

Holger Hartenfels  
Chairman of the EFMLG Task Force

13 September 2010

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**EFMLG REPORT:  
REVIEW OF THE GMRA 2000 – UPDATE ON PROGRESS**

At the EFMLG meeting with trade associations on 30 June, in which ICMA participated, we agreed to give you an update in September on the progress we are making on the review of the GMRA 2000, focusing on the five key areas addressed in the EFMLG report on standard market documentation, dated 12 April.

As we explained in our letter dated 22 April, in order to ensure that the GMRA remains the leading market standard agreement for cross border repo transactions, in late 2009 ICMA's European Repo Committee put together a working group to review the agreement.

The GMRA review working group is made up of in-house lawyers from various ICMA member firms (some of whom are also represented on the EFMLG) as well as external legal practitioners (Freshfields and Clifford Chance). Representatives from other trade associations have also been invited to participate. The review working group has focused on lessons learned from the financial crisis and recognises the benefits of harmonisation across master agreements in relevant areas. Indeed, the review working group dedicated considerable time to reviewing the EFMLG report. A number of measures promoting harmonisation are being considered, some of which are set out below. You will appreciate that, as the review is ongoing, these may be subject to change.

**Events of default**

The EFMLG report called for harmonisation of the default provisions across master agreements. One of the issues highlighted within the report was the differences between agreements in relation to an inability to pay debts. It is proposed that in the revised GMRA the clause dealing with this issue be amended to widen its scope and more closely reflect the approach taken in the ISDA 1992/2002.

Another area of focus in the report was petitions for bankruptcy, winding up or insolvency. In this regard, it is proposed that the revised standard specifies that petitions for winding up or any analogous proceeding filed by a Competent Authority (defined) will not be subject to the thirty day grace period of other third party petitions. This again more closely reflects the approach taken by the ISDA 2002.

The appointment of certain officials will trigger an event of default across the master agreements. As the EFMLG report rightly points out, it is a challenge to find appropriate wording which adequately

covers concepts across a variety of jurisdictions. Whilst most master agreements contain 'catch all' wording, including the GMRA 2000, it is proposed that the revised standard will include references to 'conservators' and 'custodians' in order to harmonise with the language used in other master agreements.

Further, it is proposed that the definition of 'Act of Insolvency' in the GMRA is amended to incorporate an additional event, i.e. *'a secured party taking possession of, or carrying out other enforcement measures in relation to, all or substantially all assets of such party, provided the relevant process is not dismissed, discharged, stayed or restrained within [30] days'*. This broadens the definition to align with the ISDA 1992/2002.

### **Termination notices**

The EFMLG report highlighted the practical benefits of the GMRA 2000 providing for an alternative notice delivery mechanism in order to protect the non-defaulting party. This will be retained in the new standard.

Elsewhere, the review working group has agreed that references to TELEX should be removed as these are now outdated and that further clarity regarding the use of email and the associated definition of 'electronic messaging' should be sought.

Further to this, the review working group is considering how to harmonise the definitions of 'business day' and 'close of business' in relation to termination notices.

### **Automatic early termination**

It is proposed that the revised GMRA will align with the GMSLA 2010 and the ISDA 1992/2002 by requiring parties to specify in the Annex of the agreement that Automatic Early Termination will apply, thus creating a standardised approach across the master agreements. In the revised standard GMRA, it is proposed that Automatic Early Termination will effect an Early Termination Date, immediately preceding the occurrence of an Act of Insolvency which is the presentation of a petition for winding up or any analogous proceeding or the appointment of a liquidator or analogous officer.

### **Calculation of close out amounts**

The EFMLG report focused on issues relating to flexibility in relation to the calculation of close out amounts. In particular, the 'spot rate' definition given in the GMRA 2000 was deemed too prescriptive. The revised GMRA has broadened the definition and also redefined its application. It is proposed that the spot rate is no longer linked to a particular quoted rate but to a rate agreed by the parties (or in the absence of such agreement, specified by the buyer). In the situation where a default has occurred and Market Value is to be determined, the spot rate is proposed to be that prevailing at such dates and times determined by the non-defaulting party.

### **Collateral and margin dispute**

We were interested to hear the EFMLG's views on this topic. It has been discussed at length within the review working group, which has decided that a dispute resolution framework would best sit outside the contractual arrangements of the GMRA. This topic is now on the agenda of ICMA's

European Repo Committee, which will be looking to existing frameworks, e.g. the ISDA 2009 Collateral Dispute Resolution Procedure, for an indication of what works in this regard.

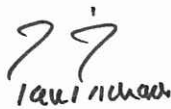
### Next steps

We would like to thank the EFMLG for producing the report on standard market documentation, which has proved a valuable tool in the GMRA review process and more broadly has contributed to the ongoing dialogue between associations on standard market documentation. In this letter, we have provided a short preview of the amendments that are proposed to be made to GMRA 2000 at this stage. Where market efficiencies may be created through harmonisation, these are being carefully considered.

ICMA aims to conclude the GMRA review process by the end of 2010. The revised GMRA will then be published alongside the 2011 GMRA legal opinions in spring 2011. As the EFMLG has continually stressed, it is important that the markets adopt the most up to date version of any agreement. In this regard, ICMA will be developing a protocol and/or amendment agreement to assist market participants in adopting the revised standard. We will of course let the EFMLG know, as soon as this documentation is published.

I am copying this letter to Antonio Sainz de Vicuna at the ECB, as well as to David Geen at ISDA, Kevin McNulty at ISLA, Rob Toomey at SIFMA, Michael Raffan at Freshfields and Habib Motani at Clifford Chance.

Yours sincerely

Handwritten signature of Paul Richards, consisting of stylized initials 'PR' and the name 'Paul Richards' written below.

Paul Richards  
ICMA

Handwritten signature of Lisa Cleary, a cursive signature.

Lisa Cleary  
ICMA