

APPENDIX

Key Provisions Comparison: GMRA, GMSLA and ISDA Master Agreement

This Appendix sets out the key provisions of the 2011 version of the Global Master Repurchase Agreement (GMRA), co-published by the Securities Industry and Financial Markets Association and International Capital Market Association, and the January 2010 version of the Global Master Securities Lending Agreement (GMSLA), published by International Securities Lending Association. It also draws out the differences in how the GMRA, GMSLA and the ISDA 2002 Master Agreement and related credit support annexes (CSAs)³⁶ address similar concepts³⁷. Due to the different architecture of the ISDA documentation, product-specific provisions are addressed in the definitional booklets, provisions in the schedules to the ISDA Master Agreement and/or confirmations. High-level proposals have therefore been included for catering (or not catering) for the relevant GMRA/GMSLA provisions in the new SFT schedule provisions and/or SFT definitional booklet.

The comparison is divided into the following sections:

- Core transaction mechanics
- Provisions catering for management of a transaction during the lifecycle
- Representations and warranties
- Default and termination
- Consequences of an event of default/termination event
- Other
- Boilerplate provisions

This comparison is not comprehensive. In particular, the comparison does not include the GMSLA provisions on fees to lenders, use of letters of credit as collateral under a GMSLA, and corporate actions with respect to borrowed securities.

³⁶ While the concept of ISDA CSAs is generally referred to, the analysis below makes specific reference on several occasions to the 1995 Credit Support Annex (governed by English law) (1995 CSA) and, where relevant, the 2016 Credit Support Annex for Variation Margin (VM) (governed by English law) (2016 VM CSA). No detail relating to the ISDA documentation produced to cater for the posting of regulatory initial margin has been included

³⁷ At this stage, this comparison has not been conducted in relation to the GMSLA Security Interest over Collateral 2018 version (2018 Pledge GMSLA)

Provision	GMRA	GMSLA	ISDA Master Agreement/ ISDA CSA
1. Core Transaction Mechanics			
Transactions/loans	<p>The GMRA applies to the sale/repurchase of securities (referred to as transactions) against payment of a purchase price/repurchase price³⁸.</p> <p>A transaction involves an initial sale from the seller to the buyer against payment of a purchase price, with a corresponding sale from the buyer to the seller against payment of a repurchase price at the end of the transaction.</p>	<p>The GMSLA caters for the transfer of securities (referred to as a loan) against the transfer of collateral in form of securities, cash or letters of credit³⁹, rather than a purchase price.</p> <p>A loan involves an initial transfer (loan) from the lender to the borrower in exchange for an initial transfer of collateral from the borrower to the lender. At the end of the loan, borrowers have an obligation to (re)deliver securities equivalent to those borrowed, and lenders have an obligation to deliver collateral equivalent to that provided to it by the borrower⁴⁰.</p>	<p>The ISDA Master Agreement is product-agnostic and so does not contain any product-specific terms. Collateral or margin⁴¹ terms can be added using the appropriate ISDA CSAs, and product terms are contained in asset class-specific definitional booklets.</p> <p>These mechanics would be included in the securities financing transaction (SFT) definitional booklet (including, for example, purchase price and repurchase price).</p>
Title transfer	All transfers of securities under the GMRA are title transfer ⁴² .	All securities and collateral are transferred by way of title transfer ⁴³ .	These mechanics would be included in the SFT definitional booklet, leveraging existing ISDA title transfer provisions in ISDA CSAs/product definitions.
Simultaneous delivery vs. payment	The transfer of securities and the payment of the purchase price are required to be made simultaneously, unless otherwise agreed ⁴⁴ .	<p>Deliveries/payments are required to be made simultaneously, unless otherwise agreed⁴⁵.</p> <p>However, parties can waive the right to a corresponding payment or delivery from the other party to be made simultaneously, where this is due to market practice or practical difficulties⁴⁶.</p>	These mechanics would be included in the SFT definitional booklet.
Condition precedent	Parties may agree via annex I to introduce a condition precedent enabling a party to withhold its payments and deliveries where an event of default has occurred and is continuing in relation to the counterparty ⁴⁷ .	Parties can withhold delivery/payment where arrangements have not been made by the other party to ensure that a corresponding delivery/payment due will be made ⁴⁸ .	<p>The ISDA Master Agreement⁴⁹ provides a condition precedent for a party to withhold performance where an event of default or potential event of default has occurred with respect to the other party.</p> <p>For consideration is whether to include wording similar to that in the GMSLA in the SFT schedule provisions or SFT definitional booklet.</p>
Type of securities	<p>The GMRA does not cover equities and net paying securities (ie, those that require a withholding tax deduction)⁵⁰.</p> <p>Optional wording exists in annex I to permit the coverage of net paying securities⁵¹. This is described further in the sub-section entitled Tax Provisions in the Other section.</p>	There are no equivalent restrictions under the GMSLA.	<p>The ISDA Master Agreement does not restrict the type of securities that can be the subject of a transaction.</p> <p>This would not change in the SFT schedule provisions.</p> <p>With respect to net paying securities, this is described further in the sub-section entitled <i>Tax Provisions</i> in the <i>Other</i> section.</p>

³⁸ GMRA, Paragraph 1(a)-(b). For convenience, this schedule does not distinguish between transactions in the form of repos or buy-sell back transactions

³⁹ GMSLA, Paragraph 1.1-2

⁴⁰ GMSLA, Paragraph 4.2

⁴¹ The terms collateral and margin are used interchangeably herein

⁴² GMRA, Paragraph 6. Contrast this with the US Master Repurchase Agreement where transactions may be considered secured lending

⁴³ This is unless the 2018 Pledge GMSLA is used

⁴⁴ GMRA, Paragraph 6(c)

⁴⁵ GMSLA, Paragraph 1.1

⁴⁶ GMSLA, Paragraph 4.3

⁴⁷ GMRA, Paragraph 6(j)

⁴⁸ GMSLA, Paragraph 8.6

⁴⁹ ISDA Master Agreement, Section 2(a)(iii)

⁵⁰ GMRA, Paragraph 1(b)-(c)

⁵¹ GMRA, Annex I, Paragraph 1(b)

Provision	GMRA	GMSLA	ISDA Master Agreement/ ISDA CSA
Confirmation of Transaction			
Form of confirmation	The GMRA sets out a description of what is to be included in each confirmation ⁵² and a template – the form of confirmation at annex I ⁵³ .	The GMSLA is not prescriptive as to form and does not outline information to be included.	The ISDA Master Agreement is not prescriptive as to the form of confirmation. A form of template confirmation or confirmations would be appended to the SFT definitional booklet in the same way as for other asset classes.
Ordinary Course Termination			
Timing of termination	Transactions will either terminate on a fixed repurchase date or, if the transaction is an on demand transaction (ie, no fixed repurchase date), upon notice by either the buyer or the seller ⁵⁴ . Termination will occur after the minimum period customarily required for settlement or delivery of money or equivalent securities of the relevant kind from the date of demand.	Loans will either terminate at the end of a fixed period or, if there is no fixed period, upon notice by the borrower or the lender. If the lender terminates by notice, the notice period must be equal to the standard settlement time for the securities concerned, and the borrower must redeliver by the end of this period ⁵⁵ . Except in the case of a fixed-term loan, the borrower may terminate and redeliver at any time ⁵⁶ .	Derivatives transactions under the ISDA Master Agreement typically end on a date agreed by the parties as part of the transaction, and so there are no general provisions for dealing with open-ended transactions. This feature would be catered for in the SFT definitional booklet.
Obligations on termination	Upon termination, the buyer must transfer to the seller equivalent securities against the payment of the repurchase price by the seller, less any amount payable and unpaid by the buyer to seller in respect of income ⁵⁷ .	Upon termination, the borrower must deliver securities equivalent to those borrowed ⁵⁸ . The lender has an equivalent obligation in respect of collateral ⁵⁹ .	As with the opening leg of transactions/ loans, this feature would be catered for in the SFT definitional booklet.
2. Provisions Catering for Management of a Transaction During the Lifecycle			
Margin Provisions			
What is margined?	At a high level, for repurchase transactions, the security selected for the transaction is a term of the trade, and the exposure that needs be margined is the difference between the current value of the bond and the repurchase price at the relevant time under the repo, taking into account the applicable margin ratio. Margin is calculated on an aggregated basis for <i>all transactions</i> outstanding (ie, in relation to an overall net exposure ⁶⁰) and may be payable by either the buyer or seller. However, parties can exclude transactions from the aggregated calculation and instead margin those transactions separately ⁶¹ .	Under a securities loan, the exposure to be collateralized is the full market value of the security being lent (plus an amount of margin representing an agreed percentage of the value of the security). The GMSLA permits parties to elect in the schedule to calculate collateral either: (i) on an aggregated basis ⁶² ; or (ii) on a loan-by-loan basis ⁶³ . Collateral is only payable by the borrower to the lender.	Under the ISDA Master Agreement, margining terms are contained in the ISDA CSAs. If an ISDA CSA is applied by the parties to an ISDA Master Agreement, margin obligations under that ISDA CSA would apply to all transactions entered into under the ISDA Master Agreement, unless any transactions are specifically carved out ⁶⁴ . There is a decision to make about whether SFTs should also fall under the scope of margining provisions in the ISDA CSA or whether separate margining provisions would be included in the SFT schedule provisions. Some of the considerations that are relevant to this decision have been set out in subsequent rows.

⁵² GMRA, Paragraph 3(b)

⁵³ GMRA, Annex 2

⁵⁴ GMRA, Paragraph 3(d)

⁵⁵ GMSLA, Paragraph 8.1

⁵⁶ GMSLA, Paragraph 8.2

⁵⁷ GMRA, Paragraph 3(f)

⁵⁸ GMSLA, Paragraph 8.3

⁵⁹ GMSLA, Paragraph 8.4

⁶⁰ GMRA, Paragraph 4(c)

⁶¹ GMRA, Paragraph 4(i)

⁶² GMSLA, Paragraph 5.4

⁶³ GMSLA, Paragraph 5.5

⁶⁴ For the ISDA CSAs designed to cater for regulatory margin, the scope of transactions to which the margining provisions apply is limited only to those to which the margining regulations apply

Provision	GMRA	GMSLA	ISDA Master Agreement/ ISDA CSA
<p>Mechanism for calculating required margin</p>	<p>If either party has a net exposure to the other, it may by notice require the other party to make a margin transfer equal to that net exposure⁶⁵.</p> <p>A net exposure will arise by reference to the respective transaction exposures, amounts of income payable between the parties but unpaid, and the sum of net margin already provided between the parties.</p> <p>Transaction exposure⁶⁶ is determined by using one of the following two approaches, specified by the parties via annex I⁶⁷:</p> <ul style="list-style-type: none"> • The function of the repurchase price and the applicable margin ratio, less the market value of the equivalent securities at the relevant time (which may be adjusted by reference to a margin percentage)⁶⁸; or • The repurchase price, less the adjusted value of the equivalent securities (which is a function of the market value of such equivalent securities (which may be adjusted by reference to a margin percentage) at the relevant time and the relevant haircut applicable to such equivalent securities)⁶⁹. <p>The margin ratio is the market value of the securities at the purchase date divided by the purchase price or such other proportion agreed by the parties. Parties may choose a different margin ratio for any or all transactions, as well as different types of securities entered into under the GMRA⁷⁰.</p> <p>Net margin takes into account: (i) cash margin paid to each party (including accrued interest on cash margin that has not been paid to the other party); and (ii) the market value of margin securities posted between the parties.</p>	<p>The lender may on any business day make a demand for the delivery of further collateral (if a collateral deficiency exists), or the borrower may on any business day make a demand for the return of excess collateral⁷¹.</p> <p>A deficiency or excess will arise by reference to the aggregate market value of posted collateral and the aggregate of the required collateral value. The amounts due and payable between the parties but unpaid are also taken into account. If the income record date has occurred in respect of any securities equivalent to loaned securities/non-cash collateral, then the amount or market value of income payable in respect of such securities is also considered (if agreed between the parties).</p> <p>The required collateral value is the market value of securities equivalent to the loaned securities and the applicable margin.</p> <p>Margin is a percentage of the market value of each form of acceptable collateral, specified in the schedule.</p> <p>Posted collateral is the aggregate market value of the collateral delivered to or deposited with the lender (excluding any equivalent collateral repaid or delivered).</p>	<p>Under the 1995 CSA, margin obligations arise in circumstances that, on a given valuation date, the credit support amount for a party is not equal to the value of the credit support balance for that party, subject to any applicable minimum transfer amounts (discussed in later sections).</p> <p><u>Credit support balance/exposure</u></p> <p>Under the 1995 CSA, the credit support amount includes the relevant party's exposure, which is the amount that would be payable to/by that party if all transactions under the ISDA Master Agreement were terminated pursuant to a termination event with one affected party on a particular valuation date⁷².</p> <p>Consequently, the concept of exposure under the ISDA Master Agreement relies on a present value calculation in respect of the transactions subject to margining. For SFTs, exposure is (predominantly) based on known values – the repurchase price (GMRA) and the market value of the loaned securities (GMSLA). Given this, it may not be necessary to apply the ISDA concepts of credit support amount/exposure to SFTs, as the added flexibility offered by these concepts may not be necessary.</p> <p>The credit support amount is also:</p> <ul style="list-style-type: none"> • Affected by independent amounts⁷³; and • Reduced by thresholds. <p><u>Credit support balance</u></p> <p>The credit support balance includes:</p> <ul style="list-style-type: none"> • The aggregate of all eligible credit support transferred/received between the parties; plus • Any distributions and all proceeds of any such eligible credit support or distributions; plus • Any equivalent distributions or interest amount not transferred already. <p>The concept of a credit support balance is substantially equivalent to similar concepts in the GMRA and GMSLA, and would be applied to SFTs either by building it into separate margining provisions within the SFT schedule provisions or by relying on the existing ISDA CSA provisions.</p>

⁶⁵ GMRA, Paragraph 4(a)

⁶⁶ GMRA, Paragraph 2(xx)

⁶⁷ GMRA, Annex I, Paragraph 2(d)

⁶⁸ GMRA, Paragraph 2(xx)(A)

⁶⁹ GMRA, Paragraph 2(xx)(B)

⁷⁰ GMRA, Paragraph 4

⁷¹ GMSLA, Paragraph 5.4-5

⁷² ISDA 1995 CSA, Paragraph 11(c)

⁷³ For the 2016 VM CSA, this concept is not relevant

Provision	GMRA	GMSLA	ISDA Master Agreement/ ISDA CSA
Future exposure	There are no equivalent concepts under the GMRA. Instead, a cushion against the risk of the purchased securities falling in value and the buyer becoming under-collateralized is provided through the margin ratio mechanism.	There are no equivalent concepts under the GMSLA. Instead, a cushion against the risk of the loaned securities falling in value and the lender becoming under-collateralized is provided through the requirement for margin.	The credit support amount includes the concept of an independent amount, which can be specified in respect of each party. The effect of specifying an independent amount in respect of a party is to increase the amount of margin that party must post to the other (ie, to increase the credit support amount). It is effectively an add-on to current exposure to cater for potential future exposure that is not factored into the exposure calculation.
Quantitative reference points for a margin transfer	There are no equivalent concepts under the GMRA.	There are no equivalent concepts under the GMSLA.	<p><u>Thresholds</u> ISDA CSAs typically permit parties to include a threshold in respect of the other. This represents an amount of exposure that the other party is happy not to take collateral in respect of.</p> <p><u>Minimum transfer amounts (MTAs)</u> Parties may also specify MTAs, which operate to prevent a party from having to make a transfer if the amount is below a certain level (once the amount of such transfer is above that level, the full amount needs to be transferred)⁷⁴.</p> <p>There are no features equivalent to thresholds and MTAs in the GMRA and GMSLA, but their application would be facilitated for parties in the SFT schedule provisions.</p>
Eligible collateral	There is no concept of a pre-agreed pool of eligible collateral from which the parties can choose in order to satisfy their margining obligations (although this would normally be agreed separately from the GMRA). Rather, the definition of margin securities requires that they be securities of a type and value reasonably acceptable to the party calling for the relevant margin transfer.	The definition of collateral permits the parties to specify in paragraph 1 of the schedule the types of collateral that are acceptable to the lender.	<p>The definition of eligible credit support permits the parties to choose which types of collateral are acceptable for the purposes of satisfying margining obligations.</p> <p>This would not be changed in the SFT schedule provisions.</p>
Repricing	Instead of margining, parties may agree to reprice a transaction by adjusting the purchase price or identity/amount of securities to eliminate exposure ⁷⁵ .	There is no equivalent concept under the GMSLA.	<p>There is no equivalent concept under the ISDA Master Agreement or the ISDA CSAs⁷⁶, as matters such as this would be addressed in the confirmation for the relevant transaction/applicable definitions.</p> <p>This would be catered for in the SFT definitional booklet in relation to repurchase transactions.</p>

⁷⁴ ISDA CSAs also provide for parties to specify a rounding convention in relation to delivery amounts and return amounts, which would also be catered for in the SFT schedule provisions

⁷⁵ GMRA, Paragraph 4(j)-(l)

⁷⁶ Although this concept does exist for mark-to-market cross-currency swaps in the 2006 ISDA Definitions

Provision	GMRA	GMSLA	ISDA Master Agreement/ ISDA CSA
Satisfying a margin call	<p>A margin call is satisfied by making a margin transfer⁷⁷ of either cash or securities reasonably acceptable to the receiving party⁷⁸.</p> <p>The party making the transfer may decide on the combination of cash and securities, provided that when the receiving party had previously posted cash or securities as margin that have not been returned, it can require the margin transfer to be satisfied by delivery of such cash or securities⁷⁹.</p> <p>If a party is unable to transfer equivalent margin securities, then it must immediately pay cash margin equal to the value of those securities⁸⁰. If this failure persists for two business days, the other party may require the transferring party to pay a cash equivalent amount equal to the default market value of the equivalent margin securities that the receiving party determines⁸¹.</p>	<p>A margin call is satisfied by making a repayment and/or delivery of equivalent collateral⁸² (if lender to borrower) or providing further collateral⁸³ (if borrower to lender).</p> <p>Where aggregated margining applies⁸⁴, unless the parties have elected otherwise, the GMSLA provides that requirements to deliver equivalent collateral or provide further collateral can be netted to allow for a single net delivery of collateral between the parties.</p> <p>Where parties margin on an aggregated basis, and a party is required to deliver further collateral or redeliver equivalent collateral to the other party, the GMSLA also provides for the allocation of such delivery or redelivery to individual loans, so that at the maturity of each loan, the equivalent collateral to be delivered by the lender to the borrower is ascertainable.</p>	<p>Under the ISDA CSAs, margin calls are satisfied by the relevant party making a transfer of eligible credit support to the other party.</p> <p>This feature would be retained/included for SFTs.</p>
Failures to deliver	See sub-section entitled <i>Failure to Deliver and Mini Close-out</i> under <i>Other</i>	See sub-section entitled <i>Failure to Deliver and Mini Close-out</i> under <i>Other</i>	See sub-section entitled <i>Failure to Deliver and Mini Close-out</i> under <i>Other</i>
Income payments	<p>Where income is paid in relation to securities purchased by the buyer, the buyer must transfer to the seller an amount equal to that income payment⁸⁵. A similar provision applies to any income paid in relation to margin securities (ie, securities held by the seller)⁸⁶.</p> <p>Income is broadly defined as including, with respect to any security at any time, all interest, dividends or other distributions thereon.</p>	<p>Where income is paid in relation to securities and collateral, the receiving party must transfer an equivalent amount to the other party. These provisions largely mirror those of the GMRA.</p> <p>Income is broadly defined as including any interest, dividends or other distributions of any kind whatsoever with respect to any securities or collateral⁸⁷.</p>	<p>In the 1995 CSA, the transferee is required to transfer to the transferor any distributions (or equivalent distributions) and interest amounts received on collateral by the transferee, provided that no delivery amount would be created or increased by such transfer.</p> <p>This feature would be retained/included for SFTs.</p> <p>Apart from interest amounts on collateral, there are no income provisions in the ISDA Master Agreement/CSA, as any such payments would be addressed in the confirmation of a transaction referencing a security (or the applicable definitions)⁸⁸.</p>
Indemnity for failure to redeliver equivalent non-cash collateral	The GMRA does not contain an indemnity equivalent to that set out in the GMSLA	The GMSLA provides for an indemnity from the lender to the borrower in respect of losses suffered by the borrower if the borrower has called for the delivery of equivalent non-cash collateral prior to an income record date and the lender fails to transfer it ⁸⁹ .	<p>There is no equivalent concept under the ISDA Master Agreement.</p> <p>This would be catered for in the SFT schedule provisions in relation to securities loans.</p>

⁷⁷ GMRA, Paragraph 2(dd)

⁷⁸ GMRA, Paragraph 4(a). Please note that securities defines both the scope of the securities that can be the subject of repo, as well as that which can be provided as margin

⁷⁹ GMRA, Paragraph 4(d)

⁸⁰ GMRA, Paragraph 4(h)(i)

⁸¹ GMRA, Paragraph 4(h)(ii)

⁸² GMSLA, Paragraph 5.4/5(b)

⁸³ GMSLA, Paragraph 5.4/5(c)

⁸⁴ GMSLA, Paragraph 5.5

⁸⁵ GMRA, Paragraph 5(a)

⁸⁶ GMRA, Paragraph 5(b)

⁸⁷ GGMSLA, Paragraph 2

⁸⁸ For example, the treatment of dividends in the equity derivatives definitions

⁸⁹ GMSLA, Paragraph 6.4, which applies unless otherwise elected in schedule

Provision	GMRA	GMSLA	ISDA Master Agreement/ ISDA CSA
Substitution	<p>The GMRA permits the seller, if the buyer agrees, to substitute securities equivalent to purchased securities for different securities that have a market value at such date at least equal to the market value of the equivalent securities transferred to seller.</p> <p>With respect to margin securities, either party can request the substitution of any of those equivalent margin securities with new margin securities having a market value at such date at least equal to that of such equivalent margin securities. The substitution shall be effected only if the other party agrees⁹⁰.</p>	<p>The GMSLA permits the borrower to substitute collateral it has provided to the lender with alternative collateral acceptable to the lender⁹¹, provided this would not trigger a margin obligation⁹².</p>	<p>Similar substitution provisions are contained in the ISDA CSA for margin.</p> <p>Under the 1995 CSA, the transferor may, with the consent of the transferee, substitute eligible credit support for new credit support.</p> <p>This feature would be retained/included for SFTs.</p>

3. Representations and Warranties

Representations	<p>The GMRA contains a standard selection of representations by each party, and these are repeated each time any transaction is entered into or transfers occur under that transaction. Among other things, these relate to:</p> <ul style="list-style-type: none"> • The party having the authority to execute the agreement and enter into the transactions; • That it enters into the GMRA on its own behalf; • That entering into the GMRA will not violate any law or regulatory requirement⁹³. <p>It contains a unique representation that states (unless there is a written agreement to the contrary) it is not relying on any advice from the other party external to the GMRA, and that it fully understands the terms of and risks associated with entering into the agreement⁹⁴. This is often included in part 5 of an ISDA schedule as an additional representation (see part 5[(m)] of the template schedule appended to the ISDA Master Agreement).</p>	<p>The GMSLA contains a series of warranties (rather than representations as contained in the GMRA). These are made on a continuing basis.</p> <p>The content of these warranties broadly corresponds with the representations of the GMRA, and relate to:</p> <ul style="list-style-type: none"> • The authority and capacity of the parties to enter and perform obligations under the agreement; • The ability of the parties to make outright transfers of securities; and • That parties are acting as principal⁹⁵. <p>It contains a unique warranty, made by the borrower, to the effect that it is not entering into a loan for the primary purpose of obtaining or exercising voting rights in respect of the loaned securities⁹⁶.</p>	<p>The ISDA Master Agreement's basic representations in relation to an entity's status, powers and authority align with those under the GMRA and GMSLA⁹⁷.</p> <p>The ISDA Master Agreement contains additional representations relating to:</p> <ul style="list-style-type: none"> • Absence of event of default or potential event of default; • Absence of litigation; and • Tax representations. <p>The unique warranty in the GMSLA would be included within the SFT schedule provisions, but otherwise retaining the ISDA Master Agreement's suite of representations. The ISDA Master Agreement also contains 'agreements that parties will furnish specified information, maintain authorizations, comply with laws, notify the other where tax becomes payable and pay stamp duty. In the GMRA and GMSLA, similar tax provisions⁹⁸ are found elsewhere, and the other agreements are largely covered by the representations/warranties in those documents. This point would not be separately addressed in the SFT schedule provisions.</p>
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⁹⁰ GMRA, Paragraph 8

⁹¹ GMSLA, Paragraph 5.3

⁹² GMSLA, Paragraph 5.4 or 5.5 as applicable

⁹³ GMRA, Paragraph 9

⁹⁴ GMRA, Paragraph 9(g)

⁹⁵ GMSLA Paragraphs 13-14

⁹⁶ GMSLA, Paragraph 14(e)

⁹⁷ ISDA Master Agreement, Section 3(a)

⁹⁸ GMRA, Paragraph 11; GMSLA, Paragraph 12

Provision	GMRA	GMSLA	ISDA Master Agreement/ ISDA CSA
Agency	Parties are separately able to elect to execute the GMRA as an agent if needed through the agency annex ⁹⁹ , resulting in a separate GMRA with each underlying principal.	As under the GMRA, parties are able to elect to execute the GMSLA as an agent ¹⁰⁰ , resulting in a separate GMSLA with each underlying principal.	While the ISDA Master Agreement does not include template wording catering for the situation that the agreement is executed by an agent acting for underlying principals, such wording is often included by parties, and example wording is available in the ISDA Clause Library. For consideration is whether agency is addressed in the SFT schedule provisions separately from the wording in the ISDA Clause Library.
4. Default and Termination			
Events of default	<p>The GMRA contains the following events of default¹⁰¹:</p> <ul style="list-style-type: none"> • Failure to pay the purchase price on the purchase date or the repurchase price on the repurchase date; • If specified as applicable in annex I, failure to deliver purchased securities on the purchase date or equivalent securities on the repurchase date, in either case within the standard settlement time for delivery of those securities; • Failure to pay any sum due in circumstances where the mini close-out provisions have been applied; • Failure to comply with the margin maintenance provisions; • Failure to pay manufactured dividends; • An act of insolvency occurs in relation to the relevant party; • Representations are incorrect or untrue in any material respect; • Admission by a party of its inability to, or intention not to, perform obligations under the GMRA; • Being declared in default by or being suspended from membership of any securities exchange or being prohibited from dealing in securities by any competent authority, on the grounds of failure to meet requirements relating to financial resources or credit rating; and • Failure to perform any other obligation(s) under the agreement that is not remedied after a 30-day grace period. 	<p>The GMSLA contains the following events of default, which largely mirror those contained in the GMRA:</p> <ul style="list-style-type: none"> • Failure to pay or repay cash collateral, or to deliver collateral; • Failure to make manufactured payments in respect of loaned securities or non-cash collateral (grace period of three days)¹⁰²; • Failure to pay any sum due under the mini close-out provisions upon the due date; • An act of insolvency; • A warranty is incorrect or untrue in a material respect; • Admission of an inability to, or intention not to, perform; • Transfer of all or any material part of the assets of the lender or borrower to a trustee by a regulatory authority; • Action taken in respect of a party by a securities exchange or regulatory authority on the grounds that it has failed to meet any requirements relating to financial resources or credit rating; and • Breach of any other obligation (grace period of 30 days). <p>The different approaches taken by the GMRA and GMSLA to failures to deliver are covered under the sub-section entitled <i>Failure to Deliver and Mini Close-out</i> under <i>Other</i>.</p>	<p>The ISDA Master Agreement contains events of default that largely align with those contained in the GMRA and GMSLA, with the addition of those that are listed below¹⁰³:</p> <ul style="list-style-type: none"> • Credit support default; • Default under specified transaction; • Cross default¹⁰⁴, and • Merger without assumption. <p>The ISDA Master Agreement's events of default would be retained and supplemented in the SFT schedule provisions as applicable with those of the GMRA and GMSLA.</p> <p>Regarding the different approaches taken by the GMRA and GMSLA to failures to deliver, see the sub-section entitled <i>Failure to Deliver and Mini close-out</i> under <i>Other</i>.</p>

⁹⁹ GMRA, Annex I

¹⁰⁰ GMSLA, Agency Annex

¹⁰¹ GMRA, Paragraph 10(a)

¹⁰² GMSLA, Paragraph 10.1(b)

¹⁰³ ISDA Master Agreement, Section 5(a)

¹⁰⁴ Please note that cross default would only apply where parties elected for its inclusion

Provision	GMRA	GMSLA	ISDA Master Agreement/ ISDA CSA
Termination events	The GMRA contains provisions largely corresponding to the tax event termination event in the ISDA Master Agreement ¹⁰⁵ .	Termination events are not contemplated by the GMSLA.	The ISDA Master Agreement's termination events cater for the termination of certain or all transactions in circumstances where no fault is attributable. If an event giving rise to a termination event is also an event of default, it will be treated as an event of default ¹⁰⁶ . The applicability of termination events would be retained with respect to transactions entered into under the SFT schedule provisions, which would involve introducing illegality and force majeure as termination events for SFTs.
Notice of event of default	The GMRA requires that each party immediately notify the other of an event of default, or an event that upon service of a notice would be an event of default, which occurs in relation to it ¹⁰⁷ .	The GMSLA requires that each party notify the other of an event of default, or an event that would become one upon service of a notice, which occurs in relation to it ¹⁰⁸ .	A similar effect is achieved by virtue of the ongoing representation at section 3(b) of the ISDA Master Agreement ¹⁰⁹ , which relates to absence of an event of default or potential event of default. This would not be changed in the SFT schedule provisions.

5. Consequences of an Event of Default/Termination Event

Event of default and designation of termination date	The event of default will not (unless automatic early termination on insolvency has been elected ¹¹⁰) trigger a termination of the agreement unless the non-defaulting party gives notice designating an early termination date and such event of default is continuing at that time ¹¹¹ . This notice must – by not more than 20 days' notice to the defaulting party specifying the relevant event of default – designate an early termination date in respect of all outstanding transactions ¹¹² .	There is no event of default unless a default notice is served (unless automatic early termination on insolvency has been elected ¹¹³). The termination date is not designated by either party, but is instead the time that the relevant event of default occurs (which itself is triggered by the default notice described earlier).	<u>Events of default</u> Unless automatic early termination on insolvency has been elected ¹¹⁴ , when an event of default has occurred and is continuing, the non-defaulting party may designate a date (not earlier than the effective date of the notice) as an early termination date and terminate all outstanding transactions ¹¹⁵ . The notice period must be no more than 20 days. This architecture (which is equivalent to that in the GMRA) would be retained for transactions entered into under the SFT schedule provisions. <u>Termination events</u> If a termination event other than force majeure occurs, the affected party must promptly notify the other party, specifying the nature and each affected transaction. It must provide any information about that termination event as the other party is likely to require. In the case of force majeure, each party should make all reasonable efforts to promptly notify the other, again specifying the nature of the termination event and providing reasonably required information ¹¹⁶ .
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¹⁰⁵ GMRA, Paragraph 11

¹⁰⁶ ISDA Master Agreement, Section 5(c)

¹⁰⁷ GMRA, Paragraph 10(m)

¹⁰⁸ GMSLA, Paragraph 10.2

¹⁰⁹ ISDA Master Agreement, Section 3(b)

¹¹⁰ GMRA, Paragraph 10(b); GMRA, Annex I

¹¹¹ GMRA, Paragraph 2(r)

¹¹² GMRA, Paragraph 10(b)-(c)

¹¹³ GMSLA, Paragraph 10.1(d)

¹¹⁴ ISDA Master Agreement, Section 6(a)

¹¹⁵ ISDA Master Agreement, Section 6(a)

¹¹⁶ ISDA Master Agreement, Section 6(b)

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			<p>Following a termination event, the exact process depends on the specific termination event¹¹⁷ (for example, illegality and force majeure are subject to a waiting period¹¹⁸).</p> <p>This architecture would be retained for transactions entered into under the SFT schedule provisions.</p>
Effect of designation of early termination date/termination date	<p>The occurrence of an early termination date triggers the acceleration of both parties' payment and delivery obligations in relation to outstanding transactions and repayment of margin.</p> <p>These accelerated obligations are then cash-valued in the base currency and set off against one another to produce an obligation to pay a net amount on the early termination date¹¹⁹.</p> <p>This is covered further in the <i>Components of Close-out</i> section.</p>	<p>When a written notice of an event of default is given, both parties' payment and delivery obligations are accelerated and cash-valued in the base currency.</p> <p>The different sums due by each party to the other are then set off against each other to produce a net amount¹²⁰.</p> <p>This is covered further in the <i>Components of Close-out</i> section.</p>	<p>Following termination, all existing and future obligations in relation to the terminated transactions are extinguished and replaced by a single obligation to pay a net sum¹²¹. This net sum is calculated pursuant to section 6(e)¹²².</p> <p>There is a decision to make about whether to apply the provisions of section 6(e) to SFTs under the SFT schedule provisions.</p> <p>This is covered further in the <i>Components of Close-out</i> section.</p>
Close-out statement	<p>The non-defaulting party must provide the defaulting party with a statement showing in reasonable detail the calculations made to arrive at the net amount and specifying the balance payable.</p>	<p>There is no obligation on the non-defaulting party to provide the defaulting party with a calculation statement.</p>	<p>Parties are required to provide a statement showing the calculation of an early termination amount, including details of how the figure was established and the account information for payment¹²³.</p> <p>For the SFT schedule provisions, all terminations (ie, even for mini close-outs) would require the non-defaulting party to serve this calculation statement.</p>
Which party determines?	<p>The non-defaulting party.</p>	<p>The non-defaulting party¹²⁴.</p>	<p>For events of default, the non-defaulting party.</p> <p>For termination events, either the affected party or both parties, depending on the event.</p> <p>This would not be changed in the SFT schedule provisions.</p>
Reference date for termination amounts/values	<p>The default valuation time is on or about the early termination date¹²⁵.</p>	<p>In contrast with the GMRA, the default valuation time is the close of business in the appropriate market on the fifth dealing day after the date on which the event of default occurs or, in the case of automatic early termination, the fifth dealing day after the day on which the non-defaulting party first became aware of the occurrence of such event of default¹²⁶.</p>	<p>Each close-out amount is determined as of the early termination date or the next commercially reasonable date¹²⁷, which provides additional flexibility as compared with the GMRA and GMSLA. There is a decision to make about whether this additional flexibility is required for the SFT schedule provisions given the assumption that SFTs should be easier to value than derivatives transactions.</p>

¹¹⁷ ISDA Master Agreement, Section 6(b)

¹¹⁸ ISDA Master Agreement, Section 5(d)

¹¹⁹ GMRA, Paragraph 10(d)(ii)

¹²⁰ GMSLA, Paragraph 11.2(b)

¹²¹ ISDA Master Agreement, Section 6(c)

¹²² ISDA Master Agreement, Section 6(e)

¹²³ ISDA Master Agreement, Section 6(d)

¹²⁴ GMSLA, Paragraph 11.3

¹²⁵ GMRA, Paragraph 10(f)

¹²⁶ GMSLA, Paragraph 11.3(b)

¹²⁷ ISDA Master Agreement, Section 14

Provision	GMRA	GMSLA	ISDA Master Agreement/ ISDA CSA
Components of close-out	<p>The non-defaulting party determines the following in respect of all transactions¹²⁸:</p> <ul style="list-style-type: none"> • The default market value of equivalent securities and equivalent margin securities to be transferred (which, per the definition of default market value, will include any coupon payments accrued but not yet paid); • The amount of any cash margin (including interest accrued) to be transferred; • The repurchase prices to be paid by either party; • The cash equivalent amounts to be paid by either party. <p>On the basis of these determinations, the non-defaulting party calculates what is due from each party to the other and sets these amounts off to produce a net amount.</p> <p>For ease of comparison, the components of these amounts are broken out in rows (i) to (vii).</p>	<p>The non-defaulting party determines the following in respect of all loans¹²⁹:</p> <ul style="list-style-type: none"> • The default market value of equivalent securities and equivalent non-cash collateral to be delivered; • The amount of any cash collateral to be repaid (including interest accrued); and • The amount of any other cash to be paid by each party. <p>On the basis of these determinations, parties must calculate what sum is due from each party to the other, and these amounts are set-off to produce a net amount¹³⁰.</p> <p>For ease of comparison, the components of these amounts are broken out in rows (i) to (vii).</p>	<p>The calculation of the final amount due occurs by taking the sum of the close-out amounts in respect of each terminated transaction together with the unpaid amounts owing to the non-defaulting party (determined by the non-defaulting party) less any unpaid amounts owed to the defaulting party.</p> <p>There is a decision to make about whether to apply the provisions of section 6(e), including the concept of close-out amount (covered in row (v) of this section), to SFTs under the SFT schedule provisions. Proposals are set out in each row accordingly.</p> <p>For ease of comparison, the components of these amounts are broken out in rows (i) to (vii).</p>
(i) Amounts due but unpaid as at reference date	<p>Any amounts due between the parties, including income payments, that had not been paid would be included within amounts due from each party to the other under the agreement set out in paragraph 10(d)(ii). This could also include costs associated with replacement of transactions and unwinding of hedges where a mini-close out had occurred before the early termination date.</p> <p>Interest that has accrued on any such amounts is also payable within the net amount (this is separate to interest payable on the termination amount, which is addressed later)¹³¹.</p>	<p>Any amounts due between the parties, including income payments and any interest accrued, that had not been paid would be included within the acceleration of obligations set out in paragraph 11.2¹³².</p> <p>This could include interest, overdraft and costs incurred as a result of late delivery of equivalent securities or equivalent collateral, including buy-in costs¹³³.</p>	<p>Any amounts that had become due and not been paid¹³⁴, as well as interest on those amounts, would become unpaid amounts for the purposes of the early termination amount calculation¹³⁵.</p> <p>The same approach would be taken to equivalent amounts due under SFTs for the purposes of the SFT schedule provisions.</p>
(ii) Acceleration of post-reference date payment obligations	<p>Under the GMRA, if an early termination date occurs, the repurchase date for each transaction is brought forward to the early termination date, such that each repurchase price is payable as of such early termination date¹³⁶.</p>	<p>The parties' payment obligations are accelerated to require performance at the time the event of default occurred (the termination date)¹³⁷.</p>	<p>The ISDA Master Agreement uses the concept of close-out amount to value future payment and delivery obligations. The concept of close-out amount and its potential application to SFTs is discussed in row (v) of this section.</p>

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¹²⁸ GMRA, Paragraph 10(d)(i)

¹²⁹ GMSLA, Paragraph 11.2(a)

¹³⁰ GMSLA, Paragraph 11.2

¹³¹ GMRA, Paragraph 10(d)(ii); Paragraph 12

¹³² GMSLA, Paragraph 11.2

¹³³ GMSLA, Paragraph 9.3

¹³⁴ The 2016 VMSA clarifies that no unpaid amount will be determined with respect to any unsatisfied delivery amounts and return amounts. Rather, these will be reflected in the close-out amount calculations

¹³⁵ ISDA Master Agreement, Section 14, definition of unpaid amount

¹³⁶ IGMRA, Paragraphs 10(c) and (d)(i)

¹³⁷ GMSLA, Paragraph 11.2

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			<p>As the obligations in the GMRA and GMSLA do not require a present value calculation in relation to these amounts, a nearer equivalent in the ISDA architecture would be the way cash collateral is treated under the ISDA CSAs. Following an event of default, cash collateral would form part of the credit support balance, the value of which will be deemed to be an unpaid amount for the purposes of the early termination amount calculation. A similar mechanism could apply with respect to the SFT schedule provisions.</p>
<p>(iii) Acceleration of post-reference date obligation to return securities</p>	<p>Under the GMRA, if an early termination date occurs, any obligation to deliver equivalent securities, and any obligation to deliver equivalent margin securities, is brought forward to the early termination date.</p> <p>The securities are valued at their default market value and converted into a cash amount.</p>	<p>Under the GMSLA, if an event of default occurs, any obligation to deliver equivalent securities, and any obligation to deliver equivalent non-cash collateral, is brought forward to the termination date.</p> <p>The securities are valued at their default market value and converted into a cash amount.</p>	<p>Following an event of default, securities collateral is valued and forms part of the credit support balance, the value of which will be deemed an unpaid amount for the purposes of the early termination amount calculation.</p> <p>A similar mechanism could be applied with respect to the SFT schedule provisions.</p>
<p>(iv) Requirement to return/repay all cash margin and all other cash amounts</p>	<p>Cash margin (including interest accrued) to be transferred and cash equivalent amounts to be paid shall become due at the early termination date.</p>	<p>Cash collateral (including interest accrued) to be repaid and any other cash amounts to be paid are accelerated for the purposes of the termination date.</p>	<p>Following an event of default, cash collateral forms part of the credit support balance, the value of which will be deemed an unpaid amount for the purposes of the early termination amount calculation.</p> <p>A similar mechanism could be applied with respect to the SFT schedule provisions.</p>
<p>(v) Termination of future payment obligations and determination of their present value</p>	<p>There is no equivalent concept under the GMRA.</p>	<p>There is no equivalent concept under the GMSLA.</p>	<p>The ISDA Master Agreement uses the concept of the close-out amount as the means of valuing transactions, which requires an assessment of the present value of future cashflows and delivery obligations under each transaction that is being terminated.</p> <p>As under the GMRA and GMSLA, external sources are contemplated as providing valuations for securities in order to determine the close-out amount. Parties are encouraged to reference quotations, market data and information from internal sources when explaining in detail how their calculations were achieved¹³⁸. Commercial reasonableness is key when establishing whether the procedures reaching the valuation are sufficient¹³⁹. These are calculated on or as soon as practicable following the early termination date¹⁴⁰.</p> <p>There is a decision to make about whether to apply the concept of close-out amount to any element of the close-out calculations for SFTs under the SFT schedule provisions. For SFTs, as valuations of securities do not require the same flexibility as may be required for (often illiquid) derivatives transactions, it may not be necessary to apply the close-out amount concept to SFTs.</p>

¹³⁸ ISDA Master Agreement, Section 6(d)(i)

¹³⁹ ISDA Master Agreement, Section 14

¹⁴⁰ ISDA Master Agreement, Section 6(d)(i)

Provision	GMRA	GMSLA	ISDA Master Agreement/ ISDA CSA
(vi) Conversion of all resulting cash amounts into a single currency	All sums not denominated in the base currency shall be converted to the base currency at the spot rate ¹⁴¹ , which for the purposes of the termination calculation is to be obtained by the non-defaulting party by reference to a pricing source or quoted by a bank ¹⁴² .	For the purposes of this calculation, any sum not denominated in the base currency shall be converted into the base currency at the spot rate prevailing at such dates and times determined by the non-defaulting party acting reasonably ¹⁴³ .	All resulting cash amounts are converted into the termination currency equivalent of those amounts. This requires the determining party to select a foreign exchange agent in good faith (or, if both parties are determining parties, the agent must be agreed) to conduct the conversion at 11.00am in the city in which such foreign exchange agent is located ¹⁴⁴ . This would not be changed in the SFT schedule provisions.
(vii) Accrual of interest from the final determination of net termination amount until payment	Interest will accrue on the net amount from the early termination date to, but excluding, the date of payment ¹⁴⁵ .	The GMSLA only caters for interest on the net amount if the net amount is not paid on the business day after account is taken ¹⁴⁶ .	Equivalent provisions to those set out in the GMRA in respect of interest are set out in the ISDA Master Agreement ¹⁴⁷ . This would not be changed in the SFT schedule provisions.
Calculating value of securities	<p>There are different options for valuing the securities: actual sale proceeds/purchase costs; quotes from market makers; and fair market value determined by the non-defaulting party.</p> <p>The default market value in respect of equivalent securities or equivalent margin securities is determined as follows:</p> <ul style="list-style-type: none"> • If the non-defaulting party has sold/bought identical securities from the same issuance, the net proceeds/purchase price (less expenses etc); • If the non-defaulting party has received offers/bids in respect of securities of the relevant description from two or more market makers or regular dealers in the appropriate market in a commercially reasonable size, with a customary pricing methodology, the price quoted (after deducting reasonably anticipated expenses) and adjusted in a commercially reasonable manner by the non-defaulting party to reflect accrued but unpaid coupons not reflected in the quotes obtained. <p>The non-defaulting party may determine a net value in respect of the relevant securities and treat that net value as the default market value if it has:</p> <ul style="list-style-type: none"> • Endeavored but been unable to sell or purchase securities or obtain quotations; • Determined that it would not be commercially reasonable to sell or purchase securities at the prices bid or offered, or obtain or use the relevant quotations. 	<p>There are different options for valuing the securities: actual buy-in/sale price; quotes from market makers; and fair market value determined by the non-defaulting party.</p> <p>The default market value in respect of equivalent securities or equivalent margin securities is determined as follows:</p> <ul style="list-style-type: none"> • If the non-defaulting party has purchased receivable securities or sold deliverable securities, it may elect to treat as the default market value the net proceeds of sale or net purchase costs; • If the non-defaulting party has received an offer securities or bid securities quotations from two or more market makers in a commercially reasonable size, it may elect to treat the price quoted (or the mean if there is more than one quote) as the default market value. <p>Alternatively, the non-defaulting party may determine the net value of the relevant securities and treat the net value as the default market value¹⁴⁹ if, acting in good faith, it has:</p> <ul style="list-style-type: none"> • Endeavored but been unable to sell or purchase securities or to obtain quotations; or • Determined that it would not be commercially reasonable to sell or purchase securities at the prices bid or offered or obtain such quotations, or that it would not be commercially reasonable to use any quotations that it has obtained. 	<p>With respect to valuing securities, the ISDA CSA mechanism involves the valuation agent determining the bid price of the relevant securities¹⁵¹.</p> <p>For the SFT schedule provisions, the features common to the default market value calculations in the GMRA and GMSLA would be added in.</p>

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¹⁴¹ GMRA, Paragraph 10(d)(ii)

¹⁴² GMRA, Paragraph 2(ss), definition of spot rate

¹⁴³ GMSLA, Paragraph 11.2(b)

¹⁴⁴ ISDA Master Agreement, Section 6(e) and Section 14, definition of termination currency equivalent

¹⁴⁵ GMRA, Paragraph 10(d)

¹⁴⁶ GMSLA, Paragraph 11.2(b) and Paragraph 15

¹⁴⁷ ISDA Master Agreement, Paragraph 9(h)(ii)(2)

¹⁴⁹ GMSLA, Paragraph 11.4-5

¹⁵¹ 1995 CSA and 2016 VM CSA, Paragraph 10, definition of value

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	The net value is a fair market value reasonably determined by the non-defaulting party and derived from pricing sources (including trading prices) and based on pricing methods the non-defaulting party considers appropriate, less transaction costs that would be incurred or reasonably anticipated in connection with the purchase or sale of such securities ¹⁴⁸ .	The net value is an amount that, in the reasonable opinion of the non-defaulting party, represents the fair market value with regard to pricing sources and methods as appropriate. If, at the default valuation time, the non-defaulting party determines that it is not reasonably practicable to determine a commercially reasonable net value of the securities, the non-defaulting party may determine its net value as soon as is reasonably practicable after the default valuation time ¹⁵⁰ .	
Adjustments for payments/deliveries in case of automatic early termination on insolvency	There is no equivalent concept under the GMRA.	There is no equivalent concept under the GMSLA.	Where an early termination date occurs pursuant to automatic early termination on insolvency (where it has been elected), the early termination amount is subject to adjustments to reflect payments or deliveries made by one party to the other during the period from the relevant early termination date to the date for payment determined under section 6(d)(ii) ¹⁵² . This would not be changed in the SFT schedule provisions.
When is the net amount payable?	On the business day following the date of the early termination statement ¹⁵³ .	Payment by the owing party must be made on the next business day after set-off has been effected ¹⁵⁴ .	Either: i) For events of default, on the day on which notice of the amount payable is effective; and ii) For termination events, on the day which is two local business days after the day on which notice of the amount payable is effective (or, if there are two affected parties, after the day on which the statement provided pursuant to clause (i) by the second party to provide such a statement is effective) ¹⁵⁵ . This would not be changed in the SFT schedule provisions.
Expenses and other costs	The defaulting party will be liable for the non-defaulting party's expenses in connection with the default, together with interest thereon ¹⁵⁶ . The non-defaulting party is also entitled to costs associated with replacement transactions or unwinding of hedges.	The defaulting party is liable to the non-defaulting party for legal and other professional expenses incurred as a result of the event of default, together with interest thereon ¹⁵⁷ .	The defaulting party is liable for the expenses of the non-defaulting party incurred in connection with the event of default ¹⁵⁸ . This would not be changed in the SFT schedule provisions.

¹⁴⁸ GMRA, Paragraph 10(e)(iii)

¹⁵⁰ GMSLA, Paragraph 11.6

¹⁵² ISDA Master, Section 6(e)(iii)

¹⁵³ GMRA, Paragraph 10(g)

¹⁵⁴ GMSLA, Paragraph 11(2)(b)

¹⁵⁵ ISDA Master Agreement, Section 6(d)(ii)

¹⁵⁶ GMRA, Paragraph 10(d)(iii)

¹⁵⁷ GMSLA, Paragraph 11.7

¹⁵⁸ ISDA Master Agreement, Section 11

Provision	GMRA	GMSLA	ISDA Master Agreement/ ISDA CSA
Other remedies	No remedies, except those set out in the agreement, may be sought by either party in respect of any event of default ¹⁵⁹ .	No remedies, except those set out in the agreement, may be sought after an event of default ¹⁶⁰ .	The provisions of the GMRA and GMSLA contrast with those of the ISDA Master Agreement, which notes that, except as specifically provided, the remedies and rights provided by the ISDA Master Agreement are not exclusive of those provided by law ¹⁶¹ . However, parties to the ISDA Master Agreement agree that neither party may recover additional damages as a consequence of a termination of the agreement ¹⁶² . This would not be changed in the SFT schedule provisions.
Consequential loss	The GMRA does not generally permit recovery of consequential loss ¹⁶³ , but does permit costs associated with replacement transactions or unwinding of hedges where a transaction is closed out early to be recovered. This applies not just where an event of default has occurred, but also in the context of the mini close-out provisions, referred to in the <i>Other</i> section.	The GMSLA does not generally permit recovery of consequential loss ¹⁶⁴ , but permits recovery of expenses (including buy-in costs) resulting from any failure to deliver on time ¹⁶⁵ (not just where an event of default has occurred).	The ISDA Master Agreement caters for costs of replacement transactions and hedging in the concept of close-out amount ¹⁶⁶ . There is a decision to make about whether to apply the concept of close-out amount to SFTs under the SFT schedule provisions. If this concept is not applied, the SFT schedule provisions would replicate as far as possible the positions in the GMRA and GMSLA.
6. Other			
Failure to deliver and mini close-out	Parties may elect (in the annex) for a failure by the seller to deliver the purchased securities on the purchase date (or the buyer failing to deliver equivalent securities on the repurchase date) to constitute an event of default. If it is not an event of default, the non-defaulting party may require the failing party to pay cash margin to cover any transaction exposure. If the failure continues, the non-defaulting party may, by notice to the other, elect for a mini close-out of the relevant transaction ¹⁶⁷ . Similar provisions exist catering for failures by either party to transfer equivalent margin securities, where such failure is on account of any reason relating to the securities or the clearing system through which the securities are to be transferred and the transferring party has made all reasonable efforts to make the transfer ¹⁶⁸ .	Under the GMSLA, a failure by the lender to lend the securities in the first place is not an event of default. A failure by the borrower to deliver equivalent securities is also not an event of default. Rather, the lender can decide to continue the loan or elect for a mini close-out and terminate it in accordance with the GMSLA termination provisions. A failure by the lender to deliver equivalent non-cash collateral is also not an event of default – the borrower can decide to continue the loan or elect for a mini close-out. Where there is a failure to deliver by either party as described, the party responsible for that failure is liable for any interest, overdraft or similar costs and expenses incurred by the other party. This must be paid within one business day of a demand of transferee ¹⁶⁹ .	Under the ISDA Master Agreement (and CSA), failure to deliver collateral constitutes a potential event of default ¹⁷⁰ with respect to all transactions. Failure to deliver under a transaction may constitute a potential event of default with respect to all transactions, but only if, under the relevant confirmation or definitions, the obligation to deliver is non-conditional and not subject to any specific fallback provisions. The SFT schedule provisions would amend the failure to deliver event of default to preserve the optionality in both the GMRA and GMSLA.

¹⁵⁹ GMRA, Paragraph 10(j)

¹⁶⁰ GMSLA, Paragraph 10.3

¹⁶¹ ISDA Master Agreement, Section 9(d)

¹⁶² ISDA Master Agreement, Section 6(e)(v)

¹⁶³ GMRA, Paragraph 10(k)-(l)

¹⁶⁴ GMSLA, Paragraph 10.4

¹⁶⁵ GMSLA, Paragraph 9.3

¹⁶⁶ ISDA Master Agreement, Paragraph 14

¹⁶⁷ GMRA, Paragraph 10(h) and (i)

¹⁶⁸ GMRA, Paragraph 4(h)

¹⁶⁹ GMSLA, Paragraph 9.3

¹⁷⁰ ISDA Master Agreement, Section 5(a)(i)

Provision	GMRA	GMSLA	ISDA Master Agreement/ ISDA CSA
Set-off	<p>The GMRA includes a contractual set-off clause that provides that the net amount payable to the payee following an event of default may, at the option of the non-defaulting party, be set off against any amount payable from the payee party to the paying party under any other agreement between them¹⁷¹.</p>	<p>The GMSLA provides, at the option of the non-defaulting party, for the set-off of any amount payable by one party to the other following an event of default against any amount payable by the other party under any other agreement or instrument between the parties¹⁷².</p>	<p>The early termination amount payable is subject to a right of set-off. This means that the net value owed will, at the option of the non-defaulting party, be set off against any other amounts payable to the payer to the payee. The non-defaulting party may, in good faith, estimate the value of an unascertained obligation¹⁷³.</p> <p>Parties would also be able to set-off termination amounts in respect of SFTs, whether because any termination amount in relation to SFTs is included within the definition of early termination amount, or (if an alternative approach is taken) the ISDA set-off provision is amended in the SFT schedule provisions.</p>
Tax provisions	<p>Under the GMRA, the general position is that all money payable is to be paid without withholding or deduction for any taxes or duties¹⁷⁴.</p> <p>In circumstances where any taxes are payable, the paying party is required to pay such additional amounts as will result in the net amounts receivable by the other party being equal to such amounts as would have been received by it had no taxes or duties been required to be withheld or deducted.</p> <p>However, in these circumstances, the paying party may elect to terminate the relevant transaction by notice¹⁷⁵. In which case, the receiving party can elect to continue the transaction and indemnify the paying party against the gross-up payment¹⁷⁶. This is the case even if the optional wording to cover net paying securities has been included in annex I.</p>	<p>Under the GMSLA, the general position is that all payments are to be made without any deduction or withholding for or on account of any tax unless required by applicable law.</p> <p>If the paying party is required to deduct/withhold, that party shall:</p> <ul style="list-style-type: none"> • Notify the other party; • Pay or otherwise account for the full amount required to be deducted or withheld to the relevant authority; and • Pay to the other party such additional amount as is necessary to ensure the net amount actually received by the recipient will equal the amount the recipient would have received had no such deduction or withholding been required¹⁷⁷. <p>However, the payer will not be required to pay any additional amount to the recipient to the extent it would not be required to be paid for the failure by the recipient to comply with or perform any obligation to deliver certain requested tax forms.</p> <p>With respect to income, however, the position under the GMSLA is that the payer must pay to the other party such amounts as agreed between the parties or, failing such agreement, the amount the lender would have received assuming such securities were not loaned to the borrower. This may require specific provision in the SFT schedule provisions.</p>	<p>Under the ISDA Master Agreement, the general position is that all payments will be made without any deduction or withholding for tax, unless such deduction or withholding is required by applicable law.</p> <p>If a party is required to withhold, that party (X) will have to (among other things):</p> <ul style="list-style-type: none"> • Notify the other party (Y); • Pay to the relevant authorities the full amount required to be deducted/withheld; and • If the relevant tax is an indemnifiable tax, pay to Y such additional amount as is necessary to ensure the net amount actually received by Y would be the amount Y would have received had no deduction or withholding been required (a gross-up payment). <p>However, X would not be required to make such gross-up payment where it would not have been required but for:</p> <ul style="list-style-type: none"> • The failure of Y to comply with or perform any agreement contained in section 4(a)(i), (iii) or 4(d) – ie, a failure of Y to deliver certain requested tax forms; or • The failure of a tax representation made by Y to be accurate and true (subject to certain provisos, including a change in the law after a transaction is entered into). <p>If there is a change in tax law or regulatory practice, the party suffering the adverse financial consequence may have the ability to terminate for a tax event.</p>

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¹⁷¹ GMRA, Paragraph 10(n)

¹⁷² GMSLA, Paragraph 11.8

¹⁷³ ISDA Master Agreement, Section 6(f)

¹⁷⁴ GMRA, Paragraph 6(b)

¹⁷⁵ GMRA, Paragraph 11(c)

¹⁷⁶ GMRA, Paragraph 10(d)

¹⁷⁷ GMSLA, Paragraphs 12.1-12.3

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			<p>With respect to payments other than in respect of income, these provisions are broadly speaking similar to those set out in the GMRA and GMSLA, and they would not change for the purpose of the SFT schedule provisions.</p> <p>With respect to payments of income/distributions, no express provision is made in the 1995 CSA with respect to distributions being received net rather than gross by the transferee. However, the transferee is only required to pay to the transferor what it receives. Consequently, specific provisions for this may need to be built into the SFT schedule provisions, and the choice between the approach taken in the GMRA and that taken in the GMSLA would also be built in.</p>
7. Boilerplate Provisions			
Notices	<p>Notices or communications may be sent by post, by fax or electronically under the GMRA¹⁷⁸. Delivery rules vary depending on the means used, but broadly involve the notice's arrival within the receiver's sphere of control¹⁷⁹, except where this is not on a business day¹⁸⁰.</p>	<p>Notices or communications may be sent by post, by fax or electronically under the GMSLA. Delivery rules vary depending on the means used, but broadly involve the notice's arrival within the receiver's sphere of control, except where this is not on a business day¹⁸¹.</p>	<p>The ISDA Master Agreement provisions regarding notices¹⁸² largely mirror those in the GMRA and GMSLA, although the ISDA Master Agreement also provides for the ability to send notices by telex¹⁸³.</p> <p>This would not be changed in the SFT schedule provisions.</p>
No waivers	<p>The GMRA provides that no express or implied waiver of any event of default by either party constitutes a waiver of any other event of default, and no exercise of any remedy will constitute a waiver of a party's right to exercise another. Failure to provide notice will not constitute a right to do so at a later date¹⁸⁴.</p>	<p>The GMSLA similarly provides that no failure or delay by a party to exercise a right or power will operate as a waiver. Again, a partial exercise of any right does not preclude any other or further exercise of that right or another right¹⁸⁵.</p>	<p>The ISDA Master Agreement also does not permit the failure, delay or partial exercise of a right to operate as a waiver in respect of that right or others¹⁸⁶.</p> <p>This would not be changed in the SFT schedule provisions.</p>
Governing law and jurisdiction	<p>The GMRA is governed by English law and requires parties to submit to the exclusive jurisdiction of the English courts (including in respect of any non-contractual obligations arising out of the agreement)¹⁸⁷.</p>	<p>The GMSLA is also governed by English law¹⁸⁸ and the parties must submit to the exclusive jurisdiction of the English courts (including in respect of any non-contractual obligations arising out of the agreement)¹⁸⁹.</p>	<p>By contrast with the GMRA and GMSLA, parties are able to select via the schedule which law the ISDA Master Agreement is governed by¹⁹⁰: either English Law or New York Law¹⁹¹. The election in the schedule then affects the courts that must be used to institute proceedings in¹⁹².</p> <p>Contrary to the GMRA and GMSLA, the ISDA provides for parties to submit to the non-exclusive jurisdiction of either the New York or English courts¹⁹³. Further options are catered for in the 2018 ISDA Choice of Law and Governing Law Guide.</p> <p>This would not be changed in the SFT schedule provisions. However, the SFT schedule provisions would be made compatible with the French and Irish law governed ISDA Master Agreements.</p>

¹⁷⁸ GMRA, Paragraph 14(a)-(b)

¹⁷⁹ GMRA, Paragraph 14(b)

¹⁸⁰ GMRA, Paragraph 14(b)

¹⁸¹ GMSLA, Paragraph 20.1

¹⁸² ISDA Master Agreement, Section 12(a)

¹⁸³ ISDA Master Agreement, Section 12(a)(ii)

¹⁸⁴ GMRA, Paragraph 18

¹⁸⁵ GMSLA, Paragraph 22

¹⁸⁶ ISDA Master Agreement, Section 9(f)

¹⁸⁷ GMRA, Paragraph 17

¹⁸⁸ GMSLA, Paragraph 23.1

¹⁸⁹ GMSLA, Paragraph 23.2-3

¹⁹⁰ ISDA Master, Section 13(a)

¹⁹¹ ISDA Master, Schedule, Part 4(h)

¹⁹² ISDA Master, Section 13(b)

¹⁹³ ISDA Master, Section 13(b)

Provision	GMRA	GMSLA	ISDA Master Agreement/ ISDA CSA
Recording	Parties agree that each may electronically record all telephone conversations between them ¹⁹⁴ .	Parties agree that each may electronically record all telephone conversations between them ¹⁹⁵ .	In the ISDA Master Agreement, parties may elect to include a provision to the same effect as the GMRA and GMSLA via the schedule ¹⁹⁶ . This would not be changed in the SFT schedule provisions.

¹⁹⁴ GMRA, Paragraph 20

¹⁹⁵ GMSLA, Paragraph 2

¹⁹⁶ ISDA Master Agreement, Schedule, Part 4(n)