CZECH BANKING ASSOCIATION

On the Basis of Standard Documentation Published by
the European Banking Federation

MASTER AGREEMENT FOR FINANCIAL TRANSACTIONS

EXPLANATORY MEMORANDUM

The following is a summary of the aims and structure of the Master Agreement for Financial Transactions sponsored by the Czech Banking Association (**"CBA"**). The Czech Master Agreement for Financial Transactions (**"CMA"**) was set up on the basis of a standard European Master Agreement for Financial Transactions (**"EMA"**) sponsored by the Banking Federation of the European Union (**"FBE"**) in co-operation with the European Savings Banks Group (**"ESBG"**) and the European Association of Cooperative Banks (**"EACB"**). The original text of the EMA was published on 1 January 2001 on the FBE website, www.fbe.be, on the ESBG website, www.savings-banks.com and on the EACB website, www.gebc.org. The drafters of the EMA derivatives working group have decided to replace the 2001 Edition of the Special Provisions, General Provisions and the Index of Defined Terms by a new version designated Edition 2004 in order to take into account the addition in the EMA of the Derivative Transactions and its documentation. With respect to the introduction of the Czech Master Agreement to the Czech financial market in 2006, all documents were initially designated Edition 2006. Edition 2007 and Edition 2008 have been prepared afterwards to reflect ongoing changes in the legal environment.

Work on the project relating to the Czech Master Agreement has been supported by the law firm of Prochazka Randl Kubr, Prague, acting as advisers for the CBA.

Goals

The European Master Agreement aims to consolidate, into a single set of harmonised documents, various master agreements used within the euro zone and certain neighbouring countries, particularly for repurchase transactions and securities lending. At the same time, parties to the EMA are able to choose the applicable law, jurisdiction and contractual language and can take into account various specific national legal requirements. Relevant provisions of the EMA have been modified, in accordance with the goals mentioned in this paragraph, with regard to use of the CMA for local transactions on the Czech financial market. The summaries of changes compared to the EMA have been itemized in the Annex to this Memorandum. As well as the European Master Agreement, which is primarily designed to replace master agreements existing under the laws of various continental European countries, the Czech Master Agreement is designed to replace local master agreements, which are used predominantly, though not exclusively, in the Czech Republic.

Benefits

As well as the EMA, the CMA should bring about the following benefits:

- enable market participants to document potentially all trading transactions under a single master agreement, including repurchase transactions, securities loans and derivative transactions. To date, a uniform approach to documentation, particularly with respect to repurchase and securities lending transactions, which are closely related in economic terms, has not been undertaken by the market;

- provide a contractual basis for cross-product netting and margining;

- result in further harmonisation of operational provisions with the New York or English law master agreements developed by, for example, ISDA, PSA/ISMA and ISLA; this issue is particularly relevant with respect to back-to-back transactions, where inconsistencies can result in mismatches;

- facilitate trading with an increasing number of counterparties in Europe who request the use of their home country standard, because, if the EMA is broadly accepted, home standards would be almost identical in many continental European jurisdictions;

- simplify and expedite the documentation process by reducing the number of master agreements which are handled and, accordingly, the number of legal opinions required; and

- result in cost-savings as a consequence of the foregoing.

Structure

The CMA will be composed of "Special Provisions", which will constitute an agreement between the parties, and "General Provisions", which will always be incorporated into that agreement. Additionally, supplemental "Annexes" may be incorporated at the election of the parties. The initial form of the CMA will thus consist of the following elements:

1. Special Provisions;

2. General Provisions;

3. Product Annex for Repurchase Transactions;

4. Product Annex for Securities Loans;

5. Product Annex for Derivatives Transactions (including supplements on Interest Rate Transactions, Option Transactions and Foreign Exchange Transactions); and

6. Margin Maintenance Annex.

The Special Provisions will be only those components of the master agreement which is signed by the parties. It will normally constitute the master agreement, incorporate the other components and contain bilaterally agreed provisions. It may be as short as two pages if the parties are satisfied with the "regular" provisions of the CMA and do not amend these.

The General Provisions and Annexes are *terms of business* which are not signed as such, but incorporated into an agreement between the parties (normally the Special Provisions). On an exceptional basis, they may be incorporated directly into the terms of a transaction, primarily when a document based on the form of Special Provisions has not yet been agreed and executed. It is Section 1(2), the second sentence of the General Provisions, which deals with such situations. The General Provisions are a "multi-product" document, comparable to a certain degree to an ISDA master agreement. They contain contractual principles common to repurchase transactions, securities loans and derivatives. Duplications and inconsistencies, as typically occur when parties enter into different master agreements with each other, are thus avoided. A further advantage is that the documents (Annexes) dealing specifically with repurchase transactions, securities loans and margin maintenance are brief and focused technical documents.

General Provisions

The General Provisions contain (i) an introductory clause on purpose, structure, interpretation and possible modifications (Section 1), as well as (ii) clauses on operational details such as confirmations, as well as payment and delivery procedures (Sections 2 and 3), taxes, particularly withholding taxes (Section 4), representations (Section 5), termination due to defaults and changes of circumstances (Section 6), close-out and final settlement (Section 7), notices (Section 8), booking offices (Section 9), other miscellaneous matters, including agency transactions (Section 10), and governing law and jurisdiction (Section 11).

The *withholding tax* and *gross-up* provision, which is relatively brief, differs from corresponding provisions contained in, for example, the ISDA and PSA/ISMA master agreements where, in turn, the relevant provisions are different from each other. It is based on the comparatively simple principle that a gross-up should apply in a cross-border, but not in a domestic context. (The ISDA Users` Guide published in 1993 contains, on page 48, an *optional* provision which basically follows this approach.)

With regard to *defaults*, Section 6(1) is based on, among others, the following principles:

- Failure to pay, including a failure to pay damages or a cash settlement amount upon non-delivery, is an event of default, but not failure to deliver as such;

- A three Business Day grace period in case of non-payment under a Transaction, but no grace period in the case of a failure to provide margin;

- A cross default provision which contains a materiality limitation. This protects against unjustified default terminations in situations where, for example, debts to third parties are not paid by a party due to illegality or impossibility and the counterparty under CMA is not affected;

- Insolvencies that are relevant only if they happen in a party's home jurisdiction or another jurisdiction specified by the parties (insolvency provisions in some market documentation standards, by contrast, seem to suggest that insolvency proceedings in any country, whether or not the party is present there, can trigger a termination right of the other party or an automatic termination).

Product Annexes for Repurchase Transactions and Securities Loans

The two Product Annexes for repurchase and securities lending transactions address the issues arising under both in a consistent manner, to the extent possible. This includes matters such as late delivery, corporate and other special events, as well as distributions of income and subscription rights (see Sections 2(6), 2(7) and 4 in the Repurchase Annex and Sections 2(5), 2(6) and 3 in the Securities Loans Annex).

Consequential damages in the event of late delivery are excluded in principle, but costs for the borrowing of substitute securities by the party entitled to the delivery may be charged.

Subscription rights will generally be required to be transferred to the seller or lender of the securities, regardless whether the buyer or borrower holds the securities purchased or borrowed; the buyer or borrower will often, if not regularly, need to purchase subscription rights in the market in order then to transfer such subscription rights. Therefore, the treatment of subscription rights is broadly in line with the customary treatment of income distribution under repurchase and securities lending transactions.

With respect to *voting rights*, the Agreement, by not setting forth any special rules in this regard, will have the effect that these rights will be freely exercisable by whichever person who owns the securities at the relevant time. Unless specifically agreed, the seller or lender is not entitled to give voting instructions. The fact that the buyer or borrower may happen to hold securities of the same kind as those purchased or borrowed will have no impact.

Product Annex for Derivatives Transactions

With the Derivatives Annex, the CMA provides a framework within which parties are able to document repurchase and lending transactions on securities, as well as ‘over the counter’ derivatives and foreign

exchange transactions. By bringing together all transactions under one roof it is possible for parties to agree on a single set of clearly defined events or circumstances in respect of a party the occurrence of which could entail the termination of all outstanding transactions between the parties, thereby avoiding a situation in which a particular event or circumstance may entail the termination of some transactions but not of others. By combining the settlement amounts in respect of all outstanding transactions into one single net amount upon early termination, the potential for reducing credit exposure and capital adequacy requirements through netting is maximised. Last but not least, parties have the possibility to calculate margin calls on a net basis in respect of all transactions outstanding between them.

The terms of the Derivatives Annex, and any agreed Supplement, and the Master Agreement will govern those Derivative Transactions in which the parties have agreed that these terms will govern a particular transaction. In most cases, this agreement between the parties will be evidenced in the confirmation for that transaction. For some transactions, however, confirmation formats are standardised so that, for example, these confirmations can be exchanged via electronic means. For these transactions, it is not always possible to include in the relevant confirmation a reference to a master agreement. In such cases it is usual for parties to agree in the master agreement that the terms of their master agreement will automatically govern these transactions, even if the confirmations do not make any reference to the master agreement. The Derivatives Annex provides that the Foreign Exchange Transactions as defined in the Supplement for Foreign Exchange Transactions will automatically be governed by the Master Agreement without further reference in a confirmation in which the parties have agreed to incorporate the Supplement for Foreign Exchange Transactions in the Derivatives Annex. In cases where there may be some uncertainty as to the meaning of "spot transactions" in the context of foreign exchange transactions and, hence, legal uncertainty as to whether such transactions are included in statutory close-out netting rules, parties can agree in the Special Provisions to exclude these spot foreign exchange transactions from the scope of their Master Agreement.

Parties can also agree in the Special Provisions that further types of transactions may be included automatically in the Derivatives Annex. Parties intending to include further transactions in the Derivatives Annex, however, should be careful accurately to identify the types of transactions to be included. Furthermore, they may also wish to consider whether, for this purpose, it would be helpful to refer to definitions of the transactions published by other industry associations.

The CBA has commissioned legal opinions for the CMA and the Derivatives Annex on the assumption that the parties to the Master Agreement will only include the transactions of the generic types referred to in paragraphs (i) through (iv) of Section l(l)(a) of the Derivatives Annex. Any reservations which an opinion writer may have (i) as to whether the close-out netting provisions of the Master Agreement would be valid for a particular transaction type referred to in paragraphs (i) through (iv) of Section l(l)(a) of the Derivatives Annex, and (ii) whether integration of that transaction type would affect the netting of the other transactions will therefore be mentioned in his opinion. Parties wishing to include transactions which do not fall within the categories referred to in paragraphs (i) through (iv) of Section l(l)(a) of the Derivatives Annex and who wish to rely on the close-out netting provisions in the Master Agreement should consult their legal advisors as to the consequences of including such particular transactions.

Market Standard Documentations/Technical Definitions and GoverningLaw

The drafters of the EMA derivatives working group decided that at this stage it would be neither helpful nor necessary for the FBE to produce new sets of technical definitions for the complete range of derivative transactions now being traded. Indeed, a number of definitions has already been published in different forms and are being used widely by participants in the derivatives markets ("Market Standard Documentations"). Therefore the Derivatives Annex has been drafted on the assumption that the parties may wish to use definitions published by an industry association or a banking association to assist them in defining the technical terms of their transactions.

Nonetheless, the EMA derivatives working group felt that it would be helpful to offer a set of definitions for "plain vanilla" foreign exchange, interest rate derivative and option transactions. These definitions are contained in the Supplements "Foreign Exchange Transactions", "Interest Rate Transactions" and "Option Transactions". It must be stressed that these Supplements are not intended to change the established market practice by introducing new or modified definitions. Instead, the aim is to reach further harmonisation and standardisation by codifying a set of definitions which reflect what the EMA derivatives working group believes to be the current market standards.

Other Market Standard Documentations may be incorporated (i) by reference in a Confirmation, or (ii) by agreement between the parties in the Special Provisions. Parties should, however, review the terms of such Market Standard Documentations to identify any terms that may have been drafted for use with a particular form of a master agreement and which, therefore, may need amending when used in conjunction with a different form of a master agreement. If the parties do not agree otherwise in the Special Provisions, the terms of these Market Standard Documentations will be construed in accordance with the law governing the Master Agreement agreed by the parties in the Special Provisions. The drafters of the Derivatives Annex recognised, however, that the Market Standard Documentations are usually drafted for use, together with national or international industry master agreements, under a particular governing law. The Special Provisions enable the parties, if they wish, to agree that the terms of the Market Standard Documentations that they specify may, in respect of certain Transactions, be construed in accordance with a different law from that which governs their Master Agreement. Therefore, parties can choose the law which they consider most appropriate to govern their Master Agreement. At the same time, they can retain the flexibility to use the Market Standard Documentation which they consider to be the most appropriate for a particular derivative transaction and, if necessary, ensure that other similar transactions in their book may be documented using market standard terms which, as far as possible, are compatible with each other.

Even though the Derivatives Annex and the 2004 Edition of the Margin Maintenance Annex were drafted with the possibility in mind that parties may wish to calculate the margin across all transactions on a net basis, the drafters of the EMA recognised that the operational requirements for this may not yet be in place generally for all institutions using the EMA. The Special Provisions, therefore, contain provisions in which parties may agree on which booking offices or subsets of transactions are to be included in the margin arrangements.

Margin Maintenance Annex

The Margin Maintenance Annex for Repurchase Transactions, Securities Loans and Derivatives Transactions sets out common rules on the provision of margin for these types of transactions. This approach is new in the market. The Annex specifies in Section 1(1) that margining may occur either globally for all such transactions, for each individual transaction or for specified groups of transactions (e.g. by distinguishing between repurchase transactions and securities loans or between equity and debt transactions).

Should the Agreement be later extended to additional types of transactions, the margin annex may be amended or supplemented.

Annex

A Summary of Changes to the CMA compared with the EMA

CMA is executed both in Czech and English and both versions are identical. The parties may decide according to which version they enter into the Czech Master Agreement and make this version as decisive between them. With respect to the fact that CMA has been generated by translation from original English version of EMA, the English version should, in case of any uncertainty, serve as an interpretation support. Whereas the CBA`s goal has been to maintain the greatest conformity between the CMA and the EMA, only the necessary stylistic alterations have been made in the Czech translation. In the interest of adapting the CMA to the Czech legal environment, this Annex discusses only those changes that are relevant to the EMA.

General Provisions

1. Promulgation of Modifications to the Czech Master Agreement

Article 1(5) of the General Provisions states that any modifications to the General Provisions or any modified or new Annex that the CBA may promulgate in the future may become effective between the parties to a Czech Master Agreement by each party notifying its acceptance in the manner designated by the CBA. In this case the CMA shall be issued in the form of a deliberative standard of the CBA.

2. The Principal of a Single Agreement

Article 1(4) has been expanded to include a provision that unless otherwise agreed, a discharge of an obligation in any manner other than performance or the manner substituting the performance (e.g. a set-off), will trigger the termination of all obligations from all other Transactions with the effect of a withdrawal in the Event of Default (Article 6(4)). Under the Insolvency Act[1] the insolvency trustee is allowed to withdraw from any outstanding Transaction. In our view, it is advisable avoiding the so-called "cherry picking", to terminate all Transactions and not permit an insolvency trustee to only terminate Transactions which are not profitable for him or her.

3. Transfer of a Title

Article 3(2)(a) of the General Provisions of EMA stipulates that as far as transfer of Securities is concerned, if registered Securities are to be transferred, the transferee may dispose of the Securities received before the transfer is entered into the relevant register. If the entry depends upon a circumstance beyond the transferor`s reasonable control, the transferor does not warrant that such entry will be effected. According to Czech law, in case of transfer of registered Securities the title shall transfer as far as the record of a title shall be made to the relevant customer`s or owner`s account[2]. By reason of the abovementioned the provision in question was omitted in CMA as we are of the view that it was misleading.

4. Withdrawal vs Notice

The EMA does not distinguish between termination by notice (in Czech "výpověď") on one hand and withdrawal (in Czech "odstoupení"). In our opinion, this distinction must be made under Czech law. Accordingly, Article 6 of the General Provisions of CMA provides for termination by withdrawal (in Czech "odstoupení") from Transactions due to an event of default or due to a change of circumstances. On the other hand Article 10(7) provides for termination of the Master Agreement upon notice (in Czech "výpověď"). In our view, these two procedures should not be confused, as the effects of withdrawal differ from the effects of termination by notice.

The CMA may be terminated by party upon giving, at least, twenty-day notice to the other party. However, all outstanding Transactions shall continue to be subject to the provisions of the CMA during

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[1] Section 14 (3) of the Act No. 328/1991 Coll., Bankruptcy Act. Section 253 (1) of the Act No. 182/2006 Coll., on insolvency, as amended.

[2] Section 96 of Act No. 256/2004 Coll., on Conducting Business on Capital Market.

the notice period; and, to that extent, the effect of the termination shall occur only when all obligations under the last such Transactions shall have been performed.

On the contrary, a termination by withdrawal may be effected even upon the occurrence of an Event of Default, as defined in Article 6(1)(a). Only the non-defaulting party shall be entitled to withdraw by giving not more than twenty-day notice of withdrawal, specifying the effective date of termination of all outstanding Transactions. The withdrawal will take effect as at the date to be designated by the party in the notice of withdrawal. If the party withdraws the Transactions, all outstanding obligations of the parties shall be replaced by the obligation of the parties to pay the Final Settlement Amout as of the effective date (Early Termination Date). In the case of a withdrawal from the outstanding Transactions, the CMA shall not terminate.

5. Automatic Termination of Transactions

The EMA provides for automatic termination of all Transactions upon the occurrence of certain Events of Default as of the time immediately preceding the relevant event or action. In our opinion, under the laws of the Czech Republic, the effects of such automatic termination may not occur immediately prior to any such action or event but only upon the occurrence of the relevant action or event. The provisions of Section 6(1)(b) of the CMA has been amended accordingly, whereas the effects of the automatic termination would occur upon the occurrence of the relevant Event of Default. In our view, however, it would not prejudice the effectiveness of the netting provisions of the CMA. Further, the automatic termination will only apply under the CMA, if the parties so elect in the Special Provisions as, in our view, the concept allowing for automatic termination is not advisable under Czech law. It is necessary to take into consideration the fact that automatic termination of Transactions takes effect retroactively as at the date of the occurrence of certain events (see Article 6(1)(viii)(5)(A), e.g. filing a petition in bankruptcy). However, in the meantime, which means during a period between the filing a petition in bankruptcy and the judgment of insolvency, a number of Transactions may be duly settled (in accordance with the Agreement). The unwinding of these transactions exactly during this period could cause substantial difficulties. However, with respect to the implementation of close-out netting in Czech legislation, we do not believe that automatic termination will be of any use.

6. Duty to Identify

The Act on Legalisation of Proceeds of Crime[3] ("AML") states that both individuals and legal entities are obliged to identify their counterparties in cases where transactions exceed EUR 1,000. It may be assumed that AML will apply to parties involved in transactions concluded on the basis of the CMA.

Under the provisions of Section 13 of the AML, a duty to identify does not apply in relation to clients who themselves are persons being subject to the identification obligation (i.e. credit and finance institutions) and whose identity is sufficiently known and transparent or in relation to activities in connection with which only small probability of misuse for the legalisation of proceeds of crime or for the financing of terrorism arises and which fulfil the conditions set out in Sections 13 (1 to 4) of the AML.

In order to comply with the requirements of the AML, we recommend that parties hand over the necessary identification documents (see point (15) of the Special Provisions) when entering into a CMA. These documents should contain the identification of individual persons entitled to enter into individual Transactions, persons entitled to execute Confirmations and persons entitled to confirm Confirmations, as well as a specimen of their signature.

7. Set-off

Article 7(4) of the General Provisions states that a Non-defaulting party may set-off its obligations to pay a Final Settlement Amount against any actual or contingent claims which it has against a Defaulting party on any legal grounds whatsoever. In our opinion, this set-off will not be possible upon the declaration of the bankruptcy against the Defaulting party, as this set-off shall not be protected under the close-out netting provisions.

Product Anex for Repurchase Transactions

[3] Section 7 of the Act No. 253/2008 Coll., on Measures against Legalization of Proceeds of Crime and Financing of Terrorism, effective from 1 September 2008.

The Product Annex for Repurchase Transactions, as construed by the Master Agreement, defines a repurchase transaction as transaction in which one party purchases a security (in consideration for a cash payment) and agrees to sell back that security to the other party (in consideration for the original cash payment plus a premium), which means Buy/Sell Back transaction. The repurchase transactions are not be construed as credit transactions secured by investment instruments.

Under provisions of Czech Commercial Code, a separately transferable right, or another right attached to an uncertified security, may be claimed towards the company only by a person who is entitled to exercise such right at a certain date determined by law ("the decisive day"; in Czech "rozhodný den"). From a tax point of view, the tax treatment of Transactions which go beyond the decisive day for dividend distribution appears questionable. Having consulted tax advisers concerning this question, a provision stating that the seller is to be considered the economic owner of the Securities for the tax purpose has been inserted in the relevant sections of the Product Annexes for Repurchase Transactions and Product Annexes for Securities Loans. This should help to avoid any doubt as to who is the tax payer on distributed money. However, the rules of this procedure should be confirmed with the Ministry of Finance.