GUIDANCE NOTES TO THE GLOBAL MASTER SECURITIES LENDING AGREEMENT (2010 VERSION)

CONTENTS

PARAGRAPH **PAGE**

GUIDANCE NOTES TO THE GLOBAL MASTER SECURITIES LENDING AGREEMENT (2010 VERSION)

1. INTRODUCTION

1.1 These guidance notes:

(a) are designed to assist users of the Global Master Securities Lending Agreement (2010 Version) (the ***Agreement***) in completing the Agreement and in arranging loans under the Agreement;

(b) do not form part of the Agreement; and

(c) summarise the key provisions of the Agreement but are not intended to summarise all of the provisions of the Agreement.

1.2 The International Securities Lending Association (***ISLA***) on 7 May 2000 published its revised stock lending agreement, the Global Master Securities Lending Agreement (the ***2000 GMSLA***) to replace the:

(a) Overseas Securities Lender's Agreement (December 1995) (the ***OSLA***);

(b) Master Gilt Edged Stock Lending Agreement (1996); and

(c) Master Equity and Fixed Interest Stock Lending Agreement (1996).

1.3 The 2000 GMSLA was developed with the following aims:

(a) to produce a document which encompassed stock lending transactions relating to all types of securities under one agreement;

(b) to internationalise the agreement to reflect the increased use of the OSLA by non-UK parties;

(c) to take account of changes in market practices and to expand its scope to reflect rules and practices of organisations relevant to stock lending including clearing and settlement systems; and

(d) to address issues raised by the increased use of the OSLA in new jurisdictions.

1.4 In July 2009 ISLA published a revised version of the Global Master Securities Lending Agreement.

1.5 The 2009 GMSLA was developed with the principal aim of learning from, and making improvements to reflect, the lessons learned from the operation of 2000 version of the Agreement and its predecessors during the financial crisis of 2007 and 2008.

1.6 In January 2010 a further revised version of the GMSLA was published. This followed representations made by some market participants on certain provisions of the 2009 version.

1.7 The principal changes made in the 2010 version of the GMSLA are described in section 4 and a table comparing allocation of tax risk under the 2000 GMSLA and the 2010 GMSLA is included in section 5.

1.8 A separate UK tax addendum is available for use where one of the parties is resident in the UK for tax purposes or makes (or, for certain purposes, receives) a payment under the Agreement in the course of a trade carried on in the UK through a branch or agency.

1.9 The Agreement has been prepared as a standard form and any person proposing to use it should ascertain that it is suitable for the circumstances in which it is proposed to be used. ISLA does not assume responsibility for use of the Agreement or any of the annexes in any particular circumstances.

1.10 An English law netting opinion, given by Freshfields Bruckhaus Deringer LLP is also available to subscribers through the Bank of England's Stock Lending and Repo Committee (SLRC). The SLRC has also obtained netting opinions in 57 other jurisdictions. Details are available from ISLA or from Freshfields by contacting kbdsupport@freshfields.com. .

1.11 The Agreement and the UK tax addendum can be found on ISLA's website at www.isla.co.uk.

2. QUICK REFERENCE GUIDE[1]

2.1 The Agreement is designed to be used for securities lending transactions which ordinarily involve one party (the Lender) lending securities to the other party (the Borrower) for a fee or interest payment. The Borrower provides the Lender with collateral for the duration of the loan. Collateral and loans are marked to market (usually daily) and the value of collateral adjusted accordingly.

2.2 A party can act as both lender and borrower under the agreement and a lender can act as principal, or as agent on behalf of others.

2.3 The agreement provides for absolute transfer of securities and collateral. On termination of the loan the borrower's obligation is to deliver equivalent securities and the lender's obligation is to repay cash collateral and deliver collateral equivalent to non-cash collateral.

2.4 Unless otherwise agreed the loan may be terminated by either party by giving notice to the other.

2.5 The borrower is required to account to the lender in respect of dividends and other distributions, and corporate actions which occur during the lifetime of the loan. Similarly the lender is required to account to the borrower in respect of dividends, distributions and actions in respect of non-cash collateral.

2.6 The Agreement provides the lender with certain remedies if the borrower fails to deliver securities on termination of the loan including the ability to terminate the loan.

2.7 The Agreement gives the non-defaulting party the right to terminate outstanding loans if an event of default (such as the insolvency of one party) takes place. Collateral is enforced through a close-out and set-off mechanism.

---

[1] Paragraph numbers refer to the 2010 GMSLA.

3. SUMMARY OF PROVISIONS

PARAGRAPH 1: APPLICABILITY

The Agreement is a master agreement intended to govern securities lending transactions entered into between parties in respect of fixed income and equities.

The Agreement is a standard form agreement which may be amended by parties by way of additional terms and conditions contained in the Schedule, addenda or annexes to the Agreement.

PARAGRAPH 2: INTERPRETATION

Definitions

This paragraph contains various defined terms used throughout the Agreement. Terms used within a specific paragraph only are defined within that paragraph.

One of the key definitions is that of "Market Value" which is important for determining the value of collateral to be provided and the marking to market requirements for collateral during the currency of a loan. "Market Value" is generally determined by the lender on a mid price basis by reference to a reputable pricing service chosen reasonably by the lender in good faith. Any accrued income is added to the valuation to the extent not included in the price. Normally, the previous day's closing prices will be used but either party may choose the latest available price where in its opinion an exceptional price movement has occurred since the closing price on the previous business day.

Securities that are suspended or that cannot legally be transferred or that are transferred or required to be transferred to a government, trustee or third party (whether by reason of nationalisation, expropriation or otherwise) are valued at:

(a) a commercially reasonable price agreed between the parties; or

(b) absent agreement, a price provided by a third party dealer agreed between the parties; or

(c) if the parties do not agree a third party dealer then a price based on quotations provided by reference dealers, and:

(i) if more than three quotations are provided, the market value is the arithmetic mean of the prices, without regard to the quotations having the highest and lowest prices;

(ii) if three quotations are provided, the market value will be the quotation remaining after disregarding the highest and lowest quotations;

(iii) if more than one quotation has the same highest or lowest price, then one of such quotations shall be disregarded;

(iv) if fewer than three quotations are provided, the market value of the relevant securities, equivalent securities, collateral or equivalent collateral shall be determined by the party making the determination of market value acting reasonably.

Different valuation provisions apply for the purposes of applying set-off after an event of default (see paragraph 10 below).

Currency conversions

Paragraph 2.4 provides for the rate of exchange at which conversions into the "Base Currency" are to be made. (The base currency, which is used for determining all prices, sums or values under the Agreement, is required to be specified in the Schedule.)

Paragraph 2.5 deals with the effects of the introduction of a new currency as the lawful currency of a country in respect of parties' payment and delivery obligations under the Agreement.

PARAGRAPH 3: LOANS OF SECURITIES

This paragraph sets out the framework provisions whereby the lender will lend securities to the borrower in accordance with the terms of the Agreement. (A party may act as lender in respect of a transaction but as borrower in respect of another.) The paragraph also deals with the status of any confirmation produced by a party (purporting to set out the terms of any specific loan of securities) providing that, unless otherwise agreed, any such confirmation shall not affect the prior communication between the parties by which the terms of the relevant loan of securities were agreed.

PARAGRAPH 4: DELIVERY

Delivery of Securities on commencement of Loan

Paragraph 4.1 sets out the mechanism for the obligation of the lender to deliver securities to the borrower in respect of any specific loan.

Requirements to effect delivery

Paragraph 4.2 provides for the outright transfer of any securities borrowed and any collateral delivered. Accordingly, the borrower has an obligation to deliver securities equivalent to those borrowed and the lender has an obligation to deliver collateral equivalent to that provided to it by the borrower. Any equivalent securities and equivalent collateral must also be provided by way of outright transfer. The securities, equivalent securities, collateral and equivalent collateral must be provided free of any encumbrances.

Deliveries to be simultaneous unless otherwise agreed

Where the Agreement provides for deliveries to be made simultaneously by the parties, paragraph 4.3 expressly permits a party to waive its right to a corresponding payment or delivery from the other party to be made simultaneously whether due to market practice or practical difficulties.

Deliveries of Income

Paragraph 4.4 provides for the mechanism for the delivery of income payments. The obligation to make such payments in respect of loaned securities is set out in paragraph 6.2 (see below). With regard to a distribution in the form of securities made in respect of any loaned securities or collateral, please refer to paragraph 6.5 (see below).

PARAGRAPH 5: COLLATERAL

Delivery of Collateral on commencement of Loan

Paragraph 5.1 contains the obligation of the borrower to provide collateral to the lender simultaneously with the delivery of the loaned securities to it by the lender. Where the parties agree that a lender is to be pre-collateralised, the parties may wish to insert the following provision:

"Unless otherwise agreed in respect of any particular Loan, notwithstanding anything to the contrary in this Agreement (i) any obligation of Lender to deliver Securities in respect of any Loan to Borrower is conditional upon Lender having received the Collateral agreed to be provided in respect of such Loan and (ii) any obligation of Lender to repay or deliver (as the case may be) Equivalent Collateral upon the termination of a Loan or upon the substitution of Alternative Collateral is conditional upon Lender verifying receipt of Equivalent Securities".

Deliveries through payment systems generating automatic payments

In the case of a settlement system that does not allow a transfer of securities to be made without a corresponding delivery or payment transfer, paragraph 5.2, in summary, provides that the automatically generated payment or delivery may be used to discharge an existing obligation. Otherwise, it will be deemed to be collateral or equivalent collateral, as the case may be, until it is substituted for alternative collateral or equivalent collateral, if an obligation to deliver collateral or equivalent collateral existed. If no such obligation existed, or if such obligation existed, upon the delivery of the alternative collateral or equivalent collateral, the recipient of the automatically generated payment or delivery is required to make an equivalent payment or delivery to the other party.

Substitutions of Collateral

Paragraph 5.3 sets out the ability of a borrower to substitute collateral (without the consent of the lender) it has provided to the lender for alternative collateral acceptable to the lender.

Marking to Market of Collateral during the currency of a Loan on aggregated basis

Paragraph 5.4 sets out the margin maintenance provisions, that is, the market value of the collateral (provided in respect of all loans) is to equal the market value of all loaned securities together with an additional amount known as the "Margin" (as specified in the Schedule in relation to each type of acceptable collateral under the Agreement as a percentage of the market value of each form of acceptable collateral). When making this calculation account is also taken of (i) amounts due and payable by either party under the Agreement but which are unpaid; and (ii) if agreed between the parties and if the income record date has occurred in respect of any non-cash collateral and loaned securities, the amount or market value of income payable in respect of such non-cash collateral or securities. The borrower has the right to call for excess collateral provided to the lender and the lender has the right to demand further collateral if a collateral deficiency exists.

Marking to Market of Collateral during the currency of a Loan on a Loan by Loan basis

Paragraph 5.5 sets out margin maintenance provisions where the parties have elected (in the Schedule) to margin on a loan by loan basis as opposed to a global basis as provided for by paragraph 5.4.

Requirements to redeliver excess Collateral

Where aggregated margining applies (pursuant to paragraph 5.4), unless the parties have elected otherwise (in the Schedule) paragraph 5.6 provides that requirements to deliver equivalent collateral or provide further collateral can be netted to allow for a single net delivery of collateral between the parties.

Where parties margin on an aggregated basis and a party is required to deliver further collateral or redeliver equivalent collateral to the other party in respect of all loans entered into, paragraph 5.7 provides for the allocation of such delivery or redelivery to individual loans, so that at the maturity of each loan, the equivalent collateral to be delivered by the lender to the borrower is ascertainable.

Timing of repayments of excess Collateral or deliveries of further Collateral

Paragraph 5.8 provides that any transfers of collateral or equivalent collateral required during the course of a loan shall be made (unless otherwise agreed) no later than close of business on the same business day if the relevant demand for transfer is received by the “Notification Time” specified in the Schedule. If the demand is made after the notification time, the delivery must be made not later than “Close of Business” (as defined in the Agreement) on the next business day after the date on which the demand is received.

Substitutions and extensions of Letters of Credit

Paragraph 5.9 sets out the lender's right to require a letter of credit provided to it by the borrower by way of collateral to be substituted for alternative collateral acceptable to the lender. Prior to the expiry of a letter of credit, the borrower is obliged to obtain an extension or replacement.

PARAGRAPH 6: DISTRIBUTIONS AND CORPORATE ACTIONS

Definition

Paragraph 6.1 contains the definition of the term "received" which is used in this paragraph: "received" means an amount of income received from the issuer after any applicable withholding or deduction for or on account of tax.

Manufactured payments

Paragraphs 6.2 and 6.3 apply where loaned securities or non-cash collateral are subject to an income record date in respect of any loaned securities or collateral securities. They provide for the borrower (or the lender as the case may be) to pay or deliver to the other party such sum or money or property as is agreed between the parties. If the parties fail to agree:

(a) in the case of loaned securities, the borrower must pay a sum of money or deliver property equivalent to the type and amount of income that would be "received" by the lender from the issuer assuming that the lender retained the loaned securities on the income record date; and

(b) in the case of non-cash collateral, the lender must pay a sum of money or deliver property equivalent to the type and amount of income that would be "received" by the lender assuming that the lender retained the non-cash collateral on the record date *and* is not entitled to any credit, benefit or other relief in respect of tax.

The default position in respect of non-cash collateral – i.e. where the parties fail to agree a rate for manufactured payments - differs from that under the 2000 GMSLA and is more lender-friendly. The onus is therefore on the borrower to ensure that a rate has been agreed or that arrangements are in place to substitute non-cash collateral prior to income record dates.

Indemnity for failure to redeliver Equivalent Non-Cash Collateral

Where a borrower has called for redelivery of equivalent non-cash collateral prior to an income record date and the lender fails to make reasonable efforts to effect the redelivery, paragraph 6.4 provides for the lender to indemnify the borrower against any loss directly resulting from such failure. The indemnity only applies where the borrower has agreed with the lender to provide acceptable alternative collateral and has given sufficient notice of its call for redelivery of the non-cash collateral. The lender, acting reasonably, must also have indicated to the borrower that the proposed alternative collateral is acceptable to it (as to which, see 5.15 below). These

provisions are modelled on those contained in the equities annex to the 2000 version of the Global Master Repurchase Agreement. The parties may elect to disapply paragraph 6.4 under paragraph 1.6 of the Schedule.

Income in the form of Securities

Where a distribution comprising securities is made in respect of any loaned securities or collateral, paragraph 6.5 provides for such securities to be added to the loaned securities or collateral, as the case may be (instead of an obligation to deliver equivalent securities at the time of the distribution) provided that the margin maintenance provisions are complied with.

Exercise of voting rights

Paragraph 6.6 provides that the borrower, in respect of loaned securities and the lender, in respect of collateral, has no obligation to arrange for any voting rights arising in respect of any such loaned securities or collateral to be exercised in accordance with the instructions of the other party.

Corporate actions

If a corporate action (such as a rights issue or a takeover offer) arises in respect of any loaned securities or collateral, paragraph 6.7 permits the lender, in the case of loaned securities and the borrower, in the case of collateral, to require that equivalent securities or collateral, as the case may be, to be redelivered take the form resulting from the exercise of the right constituting the corporate action being exercised in accordance with the instructions of the lender or borrower, as the case may be, provided that the relevant party gives notice in good time to the other party prior to the right constituting the corporate action becoming exercisable.

PARAGRAPH 7: RATES APPLICABLE TO LOANED SECURITIES AND CASH COLLATERAL

Rates in respect of Loaned Securities

Paragraph 7.1 contains the obligation of the borrower to pay a fee to the lender based upon the value of the securities borrowed.

Rates in respect of Cash Collateral

Paragraph 7.2 provides for the lender to pay the borrower interest on any cash collateral delivered to it by the borrower as agreed between the parties. The paragraph permits any such interest payment to be set off against any securities lending fee due under paragraph 7.1.

Payment of rates

Paragraph 7.3 sets out the periods by which securities lending fees and interest on cash collateral is to be calculated. It also sets out the time when such sums are payable. Payments accrue from the date of delivery of securities up to the day prior to

redelivery. Unless otherwise agreed, payments are due on the tenth business day after the end of the month to which they relate.

PARAGRAPH 8: DELIVERY OF EQUIVALENT SECURITIES

Lender's right to terminate a Loan

Paragraph 8.1 sets out the lender's right to terminate a loan of securities. Subject to any terms of the relevant loan (for example, where a fixed period has been agreed) the lender may terminate on giving notice equal to the standard settlement time for the securities concerned and the borrower must redeliver by the end of such period.

Borrower's right to terminate a Loan

Paragraph 8.2 sets out the borrower's right to terminate a loan of securities. Subject to the terms of the relevant loan, the borrower may terminate and redeliver at any time.

Delivery of Equivalent Securities on termination of a Loan

Paragraph 8.3 contains the obligation of the borrower to deliver securities equivalent to those borrowed by it to the lender upon the termination of the relevant loan.

Delivery of Equivalent Collateral on termination of a Loan

Paragraph 8.4 contains the obligation of the lender to deliver collateral equivalent to that provided to it by the borrower simultaneously with the delivery of equivalent securities to it by the borrower on termination of a loan.

Delivery of Letters of Credit

Paragraph 8.5 sets out how the obligation to deliver equivalent collateral where that collateral is in the form of a letter of credit is to be effected. Either the letter of credit is delivered for cancellation or the lender is to consent to a reduction in its value.

Delivery obligations to be reciprocal

Paragraph 8.6 permits a party that is obliged to make a delivery or payment to withhold such delivery or payment if arrangements have not been made by the other party to ensure that a corresponding delivery or payment due from the other party will be made.

PARAGRAPH 9: FAILURE TO DELIVER

A failure to deliver securities or equivalent securities is not an event of default under the GMSLA 2010. Although not universally held, the majority view during the consultation on the revised agreement was that a failure to deliver can occur for a number of different reasons, not necessarily connected with a default by the party concerned. For this reason, it would be inappropriate to enable the other party to declare an event of default in these circumstances. Instead, that party can invoke the "mini close-out" provisions in clause 9 (see below).

Borrower's failure to deliver Equivalent Securities

Paragraph 9.1 sets out the lender's remedies if the borrower fails to deliver equivalent securities upon the termination of a loan. The lender may elect to:

(a) continue the loan; or

(b) terminate only the affected loan.

In the case of (b) above, the parties' payment and delivery obligations in respect of such loan are terminated in accordance with paragraph 11.2 (see below) so that the parties' obligations to deliver equivalent securities and collateral are converted into obligations to pay the default market value of those securities and collateral and those obligations are set off against each other.

In addition, the borrower is liable for certain costs and expenses of the lender (as provided for by paragraph 9.3).

Lender's failure to redeliver Equivalent Collateral

Paragraph 9.2 sets out the borrower's remedies if the lender fails to deliver equivalent collateral upon the termination of a loan. The borrower may:

(a) continue the loan; or

(b) terminate only the affected loan.

Termination of the affected loan has the same consequences as a termination of a loan pursuant to paragraph 9.1, except that the lender is liable for certain costs and expenses of the borrower (as provided for by paragraph 9.3).

Failure by either Party to deliver

Paragraph 9.3 provides an additional remedy in the event of a failure to deliver equivalent securities or equivalent collateral by the time required under the Agreement. The party that has failed to deliver (the ***Transferor***) is liable to (and must pay within one business day of demand by) the other party (the ***Transferee***) for any interest, overdraft or similar costs and expenses incurred by the Transferee arising from the Transferor's failure to deliver and for any costs and expenses incurred as a 999costs and expenses that arise from the negligence or wilful default of the Transferee and (ii) indirect or consequential loss.

PARAGRAPH 10: EVENTS OF DEFAULT

The events that may constitute an "Event of Default" (after service of a default notice, except in respect of certain events that may constitute an act of insolvency where the parties so elect) comprise:

Clause	Event of Default	Grace period	Notice required
10.1(a)	Failure to pay or repay cash collateral Failure to deliver collateral at the start of the loan Failure to deliver further collateral	No	Yes
10.1(b)	Failure to make manufactured payments in respect of Loaned Securities or Non-Cash Collateral	3 Business Days	Yes
10.1(c)	Failure to pay any sum due under the mini close-out provisions upon the due date.	No	Yes
10.1(d)	Act of Insolvency (as defined in the agreement)	No	Yes, except where the parties have elected automatic early termination
10.1(e)	Warranty incorrect or untrue in a material respect	No	Yes
10.1(f)	Admission of non-performance by a party where such non-performance would be a potential event of default	No	Yes
10.1(g)	Transfer of all or any material part of the assets of lender or borrower to a trustee	No	Yes

10.1(h)	Action taken in respect of a party by securities exchange or regulatory authority on the grounds that it has failed to meet any requirements relating to financial resources or credit rating.	No	Yes
10.1(i)	Breach of any other obligation.	30 days	Yes

Each party is obliged to notify the other of the occurrence of an event of default or potential event of default in respect of itself.

No remedies, except those set out in the Agreement, may be sought by a party pursuant to the occurrence of an event of default.

Neither party is liable for consequential loss.

PARAGRAPH 11: CONSEQUENCES OF AN EVENT OF DEFAULT

If an event of default occurs, paragraph 11.2 provides that both parties' payment and delivery obligations are accelerated. Such obligations are replaced by an obligation of one party to pay a single cash sum to the other, determined as follows:

(a) the non-defaulting party determines:

(i) the "Default Market Value" (see below) of all securities that were to have been delivered to it by the defaulting party (defined as "Deliverable Securities");

(ii) the "Default Market Value" (see below) of all securities that it was to have delivered to the defaulting party (defined as "Receivable Securities");

(iii) the amount of any cash collateral to be repaid;

(iv) the amount of any other cash to be paid by each party;

(b) on the basis of these determinations an account is taken of what is due from each party to the other and sums due are set off and:

(i) if the amount due from the defaulting party is greater than the amount due to the defaulting party, the defaulting party must pay the difference to the non-defaulting party; and

(ii) if the amount calculated due from the defaulting party is less than the amount due to the defaulting party, the non-defaulting party must pay the difference to the defaulting party;

and such payment must be made on the next following business day after the set-off has been effected;

(c) if any sum is not denominated in the base currency (as selected by the parties), that sum is to be converted into the base currency at such date and times determined by the non-defaulting party acting reasonably.

The "Default Market Value" of securities is determined by the non-defaulting party as follows:

(a) if during the period between the termination date and the "Default Valuation Time" (this is close of business on the fifth dealing date in the relevant market after the date on which the event of default occurs):

(i) if the non-defaulting party has purchased receivable securities or sold deliverable securities, it may elect to treat as the default market value the net proceeds of sale or net purchase costs;

(ii) if the non-defaulting party has received offer (in the case of deliverable securities) or bid (in the case of receivable securities) quotations, from two or more market makers or regular dealers in a commercially reasonable size, it may elect to treat the price quoted (or the arithmetic mean if more than one price is quoted) as the default market value;

(iii) if, acting in good faith, the non-defaulting party has (A) endeavoured but been unable to sell or purchase securities or to obtain quotations (or both) or (B) determined that it would not be commercially reasonable to sell or purchase securities at the prices bid or offered or to obtain such quotations, or that it would not be commercially reasonable to use any quotations which it has obtained, the non-defaulting party may determine the "Net Value" of the relevant securities and may elect to treat the net value as the default market value of the relevant securities;

(b) to the extent that the non-defaulting party has not determined the default market value as described in (a) above, the default market value of the relevant securities shall be an amount equal to their net value at the default valuation time. But if at the default valuation time the non-defaulting party reasonably determines that, owing to circumstances affecting the market in the securities in question, it is not reasonably practicable to determine a net value of such securities which is commercially reasonable, the default market value of such securities shall be an amount equal to their net value as determined by the non-defaulting party as soon as reasonably practicable after the default valuation time;

(c) the "Net Value" of securities is the amount which, in the reasonable opinion of the non-defaulting party, represents their fair market value, having regard to

such pricing sources and methods (which may include available prices for securities with similar maturities, terms and credit characteristics as the relevant securities) as the non-defaulting party considers appropriate.

Paragraph 11.7 provides that the defaulting party is liable to the non-defaulting party for legal and other professional expenses incurred by the non-defaulting party as a result of the event of default, together with interest, calculated at such rate as the parties agree or, failing such agreement, at one month LIBOR.

Set-off

Paragraph 11.8 provides, at the option of the non-defaulting party for the set-off of any amount payable by one party to the other following an event of default against any amount payable by the other party under any other agreement or instrument between the parties.

PARAGRAPH 12: TAXES

Withholding, gross-up and provision of information

Paragraph 12.1 provides that all payments under the Agreement must be made without any withholding or deduction in respect of tax, except where required by any applicable law.

If any such withholding is required, paragraph 12.2 requires the paying party to notify the recipient and (save for payments under paragraph 6.3 in respect of income on non-cash collateral) to increase the amount paid to ensure that the other party receives such amount as it would have received but for the withholding.

Paragraph 12.3 provides that a recipient of a payment must provide such information or other cooperation as may reasonably be required by the paying party to limit any withholding obligation of that party, and the paying party's obligation to gross-up under paragraph 12.2(d) is disapplied to the extent that such obligation would not have arisen but for the recipient's failure to do.

Stamp tax

The borrower is generally liable under paragraph 12.5 to pay all stamp, registration and transfer taxes (such as stamp duties on transfers of securities and collateral) and separately indemnifies the lender under paragraph 12.6 against any liability arising from its failure to pay any such tax.

Sales tax

Paragraph 12.6 provides that all sums payable under the Agreement are exclusive of any applicable sales or value added tax and makes the payer liable for any such tax upon receipt of an appropriate tax invoice.

Retrospective changes in law

Paragraph 12.7 provides that amounts payable under the Agreement are determined by reference to applicable law as at the date a payment is made and that the payment is not subsequently to be adjusted by any retrospective change in applicable law (which includes published practice of any government or taxing authority) or any judicial decision (other than a decision specific to a particular agreement).

PARAGRAPH 13: LENDER'S WARRANTIES

A party acting as lender warrants to the other on a continuing basis as regard its authority and capacity to perform its obligations under the Agreement, its ability to make an outright transfer of securities; and that it is acting as principal, other than where it is acting as agent.

PARAGRAPH 14: BORROWER'S WARRANTIES

A party acting as borrower warrants to the other on a continuing basis that it has all necessary approvals, is authorised and has capacity to perform its obligations under the Agreement; that it is able to make an outright transfer of collateral; that it is acting as principal (a borrower may not act as agent under the Agreement); and that it is not entering into a loan for the primary purpose of obtaining or exercising voting rights in respect of the loaned securities.

PARAGRAPH 15: INTEREST ON OUTSTANDING PAYMENTS

This paragraph provides for interest to be paid on amounts due but unpaid at the rate specified in paragraph 11.7 (see above). No interest is payable in respect of any day on which one party endeavours to make a payment to the other but the other party is unable to receive it

PARAGRAPH 16: TERMINATION OF THIS AGREEMENT

Each party has the right to terminate the Agreement on fifteen business days notice in writing. Any such termination will not, however, affect the parties' existing obligations in respect of any outstanding loans of securities.

PARAGRAPH 17: SINGLE AGREEMENT

This paragraph provides that all loans entered into form part of a single contractual relationship. This is intended to prevent "cherry picking" by a liquidator, that is, a liquidator of an insolvent party only affirming those loans that it considers to be profitable and disaffirming the rest. It is also intended to reinforce the close-out netting provisions by demonstrating contractual interdependence between the loans.

PARAGRAPHS 18 TO 26

These paragraphs contain provisions relating to the following:

(a) severance of void/unenforceable provisions (paragraph 18);

(b) neither party to seek specific performance, which is designed to reinforce the close out and netting provisions (paragraph 19);

(c) how notices may be delivered and when they take effect (paragraph 20);

(d) non-assignment of rights or obligations other than a party's interest in any net sum payable to it following an event of default (paragraph 21);

(e) exercise or non-exercise of right not to constitute waiver of any other right (paragraph 22);

(f) governing law (English law) and submission to exclusive jurisdiction of English courts (paragraph 23);

(g) significance of time stipulations in the Agreement (paragraph 24);

(h) permissibility of recording of telephone conversations between the parties (paragraph 25); and

(i) waiver of sovereign or any other immunity (paragraph 26).

PARAGRAPH 27: MISCELLANEOUS

This paragraph contains various provisions, including:

(a) an entire agreement clause, that is, the Agreement (and no other prior correspondence) sets out the entire understanding of the parties;

(b) a warranty from the party who has prepared the Agreement (as defined in the Schedule) that it conforms to the standard form Agreement unless otherwise notified;

(c) no amendment to be effective unless in writing;

(d) if the parties specify in the Schedule, agreement that the Agreement shall apply to all loans outstanding as at the date of the Agreement;

(e) if the parties specify in the Schedule, agreement that each party may use a third party vendor for automatic processing;

(f) survival of warranties after termination of the Agreement for so long as obligations remain outstanding;

(g) execution of Agreement in counterparts; and

(h) exclusion of third party rights.

SCHEDULE

1. Parties are required to specify the acceptable forms of collateral to be provided under the Agreement and the applicable margin in respect of each such form. If parties wish margining to occur on a loan by loan basis, then the parties are required to mark the appropriate box accordingly. The parties are also required to specify the notification time for the purposes of the deadline for delivery of collateral.

2. Parties are required to specify the base currency.

3. The definition of "Business Day" is in part based upon days on which banks and securities markets are open for business in certain places. The parties are required to specify the places by reference to which the definition of business day is to be construed.

4. Parties may specify an alternative time at which the price or value is to be taken for the purposes of "Market Value" (if no time is specified, the price of value is to be taken at close of business on the previous business day).

5. Parties may elect to apply automatic early termination. Where parties do so the effect is that the presentation of a petition for winding-up (or any analogous proceeding) or the appointment of a liquidator (or analogous officer) is an event of default without the need to serve written notice. Parties will usually elect to do so where recommended by a legal opinion (see above).

6. Parties are required to specify the office through which they are acting for the purposes of the Agreement and also notice details.

7. Parties are required to specify details of their process agent, if appropriate.

8. If a party contemplates acting in the capacity of an agent lender, and if the addendum for pooled principal transactions is to apply, it is required to mark the appropriate box accordingly.

9. For the purposes of paragraph 27.2 of the Agreement, the identity of the party preparing the Agreement is required to be stated by marking the appropriate box.

10. The rate of default interest is required to be specified. (See Clause 11.7 in the agreement).

11. If the parties wish the Agreement to apply to outstanding transactions, they should specify this here.

12. The parties should specify here if they wish to use third party vendors for automated processing.

AGENCY ANNEX

1. TRANSACTIONS ENTERED INTO AS AGENT

This paragraph sets out the provisions relating to a transaction where a party is acting as an agent lender on behalf of a third party.

1.1 Power for Lender to enter into Loans as agent

This paragraph permits a party acting in the capacity of lender to act as agent (if such party so indicates in the Schedule). A lender which has indicated that it will act as agent must identify each loan as an agency loan unless it has indicated in paragraph 8 of the Schedule that it will always act as agent.

1.2 Pooled Principal transactions

Where the parties have indicated in the Schedule that the addendum for pooled principal transactions will apply, the lender may enter into an agency loan on behalf of more than one principal.

1.3 Conditions for agency loan

The following conditions must be satisfied in respect of an agency loan:

(a) the lender must provide to the borrower certain information to enable the borrower to identify the principal to the loan;

(b) the lender must disclose that securities are being lent by a party as agent on behalf of a third party and the identity of the principal must be disclosed at the time the loan is entered into or before close of business on the business day after date on which the loaned securities are transferred;

(c) the lender must have been authorised by a principal to perform the principal's obligations under the Agreement (see commentary on paragraph 1.5 below).

1.4 Notification by Lender of certain events affecting the principal

An agent lender is required to inform the other party of: (i) an event which would constitute an act of insolvency with respect to any principal; and (ii) if the agent lender is, at any time, not duly authorised by the principal to act on its behalf.

1.5 Status of agency transaction

There is deemed to be a separate securities lending agreement (on the same terms as those entered into between the agent lender and borrower) between each principal and borrower. However, in respect of each such separate securities lending agreement, an event of default in respect of the agent lender is deemed to be an event of default with respect to the principal.

1.6 Warranty of authority by Lender acting as agent

Each time a transaction is entered into by a party acting as agent lender, it is required to warrant to the other party that it has been duly authorised by the principal in respect of which it is purporting to act.

ADDENDUM FOR POOLED PRINCIPAL LOANS

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

Modifications to the Agency Annex

Paragraphs 3.1 and 3.2 of the Addendum amend paragraphs 1.3(b) and 1.3(c) of the Agency Annex to make clear that a party can act on behalf of more than one principal.

Allocation of Agency Loans

If an agent does not allocate a loan to one or more principals, there is a considerable degree of legal uncertainty as to the status of that loan before allocation and therefore legal risk if a party becomes insolvent before allocation takes place. Paragraph 4.1 of the Addendum requires an agent to allocate a loan before the settlement date for the loan. Paragraph 4.2 provides that, upon allocation, the loan is deemed to have been allocated with effect from the date on which the loan was entered into.

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

Allocation of collateral

Where further collateral is provided by a principal or the other party and is not immediately allocated to one or more principals, there is similarly a degree of legal uncertainty and therefore legal risk if a party becomes insolvent before allocation takes place. In order to minimise this risk, paragraph 5 of the Addendum provides that, unless the agent has already allocated the collateral, collateral transfers are deemed to have been allocated among principals in proportion to the net aggregate of each principal's exposures (defined as the “Net Loan Exposure”) at close of business on the business day before the collateral transfer is made or received.

Pooled Principals

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

Paragraph 6.1 permits the parties (i.e. the agent and the borrower), by agreement, to apply the pooling provisions to designated principals but in relation to all loans entered into for those designated principals.

Paragraph 6.3 of the Addendum provides that, for those principals to which the pooling provisions apply the agent must, at close of business on each day, make such collateral transfers as are necessary to ensure that collateral is held by each principal or by the other party for each principal in proportion to the “Net Loan Exposure” of

each principal to the other party or the other party's net loan exposure to each principal (as the case may be).

Paragraph 6.4 provides that the collateral transfers required to be made by paragraph 6.3 are effected by book entries by the agent and there are no actual payments of cash or deliveries of securities. Upon request, the agent is required (under paragraph 6.5) to provide the borrower with a statement detailing the collateral transfers effected in accordance with these provisions.

4. UK TAX ADDENDUM

4.1 The UK Tax Addendum (the ***Addendum***) is available for use where a party is resident in the UK for tax purposes or makes or receives a payment under the Agreement in the course of a trade carried on in the UK through a branch or agency (referred to below as a ***UK party***).

Application of Addendum

4.2 Paragraphs 2 to 8 of the Addendum apply to manufactured payments *made* by a UK party under paragraphs 6.2 or 6.3 of the Agreement (see above) where the loaned securities or non-cash collateral concerned are either overseas securities, net paying UK securities, REIT shares or PAIF shares (as such terms are defined in the Addendum).

4.3 Paragraph 9 of the Addendum applies to manufactured payments *received* by a UK party under paragraph 6.2 or 6.3 of the Agreement in respect of overseas securities (as defined) where the payer is not a UK party. Paragraph 9 only applies, however, where the parties specify in the Schedule to the Addendum that it is to apply.

Disapplication of gross-up

4.4 Paragraph 2 of the Addendum disapplies the borrower's gross up obligation under new paragraph 12.2(d) of the Agreement in relation to any payment to which the Addendum applies. (Paragraph 12.2(d) already excludes any obligation on the part of a lender to gross up any payment under paragraph 6.3 in respect of income on non-cash collateral: see above.)

4.5 A UK party making a payment under paragraph 6.2 or 6.3 of the Agreement to which the Addendum applies must, however, have regard to any warranty provided by the other party under the Addendum (see below), and any other relevant warranty or certification provided by such party, when determining for the purposes of paragraph 12.1 of the Agreement whether it is required to withhold any amount from that payment. Consequently, if a lender has provided a representation that enables the borrower to pay gross, the borrower must take this into account.

Warranties

4.6 A party is required to specify in the Schedule to the Addendum which (if any) of the warranties in paragraphs 4 to 7 of the Addendum it is making. Each warranty is expressed to be made on a continuing basis.

4.7 The warranties in the Addendum contain factual information that should broadly remain static (typically relating to the status of a party) rather than being information specific to the circumstances of a particular transaction. The intention is that the warranties will be relevant to a determination by a party as to whether it must withhold in respect of UK income tax from a payment made under paragraph 6.2 or 6.3 by virtue of:

(a) as regards the warranty in paragraph 4(a), regulation 5(1B) of the Income Tax (Manufactured Overseas Dividends) Regulations 1994;

(b) as regards the warranty in paragraph 4(b), regulation 3(6) of the Income Tax (Manufactured Overseas Dividends) Regulations 1994;

(c) as regards the warranty in paragraph 5, sections 933 to 937 of the Income Tax Act 2007;

(d) as regards the warranty in paragraph 6, regulation 7 of the Real Estate Investment Trusts (Assessment and Recovery of Tax) Regulations 2006; and

(e) as regards the warranty in paragraph 7, regulations 69Z24, 69Z24A and 69Z24B of the Authorised Investment Funds (Tax) Regulations 2006.

4.8 Paragraphs 5, 6 and 7 of the Addendum do not seek to accommodate all circumstances under which a payment may be made under paragraph 6.2 or 6.3 without any withholding on account of UK income tax.

4.9 Accordingly, a party who is entitled to receive such a payment without any such withholding by virtue of some other circumstance (e.g. it is a charity or a local authority) may wish separately to provide an appropriate warranty or confirmation under paragraph 2.2(b). A recipient of a manufactured payment may also use paragraph 2.2(b) to provide the paying party with information relevant to a particular transaction or payment, which it is unable to warrant on a continuing basis from the outset (e.g. confirmations based on Appendix C to HM Revenue & Customs December 2003 guidance notes on manufactured payments on overseas securities).

4.10 Due to the regularity with which revisions are made to the UK tax rules relating to manufactured payments, it is recommended that parties using the Addendum obtain advice on whether the form of any warranty is and remains appropriate.

AUKI/AUKCA status

4.11 Whether a party is an approved UK collecting agent or an approved UK intermediary is relevant to the operation of various provisions in the Income Tax (Manufactured Overseas Dividends) Regulations 1994. Each party is required therefore to notify the other if it is, becomes or ceases to be such an agent or intermediary.

Reverse charge

4.12 Where paragraph 9 applies (see above), a party making a payment under paragraph 6.2 or 6.3 must provide such information or other cooperation as may reasonably be required by the recipient to determine its obligation to account for UK income tax on the receipt under a reverse charge mechanism (e.g. section 923 of the Income Tax Act 2007). This provision is modelled on new paragraph 12.3 of the Agreement.

4.13 Paragraph 9 only applies in relation to overseas securities. It was not anticipated that a recipient of a payment in respect of net-paying UK securities, REIT shares or PAIF would require information from the payer to determine its obligations under the reverse charge mechanisms relating to such securities.

Agent lenders

4.14 The Addendum should be suitable for use in respect of agency loans. However, certain provisions in the Addendum were drafted primarily with an eye to their application to principal loans: for instance, agent lenders may be unable to provide any of the specified warranties in paragraphs 4 to 7 upon entering into the Addendum as the form of the warranties is often dictated by the circumstances of the principal concerned and an agent may act on behalf of many principals.

4.15 There are at least two possible solutions for agent lenders: (i) paragraph 2.2(b) of the Addendum should afford a flexible mechanism for agent lenders to provide or procure the provision of warranties or other documents on an ad hoc basis; or (ii) the form of the introductory language in paragraphs 4 to 7 can be amended in relation to an agent lender so that the lender agrees to provide the necessary representations at the outset of each trade or prior to any income record date.

4.16 As regards the terminology used in the Addendum: references to "Lender" when applied to agency loans should be generally be construed in respect of a particular loan as referring to the principal: this is implicit from paragraph 1.5 of the Agency Annex as discussed above; and references to the recipient of a payment are to the *actual* recipient of such payment (which in an agency context would typically be the agent). It may be advisable to make this point explicit in any tax addendum agreed by or with an agent lender.

4.17 Two exceptions to the above are that: (i) confirmations under paragraph 8 of the Addendum regarding a party's AUKI or AUKCA status should be provided separately in relation to both an agent and any principal (and not simply by the principal as the 'lender'); and (ii) an agent may wish to avail itself of paragraph 9 of the Addendum to obtain information from the borrower notwithstanding paragraph 1.5 of the Agency Annex. The parties to an agency loan may wish separately to confirm each of these points in their agreement.

Transparent entities

4.18 The application of the UK tax rules relating to manufactured payments where a payer or recipient of a payment is legally or fiscally transparent (or where there is doubt as to the status of a party) is not terribly clear and it is likely to be difficult for any such entities to make representations regarding their beneficial entitlement to particular payments. In cases of uncertainty, it is recommended that specialist advice is obtained.

5. COMPARISON OF 2010 GMSLA AND 2000 GMSLA

Introduction

5.1 The primary motivation for producing the 2010 GMSLA was to update the default valuation provisions. During the course of the credit crunch and banking crisis, the default valuations of the 2000 GMSLA and its predecessor agreements proved to be less flexible than corresponding provisions in other master agreements, particularly in relation to illiquid securities.

5.2 As a result, ISLA convened a working group of market practitioners to review and, where appropriate, update the 2000 GMSLA. While the focus of the changes was the default valuation provisions, various other changes were also made.

5.3 The opportunity was also taken to update the tax provisions in the 2000 GMSLA and a separate tax working group of market practitioners was convened for this purpose.

5.4 Some of the paragraphs of the Agreement have been re-ordered to provide a more logical approach and the agency provisions are now contained in a separate annex.

Paragraph 2: interpretation

5.5 The definition of "Business Day" has been amended to be more prescriptive in particular circumstances: delivery of securities or collateral, payments and notices.

5.6 The definition of "Market Value" has been amended to be more prescriptive as to how securities are to be valued in the event that they are suspended, can no longer be legally transferred or are transferred to a government, trustee or third party (see section 3 above).

Paragraph 5: Collateral

5.7 Paragraphs 5.4 and 5.5 have been amended to provide expressly that, for the purposes of the calculations under those paragraphs, if the income record date has occurred in respect of any non-cash collateral, the amount or market value of income payable in respect of that non-cash collateral (but only if the parties have agreed) and all amounts due and payable by the lender under the agreement but which are unpaid are to be taken into account.

5.8 Paragraph 5.8 (timing of repayments of excess collateral or deliveries of further collateral) has been amended to provide that if a demand for collateral is made by the "Notification Time", which is required to be specified in the Schedule, the collateral must be delivered by close of business on the same business day. If the demand is made after the notification time, delivery must be made by close of business on the following business day.

5.9 Paragraph 5.9 (substitutions and extensions letters of credit) has been amended to provided that substitution of a letter of credit must take place on the third business day following the notice requiring substitution.

Paragraph 6: Distributions and Corporate Actions

Loaned Securities

5.10 The default position where the parties have not agreed a rate for manufactured payments on loaned securities is essentially unchanged in the new agreement – i.e. a borrower must pay or deliver to the lender a sum or money or property equivalent to any income that the lender would be entitled to receive were it not to have loaned the relevant securities to the borrower. The new agreement does, however, lay an increased emphasis on ensuring that the parties agree a rate for manufactured payments instead of relying upon the default position (and it is understood that this is in line with standard market practice). The parties should ensure that any agreed rate is evidenced in writing.

5.11 A criticism of the default position outlined at 5.10 is that it may result in uncertainty as in order to determine the amount of income a lender would be entitled to receive the borrower must understand the tax treatment that would apply to such income, including the tax status of the lender (e.g. its eligibility for relief under a double taxation treaty) and the tax rules applying to the issuer. However, alternative approaches – e.g. a default position under which a borrower would be required to make manufactured payments equal to the full amount of any income paid by the issuer of loaned securities - were ultimately rejected.

5.12 It may be desirable to develop a best practice methodology for assisting the parties in determining the amount of manufactured payments payable to the lender (where a rate has not previously been agreed). ISLA is considering options and plans to consult with the market in due course.

Non-Cash Collateral

5.13 Under the 2000 GMSLA, a lender's obligation to make manufactured payments on non-cash collateral corresponds with that of the borrower on loaned securities – i.e. it must pay or deliver to the borrower a sum or money or property equivalent to any income the borrower would be entitled to receive were it to have retained the collateral.

5.14 The default position under paragraph 6.3 of the 2010 GMSLA (see above) is accordingly biased in favour of the lender. It is common practice for non-cash collateral to be substituted over income record dates and generally borrowers control the day to day movements of collateral. The expectation is that a borrower will seek to substitute non-cash collateral prior to any income record date if it would otherwise be prejudiced by paragraph 6.3. The corollary to this is the inclusion of new paragraph 6.4 (which may be disapplied by the parties under the Schedule to the Agreement) under which a lender indemnifies the borrower against any direct loss resulting from a failure by the lender to make reasonable efforts to effect a substitution (see above).

5.15 One requirement for the indemnity in new paragraph 6.4 to be engaged is that a lender, acting reasonably, must have indicated to the borrower its acceptance of any proposed alternative collateral. The "acting reasonably" language imposes an obligation on Lender to act reasonably when making the determination and is intended to strengthen the indemnity. Provided the proposed alternative collateral is of a type referred to in the Schedule to the Agreement, the parties should regard this requirement as satisfied, *unless* in any specific case a lender regards the proposed alternative collateral as unacceptable. ISLA will consider whether it is desirable to develop a best practice statement to cover the mechanics of this process.

Paragraph 7: Rates

5.16 Clause 7.3 has been amended to provide that payments under clause 7 are to be paid not later than the tenth business day after the end of the relevant month.

Paragraph 9: Failure to deliver

5.17 Paragraph 9 confers on the lender the ability to terminate a loan if the borrower fails to deliver equivalent securities and the borrower ability to terminate a loan if the lender fails to deliver equivalent non-cash collateral. These provisions have been amended so as to provide a "mini close-out" mechanism under which termination takes place in accordance with the default valuation provisions as if an event of default had occurred (but it is stated expressly that any failure to deliver is not an event of default). These provisions replicate those applicable to repurchase transactions which are contained in the Global Master Repurchase Agreement (2000).

5.18 Paragraph 9.2 makes clear that a borrower can elect to continue a loan if the lender fails to deliver equivalent non-cash collateral.

5.19 Paragraph 9.3 has been clarified so that where a party fails to deliver equivalent securities or equivalent non-cash collateral, in addition its remedies under the mini close-out mechanism described above, it is entitled to recover from the other party:

(a) interest, overdraft or similar costs and expenses incurred; and

(b) costs and expenses incurred as a direct result of a buy in exercised against it by a third party.

Paragraph 10: Events of Default

5.20 The following changes have been made to the definition of "Event of Default":

(a) a failure to deliver equivalent securities or non-cash collateral is no longer an event of default

(b) a failure to make a manufactured payment remains an event of default, but a three day grace period has been introduced;

(c) automatic early termination now applies only if the parties specify this in the Schedule;

(d) a party's admission of its inability to perform obligations will be an event of default only where the failure in question would itself be an event of default;

(e) it will be an event of default if a material part of a party's assets are transferred to a trustee;

(f) it will no longer be an event of default if investors' assets are transferred to a trustee

(g) regulatory or exchange prohibition or suspension will be an event of default only if it is on the grounds of failure to meet financial resource or credit rating requirements.

Paragraph 11: consequences of an Event of Default

5.21 The default valuation provisions, which are used to determine the value of securities that were to have been delivered by and to the defaulting party, have been significantly amended. The new provisions (described above) are modelled on those contained in the 2000 version of the Global Master Repurchase Agreement. They provide a non-defaulting party with much greater flexibility when valuing relevant securities. This is particularly important in the case of illiquid securities where it might not be possible to obtain a market price or quotes from market makers or dealers, or where such quotes are not commercially reasonable and the provisions now enable a non-defaulting party to determine a "Net Value" of securities.

5.22 The provisions also allow a non-defaulting party to extend the five day default valuation period if "owing to circumstances affecting the market" in the securities in question, it is not reasonably practicable for the non-defaulting party to determine a net value of such securities which is commercially reasonable.

5.23 Finally, the provisions for converting one currency to another have been amended, again to provide greater flexibility for the non-defaulting party. They now state that the conversion is take place using the spot rate at such date and times determined by the non-defaulting party acting reasonably.

Paragraph 12: Taxes

5.24 With the exception of the provisions allocating liability for stamp taxes to a borrower, paragraph 12 of the 2010 GMSLA represents new drafting.

5.25 New paragraphs 12.1 to 12.3 clarify the parties' respective responsibilities in circumstances where a withholding or deduction for or on account of tax is required in respect of a payment made by one party under the Agreement. They accordingly address payer rather than issuer-level withholding. These paragraphs are modelled on provisions contained in the 2002 version of the International Swaps and Derivatives Association master agreement.

5.26 Paragraphs 12.4 and 12.5, which allocate liability for stamp tax (now defined at paragraph 2) to a borrower, have been slightly amended to ensure that a borrower is not liable for any such tax to the extent arising from a lender breach of the Agreement.

5.27 Paragraph 12.6 is a new provision allocating responsibility for sales tax (now defined at paragraph 2) to a party making a payment under the Agreement.

5.28 New paragraph 12.7 seeks to provide certainty that the amount of any payment made by a party under the Agreement will not subsequently be affected by a retrospective change in applicable law (now defined at paragraph 2 and which includes published practice of any government or taxing authority) or judicial decision (other than a decision specific to a particular agreement).

5.29 As regards taxes not covered by paragraph 12 (for instance, capital gains taxes or taxes on corporate income) the expectation is that a suitable allocation of responsibility for such taxes is generally achieved by allowing them to lie where they fall. Parties may of course expressly agree upon an alternative basis of allocation, for instance, where appropriate having regard to the tax laws of a particular jurisdiction.

Paragraph 14: Borrower's warranties

5.30 A warranty has been added that the borrower is not entering into a loan for the purposes of obtaining or exercising voting rights in respect of the relevant loaned securities. This is consistent with best practice guidance set out in the SLRC's Code of Guidance.

Paragraph 21: Assignment

5.31 This paragraph has been amended to permit a party to assign any net sum payable to it following an event of default.

Paragraph 27: Miscellaneous

5.32 New provisions have been added so that:

(a) if the parties so specify in the Schedule, the Agreement will apply to all loans outstanding as at the date of the Agreement;

(b) if the parties so specify in the Schedule, each party may use a third party vendor for automatic processing.

The Agency Annex

5.33 The provisions in paragraph 1.3 (conditions for agency loan) that relate to disclosure and the provision of information to take account of the ISLA model for agent lender disclosure (see www.isla.co.uk].

5.34 A new addendum has been added which allows an agent lender to enter into a loan for more than one principal and contains provisions addressing allocation of loans and collateral and rebalancing of collateral.

The UK Tax Addendum

5.35 The 2000 UK Tax Addendum was available for use in respect of loans and collateral in the form of overseas securities. It revised the default provisions in the 2000 GMSLA relating to a borrower's (in respect of loaned securities) and a lender's (in respect of collateral) obligations to make manufactured payments where no rate was agreed. It also required a borrower to substitute collateral securities prior to any income becoming payable unless the lender could make a manufactured payment without triggering any requirement to account for UK income tax.

5.36 The 2010 UK Tax Addendum adopts a different approach: it does not alter the default position under paragraph 6 of the 2010 GMSLA as regards the parties' respective obligations to make manufactured payments; and instead, the main functions performed by the 2010 UK Tax Addendum are to:

(a) disapply the gross up in paragraph 12 of the 2010 GMSLA in respect of manufactured payments on loaned securities to which it applies (see above); and

(b) require the payer to take account of representations and information provided by the recipient when determining whether it must withhold from such payment. It also then sets out a common form for various representations that may be given.

5.37 Also, where paragraph 9 of the new 2010 UK Tax Addendum is applied, a recipient of a manufactured payment is empowered to seek information or cooperation from the payer if reasonably required to determine its obligation to account for UK income tax on the receipt under a reverse charge mechanism (see above).

6. OVERVIEW OF TAX RISK ALLOCATION UNDER 2010 GMSLA AND 2000 GMSLA

The table below summarises the allocation of tax risk under the new agreement as compared with the 2000 GMSLA.

Tax risk	**Allocation of risk under 2000 GMSLA**[2]	**Allocation of risk under 2010 GMSLA**[3]
Issuer-level withholding tax on income paid in respect of loaned securities	Amount payable by borrower to lender to equal amount lender would have received but for the stock loan, unless a different sum is agreed (paragraph 6.1). If UK tax addendum applies, default position (i.e. where no agreement) as regards any income payment is for borrower to pay 100% unless a lesser amount is agreed or unless "appropriate tax vouchers" are provided (paragraph 6.1(ii) as inserted by UK tax addendum). (UK tax addendum applies to loans of non-UK equities (or collateral in such form) and is only suitable for use by UK parties.)	Amount payable by borrower to lender to be agreed by parties. In default of agreement, borrower pays amount equal to what lender would have received but for the stock loan (paragraphs 6.1 and 6.2).
Withholding tax on manufactured payments in respect of loaned securities	No express gross up. If UK tax addendum applies (see above), borrower pays net of any UK withholding and if requested supplies "appropriate tax vouchers" (paragraph 6.3(iii) as inserted by UK tax addendum). (Unless otherwise agreed and unless "relevant withholding tax" is zero, payments must be made through an approved UK intermediary or approved UK collecting agent (paragraph 6.3(iv) as inserted by UK tax addendum).)	Borrower grosses up (paragraph 12.2(d)). Lender required to provide documentation and assistance reasonably requested by borrower to avoid or reduce withholding (paragraph 12.3). If UK tax addendum applies (see above), gross up is disapplied but borrower is required to take account of warranties and documentation provided by lender (paragraph 2 of UK tax addendum).

---

[2] Except where otherwise indicated, references in this column to paragraphs are to paragraphs in the 2000 GMSLA.

[3] Except where otherwise indicated, references in this column to paragraphs are to paragraphs in the 2010 GMSLA.

Tax risk	Allocation of risk under 2000 GMSLA[2]	Allocation of risk under 2010 GMSLA[3]
Issuer-level withholding tax on income paid in respect of non-cash collateral	Amount payable by lender to borrower to equal amount borrower would have received but for provision of collateral unless a different sum is agreed (paragraph 6.1). If UK tax addendum applies, where collateral is not required to be substituted (see below), lender pays borrower the amount it receives and provides "appropriate tax vouchers" (if any).	Amount payable by lender to borrower to be agreed by parties. In default of agreement, lender pays borrower an amount equal to what lender would have received assuming no entitlement to double taxation treaty or other reliefs (paragraph 6.3). Expectation is that borrower will substitute non-cash collateral prior to income record date. If failing to cooperate, lender may be required to indemnify borrower (paragraph 6.4).
Withholding tax on manufactured payments in respect of non-cash collateral	No express gross up. If UK tax addendum applies (see above), collateral must be substituted *unless* there would be no obligation to account for UK income tax[4].	No gross up as express carve out in paragraph 12.2(d). Where UK tax addendum applies (see above), there is still no gross up, but lender is expressly required to take account of warranties and documentation provided by borrower when assessing its obligation to withhold (paragraph 2 of UK tax addendum).
Withholding tax on interest payable in respect of cash collateral	No express gross up.	Lender grosses up (paragraph 12.2(d)). Borrower required to provide documentation and assistance reasonably required by lender to avoid or reduce withholding (paragraph 12.3).
Reverse charge withholding tax on receipt of manufactured payments (loaned securities and collateral)	No express provision. Where UK tax addendum applies, however, collateral may have to be substituted before any income becomes payable if a reverse charge obligation would otherwise arise[5].	No express provision. Where the UK tax addendum applies and the parties so elect (see above), a party making a manufactured payment must provide such information or other cooperation as may reasonably be required by the recipient to avoid or reduce its obligation to account for UK income tax on the receipt under a reverse charge mechanism.

---

4 The UK tax addendum refers to payment of tax under Schedule 23A of the Income and Corporation Taxes Act 1988, which should by virtue of paragraph 2.6 of the 2000 GMSLA extend to any statutory re-enactments. Relevant obligations should include therefore deductions from manufactured payments and a recipient's reverse charge obligations in respect of manufactured overseas dividends (at the time of writing, sections 922 and 923 of the Income Tax Act 2007).)

5 See footnote 4 above.

Tax risk	**Allocation of risk under 2000 GMSLA[2]**	**Allocation of risk under 2010 GMSLA[3]**
Retrospective change in law	No risk allocation.	Amounts payable under agreement determined by reference to applicable law at date of payment and are not subject to adjustment following retrospective change in law or subsequent judicial decision (unless relating to a particular agreement) (paragraph 12.7).
Transfer taxes	Borrower risk (paragraph 11).	Borrower risk except where arises by virtue of lender breach of obligations under agreement (paragraphs 12.4 and 12.5).
Sales taxes	No risk allocation.	All sums payable under the agreement are exclusive of any sales tax (paragraph 12.6).
Corporate and capital gains taxes	No risk allocation.	No risk allocation.