



## **ISLA CONSULTATION ON REVISED VERSION OF THE GMSLA**

1. ISLA published a consultation paper in July 2007 setting out possible amendments to the Global Master Securities Lending Agreement (GMSLA). Since then ISLA legal and tax working groups have been reviewing the comments received on that paper and, with generous drafting assistance from Freshfields together with Deloitte and Touche and PriceWaterhouseCoopers on the tax-related sections, ISLA has produced a revised text of the Agreement for public consultation (see attached).

2. ISLA is now seeking comments from member firms and other interested parties on the proposed new text by 30 June 2008. Preferably, these should be in the form of specific drafting suggestions. They should be sent to:

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### **Objectives of the review**

3. The review of the GMSLA had a number of objectives:
- To update the Agreement to reflect changes in law, tax and market practice, as well as new issues arising, since the original version was produced in 2000.

- To address some of the amendments that lenders and borrowers commonly make to the Agreement bilaterally using side letters.
- Where appropriate, to use the same language and form as the Global Master Repo Agreement (GMRA) (2000 version).
- To identify all likely events that may have a tax consequence and identify the party that will bear the associated tax risk.

### **Summary of proposed changes**

4. In the order of the paragraphs of the revised Agreement, the significant proposed changes from the GMSLA (2000 version) are as follows:

- Paragraph 2: new definitions of Agency Annex, Delivery, Evidence of Tax Deduction, Tax and Tax Event
- Correction to paragraph 5.6 (agreement to set-off collateral margin movements) which should relate to paragraph 5.5 (marking to market on a loan-by-loan basis) rather than paragraph 5.4 (marking to market on an aggregated basis).
- Paragraph 5.9: extension to allow Borrowers until the third Business Day following a request by a Lender to deliver cash or other Collateral in substitution for a Letter of Credit. Previously, the Borrower had to substitute on the following Business Day.
- Paragraphs 5.10 and 6.1: new obligation on the Borrower to recall any non-cash Collateral over an interest payment date provided it has delivered adequate alternative Collateral. Failure to comply with this obligation is not an Event of Default. But, under paragraph 6.1 (b), the Lender pays what Income it receives rather than what the Borrower would have been entitled to receive had it not given the securities as Collateral.
- Paragraph 9 and 10: Failure to deliver Equivalent Securities or Collateral is no longer a potential Event of Default. Rather the options open to the other party are either to continue the loan or to terminate the particular Loan (but only that Loan) according to the set-off arrangements described in paragraph 11.2. Following a

failure to deliver, under paragraph 9.3, the other party is able to claim for direct costs if it is unable to act on corporate actions, for costs in relation to any buy-in exercised against it and for direct costs associated with buying or borrowing securities to meet an onward delivery obligation.

- Paragraph 11: The set-off procedures following an Event of Default have been broadly harmonised with those in the GMRA.
- Paragraph 12: A 'gross-up' requirement for tax deducted or withheld has been added in relation to all payments other than manufactured payments on Collateral (for which, see paragraph 6.1 (b) referred to above).
- Paragraph 12: Borrowers are made liable for stamp, registration and documentation taxes.
- Paragraph 12: Any other taxes eg sales taxes or VAT are made the responsibility of the party in whose jurisdiction they arise.
- Paragraph 12: A Tax Event having a material adverse effect gives either party the right to terminate a Loan.
- Paragraph 12: A Tax Event with retrospective effect does not give grounds for reversing prior actions.
- Agency Annex: An Agency Annex has been added, replacing the former paragraph 16 of the main Agreement and in line with the GMRA.
- Addendum for Multiple Principal Transactions: An addendum has been added, modeled on the similar addendum to the GMRA (2000 version) where Agents wish to make Agency Loans on behalf of more than one Principal and allocate collateral on a pro-rata basis amongst them (also known as a collateral allocation letter).
- UK Tax Addendum: an updated UK tax addendum has been added, covering both Overseas Securities and real estate investment trust shares. ISLA is not proposing to publish standard tax addenda for any other jurisdictions at this time.

A number of more minor drafting changes have been made and the order of some of the paragraphs has been altered so that the Agreement follows the life cycle of a trade more naturally.

### **Consent fees**

A particular question that has arisen recently concerns the treatment of consent fees paid to bondholders by the issuer when they agree to a change (typically a relaxation) of the terms of a bond. In some cases, such fees are paid based on a record date in the past so that lenders do not have an opportunity to recall securities in order to make an election and, if they agree, to receive the fee. One possibility would be to amend paragraphs 6.1 and/or 6.4 (corporate actions) to make it clear that such elections fall within corporate actions and that borrowers are required to manufacture a payment equal to any such fee back to the borrower. Views are sought on this possibility.

International Securities Lending Association  
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