European Master Agreement for Financial Transactions (EMA)
The New Derivatives Annex and its Supplements

The Basis Facts

- The European Master Agreement for Financial Transactions (EMA) is sponsored by the European banking associations, namely the Banking Federation of the European Union (FBE), the European Savings Banks Group and the European Association of Co-operative Banks.
- The EMA was first published in 1999 and was slightly modified in 2001. It is now available in the new 2004 version.
- The EMA was developed and continues to be reviewed by the FBE EMA working group, the work of which is heavily based on contributions made from the European national banking associations.
- The EMA is a cross-product netting and margining agreement that covers repurchase transactions, securities loans and now – for the first time – also derivatives transactions.
- The EMA is available in seven languages (English, German, Greek, Italian, French, Spanish, Portuguese).
- The EMA is designed to be enforceable under different European states' governing laws, as selected by the parties.
- The EMA is accompanied by legal opinions on the enforceability of netting for almost all jurisdictions within Europe.

The Goals of and the Approach Taken by the EMA

- Providing a single standard of documentation, especially for non-cross-border transactions within Europe.
- Developing a reliable approach for cross product netting and margining.
- Harmonising the terms and conditions for derivatives transactions, without re-inventing the wheel.
- Using the key terminology of the derivatives world (e.g., Trade Date, Effective Date, Payment Date) in order to enable back offices and operations to continue to use their current confirmation templates and systems.
- Facilitating a harmonisation of instruments and terms, which are used for all products (e.g., the terms and condition for the execution of options or the fallbacks for market disruptions).
- Ensuring that the documentation can make use of other Market Standard Documentation (e.g., the German Master Agreement or the ISDA Master Agreements) to further reduce mismatches and basis risks, if necessary.

The Building Block Structure of the EMA

- The basis document of the EMA comparable to the pre-printed forms of the German Master Agreement or the ISDA Master Agreements is the General Provisions. They contain the provisions that are applicable to all transactions. Amongst others, you will find: The single agreement concept, the termination and close-out provisions and the governing law.

- The General Provisions are supplemented by the Annexes for the relevant product types (so-called “Product Annexes”) and the Margin Maintenance Annex.
- The following Product Annexes are currently available: Repurchase Annex, Securities Loans Annex, Derivatives Annex.
- The Derivatives Annex is further supplemented by Product Supplements for Foreign Exchange Transactions, Interest Rate Transactions and Options Transactions.
- The Special Provisions is the document actually executed by the parties. It contains all selections and modifications agreed between them. In the Special Provisions the parties also determine whether the relevant master agreement is a single product master agreement (only one Product Annex) or a cross product master agreement (two or more Product Annexes).
- Parties are free to “build” their own master agreement by selecting the relevant Product Annexes, Product Supplements and/or the Margin Maintenance Annex.
- A derivatives master agreement consists of the following parts (each specified as applicable in the Special Provisions): (1) The General Provisions, (2) the Derivatives Annex and (3) the Supplements.

The New Derivatives Annex

- The scope of the products potentially covered by the Derivatives Annex (the “Annex”) has been drafted broadly.
- The definition of “Derivatives Transaction” in Section 1(1) of the Annex includes: (i) all over-the-counter market transactions (exchange traded futures and options are excluded), (ii) all types of structures including, for example, spots, forwards, options, swaps, caps, floors and collars and any combination thereof, (iii) each underlying, including but no limited to, interest rate, foreign exchange, equity, bonds, precious metal, energy, other commodities, credit risk, weather or economic conditions, and (iv) both cash settled transactions as well as physically settled transactions.
- In order to include a Derivative Transaction in the relevant master agreement, Section 1(2) of the Annex provides two options: (i) individual inclusion by reference in the Confirmation of the relevant Transaction or (ii) automatic inclusion by agreement in the Special Provision.
- The automatic inclusion requires that the relevant type of Transaction is precisely defined. This is the reason why the EMA Product Supplements provide comprehensive definitions of the transactions they cover. In respect of Foreign Exchange Transactions, the automatic inclusion is deemed to be applicable if the parties have agreed that the Foreign Exchange Supplement applies.
- When documenting Derivative Transactions the parties may elect one of the following two options: (i) using the terms and conditions specified in the Product Supplements (the “Supplement Approach”) or (ii) using other Market Standard Documentation (the “Bridge Approach”). Both approaches are independent of each other and the parties may agree to use both parallel to each other.
- The Bridge Approach does not change the applicable law agreed between the parties for the relevant master agreement. Such law also governs the Transactions entered into, which make use of Market Standard Documentation. However, the parties may agree that the terms and condition of the Market Standard Documentation may be construed in accordance with a different law (Section 2 of the Annex).