcy Code protections or U.S. or N.Y. state banking laws and more clearly cover repos involving any form of underlying assets. (For a further discussion of these issues, see 3. below.) Thus the contractual choice of law may affect a party's rights in the event of an insolvency, winding up, bankruptcy, or similar proceeding (**"Bankruptcy"**) in the United States.

c. The law establishing the counterparty's capacity and authority

Whether either party has the legal capacity and authority to enter into the MRA or GMRA is normally determined by the law in which the counterparty is established (if a company or partnership) or domiciled (if an individual). Both the MRA and GMRA contain representations and warranties in respect of each party's capacity and authority. In addition, the MRA has a number of provisions specifically addressing legal concerns in respect of certain U.S. counterparties, such as counterparties engaged in transactions involving ERISA assets (paragraph 18 of the MRA) and U.S. investment companies (Annex VII of the MRA).

d. The law establishing rights in and to repo securities and margin

Choice of law rules often do not result in the contractual governing law being applied to the rights of parties to property, including rights relative to third-party creditors of a counterparty. Whether a property transfer is legally effective to achieve a transfer of ownership or whether a party has a perfected and first priority security interest in property is often determined by the law of a jurisdiction in which the property is located or which otherwise has an important relationship to the property itself.

For example, if the Forum State were New York, the choice of law rules applicable to rights in respect of U.S. Treasury securities (**"U.S. Treasuries"**) held in the commercial book-entry system of the Federal Reserve, now referred to as Treasury/Reserve Automated Data Entry System (**"TRADES"**), are set forth in federal regulations. In a typical transaction, the repo securities are U.S. Treasuries maintained by a bank in an account in TRADES at the Federal Reserve Bank of New York; that bank (the "custodian bank") maintains securities accounts for others in the ordinary course of its business,

[2] For FDICIA to apply, it is also required that both counterparties are **"financial institutions"** (defined to include a U.S. bank (as a single branch or multibranch party), a U.S. branch of a foreign bank, a U.S. broker-dealer, a U.S. futures commission merchant or an institution that both enters into **"financial contracts"** (defined to include repos) and had one or more such financial contracts of total gross dollar value of U.S.$1 billion in nominal principal amount outstanding on any day during the previous 15 months or had total gross market-to-market positions of at least U.S.$100 million in one or more financial contracts on any day during the previous 15 months).

and, in that capacity, identifies the securities on its books (maintained in New York) as being held on behalf of the repo buyer. Under the federal regulation, the repo buyer's rights in the repo securities not only will be affected by the governing law of the master repo agreement but also by the law governing the contract between the repo buyer and its custodian bank or, in the absence of a contractual governing law provision, the law of New York (assuming that is where its account at the custodian bank is maintained). Thus the only relevant law may not be the law selected to govern the master repo agreement. Under English choice of law rules and our assumed facts, property rights with respect to U.S. Treasuries maintained by the repo buyer in an account in a custodian bank in New York would also be determined primarily by N.Y. (and applicable federal) law even if the GMRA, governed by English law, were used.

Neither the MRA nor the GMRA detail the specific steps that must be taken to transfer securities sold or margin provided in a repo transaction in accordance with the rights sought to be established by the respective agreement. Therefore, in each case the parties must determine the actions required to be taken under applicable law, which may not be the governing law of the contract.

e. Rights in bankruptcy

Under applicable choice of law rules, the governing law of the contract may not determine the rights of the parties in the event of the Bankruptcy of a repo counterparty. The law or laws of the jurisdiction in which a Bankruptcy proceeding is maintained will generally govern, including its choice of law rules. In the case of an international repo transaction, this may be:

- The law of the place of incorporation or main place of business of the counterparty (or its domicile if an individual);
- The law in which the contracting branch of the counterparty is established; and/or
- The law of a jurisdiction in which some assets of the counterparty are located and as to which certain ancillary bankruptcy proceedings may take place.

In discussing the major differences in the MRA and GMRA, these guidance notes highlight some of the important aspects of conflicts of laws that can affect the choice of documentation.

3. Scope of Coverage

The MRA and the GMRA both have potentially broad coverage in respect of repo assets.

The GMRA may be used to document repos in any securities and financial instruments. While the GMRA is stated to exclude net paying securities, equities and U.S. Treasury instruments, ISMA has published an annex adapting the GMRA for use with net paying securities and, at the time of publication of these guidance notes, is about to issue guidance explaining that the GMRA may be used for U.S. Treasury instruments without amendment to the agreement, and an annex adapting the GMRA for use with equity securities is being prepared. The MRA covers repos in securities or "other assets" (e.g., loans or receivables), and thus has potentially broader scope than the GMRA. An equity securities annex is also being prepared for the MRA.

A repo participant should be careful, however, whether using either of the standard forms to cover all types of repo assets potentially covered by these forms, to be sure it has considered all the issues related to the particu-

lar type of asset. Before using a repo agreement for a range of assets, issues should be considered in respect of U.S. and non-U.S. counterparties such as tax consequences flowing from such transactions, local regulation of repo transactions and repo assets (including whether non-local counterparties can own the repo assets under local law), applicable laws relating to the transfer of property interests in the repo assets, and applicable bankruptcy laws.

For example, important issues that repo market participants should consider in respect of U.S. counterparties include the power and authority of such counterparty to enter into the range of contemplated transactions and the applicability of provisions of the U.S. Bankruptcy Code (the **"Code"**) or the Federal Deposit Insurance Act (**"FDIA"**) which may protect the netting and close-out provisions of repo agreements (in respect of counterparties subject to the foregoing statutes) for certain repo assets but not necessarily all forms of assets.[3]

4. Structural Differences in Remedies in the Event of Default

The GMRA and the MRA each structure slightly differently the remedies available to a repo participant upon the occurrence of an event of default.

The GMRA provides for the outright transfer of the repo securities from repo seller to repo buyer and applies the concept of set-off, in insolvency or other default, of exposures of the repo counterparties to each other for transactions covered by the GMRA. The occurrence of an event of default under the GMRA has the effect of accelerating outstanding transactions, converting delivery obligations in respect of the securities to cash sums based on the "default market value" of the securities (which is taken as the actual dealing price within a limited period or the market value at the end of that period) and then netting outstanding amounts to result in a single sum payable from one party to the other. The default valu-

[3] Section 559 of the Code protects the rights of a repo participant to liquidate, upon the occurrence of an insolvency proceeding under the Code (a **"Code proceeding"**), repurchase agreements which have a maturity of one year or less (or are terminable on demand) and relate to certificates of deposit, eligible bankers' acceptances and U.S. government and agency securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States. Section 555 of the Code protects the contractual right of a stockbroker, financial institution (defined to include a commercial or savings bank, industrial savings bank, savings and loan association or trust company, acting for itself or as agent or custodian for a customer) or securities clearing agency to liquidate, upon the occurrence of a Code proceeding, a securities contract (defined to include a contract for the purchase and sale of a security). Although the definition of a securities contract is broad, Section 555's scope is restricted because it applies only to stockbrokers, financial institutions (or their customers where the financial institution is acting as agent) and securities clearing agencies as counterparties to the entity subject to the Code proceeding.

Both Section 555 and 559 contain an exception in the event of a court order authorized under the Securities Investor Protection Act of 1970 or any statute administered by the Securities and Exchange Commission. The U.S. Securities Investor Protection Corporation (**"SIPC"**) has determined, in a letter dated February 4, 1986, from Michael E. Don, Deputy General Counsel, to Robert A. Portnoy, Deputy Executive Director and General Counsel of the Public Securities Association, and in a letter dated February 14, 1996, from Michael E. Don, President, to Seth Grosshandler, Cleary, Gottlieb, Steen & Hamilton, that, as to repurchase agreements (whether or not they fall within the Code definition of "repurchase agreement"), the standard proposed order SIPC will seek will still bar their immediate liquidation pursuant to insolvency default clauses, but that SIPC would consent (and would urge the trustee to consent) to their liquidation upon the receipt of an appropriate affidavit (and similar additional documentation) from the counterparty that the affiant has no knowledge of any fraud involved in the repo transactions and that the repo counterparty has a perfected security interest in the underlying securities. The letter states SIPC's hope that it could make the determinations necessary for its consent to closeout within four to five days after the initiation of a liquidation proceeding, or more rapidly in periods of particular market volatility.

FDIA, which would apply to a federally insured bank's receivership or conservatorship proceeding, defines repurchase agreement more broadly than the Code to include certain mortgage-related securities, any mortgage-related loans and any interest in any mortgage loan, and repurchase agreements which have a maturity of one year or less involving certain securities that are direct obligations of or are fully guaranteed by OECD central governments. The foregoing benefits apply regardless of the type of counterparty to the federally insured bank.

ation provisions are flexible and give the non-defaulting party up to two dealing days to deal in the securities to allow for different time zones.[4]

The MRA also is structured as an outright sale of securities but, unlike the GMRA, contains provisions to protect the repo buyer's interest in and to repo securities if the repo agreement were to be recharacterized as a secured loan. The remedies upon default provisions therefore differ from those of the GMRA. Upon the occurrence of an event of default, the remedies of a non-defaulting buyer of repo securities under the MRA include the ability immediately to sell or be deemed to have sold such securities in a commercially reasonable manner. Likewise, a non-defaulting seller of repo securities under the MRA may immediately purchase or be deemed to have purchased the repo securities in a commercially reasonable manner.[5]

The contingency that a repo may be recharacterized as a secured loan, contrary to the intention of the parties, is also addressed in a number of other provisions of the MRA. The MRA contains a specific provision (paragraph 6) that, if the transactions thereunder are deemed to be secured loans rather than sales and purchases, the repo seller shall be deemed to have granted the repo buyer a security interest in the transferred repo securities (the **"Security Interest Provision"**).[6] The MRA also contains an acknowledgment by the parties that the underlying repo securities trade in a recognized market. This provision offers the repo buyer protection because Section 9-504 of the Uniform Commercial Code, which applies to the transfer of interests in property, does not require notice to a defaulting party before liquidation of a non-defaulting party's collateral if such collateral consists of securities which trade in a recognized market.

It is important to consider in any international repo transaction the possibility of recharacterization of the repo as a secured loan. Specifically, parties should investigate how the law applicable to the property rights in the repo securities may affect the operation of the GMRA or the MRA. Thus, for example, if the GMRA is used but English law is not the law applicable to the rights of the parties in the repo securities, and under applicable law the repo would be recharacterized as a secured loan, it may not be possible to operate the GMRA as contemplated by its text. For example, would recharacterization require additional steps to be taken in order to obtain a perfected and first priority security interest? Would it affect the repo buyer's rights to rehypothecate the repo securities? Would a stay apply in bankruptcy to the repo buyer's rights to liquidate the repo securities? Does the repo seller have the power and authority to pledge the securities?

The potential effect of recharacterization can also be seen where the MRA is used but English law is determined to be the law applicable to the repo buyer's rights in the repo securities. It is possible that an English court might recharacterize the repo as a secured loan because of the provisions of the MRA described above which are intended to address the contingency of just such an inappropriate recharacter-

4 For U.K.-regulated firms entering into repos, it is possible to report counterparty risk on a net basis provided the documentation is supported by a legal opinion confirming that the netting provisions are enforceable in the event of default, liquidation or bankruptcy. The GMRA is supported by opinions in respect of a number of jurisdictions so that netting is available where the GMRA is used and the applicable conditions are satisfied. (See note 1.) The MRA has certain optional provisions to achieve this capital treatment for repos entered into under the MRA. (See note 5.)

5 The MRA contains certain optional alternative remedies upon default provisions exclusively relying on set-offs as a remedy as is done in the GMRA. These provisions, contained in the Schedule of Optional Provisions for Annex I, are entitled "Alternative Termination Provision for U.K. and Certain Other Counterparties Seeking Regulatory Netting Treatment Under Capital Adequacy Directives." Legal opinions for New York, the jurisdiction of incorporation of the counterparty, and the jurisdiction of any branch of the counterparty would be required before U.K. firms could report counterparty exposure on a net basis using these provisions.

6 We note that this provision may have particular relevance to certain parties. SIPC, which may administer a U.S. broker-dealer's Bankruptcy proceeding, requires that the broker-dealer's repo counterparty show that it has a perfected security interest in any transferred repo securities before SIPC will consent to a closeout of a repo agreement. (See note 3.)

ization. ISMA has obtained the reasoned opinion of Richard Sykes, Q.C., that there is no such risk in the case of the GMRA where English law is applicable.

5. Agency Provisions

The two agreements differ in relation to the provisions for agents to act for principals. Under Annex IV of the GMRA, only one party to the repo agreement can be acting as agent, and can act as agent only for a single disclosed principal. Under the MRA, each party represents that it is acting as a principal unless the parties have agreed otherwise in writing. This agreement may be achieved by the use of Annex IV of the MRA which allows for the MRA to be entered into between agents acting for one or more principals whose identities are disclosed up to one business day after entering into a transaction and also allows for agents to engage in “block transactions,” i.e., on behalf of multiple principals. *It is important for parties to assure themselves that their documentation is adequate to obtain recourse against the intended counterparty under the law applicable to its power and authority to contract should the MRA or GMRA be entered into with an agent acting for the counterparty in a single transaction or in block transactions.*[7] Under N.Y. choice of law rules, the law applicable to the issue of whether a principal is bound by action taken on its behalf by an agent will be that of the jurisdiction with the most significant relationship to the parties and the transactions involved, which may not be the governing law of the repo agreement.

6. Market-Based Differences in MRA and GMRA

a. Events of default

(1) Notice requirements

For an event of default to have occurred, the GMRA requires the non-defaulting party to provide a default notice to the defaulting party except in the case of certain acts of insolvency. In addition, the GMRA has a 30-day cure period in respect of certain events of default. In contrast, the MRA does not require the non-defaulting party to provide notice to the defaulting party prior to declaring an event of default, except for one business day’s notice in the event of nonpayment of income.

(2) Failure to deliver securities

Under the MRA, the failure to deliver securities on the purchase or repurchase date constitutes an event of default (upon which all outstanding transactions under the MRA can, but need not, be terminated). Under the GMRA, for practical or commercial reasons it does not. However, the performing party is entitled under the GMRA to:

- require the repayment of the purchase price or repurchase price if it has paid it;
- if it has a transaction exposure in respect of the relevant transaction, require the payment of cash margin; or
- by written notice, declare that transaction only shall be terminated.

[7] For a discussion of legal issues arising under New York and English law, respectively, where a party acts as agent for disclosed or for undisclosed principals, see “Fund Managers Acting as Agents and Market Transactions” prepared by the Financial Markets Lawyers Group (January 1996) and “Fund Management and Market Transactions,” A Practice Recommendation of the Financial Law Panel (September 1995).

b. Margin provisions

(1) **Margin calculation**

Both agreements provide for margin maintenance to be calculated on an aggregate basis across all transactions, but each agreement allows parties to elect not to include a particular repo transaction in this calculation and to provide for margin separately. The margin maintenance provisions of the GMRA offer the parties the option to "reprice" a transaction rather than make a margin call. Repricing is the market pratice for Buy/Sell Back Transactions, and may be done by adjusting the cash or the securities side of the transaction. The MRA provides optional repricing provisions in its Schedule of Optional Provisions for Annex I.

The MRA allows parties to establish a deadline for notices of margin calls such that calls made before that time must be satisfied the same day. The GMRA also contains the option for establishing a deadline. Failure to satisfy margin maintenance obligations is an event of default under both the MRA and the GMRA. However, in the MRA, there is no cure period for a margin default, whereas the GMRA provides for notice to be given to the party who has failed to satisfy the call before an event of default can be triggered.

The GMRA contains a provision for a recipient of cash margin to pay interest on the cash to the paying party. The MRA does not contain a parallel provision, as this type of arrangement has not been the standard practice in the U.S. market.

Parties should consider the conventions in their markets for margin maintenance and the tax, accounting, legal or other ramifications of these conventions as well as the method of exercising rights associated with margin maintenance obligations.

(2) **Margin for forward transactions**

The MRA Annex V provides for margin on forward transactions. In a transaction involving international securities it is important to consider the law of the jurisdiction which will determine the repo participants' property rights in the Forward Collateral (as defined in the MRA Annex V) to ascertain if the parties have effectively transferred ownership of the Forward Collateral or have created a first priority security interest in the Forward Collateral. Similarly, it is important to consider the law(s) applicable to the insolvency of the counterparty to ascertain the rights of the non-defaulting party to set-off or liquidate the Forward Collateral.

c. Hold in custody repos

The MRA contains provisions for hold in custody repos; the GMRA does not. Both local regulatory requirements and bankruptcy laws applicable to the repo seller for "hold in custody" repos should be carefully considered to determine whether the repo buyer's rights to the repo securities are protected against a bankruptcy receiver or third party creditor of the repo seller.

d. Buy/Sell Back Transactions

Annex VI to the MRA has added provisions for "Buy/Sell Back" transactions. The principal economic difference between Buy/Sell Back transactions and more traditional repo transactions covered by the MRA is that, in Buy/Sell Backs, income payments on repo securities are retained by the repo Buyer (and the sell back price is adjusted accordingly). The GMRA in Annex III also has Buy/Sell

Back provisions, the main difference being that the GMRA calculates accrued interest separately from the purchase price in accordance with London market practice.

The GMRA contains provisions giving the parties the option to reprice the transaction, as does the MRA in the Schedule of Optional Provisions for Annex I. This is the standard method of dealing with fluctuations in the value of securities in Buy/Sell Back transactions.

Before engaging in Buy/Sell Back transactions, issues of power and authority, accounting, tax, and regulatory issues should be carefully considered under applicable law.

e. Other market-related differences
Certain other market-related differences are described in the attachment to these Supplemental Guidance Notes.

7. MRA Provisions Related to Regulatory Status of Certain U.S. Counterparties

In order to meet applicable statutory or regulatory requirements of federal law, certain U.S. persons as repo counterparties will find it necessary or preferable to include one or more provisions of the MRA in their repo agreements whether the documentation being used is the MRA or the GMRA:

a. Annex VII for investment companies registered under the U.S. Investment Company Act of 1940.

b. Paragraph 18 for transactions involving ERISA plan assets.

c. Paragraph 20(a) and (b) for U.S. registered brokers or dealers.

d. Paragraph 20(c) for federally insured U.S. financial institutions.

e. Paragraph 8 disclosure for hold in custody repos if the repo seller is a government securities broker or dealer or is a financial institution.

f. Paragraph 19 in respect of bankruptcy and insolvency concerns. The protections of U.S. federal banking laws relating to the receivership and conservatorship of federally or state chartered insured banks or branches of foreign banks will apply to repo agreements even if the parties do not refer in the agreement to the relevant provisions of Section 11(e)(8) of FDIA. Similarly, where a U.S. corporation is a counterparty, parties do not need to refer in their contract to the Code's protections of repos of certain U.S. government and agency securities (Section 559) or other securities contracts by certain financial institutions (Section 555). Nevertheless, parties may wish to include the provisions contained in paragraph 19 referring to the above-referenced statutory sections to confirm that the parties intend them to apply.

8. Counterparties and Securities from Emerging Markets

Where one repo participant is from an emerging market country, or where the repo securities are issued by an issuer from or are maintained in an emerging market country, the counterparty may wish to include an additional event of default to both the MRA and GMRA relating to sovereign risks or force majeure events. *A provision relating to sovereign risk is included in the MRA's Schedule of Optional Provisions for Annex I and is entitled "Additional Event of Default."*

9. Foreign Regulation

In engaging in repo activities across national borders, a party should obtain advice of counsel on the extent to which the activity is legally permissible under applicable foreign statute and regulation. For example, a party should consider the extent to which it may legally acquire or deal in repo securities in a foreign jurisdiction or deal with local counterparties (e.g., a foreign counterparty's inability to pledge assets) or become subject to local licensing requirements or regulations (such as licensing requirements for broker or dealer activities or solicitation).

10. Use of Two or More Master Agreements with a Single Counterparty

After considering all of the above factors, including the effect on netting of counterparty exposures, a party may find it desirable to enter into more than one Master Repurchase Agreement with a single counterparty, for example, in respect of different types of repo securities. If so, paragraph 14 of the MRA and paragraph 15 of the GMRA would need to be amended. Also, in this situation, parties may wish to include, in each Master Repurchase Agreement, an event of default expressly referring to a default under the other Master Repurchase Agreement. Parties should also consider the need to specify in each confirmation the particular Master Repurchase Agreement between the parties that is applicable to the transaction.

Additional Market-Related Differences in MRA and GMRA

GMRA	MRA
1. Price Differential calculated on basis of 360 or 365 day year (¶2(dd))	1. Price Differential calculated on basis of 360-day year (¶2(k))
2. Requires designating offices through which transactions will be handled (¶2(l))	2. No requirement regarding designated offices; optional provisions for designating offices contained in the Guidance Notes, September 1996 Version, Schedule of Optional Provisions for Annex I
3. Confirmation prevails over agreement (¶3(b))	3. Agreement prevails over confirmation (¶3(b))
4. In lieu of margin maintenance, new repriced transactions can be entered into or are deemed to occur (¶4(i),(j),(k))	4. No provision for entry into new transactions in lieu of margin maintenance; optional provision for repricing contained in Schedule of Optional Provisions for Annex I
5. No threshold amount for margin exposure provided (although can be specified)	5. Provides option to establish threshold amount for margin exposure (¶4(e))
6. Minimum delivery period for margin to be specified (¶4(g))	6. Margin delivery on same or next day (¶4(d))
7. Can specify the return of particular margin assets (¶4(d))	7. No such provision
8. Additional Event of Default: expulsion from self-regulatory organization (¶10(a)(vii))	8. No such additional Events of Default
9. Interest rate on owed obligations upon Event of Default termination = greater of LIBOR or Pricing Rate (¶10(d))	9. Interest rate on owed obligations upon Event of Default termination = greater of Prime Rate or Pricing Rate (¶11(h))
10. Default remedies are limited to those set forth in the agreement (¶10(g))	10. Default remedies specified are in addition to any other rights available under applicable law (¶11(i))
11. Interest provision imposing LIBOR on all unpaid obligations under agreement, outside Event of Default termination (¶12)	11. No non-termination interest rate
12. Contains a "no reliance" representation (¶9(g))	12. No such representation
13. Representation that securities transferred are free of all liens (¶9(h))	13. No such representation
14. Tax representation specific to U.K. regime (¶9(i)); provisions addressing taxes including withholding taxes (¶6(b))	14. Provisions addressing taxes including withholding taxes (¶5 of Annex III).