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Securities Industry and
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# Guidance Notes to Annex IX

## Transactions Involving Certain Japanese Financial Institutions

(Capitalized terms used but not otherwise defined in these guidance notes have the meanings given to them in the Master Repurchase Agreement (the "Agreement") and in Annex IX.)

A Japanese tax law, effective as of April 1, 2002 (the "Japanese Tax Law") has given rise to tax implications for certain cross-border repo transactions conducted between a Japanese financial institution and a non-Japanese financial institution. Although the current Agreement may be used to conduct such transactions, the Association has published Annex IX in order to allow such transactions to meet one of several requirements necessary in order for such transactions to be exempt from the Japanese Tax Law. These guidance notes briefly summarize key provisions of Annex IX and identify certain issues which parties entering into Annex IX may wish to be aware of.

***These guidance notes 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 and whether the Agreement or Annex IX is suitable to its particular circumstances and needs.***

**Background**: The Japanese Tax Law imposes an obligation on a Japanese financial institution to withhold tax on the Price Differential it pays on certain cross-border repo transactions it has entered into with a non-Japanese financial institution, unless such transactions are otherwise exempt. One of several requirements such transactions must meet in order to be exempt is to be conducted pursuant to documentation which meets certain Japanese netting law requirements. Annex IX is intended to supplement and modify the Agreement in order to allow it to meet such Japanese netting law requirements. (More information regarding the Japanese Tax Law is available on the Association's website at ~~http://www.bondmarkets.com/regulatory/fund.shtml.~~)

**Scope**: Annex IX only applies to Transactions where one party is, and the other is not, resident in Japan for tax purposes. In addition, Annex IX applies only to Transactions which utilize Exempt Securities. Under the Japanese Tax Law, Exempt Securities include: foreign government debt (e.g. U.S. Treasuries), debt issued by "local authorities" (e.g. municipal bonds), and government-sponsored agency debt (e.g. Fannies and Freddies). The use of Exempt Securities in such Transactions is another one of several requirements such Transaction must meet in order to be exempt from the Japanese Tax Law.

Note that Annex IX does not apply to Transactions which utilize securities issued in Japan, such as JGBs. The use of Japan-issued securities in cross-border transactions raises additional tax issues which Annex IX does not address. Market participants may wish to use the Global Master Repurchase Agreement (GMRA), published jointly by the Association and the International Securities Markets Association, and the Japanese Securities Annex to the GMRA for Japanese cross-border repo transactions utilizing securities issued in Japan. (The Japanese Securities Annex to the GMRA is available on the Association's website at the following link: http://www.bondmarkets.com/eissues.shtml.)

**Act of Insolvency**: The definition of Act of Insolvency in the Agreement is amended by Annex IX. As amended, an Act of Insolvency includes Close-out Netting Events, which generally involve the voluntary or involuntary filing in respect of a party to the Agreement of insolvency-related proceedings in a Japanese court. In addition, Annex IX also amends the Agreement so that an Act of Insolvency shall occur immediately upon the occurrence of a Close-out Netting Event, notwithstanding provisions in the Act of Insolvency definition which might otherwise allow a party to avoid triggering the occurrence of an Act of Insolvency, such as the fifteen-day grace period in the Agreement provided under Paragraph 2, clause (a)(ii)(C).

For the avoidance of doubt, Annex IX also sets out provisions for the immediate set-off of amounts due from one party to the Agreement to the other, in accordance with certain Japanese enforcement regulations.

**Use with Annex III**: Annex IX may be used separately from or in conjunction with Annex III to the Agreement, “International Transactions.” As set out in Paragraph 5 of Annex IX, in the event of a conflict between the conversion or valuation used for purposes of the set-off of obligations in accordance with certain Japanese enforcement regulations and the definition of “Contractual Currency” in Annex III, the provisions of Paragraph 5 of Annex IX will prevail.