

TBMA/ISMA GLOBAL MASTER REPURCHASE AGREEMENT (2000 VERSION)

AGENCY ANNEX

Supplemental terms and conditions for Agency Transactions

This Annex constitutes an Annex to the TBMA/ISMA Global Master Repurchase Agreement dated _____ between and (the "Agreement").

1. Scope and interpretation

- (a) The parties have agreed that the Transactions to which this Agreement applies may include Agency Transactions.
- (b) Subject to the following provisions of this Annex, either party may enter into Transactions as agent for a third person (a "Principal"), whether as custodian or investment manager or otherwise (a Transaction so entered into being an "Agency Transaction"). In this Annex the party entering into an Agency Transaction as agent is referred to as the "Agent" and the other party is referred to as the "other party".
- (c) In relation to Agency Transactions, the Agreement shall be construed as if it had been amended and supplemented as set out in paragraphs 2 to 5 of this Annex.
- [(d) The parties agree that either party may enter into an Agency Transaction on behalf of more than Principal and accordingly the addendum hereto for multiple principal transactions shall apply.]*

2. Initiation; Confirmation

- (a) A party may enter into an Agency Transaction if, but only if -
 - (i) it specifies that Transaction as an Agency Transaction at the time when it enters into it and in the Confirmation;
 - (ii) it enters into that Transaction on behalf of a single Principal whose identity is disclosed to the other party (whether by name or by reference to a code or identifier which the parties have agreed will be used to refer to a specified Principal) at the time when it enters into the Transaction; and
 - (iii) it has at the time when the Transaction is entered into actual authority to enter into the Transaction on behalf of that Principal and to perform on behalf of that Principal all of that Principal's obligations under the Agreement.
 - (b) A transaction shall not be entered into under the Agreement and this Annex if both parties specify that they propose to enter into that transaction as an agent.
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* Delete as appropriate

3. Notification

Each party undertakes that, if it enters as agent into an Agency Transaction, forthwith upon becoming aware -

- (i) of any event which constitutes an Event of Default with respect to the relevant Principal; or
- (ii) of any breach of any of the warranties given in paragraph 5(c) below or of any event or circumstance which has the result that any such warranty would be untrue if repeated by reference to the current facts;

it will inform the other party of that fact and will, if so required by the other party, furnish the other party with such additional information as the other party may reasonably request.

4. Separate agreement

- (a) Each Agency Transaction shall be a transaction between the relevant Principal and the other party and no person other than the relevant Principal and the other party shall be a party to or have any rights or obligations under an Agency Transaction. Without limiting the foregoing, the Agent shall not be liable as principal for the performance of an Agency Transaction, but this is without prejudice to any liability of the Agent under any other provision of this Annex.
- (b) All the provisions of the Agreement shall apply separately as between the other party and each Principal for whom the Agent has entered into an Agency Transaction or Agency Transactions as if each such Principal were a party to a separate agreement with the other party in all respects identical with the Agreement as supplemented by the provisions of this Annex other than this paragraph, but with the following additions and modifications -
 - (i) if there occurs in relation to the Agent an Event of Default or an event which would constitute an Event of Default if the other party served a Default Notice or other written notice under any sub-paragraph of paragraph 10 of the Agreement, the other party shall be entitled by giving written notice to the Principal (which notice shall be validly given if given to the Agent in accordance with paragraph 14 of the Agreement) to declare that by reason of that event an Event of Default is to be treated as occurring in relation to the Principal. If the other party gives such a notice then an Event of Default shall be treated as occurring in relation to the Principal at the time when the notice is deemed to be given in accordance with paragraph 14 of the Agreement;
 - (ii) if the Principal is neither incorporated nor has established a place of business in Great Britain, the Principal shall for the purposes of paragraph 17 of the Agreement as so applicable be deemed to have appointed as its agent to receive on its behalf service of process in the Courts of England the Agent, or if the Agent is neither incorporated nor has established a place of business in the United Kingdom, the person appointed by the Agent under paragraph 17 of the Agreement,

or such other person as the Principal may from time to time specify in a written notice given to the other party.

- (c) The Agent shall do all such things and provide the other party with all such information as may be necessary to identify any Transaction Exposure which may arise in respect of any Principal.
- (d) The foregoing provisions do not affect the operation of the Agreement as between the other party and the Agent in respect of any Transactions into which the Agent may enter on its own account as a principal.

5. Representations and warranties

- (a) Paragraph 9(b) of the Agreement shall be deleted and replaced by the following:
 - "(b) it will engage in this Agreement and the Transactions contemplated hereunder as principal or, subject to and in accordance with the terms of the Agency Annex hereto, as agent and the conditions referred to in the Agency Annex hereto will be fulfilled in respect of each Transaction into which it enters as an agent;"
- (b) At the beginning of the last sentence of paragraph 9 of the Agreement there shall be added the words "Subject to the Agency Annex hereto,".
- (c) Each party warrants to the other that it will, on every occasion on which it enters or purports to enter into a transaction as an Agency Transaction, be duly authorised to enter into that transaction on behalf of the person whom it specifies as the Principal in respect of that transaction and to perform on behalf of that person all the obligations of that person under the Agreement.

Addendum to Agency Annex for multiple principal transactions

1. Scope

This addendum applies where a party wishes to enter into an Agency Transaction on behalf of more than one Principal. The Agency Annex shall apply to such a Transaction subject to the modifications and additional terms and conditions contained in paragraphs 2 to 7 below.

2. Interpretation

- (a) In this addendum –
 - (i) a party has a “Net Transaction Exposure” in respect of the other party if the aggregate of all the first party’s Transaction Exposures exceeds the aggregate of all the other party’s Transaction Exposures; and the amount of the Net Transaction Exposure is the amount of the excess. For this purpose, amounts not denominated in the Base Currency shall be converted into the Base Currency at the Spot Rate prevailing at the relevant time;
 - (ii) “Pooled Principal” has the meaning given in paragraph 6(a) below; and
 - (iii) “Pooled Transaction” has the meaning given in paragraph 6(a) below.

3. Modifications to the Agency Annex

- (a) Paragraph 2(a)(ii) of the Agency Annex is deleted and replaced by the following –

“it enters into that Transaction on behalf of one or more Principals and at or before the time when it enters into the Transaction it discloses to the other party the identity and the jurisdiction of incorporation, organisation or establishment of each such Principal (and such disclosure may be made either directly or by reference to a code or identifier which the parties have agreed will be used to refer to a specified Principal);”.

- (b) Paragraph 2(a)(iii) of the Agency Annex is deleted and replaced by the following –

“it has at the time when the Transaction is entered into actual authority to enter into the Transaction on behalf of each Principal and to perform on behalf of each Principal all of that Principal’s obligations under the Agreement”.

4. Allocation of Agency Transactions

- (a) The Agent undertakes that if, at the time of entering into an Agency Transaction, the Agent has not allocated the Transaction to a Principal, it will allocate the Transaction before the Purchase Date for that Transaction either to a single Principal or to several Principals, each of whom shall be responsible for only that part of the Transaction which has been allocated to it. Promptly following such allocation, the Agent shall notify the other party of

the Principal or Principals (whether by name or reference to a code or identifier which the parties have agreed will be used to refer to a specified Principal) to which that Transaction or part of that Transaction has been allocated.

- (b) Upon allocation of a Transaction in accordance with sub-paragraph (a) above or otherwise, with effect from the date on which the Transaction was entered into –
 - (i) where the allocation is to a single Principal, the Transaction shall be deemed to have been entered into between the other party and that Principal; and
 - (ii) where the allocation is to two or more Principals, a separate Transaction shall be deemed to have been entered into between the other party and each such Principal with respect to the appropriate proportion of the Purchased Securities.
- (c) If the Agent shall fail to perform its obligations under sub-paragraph (a) above then for the purposes of assessing any damage suffered by the other party (but for no other purpose) it shall be assumed that, if the Transaction concerned (to the extent not allocated) had been allocated in accordance with that paragraph, all the terms of the Transaction would have been duly performed.

5. Allocation of margin

- (a) Unless the Agent expressly allocates a Margin Transfer before such time, the Agent shall, at the time of making or receiving that Margin Transfer, be deemed to have allocated any Margin Transfer in accordance with paragraph 6(c) below.
- (b)
 - (i) If the Agent has made a Margin Transfer on behalf of more than one Pooled Principal, that Margin Transfer shall be allocated in proportion to the other party's Net Transaction Exposure in respect of each Pooled Principal at the Agent's close of business on the Business Day before the Margin Transfer is made; and
 - (ii) if the Agent has received a Margin Transfer on behalf of more than one Pooled Principal, that Margin Transfer shall be allocated in proportion to each Pooled Principal's Net Transaction Exposure in respect of the other party at the Agent's close of business on the Business Day before the Margin Transfer is made.
- (c) Sub-paragraphs (a) and (b) shall not apply in respect of any Margin Transfer which is effected or deemed to have been effected under paragraph 6(c) below.

6. Pooled Principals: rebalancing of margin

- (a) Where the Agent acts on behalf of more than one Principal, the parties may agree that, as regards [all (but not some only)] outstanding Transactions with those Principals, or with such of those Principals as they may agree ("Pooled

Principals”, such Transactions being “Pooled Transactions”), any Margin Transfers are to be made on an aggregate net basis.

- (b) Sub-paragraphs (c) to (e) below shall have effect for the purpose of ensuring that Margin is, so far as is practicable, transferred and held uniformly, as between the respective Pooled Principals, in respect of all Pooled Transactions for the time being outstanding under the Agreement.
- (c) At or as soon as practicable after the Agent’s close of business on each Business Day on which Pooled Transactions are outstanding (or at such other times as the parties may from time to time agree) there shall be effected such Margin Transfers as shall ensure that immediately thereafter –
 - (i) in respect of all Pooled Principals which have a Net Transaction Exposure to the other party, the amount of Cash Margin then repayable, and the amount of Equivalent Margin Securities of each description then deliverable, by each such Pooled Principal is equal to such proportion of the aggregate amount of Cash Margin repayable, or the aggregate amount of such Equivalent Margin Securities deliverable, by all such Pooled Principals as corresponds to the proportion which the Net Transaction Exposure of the relevant Pooled Principal bears to the aggregate of the Net Transaction Exposures of all Pooled Principals to the other party; and
 - (ii) in respect of all Pooled Principals to which the other party has a Net Transaction Exposure, the aggregate amount of Cash Margin then repayable, and the aggregate amount of Equivalent Margin Securities of each description then deliverable, to each such Pooled Principal is equal to such proportion of the aggregate amount of Cash Margin repayable, or the aggregate amount of such Equivalent Margin Securities deliverable, to all such Pooled Principals as corresponds to the proportion which the Net Transaction Exposure of the other party to the relevant Pooled Principal bears to the aggregate of the Net Transaction Exposures of the other party to all Pooled Principals.
- (d) Margin Transfers effected under sub-paragraph (c) shall be effected (and if not so effected shall be deemed to have been so effected) by appropriations made by the Agent and shall be reflected by entries in accounting and other records maintained by the Agent. Accordingly, it shall not be necessary for payments of cash or deliveries of Securities to be made through any settlement system for the purpose of such Margin Transfers. Without limiting the generality of the foregoing, the Agent is hereby authorised and instructed by the other party to do all such things on behalf of the other party as may be necessary or expedient to effect and record the receipt on behalf of the other party of cash and Securities from, and the delivery on behalf of the other party of cash and Securities to, Pooled Principals in the course or for the purposes of any Margin Transfer effected under that sub-paragraph.
- (e) Promptly following the Margin Transfers effected under sub-paragraph (c) above at the close of business on any Business Day, the Agent shall prepare a statement showing in respect of each Pooled Principal the amount of Cash Margin which has been paid, and the amount of Margin Securities and Equivalent Margin Securities of each description which have been

transferred, by or to that Pooled Principal immediately after those Margin Transfers. If the other party so requests, the Agent shall promptly deliver to the other party a copy of the statement so prepared.

7. Warranties

- (a) The Agent warrants to the other party that –
- (i) all notifications provided to the other party under paragraph 4(a) above and all statements provided to the other party under paragraph 6(e) above shall be complete and accurate in all material respects;
 - (ii) at the time of allocating an Agency Transaction in accordance with paragraph 4(a) above, each Principal or Principals to whom the Agent has allocated that Transaction or any part of that Transaction is duly authorised to enter into the Transactions contemplated by this Agreement and to perform its obligations thereunder; and
 - (iii) at the time of allocating an Agency Transaction in accordance with paragraph 4(a) above, no Event of Default or event which would constitute an Event of Default with the service of a Default Notice or other written notice under any sub-paragraph of paragraph 10 of the Agreement has occurred in relation to any Principal or Principals to whom the Agent has allocated that Transaction or any part of that Transaction.

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Guidance notes to the Addendum to the Agency Annex for multiple principal transactions

These guidance notes –

- are designed to provide users of the Addendum to the Agency Annex with information on its content;
- do not form part of the Agency Annex or the Addendum to the Agency Annex or the Agreement;
- summarise certain but not all of the provisions of the Addendum to the Agency Annex.

Introduction

1. The Agency Annex permits one party to enter into a transaction as agent on behalf of a single principal. The purpose of the Addendum to the Agency Annex for multiple principal transactions is to extend the scope of the Agency Annex by amending certain provisions of the Annex and adding further provisions so that a party can enter into a transaction on behalf of one or more principals. The Addendum contains supplementary provisions which are necessary to address the additional legal complexities arising from multiple principal transactions.

Modification of Transactions

2. Paragraphs 3(a) and (b) of the Addendum amend paragraphs 2(a)(ii) and (iii) of the Agency Annex to make clear that a party can act on behalf of more than one principal.

Allocation of Agency Transactions

3.1 If an agent does not allocate a transaction to one or more principals, there is a considerable degree of legal uncertainty as to the status of that transaction before allocation and therefore legal risk if a party becomes insolvent before allocation takes place. Paragraph 4(a) of the Addendum requires an agent to allocate a transaction before the purchase date. Paragraph 4(b) provides that, upon allocation, the transaction is deemed to have been allocated with effect from the date on which the transaction was entered into.

3.2 The provisions in this section are based on pro forma provisions included in the Financial Law Panel paper “Fund Management and Market Transactions: a Practice Recommendation”, which was published in September 1995.

Allocation of margin

4. Where new margin is provided by a principal or the other party and is not immediately allocated to one or more principals, there is similarly a degree of legal uncertainty and therefore legal risk if a party becomes insolvent before allocation takes place. In order to minimise this risk, paragraph 5 of the Addendum provides that, unless the agent has already allocated the margin, margin transfers are deemed to have been allocated among principals in proportion to the net aggregate of each

principal's transaction exposures (defined as the "Net Transaction Exposure") at close of business on the day before the margin transfer is made or received.

Pooled Principals

5.1 In practice, it is common for fund managers, custodians and other agency lenders to operate the margin provisions on a pooled basis, i.e. taking into account the position of all underlying principals, rather than on a principal by principal basis. In addition, rather than making separate margin transfers from one principal to the other party and from the other party to another principal, they "rebalance" margin already provided or held without making actual payments or transfers. Paragraph 6 of the Addendum provides the legal basis for operating the margin provisions in this way. The purpose of the pooling provisions is to ensure that margin is held uniformly for all principals.

5.2 Paragraph 6(a) permits the parties (i.e. the agent and the other party), by agreement, to apply the pooling provisions to designated principals but in relation to all transactions entered into for those designated principals.

5.3 Paragraph 6(d) of the Addendum provides that, for those principals to which the pooling provisions apply the agent must, at close of business on each day, make such margin transfers as are necessary to ensure that margin is held by each principal or by the other party for each principal in proportion to the "Net Transaction Exposure" of each principal to the other party or the other party's Net Transaction Exposure to each principal (as the case may be).

5.4 The margin transfers required to be made by paragraph 6(d) are effected by book entries by the Agent and there are no actual payments of cash or deliveries of securities. Upon request, the agent is required to provide the other party with a statement detailing the margin transfers effected in accordance with these provisions.

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