9 February 2012

Repo, Securities Lending and Eurozone Contingency Planning

1. INTRODUCTION

1.1 The ongoing eurozone crisis, and in particular the perceived risk of a eurozone member leaving the single currency, presents many questions in relation to financial transactions. In repo and securities lending transactions, the existence of cash and securities legs combined with the various structural features of repo and securities lending gives rise to a number of pertinent issues unique to these transactions. This briefing is intended to assist those conducting eurozone contingency planning by considering some of the key issues in relation to repo and securities lending in the context of the hypothetical departure of a single eurozone member state from the single currency.

1.2 This briefing updates and extends our previous briefing ("Repo and the Eurozone Crisis – December 2011") to cover securities lending transactions and add further commentary and practical suggestions as well as including in Appendix 1 a comparative summary table of some relevant provisions of the repo and securities lending master agreements and in Appendix 2 a summary of potential action which could be taken in respect of each type of agreement.

2. POTENTIAL EXIT SCENARIOS AND ASSUMPTIONS

2.1 The exit of a eurozone member from the single currency could arise in a number of different ways. There is currently no mechanism in the EU treaty framework for any member state to leave the euro, without also leaving the EU. Consequently any exiting state (**"Exiting State"**) would either need to leave the EU or negotiate an exit from the euro. It is also theoretically possible that an Exiting State would do so unilaterally in breach of its existing treaty obligations.

2.2 It is, of course, also conceivable that there may be more than one Exiting State or that the euro may split into two or more currency blocs or that the entire eurozone devolves into 17 new currencies.

2.3 Each of the above scenarios would give rise to a different set of legal considerations and would involve a considerable number of unknowns. For example, there would be some combination of new EU legislation, EU treaty amendments and new domestic legislation in the Exiting State or in other member states. The Exiting State may also introduce capital and exchange controls. There may also be industry protocols providing for financial market participants to amend their master agreements voluntarily and multilaterally. Finally, any redenomination of debts by the Exiting State could apply to any combination of sovereign debt, debt of any entities incorporated or resident in the Exiting State, debts subject to the governing law of the Exiting State, debts to be enforced in the Exiting State or any debt payable in the Exiting State.

2.4 Given the numerous permutations of a eurozone exit, and in order to simplify the analysis and consideration of the issues, this briefing proceeds on the basis of the following assumptions:

(a) a single Exiting State leaves the eurozone and introduces national legislation establishing a new domestic currency and redenominating all sovereign debt and the debt of any entity incorporated in the Exiting State. It also introduces capital and exchange controls;

(b) a hypothetical repo transaction (the **"Repo"**) has been entered into between a Buyer and Seller under a standard unamended 1995 or 2000 Global Master Repurchase Agreement (**"GMRA 1995"** or **"GMRA 2000"** respectively, each a **"GMRA"**) where the Buyer has paid the Seller a purchase price denominated in euro against a transfer of purchased securities in the form of euro-denominated government bonds (**"EGBs"**) issued by the Exiting State. The Seller is incorporated in the Exiting State. The Buyer is incorporated in England. For the purposes of this briefing we focus on the GMRA 1995 and GMRA 2000 and not the GMRA 2011 as we assume that very few GMRA 2011 agreements have been signed to date. However, the table at the end of this briefing does include the relevant provisions of the GMRA 2011 for comparison purposes;

(c) a hypothetical securities lending transaction (the **"Securities Loan"**) has been entered into between a Borrower and Lender under a standard unamended 1995 Overseas Securities Lender's Agreement (**"OSLA"**), 2000 Global Master Securities Lending Agreement (**"GMSLA 2000"**) or 2010 Global Master Securities Lending Agreement (**"GMSLA 2010"**, and together with the GMSLA 2000, the **"GMSLAs"**, and the GMSLAs and the OSLA together, the **"SLAs"**) where the Borrower has borrowed from the Lender euro-denominated shares (the **"Shares"**) issued by a corporate incorporated in the Exiting State against the transfer of collateral to the Lender in the form of euro-denominated government bonds (**"EGBs"**) issued by the Exiting State or cash collateral denominated in euro. The Borrower is incorporated in the Exiting State. The Lender is incorporated in England; and

(d) no insolvency has occurred in respect of either the Buyer or the Seller (in the case of the Repo) or the Borrower or Lender (in the case of the Securities Loan) or any other relevant entity.

2.5 The views expressed in this briefing relate to the position under English law and are of course entirely subject to the terms of any EU or domestic legislation passed in relation to the exit.

2.6 Finally, the matters under discussion here may come before courts other than English courts, notwithstanding the use of any exclusive or non-exclusive jurisdiction clauses in the GMRAs and GMSLAs or the arbitration clause in the OSLA. The Seller under the Repo or the Borrower under the Securities Loan may seek to bring an action in the Exiting State. In addition, it may become necessary to enforce an

English judgment in the courts of the Exiting State. Other courts may reach judgments based upon different principles to those discussed in this briefing. In particular, a court of the Exiting State may be more likely to reach a position which is consistent with any domestic legislation passed in the Exiting State, regardless of the position under English law. We discuss the jurisdiction clauses under the various master agreements in section 10 below.

2.7 Unless the context otherwise requires, capitalised terms used but not defined in this briefing are as defined in the relevant GMRA or SLA as applicable although, in the case of the SLAs, we use certain terms such as "Loan", "Loaned Securities", "Equivalent Securities", "Collateral Securities" and "Equivalent Collateral" for all SLAs for ease of reference even where there are slight differences between the actual defined terms in the relevant SLAs.

3. KEY ISSUES IN THE CONTEXT OF REPO AND SECURITIES LENDING

3.1 Where a member state exits the eurozone in the scenario considered in this briefing, the questions that arise in the context of a repo or securities lending transaction are numerous, but the analysis can be simplified by being broken down into two principal questions:

(a) **Continuity and termination** – would the departure of the Exiting State, the introduction of the new domestic currency or the introduction of capital and exchange controls trigger:

(i) a termination or discharge of obligations under the Repo or Securities Loan under general legal principles such as the doctrine of frustration (sometimes referred to as the "continuity of contracts" issue);

(ii) an Event of Default under the GMRAs or SLAs; or

(iii) a contractual termination event under the GMRAs or SLAs?

(b) **What happens to euro-denominated payments, securities & calculations?**

(i) Payments: the key question in relation to any payment obligation denominated in euro is whether the payer is still obliged to pay in euro or whether it is permitted or required to pay in the new domestic currency (and if so, how much). The core payment obligations in repo and securities lending transactions which we consider below are: Repurchase Price (repo), payment or repayment of Cash Margin (repo) or Cash Collateral (securities lending), income payments, fee (securities lending) and close-out netting payments;

(ii) Securities: both repo and securities lending transactions involve various obligations to transfer securities, whether bonds or shares, either as the underlying securities of the transaction (Purchased Securities (repo)/Loaned Securities (securities lending)) or as margin/collateral (Margin Securities (repo)/ Collateral Securities (securities lending)). In each case the transferee is required to transfer back to the transferor "equivalent" securities either at maturity of the transaction (the underlying securities) or potentially during the term of the transaction (margin/collateral or substitutions, for example). The key question in the context of the scenario considered in this briefing is the following: if the securities are redenominated from euro into the new domestic currency, what is the transferee permitted/obliged to transfer to the transferor as "equivalent" securities?; and

(iii) Calculations: some euro-related provisions in repo and securities lending agreements are not obligations or payments in themselves but merely calculations or reference points for determinations or amounts. It does not follow that the same analysis applicable to payment obligations also applies to these calculations. We consider below the concepts of Base Currency, margin/collateral calculations and close-out netting calculations.

3.2 We consider each of these questions below in the context of the GMRAs and SLAs. We do not purport to cover every relevant obligation or provision under these agreements, but instead highlight several of the more important provisions to illustrate the issues.

3.3 We conclude with some suggestions on practical steps that parties may wish to consider in order to reduce any legal or contractual uncertainty, or provide for desired outcomes, in their new and existing transactions and agreements.

4. CONTINUITY OF CONTRACTS

4.1 A common concern is the potential impact of the exit of a member state from the eurozone on the continuity of contracts. Specifically, would this event lead to the termination of affected contracts, or give rise to the right of a party to unilaterally terminate affected contracts, under general legal principles such as frustration on the grounds of impossibility or illegality?

4.2 This concern was also prevalent at the time when the euro was introduced and ultimately led to the introduction of an EC Regulation (Council Regulation 1103/97) specifically providing for continuity, unless the parties specifically and mutually agreed to terminate. The need for such legislation was widely questioned as the common view was that continuity of contracts would not be affected by the introduction of a new currency but it was ultimately felt that the markets needed absolute certainty on the issue. For that reason it is likely that similar legislation would be passed in the case of an exit of a eurozone member state.

4.3 Since the introduction of the euro, some master agreements have included contractual continuity clauses:

(a) in the case of securities lending transactions, paragraph 2.5 GMSLA 2000 and GMSLA 2010 is a specific continuity clause which provides that the "introduction of and/or substitution (in place of an existing currency) of a new currency as the lawful currency of a country shall not have the effect of altering, or discharging, or excusing performance under, any term of the Agreement or any Loan thereunder, nor give a Party the right unilaterally to alter or terminate the Agreement or any Loan thereunder". There is no such provision in the OSLA; and

(b) in the case of repo transactions, there is a form of continuity clause in paragraph 16(e) GMRA 2000 but this only relates to new countries joining the euro, and not to countries leaving it. There is no continuity clause in the GMRA 1995.

4.4 Consequently, in relation to the exit of a member state from the eurozone and the introduction of a new domestic currency, the position under the GMSLAs is clearer than that for the OSLA and the GMRAs. However, even in the case of the OSLA and the GMRAs, it is unlikely that the exit of a member state from the eurozone and the introduction of a new domestic currency would of themselves lead to a frustration of the agreements. *In the context of contingency planning, that residual risk could be mitigated by including continuity clauses in new and existing GMRAs and OSLAs.*

4.5 However, the imposition of capital and exchange controls in the Exiting State may in some circumstances raise legal questions as to impossibility/illegality of performance and therefore potentially frustration. Neither the GMRAs nor the SLAs contain express illegality or force majeure clauses such as those contained in ISDA Master Agreements for derivatives. Those provisions allow parties to terminate affected transactions and therefore provide greater certainty of, and control over, the outcome. *In the context of contingency planning, this risk could be mitigated by including an express illegality and/or force majeure clause in new and existing GMRAs and SLAs.*

5. EVENTS OF DEFAULT

5.1 Each of the GMRAs and SLAs contains a suite of contractual Events of Default (**"EODs"**). Paragraph 10(a) GMRA 1995 and GMRA 2000 sets out those events that constitute EODs for repo transactions and paragraph 12.1 OSLA, paragraph 14.1 GMSLA 2000 and paragraph 10.1 GMSLA 2010 set out the EODs for securities lending transactions.

5.2 The following EODs are potentially relevant and worthy of discussion, particularly if capital and exchange controls are imposed.

Repo

Failure to pay Repurchase Price

5.3 Paragraph 10(a)(i) GMRA 1995 and GMRA 2000 states that an EOD occurs where the Seller fails to pay the Repurchase Price on the Repurchase Date. If the Repurchase Price in our Repo example is found to remain denominated in euro despite the introduction of a new domestic currency by the Exiting State (as discussed in section 7 below), then if the Exiting State has implemented capital and exchange controls preventing the Seller from paying the Repurchase Price in euro, it is possible that an EOD will occur if the Seller is not able to pay the Repurchase Price on the Repurchase Date. However, as discussed in section 4 above and section 7 below, the imposition of capital and exchange controls by the Exiting State may in some circumstances relieve the Buyer from the obligation to pay the Repurchase Price in euro if it would be illegal to do so. In such a case it is unclear whether an EOD would be triggered. The same analysis will apply in respect of any other EODs triggered by failures to pay cash denominated in euro (such as a failure to pay Cash Margin or income denominated in euro under paragraphs 10 (a)(ii) and (iii) GMRA 1995 and 10(a)(iv) and (v) GMRA 2000). *In their contingency planning, parties may wish to consider including an express illegality and/or force majeure termination event to avoid an EOD but still preserve termination rights, bearing in mind any risk that an EOD may also apply to themselves.*

Failure to deliver Equivalent Securities

5.4 Paragraph 10(a)(ii) GMRA 2000 provides for an EOD (if elected to apply in Annex I) for failure by the Buyer to deliver Equivalent Securities on the Repurchase Date. In our Repo example, if the Purchased Securities are redenominated the question arises whether they fail to qualify as Equivalent Securities, potentially triggering an EOD. Whether redenominated securities constitute Equivalent Securities for this purpose is discussed under section 8 below, where we conclude that they should still qualify (subject to any issues in respect of any restructuring or discretionary voting rights), making an EOD unlikely. Under the GMRA 1995, failure to deliver Equivalent Securities is not an EOD, although (as for the GMRA 2000) there is a termination event (see section 6 below). *Risk mitigation could include expressly providing that redenominated securities would still qualify as "equivalent".*

Insolvency

5.5 Paragraph 10(a)(iv) GMRA 1995 and paragraph 10(a)(vi) GMRA 2000 provide for an EOD upon an Act of Insolvency of either party. This would not be triggered directly by the scenario contemplated in this briefing but remains relevant given the possible effect of a withdrawal from the euro on a counterparty incorporated in the Exiting State (through a potential devaluation of the new domestic currency, increased margin calls etc.).

Breach of representation

5.6 Paragraph 10(a)(v) GMRA 1995 and paragraph 10(a)(vii) GMRA 2000 provide for an EOD upon a breach of representation. Paragraph 9(e) GMRA 1995 and GMRA 2000 contains a representation that "...performance of this Agreement and the Transactions contemplated hereunder will not violate any law...or rule applicable to it...". This representation is deemed to be repeated when a transaction is entered into and on each date when Securities, Equivalent Securities, Margin Securities or Equivalent Margin Securities are to be transferred under any transaction. It is conceivable that the imposition of capital and exchange controls could lead to a breach of this representation, particularly given that the GMRAs do not contain an illegality or force majeure provision. *As in section 5.3 above, parties should consider in their contingency planning whether to include an express illegality and/or force majeure termination event.*

Admission of inability to perform

5.7 Paragraph 10(a)(vi) GMRA 1995 and paragraph 10(a)(viii) GMRA 2000 provide for an EOD upon a party admitting that it is unable to perform any of its obligations. Again, it is conceivable that the imposition of capital and exchange controls could lead to a party triggering this EOD. The affected party may in turn argue that it is not unable to perform its obligations but has been prevented from doing so by a change in law. *Contingency planning could include providing instead for an express illegality and/or force majeure termination event.*

Securities lending

Failure to pay or repay Cash Collateral

5.8 Paragraph 12.1.1 OSLA, paragraph 14.1(i) GMSLA 2000 and paragraph 10.1(a) GMSLA 2010 state that an EOD occurs where the Borrower or Lender fails to pay or repay Cash Collateral on the relevant due date. If the currency of the Cash Collateral in our Securities Loan example is found to remain denominated in euro despite the introduction of a new domestic currency by the Exiting State (as discussed in section 7 below), then if the Exiting State has implemented capital and exchange controls preventing the Borrower from paying the Cash Collateral in euro, it is possible that an EOD will occur if the Borrower is not able to pay the Cash Collateral on the due date. However, as discussed in section 5.3 above, the imposition of capital and exchange controls by the Exiting State may relieve the Borrower from the obligation to pay the Cash Collateral in euro if it would be illegal to do so. In such a case it is unclear whether an EOD would be triggered. The same analysis will apply in respect of any other EODs triggered by failures to pay cash denominated in euro (such as a failure to pay income or the securities lending fee denominated in euro under paragraphs 12.1.2, 12.1.3 and 12.1.9 OSLA, paragraphs 14.1(iii) and 14.1(x) GMSLA 2000 and paragraphs 10.1(b) and 10.1(i) GMSLA 2010). *Contingency planning could include providing for an express illegality and/or force majeure termination event.*

Failure to deliver Equivalent Securities or Equivalent Collateral

5.9 Paragraph 14.1(iv) GMSLA 2000 provides for an EOD for failure by the Borrower to deliver Equivalent Securities on the due date, and paragraphs 12.1.1 OSLA and paragraph 14.1(i) GMSLA 2000 provide for an EOD for failure by the Lender to deliver Equivalent Collateral on the due date. In addition, paragraphs 9.1 and 9.2 GMSLA 2000 provide for an optional EOD as an alternative to a termination right if the Borrower or Lender fails to redeliver Equivalent Securities or Equivalent Collateral respectively. In our Securities Loan example, if the Shares or EGBs are redenominated, the question arises whether they fail to qualify as Equivalent Securities or Equivalent Collateral respectively, potentially triggering an EOD. Whether redenominated securities constitute Equivalent Securities or Equivalent Collateral for this purpose is discussed under section 8 below, where we conclude that (in the case of the GMSLA 2000 and GMSLA 2010) they expressly still qualify and (in the case of the OSLA) they should still qualify, making an EOD unlikely. *Risk mitigation could include expressly providing in any OSLAs that redenominated securities would still qualify as "equivalent".*

Insolvency

5.10 Paragraph 12.1.4 OSLA, paragraph 14.1(v) GMSLA 2000 and paragraph 10.1(d) GMSLA 2010 provide for an EOD upon an Act of Insolvency of either party. This would not be triggered directly by the scenario contemplated in this briefing but, as explained for repo above, remains relevant given the possible effect of a withdrawal from the euro on a counterparty incorporated in the Exiting State.

Breach of warranty

5.11 Paragraph 12.1.5 OSLA, paragraph 14.1(vi) GMSLA 2000 and paragraph 10.1(e) GMSLA 2010 provide for an EOD upon a breach of warranty. Paragraphs 10 and 11 OSLA, paragraphs 12 and 13 GMSLA 2000 and paragraphs 13 and 14 GMSLA 2010 contain various continuing warranties, including that the parties are not restricted in any manner from performing their obligations under the agreement. It is conceivable that the imposition of capital and exchange controls could lead to a breach of this warranty, particularly as the SLAs do not contain an illegality or force majeure provision. *As for repo, parties should consider in their contingency planning whether to include an express illegality and/or force majeure termination event.*

Admission of inability to perform

5.12 Paragraph 12.1.6 OSLA, paragraph 14.1(vii) GMSLA 2000 and paragraph 10.1(f) GMSLA 2010 provide for an EOD upon a party admitting that it is unable to perform any of its obligations. Again, it is conceivable that the imposition of capital and exchange controls could lead to a party triggering this EOD. The affected party may in turn argue that it is not unable to perform its obligations but has been prevented from doing so by a change in law. *Contingency planning could include providing instead for an express illegality and/or force majeure termination event.*

6. **CONTRACTUAL TERMINATION EVENTS**

6.1 Neither the GMRAs nor the SLAs contain a suite of termination events of the type found, for example, in ISDA master agreements for derivatives. However, there are a number of contractual termination events which can be found in the agreements and which should be considered including the following:

(a) Repo:

(i) Termination for failure to deliver Equivalent Securities: paragraph 10(f) GMRA 1995 and paragraph 10(h) GMRA 2000;

(ii) Tax Event: paragraph 11 GMRA 1995 and GMRA 2000;

(b) Securities lending

(i) Termination for failure to redeliver Equivalent Securities or Equivalent Collateral: paragraph 7.3 OSLA, and paragraphs 9.1 and 9.2 GMSLA 2000 and GMSLA 2010; and

(ii) Optional termination of a Loan: paragraphs 7.2 and 7.5 OSLA, paragraphs 8.2 and 8.3 GMSLA 2000, and paragraphs 8.1 and 8.2 GMSLA 2010.

Repo

Termination for failure to deliver Equivalent Securities

6.2 Paragraph 10(f) GMRA 1995 and paragraph 10(h) GMRA 2000 include a so-called "mini close-out" provision which permits the Seller, amongst other things, to terminate an affected transaction if the Buyer fails to deliver Equivalent Securities to it on the Repurchase Date. The potential relevance of this relates to whether securities which have been redenominated are "equivalent" and therefore whether the Buyer has complied with, or failed in, its obligation to deliver Equivalent Securities. We discuss this in section 5.4 above in relation to EODs and in section 8 below where we conclude that this is unlikely to be an issue in the absence of a restructuring or discretionary vote. *Risk mitigation could include expressly providing that redenominated securities would still qualify as "equivalent".*

Tax Event

6.3 Paragraph 11 GMRA 1995 and GMRA 2000 is a termination event entitled "Tax Event" but has been drafted widely so that it may encompass other changes that have a material adverse effect on a party to a transaction. In other words, it can be read in effect as a form of material adverse change clause.

6.4 The effect of the clause is that either party materially adversely affected by a tax event may terminate any affected transaction upon notice (paragraph 11(a) and (c) GMRA 1995 and GMRA 2000) subject to a right of veto (upon providing an indemnity) by the other party.

6.5 However, the wording of the clause extends to "any change in the fiscal or regulatory regime (including, but not limited to, a change in law…)" that "has or will, in the notifying party's reasonable opinion, have a material adverse effect on that party in the context of a transaction". In theory, this is possibly wide enough to allow an argument that it captures, for example, the Exiting State introducing new laws imposing capital and exchange controls or potentially even the introduction of the new domestic currency itself. Against this it could be argued that the clause is intended to cover tax and tax-related issues only, that it refers to the "fiscal" rather than "monetary" regime and therefore the wording should be given a narrow construction. However, the literal wording is wider than required to cover just tax and so the possibility of its application by a counterparty based in the Exiting State cannot be ruled out. *Parties may wish to consider expressly providing that the exit of a member state from the eurozone will not trigger the application of this clause and instead including, if required, an express illegality and/or force majeure termination event.*

Securities lending

Termination for failure to redeliver Equivalent Securities or Equivalent Collateral

6.6 OSLA: Paragraph 7.3 OSLA contains a termination right for the Lender if the Borrower fails to redeliver Equivalent Securities after a call by the Lender under its optional termination right (see below). This termination event treats the relevant event "as if" an Event of Default has occurred, but no actual EOD occurs. There is no equivalent termination event for the Borrower if the Lender fails to redeliver Equivalent Collateral as this is instead an Event of Default. Note that there does not appear to be any termination event or EOD for a failure by the Borrower to redeliver Equivalent Securities upon scheduled termination, and consequently this may instead be caught by the sweep-up EOD in paragraph 12.1.9.

6.7 GMSLA 2000: Paragraph 9.1 GMSLA 2000 contains a termination right for the Lender if the Borrower fails to redeliver Equivalent Securities (either at scheduled termination of a Loan or upon a Lender call under its optional termination right (see below)). Paragraph 9.2 GMSLA 2000 contains a termination right for the Borrower if the Lender fails to redeliver Equivalent Collateral (either at scheduled termination of a Loan or upon a Borrower call under its optional termination right (see below)). These provisions also contain an option to call an Event of Default.

6.8 GMSLA 2010: Paragraphs 9.1 & 9.2 GMSLA 2010 contain the same termination rights as for the GMSLA 2000 above. However, there is no equivalent right to call an Event of Default.

6.9 As with repo, the relevance of these provisions relates to any potential for argument that redenominated securities are not "equivalent", which we discuss in sections 5.4 and 6.2 above and section 8 below, where we conclude that this is unlikely to be an issue. *Risk mitigation could include expressly providing that redenominated securities would still qualify as "equivalent".*

Optional termination of a Loan

6.10 Under the SLAs each of the Borrower and the Lender has an optional right to terminate any Loan, subject to the terms of that Loan (paragraphs 7.2 and 7.5 OSLA, paragraphs 8.2 and 8.3 GMSLA 2000, and paragraphs 8.1 and 8.2 GMSLA 2010). This right could, of course, be exercised by either party at any time including in the event of a eurozone exit (subject to the terms of the relevant Loan). This may crystallise other issues discussed in this briefing, such as obligations to pay sums in euro or deliver Equivalent Securities or Equivalent Collateral.

7. EURO-DENOMINATED PAYMENTS

7.1 What happens to a party's euro-denominated payment obligations? The analysis can be broken down into the following principal questions/risks:

(a) What currency is the obligation expressed to be payable in under the contract?

(b) If euro, what does this mean – the continuing single currency or is there a risk that it will be determined to mean the new domestic currency of the Exiting State?

(c) If it means the continuing single currency, is there a risk that it would be redenominated into the currency of the Exiting State or that the payment obligation will be unenforceable?

7.2 We illustrate the key issues below in the context of some of the main payment obligations under the Repo and the Securities Loan in our examples. It will be seen that the principal considerations are:

(a) construction of the contract itself – what does the contract provide, and what does it mean?;

(b) in that context, the definition (if any) and meaning of "euro"; and

(c) the place of payment and any other factors connecting the transaction with the Exiting State.

Repurchase Price (repo)

7.3 In our Repo example, if the Purchase Price is denominated in euro and the currency of the jurisdiction of the Seller changes to a new domestic currency, together with a redenomination of the currency of the underlying Purchased Securities into the new domestic currency, then the question naturally arises whether the Seller is obliged to repay in euro or in the new domestic currency. From the Buyer's perspective, assuming that the new currency is weaker than the euro, it will presumably wish to ensure that it is repaid in euro. This will be the case particularly if the transaction was a funding or cash-driven transaction.

Construction of the contract

7.4 The starting point in our scenario is to construe the contract in accordance with English law as its governing law.

7.5 Under the GMRAs all payments made in respect of the Purchase Price or Repurchase Price are required to be made in the Contractual Currency and "Contractual Currency" is defined as the currency of the Purchase Price of a transaction (paragraph 2(h) GMRA 1995, paragraph 2(i) GMRA 2000 and paragraph 7(a) GMRA 1995 and GMRA 2000). The pro forma Confirmation includes a line item for parties to specify the Contractual Currency in order to add certainty.

7.6 In the case of our Repo example, the Purchase Price is denominated in euro and therefore the Contractual Currency is the euro. Consequently, the contract provides for the Repurchase Price to be paid in euro.

Definition & meaning of "euro"

7.7 However, given that the Exiting State has left the single currency and established a new domestic currency, the Seller is incorporated in the Exiting State and the Exiting State has purported to redenominate its debts and those of its nationals, this raises the question of the meaning of "euro", at least in the context of the Repurchase Price. In particular, does "euro" mean:

(a) the single currency of the member states participating in the eurozone from time to time; or

(b) the currency of the jurisdiction of the Seller from time to time, which happened to be euro at the time of entering into the transaction; or

(c) the currency of the underlying Purchased Securities from time to time, which happened to be euro at the time of entering into the transaction?

7.8 In order to determine the meaning of "euro", you would again start by analysing the contract to see how "euro" has been defined. In repo transactions, however, the position is typically somewhat unsatisfactory. There is no definition of euro in the GMRA and no standard definitions are incorporated into Confirmations unlike, for example, the derivatives market where transactions will usually incorporate one of the various ISDA definitions booklets. It is therefore left to the parties to include a definition of any currency terms that they use, including any reference to "euro", "EUR" or "€". This means that the position will depend on a trade by trade analysis of whether a definition of euro has been included at all (as in many cases no definition is added to a Confirmation) and, if so, an analysis of the wording of that definition. The following are the possible scenarios and in each case we express our view of the most likely interpretation (subject to the other considerations in the remainder of this briefing):

(a) if a standard definition has been included along the lines of the standard ISDA definitions (of which there are several including "the lawful currency of the member states of the European Union that adopt the single currency in accordance with the EC Treaty"), then this should result in a construction that euro is intended to mean the single currency of the eurozone from time to time and not the new domestic currency;

(b) if a definition has been included (which we assume is very unlikely) defining the euro as the currency from time to time of a particular member state (such as the Exiting State), then this should result in a construction that euro is intended to mean the currency of that member state, which will be the new domestic currency in the case of the Exiting State;

(c) if a different definition has been included, its meaning and effect will need to be considered on a case by case basis; and

(d) if no definition has been included, then there is contractual ambiguity and uncertainty as to which of the possible interpretations prevails, although we believe there to be a good argument in our Repo example that, as the euro still exists, the contract should be construed to refer to the euro in its continuing form.

Other legal principles

7.9 However, the express wording of the contract is only the starting point as other legal principles including conflicts of laws rules must also be considered. In that regard, English law distinguishes between the "currency of account" and the "currency of payment".

7.10 "Currency of account" addresses the question "in what currency is the payment obligation (i.e. the Repurchase Price) expressed/measured?". If there is any doubt as to which this currency is, the contract would be interpreted in accordance with applicable law, which in our example would be English law (under the provisions of European Parliament and Council Regulation (EC) 593/2008 (also known as "Rome I")). Under English law, in clarifying any doubt as to currency of account, one relevant consideration is a presumption that the parties intended to refer to the currency of the jurisdiction with which the contract is most closely connected. Relevant factors in our scenario would include that the Exiting State is the jurisdiction of both the Purchased Securities and of the Seller, which may lead to an argument that the relevant currency is the new domestic currency. There is also a rebuttable (and relatively weak) presumption that, if a place of payment is specified, the parties intended the currency of account to be the same as that of the currency of payment.

7.11 "Currency of payment" addresses the question "in what currency is the payment obligation (i.e. the Repurchase Price) to be discharged?". Where there is uncertainty, the relevant law may be the law of the country in which the payment is to be made and the debt discharged. Under the GMRAs, place of payment is addressed in the transaction Confirmation where, in accordance with paragraph 3(b)(v) GMRA 1995 and GMRA 2000, each party specifies the details of a bank account to which payments under that transaction are to be credited. Consequently, in the case of the Repurchase Price, this will be wherever the Buyer's specified account for euro payments is located. Different parties in the market may have their euro accounts located in different eurozone countries – this may lead to market uncertainty as there may be a variety of different applicable laws being used to determine the currency in which a euro-denominated Repurchase Price is to be discharged.

7.12 Against all of this it could be argued (quite strongly in our view) that, in the case where the parties have not included any express definition of euro in the GMRA or transaction confirmation, there is no uncertainty, as the currency is specified in the contract to be "euro" and that is clearly understood to be the single currency of the eurozone, which continues to exist. This is not a case where, for example, the currency is expressed in a form which is common to several different currencies (such as "Dollars" but without specifying whether that is, say, US or Canadian or Australian Dollars) or a scenario where the specified currency has ceased to exist.

7.13 However, in certain circumstances English law will give effect to the law applicable in the Exiting State (which could potentially include the domestic law redenominating euro-denominated debts into the currency of the Exiting State), particularly if the payment obligation is to be performed there, and so place of performance in the relevant transaction will again be relevant for this. In addition, if the Exiting State imposes capital and exchange controls making it illegal to pay the Repurchase Price in euro, then in addition to continuity concerns (see section 4 above) this could have the effect that an English court would not enforce payment in euro. See section 5 above for a discussion of a potential Event of Default in these circumstances.

Currency indemnity

7.14 The GMRAs include a form of currency indemnity in paragraph 7(b) GMRA 1995 and GMRA 2000 which may be relevant. This provides that if a party is due to be paid in the Contractual Currency but instead receives payment in another currency and suffers a shortfall as a result, the other party must pay the shortfall. This would apply if, for example, the Contractual Currency is euro and a court judgment is given for payment to be made in the new domestic currency. However, it is not certain that this type of indemnity would be enforceable in this scenario due to the other issues raised in this section.

Conclusion

7.15 In conclusion, the approach in the relevant contracts to the definition of "euro" will be key to the level of certainty that a Repurchase Price obligation denominated in euro will be repayable in euro notwithstanding the introduction of the new domestic currency and the redenomination of any debt. If the definition is clear, then unless the place of payment is in the Exiting State or capital and exchange controls are imposed, there should be limited risk under English law that the Repurchase Price obligation will be redenominated. Where there is ambiguity in the definition, or no definition at all, then there will be uncertainty as to the legal position, although a likelihood in our view that "euro" would be interpreted as the single currency of the eurozone in its continuing form if the currency still exists. Where there are significant connecting factors to the Exiting State including place of performance, or where capital and exchange controls are introduced, the risk of redenomination increases correspondingly. *Risk mitigation factors could include clarifying the definition of "euro", providing for place of performance outside any member states of concern or for the ability to change place of performance, and including an express illegality and/or force majeure termination event.*

7.16 It is worth noting that, since the question of whether or not any securities which are the subject of the repo may be validly redenominated into the new domestic currency is an entirely separate question from whether the Repurchase Price remains payable in euro, it is possible that the effect of the redenomination may be to turn the repo from a single currency repo into a cross-currency one if the Repurchase Price remains denominated in euro but the Purchased Securities become denominated in the new domestic currency.

7.17 It should also be noted that any Purchase Price paid in euro to a counterparty in an Exiting State and held in a bank in that country will be redenominated into the new currency of the Exiting State, and consequently this will trigger significant currency risk for the counterparty and an incentive to argue that it should only repay as Repurchase Price the amount that the Purchase Price has become (together with repo interest on that sum).

Payment/repayment of Cash Margin (repo) or Cash Collateral (securities lending)

7.18 Cash Margin: payments of Cash Margin would be subject to a similar analysis to that for Repurchase Price above. Cash Margin is payable in the Base Currency and other specified currencies (paragraph 4(e) GMRA 1995 and GMRA 2000). Assuming that the Base Currency is expressed to be euro, the interpretation of the meaning of "euro" would follow the principles above. One relevant difference, however, in relation to margin payment obligations is that the currency is not expressed in relation to any specific transaction (unlike the Contractual Currency for Repurchase Price which is linked to each transaction as the currency of the Purchase Price of that transaction), but applies to all transactions under the agreement. It is arguable, therefore, that in considering connections with the Exiting State, it is less relevant that any particular Purchased Securities or Margin Securities are issued by a government or entity of the Exiting State.

7.19 Cash Collateral: in respect of Cash Collateral under a securities lending transaction, it is payable in any currency specified by the parties in the relevant SLA (paragraph 6.1 OSLA and definition of "collateral" in the OSLA, GMSLA 2000 and GMSLA 2010) and would be subject to a similar analysis to that for Repurchase Price above. There is a degree of closer attribution of collateral to specific Loans under the SLA, unless the parties have agreed to provide collateral on a net basis, and so arguments could potentially be raised about a connection of "euro" to the Exiting State. However, we consider that to be a weaker argument in the absence of evidence to support it.

7.20 It should be noted that any Cash Margin or Cash Collateral paid in euro to a counterparty in an Exiting State and held in a bank in that country will be redenominated into the new currency of the Exiting State, and consequently this will trigger currency risk for the counterparty and an incentive to argue that it should only return the amount that the Cash Margin or Cash Collateral has become (together with relevant interest on that sum).

Income payments (repo and securities lending)

7.21 Both repo and securities lending agreements include provisions requiring the transferee of any securities received as Purchased Securities or Margin Securities (in the case of repo) or Loaned Securities or Collateral Securities (in the case of securities lending) to pay back to the transferor amounts (so-called "manufactured coupons" or "manufactured dividends", referred to below as the more generic **"manufactured payments"**) equivalent to those paid on such securities by way of income (coupon, dividends etc). These provisions reflect the intended economic nature of the standard repo and securities lending relationship such that market risk and reward remains with the original owner of the securities notwithstanding the outright transfer of those assets to the other party.

7.22 The key question which arises in relation to the scenario discussed in this briefing is: if the transferee receives cash Income in the new domestic currency of the Exiting State, in what currency and how much is it obliged to pay across to the transferor under the manufactured payment provisions of the GMRAs and SLAs?

Repo

7.23 Paragraph 5 GMRA 1995 and GMRA 2000 requires the transferee of Purchased Securities or Margin Securities to pay to the transferor an amount equal to any Income payments, such as coupons and dividends, paid by the relevant issuer.

7.24 Two relevant points arise in relation to paragraph 5:

(a) First, it is made expressly clear that the payment to be made by the transferee must be made "in the same currency as" the Income paid by the issuer. Therefore, currency risk remains with the original owner of the securities. In our Repo example, the euro still exists but the Exiting State has introduced a new domestic currency. Whether the EGBs (or any Margin Securities) can be validly redenominated into the new domestic currency is discussed in section 8 below. However, due to the wording of paragraph 5 of the GMRA 1995 and GMRA 2000, whether or not the securities are redenominated, and whatever currency the Income is paid in, the transferee pays an amount in that currency. Thus, the original transferor bears the currency risk of any redenomination.

(b) Second, the transferee is only obliged to pay to the transferor "an amount equal to" the amount paid by the issuer. Therefore, notwithstanding any redenominated currency being effectively devalued and becoming worth less than the euro equivalent, and whatever exchange rate is officially used by the Exiting State to determine the amount of new domestic currency to be converted from the original euro amount, the original transferor bears the risk of this devaluation or exchange rate calculation.

7.25 If the manufactured payments remain payable in euro, then the considerations discussed in section 7.13 above will apply.

Securities lending

GMSLA 2010

7.26 In the GMSLA 2010 the position is unambiguous. In paragraphs 6.2 and 6.3, it is made expressly clear that the manufactured payment (whether in respect of Income on Loaned Securities or Income on Collateral Securities) to be made by the transferee is either the amount agreed between the parties or, failing agreement, must be "a sum of money…equivalent to (and in the same currency as) the type and amount of such Income" that the transferor would have received had it not transferred the relevant Loaned Securities or Collateral Securities. Thus, despite the use of the potentially ambiguous phrase "equivalent to" instead of "equal to", the wording as a whole makes it clear that, whether or not the Loaned Securities or Collateral Securities are redenominated, and whatever currency the Income is paid in, the transferee pays the same amount and in that same currency. Consequently the original transferor bears the currency risk of any redenomination and subsequent devaluation.

GMSLA 2000

7.27 The GMSLA 2000 is not quite as clear as the GMSLA 2010 as it does not expressly refer to the currency of the manufactured payment. Paragraph 6.1 GMSLA 2000 states that the manufactured payment must be "equivalent to the type and amount of such Income" that the transferor would have been entitled to receive had it not transferred the relevant Loaned Securities or Collateral Securities. Note that this does not use the phrase "equal to" and instead uses the looser terminology "equivalent to" which might suggest that it is acceptable to pay an amount <u>of equal value</u> in a different currency. However, whilst "equivalent to" is not defined in relation to Income, it is defined in relation to Securities and Collateral (paragraph 2.1). In such a case, "equivalent to" means "of an identical type, nominal value, description and amount" to the relevant Securities or Collateral. Given that the Income so paid relates directly to the Securities or Collateral, it could be argued that "equivalent to" should be interpreted consistently with those definitions. In particular, the use of the words "identical type" would imply that any manufactured payment must be paid in the same currency in which the Income was payable. Had the Lender not transferred the Loaned Securities to the Borrower, or had the Borrower not transferred the Collateral Securities to the Lender, it would have received the Income in the new domestic currency. There is also the additional more general argument that the underlying principle of securities lending is that economic exposure to the Securities or Collateral should remain with the transferor. Therefore, it is likely that the GMSLA 2000 also leaves the currency risk of any redenomination and subsequent devaluation with the transferor.

OSLA

7.28 The OSLA uses different terminology in the manufactured payment provisions relating to Income on the Loaned Securities to those relating to Income on any Collateral Securities.

7.29 Loaned Securities: In relation to Loaned Securities, the OSLA requires the manufactured payment to be "equal to the amount of the relevant Income" (paragraph 4.2.2). Whilst this does not expressly provide for the payment to be in the same currency as that of the real Income payment, an ordinary construction of the meaning of those words should conclude that they mean the same currency.

7.30 Collateral Securities: In relation to Collateral Securities, the starting point is that the Borrower is required under paragraph 6.7.1 to recall Collateral Securities before a payment of Income unless the parties are satisfied that no UK tax will be payable, and so the issue may not arise. If the Collateral Securities are not recalled because the parties are satisfied on the tax issue, then the Lender must pay as the manufactured payment "a sum of money…equivalent to such Income" (paragraph 6.7.2). Note that, unlike the position for Loaned Securities discussed above, this does not use the phrase "equal to" and instead uses the looser terminology "equivalent to". Consequently the analysis is similar to that for the GMSLA 2000 above. The OSLA does not define "equivalent to" in relation to Income, but does use that phrase in the definitions of "Equivalent Collateral" and "Collateral equivalent to" and is defined to mean "of an identical type, nominal value, description and amount". For similar reasons to those given in respect of the GMSLA 2000, it is therefore likely that the OSLA also leaves the currency risk of any redenomination and subsequent devaluation with the transferor.

Manufactured payments in euro

7.31 If the manufactured payments remain payable in euro, then the considerations discussed in section 7.13 above will apply.

Fee (securities lending)

7.32 The SLAs all provide for the payment of a fee by the Borrower to the Lender in respect of each Loan.

OSLA

7.33 Paragraphs 5.1 and 5.3 OSLA provide for the Borrower to pay a fee calculated by applying an agreed rate to the daily Value of the Loaned Securities. The fee accrues daily and "shall be in such currency and shall be paid in such manner and at such place as shall be agreed between the Parties". "Value" is in turn defined by reference to "the Reference Price" which is itself defined by reference to the mid market quotation of the relevant Securities as derived from a reputable pricing information service or dealer bid prices as a fallback.

7.34 From this, it is likely to follow that, if the Securities have been redenominated into the currency of the Exiting State, their "Value" for these purposes will also be calculated in that currency. However, paragraph 5.3 seems to provide expressly for the parties to be able to agree any currency that they choose for payment of the fee, regardless of the currency in which a security is quoted. Consequently, the position will depend on what currency (if any) the parties have agreed and how specific they have been. This may lead to uncertainty as to the contractual currency of calculation and payment of the fee. In the context of that uncertainty, it also appears to be the case that there is a close correlation between the currency of the fee and the currency of the Loaned Securities, and this may make it more likely that the contract will be interpreted accordingly.

GMSLA 2000

7.35 Paragraphs 7.1 and 7.3 GMSLA 2000 provide for the Borrower to pay a fee calculated by applying an agreed rate to the daily Market Value of the Loaned Securities. The fee accrues daily. "Market Value" is in turn defined by reference to market quotations for the bid price of the relevant Securities as derived from a reputable pricing information service or dealer bid prices as a fallback. Unlike the OSLA, there is no separate provision for the parties to agree the relevant currency of the fee.

7.36 From this, it is likely to follow that, if the Securities have been redenominated into the currency of the Exiting State, their "Market Value" for these purposes will also be calculated in that currency and this might suggest that therefore the fee will, as a matter of the contract, be payable in the redenominated currency.

7.37 However, paragraph 2.4 GMSLA 2000 converts all "prices, sums or values" into the Base Currency which implies that any fee not expressed in the Base Currency would be converted into the Base Currency either as a "sum" itself (as used in paragraph 7.1 GMSLA 2000) or through the Market Value being a "value". However, it is not entirely clear that it is intended to apply to the payment of the fee. If it does apply and if there is a conversion from the new domestic currency into the Base Currency, and the new domestic currency devalues, this may reduce the amount of the fee.

GMSLA 2010

7.38 Paragraphs 7.1 and 7.3 GMSLA 2010 are substantially similar to the equivalent provisions in the GMSLA 2000 and therefore the analysis will be similar. Paragraph 2.4 GMSLA 2010 is drafted a little more broadly than in the GMSLA 2000 and so there is a stronger argument that it applies to the payment of this fee.

Payments in euro

7.39 If it is determined that the contractual currency of calculation and payment of the fee is the euro, then the considerations discussed in section 7.13 above will apply.

Close-out netting payments (repo and securities lending)

7.40 Both repo and securities lending use the mechanic of close-out netting to mitigate counterparty credit risk. The close-out netting provisions are contained principally in:

(a) for repo:

(i) GMRA 1995: paragraph 10; and

(ii) GMRA 2000: paragraph 10; and

(b) for securities lending:

(i) OSLA: paragraph 8;

(ii) GMSLA 2000: paragraph 10; and

(iii) GMSLA 2010: paragraph 11.

7.41 We do not consider here the position where a party has become insolvent as that will raise insolvency law issues which are outside the scope of this briefing and will affect the analysis below.

Repo

7.42 The GMRA 1995 and GMRA 2000 each provide for the single net balance determined under the close-out provisions to be calculated and (although not expressed this way) payable in the specified Base Currency.

7.43 If the Base Currency specified for this purpose is euro, the same question arises as to the meaning of "euro" in this context - does it mean the single continuing currency or the currency of the Exiting State? The same analysis will apply as for the Repurchase Price above, although perhaps here there is a stronger argument that, as Base Currency is generic across the agreement, it is not intended to have a connection with any particular country.

7.44 Whether a net close-out amount payable by a counterparty in the Exiting State would be redenominated, or would have enforceability issues, is subject to the same analysis as for the Repurchase Price as discussed in section 7.13 above.

Securities lending

7.45 All of the SLAs provide for the single net balance determined under the close-out provisions to be calculated and (although not expressed this way) payable in the specified Base Currency.

7.46 If the Base Currency specified for this purpose is euro, the same analysis would apply as for repo above. However, it should be noted that the Schedule to the GMSLA 2010 provides for parties to specify a fallback Base Currency where the original Base Currency "ceases to be freely convertible", which will be relevant in the case of imposition of exchange controls.

8. EURO-DENOMINATED SECURITIES AND REDENOMINATION

8.1 In the scenario considered in this briefing, the Exiting State has passed legislation redenominating all debts owed by it or by its nationals from euro into the new domestic currency.

8.2 This may affect (in the case of the Repo) the Purchased Securities and any Margin Securities issued by the Exiting State or entities incorporated in the Exiting State, and (in the case of the Securities Loan) the Collateral in the form of EGBs, as they may all be redenominated into the new domestic currency. Whether that redenomination would be effective has been the subject of considerable market analysis already and depends on a variety of factors including (in the case of debt securities) the terms and conditions of the relevant securities, the governing law of the relevant securities, the jurisdiction clause under the relevant securities, the jurisdiction of any court seized of the matter, and the place of payment of the relevant securities.

8.3 It may also affect the Loaned Securities in our Securities Loan example (which are shares) depending on the scope of the redenomination legislation. It is also possible that the currency of denomination of the Loaned Securities would be sought to be changed by corporate action.

8.4 For the purposes of this briefing we will assume that any such redenomination in relation to both debt securities and equities, is effective. In these circumstances, what is the position of:

(a) (under a repo) the Buyer in respect of Purchased Securities or the transferee in respect of Margin Securities; or

(b) (under a securities lending transaction) the Borrower in respect of Loaned Securities or the Lender in respect of Collateral Securities?

Repo: Purchased Securities, Margin Securities & "equivalent"

8.5 The Buyer is required to return "Equivalent Securities" at the maturity of the repo and the transferee of Margin Securities is required to return "Equivalent Margin Securities" when margin is recalled. "Equivalent Securities" and "Equivalent Margin Securities" are both defined by reference to securities which are "equivalent to" the securities originally transferred as Purchased Securities/Margin Securities. The phrase "equivalent to" is itself then defined (paragraph 2(p) GMRA 1995 and paragraph 2(t) GMRA 2000). The GMRA 1995 and 2000 definitions are different, with the GMRA 2000 definition being more extensive.

8.6 In the GMRA 1995 definition, "equivalent to" means securities which are "(i) of the same issuer; (ii) part of the same issue; and (iii) of an identical type, nominal value, description and (except where otherwise stated) amount as" the original securities.

8.7 The GMRA 2000 definition of "equivalent to" is the same but goes on to include the following further specific examples of events which do not destroy the equivalence and which clarify what would be considered to be "equivalent" securities:

(a) "equivalent to" is defined to include securities redenominated <u>into</u> euro or whose nominal value has changed in connection with such a redenomination (paragraph 2(t)(A) GMRA 2000); and

(b) where securities have been (amongst other things) converted or where holders of securities have become entitled to receive or acquire other Securities or property or the securities have become subject to any similar event, "equivalent to" means securities equivalent to the original securities together with or replaced by a sum of money or securities or other property equivalent to that receivable by holders of the original securities resulting from the relevant event (paragraph 2(t)(B) GMRA 2000).

8.8 Consequently, neither the GMRA 1995 nor the GMRA 2000 expressly contemplates the redenomination of securities from euro into a domestic currency. The GMRA 2000 comes closest with the reverse scenario of a redenomination into euro, and additional potential arguments that the securities have been "converted" for these purposes or the holders have become entitled to receive other property, in which event the GMRA includes within the definition of what is equivalent "a sum of money…equivalent to that receivable by holders…" or replaces the obligation to deliver the original securities with an obligation to deliver instead securities "equivalent to" those resulting from the relevant event. Again "equivalent to" in this context is defined as being securities of the same issuer and issue, and of an "identical type, nominal value, description and (except where otherwise stated) amount" as the new securities.

8.9 If the redenomination affects all (and not part only) of the relevant issue of securities, it is likely that, under both the GMRA 1995 and the GMRA 2000, these would be "equivalent to" the original securities for the purposes of the GMRA and therefore the Buyer/transferee is both permitted and required to redeliver the redenominated securities. The argument is stronger with the GMRA 2000 than with the more limited wording of the GMRA 1995, but in each case this is consistent with the structure, economics and purpose of repo under which the original transferor remains economically exposed to the securities and is intended to be kept in the same position, to the extent possible, as if it had continued to own the securities throughout the repo.

8.10 If the redenominated securities were found not to be "equivalent", this would have the effect that no securities could be equivalent to the original securities for the purposes of the repo, and therefore it would become impossible for the Buyer/transferee to transfer "equivalent" securities. We believe that to be a very unlikely interpretation of the contract.

8.11 *Parties may wish to consider in their contingency planning expressly clarifying that securities which have been redenominated into a new currency other than euro are still "equivalent".*

8.12 If the redenomination requires a vote to be exercised (for example, as part of a sovereign debt restructuring), the position under the GMRAs is not clear and the transferee may wish to consider consultation with the other party prior to exercising any discretion. The position would be different under the Equities Annex which contains provisions on control of voting rights.

Securities lending: Loaned Securities, Collateral Securities and "equivalent"

8.13 Under all SLAs the transferee of any securities (whether Loaned Securities or Collateral in the form of securities) is required to redeliver "equivalent" securities to the transferor.

8.14 Under paragraphs 6 and 7 OSLA, and paragraphs 5 and 8 GMSLA 2000 and GMSLA 2010, the Borrower is required to redeliver "Equivalent Securities" to the Lender upon scheduled termination of the relevant Loan or upon optional termination of the relevant Loan by the Lender or Borrower. The Lender is required to redeliver "Equivalent Collateral", or "Collateral equivalent to" that delivered to the Lender, at various times, including upon substitution of Collateral, through the return of excess Collateral, or upon scheduled or optional termination of the relevant Loan.

8.15 "Equivalent Securities", "Equivalent Collateral" and "Collateral equivalent to" (in the case of the OSLA) and "Equivalent" or "equivalent to" (in relation to Securities and Collateral in the case of the GMSLA 2000 and in relation to Loaned Securities and Collateral in the case of the GMSLA 2010) are defined as Securities/Collateral "of an identical type, nominal value, description and amount".

8.16 Would redenominated debt securities or shares be "Equivalent"/"equivalent" for this purpose?

GMSLA 2000 & GMSLA 2010

8.17 Paragraph 2.5 GMSLA 2000 & GMSLA 2010 provides: "The parties confirm that introduction of and/or substitution (in place of an existing currency) of a new currency as the lawful currency of a country shall not have the effect of altering, or discharging, or excusing performance under, any term of the Agreement or any Loan thereunder, nor give a party the right unilaterally to alter or terminate the Agreement or any Loan thereunder. Securities will for the purposes of this Agreement be regarded as equivalent to other securities notwithstanding that as a result of such introduction and/or substitution those securities have been redenominated into the new currency or the nominal value of the securities has changed in connection with such redenomination.".

8.18 This is a clear and express contractual provision which makes it clear in respect of Securities that under the GMSLAs the redenominated Shares would be "equivalent".

8.19 There is a minor ambiguity over whether the provisions of paragraph 2.5 cover Collateral Securities as well as Loaned Securities. The first reference to "Securities" in paragraph 2.5 GMSLA 2000 and GMSLA 2010 is capitalised, which could suggest that the intention was only to cover "Securities" and not, for example, Collateral. However, the better reading of that word is that it is only capitalised because of its position as the first word in the sentence and the intention is to cover all "securities" including Collateral in the form of securities. This would be consistent with the other references to "securities" in that sentence which are not capitalised. Collateral is broadly defined as "such securities or financial instruments" as are specified by the parties. Therefore, Collateral Securities would be securities for the purposes of paragraph 2.5 and redenominated securities which are Collateral would constitute Equivalent Collateral. Even if this is incorrect, a similar analysis to that in respect of the OSLA below should still achieve the same result.

8.20 Where redenomination requires a vote to be exercised by holders of the relevant securities, then the provisions of the GMSLAs dealing with voting rights and corporate actions need to be considered. Paragraph 6.3 GMSLA 2000 and paragraph 6.6 GMSLA 2010 make it clear that neither party is required to exercise voting rights as instructed by the other, and so any exercise would need to be by dialogue and agreement between the parties. Paragraph 6.4 GMSLA 2000 and paragraph 6.7 GMSLA 2010 provide for the transferor to give instructions, in the case of conversion or other rights, as to how the right should be exercised.

OSLA

8.21 Unlike the GMSLAs, the OSLA does not expressly contemplate the redenomination of securities from an existing currency into a new domestic currency. Therefore, it is necessary to construe the contract in order to determine its meaning and effect, as for the GMRAs above.

8.22 If the redenomination affects all (and not part only) of the relevant issue of securities, it is likely that, under the OSLA, these would be "equivalent to" the original securities for the purposes of the OSLA and therefore the Borrower or Lender are both permitted and required to redeliver the redenominated Securities or Collateral. In each case this is consistent with the structure, economics and purpose of securities lending under which the original transferor remains economically exposed to the securities and is intended to be kept in the same position, to the extent possible, as if it had continued to own the securities throughout the securities lending transaction. There is an additional argument that the definitions of "Equivalent Securities" (in the case of Loaned Securities) and "Equivalent Collateral"/"Collateral equivalent to" (in the case of Collateral Securities) provide for this scenario under the concept of a "conversion" or other "event similar to any of the foregoing", which then requires the transferee to transfer the securities into which the Loaned Securities or relevant Collateral (as applicable) have been converted or (in the case of a similar event) replaces the obligation to deliver the original securities with an obligation to deliver instead securities "equivalent to" those received resulting from the relevant event. Again "equivalent to" in this context is defined as being securities of an "identical type, nominal value, description and amount" as the new securities.

8.23 If the redenominated securities were found not to be "equivalent", this would have the effect that no securities could be equivalent to the original securities for the purposes of the transaction, and therefore it would become impossible for the Borrower or Lender to transfer "equivalent" Securities or Collateral (as applicable). We believe that to be a very unlikely interpretation of the contract.

8.24 *Parties may wish to consider in their contingency planning expressly clarifying in new and existing OSLAs that securities which have been redenominated into a new currency other than euro are still "equivalent".*

8.25 Where redenomination requires a vote to be exercised by holders of the relevant securities, then the provisions of the OSLA dealing with voting rights and corporate actions need to be considered. Paragraphs 4.2.6 and 4.2.7 OSLA provide for the transferee to use its best endeavours to arrange for the voting rights attached to such securities to be exercised in accordance with the instructions of the Lender or Borrower (as the case may be), and (in the case of a conversion or other rights) provides for the transferor to give instructions as to how the right should be exercised.

9. EURO-DENOMINATED CALCULATIONS

9.1 Both the GMRAs and the SLAs contain a number of provisions which potentially use the euro as a unit of <u>calculation</u> rather than directly in the context of a <u>payment obligation</u>. In these circumstances the question arises whether the euro would be redenominated into the currency of the Exiting State.

9.2 The analysis here is different to that for payment obligations and, in our view, is primarily a matter of construction of the contract (including the meaning and definition of "euro").

Base Currency

9.3 Both the GMRAs and the SLAs use a concept of "Base Currency", primarily as a means of converting multiple currencies of different transactions and margin/collateral into a single currency for the purposes of various calculations, the principal ones of which are:

(a) exposure of each party under a transaction or under the agreement as a whole for the purposes of the margining provisions (repo) or collateral provisions (securities lending); and

(b) the components of the net close-out payment due after close-out netting.

9.4 Base Currency is also used as the currency in which certain payments are due. These are considered in section 7 above.

9.5 If the parties have provided that the Base Currency is "euro", an important point is that redenomination of debts by an Exiting State does not redenominate all references to "euro" in a financial contract. In this context, the euro is used as a reference point for a calculation rather than directly as the amount of a payment obligation or as the currency in which an amount is expressed to be payable.

9.6 Consequently, you would start by interpreting the contract to determine the meaning of "euro". If, as is likely, "euro" is not defined, you would need to analyse the position as in section 7 above to determine whether it is intended to mean the continuing single currency or the currency of the Exiting State (or of another member state). Here, there is less obvious connection with either party and perhaps more likely a choice of a currency in which the majority of the transactional exposure under the agreement as a whole was expected to be denominated, or perhaps a choice of a currency which was very liquid. Consequently, there is perhaps less risk that it would be determined to mean the currency of the Exiting State.

9.7 *Again, clarification of the meaning of "euro" in this context would be the primary risk mitigation measure for parties to consider.*

9.8 If it is found to mean the continuing single currency, then the risk of redenomination would be likely to depend upon how integral a part of a payment obligation it is. If it is integral to a payment obligation by a counterparty based in the Exiting State, then the analysis is likely to follow that for the Repurchase Price payment obligation considered in section 7 above.

9.9 Note that the Schedule to the GMSLA 2010 provides for parties to specify a fallback Base Currency where the original Base Currency "ceases to be freely convertible", which will be relevant in the case of imposition of exchange controls.

Margin and collateral calculations

9.10 Both repo and securities lending transactions use the technique of variation margin (contained in the "margin maintenance" provisions of the GMRAs (in the case of repo) and the "collateral" provisions of the SLAs (in the case of securities lending)), being in each case the ability of the parties to collateralise their exposure to one another.

9.11 The margining provisions of paragraph 4 GMRA 1995 and GMRA 2000, and the collateral provisions of paragraph 6 OSLA and paragraph 5 GMSLA 2000 and GMSLA 2010, essentially measure exposure as (a) in the case of repo, the difference between the Repurchase Price on the one hand and the market value of the Purchased Securities on the other and (b) in the case of securities lending, the difference between the market value of the Collateral on the one hand and the market value of the Loaned Securities on the other (this is simplified for the purposes of the analysis). Redenomination of one or other of those sides of the repo or securities lending transaction into the new domestic currency may have the effect of significantly revaluing (downwards or upwards depending on whether the Exiting State is a stronger or weaker member of the eurozone) that leg, which in turn may have a significant effect on the exposure of one party to the other and may result in a trigger of significant margin calls to address that exposure. Any affected counterparty may face liquidity issues as a result, especially if it has large aggregate repo and/or securities lending positions across the market.

Repo

9.12 In calculating exposure for margining purposes under the GMRAs, the value of any securities whose market price is quoted in a currency other than the Contractual Currency must be converted into the Contractual Currency at the Spot Rate prevailing at the relevant time. Assuming that the Purchase Price has been paid, it cannot be redenominated into the currency of the Exiting State and so the Contractual Currency will be euro. The Contractual Currency would not be at risk of redenomination as a concept because it is defined by reference to the currency of the Purchase Price rather than expressly as a currency in its own right. In our Repo example, on the assumption that the EGBs are redenominated into the new domestic currency, and assuming that the Contractual Currency is euro, the value of the EGBs would need to be converted into euro at the Spot Rate creating the shift in exposure discussed above.

9.13 The margining provisions in the GMRAs use the concept of Base Currency as well as Contractual Currency in the calculations of exposure. We discuss the concept of Base Currency in section 9.3 onwards above.

Securities lending

9.14 In calculating exposure for collateral purposes under the SLAs, the value of any securities whose market price is quoted in a currency other than the Base Currency must be converted into the Base Currency at the spot rate prevailing at the relevant time. In our Securities Loan example, on the assumption that the Shares are redenominated into the new domestic currency, and assuming that the Base Currency is euro, the value of the Shares would need to be converted into euro at the spot rate creating the shift in exposure discussed above.

9.15 We discuss the concept of Base Currency in section 9.3 onwards above.

Close-out netting calculations

9.16 The close-out netting procedures and calculations set out in the GMRAs and SLAs are fairly similar, particularly in the latest versions of each agreement. They involve:

(a) an acceleration of payment and delivery obligations;

(b) a valuation of those obligations, including a conversion into a common currency; and

(c) an obligation to pay the net balance.

9.17 We have already considered the close-out netting payment in section 7 above. We consider below the other components of the close-out netting calculations in the GMRAs and SLAs, focussing on the areas where the euro and related issues may be relevant. It should be noted that we do not consider here the position where a party has become insolvent as that will raise insolvency law issues which are outside the scope of this briefing and will affect the analysis below.

9.18 Repo: paragraph 10(b) GMRA 1995 and GMRA 2000 accelerates the repayment of Repurchase Price and Cash Margin and the redelivery of Equivalent Securities and Equivalent Margin Securities. Paragraph 10(c) GMRA 1995 and GMRA 2000 then provides for the calculation by the non-defaulting party of the amount of any payments of Repurchase Price and Cash Margin to be paid by each party and the value (using the concept of "Default Market Value") of any Equivalent Securities and Equivalent Margin Securities to be delivered by each party.

9.19 Securities lending: paragraph 8.2 OSLA, paragraph 10.2 GMSLA 2000 and paragraph 11.2 GMSLA 2010 accelerate the repayment of Cash Collateral and the redelivery of Equivalent Securities and Equivalent Collateral. Paragraph 8.2 OSLA, paragraph 10.2 GMSLA 2000 and paragraph 11.2 GMSLA 2010 then provide for the calculation by the non-defaulting party of the amount of any payments of Cash Collateral to be paid by each party and the value (using the concept of "Relevant Value" (in the case of the OSLA and GMSLA 2000) and "Default Market Value" (in the case of the GMSLA 2010)) of any Equivalent Securities and Equivalent Collateral to be delivered by each party.

9.20 In relation to payment obligations, we have already discussed in section 7 above the analysis to be applied when determining the currencies of the various payment obligations and those same principles will be applicable here notwithstanding the acceleration of those obligations.

9.21 In relation to delivery obligations, we have also discussed in section 8 above the meaning of "equivalent" in respect of securities and concluded that any redenominated securities are still likely to qualify as "equivalent". On that basis, the Default Market Values and Relevant Values of any redenominated securities would be determined in the new domestic currency of the Exiting State. This would be consistent with the valuation methodology in the GMRAs and SLAs, which relies on a combination of one or more of sale proceeds, market quotations or market value as determinants of the Default Market Value or Relevant Value (as applicable), all of which would be measured in the new currency following a redenomination.

Conversion into common currency

9.22 On the basis of the sums established at the valuation stage, the GMRAs and SLAs require that all obligations are set off leaving a single net sum payable by the party owing the larger amount. For the purposes of this calculation all sums not denominated in the Base Currency must be converted into the Base Currency on the relevant date at the spot rate prevailing at the relevant time.

9.23 We consider the concept of Base Currency in section 9.3 onwards above.

10. JURISDICTION

10.1 It is possible that a counterparty may bring an action in the courts of the Exiting State and, in that case, it is likely that those courts would apply any domestic legislation passed in respect of the exit, including in relation to redenomination or capital and exchange controls. The risk or likelihood of an action being brought in a court of the Existing State depends to a large extent on what the parties have agreed in their jurisdiction clause in the relevant master agreement.

10.2 <u>Repo</u>: in the case of repo agreements, the GMRA 1995 and GMRA 2000 have non-exclusive jurisdiction clauses in favour of English courts (paragraph 17) so the parties are free to sue in other competent courts.

10.3 <u>Securities lending</u>: in the case of securities lending, paragraph 24 GMSLA 2000 and paragraph 23 GMSLA 2010 contain an exclusive jurisdiction clause in favour of the English courts. However, it is still possible that an action may be brought first in the courts of the Exiting State in which case the English courts may not hear the action until those courts have determined their jurisdiction, however long that takes. In theory, those courts should determine that they do not have jurisdiction but if for any reason they determine that they <u>do</u> have jurisdiction, an appeal through the local courts of the Exiting State may be needed to determine whether that was in breach of EC law. In the case of the OSLA, it has a London arbitration clause in paragraph 23. In that case, if an action is brought in the court of the Exiting State, there is no equivalent prohibition on the commencement of arbitration proceedings and so the arbitration may still also proceed leading to a potential for conflicting decisions. In each case it may still be possible to bring an action in the English courts for breach of contract arising out of the bringing of local proceedings in the Exiting State. However, it is also possible that an enforcement action may be required in the jurisdiction of the Exiting State to access the counterparty's assets and this may lead to similar difficulties in the local courts.

10.4 *A risk reduction plan would include (in the case of repo) providing for exclusive jurisdiction clauses and (in the case of both repo and securities lending) prompt action in the English courts or London arbitration (as applicable) if required.*

11. CONCLUSION AND POSSIBLE ACTION

11.1 The above is a summary of some of the potential issues that may arise in the event that the scenario considered by this briefing materialises, and the potential consequences of those issues for repo and securities lending transactions. As mentioned above it should be noted that, even with the assumptions made in relation to the stated scenario, it is difficult to predict with any certainty how an exit from the eurozone may occur and what legal framework will evolve to effect it. The circumstances surrounding an exit will have a significant bearing on the analysis and in that regard the conclusions and views expressed above will vary according to the actual facts and any resulting legislation or court judgments.

Objectives

11.2 What might parties to repo and securities lending transactions do about these issues? The overriding aims of any action to be taken in advance of an actual or announced eurozone exit or break-up would be:

(a) to reduce any general legal uncertainty, principally through addressing continuity issues and reducing the potential for conflicts of laws;

(b) to reduce any contractual uncertainty and ambiguity; and

(c) to include any specific rights or outcomes (such as termination rights) which parties may desire.

Possible action

11.3 In our view, there are several issues which participants could usefully consider addressing as highlighted in this briefing, with the objectives set out in section 11.2 above.

Reduction of general legal uncertainty

(a) Continuity: parties may wish to include standard form continuity language along the lines of that included in paragraph 2.5 GMSLA 2000 and GMSLA 2010.

(b) Exclusive jurisdiction clauses: subject to any other relevant factors, parties may wish to consider whether to include exclusive jurisdiction clauses submitting to the exclusive jurisdiction of the English courts.

(c) Place of payment: subject to any other relevant factors, parties may wish to consider specifying a place of payment for their transactions outside any country where there is a significant concern of an exit from the eurozone. This may involve changing the location of any bank accounts for the receipt or payment of euro payments. In addition, parties may wish to provide that the place of payment may be changed, or to specify multiple places of payment for euro obligations.

Reduction of contractual ambiguity

(d) Definition of "euro": parties should include a definition of "euro" and that definition could make it clear that, for example, it remains the single currency regardless of the withdrawal of any particular member state. Clearly this will not assist in the scenario where there is a complete break-up but it is extremely difficult contractually to provide adequately for that eventuality. Given the unanticipated developments in the eurozone since its introduction, it is possibly timely to update the standard definitions of "euro" to clarify the position.

(e) Meaning of "Equivalent": parties may wish to clarify that securities will still be "equivalent" Securities or Collateral notwithstanding any redenomination into the new domestic currency.

(f) Events of Default: as discussed in section 5 above, it is possible that certain EODs may be triggered in the scenario considered in this briefing, particularly where capital and exchange controls are introduced. Parties may consider that it would be better to avoid the uncertainty of an EOD which may also in some circumstances apply to themselves and instead include express termination provisions for illegality and/or force majeure (see section 11.3(i) below).

(g) Tax Event (repo): parties may wish to clarify that the definition of "Tax Event" in paragraph 11 GMRA 1995 and GMRA 2000 does not include the exit of a member state from the eurozone or the imposition of capital or exchange controls. However, parties should first consider whether, in fact, they wish to retain a possible right to terminate in these circumstances (and leave an equivalent right for their counterparty). If so, the better alternative may be to make express provision for a termination right (see below).

(h) Fee (securities lending): parties may wish to make it expressly clear in which currency the securities lending fee is calculated and payable.

Provision for desired outcomes

(i) Termination rights: parties may wish to consider including specific termination rights to be triggered in the event of a specified member state leaving the eurozone, or an "Illegality" and/or "Force majeure" clause along the lines of those in the 2002 ISDA Master Agreement to be triggered in the event of capital or exchange controls making performance illegal. This would provide the benefit of clarifying obligations, providing a termination right and avoiding unwittingly triggering an EOD which might potentially apply to either party.

Going forward v. going back

11.4 Participants should differentiate between existing transactions/agreements and new transactions/agreements. It is easier both in principle and in practice to address the issues going forward than in retrospect, and consequently a different approach to each category will be required:

(a) for new master agreements, the issues could be addressed by including provisions in the master agreement to the extent not already covered. This could perhaps be by way of a "eurozone annex" dealing with the relevant issues;

(b) for new transactions under existing master agreements, certain issues could be dealt with in the transaction confirmation if the transaction was considered to be "at risk" to any of the issues, or alternatively the existing master agreement could be amended; and

(c) for existing transactions or existing master agreements, the existing master agreement could be amended and the amendments agreed to cover any existing transactions. In relation to existing transactions and agreements, other options are also available (see below).

Existing transactions / agreements

11.5 Industry associations & potential legislation: for existing transactions and agreements, industry associations should take the lead in establishing market consensus around the key issues, and in lobbying governments to make adequate provision to address any potential uncertainty. However, it is highly improbable that any legislation would be passed in the absence of an actual or announced exit, and consequently this would instead be a planning exercise in order to give comfort to the markets that action would be taken at the relevant time. That said, any legislation could only be at a very high level – presumably it could cover continuity of contracts (as happened at the time of introducing the euro) and possibly a statement on the meaning of "euro", although even that is unlikely. It would not be possible to legislate with a single rule for any of the differing commercial intentions and expectations of the parties in their transactions.

11.6 Market protocols: a market protocol to effect multilateral amendments to existing agreements could go further (as it is voluntary) and could be implemented before any eurozone exit to reduce uncertainty, but would still need to gain consensus which would reduce the number of issues that could realistically be dealt with. We would expect that a market protocol could be used to cover:

(a) continuity of contracts (for those master agreements without such a clause) subject to any express agreement by the parties to terminate;

(b) the inclusion of an exclusive jurisdiction clause (for those master agreements without such a clause);

(c) the meaning of "euro";

(d) the meaning of "equivalent" in relation to securities/collateral; and

(e) perhaps an optional illegality and/or force majeure clause (which would need to tie in with any continuity provision).

11.7 Bilateral amendments: in the absence of a market protocol, or even if there is a market protocol, it is possible that only bilateral agreement between counterparties can adequately cover off some of the issues in existing agreements. The market protocol (if any) may not cover all the relevant issues, and not all counterparties to existing agreements will sign up to a protocol. As it would be unrealistic to expect parties to renegotiate all of their agreements with any eurozone element, parties may wish to determine whether they have "high risk" counterparties, agreements or transactions and seek to amend those (recognising that the fact that they are determined to be high risk may mean that bilateral amendment becomes harder to achieve).

11.8 Upgrading master agreements: parties should also consider upgrading any of the very old master agreements that they have in place (such as an OSLA or GMRA 1995) to the latest or more recent version of the relevant agreement which may help to deal with some of the above issues as well as taking advantage of more recent best practice and other contractual improvements post credit crisis, including in relation to defaults and insolvencies of their counterparties.

Summary

11.9 We set out in Appendix 2 a table summarising the potential action discussed above which could be taken in respect of each type of agreement. For new transactions under existing master agreements, some of these issues could also potentially be addressed instead in the confirmation if the transaction is seen as "at risk" of eurozone related issues.

APPENDIX 1: GMRA/SLA COMPARISON TABLES

Note: This table seeks to compare some of the core provisions/concepts of the GMRAs and SLAs relating to the eurozone issues considered in this briefing between the 1995, 2000 and 2011 GMRAs (for repo) and the OSLA 1995, the GMSLA 2000 and the GMSLA 2010 (for securities lending). It is not, and does not seek to be, complete, and other substantial concepts are included in each agreement which are not summarised below. The summaries of any concepts below are also necessarily incomplete. Readers should always refer to the full terms and conditions of the relevant agreements for a complete and accurate statement of the contractual position.

REPO AGREEMENTS

Key Provision	GMRA 1995	GMRA 2000	GMRA 2011
Continuity of contracts clause?	None	Para 16(e): only covers new countries joining euro and not countries leaving it	Para 16(e): only covers new countries joining euro and not countries leaving it
Illegality, impossibility or force majeure clause?	No express clause, but: *Event of Default* Para 10(a)(vi): either party admits that it is unable to perform any of its obligations; and *Termination event* Para 11: if either party is materially adversely affected by a change in fiscal or regulatory regime, the affected party may terminate any affected Transaction	No express clause, but: *Event of Default* Para 10(a)(viii): either party admits that it is unable to perform any of its obligations; and *Termination event* Para 11: if either party is materially adversely affected by a change in fiscal or regulatory regime, the affected party may terminate any affected Transaction	No express clause, but: *Event of Default* Para 10(a)(viii): either party admits that it is unable to perform any of its obligations; and *Termination event* Para 11: if either party is materially adversely affected by a change in fiscal or regulatory regime, the affected party may terminate any affected Transaction
Events of Default	Para 10(a)(i): Seller fails to pay Repurchase Price NB: failure to deliver Equivalent Securities is not an EOD Para 10(a)(ii): failure to make a margin payment Para 10(a)(iii): failure to pay income Para 10(a)(iv): Act of Insolvency Para 10(a)(v): breach of representation Para 10(a)(vi): either party	Para 10(a)(i): Seller fails to pay Repurchase Price Para 10(a)(ii) (<u>if</u> parties have elected in Annex I for this EOD to apply): Buyer fails to deliver Equivalent Securities Para 10(a)(iv): failure to make a margin payment Para 10(a)(v): failure to pay income Para 10(a)(vi): Act of Insolvency Para 10(a)(vii): breach of representation Para 10(a)(viii): either party	Para 10(a)(i): Seller fails to pay Repurchase Price Para 10(a)(ii) (<u>if</u> parties have elected in Annex I for this EOD to apply): Buyer fails to deliver Equivalent Securities Para 10(a)(iv): failure to make a margin payment Para 10(a)(v): failure to pay income Para 10(a)(vi): Act of Insolvency Para 10(a)(vii): breach of representation Para 10(a)(viii): either party

Key Provision	GMRA 1995	GMRA 2000	GMRA 2011
	admits that it is unable to perform any of its obligations	admits that it is unable to perform any of its obligations	admits that it is unable to perform any of its obligations
Termination events	Para 10(f): Buyer fails to deliver Equivalent Securities Para 11: Tax Event	Para 10(h): Buyer fails to deliver Equivalent Securities Para 11: Tax Event	Para 10(i): Buyer fails to deliver Equivalent Securities Para 11: Tax Event
Repurchase Price payments	Paras 2(h) and 7(a): payable in the Contractual Currency, which is defined as the currency of the Purchase Price	Paras 2(i) and 7(a): payable in the Contractual Currency, which is defined as the currency of the Purchase Price	Paras 2(k) and 7(a): payable in the Contractual Currency, which is defined as the currency of the Purchase Price
Cash Margin payments	Para 4(e): payable in Base Currency and other agreed currencies	Para 4(e): payable in Base Currency and other agreed currencies	Para 4(e): payable in Base Currency and other agreed currencies
Income payments	Para 5: Transferee must pay an amount equal to and in the same currency as amount paid by the issuer	Para 5: Transferee must pay an amount equal to and in the same currency as amount paid by the issuer	Para 5: Transferee must pay an amount equal to and in the same currency as amount paid by the issuer
Close-out netting provisions	Para 10: net balance calculated and payable in Base Currency	Para 10: net balance calculated and payable in Base Currency	Para 10: net balance calculated and payable in Base Currency
Currency indemnity	Yes – para 7(b)	Yes – para 7(b)	Yes – para 7(b)
Equivalent Securities and Equivalent Margin Securities	Para 2(p): no express reference to redenomination	Para 2(t): express reference to redenomination <u>into</u> euro but not to redenomination <u>out of</u> euro Also provides for where securities have been "converted" or where holders become entitled to receive or acquire other securities or property	Para 2(v): express reference to redenomination <u>into</u> euro but not to redenomination <u>out of</u> euro Also provides for where securities have been "converted" or where holders become entitled to receive or acquire other securities or property
Margin calculations	Para 4: uses concepts of Contractual Currency and Base Currency in calculations of exposure. Contractual Currency = currency of Purchase Price Base Currency = as specified by parties	Para 4: uses concepts of Contractual Currency and Base Currency in calculations of exposure. Contractual Currency = currency of Purchase Price Base Currency = as specified by parties	Para 4: uses concepts of Contractual Currency and Base Currency in calculations of exposure. Contractual Currency = currency of Purchase Price Base Currency = as specified by parties
Jurisdiction clause	Para 17: non-exclusive jurisdiction of English courts	Para 17: non-exclusive jurisdiction of English courts	Para 17: exclusive jurisdiction of English courts

SECURITIES LENDING AGREEMENTS

Key Provision	OSLA 1995	GMSLA 2000	GMSLA 2010
Continuity of contracts clause	None	Para 2.5: express continuity clause covering introduction of and/or substitution of a new currency	Para 2.5: express continuity clause covering introduction of and/or substitution of a new currency
Events of Default	Para 12.1.1: Borrower or Lender fails to pay/repay Cash Collateral Para 12.1.1: Lender fails to deliver Equivalent Collateral Para 12.1.2/6.7.2: Lender fails to pay income Para 12.1.3: Borrower fails to pay income Para 12.1.4: Act of Insolvency Para 12.1.5: breach of warranty Para 12.1.6: either party admits that it is unable to perform any of its obligations Para 12.1.9: failure to perform other obligations (e.g. failure by Borrower to pay securities lending fee and failure by Borrower to redeliver Equivalent Securities on scheduled termination of a Loan)	Para 14.1(i): Borrower or Lender fails to pay/repay Cash Collateral Para 14.1(i): Lender fails to deliver Equivalent Collateral Para 14.1(iii): Lender fails to pay income Para 14.1(iii): Borrower fails to pay income Para 14.1(v): Act of Insolvency Para 14.1(vi): breach of warranty Para 14.1(vii): either party admits that it is unable to perform any of its obligations Para 14.1(x): failure to perform other obligations (e.g. failure by Borrower to pay securities lending fee)	Para 10.1(a): Borrower or Lender fails to pay/repay Cash Collateral NB: no EOD for failure to deliver Equivalent Collateral Para 10.1(b): Lender fails to pay income Para 10.1(b): Borrower fails to pay income Para 10.1(d): Act of Insolvency Para 10.1(e): breach of warranty Para 10.1(f): either party admits that it is unable to perform any of its obligations Para 10.1(i): failure to perform other obligations (e.g. failure by Borrower to pay securities lending fee)
Termination events	Para 7.2: optional termination of a Loan by Lender Para 7.3: Borrower fails to redeliver Equivalent Securities upon Lender optional termination Para 7.5: optional termination of a Loan by Borrower	Para 8.2: optional termination of a Loan by Lender Para 9.1: Borrower fails to redeliver Equivalent Securities Para 8.3: optional termination of a Loan by Borrower Para 9.2: Lender fails to redeliver Equivalent Collateral	Para 8.1: optional termination of a Loan by Lender Para 9.1: Borrower fails to redeliver Equivalent Securities Para 8.2: optional termination of a Loan by Borrower Para 9.2: Lender fails to redeliver Equivalent Collateral
Cash Collateral payments	Definition of "Collateral" and para 6.1: any currency specified by parties	Definition of "Collateral": any currency specified by parties	Definition of "Collateral": any currency specified by parties

Key Provision	OSLA 1995	GMSLA 2000	GMSLA 2010
Income payments	Para 4.2: Borrower must pay Lender an amount equal to the amount of the relevant Income Para 6.7: Lender must pay Borrower a sum of money equivalent to such Income	Para 6.1: transferee must pay an amount equivalent to the type and amount of any Income that transferor would have been entitled to receive	Paras 6.2 and 6.3: transferee must pay a sum of money equivalent to (and in same currency as) the type and amount of Income that transferor would have received
Securities lending fee	Paras 5.1 and 5.3: fee calculated by applying agreed rate to daily Value of Loaned Securities. Fee is in such currency and paid in such manner and place agreed between parties	Paras 7.1 and 7.3: fee calculated by applying agreed rate to daily Market Value of Loaned Securities Para 2.4: conversion into Base Currency?	Paras 7.1 and 7.3: fee calculated by applying agreed rate to Daily Market Value of Loaned Securities Para 2.4: conversion into Base Currency?
Close-out netting provisions	Para 1.4: net balance calculated and payable in Base Currency	Para 2.4: net balance calculated and payable in Base Currency	Paras 2.4 and 11.2(b): net balance calculated and payable in Base Currency Note provision in Schedule for fallback Base Currency if original Base Currency ceases to be freely convertible
Currency indemnity	No	No	No
Equivalent Securities and Equivalent Collateral	Para 1.1: no express reference to redenomination	Para 2.5: express reference to redenomination into a new currency	Para 2.5: express reference to redenomination into a new currency
Collateral calculations	Para 6: uses concept of Base Currency in calculations of exposure Base Currency = as specified by parties	Para 5: uses concept of Base Currency in calculations of exposure Base Currency = as specified by parties	Para 5: uses concept of Base Currency in calculations of exposure Base Currency = as specified by parties, including fallback Base Currency if original Base Currency ceases to be freely convertible
Currency conversion	Para 1.4: all prices, sums and values (for margining or set-off purposes) converted into Base Currency	Para 2.4: all prices, sums and values converted into Base Currency	Para 2.4: all prices, sums and values converted into Base Currency
Jurisdiction clause	Para 23: arbitration (London)	Para 24: exclusive jurisdiction of English courts	Para 23: exclusive jurisdiction of English courts

APPENDIX 2: POTENTIAL ACTION IN RESPECT OF NEW/EXISTING AGREEMENTS

Issue	Repo		Securities Lending		Protocol
	New GMRAs	Existing GMRAs	New SLAs	Existing SLAs	
Continuity	Add wording to a GMRA 2000 or GMRA 2011	Amend to add	Already in GMSLA 2000 and GMSLA 2010	GMSLAs: already included OSLA: amend or upgrade	Yes
Exclusive jurisdiction clause	GMRA 2011: already included GMRA 2000: add wording	GMRA 1995 or GMRA 2000: amend or upgrade GMRA 2011: already included	Already in GMSLA 2000 and GMSLA 2010	GMSLAs: already included OSLA: retain arbitration or amend or upgrade?	Yes
Place of payment	Add wording to a GMRA 2000 or GMRA 2011 if required	Amend if required	Add provisions if required	Amend if required	No
Definition of "euro"	Add wording to a GMRA 2000 or GMRA 2011	Amend to add	Add wording to GMSLA 2000 or GMSLA 2010	Amend to add	Yes
Meaning of "equivalent"	Add wording to a GMRA 2000 or GMRA 2011	Amend to add	Already in GMSLA 2000 and GMSLA 2010	GMSLAs: already included	Yes

Issue	Repo		Securities Lending		Protocol
	New GMRAs	**Existing GMRAs**	**New SLAs**	**Existing SLAs**	
				OSLA: amend or upgrade	
Events of Default	Clarify? Or include termination right? (See "Termination rights" below)	Amend to clarify? Or amend to include termination right? (See "Termination rights" below)	Clarify? Or include termination right? (See "Termination rights" below)	Amend to clarify? Or amend to include termination right? (See "Termination rights" below)	No
Tax Event	Clarify? Or include termination right? (See "Termination rights" below)	Amend to clarify? Or amend to include termination right? (See "Termination rights" below)	N/A	N/A	No
Currency of securities lending fee	N/A	N/A	Clarify?	Amend to clarify?	No
Termination rights	Include illegality and/or force majeure termination event?	Amend to include illegality and/or force majeure termination event?	Include illegality and/or force majeure termination event?	Amend to include illegality and/or force majeure termination event?	Yes

FURTHER INFORMATION

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