

ICMA publishes 2011 Global Master Repurchase Agreement

The Global Master Repurchase Agreement (GMRA) is used across the globe as the standard contract for documenting transactions in the international repo market. After reviewing the 2000 version of the GMRA in light of the financial crisis and the Lehman collapse, the International Capital Market Association (ICMA) has now published the new 2011 GMRA.

Repo is the term commonly used in the market to describe a securities sale and repurchase transaction. Under a "classic" repo, the owner of securities (the seller) will sell the securities (typically bonds or shares) to a bank or other finance provider (the buyer) for a price and agree to buy back equivalent securities at a specified future date for the repurchase price. Thus the seller is able to generate funds from the securities, and on the basis that its holding of the securities should be restored on an agreed future date when the buyer will transfer equivalent securities back to the seller. Repos therefore form part of the huge global securities financing market.

The GMRA is the most widely used contract in the international repo market. In response to the financial crisis, an ICMA working group (including market practitioners and legal specialists) was established to review and update the GMRA. This has culminated in the new 2011 GMRA, which is available on the ICMA website (www.icmagroup.org).

Many of the changes made in the 2011 GMRA are intended to reflect lessons learned over the past few years (particularly following the Lehman collapse) and to improve counterparty risk mitigation. Amendments have also been made with a view to greater alignment between market standard documentation and to reflect changes in market practice and legal and regulatory issues.

Overview of the major changes

Highlights of the changes made in the 2011 GMRA include the following.

- The methodology in calling an Event of Default has been amended and is now more aligned with the procedure in the 2002 ISDA Master Agreement. Under the 2000 GMRA to have an Event of Default you need both the occurrence of the relevant event and a notice by the non-Defaulting Party. The occurrence of the Event of Default leads automatically to a close out. Under the 2011 GMRA the relevant event is an Event of Default but it will not trigger close out unless the non-Defaulting Party gives notice. So a cross default can now potentially occur even if a close out has not been initiated. Under the 2000 GMRA the presentation of a petition for the winding up of a party, or the appointment of a liquidator, triggers an automatic close out. Now, under the 2011 GMRA, the parties have to elect whether they want this event to lead to an automatic close out.
- Increased flexibility is afforded to the non-Defaulting Party as regards the default valuation time and valuation procedures.

Key Issues

ICMA has published the 2011 GMRA and Protocol

For details of the changes as against the 2000 GMRA, see our chart which begins on page 3

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- The definition of Act of Insolvency has been expanded and brought closer to the definition of Bankruptcy in Section 5(a)(vii) of the 2002 ISDA Master Agreement.
- The concept of a Margin Percentage has been introduced, which will allow parties to adjust the value attributed to Margin Securities if they agree to do so.
- A procedure has been introduced which allows for payment of a Cash Equivalent Amount on a return of collateral where Equivalent Margin Securities are not available.
- A contractual set-off clause has been included, which provides that the close-out amount payable to one party (the payee) by the other (the payer) following an Event of Default may, at the option of the non-Defaulting Party, be set off against any amount payable by the payee to the payer under any other agreement between them.

For fuller details of these and other changes, **see our chart which begins on the next page.**

The Protocol

ICMA has also published the 2011 Global Master Repurchase Agreement Protocol to enable parties to a 1995 GMRA or a 2000 GMRA to effect efficiently amendments to those agreements to bring certain provisions in line with the new 2011 GMRA. The Protocol is open for adherence.

Useful links

[ICMA homepage](#)

[ICMA 2011 GMRA page](#)

Summary of Key Changes in the 2011 GMRA (c.f. the 2000 GMRA)

Para	Provision	Summary of Key Changes
2	Definition: "Act of Insolvency"	<p>The definition of Act of Insolvency has been amended to:</p> <ul style="list-style-type: none"> include the situation where a secured party takes possession of, or carries out other enforcement measures in relation to, all or substantially all of the assets of a party, provided that the process is not dismissed, discharged, stayed or restrained within 15 days; provide for an additional trigger upon a party's becoming insolvent or becoming unable to pay its debts as they become due or failing to pay its debts as they become due (the trigger relating to a party admitting in writing its inability to pay its debts as they become due is also retained); reduce the number of days from 30 to 15 for petitions (alleging or for the bankruptcy, winding up or insolvency of a party) to be stayed or dismissed. Additionally, an Act of Insolvency will occur on the commencement of proceedings by a Competent Authority (to which the 15 day period does not apply); include the appointment of a conservator or custodian over all or any material part of a party's property as a trigger – this clarifies the position in the 2000 GMRA, where a custodian or conservator may not have been regarded as an analogous officer to a receiver, administrator, liquidator or trustee. <p>These amendments bring the definition closer to the definition of Bankruptcy in Section 5(a)(vii) of the 2002 ISDA Master Agreement.</p>
2	Definition: "Applicable Rate"	<p>A definition of Applicable Rate has been included to complement the amendments to the default interest provisions of the GMRA. Following an Event of Default, the Applicable Rate will be the rate selected in a commercially reasonable manner by the non-Defaulting Party (rather than LIBOR), which will allow much more flexibility to the non-Defaulting Party to determine the appropriate rate. In all other circumstances, the rate will be the rate agreed between the parties (and may be specified in Annex I or in a Confirmation).</p>
2	Definition: "Business Day"	<p>The Business Day definition has been simplified, and the specific references to Clearstream and Euroclear settlement have been removed, so that:</p> <ul style="list-style-type: none"> in relation to the settlement of a Transaction or the delivery of Securities through a settlement system, a Business Day will be a day on which that settlement system is open for business; in relation to the settlement of a Transaction or delivery of Securities otherwise than through a settlement system, a Business Day will be a day on which banks are open for business in the place where the relevant Securities are to be delivered and, if different, the place in which the relevant payment is to be made; and in relation to the payment of any other amount, a Business Day will be a day, other than a Saturday or Sunday, on which banks are open for business in the principal financial centre of the country of which the currency in which the payment is denominated is the official currency and, if different, in the place where any account designated by the parties for the making or receipt of the payment is situated (or, in the case of a payment in euro, a day on which TARGET2 operates).
2	Definition: "Cash"	<p>A definition of Cash Equivalent Amount has been included, which cross-refers to the meaning given in paragraph 4(h) (see below for details).</p>

	Equivalent Amount"	
2	Definition: "Competent Authority"	A definition of Competent Authority has been included, referring to a regulator, supervisor or similar official with primary insolvency, rehabilitative or regulatory jurisdiction over a party in the jurisdiction of its incorporation or establishment or jurisdiction of its head office.
2	Definition: "Default Notice"	The definition of Default Notice has been amended so that the purpose of such notice will be to designate a day as an "Early Termination Date" for the purposes of the Agreement.
2	Definition: "Early Termination Date"	A definition of Early Termination Date has been included. This will be the date designated as such in the Default Notice, or as otherwise determined in accordance with paragraph 10(b). The terminology for these purposes reflects that used in the 2002 ISDA Master Agreement.
2	Definition: "Electronic Messaging System"	A definition of Electronic Messaging System has been included, which specifically covers email. This new definition complements other changes which allow for notices or other communications to be given through an Electronic Messaging System.
2	Definition: "Equivalent Securities"	The definition of Equivalent Securities has been amended to clarify that Distributions should not be included when calculating the redemption proceeds of Purchased Securities under that definition; nor should they trigger the proviso relating to certain corporate type actions in the related definition of "equivalent to".
2	Definition: "Forward Transaction"	A definition of Forward Transaction has been included, which cross-refers to the meaning specified in Annex I.
2	Definition: "Income"	The definition of Income now expressly includes Distributions (previously they were excluded).
2	Definition: "Margin Percentage"	A definition of Margin Percentage has been included. In relation to any Margin Securities or Equivalent Margin Securities, this will be the percentage, if any, agreed to by the parties acting in a commercially reasonable manner. The application of a Margin Percentage will allow parties to adjust the value attributed to Margin Securities.
2	Definition: "Margin Securities"	The definition of Margin Securities has been amended to refer to Securities of the type and value (having applied a Margin Percentage, if any) reasonably acceptable to the party calling for the Margin Transfer.
2	Definition: "Market Value"	<p>The definition of Market Value now contemplates the application of a Margin Percentage when valuing Margin Securities. The definition also now allows the parties to agree a source or other method for valuing the relevant Securities. Securities will now be valued pursuant to market practice for valuing such Securities.</p> <p>The definition in the 2000 GMRA provided that Securities that are suspended will be deemed to have a nil value for the purposes of margin maintenance – this provision has been deleted.</p>
2	Definition:	The definition of Net Margin has been amended to incorporate the concept of the Cash Equivalent Amount, so that such amounts will be

	"Net Margin"	included in a determination of Net Margin.
2	Definition: "Spot Rate"	<p>The definition of Spot Rate has been amended so that, following an Event of Default, the source for the rate will be a pricing source or bank in the London inter-bank market, specified by the non-Defaulting Party.</p> <p>For all other purposes, the source for the rate will be as agreed between the parties. However, if no source is agreed between the parties, the source will be selected by the Buyer.</p>
2	Definition: "TARGET2"	A definition of TARGET2 has been included to replace the definition of TARGET.
2	Definition: "Transaction Exposure"	<p>The definition of Transaction Exposure has been substantially amended and now sets out two alternative methods of calculation for the parties to choose from by making the relevant election in Annex I.</p> <p>Method (A) reflects the method of calculation used under the 2000 GMRA, where exposure is equal to: (i) the product of the Repurchase Price and the applicable Margin Ratio, less (ii) the Market Value of Equivalent Securities.</p> <p>Method (B) is a new method of calculation, which we understand reflects the practice of a number of market participants. Under this method, exposure is equal to: (i) the Repurchase Price; less (ii) the Adjusted Value of Equivalent Securities (being the Market Value of Equivalent Securities after adjustment for any discount ("haircut") for the relevant Securities, if any, as agreed by the parties).</p> <p>If the result of the above calculations is positive, Buyer has a Transaction Exposure equal to the result of the calculation. If the result is negative, Seller has a Transaction Exposure equal to the absolute value of the result of the calculation. Provided, in the case of Method (A), that the Transaction Exposure is capped at the Repurchase Price.</p> <p>(In relation to Forward Transactions, note that the definition of Transaction Exposure set out in Annex I is retained and is unchanged.)</p>
4	Margin Maintenance	<p>The margin maintenance provisions set out in paragraph 4 have been amended to contemplate the payment of cash in the place of Equivalent Margin Securities in certain circumstances.</p> <p>Newly inserted paragraph 4(h) provides that, where a party (the Transferor) is obliged to transfer Equivalent Margin Securities and, having made all reasonable efforts to do so, is, for any reason relating to the Securities or the clearing system through which the Securities are to be transferred, unable to transfer Equivalent Margin Securities then it shall immediately pay to the other party Cash Margin at least equal to the Market Value of such Equivalent Margin Securities. Unless the parties otherwise agree, such Cash Margin shall not bear interest.</p> <p>Additionally, if the failure is continuing for two Business Days or more, the other party may, by notice to the Transferor, require the Transferor to pay an amount (the "Cash Equivalent Amount") equal to the Default Market Value of the Equivalent Margin Securities determined by the other party in accordance with paragraph 10(f) which applies as if the other party were the non-Defaulting Party and references to the Early Termination Date were to the effective date of the notice.</p>
5	Income Payments	The provisions relating to Income Payments have been amended so that if an Income Payment Date occurs after the Repurchase Date, but before Equivalent Securities have been delivered to the Seller (or, if earlier, the Early Termination Date or termination of the Transaction

		under paragraph 10(ii)) then the Buyer must pay the Seller an amount equal to (and in the same currency as) the amount paid by the issuer, on the date such income is paid by the issuer. Consequential amendments have also been made to refer to the payment of Cash Equivalent Amounts, where applicable.
6	Payment and Transfer	<p>Paragraph 6 has been amended to refer to any agreed book entry or other securities clearance system (instead of just Euroclear and Clearstream). An exemption from the requirement that a transfer of Securities must be made free and clear of liens has been included, to allow for liens granted to the operator of the clearance system through which the relevant Securities are transferred. An equivalent amendment has been made to the representation of no liens in paragraph 9.</p> <p>It is worth pointing out that paragraph 6(j) has not been amended substantially from the equivalent provision in the 2000 GMRA. This provision is similar to Section 2(a)(iii) of the ISDA Master Agreement, and, provided that the parties have elected for this provision to apply in Annex I, it makes it a condition precedent to any obligation of a party (other than an obligation upon a close-out of the GMRA) that no Event of Default has occurred and is continuing with respect to the other party. Section 2(a)(iii) of the ISDA Master Agreement is the subject of ongoing litigation, see our briefing from December 2010.</p>
8	Substitution	An amendment has been made to paragraph 8 to clarify that the Market Value for new Margin Securities is determined as at the time the exchange is agreed.
9	Representations	The representation in paragraph 9(h) to the effect that any transfer of Securities is made free and clear of liens has been amended to carve out liens granted to the operator of the clearance system through which the relevant Securities are transferred.
10	Events of Default - General	Changes have been made throughout this paragraph 10 to reflect the new definition of Early Termination Date (the Repurchase Date for each Transaction shall be deemed to occur on the Early Termination Date). Amendments have also been made to refer to the payment of Cash Equivalent Amounts, where applicable.
10(a)	Events of Default - Methodology	<p>The methodology in calling an Event of Default has been amended and is now more aligned with the procedure in the 2002 ISDA Master Agreement. Under the 2000 GMRA to have an Event of Default you need both the occurrence of the relevant event and a notice by the non-Defaulting Party. The occurrence of the Event of Default leads automatically to a close out. Under the 2011 GMRA the relevant event is an Event of Default but it will not trigger close out unless the non-Defaulting Party gives notice, so a cross default can now occur even if a close out has not been initiated. Under the 2000 GMRA the presentation of a petition for the winding up of a party, or the appointment of a liquidator, triggers an automatic close out. Now, under the 2011 GMRA, the parties have to elect whether they want this event to lead to an automatic close out – now termed an Automatic Early Termination.</p> <p>In addition, certain changes have been made to the list of events comprising Events of Default.</p> <ul style="list-style-type: none"> • Sub-paragraph (a)(ii) has been amended so that this Event of Default is triggered when the relevant party fails to deliver Purchased Securities or Equivalent Securities on the due date "within the standard settlement time for delivery of the Securities concerned". • Sub-paragraph (a)(iv) has been amended to describe more specifically the Events of Default relating to margin maintenance, rather than simply cross-referring to the obligations in paragraph 4. It will be an Event of Default if the Seller or Buyer fails to: <ul style="list-style-type: none"> ◦ make a Margin Transfer within the minimum period in accordance with paragraph 4(g) or, in the case of an obligation to

		<p>deliver Equivalent Margin Securities, either to deliver the relevant Equivalent Margin Securities or to pay Cash Margin in accordance with paragraph 4(h)(i) or to pay the Cash Equivalent Amount in accordance with paragraph 4(h)(ii); or</p> <ul style="list-style-type: none"> ○ where paragraph 4(i) applies, to provide margin in accordance with that paragraph; or ○ to pay any amount or to transfer any Securities in accordance with paragraphs 4(k) or (l). <ul style="list-style-type: none"> • Sub-paragraph (a)(ix) has been largely replaced to reflect the new definition of Competent Authority and other changes. It will be an Event of Default if a party is declared in default or is suspended or expelled from membership or participation in any securities exchange, or if a party is suspended or prohibited from dealing in securities by any Competent Authority, in each case on the grounds that it has failed to meet any requirements relating to financial resources or credit rating.
10(b)	Events of Default - Designation of Early Termination Date	<p>The new procedure for the designation of an Early Termination Date (which initiates close out) is set out in paragraph 10(b). This paragraph resembles the equivalent provision in the 2002 ISDA Master Agreement.</p> <ul style="list-style-type: none"> • If at any time an Event of Default has occurred and is continuing the non-Defaulting Party may, by not more than 20 days' notice to the Defaulting Party specifying the relevant Event of Default, designate an Early Termination Date in respect of all outstanding Transactions. • Where Automatic Early Termination has been specified in Annex I with respect to the Defaulting Party, the Early Termination Date in respect of all outstanding Transactions will occur at the time immediately preceding the occurrence with respect to the Defaulting Party of the 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 of the Defaulting Party.
10(d) (was 10(c))	Events of Default - Close out calculations	<p>A new paragraph 10(d)(iii) has been included, which requires the non-Defaulting Party to provide to the Defaulting Party, as soon as reasonably practicable after effecting the close out calculations, a statement showing in reasonable detail such calculations and specifying the balance payable by one party to the other. Such balance shall be due and payable on the Business Day following the date of such statement however (to the extent permitted by applicable law) interest shall accrue on such amount on a 360 day, 365 day or other day basis in accordance with the applicable market convention (or as otherwise agreed by the parties), for the actual number of days during the period from and including the Early Termination Date to, but excluding, the date of payment.</p> <p>Additionally, paragraph 10(d)(ii) now explicitly provides that the calculation of the close out amount payable will take into account amounts payable under paragraphs 10(g) (expenses and interest thereon) and 12 (Interest).</p>
10(e) (was 10(d))	Events of Default - Definition of "Default Market Value" and related definitions	<p>Paragraph 10(e) has been amended to provide more flexibility to the non-Defaulting Party when determining the Default Market Value of any Equivalent Securities or Equivalent Margin Securities as part of the close out procedure – which the non-Defaulting Party is required to do "on or as soon as reasonably practicable after the Early Termination Date".</p> <p>Accordingly, the definition "Default Valuation Time" (which in the 2000 GMRA was the close of business on the fifth dealing day after the occurrence of the Event of Default, in most cases) has been deleted.</p>

The definition of "Net Value" has been amended to include trading prices as price sources that the non-Defaulting Party may have regard to and also extend Transaction Costs to include not just those which would be incurred, but also those which are reasonably anticipated.

The definition "Transaction Costs" has been broadened to include any mark-up or mark-down or premium paid for guaranteed delivery and also to cover costs not just incurred, but also those which are reasonably anticipated.

<p>10(f) (was 10(e))</p>	<p>Events of Default - Procedures for the calculation of Default Market Value</p>	<p>A number of amendments have been made to the Default Market Value procedures in paragraph 10(f), many of which provide more flexibility to the non-Defaulting Party.</p> <ul style="list-style-type: none"> • Sub-paragraph (i): This first potential valuation method, which allows the non-Defaulting Party to elect to use actual sale or purchase prices as a basis for the determination of the Default Market Value, now applies where the non-Defaulting Party has sold or purchased, as applicable, relevant Securities on or about the Early Termination Date - in the 2000 GMRA, the relevant time period was between the occurrence of the Event of Default and the Default Valuation Time. In addition, this provision has been amended to provide that reasonable commissions, as well as reasonable costs, fees and expenses incurred in connection with the sale/purchase may be taken into account to determine the net proceeds of any sale or purchase, and also to require the non-Defaulting Party to act in "good faith". • Sub-paragraph (ii): This second valuation method, which allows the non-Defaulting Party to elect to reference received bid or offer quotations as a basis for the determination of the Default Market Value, has been amended to: <ul style="list-style-type: none"> ○ reference "pricing methodology which is customary for the relevant type of security"; ○ provide for the adjustment, in a commercially reasonable manner, of any quoted price or prices (x) to reflect accrued but unpaid coupons not reflected in the price or prices quoted in respect of such securities and (y) in respect of any Pool Factor Affected Security, to reflect the realisable value of such Security, taking into consideration the Pool Factor Distortion ("Pool Factor Affected Security" means a security other than an equity security in respect of which the decimal value of the outstanding principal divided by the original principal balance of such Security is less than one (as indicated by any pool factor applicable to such security), such circumstances a "Pool Factor Distortion"); and ○ extend Transaction Costs, which are deducted or added, as applicable, as part of the calculation, to include not just those which would be incurred, but also those which are reasonably anticipated. • Sub-paragraph (iii): This third valuation method, which provides a fallback method of determining the Default Market Value, has been amended to reflect lessons learned in the financial crisis. Under the 2000 GMRA, this method is only available to the non-Defaulting Party where (a) he has endeavoured but is unable to sell or purchase Securities or obtain quotations in accordance with the two methods described above, or (b) he has determined that it would not be commercially reasonable to obtain such quotations, or that it would not be commercially reasonable to use any quotations which it has so obtained. Under the 2011 GMRA, this method will also be available where the non-Defaulting Party has determined that it would not be commercially reasonable to sell or purchase Securities at the prices bid or offered.
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		The non-Defaulting Party is no longer required to give the Defaulting Party a "Default Valuation Notice" under this paragraph.
10(g) (was 10(f))	Events of Default - Expenses incurred	Paragraph 10(g) has been amended so that interest on the expenses incurred by the non-Defaulting Party will accrue at the Applicable Rate (instead of LIBOR).
10(i) (was 10(h))	Events of Default - Buyer's failure to deliver Equivalent Securities	Paragraph 10(i) now expressly provides for the situation where a Buyer fails to deliver "some or all" Equivalent Securities to the Seller on the applicable Repurchase Date. Where a Buyer delivers some, but not all, required Equivalent Securities, the Transaction may be determined in part.
10(l) (was 10(k))	Events of Default – Losses / expenses re replacement transactions	Paragraph 10(l) has been broadened to allow the innocent party recover any loss or expense incurred, not just in entering into replacement transactions, but also in "otherwise hedging its exposure", following the termination of a Transaction before its agreed Repurchase Date (or, newly included, in the case of a Forward Transaction, before its Purchase Date) under paragraphs 10(b), 10(h)(iii) or 10(i)(iii).
10(m) (was 10(l))	Events of Default - Requirement to notify	Paragraph 10(m) has been amended to reflect the changes made to the methodology in calling an Event of Default. A party is now required to immediately notify the other if an Event of Default, or an event which, "upon the service of a notice or the lapse of time, or both" would be an Event of Default, occurs in relation to it.
10(n)	Events of Default - Set-off provision	<p>This new paragraph 10(n) is a contractual set-off clause, which broadly provides that the close-out amount payable to one party (the payee) by the other (the payer) following an Event of Default may, at the option of the non-Defaulting Party, be set off against any amount payable by the payee to the payer under any other agreement between them. Full extract below:</p> <p>"Any amount payable to one party (the Payee) by the other party (the Payer) under paragraph 10(d) may, at the option of the non-Defaulting Party, be reduced by its set off against any amount payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement between the Payee and the Payer or instrument or undertaking issued or executed by one party to, or in favour of, the other party. If an obligation is unascertained, the non-Defaulting Party may in good faith estimate that obligation and set off in respect of the estimate, subject to accounting to the other party when the obligation is ascertained. Nothing in this paragraph shall be effective to create a charge or other security interest. This paragraph shall be without prejudice and in addition to any right of set off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise)."</p>
12	Interest	Paragraph 12 has been amended so that default interest accrues at the Applicable Rate (instead of LIBOR) and the day count basis is determined in accordance with applicable market convention or as otherwise agreed by the parties (instead of referencing the applicable ISMA convention).

14	Notices	Amendments have been made to paragraph 14 to allow notices or other communications to be sent by Electronic Messaging System (which expressly includes email) and to delete the specific provision which dealt with notices or communications sent by telex. In addition, consequential amendments have been made to reflect the new methodology in calling an Event of Default (i.e. references to Default Notices are deleted, provisions in relation to Early Termination Notices are inserted).
17	Governing law	The governing law and jurisdiction provisions in paragraph 17 have been updated to reflect the Rome II Regulation (EC/864/2007), which allows parties to choose the law applicable to most torts and other non-contractual obligations in certain circumstances. In addition, exclusive jurisdiction is now given to the English courts. Finally, additional provisions have been included which provide that, if a party fails to comply with its obligation to appoint a replacement agent for service of process, then the other party will be entitled to appoint one on the first party's behalf and at its expense.
Annex I	Annex I: Supplemental Terms or Conditions	Annex I has been amended to complement the amendments described above. In particular, note that new elections are included in respect of Transaction Exposure Method and Automatic Early Termination. In addition, a new (optional) supplemental provision has been included to deal with negative rate transactions. This provision states that, in the case of Transactions in which the Pricing Rate will be negative, the parties agree that if Seller fails to deliver the Purchased Securities on the Purchase Date then – (i) Buyer may by notice to Seller terminate the Transaction (and may continue to do so for every day that Seller fails to deliver the Purchased Securities); and (ii) for every day that Seller fails to deliver the Purchased Securities the Pricing Rate shall be zero.

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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