Template Mini Close-out Notice

**Introduction**

This template Mini Close-out Notice has been published by the International Capital Market Association (“**ICMA**”) to assist a party wishing to serve written notice on its counterparty in accordance with paragraph 10(h)(iii) of the TBMA/ISMA Global Master Repurchase Agreement (2000 Version) (the “**GMRA**”).

Capitalised terms used in these introductory paragraphs and not otherwise defined herein shall have the meaning given to them in the GMRA.

**Responsibility of the parties and disclaimer regarding legal advice**

ICMA does not assume any responsibility for any use of this Template Mini Close-out Notice. The party sending a mini close-out notice based on this Template Mini Close-out Notice should ensure that it is satisfied that any such notice is effective and appropriate in respect of the GMRA. In particular, the party sending a mini close-out notice should have regard to the GMRA as negotiated with the counterparty, which may include amendments to the standard mini close-out and notices provisions. A party sending a mini close-out notice based on this Template Mini Close-out Notice should also consider any regulatory or legal constraints which may impact the exercise of its rights with respect to the GMRA.

The introductory paragraphs to this Template Mini Close-out Notice, the Template Mini Close-out Notice itself and the related explanatory footnotes do not constitute legal advice. The party sending a mini close-out notice should seek legal advice in any relevant jurisdiction and consult with any other advisor it deems appropriate prior to sending a mini close-out notice.

**Circumstances in which this Template Mini Close-out Notice can be used**

Paragraph 10(h)(iii) of the GMRA provides the Seller with a right to terminate a Transaction by sending written notice to the other party in the event that the Buyer fails to deliver Equivalent Securities in accordance with its obligation to do so.

In order to exercise the right to a mini close-out of the relevant Transaction as a result of the above failure, the Seller must serve written notice on the other party. Any such notice should declare that the relevant Transaction shall be terminated immediately in accordance with sub-paragraph 10(c) of the GMRA (disregarding for this purpose references in that sub-paragraph to transfer of Cash Margin and delivery of Equivalent Margin Securities as if references to the Repurchase Date were to the date on which notice was given under sub-paragraph 10(h)(iii) of the GMRA). That date should be construed as the date on which the notice becomes effective, if later than the date it was sent.

This Template Mini Close-out Notice can be used as a basis for drafting such a notice pursuant to paragraph 10(h)(iii) of the GMRA.

This Template Mini Close-out Notice does not cover any communication of (i) the amount due from one party to the other as a result of termination of the relevant Transaction or (ii) any amounts due and payable under paragraph 10(k) of the GMRA with respect to the delivery failure.

The party sending the mini close-out notice should have regard to paragraph 10(b) of the GMRA for information on termination of the relevant Transaction on delivery of a mini close-out notice, and how the amount payable as a result will be calculated, but disregarding for this purpose references in that sub-paragraph to transfer of Cash Margin and delivery of Equivalent Margin Securities.

**Delivery of a mini close-out notice**

Parties are reminded that any notice under the GMRA, including any mini close-out notice based on this Template Mini Close-out Notice, should be delivered in accordance with the Notices provision in paragraph 14 of the GMRA and the address for notices provisions in Annex I to the GMRA.

[*Insert address of the party sending the notice*]

[*Insert addressee details for the recipient*][[1]](#footnote-1)

Dear Sir/Madam,

**Re: Mini close-out notice under the TBMA/ISMA Global Master Repurchase Agreement (2000 Version) dated [*insert date of GMRA*] between [*insert counterparty’s name*] (“Counterparty”) and [*insert name of entity sending the notice*] (“[Terminating Party][[2]](#footnote-2)”)**

**[Repurchase]/[Buy/Sell] Transaction (reference number: [*insert reference number or other transaction identifiers*]) (the “Transaction”)**

**Seller:**

**Buyer:**

**Purchase Date:**

**Repurchase Date:**

**Relevant Equivalent Securities (including ISIN):**

We refer to the TBMA/ISMA Global Master Repurchase Agreement (2000 Version) dated as of [*insert date of GMRA*] (including the supplemental terms and conditions contained in Annex I thereto, any Addenda or Annexes attached thereto and any confirmations thereunder), between Counterparty and [Terminating Party] (the “**GMRA**”). Capitalised terms used in this mini close-out notice and not otherwise defined herein shall have the meaning given to them in the GMRA.

In respect of the Transaction, we hereby give notice that as a result of [*specify situation with respect to the relevant Equivalent Securities that is causing delivery failure and[[3]](#footnote-3)*] the Counterparty’s continuing failure to deliver the Equivalent Securities specified above, the Transaction shall be terminated immediately in accordance with paragraph 10(h)(iii) of the GMRA. This mini close-out notice constitutes the written notice referred to in paragraph 10(h)(iii) of the GMRA.

The [Repurchase Price]/[Sell Back Price] and the Default Market Value of the Equivalent Securities will be determined by Terminating Party in accordance with paragraph 10(c) as at the date when this notice is effective. For these purposes, “Default Valuation Time” means, the close of business in the Appropriate Market on the fifth dealing day after the day on which this written notice becomes effective.

This mini close-out notice is without prejudice to (and shall not be deemed to constitute a waiver of) the rights, privileges and remedies of [Terminating Party] under (a) the GMRA including, without limitation, with respect to any Event of Default relating to Counterparty which now or in the future may exist under the GMRA or (b) any other agreement between [Terminating Party] and Counterparty. [Terminating Party] reserves all of its rights, privileges and remedies (at law or otherwise) against Counterparty. [For the avoidance of doubt, [Terminating Party] is not treating the failure to deliver Equivalent Securities as an Event of Default under paragraph 10(a)(ii) of the GMRA and this notice does not constitute a Default Notice thereunder.][[4]](#footnote-4)

[In accordance with paragraph 14 of the GMRA, this mini close-out notice is being served and delivered by [*insert reference to applicable delivery method by reference to delivery methods specified in paragraph 14 of the GMRA, e.g. courier/in person*] [during normal business hours] and shall be effective [at the time it is served by delivery to Counterparty].][[5]](#footnote-5)

This mini close-out notice and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

Yours faithfully,

[*Insert name of entity which is the Terminating Party*]

By:

Name:

Title:

***[Note: All footnotes (and this drafting note) should be deleted before any mini close-out notice based on this Template Mini Close-out Notice is sent to the Counterparty.]***

1. Refer to the Notices provision in paragraph 14 of the GMRA and paragraph 1(m) of Annex I to the GMRA I for the recipient’s notice details. [↑](#footnote-ref-1)
2. You may wish to include a reference to your institution’s name here instead of “Terminating Party”. If you do this, every reference to “Terminating Party” below should be replaced with a reference to your institution’s name as defined here. [↑](#footnote-ref-2)
3. This is not required under the GMRA and should only be included if the Terminating Party wishes to give a reason why it has elected to issue a mini close-out notice, for example where the relevant securities have been delisted. [↑](#footnote-ref-3)
4. Include this sentence if the parties have specified in Annex I that paragraph 10(a)(ii) is marked as applicable. [↑](#footnote-ref-4)
5. If Terminating Party wants to include such a paragraph, it should be adapted to align with the relevant delivery method used. If courier or in person delivery is used and delivery takes place during normal business hours, the wording suggested can be used. However, if delivery is by fax, certified or registered mail or electronic messaging system, for example, or if delivery takes place outside of normal business hours (including where delivery does not take place on a Business Day), the wording should be adjusted by reference to paragraph 14 of the GMRA and with particular regard to when such a notice would be effective pursuant to paragraph 14 of the GMRA. [↑](#footnote-ref-5)