

Chapter 4

Commentary on the TBMA/ISMA Global Master Repurchase Agreement

This chapter provides a straightforward but detailed commentary on the TBMA/ISMA Global Master Repurchase Agreement (the “TBMA/ISMA GMRA”). A segment of the Agreement text is quoted first (shaded in grey) and explanatory commentary follows immediately below it in each case.

First, it might be useful to set the scene and outline the evolution of the TBMA/ISMA GMRA.

Evolution of the TBMA/ISMA GMRA

In 1986 the US-based Public Securities Association (the “PSA”), now The Bond Market Association (“TBMA”), published its prototype repurchase agreement (governed by New York Law) covering US treasuries so as to provide the repo market with a standard agreement containing a number of basic legal protections. The prototype included provisions for market-to-market procedures; stated the rights of both parties when one of them defaulted; and sought to ensure the availability of bankruptcy protections. The PSA Master Repurchase Agreement was revised in 1987 and by the early 1990s it was the industry standard document in the US repo market.

In November 1992 the PSA, in conjunction with the International Securities Market Association (“ISMA”) issued the “Global Master Repurchase Agreement” covering gross paying securities other than US treasuries and equities, and subject to English law. The Agreement was closely modelled on the standard form PSA Master Repurchase Agreement used in the US repo market.

In November 1995 the PSA and ISMA published a revised version of the 1992 Agreement motivated in part by the arrival of the new UK gilt repo market, which started on 2 January 1996.

The revisions included major changes to the margining provisions and the inclusion, for the first time, of provisions dealing with agency transactions and fully documented buy/sellback transactions. Both the revised form of the PSA/ISMA GMRA and the Gilt Repo Annex, which together formed the Gilt Repo Legal Agreement, were published in November 1995, along with the Bank of England’s Gilt Repo Code of Conduct. This Code of Conduct prohibited gilt repos being traded until a PSA/ISMA GMRA or TBMA/ISMA GMRA was executed.

The success of the PSA/ISMA GMRA showed the advantages of standardised documentation in reducing risk by eliminating undocumented or poorly documented transactions, reducing documentation costs and lowering barriers to new market entrants. It was also

favoured by regulators, who decide on the amount of capital to be allocated to repos in a bank's trading book, because it reduced risk.

Although an English law agreement, the PSA/ISMA GMRA, was also intended for use in the European cross-border market. It is still extensively used in countries other than the United States, sometimes in combination with country-specific annexes.

On 30 November 2000 the TBMA/ISMA GMRA was published. A study of this is offered below.

Structure of the TBMA/ISMA GMRA

The basic structure of the TBMA/ISMA GMRA is:

- a printed standard form master agreement containing provisions for all repurchase transactions between the Seller and the Buyer (a set of explanatory notes was also published and is worth reading);
- various annexes as follows:
 - i) Annex I: Supplemental Terms or Conditions. This enables the parties to make choices in relation to certain provisions of the TBMA/ISMA GMRA and to tailor the document to suit their purposes and relative credit strengths. **Negotiators negotiate Annex I;**
 - ii) Annex II: Form of Confirmation;
 - iii) Buy/Sell Back Annex;
 - iv) Agency Annex and Addendum;
 - v) Product Annexes for equities, gilts and bills of exchange; and
 - vi) Country Annexes for Canada, Italy, Japan, the Netherlands, South Africa and Thailand.

Parties choose which of these Annexes they want to apply to their TBMA/ISMA GMRA.

The key features of the TBMA/ISMA GMRA are that:

- repos are structured as outright sales and repurchases;
- full legal title to securities and cash is transferred;
- the Seller has an obligation to return equivalent securities;
- there is provision for initial margin and top-up margin;
- the equivalent of the coupon received from the issuer on a security is paid to the Seller on the same day; and
- legal title to collateral is robust, which overcomes doubts when an Event of Default occurs.

In essence the TBMA/ISMA GMRA includes provisions dealing with payment and transfer of securities and cash, margin maintenance, coupon payments on securities, reciprocal representations and warranties (dealing with authority, title to securities and tax), rights of substitution, reciprocal events of default (which permit close-out of all transactions that are subject to the TBMA/ISMA GMRA), and termination of individual transactions upon the occurrence of specified tax events, as well as standard "boilerplate" clauses.

The TBMA/ISMA GMRA can potentially cover repos and buy/sellbacks in equities, gross paying securities, net paying securities, US Treasury instruments, bills of exchange and certificates of deposit. The Agency Annex allows Agency Transactions to be undertaken with disclosed principals.

When the TBMA/ISMA GMRA was revised in 1999/2000 it did not undergo major, wholesale radical surgery from its predecessor, the PSA/ISMA GMRA. Rather, there was a

refashioning of certain provisions inspired by market demand. This can be clearly seen by printing off the blacklined version showing the differences between the two documents from ISMA’s website (www.isma.org under the Legal and Regulatory section).

This is in stark contrast to the process used in ISDA’s 2001 Margin Provisions, where a radical new regime for documenting collateralised transactions was proposed, but has still not been widely taken up by the market. While parties (usually less sophisticated ones) are still entering into PSA/ISMA GMRAs, the TBMA/ISMA GMRA is in widespread use.

Paragraph-by-paragraph analysis of the TBMA/ISMA GMRA

**2000
VERSION**

**TBMA/ISMA
GLOBAL MASTER REPURCHASE AGREEMENT**

Dated as of _____

Between:

_____ (“Party A”)

and

_____ (“Party B”)

Headings and parties

The TBMA/ISMA GMRA is dated as of a certain date. This is normally the date of signing before the first trade. Banks in Europe will not trade repos unless the TBMA/ISMA GMRA is signed and in place. In the United Kingdom this is a requirement of the Bank of England’s Gilt Repo Code. This differentiates it from the ISDA Master Agreement, where the agreement is often signed well after the date of the first trade and in the meantime the parties rely on the Confirmation.

There is a block where the parties state their full legal names. Usually, but not always, Party A prepares the draft of Annex I (which is what negotiators negotiate) and will produce the execution copies when all points have been agreed by the parties.

Paragraph 1

1. Applicability

(a) From time to time the parties hereto may enter into transactions in which one party, acting through a Designated Office, (“Seller”) agrees to sell to the other, acting

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through a Designated Office, (“Buyer”) securities and financial instruments (“Securities”) (subject to paragraph 1(c), other than equities and Net Paying Securities) against the payment of the purchase price by Buyer to Seller, with a simultaneous agreement by Buyer to sell to Seller Securities equivalent to such Securities at a date certain or on demand against the payment of the repurchase price by Seller to Buyer.

(b) Each such transaction (which may be a repurchase transaction (“Repurchase Transaction”) or a buy and sell back transaction (“Buy/Sell Back Transaction”) shall be referred to herein as a “Transaction” and shall be governed by this Agreement, including any supplemental terms or conditions contained in Annex I hereto, unless otherwise agreed in writing.

(a) This sub-paragraph sets out the mechanics of a classic repo transaction, and the obligations of the Buyer and Seller to each other. It also contemplates that the parties might act through branches of their respective organisations. Repo transaction may be for a particular term or on demand.

Equities and Net Paying Securities are excluded unless selected in Annex I. (Annex I and the other Annexes are discussed at the end of this chapter.)

(b) Repos and buy/sellbacks may be traded and covered under the TBMA/ISMA GMRA, and are called “Transactions” governed by it. They are also subject to the provisions of Annex I unless otherwise agreed in writing (which would be rare).

(c) If this Agreement may be applied to

(i) Buy/Sell Back Transactions, this shall be specified in Annex I hereto, and the provisions of the Buy/Sell Back Annex shall apply to such Buy/Sell Back Transactions;

(ii) Net Paying Securities, this shall be specified in Annex I hereto and the provisions of Annex I, paragraph 1(b) shall apply to Transactions involving Net Paying Securities.

(c) If buy/sellbacks are to be traded under the TBMA/ISMA GMRA, this must be stated in Annex I and the provisions of the Buy/Sell Back Annex will apply to them. If either party wants to enter into Net Paying Securities under the TBMA/ISMA GMRA, this must also be stated in Annex I and Annex 1, paragraph 1(b) will apply to them.

(d) If Transactions are to be effected under this Agreement by either party as an agent, this shall be specified in Annex I hereto, and the provisions of the Agency Annex shall apply to such Agency Transactions.

(d) If either party wants to engage in Agency Transactions on behalf of disclosed third parties, this must be stated in Annex I and the terms of the Agency Annex will apply to those

transactions. If neither party wants to engage in Buy/Sell Back Transactions, Net Paying Securities or Agency Transactions, this also must be stated in Annex I.

Paragraph 2

This is an extensive Definitions Paragraph and appears much earlier in the TBMA/ISMA GMRA than it does in the ISDA Master Agreement, where it is located in Section 14, the last section of the main text.

2. Definitions

(a) “Act of Insolvency” shall occur with respect to any party hereto upon–

- (i) its making a general assignment for the benefit of, entering into a reorganisation, arrangement, or composition with creditors; or
- (ii) its admitting in writing that it is unable to pay its debts as they become due; or
- (iii) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property; or
- (iv) the presentation or filing of a petition in respect of it (other than by the counterparty to this Agreement in respect of any obligation under this Agreement) in any court or before any agency alleging or for the bankruptcy, winding-up or insolvency of such party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition (except in the case of a petition for winding-up or any analogous proceeding, in respect of which no such 30 day period shall apply) not having been stayed or dismissed within 30 days of its filing; or
- (v) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such party or over all or any material part of such party’s property; or
- (vi) the convening of any meeting of its creditors for the purposes of considering a voluntary arrangement as referred to in section 3 of the Insolvency Act 1986 (or any analogous proceeding);

(a) Act of Insolvency is an important definition and is sometimes supplemented by country-specific provisions in Annex I, or even in a country Annex (eg, the South African Annex).

The events described in the definition are:

- a composition with creditors;
- a written admission of inability to pay debts when due;
- steps to appoint an insolvency official;
- presentation of a bankruptcy petition by a third party that is not dismissed within 30 days. (Please note that in (iv) there is no 30-day grace period for a third-party winding-up order, as there is in the 1992 ISDA Master Agreement);
- actual appointment of an insolvency official; and
- convening a creditors’ meeting to propose a voluntary arrangement (a process allowed under the UK’s 1986 Insolvency Act where a solvent party can make a composition of its debts or an arrangement of its financial affairs, if its creditors agree).

As we shall see in paragraph 10(a), there is no grace period for Acts of Insolvency or for most other Events of Default.

(b) “Agency Transaction”, the meaning specified in paragraph 1 of the Agency Annex;

(b) An Agency Transaction is one where one of the contracting parties is acting as agent for a disclosed principal.

(c) “Appropriate Market”, the meaning specified in paragraph 10;

(c) In valuing Securities for the purposes of close-out of Transactions under paragraph 10 following an Event of Default, “Appropriate Market” is the one deemed most relevant by the non-Defaulting Party for obtaining prices from dealers.

(d) “Base Currency”, the currency indicated in Annex I hereto;

(d) This definition is used in two places and possibly different currencies are appropriate in each place. It is used in paragraph 4 to calculate Net Exposure for margining purposes. Any Cash Margin payable under paragraph 4(e) must be paid in the Base Currency, unless otherwise agreed. It is also used for calculating a close-out amount in paragraph 10. The mention of the local currencies of the parties’ jurisdictions is a good idea here because, if they become insolvent, it is likely that any court judgement will be awarded in a local currency. It is therefore important to consider whether to quote more general wording in Annex I to account for these different uses of Base Currency, rather than simply to nominate one particular currency. Factors likely to influence the choice of the Base Currency are the location and jurisdiction of incorporation of the parties, and the currency of the Purchase Price and Repurchase Price of the securities in repo transactions.

(e) “Business Day” –

(i) in relation to the settlement of any Transaction which is to be settled through Clearstream or Euroclear, a day on which Clearstream 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 the settlement of any Transaction which is to be settled through a settlement system other than Clearstream or Euroclear, a day on which that settlement system is open to settle such Transaction;

(iii) in relation to any 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 obligation to make a payment not falling within (i) or (ii) above, a day other than a Saturday or a Sunday on which banks are open for business in the principal financial centre 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 a payment in euro, a day on which TARGET operates);

(e) This definition identifies a Business Day as one when particular settlement systems for settling repo transactions are open for business. The definition covers both deliveries and payments. TARGET is the market's euro payment settlement system.

(f) "Cash Margin", a cash sum paid to Buyer or Seller in accordance with paragraph 4;

(f) If the value of the bonds sold to the Buyer falls during the life of the repo transaction, the Buyer is entitled under paragraph 4 (Margin Maintenance) to call for more bonds or for Cash Margin to maintain the value of the bonds against which it has paid out its cash at the start of the repo transaction.

(g) "Clearstream", Clearstream Banking, société anonyme, (previously Cedelbank) or any successor thereto;

(g) Together with Euroclear, one of Europe's two major central securities depositories and settlement systems. Clearstream is now owned by Deutsche Börse.

(h) "Confirmation", the meaning specified in paragraph 3(b);

(h) A written confirmation of a repo or buy/sellback transaction setting out its economic terms and containing the matters outlined in paragraph 3(b) and in Annex II.

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