Securities and Derivatives Group
July 2015

Repo, securities lending and the Greek debt crisis

Page contents

1. Introduction

1.1. The Greek debt crisis, and in particular the heightened risk of Greece leaving the Eurozone following the referendum on 5 July 2015, presents many questions in relation to financial transactions. In repo and securities lending transactions, the existence of cash and securities legs combined with the various structural features of repo and securities lending gives rise to a number of pertinent issues unique to these transactions.

1.2. This briefing considers some of the key issues in relation to repo and securities lending in the context of a potential "Grexit" and refreshes our previous briefing ("Repo, Securities Lending and Eurozone Contingency Planning – 9 February 2012") with a particular focus on the situation on Greece.

2. Grexit Scenarios and Assumptions

2.1. At this stage it is not clear if, when or how Greece might leave the Eurozone and there is currently no mechanism in the EU treaty framework for any member state to leave the euro without also leaving the EU.

2.2. Each potential Grexit scenario would give rise to a different set of legal considerations and would involve a considerable number of unknowns. For example, there would be some combination of new EU legislation, EU treaty amendments and new Greek domestic legislation. Capital controls have already been introduced as a temporary measure, and these may be extended and expanded together with exchange controls. Any redenomination of debts by Greece could apply to any combination of sovereign debt, debt of any entities incorporated or resident in Greece, debts subject to Greek governing law, debts to be enforced in Greece or any debt payable in Greece. It is also possible that, instead of exiting the Eurozone, Greece introduces some form of parallel currency. Finally, depending on decisions taken by the ECB and/or at a political level, the solvency of one or more Greek banks and corporates may be called into question.

2.3. Given the numerous permutations of a Eurozone exit, and in order to simplify the analysis and consideration of the issues, this briefing proceeds on the basis of the following assumptions:

a) Greece leaves the Eurozone and introduces national legislation establishing a new domestic currency and redenominating all sovereign debt and the debt of any entity incorporated in Greece. Capital controls remain in place and exchange controls are introduced;

b) a hypothetical repo transaction (the "**Repo**") has been entered into between a Buyer and Seller under a standard unamended 1995, 2000 or 2011 Global Master Repurchase Agreement ("**GMRA 1995**", "**GMRA 2000**" or "**GMRA 2011**" respectively, each a "**GMRA**") where the

Buyer has paid the Seller a purchase price denominated in euro against a transfer of purchased securities in the form of euro-denominated government bonds issued by the Hellenic Republic ("**GGBs**"). The Seller is incorporated in Greece. The Buyer is incorporated in England;

c) a hypothetical securities lending transaction (the "**Securities Loan**") has been entered into between a Borrower and Lender under a standard unamended 1995 Overseas Securities Lender's Agreement ("**OSLA**"), 2000 Global Master Securities Lending Agreement ("**GMSLA 2000**") or 2010 Global Master Securities Lending Agreement ("**GMSLA 2010**", and together with the GMSLA 2000, the "**GMSLAs**", and the GMSLAs and the OSLA together, the "**SLAs**") where the Borrower has borrowed from the Lender euro-denominated shares (the "**Shares**") issued by a corporate incorporated in Greece against the transfer of collateral to the Lender in the form of euro-denominated government bonds issued by the Hellenic Republic ("**GGBs**") or cash collateral denominated in euro. The Borrower is incorporated in Greece. The Lender is incorporated in England; and

d) no insolvency has occurred in respect of either the Buyer or the Seller (in the case of the Repo) or the Borrower or Lender (in the case of the Securities Loan) or any other relevant entity, although we consider the position of the insolvency or recovery procedure of a Greek bank counterparty in the context of whether an Event of Default may be triggered under a GMRA or SLA.

2.4. The views expressed in this briefing relate to the position under English law and are of course entirely subject to the terms of any EU or Greek domestic legislation passed in relation to the exit.

2.5. Finally, the matters under discussion here may come before courts other than English courts, notwithstanding the use of any exclusive or non-exclusive jurisdiction clauses in the GMRAs and GMSLAs or the arbitration clause in the OSLA. The Seller under the Repo or the Borrower under the Securities Loan may seek to bring an action in Greece, or it may become necessary to enforce an English judgment in the Greek courts, which in each case may reach judgments based upon different principles to those discussed in this briefing. In particular, a Greek court may be more likely to reach a position which is consistent with any domestic legislation passed in Greece, regardless of the position under English law. We discuss the jurisdiction clauses under the various master agreements in section 11 below.

2.6. Unless the context otherwise requires, capitalised terms used but not defined in this briefing are as defined in the relevant GMRA or SLA as applicable

3. Key issues in the context of Repo and Securities Lending

3.1. The questions that arise in the context of a repo or securities lending transaction from the scenario considered in this briefing are numerous, but the analysis can be simplified by being broken down into two principal questions:

a) **Continuity and termination** – would the departure of Greece from the Eurozone, the resulting introduction of a new domestic currency or the introduction of capital and exchange controls trigger:

i. a termination or discharge of obligations under the Repo or Securities Loan under general legal principles such as the doctrine of frustration (sometimes referred to as the "continuity of contracts" issue);

ii. an Event of Default under the GMRAs or SLAs; or

iii. a contractual termination event under the GMRAs or SLAs?

b) **What happens to euro-denominated payments, securities & calculations?**

i. Payments: is the payer is still obliged to pay in euro or is it permitted or required to pay in the new domestic currency? The core payment obligations in repo and securities lending transactions which we consider below are: Repurchase Price (repo), payment or repayment of Cash Margin (repo) or Cash Collateral (securities lending), income payments, fee (securities lending) and close-out netting payments;

ii. Securities: both repo and securities lending transactions involve various

obligations to transfer securities, whether bonds or shares, either as the underlying securities of the transaction (Purchased Securities (repo)/Loaned Securities (securities lending)) or as margin/collateral (Margin Securities (repo)/ Collateral Securities (securities lending)). In each case the transferee is required to transfer back to the transferor "equivalent" securities. If the securities are redenominated from euro into the new domestic currency, what is the transferee permitted/obliged to transfer to the transferor as "equivalent" securities?; and

iii. Calculations: some euro-related provisions in repo and securities lending agreements are not obligations or payments in themselves but merely calculations or reference points for determinations or amounts. It does not follow that the same analysis applicable to payment obligations also applies to these calculations. We consider below the concepts of Base Currency, margin/collateral calculations and close out netting calculations.

3.2. We consider each of these questions below in the context of the GMRAs and SLAs. We do not purport to cover every relevant obligation or provision under these agreements, but instead highlight several of the more important provisions to illustrate the issues.

3.3. We conclude with some suggestions on practical steps that parties may wish to consider in order to reduce any legal or contractual uncertainty, or provide for desired outcomes, in their new and existing transactions and agreements, recognising that these may now be more relevant for potential contagion risk with other Eurozone member states or in the event that Greece is provided with a further bailout or some form of debt relief.

3.4. We do not consider the effect of the recent "default" by Greece in repaying its IMF loan on cross-default provisions in the GMRAs or SLAs for the simple reason that there are no cross-default provisions in these agreements.

4. Continuity of Contracts

4.1. A common concern is the potential impact of the exit of a member state from the Eurozone on the continuity of contracts. Specifically, would this event lead to the termination of affected contracts, or give rise to the right of a party to unilaterally terminate affected contracts, under general legal principles such as frustration on the grounds of impossibility or illegality?

4.2. Since the introduction of the euro, some master agreements have included contractual continuity clauses:

a) in the case of securities lending transactions, paragraph 2.5 GMSLA 2000 and GMSLA 2010 is a specific continuity clause which provides that the "introduction of and/or substitution (in place of an existing currency) of a new currency as the lawful currency of a country shall not have the effect of altering, or discharging, or excusing performance under, any term of the Agreement or any Loan thereunder, nor give a Party the right unilaterally to alter or terminate the Agreement or any Loan thereunder". There is no such provision in the OSLA; and

b) in the case of repo transactions, there is a form of continuity clause in paragraph 16(e) GMRA 2000 and GMRA 2011 but this only relates to new countries joining the euro, and not to countries leaving it. There is no continuity clause in the GMRA 1995.

c) Consequently, in relation to a potential exit of Greece from the Eurozone and the introduction of a new domestic currency, the position under the GMSLAs is clearer than that for the OSLA and the GMRAs. However, even in the case of the OSLA and the GMRAs, it is unlikely that the exit of Greece from the Eurozone and the introduction of a new domestic currency would of themselves lead to a frustration of the agreements.

In the context of contingency planning, that residual risk could be mitigated by including continuity clauses in new and existing GMRAs and OSLAs.

4.3. However, the imposition of capital and exchange controls in Greece may in some circumstances raise legal questions as to impossibility/illegality of performance and therefore potentially frustration. Neither the GMRAs nor the SLAs contain express illegality or force majeure clauses such as those contained in ISDA Master Agreements for derivatives. Those provisions allow parties to terminate affected transactions and therefore provide greater certainty of, and control over, the outcome.

In the context of contingency planning, this risk could be mitigated by including an express illegality and/or force majeure clause in new and existing GMRAs and SLAs.

5. Events of Default

5.1. Each of the GMRAs and SLAs contains a suite of contractual Events of Default ("**EODs**"). Paragraph 10(a) of the GMRAs sets out those events that constitute EODs for repo transactions and paragraph 12.1 OSLA/ 14.1 GMSLA 2000/ 10.1 GMSLA 2010 set out the EODs for securities lending transactions. The following EODs are potentially relevant and worthy of discussion, particularly in the context of the imposition of capital and exchange controls.

Repo

Failure to pay Repurchase Price

5.2. The GMRAs provide for an EOD where the Seller fails to pay the Repurchase Price on the Repurchase Date. If the Repurchase Price in our Repo example is found to remain denominated in euro despite the introduction of a new Greek domestic currency, then if the capital and exchange controls imposed by Greece prevent the Seller from paying the Repurchase Price in euro, it is possible that an EOD will occur if the Seller is not able to pay the Repurchase Price on the Repurchase Date. However, as discussed in sections 4 and 7 of this briefing, the imposition of capital and exchange controls may in some circumstances relieve the Buyer from the obligation to pay the Repurchase Price in euro if it would be illegal to do so. In such a case it is unclear whether an EOD would be triggered. The same analysis will apply in respect of any other EODs triggered by failures to pay cash denominated in euro (such as a failure to pay Cash Margin or income denominated in euro).

In their contingency planning, parties may wish to consider including an express illegality and/or force majeure termination event to avoid an EOD but still preserve termination rights, bearing in mind any risk that an EOD may also apply to themselves.

Failure to deliver Equivalent Securities

5.3. The GMRA 2000 and GMRA 2011 provide for an EOD (if elected to apply in Annex I) for failure by the Buyer to deliver Equivalent Securities on the Repurchase Date. In our Repo example, if the Purchased Securities are redenominated the question arises whether they fail to qualify as Equivalent Securities, potentially triggering an EOD. Whether redenominated securities constitute Equivalent Securities for this purpose is discussed under section 8 below, where we conclude that they should still qualify, making an EOD unlikely. Under the GMRA 1995, failure to deliver Equivalent Securities is not an EOD, although (as for the GMRA 2000) there is a termination event (see section 6 below).

Risk mitigation could include expressly providing that redenominated securities would still qualify as "equivalent".

Insolvency

5.4. There is an EOD under each GMRA upon an Act of Insolvency of either party. This would not be triggered directly by the scenario contemplated in this briefing but remains relevant given the possible effect on Greek bank counterparties of a withdrawal of ECB liquidity support, and for Greek counterparties generally if their economic position deteriorates as a result of Grexit. For Greek corporates, the position is likely to be straightforward with a normal analysis of the EOD. For Greek banks, if any of the Greek banks becomes insolvent or goes into a recovery procedure, however, the question arises whether this will trigger an EOD under a GMRA entered into with that bank. This will not necessarily be a straightforward question and will depend on (a) exactly what type of insolvency/recovery procedure has been

initiated and by whom and (b) the terms of the particular GMRA.

5.5. The definition of "Act of Insolvency" in the GMRA 1995 and GMRA 2000 is the same and is widely drafted, although it includes lists of specific insolvency procedures and specific insolvency officials which were drafted before the global financial crisis and before new insolvency and recovery procedures for EU banks were implemented. Consequently an analysis would need to be done of the relevant event, procedure and local law to ensure that it falls within these terms and reliance may need to be placed on an analysis of the "analogous officer", "analogous proceeding" and "similar relief" language in the definition.

5.6. The GMRA 2011 contains an amended version of the definition which takes into account developments in the global financial crisis, and seeks to build in greater flexibility by including proceedings by a "Competent Authority"being "a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over a party". This should make it easier for any insolvency or recovery procedure to trigger this Event of Default, but the analysis will still need to be performed against the facts at the time. Risk mitigation could include updating definitions of "Act of Insolvency" in GMRA 1995 and GMRA 2000 to capture the full range of potential insolvency or recovery procedures.

5.7. Note that it is a separate question whether, if an "Act of Insolvency" Event of Default has technically occurred, a party will be able to close out if there is any stay imposed under Greek legislation. Local law will need to be analysed on this issue.

Breach of representation

5.8. A breach of representation will be an EOD under each GMRA. Paragraph 9(e) of the GMRAs contains a repeating representation that "…performance of this Agreement and the Transactions contemplated hereunder will not violate any law…or rule applicable to it…". It is conceivable that the imposition of capital and exchange controls could lead to a breach of this representation, particularly given that the GMRAs do not contain an illegality or force majeure provision.

Parties should consider in their contingency planning whether to include an express illegality and/or force majeure termination event.

Admission of inability to perform

5.9. It will be an EOD under each GMRA upon a party admitting that it is unable to perform any of its obligations. Again, it is conceivable that the imposition of capital and exchange controls could lead to a party triggering this EOD. The affected party may in turn argue that it is not unable to perform its obligations but has been prevented from doing so by a change in law.

Contingency planning could include providing instead for an express illegality and/or force majeure termination event.

Securities lending

Failure to pay or repay Cash Collateral

5.10. There is an EOD under the SLAs where the Borrower or Lender fails to pay or repay Cash Collateral on the relevant due date. If the currency of the Cash Collateral in our Securities Loan example is found to remain denominated in euro despite the introduction of a new domestic currency by Greece, then if the Greek capital and exchange controls prevent the Borrower from paying the Cash Collateral in euro, it is possible that an EOD will occur if the Borrower is not able to pay the Cash Collateral on the due date. However, as discussed above, the imposition of capital and exchange controls may relieve the Borrower from the obligation to pay the Cash Collateral in euro if it would be illegal to do so. In such a case it is unclear whether an EOD would be triggered. The same analysis will apply in respect of any other EODs triggered by failures to pay cash denominated in euro (such as a failure to pay income or the securities lending fee denominated in euro).

Contingency planning could include providing for an express illegality and/or force majeure termination event.

Failure to deliver Equivalent Securities or Equivalent Collateral

5.11. The GMSLA 2000 provides for an EOD for failure by the Borrower to deliver Equivalent Securities on the due date, and both the OSLA and GMSLA 2000 provide for an EOD for failure by the Lender to deliver Equivalent Collateral on the due date. In addition, the GMSLA 2000 provides for an optional EOD as an alternative to a termination right if the Borrower or Lender fails to redeliver Equivalent Securities or Equivalent Collateral respectively. In our Securities Loan example, if the Shares or GGBs are redenominated, the question arises whether they fail to qualify as Equivalent Securities or Equivalent Collateral respectively, potentially triggering an EOD. Whether redenominated securities constitute Equivalent Securities or Equivalent Collateral for this purpose is discussed under section 8 below, where we conclude that (in the case of the GMSLA 2000 and GMSLA 2010) they expressly still qualify and (in the case of the OSLA) they should still qualify, making an EOD unlikely.

Risk mitigation could include expressly providing in any OSLAs that redenominated securities would still qualify as "equivalent".

Insolvency

5.12. Each SLA provides for an EOD upon an Act of Insolvency of either party. This would not be triggered directly by the scenario contemplated in this briefing but, as explained for repo above, remains relevant given the possible effect on Greek banks and corporates of the political and economic position.

5.13. The definition of "Act of Insolvency" in the SLAs is very similar to that in the GMRA 1995 and GMRA 2000 (without the benefit of the broader definition in the GMRA 2011) and consequently an analysis would need to be done of the relevant event, procedure and local law to ensure that it falls within the definition and reliance may need to be placed again on an analysis of the "analogous officer", "analogous proceeding" and "similar relief" language in the definition.

5.14. Note that it is a separate question whether, if an "Act of Insolvency" Event of Default has technically occurred, a party will be able to close out if there is any stay imposed under Greek legislation. Local law will need to be reviewed on this issue.

Breach of warranty

5.15. Each SLA provides for an EOD upon a breach of warranty. There are various continuing warranties in the SLAs, including that the parties are not restricted in any manner from performing their obligations under the agreement. It is conceivable that the imposition of capital and exchange controls could lead to a breach of this warranty, particularly as the SLAs do not contain an illegality or force majeure provision.

As for repo, parties should consider in their contingency planning whether to include an express illegality and/or force majeure termination event.

Admission of inability to perform

5.16. The SLAs provide for an EOD upon a party admitting that it is unable to perform any of its obligations. Again, it is conceivable that the imposition of capital and exchange controls could lead to a party triggering this EOD. The affected party may in turn argue that it is not unable to perform its obligations but has been prevented from doing so by a change in law.

Contingency planning could include providing instead for an express illegality and/or force majeure termination event.

6. Contractual Termination Events

6.1. Neither the GMRAs nor the SLAs contain a suite of termination events of the type found, for example, in ISDA master agreements for derivatives. However, there are a number of contractual termination events which can be found in the agreements and which should be considered including (a) for repo, termination for failure to deliver Equivalent Securities and Tax Event, and (b) for securities lending, termination for failure to redeliver Equivalent Securities or Equivalent Collateral and optional termination of a Loan.

Repo

Termination for failure to deliver Equivalent Securities

6.2. Each GMRA includes a so-called "mini close-out" provision which permits the Seller, amongst other things, to terminate an affected transaction if the Buyer fails to deliver Equivalent Securities to it on the Repurchase Date. The potential relevance of this relates to whether securities which have been redenominated are "equivalent" and therefore whether the Buyer has complied with, or failed in, its obligation to deliver Equivalent Securities. We discuss this in section 5.3 above in relation to EODs and in section 8 below where we conclude that this is unlikely to be an issue.

Risk mitigation could include expressly providing that redenominated securities would still qualify as "equivalent".

Tax Event

6.3. Paragraph 11 of the GMRAs is a termination event entitled "Tax Event" but has been drafted widely so that it may encompass other changes that have a material adverse effect on a party to a transaction and could therefore be read as a form of material adverse change clause. The effect of the clause is that either party materially adversely affected by a tax event may terminate any affected transaction upon notice subject to a right of veto (upon providing an indemnity) by the other party.

6.4. However, the wording of the clause extends to "any change in the fiscal or regulatory regime (including, but not limited to, a change in law…)" that "has or will, in the notifying party's reasonable opinion, have a material adverse effect on that party in the context of a transaction". In theory, this is possibly wide enough to allow an argument that it captures, for example, the introduction of new laws imposing capital and exchange controls or potentially even the introduction of the new domestic currency itself. Against this it could be argued that the clause is intended to cover tax and tax-related issues only, that it refers to the "fiscal" rather than "monetary" regime and therefore the wording should be given a narrow construction. However, the literal wording is wider than required to cover just tax and so the possibility of its application by a Greek counterparty cannot be ruled out.

Parties may wish to consider expressly providing that the exit of a member state from the Eurozone will not trigger the application of this clause and instead including, if required, an express illegality and/or force majeure termination event.

Securities lending

Termination for failure to redeliver Equivalent Securities or Equivalent Collateral

6.5. OSLA: The OSLA contains a termination right for the Lender if the Borrower fails to redeliver Equivalent Securities after a call by the Lender under its optional termination right (see below). This termination event treats the relevant event "as if" an Event of Default has occurred, but no actual EOD occurs. There is no equivalent termination event for the Borrower if the Lender fails to redeliver Equivalent Collateral as this is instead an Event of Default.

6.6. GMSLA 2000: The GMSLA 2000 contains a termination right for the Lender if the Borrower fails to redeliver Equivalent Securities (either at scheduled termination of a Loan or upon a Lender call under its optional termination right (see below)) and a termination right for the Borrower if the Lender fails to redeliver Equivalent Collateral (either at scheduled termination of a Loan or upon a Borrower call under its optional termination right (see below)). These provisions also contain an option to call an Event of Default.

6.7. GMSLA 2010: The GMSLA 2010 contains the same termination rights as for the GMSLA 2000 above. However, there is no equivalent right to call an Event of Default.

6.8. As with repo, the relevance of these provisions relates to any potential for argument that redenominated securities are not "equivalent", which we discuss elsewhere where we conclude that this is unlikely to be an issue.

Risk mitigation could include expressly providing that redenominated securities would still qualify as "equivalent".

Optional termination of a Loan

6.9. Under the SLAs each of the Borrower and the Lender has an optional right to terminate any Loan, subject to the terms of that Loan. This right could, of course, be exercised by either party at any time including in the event of a Eurozone exit (subject to the terms of the relevant Loan). This may crystallise other issues discussed in this briefing, such as obligations to pay sums in euro or deliver Equivalent Securities or Equivalent Collateral.

7. Euro-Denominated Payments

7.1. What happens to a party's euro-denominated payment obligations? The analysis can be broken down into the following principal questions/risks:

a) What currency is the obligation expressed to be payable in under the contract?

b) If euro, what does this mean – the continuing single currency or is there a risk that it will be determined to mean the new domestic currency of Greece?

c) If it means the continuing single currency, is there a risk that it would be redenominated into the currency of Greece or that the payment obligation will be unenforceable?

7.2. We illustrate the key issues below in the context of some of the main payment obligations under the Repo and the Securities Loan in our examples. It will be seen that the principal considerations are:

a) construction of the contract itself – what does the contract provide, and what does it mean?;

b) in that context, the definition (if any) and meaning of "euro"; and

c) the place of payment and any other factors connecting the transaction with Greece.

Repurchase Price (repo)

7.3. In our Repo example, if the Purchase Price is denominated in euro and the currency of the jurisdiction of the Seller changes to a new domestic currency, together with a redenomination of the currency of the underlying Purchased Securities into the new domestic currency, then the question naturally arises whether the Seller is obliged to repay in euro or in the new domestic currency.

Construction of the contract

7.4. The starting point in our scenario is to construe the contract in accordance with English law as its governing law. Under the GMRAs all payments made in respect of the Purchase Price or Repurchase Price are required to be made in the Contractual Currency and "Contractual Currency" is defined as the currency of the Purchase Price of a transaction. The pro forma Confirmation includes a line item for parties to specify the Contractual Currency in order to add certainty.

7.5. In the case of our Repo example, the Purchase Price is denominated in euro and therefore the Contractual Currency is the euro. Consequently, the contract provides for the Repurchase Price to be paid in euro.

Definition & meaning of "euro"

7.6. However, given that we have assumed that Greece has left the single currency and established a new domestic currency, the Seller is incorporated in Greece and Greece has purported to redenominate its debts and those of its nationals, this raises the question of the meaning of "euro", at least in the context of the Repurchase Price. In particular, does "euro" mean:

a) the single currency of the member states participating in the Eurozone from time to time; or

b) the currency of the jurisdiction of the Seller from time to time, which happened to be euro at the time of entering into the transaction; or

c) the currency of the underlying Purchased Securities from time to time, which happened to be euro at the time of entering into the transaction?

7.7. In order to determine the meaning of "euro", you would again start by analysing the contract to see how "euro" has been defined. In repo transactions, however, the position is typically somewhat unsatisfactory. There is

no definition of euro in the GMRA and no standard definitions are incorporated into Confirmations unlike, for example, the derivatives market where transactions will usually incorporate one of the various ISDA definitions booklets. This means that the position will depend on a trade by trade analysis of whether a definition of euro has been included at all (as in many cases no definition is added to a Confirmation) and, if so, an analysis of the wording of that definition. The following are the possible scenarios and in each case we express our view of the most likely interpretation (subject to the other considerations in the remainder of this briefing):

a) if a standard definition has been included along the lines of the standard ISDA definitions, then this should result in a construction that euro is intended to mean the single currency of the Eurozone from time to time and not the new domestic currency;

b) if a definition has been included (which we assume is very unlikely) defining the euro as the currency from time to time of a particular member state (such as Greece), then this should result in a construction that euro is intended to mean the currency of that member state, which will be the new domestic currency in the case of Greece;

c) if a different definition has been included, its meaning and effect will need to be considered on a case by case basis; and

d) if no definition has been included, then there is contractual ambiguity and uncertainty as to which of the possible interpretations prevails, although we believe there to be a good argument in our Repo example that, as the euro still exists, the contract should be construed to refer to the euro in its continuing form.

Other legal principles

7.8. However, the express wording of the contract is only the starting point as other legal principles including conflicts of laws rules must also be considered.

7.9. In certain circumstances English law will give effect to the law of another country (which could potentially include the domestic law redenominating euro-denominated debts into the new Greek domestic currency), particularly if the payment obligation is to be performed there, and so place of performance in the relevant transaction will be relevant for this. In addition, if capital and exchange controls make it illegal to pay the Repurchase Price in euro, then in addition to continuity concerns (see section 4 above) this could have the effect that an English court would not enforce payment in euro. See section 5 above for a discussion of a potential Event of Default in these circumstances.

Currency indemnity

7.10. The GMRAs include a form of currency indemnity in paragraph 7(b) which may be relevant. This provides that if a party is due to be paid in the Contractual Currency but instead receives payment in another currency and suffers a shortfall as a result, the other party must pay the shortfall. This would apply if, for example, the Contractual Currency is euro and a court judgment is given for payment to be made in the new domestic currency. However, it is not certain that this type of indemnity would be enforceable in this scenario.

Conclusion

7.11. In conclusion, the approach in the relevant contracts to the definition of "euro" will be key to the level of certainty that a Repurchase Price obligation denominated in euro will be repayable in euro notwithstanding the introduction of the new domestic currency and the redenomination of any debt. If the definition is clear, then unless the place of payment is in Greece or capital and exchange controls are imposed, there should be limited risk under English law that the Repurchase Price obligation will be redenominated. Where there is ambiguity in the definition, or no definition at all, then there will be uncertainty as to the legal position, although a likelihood in our view that "euro" would be interpreted as the single currency of the Eurozone in its continuing form if the currency still exists. Where there are significant connecting factors to Greece including place of performance, or where capital and exchange controls are introduced, the risk of redenomination increases correspondingly.

Risk mitigation factors could include clarifying the definition of "euro", providing for place of performance outside any member states of concern or for the ability to change place of performance, and including an express illegality and/or force majeure termination event.

Payment/repayment of Cash Margin (repo) or Cash Collateral (securities lending)

7.12. Cash Margin: payments of Cash Margin would be subject to a similar analysis to that for Repurchase Price above. Cash Margin is payable in the Base Currency and other specified currencies (paragraph 4(e) of the GMRAs). Assuming that the Base Currency is expressed to be euro, the interpretation of the meaning of "euro" would follow the principles above. One relevant difference, however, in relation to margin payment obligations is that the currency is not expressed in relation to any specific transaction (unlike the Contractual Currency for Repurchase Price which is linked to each transaction as the currency of the Purchase Price of that transaction), but applies to all transactions under the agreement. It is arguable, therefore, that in considering connections with Greece, it is less relevant that any particular Purchased Securities or Margin Securities are issued by a Greek entity.

7.13. Cash Collateral: in respect of Cash Collateral under a securities lending transaction, it is payable in any currency specified by the parties in the relevant SLA and would be subject to a similar analysis to that for Repurchase Price above. There is a degree of closer attribution of collateral to specific Loans under the SLA, unless the parties have agreed to provide collateral on a net basis, and so arguments could potentially be raised about a connection of "euro" to Greece. However, we consider that to be a weaker argument in the absence of evidence to support it.

Income payments (repo and securities lending)

7.14. Both repo and securities lending agreements include provisions requiring the transferee of any underlying securities or margin/collateral securities to pay back to the transferor amounts (so-called "manufactured coupons" or "manufactured dividends", referred to below as the more generic "**manufactured payments**") equivalent to those paid on such securities by way of income (coupon, dividends etc). These provisions reflect the intended economic nature of the standard repo and securities lending relationship such that market risk and reward remains with the original owner of the securities notwithstanding the outright transfer of those assets to the other party.

7.15. If the transferee receives cash Income in the new domestic currency of Greece, in what currency and how much is it obliged to pay across to the transferor under the manufactured payment provisions of the GMRAs and SLAs? (Note that, if the manufactured payments remain payable in euro, then the considerations discussed in section 7.9 above will apply.)

Repo

7.16. Paragraph 5 of the GMRA makes it expressly clear that the payment to be made by the transferee must be made "in the same currency as" the Income paid by the issuer. Therefore, currency risk remains with the original owner of the securities and, whether or not the securities are redenominated and whatever currency the Income is paid in, the transferee pays an amount in that currency. In addition, the transferee is only obliged to pay to the transferor "an amount equal to" the amount paid by the issuer. Therefore, notwithstanding any redenominated currency being effectively devalued and becoming worth less than the euro equivalent, and whatever exchange rate is officially used by Greece to determine the amount of new domestic currency to be converted from the original euro amount, the original transferor bears the risk of this devaluation or exchange rate calculation.

Securities lending

GMSLA 2010

7.17. In the GMSLA 2010 the position is unambiguous. Paragraphs 6.2 and 6.3 make it expressly clear that the manufactured payment to be made by the transferee is either the amount agreed between the parties or, failing agreement, must be "a sum of

money…equivalent to (and in the same currency as) the type and amount of such Income" that the transferor would have received had it not transferred the relevant Loaned Securities or Collateral Securities. Thus, whether or not the Loaned Securities or Collateral Securities are redenominated and whatever currency the Income is paid in, the transferee pays the same amount and in that same currency. Consequently the original transferor bears the currency risk of any redenomination and subsequent devaluation.

GMSLA 2000

7.18. The GMSLA 2000 is not quite as clear as the GMSLA 2010 as it does not expressly refer to the currency of the manufactured payment. However, it is likely that the GMSLA 2000 also leaves the currency risk of any redenomination and subsequent devaluation with the transferor.

OSLA

7.19. In relation to Loaned Securities, the OSLA requires the manufactured payment to be "equal to the amount of the relevant Income". Whilst this does not expressly provide for the payment to be in the same currency as that of the real Income payment, an ordinary construction of the meaning of those words should conclude that they mean the same currency. In relation to Collateral Securities, if the Borrower does not recall Collateral Securities before a payment of Income, then the Lender must pay as the manufactured payment "a sum of money…equivalent to such Income". Consequently the analysis is similar to that for the GMSLA 2000 above and it is therefore likely that the OSLA also leaves the currency risk of any redenomination and subsequent devaluation with the transferor.

Fee (securities lending)

7.20. The SLAs all provide for the payment of a fee by the Borrower to the Lender in respect of each Loan. (Note that, if it is determined that the contractual currency of calculation and payment of the fee is the euro, then the considerations discussed in section 7.9 above will apply.)

OSLA

7.21. The OSLA provides for the Borrower to pay a fee calculated by applying an agreed rate to the daily Value of the Loaned Securities. The fee "shall be in such currency and shall be paid in such manner and at such place as shall be agreed between the Parties". "Value" is in turn defined by reference ultimately to a mid market quotation of the relevant Securities. From this, it is likely to follow that, if the Securities have been redenominated into the new Greek domestic currency, their "Value" for these purposes will also be calculated in that currency. However, the OSLA seems to provide expressly for the parties to be able to agree any currency that they choose for payment of the fee, regardless of the currency in which a security is quoted. Consequently, the position will depend on what currency (if any) the parties have agreed and how specific they have been. This may lead to uncertainty as to the contractual currency of calculation and payment of the fee. In the context of that uncertainty, it also appears to be the case that there is a close correlation between the currency of the fee and the currency of the Loaned Securities, and this may make it more likely that the contract will be interpreted accordingly.

GMSLA 2000

7.22. The GMSLA 2000 provides for the Borrower to pay a fee calculated by applying an agreed rate to the daily Market Value of the Loaned Securities. The fee accrues daily. "Market Value" is in turn defined by reference to market quotations for the bid price of the relevant Securities. From this, it is likely to follow that, if the Securities have been redenominated into the new Greek domestic currency, their "Market Value" for these purposes will also be calculated in that currency and this might suggest that therefore the fee will, as a matter of the contract, be payable in the redenominated currency. However, paragraph 2.4 GMSLA 2000 converts all "prices, sums or values" into the Base Currency which implies that any fee not expressed in the Base Currency would be converted into the Base Currency, although it is not entirely clear that it is intended to apply to the payment of the fee. If it does apply and if there is a conversion from the new domestic currency into the Base

Currency, and the new domestic currency devalues, this may reduce the amount of the fee.

GMSLA 2010

7.23. The GMSLA 2010 contains provisions which are substantially similar to the equivalent provisions in the GMSLA 2000 and therefore the analysis will be similar. Paragraph 2.4 GMSLA 2010 is drafted a little more broadly than in the GMSLA 2000 and so there is a stronger argument that it applies to the payment of this fee.

Close-out netting payments (repo and securities lending)

7.24. Both repo and securities lending use the mechanic of close-out netting to mitigate counterparty credit risk. We focus here only on the contractual provisions and do not consider the position under applicable insolvency law issues which are outside the scope of this briefing and will affect the analysis below.

Repo

7.25. The GMRAs each provide for the single net balance determined under the close-out provisions to be calculated and (although not expressed this way) payable in the specified Base Currency.

7.26. If the Base Currency specified for this purpose is euro, the same question arises as to the meaning of "euro" in this context - does it mean the single continuing currency or the new Greek domestic currency? The same analysis will apply as for the Repurchase Price above, although perhaps here there is a stronger argument that, as Base Currency is generic across the agreement, it is not intended to have a connection with any particular country.

7.27. Whether a net close-out amount payable by a counterparty in Greece would be redenominated, or would have enforceability issues, is subject to the same analysis as for the Repurchase Price as discussed in section 7.9 above.

Securities lending

7.28. All of the SLAs provide for the single net balance determined under the close-out provisions to be calculated and (although not expressed this way) payable in the specified Base Currency.

7.29. If the Base Currency specified for this purpose is euro, the same analysis would apply as for repo above. However, it should be noted that the Schedule to the GMSLA 2010 provides for parties to specify a fallback Base Currency where the original Base Currency "ceases to be freely convertible", which will be relevant in the case of imposition of exchange controls.

8. Euro-Denominated Securities and Redenomination

8.1. Redenomination may affect (in the case of the Repo) the Purchased Securities in the form of GGBs and any Margin Securities issued by Greek entities, and (in the case of the Securities Loan) the Collateral in the form of GGBs, as they may all be redenominated into the new domestic currency. Whether that redenomination would be effective has been the subject of considerable market analysis already and depends on a variety of factors including (in the case of debt securities) the terms and conditions of the relevant securities, the governing law of the relevant securities, the jurisdiction clause under the relevant securities, the jurisdiction of any court seized of the matter, and the place of payment of the relevant securities.

8.2. It may also affect the Loaned Securities in our Securities Loan example (which are shares) depending on the scope of the redenomination legislation. It is also possible that the currency of denomination of the Loaned Securities would be sought to be changed by corporate action.

8.3. For the purposes of this briefing we will assume that any such redenomination in relation to both debt securities and equities is effective. In these circumstances, what is the position of:

a) (under a repo) the Buyer in respect of Purchased Securities or the transferee in respect of Margin Securities; or

b) (under a securities lending transaction) the Borrower in respect of Loaned Securities or the Lender in respect of Collateral Securities?

Repo: Purchased Securities, Margin Securities & "equivalent"

8.4. The Buyer is required to securities which are "equivalent to" (as defined) the securities originally transferred as Purchased Securities/Margin Securities.

8.5. None of the GMRAs expressly contemplates the redenomination of securities from euro into a domestic currency (although the GMRA 2000 and GMRA 2011 deal with the reverse scenario of a redenomination into euro). However, if the redenomination affects all (and not part only) of the relevant issue of securities, it is likely that, under each GMRA, these would be "equivalent to" the original securities for the purposes of the GMRA and therefore the Buyer/transferee is both permitted and required to redeliver the redenominated securities. This is consistent with the structure, economics and purpose of repo under which the original transferor remains economically exposed to the securities and is intended to be kept in the same position, to the extent possible, as if it had continued to own the securities throughout the repo.

8.6. If the redenominated securities were found not to be "equivalent", this would have the effect that no securities could be equivalent to the original securities for the purposes of the repo, and therefore it would become impossible for the Buyer/transferee to transfer "equivalent" securities. We believe that to be a very unlikely interpretation of the contract.

Parties may wish to consider in their contingency planning expressly clarifying that securities which have been redenominated into a new currency other than euro are still "equivalent".

Securities lending: Loaned Securities, Collateral Securities and "equivalent"

8.7. Under all SLAs the transferee of any securities (whether Loaned Securities or Collateral in the form of securities) is required to redeliver "equivalent" securities to the transferor.

Would redenominated debt securities or shares be "equivalent" for this purpose?

GMSLA 2000 & GMSLA 2010

8.8. Paragraph 2.5 GMSLA 2000 & GMSLA 2010 provides: "The parties confirm that introduction of and/or substitution (in place of an existing currency) of a new currency as the lawful currency of a country shall not have the effect of altering, or discharging, or excusing performance under, any term of the Agreement or any Loan thereunder, nor give a party the right unilaterally to alter or terminate the Agreement or any Loan thereunder. Securities will for the purposes of this Agreement be regarded as equivalent to other securities notwithstanding that as a result of such introduction and/or substitution those securities have been redenominated into the new currency or the nominal value of the securities has changed in connection with such redenomination.".

8.9. This is an unambiguous express contractual provision which makes it clear that under the GMSLAs redenominated securities would be "equivalent".

OSLA

8.10. Unlike the GMSLAs, the OSLA does not expressly contemplate the redenomination of securities from an existing currency into a new domestic currency. Therefore, it is necessary to construe the contract in order to determine its meaning and effect, as for the GMRAs above.

8.11. If the redenomination affects all (and not part only) of the relevant issue of securities, it is likely that, under the OSLA, these would be "equivalent to" the original securities for the purposes of the OSLA and therefore the Borrower or Lender are both required to redeliver the redenominated Securities or Collateral.

8.12. If the redenominated securities were found not to be "equivalent", this would have the effect that no securities could be equivalent to the original securities for the purposes of the transaction, and therefore it would become impossible for the Borrower or Lender to transfer "equivalent" Securities or Collateral (as applicable). We believe that to

be a very unlikely interpretation of the contract.

Parties may wish to consider in their contingency planning expressly clarifying in new and existing OSLAs that securities which have been redenominated into a new currency other than euro are still "equivalent".

9. Euro-Denominated Calculations

9.1. Both the GMRAs and the SLAs contain a number of provisions which potentially use the euro as a unit of calculation rather than directly in the context of a payment obligation. In these circumstances the question arises whether the euro would be redenominated into the new Greek domestic currency. The analysis here is different to that for payment obligations and, in our view, is primarily a matter of construction of the contract (including the meaning and definition of "euro").

Base Currency

9.2. Both the GMRAs and the SLAs use a concept of "Base Currency", primarily as a means of converting multiple currencies of different transactions and margin/collateral into a single currency for the purposes of various calculations. Base Currency is also used as the currency in which certain payments are due (considered in section 7 above).

9.3. If the parties have provided that the Base Currency is "euro", an important point is that redenomination of debts does not redenominate all references to "euro" in a financial contract. In this context, the euro is used as a reference point for a calculation rather than directly as the amount of a payment obligation or as the currency in which an amount is expressed to be payable.

9.4. Consequently, you would start by interpreting the contract to determine the meaning of "euro". If, as is likely, "euro" is not defined, you would need to analyse the position as in section 7 above to determine whether it is intended to mean the continuing single currency or the new Greek domestic currency. Here, there is less obvious connection with either party and perhaps more likely a choice of a currency in which the majority of the transactional exposure under the agreement as a whole was expected to be denominated, or perhaps a choice of a currency which was very liquid. Consequently, there is perhaps less risk that it would be determined to mean the new Greek domestic currency.

Again, clarification of the meaning of "euro" in this context would be the primary risk mitigation measure for parties to consider.

9.5. If it is found to mean the continuing single currency, then the risk of redenomination would be likely to depend upon how integral a part of a payment obligation it is. If it is integral to a payment obligation by a Greek counterparty, then the analysis is likely to follow that for the Repurchase Price payment obligation considered in section 7 above.

9.6. Note that the Schedule to the GMSLA 2010 provides for parties to specify a fallback Base Currency where the original Base Currency "ceases to be freely convertible", which will be relevant in the case of imposition of exchange controls.

Margin and collateral calculations

9.7. Both repo and securities lending transactions use the technique of variation margin, being in each case the ability of the parties to collateralise their exposure to one another.

9.8. The margining /collateral provisions under the GMRAs and SLAs essentially measure exposure as (a) in the case of repo, the difference between the Repurchase Price on the one hand and the market value of the Purchased Securities on the other and (b) in the case of securities lending, the difference between the market value of the Collateral on the one hand and the market value of the Loaned Securities on the other (this is simplified for the purposes of the analysis). Redenomination of one or other of those sides of the repo or securities lending transaction into the new domestic currency may have a significant effect on the exposure of one party to the other and may result in a trigger of significant margin calls to address that exposure.

Repo

9.9. In calculating exposure for margining purposes under the GMRAs, the value of any

securities whose market price is quoted in a currency other than the Contractual Currency must be converted into the Contractual Currency at the Spot Rate prevailing at the relevant time. Assuming that the Purchase Price has been paid, it cannot be redenominated into the new Greek domestic currency and so the Contractual Currency will be euro. The Contractual Currency would not be at risk of redenomination as a concept because it is defined by reference to the currency of the Purchase Price rather than expressly as a currency in its own right. In our Repo example, on the assumption that the GGBs are redenominated into the new domestic currency, and assuming that the Contractual Currency is euro, the value of the GGBs would need to be converted into euro at the Spot Rate creating the shift in exposure discussed above.

9.10. The margining provisions in the GMRAs use the concept of Base Currency as well as Contractual Currency in the calculations of exposure. We discuss the concept of Base Currency in section 9.2 onwards above.

Securities lending

9.11. In calculating exposure for collateral purposes under the SLAs, the value of any securities whose market price is quoted in a currency other than the Base Currency must be converted into the Base Currency at the spot rate prevailing at the relevant time. In our Securities Loan example, on the assumption that the Shares are redenominated into the new domestic currency, and assuming that the Base Currency is euro, the value of the Shares would need to be converted into euro at the spot rate creating the shift in exposure discussed above.

9.12. We discuss the concept of Base Currency in section 9.2 onwards above.

Close-out netting calculations

9.13. The close-out netting procedures and calculations set out in the GMRAs and SLAs are fairly similar, particularly in the latest versions of each agreement. It should be noted that we do not consider here the position under any applicable insolvency laws as they are outside the scope of this briefing and will affect the analysis below, and instead we focus only on the relevant contractual provisions.

9.14. In relation to payment obligations, we have already discussed in section 7 above the analysis to be applied when determining the currencies of the various payment obligations and those same principles will be applicable here notwithstanding the acceleration of those obligations.

9.15. In relation to delivery obligations, we have also discussed in section 8 above the meaning of "equivalent" in respect of securities and concluded that any redenominated securities are still likely to qualify as "equivalent". On that basis, the valuations of any redenominated securities would be determined in the new Greek domestic currency. This would be consistent with the valuation methodology in the GMRAs and SLAs, which relies on a combination of one or more of sale proceeds, market quotations or market value as determinants of the applicable value, all of which would be measured in the new currency following a redenomination.

9.16. On the basis of the sums established at the valuation stage, the GMRAs and SLAs require that all obligations are set off leaving a single net sum payable by the party owing the larger amount. For the purposes of this calculation all sums not denominated in the Base Currency must be converted into the Base Currency on the relevant date at the spot rate prevailing at the relevant time. We consider the concept of Base Currency in section 9.2 onwards above.

10. Business days

10.1. An unwelcome contractual consequence of the extended closure of Greek banks is that the relevant period of unscheduled bank holidays will not be business days in Greece and consequently may not be effective days for the service of important notices under the GMRAs or SLAs such as margin calls or termination notices following an Event of Default or termination event.

Risk mitigation may include amendments to contracts to provide that unscheduled bank holidays are effective days for the service of important notices.

10.2. Depending on the terms of a particular transaction, payment days may also be affected.

11. Jurisdiction

11.1. It is possible that a Greek counterparty may bring an action in the Greek courts and, in that case, it is likely that those courts would apply any domestic legislation passed in respect of the exit, including in relation to redenomination or capital and exchange controls. The risk or likelihood of an action being brought in a Greek court depends to a large extent on what the parties have agreed in their jurisdiction clause in the relevant master agreement.

11.2. Repo: in the case of repo agreements, the GMRA 1995 and GMRA 2000 have non-exclusive jurisdiction clauses in favour of English courts (paragraph 17) so the parties are free to sue in other competent courts. The GMRA 2011 contains an exclusive jurisdiction clause in favour of the English courts. It is still possible that an action may be brought first in the Greek courts but under the Recast Brussels Regulation, it should now be easier to enforce an exclusive jurisdiction clause.

11.3. Securities lending: in the case of securities lending, paragraph 24 GMSLA 2000 and paragraph 23 GMSLA 2010 contain an exclusive jurisdiction clause in favour of the English courts. Similar considerations apply as for repo above. In the case of the OSLA, it has a London arbitration clause in paragraph 23. In that case, if an action is brought in the Greek courts, there is no equivalent prohibition on the commencement of arbitration proceedings and so the arbitration may still also proceed leading to a potential for conflicting decisions. In each case it may still be possible to bring an action in the English courts for breach of contract arising out of the bringing of local proceedings in Greece. However, it is also possible that an enforcement action may be required in Greece to access the counterparty's assets and this may lead to similar difficulties in the local courts.

A risk reduction plan would include (in the case of repo under a GMRA 1995 or GMRA 2000) providing for exclusive jurisdiction clauses and (in the case of both repo and securities lending) prompt action in the English courts or London arbitration (as applicable) if required.

12. Conclusion and possible action

12.1. The above is a summary of some of the potential issues that may arise in the event that the scenario considered by this briefing materialises, and the potential consequences of those issues for repo and securities lending transactions. As mentioned above it should be noted that, even with the assumptions made in relation to the stated scenario, it is difficult to predict with any certainty how an exit from the Eurozone may occur and what legal framework will evolve to effect it. The circumstances surrounding an exit will have a significant bearing on the analysis and in that regard the conclusions and views expressed above will vary according to the actual facts and any resulting legislation or court judgments.

Objectives

12.2. What might parties to repo and securities lending transactions do about these issues? The overriding aims of any action to be taken in advance of an actual or announced Eurozone exit would be:

a) to reduce any general legal uncertainty, principally through addressing continuity issues and reducing the potential for conflicts of laws;

b) to reduce any contractual uncertainty and ambiguity; and

c) to include any specific rights or outcomes (such as termination rights) which parties may desire.

Possible action

12.3. In our view, although the time for action in respect of Greek counterparties may now be limited, there are several issues which participants could usefully consider addressing as highlighted in this briefing, with the objectives set out above, either in relation to Greek counterparties if there is an extension of the bail-out or some other form

of financial accommodation, or in relation to other Eurozone countries considered to be at risk.

Reduction of general legal uncertainty

a) *Continuity*: parties may wish to include standard form continuity language along the lines of that included in paragraph 2.5 GMSLA 2000 and GMSLA 2010.

b) *Exclusive jurisdiction clauses*: subject to any other relevant factors, parties may wish to consider whether to include exclusive jurisdiction clauses submitting to the exclusive jurisdiction of the English courts.

c) *Place of payment*: subject to any other relevant factors, parties may wish to consider specifying a place of payment for their transactions outside any country where there is a significant concern of an exit from the Eurozone. This may involve changing the location of any bank accounts for the receipt or payment of euro payments. In addition, parties may wish to provide that the place of payment may be changed, or to specify multiple places of payment for euro obligations.

Reduction of contractual ambiguity

d) Definition of "euro": parties should include a definition of "euro" and that definition could make it clear that, for example, it remains the single currency regardless of the withdrawal of any particular member state.

e) Meaning of "equivalent": parties may wish to clarify that securities will still be "equivalent" Securities or Collateral notwithstanding any redenomination into the new domestic currency.

f) Events of Default: as discussed in section 5 above, it is possible that certain EODs may be triggered in the scenario considered in this briefing, particularly in the context of capital and exchange controls. Parties may consider that it would be better to avoid the uncertainty of an EOD which may also in some circumstances apply to themselves and instead include express termination provisions for illegality and/or force majeure (see below).

g) Tax Event (repo): parties may wish to clarify that the definition of "Tax Event" in paragraph 11 GMRA 1995 and GMRA 2000 does not include the exit of a member state from the Eurozone or the imposition of capital or exchange controls. However, parties should first consider whether, in fact, they wish to retain a possible right to terminate in these circumstances (and leave an equivalent right for their counterparty). If so, the better alternative may be to make express provision for a termination right (see below).

h) Fee (securities lending): parties may wish to make it expressly clear in which currency the securities lending fee is calculated and payable.

Provision for desired outcomes

i) Termination rights: parties may wish to consider including specific termination rights to be triggered in the event of a specified member state leaving the Eurozone, or an "Illegality" and/or "Force majeure" clause along the lines of those in the 2002 ISDA Master Agreement to be triggered in the event of capital or exchange controls making performance illegal. This would provide the benefit of clarifying obligations, providing a termination right and avoiding unwittingly triggering an EOD which might potentially apply to either party.

j) Business days for notices: parties may wish to provide for unscheduled bank holidays to be considered as effective days for margin calls and termination notices.

Going forward v. going back

12.4. Participants should differentiate between existing transactions/agreements and new transactions/agreements. It is easier both in principle and in practice to address the issues going forward than in retrospect, and consequently a different approach to each category will be required:

a) for new master agreements, the issues could be addressed by including provisions in the master agreement to the extent not already covered. This could perhaps be by way of a "Eurozone annex" dealing with the relevant issues;

b) for new transactions under existing master agreements, certain issues could be dealt with in the transaction confirmation if the transaction was considered to be "at risk" to any of the issues, or alternatively the existing master agreement could be amended; and

c) for existing transactions or existing master agreements, the existing master agreement could be amended and the amendments agreed to cover any existing transactions. In relation to existing transactions and agreements, other options are also available (see below).

Existing transactions/agreements

12.5. Industry associations & potential legislation: for existing transactions and agreements, industry associations should take the lead in establishing market consensus around the key issues, and in lobbying governments to make adequate provision to address any potential uncertainty. However, it is highly improbable that any legislation would be passed in the absence of an actual or announced exit, and consequently this would instead be a planning exercise in order to give comfort to the markets that action would be taken at the relevant time. That said, any legislation could only be at a very high level – presumably it could cover continuity of contracts (as happened at the time of introducing the euro) and possibly a statement on the meaning of "euro", although even that is unlikely. It would not be possible to legislate with a single rule for any of the differing commercial intentions and expectations of the parties in their transactions.

12.6. Market protocols: a market protocol to effect multilateral amendments to existing agreements could go further (as it is voluntary) and could be implemented before any Eurozone exit to reduce uncertainty, but would still need to gain consensus which would reduce the number of issues that could realistically be dealt with. We would expect that a market protocol could be used to cover:

a) continuity of contracts (for those master agreements without such a clause) subject to any express agreement by the parties to terminate;

b) the inclusion of an exclusive jurisdiction clause (for those master agreements without such a clause);

c) the meaning of "euro";

d) the meaning of "equivalent" in relation to securities/collateral;

e) perhaps an optional illegality and/or force majeure clause (which would need to tie in with any continuity provision); and

f) unscheduled bank holidays.

12.7. Bilateral amendments: in the absence of a market protocol, or even if there is a market protocol, it is possible that only bilateral agreement between counterparties can adequately cover off some of the issues in existing agreements. The market protocol (if any) may not cover all the relevant issues, and not all counterparties to existing agreements will sign up to a protocol. As it would be unrealistic to expect parties to renegotiate all of their agreements with any Eurozone element, parties may wish to determine whether they have "high risk" counterparties, agreements or transactions and seek to amend those (recognising that the fact that they are determined to be high risk may mean that bilateral amendment becomes harder to achieve).

12.8. Upgrading master agreements: parties should also consider upgrading any of the very old master agreements that they have in place (such as an OSLA or GMRA 1995) to the latest or more recent version of the relevant agreement which may help to deal with some of the above issues as well as taking advantage of more recent best practice and other contractual improvements post credit crisis, including in relation to defaults and insolvencies of their counterparties.

Summary

12.9. We set out in Appendix 2 a table summarising the potential action discussed above which could be taken in respect of each type of agreement. For new transactions under existing master agreements, some of these issues could also potentially be addressed instead in the confirmation if the transaction is seen as "at risk" of Eurozone related issues.

APPENDIX 1: GMRA/SLA COMPARISON TABLES

Note: This table seeks to compare some of the core provisions/concepts of the GMRAs and SLAs relating to the Eurozone issues considered in this briefing between the 1995, 2000 and 2011 GMRAs (for repo) and the OSLA 1995, the GMSLA 2000 and the GMSLA 2010 (for securities lending). It is not, and does not seek to be, complete, and other substantial concepts are included in each agreement which are not summarised below. The summaries of any concepts below are also necessarily incomplete. Readers should always refer to the full terms and conditions of the relevant agreements for a complete and accurate statement of the contractual position.

Repo Agreements

Key Provision	GMRA 1995	GMRA 2000	GMRA 2011
Continuity of contracts clause?	None	Para 16(e): only covers new countries joining euro and not countries leaving it	Para 16(e): only covers new countries joining euro and not countries leaving it
Illegality, impossibility or force majeure clause?	No express clause, but: Event of Default Para 10(a)(vi): either party admits that it is unable to perform any of its obligations; and Termination event Para 11: if either party is materially adversely affected by a change in fiscal or regulatory regime, the affected party may terminate any affected Transaction	No express clause, but: Event of Default Para 10(a)(viii): either party admits that it is unable to perform any of its obligations; and Termination event Para 11: if either party is materially adversely affected by a change in fiscal or regulatory regime, the affected party may terminate any affected Transaction	No express clause, but: Event of Default Para 10(a)(viii): either party admits that it is unable to perform any of its obligations; and Termination event Para 11: if either party is materially adversely affected by a change in fiscal or regulatory regime, the affected party may terminate any affected Transaction
Events of Default	Para 10(a)(i): Seller fails to pay Repurchase Price NB: failure to deliver Equivalent Securities is not an EOD Para 10(a)(ii): failure to make a margin payment Para 10(a)(iii): failure to pay income Para 10(a)(iv): Act of Insolvency Para 10(a)(v): breach of representation Para 10(a)(vi): either party admits that it is unable to perform any of its obligations	Para 10(a)(i): Seller fails to pay Repurchase Price Para 10(a)(ii) (if parties have elected in Annex I for this EOD to apply): Buyer fails to deliver Equivalent Securities Para 10(a)(iv): failure to make a margin payment Para 10(a)(v): failure to pay income Para 10(a)(vi): Act of Insolvency Para 10(a)(vii): breach of representation Para 10(a)(viii): either party admits that it is unable to perform any of its obligations	Para 10(a)(i): Seller fails to pay Repurchase Price Para 10(a)(ii) (if parties have elected in Annex I for this EOD to apply): Buyer fails to deliver Equivalent Securities Para 10(a)(iv): failure to make a margin payment Para 10(a)(v): failure to pay income Para 10(a)(vi): Act of Insolvency Para 10(a)(vii): breach of representation Para 10(a)(viii): either party admits that it is unable to perform any of its obligations

Key Provision	GMRA 1995	GMRA 2000	GMRA 2011
Termination events	Para 10(f): Buyer fails to deliver Equivalent Securities Para 11: Tax Event	Para 10(h): Buyer fails to deliver Equivalent Securities Para 11: Tax Event	Para 10(i): Buyer fails to deliver Equivalent Securities Para 11: Tax Event
Repurchase Price payments	Paras 2(h) and 7(a): payable in the Contractual Currency, which is defined as the currency of the Purchase Price	Paras 2(i) and 7(a): payable in the Contractual Currency, which is defined as the currency of the Purchase Price	Paras 2(k) and 7(a): payable in the Contractual Currency, which is defined as the currency of the Purchase Price
Cash Margin payments	Para 4(e): payable in Base Currency and other agreed currencies	Para 4(e): payable in Base Currency and other agreed currencies	Para 4(e): payable in Base Currency and other agreed currencies
Income payments	Para 5: Transferee must pay an amount equal to and in the same currency as amount paid by the issuer	Para 5: Transferee must pay an amount equal to and in the same currency as amount paid by the issuer	Para 5: Transferee must pay an amount equal to and in the same currency as amount paid by the issuer
Close-out netting provisions	Para 10: net balance calculated and payable in Base Currency	Para 10: net balance calculated and payable in Base Currency	Para 10: net balance calculated and payable in Base Currency
Currency indemnity	Yes – para 7(b)	Yes – para 7(b)	Yes – para 7(b)
Equivalent Securities and Equivalent Margin Securities	Para 2(p): no express reference to redenomination	Para 2(t): express reference to redenomination into euro but not to redenomination out of euro Also provides for where securities have been "converted" or where holders become entitled to receive or acquire other securities or property	Para 2(v): express reference to redenomination into euro but not to redenomination out of euro Also provides for where securities have been "converted" or where holders become entitled to receive or acquire other securities or property
Margin calculations	Para 4: uses concepts of Contractual Currency and Base Currency in calculations of exposure. Contractual Currency = currency of Purchase Price Base Currency = as specified by parties	Para 4: uses concepts of Contractual Currency and Base Currency in calculations of exposure. Contractual Currency = currency of Purchase Price Base Currency = as specified by parties	Para 4: uses concepts of Contractual Currency and Base Currency in calculations of exposure. Contractual Currency = currency of Purchase Price Base Currency = as specified by parties
Business days for notices	Para 14: notices not effective on days where banks are not open for business in place of receipt	Para 14: notices not effective on days where banks are not open for business in place of receipt	Para 14: notices not effective on days where banks are not open for business in place of receipt
Jurisdiction clause	Para 17: non-exclusive jurisdiction of English courts	Para 17: non-exclusive jurisdiction of English courts	Para 17: exclusive jurisdiction of English courts

Securities Lending Agreements

Key Provision	OSLA 1995	GMSLA 2000	GMSLA 2010
Continuity of contracts clause	None	Para 2.5: express continuity clause covering introduction of and/or substitution of a new currency	Para 2.5: express continuity clause covering introduction of and/or substitution of a new currency
Events of Default	Para 12.1.1: Borrower or Lender fails to pay/repay Cash Collateral Para 12.1.1: Lender fails to deliver Equivalent Collateral Para 12.1.2/6.7.2: Lender fails to pay income Para 12.1.3: Borrower fails to pay income Para 12.1.4: Act of Insolvency Para 12.1.5: breach of warranty Para 12.1.6: either party admits that it is unable to perform any of its obligations Para 12.1.9: failure to perform other obligations (e.g. failure by Borrower to pay securities lending fee and failure by Borrower to redeliver Equivalent Securities on scheduled termination of a Loan)	Para 14.1(i): Borrower or Lender fails to pay/repay Cash Collateral Para 14.1(i): Lender fails to deliver Equivalent Collateral Para 14.1(iii): Lender fails to pay income Para 14.1(iii): Borrower fails to pay income Para 14.1(v): Act of Insolvency Para 14.1(vi): breach of warranty Para 14.1(vii): either party admits that it is unable to perform any of its obligations Para 14.1(x): failure to perform other obligations (e.g. failure by Borrower to pay securities lending fee)	Para 10.1(a): Borrower or Lender fails to pay/repay Cash Collateral NB: no EOD for failure to deliver Equivalent Collateral Para 10.1(b): Lender fails to pay income Para 10.1(b): Borrower fails to pay income Para 10.1(d): Act of Insolvency Para 10.1(e): breach of warranty Para 10.1(f): either party admits that it is unable to perform any of its obligations Para 10.1(i): failure to perform other obligations (e.g. failure by Borrower to pay securities lending fee)
Termination events	Para 7.2: optional termination of a Loan by Lender Para 7.3: Borrower fails to redeliver Equivalent Securities upon Lender optional termination Para 7.5: optional termination of a Loan by Borrower	Para 8.2: optional termination of a Loan by Lender Para 9.1: Borrower fails to redeliver Equivalent Securities Para 8.3: optional termination of a Loan by Borrower Para 9.2: Lender fails to redeliver Equivalent Collateral	Para 8.1: optional termination of a Loan by Lender Para 9.1: Borrower fails to redeliver Equivalent Securities Para 8.2: optional termination of a Loan by Borrower Para 9.2: Lender fails to redeliver Equivalent Collateral
Cash Collateral payments	Definition of "Collateral" and para 6.1: any currency specified by parties	Definition of "Collateral": any currency specified by parties	Definition of "Collateral": any currency specified by parties

Key Provision	OSLA 1995	GMSLA 2000	GMSLA 2010
Income payments	Para 4.2: Borrower must pay Lender an amount equal to the amount of the relevant Income Para 6.7: Lender must pay Borrower a sum of money equivalent to such Income	Para 6.1: transferee must pay an amount equivalent to the type and amount of any Income that transferor would have been entitled to receive	Paras 6.2 and 6.3: transferee must pay a sum of money equivalent to (and in same currency as) the type and amount of Income that transferor would have received
Securities lending fee	Paras 5.1 and 5.3: fee calculated by applying agreed rate to daily Value of Loaned Securities. Fee is in such currency and paid in such manner and place agreed between parties	Paras 7.1 and 7.3: fee calculated by applying agreed rate to daily Market Value of Loaned Securities Para 2.4: conversion into Base Currency?	Paras 7.1 and 7.3: fee calculated by applying agreed rate to Daily Market Value of Loaned Securities Para 2.4: conversion into Base Currency?
Close-out netting provisions	Para 1.4: net balance calculated and payable in Base Currency	Para 2.4: net balance calculated and payable in Base Currency	Paras 2.4 and 11.2(b): net balance calculated and payable in Base Currency Note provision in Schedule for fallback Base Currency if original Base Currency ceases to be freely convertible
Currency indemnity	No	No	No
Equivalent Securities and Equivalent Collateral	Para 1.1: no express reference to redenomination	Para 2.5: express reference to redenomination into a new currency	Para 2.5: express reference to redenomination into a new currency
Collateral calculations	Para 6: uses concept of Base Currency in calculations of exposure Base Currency = as specified by parties	Para 5: uses concept of Base Currency in calculations of exposure Base Currency = as specified by parties	Para 5: uses concept of Base Currency in calculations of exposure Base Currency = as specified by parties, including fallback Base Currency if original Base Currency ceases to be freely convertible
Currency conversion	Para 1.4: all prices, sums and values (for margining or set-off purposes) converted into Base Currency	Para 2.4: all prices, sums and values converted into Base Currency	Para 2.4: all prices, sums and values converted into Base Currency
Business days for notices	Para 20: notices not effective on days where banks are not open for business in place of delivery set out in Schedule	Para 21: notices not effective on days where banks are not open for business in place of delivery set out in Schedule	Para 20: notices are effective on delivery. No business day requirement
Jurisdiction clause	Para 23: arbitration (London)	Para 24: exclusive jurisdiction of English courts	Para 23: exclusive jurisdiction of English courts

APPENDIX 2: POTENTIAL ACTION IN RESPECT OF NEW/EXISTING AGREEMENTS

Issue	**Repo**		**Securities Lending**		**Protocol**
	New GMRAs	**Existing GMRAs**	**New SLAs**	**Existing SLAs**	
Continuity	Add wording to a GMRA 2000 or GMRA 2011	Amend to add	Already in GMSLA 2000 and GMSLA 2010	GMSLAs: already included OSLA: amend or upgrade	Yes
Exclusive jurisdiction clause	GMRA 2011: already included GMRA 2000: add wording	GMRA 1995 or GMRA 2000: amend or upgrade GMRA 2011: already included	Already in GMSLA 2000 and GMSLA 2010	GMSLAs: already included OSLA: retain arbitration or amend or upgrade?	Yes
Place of payment	Add wording to a GMRA 2000 or GMRA 2011 if required	Amend if required	Add provisions if required	Amend if required	No
Definition of "euro"	Add wording to a GMRA 2000 or GMRA 2011	Amend to add	Add wording to GMSLA 2000 or GMSLA 2010	Amend to add	Yes
Meaning of "equivalent"	Add wording to a GMRA 2000 or GMRA 2011	Amend to add	Already in GMSLA 2000 and GMSLA 2010	GMSLAs: already included OSLA: amend or upgrade	Yes
Events of Default	Clarify? Or include termination right? (See "Termination rights" below)	Amend to clarify? Or amend to include termination right? (See "Termination rights" below)	Clarify? Or include termination right? (See "Termination rights" below)	Amend to clarify? Or amend to include termination right? (See "Termination rights" below)	No
Tax Event	Clarify? Or include termination right? (See "Termination rights" below)	Amend to clarify? Or amend to include termination right? (See "Termination rights" below)	N/A	N/A	No
Currency of securities lending fee	N/A	N/A	Clarify?	Amend to clarify?	No
Termination rights	Include illegality and/or force majeure termination event?	Amend to include illegality and/or force majeure termination event?	Include illegality and/or force majeure termination event?	Amend to include illegality and/or force majeure termination event?	Yes
Business days for notices	Add wording to a GMRA 2000 or GMRA 2011	Amend to add	Add wording to GMSLA 2000 or GMSLA 2010	Amend to add (or clarify in case of OSLA)	Yes

Further information

For further information on any aspect of this briefing, please speak to Chris Georgiou, Jonathan Haines or your usual Ashurst contact.

Contacts

Christopher Georgiou
Partner
T: +44 (0)20 7859 2149
christopher.georgiou@ashurst.com

Jonathan Haines
Partner
T: +44 (0)20 7859 1396
jonathan.haines@ashurst.com

Abu Dhabi
Suite 101, Tower C2
Al Bateen Towers
Bainunah (34th) Street
Al Bateen
PO Box 93529
Abu Dhabi
United Arab Emirates
T: +971 (0)2 406 7200
F: +971 (0)2 406 7250

Adelaide
Level 3
70 Hindmarsh Square
Adelaide SA 5000
Australia
T: +61 8 8112 1000
F: +61 8 8112 1099

Beijing
Level 26 West Tower, Twin Towers
B12 Jianguomenwai Avenue
Chaoyang District
Beijing 100022
PRC
T: +86 10 5936 2800
F: +86 10 5936 2801

Brisbane
Level 38, Riverside Centre
123 Eagle Street
Brisbane QLD 4000
Australia
T: +61 7 3259 7000
F: +61 7 3259 7111

Brussels
Avenue Louise 489
1050 Brussels
Belgium
T: +32 (0)2 626 1900
F: +32 (0)2 626 1901

Canberra
Level 11
12 Moore Street
Canberra ACT 2601
Australia
T: +61 2 6234 4000
F: +61 2 6234 4111

Dubai
Level 5, Gate Precinct Building 3
Dubai International
Financial Centre
PO Box 119974
Dubai
United Arab Emirates
T: +971 (0)4 365 2000
F: +971 (0)4 365 2050

Frankfurt
OpernTurm
Bockenheimer Landstraße 2-4
60306 Frankfurt am Main
Germany
T: +49 (0)69 97 11 26
F: +49 (0)69 97 20 52 20

Hong Kong
11/F, Jardine House
1 Connaught Place
Central
Hong Kong
T: +852 2846 8989
F: +852 2868 0898

Jakarta (Associated Office)
Oentoeng Suria & Partners
Level 37, Equity Tower
Sudirman Central
Business District
Jl. Jend. Sudirman Kav. 52-53
Jakarta Selatan 12190
Indonesia
T: +62 21 2996 9200
F: +62 21 2903 5360

Jeddah (Associated Office)
Faisal Adnan Baassiri Law Firm
in Association with Ashurst LLP
Alesayi Building
Madinah Road (South)
Al Andalus District/1
PO Box 55339
Jeddah 21534
Saudi Arabia
T: +966 (0)12 228 2700
F: +966 (0)12 228 2701

London
Broadwalk House
5 Appold Street
London EC2A 2HA
UK
T: +44 (0)20 7638 1111
F: +44 (0)20 7638 1112

Madrid
Alcalá, 44
28014 Madrid
Spain
T: +34 91 364 9800
F: +34 91 364 9801/02

Melbourne
Level 26
181 William Street
Melbourne VIC 3000
Australia
T: +61 3 9679 3000
F: +61 3 9679 3111

Milan
Piazza San Fedele, 2
20121 Milan
Italy
T: +39 02 854231
F: +39 02 85423444

Munich
Ludwigpalais
Ludwigstraße 8
80539 Munich
Germany
T: +49 (0)89 24 44 21 100
F: +49 (0)89 24 44 21 101

New York
Times Square Tower
7 Times Square
New York, NY 10036
USA
T: +1 212 205 7000
F: +1 212 205 7020

Paris
18, square Edouard VII
75009 Paris
France
T: +33 (0)1 53 53 53 53
F: +33 (0)1 53 53 53 54

Perth
Level 32, Exchange Plaza
2 The Esplanade
Perth WA 6000
Australia
T: +61 8 9366 8000
F: +61 8 9366 8111

Port Moresby
Level 4, Mogoru Moto Building
Champion Parade
PO Box 850
Port Moresby
Papua New Guinea
T: +675 309 2000
F: +675 309 2099

Rome
Via Sistina, 4
00187 Rome
Italy
T: +39 06 421021
F: +39 06 42102222

Shanghai
Suite 3408-10
CITIC Square
1168 Nanjing Road West
Shanghai 200041
PRC
T: +86 21 6263 1888
F: +86 21 6263 1999

Singapore
12 Marina Boulevard
#24-01 Marina Bay
Financial Centre Tower 3
Singapore 018982
T: +65 6221 2214
F: +65 6221 5484

Stockholm
Jakobsgatan 6
Box 7124
SE-103 87 Stockholm
Sweden
T: +46 (0)8 407 24 00
F: +46 (0)8 407 24 40

Sydney
Level 36, Grosvenor Place
225 George Street
Sydney NSW 2000
Australia
T: +61 2 9258 6000
F: +61 2 9258 6999

Tokyo
Shiroyama Trust Tower
30th Floor
4-3-1 Toranomon
Minato-ku, Tokyo 105-6030
Japan
T: +81 3 5405 6200
F: +81 3 5405 6222

Washington DC
1875 K Street NW
Washington, DC 20006
USA
T: +1 202 912 8000
F: +1 202 912 8050