



I S M A

INTERNATIONAL SECURITIES MARKET ASSOCIATION

**By telefax and mail**

The Basel Committee on Banking Supervision  
Bank for International Settlements  
CH-4002 Basel

May 29, 2001  
JL/TH/zk

**Proposed new Basel Capital Accord**

Dear Sirs

We refer to the consultation draft of the proposed new capital accord.

As the Committee is aware, the International Securities Market Association (ISMA) represents the international securities market. An increasingly important constituency of our members is the repo market. Reflecting this, our Rule Book includes a special body, the International Repo Council, which represents the interests of that market. In addition, the Association is co-sponsor of the market standard master agreement for repos, the Global Master Repurchase Agreement (**GMRA**) that was originally published in 1992. A revised version was published in 1995 and the latest version, the GMRA 2000 that is enclosed (including the guidance notes), was published in October last year.

The GMRA is widely accepted as *the* market standard agreement in a number of markets, particularly on a cross-border basis. As well as the basic terms for repo transactions, the GMRA contains important provisions which are aimed at reducing risk for users of the agreement. These include the ability for either party to call for margin at any time (on an intra-day as well as daily basis) and comprehensive default and close-out and netting provisions which enable a non-defaulting party to take early action to protect itself in the event of the insolvency or other default of its counterparty. Although governed by English law, ISMA has obtained legal opinions in more than 30 jurisdictions which confirm the enforceability of the GMRA, both generally and in insolvency.

The Association has for some time followed developments in the capital adequacy rules for repo transactions and has been actively involved in developments at an EU and national level. Against this background, the

Association has reviewed with great interest the parts of the proposed new Accord that relate to repos.

The Association welcomes the recognition in the proposals (through more favourable capital treatment) that properly documented repo transactions serve to reduce risk. We agree that the requirement to obtain legal opinions on the enforceability of the arrangements in relevant jurisdictions is very important to support the underlying documentation and justify a lower capital charge. It is equally important that these opinions are obtained from independent counsel and are of the highest quality.

However, we would like to make a number of points on the proposed requirements for documentation.

- One of the conditions is that the time period between a counterparty's failure to remargin and liquidation of collateral should be no more than four or ten days (depending on whether the risk-weighting floor is 0% or 20%). We assume that this requirement is that the agreement should not prevent liquidation of collateral within these time frames so that parties are able to liquidate the collateral and not that the agreement requires liquidation within a specified period (there may be good reasons why a party does not wish to liquidate collateral immediately, for example in the case of a large position or an illiquid market), but this should be clarified. In the case of a repo, of course title to the collateral (i.e. the purchased securities) is transferred to the buyer and it can therefore dispose of the collateral when it wishes. Under the GMRA, a non-defaulting party is required to account for the value of collateral in the close-out calculation, whether or not it has disposed of the collateral. The GMRA contains very flexible provisions for valuing collateral for this purpose, which are intended to ensure that the non-defaulting party recovers an accurate reflection of its loss but does not force that party to take any particular course of action.
- In the case of transactions where the floor is 0%, an additional condition is that the documentation covering the agreement is the standard *domestic* market documentation for transactions in the securities concerned. We think that this is unnecessarily restrictive and would prevent an internationally accepted agreement such as the GMRA being used. Although the GMRA is widely accepted and used in a number of markets, and has been adapted (or is in the process of being so adapted) specifically for use in a number of domestic markets from jurisdictions as diverse as the Netherlands to Australia, Japan, Singapore and Thailand, it could probably not be said to be the standard *domestic* market documentation in some important markets. This would require market participants to use a range of different documents, which itself could lead to *increased* risk for those participants because of different rights and remedies, and therefore a possible mismatch in the event of a default. Moreover, it would inevitably result in increased cost and burden on market participants, particularly those larger firms who are active across a

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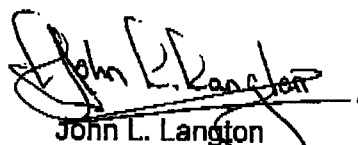
wide range of markets, to have to use, be familiar with and negotiate a number of different agreements. For these reasons, agreements such as the GMRA and the ISDA master for derivatives are promoted as a market standard agreement for all markets. Finally, what happens where there is no standard domestic market documentation?


In our view, it should be a sufficient requirement that documentation covers the transactions in question and fulfils the other conditions specified. The most important element is that the enforceability of the agreement is supported by an appropriate legal opinion. If these criteria are met, it does not seem to us that the fact that an agreement is the standard domestic market documentation in a particular jurisdiction should be an additional requirement.

Finally, as we understand it, the proposals relate to the "banking book" rather than the trading book. Although our members include most of the major banks, a majority of the Association's members are broker/dealers for whom the trading book is more important. We understand that this area is under review. We would urge that any changes to the current position be consulted upon in the same manner as the current proposals.

We would welcome the opportunity to discuss these issues with you.

Yours sincerely

  
John L. Langton  
Chief Executive  
and Secretary General

  
Thomas Hunziker  
General Counsel

**Enclosure**

cc: Godfried De Vidts, Chairman, ISMA's International Repo Council