

EASTERN CARIBBEAN SECURITIES REGULATORY COMMISSION



**CONSULTATION PAPER
P01-2016**

ECSRC Market Guidelines No.1 of 2016

***Draft* INTERIM GUIDELINES
FOR REPURCHASE AGREEMENTS**

APRIL 2016

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ECSRC MARKET GUIDELINES NO. 1 OF 2016

The Eastern Caribbean Securities Regulatory Commission, in exercise of powers conferred on it pursuant to section 163 of the Securities Act, issues the following Market Guidelines.

1.0 INTRODUCTION

- 1.1 The Eastern Caribbean Securities Regulatory Commission (the Commission) is a body corporate responsible for promoting investor protection through promotion of the highest standards of professional and other activities within the Eastern Caribbean Securities Market (ECSM).

- 1.2 As the designated authority for licensing, supervising and regulating the activities of securities market operators the Commission must take all reasonable steps to support the operation of an orderly, fair and informed securities market. The Commission must, therefore, set standards for regulating the manner of trading and the range of securities traded, issued and offered on the ECSM by market intermediaries and institutions, persons engaged in securities business, reporting issuers and the public issue of securities in the eight territories comprising the Eastern Caribbean Currency Union (ECCU)¹.

2.0 OBJECTIVE

- 2.1 The purpose of the Interim Repurchase Agreement (Repo) Guidelines is to offer better protection to investors by introducing a set of best practices on repurchase agreement transactions as well as to specify regulatory requirements that should be observed by licensed market intermediaries and all market actors when undertaking Repo transactions.

- 2.2 These Guidelines should be read together with the following legislative provisions of the Act:
 - i. PART IV Licensing of Market Participants;

¹ These territories are Anguilla, Antigua and Barbuda, Commonwealth of Dominica, Grenada, Montserrat, St. Kitts and Nevis, Saint Lucia, and St Vincent and the Grenadines.

- ii. PART V Conduct of Securities Business and the accompanying Securities (Conduct of Business) Regulations 2001;
- iii. PART VII Offers of Corporate Securities;
- iv. PART VIII Registration of Corporate Issuers;
- v. Securities (Prospectus) Regulations, 2001; and
- vi. Securities (Licence and Fees) Regulations, 2001.

3.0 DEFINITION AND INTERPRETATION

In these Interim Repo Guidelines, unless the context otherwise requires –

“Act” means the Securities Act, 2001 and its accompanying Regulations, and shall be deemed to include any amendment, replacement or re-enactment from time to time. The applicable Securities Acts and Regulations enforced throughout the ECCU are the: Securities Act Chapter S13 of Anguilla; the Securities Act No. 14 of 2001 of Antigua and Barbuda; Securities Act No. 21 of 2001 of the Commonwealth of Dominica, Securities Act No. 23 of 2001 of Grenada; Securities Act Chapter 11.01 of Montserrat, Securities Act Chapter 21.16 of St Kitts and Nevis; Securities Act Chapter 12.18 of Saint Lucia; and Securities Act Chapter 261 of Saint Vincent and The Grenadines.

“Advertisement” means advertisement as defined in the Act .

“Approved Countries” shall include the list of foreign countries specified in Schedule I of the Securities (Foreign Securities and Intermediaries) Regulations, 2004, which is enclosed in Appendix I.

“Business Day” means any day, other than a Saturday or Sunday or any other day on which a public holiday is declared in the relevant Member territory of the Eastern Caribbean Currency Union.

“Classic Repo” is a type of Repurchase Agreement (Repo) where securities are sold against cash with a commitment to repurchase the equivalent securities on a specified date at a specified price, where both the repurchase date and price are fixed at the initiation of the transaction. The

Repo Seller delivers the securities and receives cash from the Repo Buyer. The cash is supplied at the prevailing Repo rate that remains constant during the term of the transaction.

“**Collateral**” often referred to as the **underlying security** is an asset, security, deposit or any financial instrument assigned, pledged or delivered by the Repo Seller to the Repo Buyer to secure the cash invested in a Repo transaction.

“**Commission**” means the Eastern Caribbean Securities Regulatory Commission, established by Article 3 of the Agreement made on the 24th day of November 2000 to which the governments of the eight member territories of the Eastern Caribbean Currency Union are a party.

“**Coupon**” also referred to as the coupon rate and nominal yield represents the annual interest rate paid on a bond, expressed as a percentage of the face value.

“**Dematerialized**” is the process of eliminating physical certificates as a record of security ownership, or where ownership of the security exists only as an accounting record.

“**Due Bill/Hold in-custody Repurchase Agreement**” is a Repo where the underlying collateral security pledged by the Repo Seller or (cash borrower) is not actually delivered to the Repo Buyer (cash lender). The underlying collateral security is placed in an internal account by the Repo Seller, for the Repo Buyer, for the duration of the trade or agreement.

“**ECCB**” means Eastern Caribbean Central Bank.

“**ECCSD**” means Eastern Caribbean Central Securities Depository.

“**ECSM**” means Eastern Caribbean Securities Market.

“**Exchange**” means Eastern Caribbean Securities Exchange or ECSE.

“**Foreign Securities**” means a security issued by a foreign company or foreign government.

“Foreign Securities Regulator” shall include any commission, body or agency that exercises regulatory control or oversight over the securities business of a foreign broker-dealer, foreign investment adviser, foreign securities exchanges or the issue of securities by a foreign company.

“Haircut” refers to an agreed percentage discount applied to the Market Value of collateral to fix the Purchase Price at the start of a Repo. A haircut is expressed as the percentage difference between Market Value compared to the Purchase Price.

“Immobilization” refers to any circumstance where an investor does not receive a physical certificate upon the purchase of a security or is required to physically deliver a certificate upon the sale of a security. Immobilization is also known as “Book-Entry Ownership” whereby evidence of ownership is maintained on the issuer’s or broker-dealer’s books.

“Initial Margin” is an agreed premium applied to the Purchase Price to fix the Market Value of collateral at the start of a Repo. An initial margin is expressed as a percentage of the Market Value compared to the Purchase Price.

“Institutional Investors” include:

- (a) a body corporate, limited partnership, unit trust or other business entity, which is incorporated, registered or otherwise established under the laws of a member territory;
- (b) any bank, credit or other financial institution licensed under the Banking Act;
- (c) any non-bank person, organization or an incorporated body of persons that is formed under the laws of a member territory of the Eastern Caribbean Currency Union;
- (d) a government entity; or
- (e) any foreign person, body corporate, organisation or financial institution which is incorporated or otherwise established under the laws of a jurisdiction other than a member territory.

“Maintenance of Margin” see **Re- Pricing**

“Margin” is the term usually applied to a margin maintenance cash payment or transfer of collateral called and/or made in response to a Margin call to eliminate a net exposure

“Margin Call” is a request by one counterpart for the initial margin to be reinstated or to restore the original cash/securities ratio to parity.

“Mark-to-Market” means the act or process whereby a value is assigned to a financial instrument based on the current market price of that instrument. This is normally done to ensure that the margin requirements for a particular security are being observed

“Member Territory” has the same meaning as in the Eastern Caribbean Securities Regulatory Commission Agreement of 24th November, 2000.

“Modified Following Business Day Convention” means following business day convention described in clause 14.2 of these Guidelines

“Non-Institutional Investors” includes Repo Buyers other than Institutional Investors as defined above.

“Participating Governments” means the governments of the member countries and territories of the Eastern Caribbean Currency Union who are party to the Agreement establishing the Eastern Caribbean Securities Regulatory Commission.

“Purchase Price” means the sum of money paid by the Repo Buyer to the Repo Seller at the start of a Repo to buy or gain a beneficial interest in the collateral. It is equal to the market value of the collateral less any initial margin or haircut.

“Repo Buyer” refers to the party to a repurchase agreement who purchases securities for the term of the transaction and commits to sell back the equivalent or same securities at maturity and earns a repo rate on the transaction. Thus the Repo Buyer is the investor buying securities under the first leg of the transaction

“Repo Seller”, or cash borrower, is the party to a Repo transaction who sells securities for cash, for the term of a Repo transaction and commits to buy back the equivalent or same securities at maturity at a cost, usually a predetermined Repo rate. Thus the Repo Seller is the party selling securities under the first leg of the Repo transaction.

“Repo Rate” is the rate of interest on the cash leg in a Repo transaction expressed as a percentage of the principal amount invested.

“Repurchase Agreement”, commonly referred to as Repo, RP, or sale and repurchase agreement, is a sale of securities and a simultaneous commitment by the Repo Seller to buy the same or equivalent securities back from the Repo Buyer on a future date for the original price plus a rate of return on the use of the cash.

“Re-Pricing” occurs when the market value of a security in a repo changes and the parties to the transaction adjust the amount of securities or collateral in the transaction to the correct margin level.

“Retail Repo” is a repurchase agreement between a Repo Seller (broker-dealer) and a Repo Buyer (investor), whereby the seller does not completely and outright transfer legal ownership of the underlying collateral security to the investor.

“Reverse Repo” refers to a Repurchase Agreement where the Repo Seller agrees to buy the securities and the Repo Buyer agrees to repurchase the securities at a later date.

“Sophisticated Investors” means any legal person who falls within any of the following categories, or who the issuer/Repo Seller reasonably believes falls within any of the following categories at the time of the sale of Repo securities to that person:

- i) Financial institutions
- ii) Insurance companies
- iii) Broker-dealers
- iv) Principals and representatives on the ECSM
- v) Investment advisors

- vi) Investment companies/pension funds
- vii) Business development companies
- viii) Directors and officers of the issuer
- ix) Companies/partnerships/organisations with capital in excess of EC\$5.0 million
- x) Individuals with net worth in excess of EC\$1.0 million
- xi) Individuals whose income exceeds EC\$200,000 annually
- xii) Individual whose joint income with a spouse exceeds EC\$300,000 annually

The responsibility is placed on the issuer/Repo Seller to ensure that a potential Repo Buyer is a sophisticated investor.

4.0 SCOPE AND APPLICATION

- 4.1 The Guidelines apply to market participants and institutions licensed under PART IV and or PART VII of the Act.
- 4.2 The Guidelines are not intended to regulate repurchase agreements issued between commercial banks licensed under the 2015 Banking Act and by the Eastern Caribbean Central Bank (ECCB); nor replace any of the requirements enforced by the ECCB.
- 4.3 The Interim Repo Guidelines apply to Repo and Reverse Repo, unless otherwise stated, and shall primarily cover both Due Bill/Hold in-custody Repo and Retail Repo transactions. They shall also apply in the case of Classic Repo transactions regardless of whether the securities dealer does not completely and outright delivers or transfers legal ownership of the underlying collateral security to the repo investor.

5.0 COMMENCEMENT

- 5.1 The Interim Repo Guidelines shall become effective three (3) months from the date of issuance by the Commission.

6.0 GENERAL REQUIREMENTS

6.1 The conduct of repo transactions should at all times, be carried out on terms that are consistent with the principles of best practice and in accordance with the standard of conduct requirements prescribed in Section 71 of PART V (Conduct of Business) of the Act. Participants in the Repo market shall, therefore:

- (i) maintain and observe high standards of market conduct, professionalism and integrity in order for the repo market to operate in a sound and orderly manner; and
- (ii) under no circumstance, enter into Repo transactions that are intended to limit the availability of any security with the intention of creating a false or distorted market in that security.

6.2 Prior to engaging in Repo transactions market intermediaries and institutions shall first ensure that:

6.2.1 All relevant regulatory and/or legal requirements have been complied with, primarily:

6.2.1.1 **Licensing:** No person shall carry on business as a Repo Seller unless licensed by the Commission as a Broker-Dealer or Limited Service Broker under PART IV of the Act.

6.2.1.2 **Registration:** Where a repo agreement is to be offered in the ECSM, the issuer or offeror shall be subject to the provisions of PART VII (Offers of Corporate Securities) and PART VIII (Registration of Corporate Issuers) of the Act. Therefore:

- i. no person shall carry on the business of issuing, proposing to issue, offering or distributing repos to the public in the ECSM unless registered with the Commission as a reporting issuer;
- ii. no repurchase agreement shall be offered to the public unless it has been registered with the Commission;

- iii. a company which proposes to issue repo agreements to the public shall register with the Commission as a reporting issuer and complete and file a registration statement on Form RS-1 (Revised 2015) (New Issues of Securities) Schedule 1, of the Securities (Registration Statement) Rules, accompanied by the Biographical Data Form (Directors) and Biographical Data Forms (Executive Officers and Other Key Personnel) pursuant to section 97(3) of the Act;

6.2.2 The application for registration is accompanied by the following:

6.2.2.1 a proposed Prospectus, which complies with the Act, for the distribution of the repos. This Prospectus must be submitted for approval to the Commission no less than thirty days prior to the proposed date of publication of the Prospectus, subject to sections 92 (2) and 92 (3) of the Act. Regulation 4 of the Securities (Prospectus) Regulations provides a Schedule for the form and content of the required Prospectus. The Commission may approve a prospectus only if it contains all such information as investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of:

- i. the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the Repos;
- ii. the rights attaching to those Repos; and
- iii. such other information and particulars, and complies with such other requirements, as may be prescribed.

6.2.2.2 The prescribed fee as set out in the Securities (Licences and Fees) Regulations, 2001; and

6.2.2.3 A copy of the Master Repurchase Agreement (MRA) and any additional documents and information that the Commission may require.

6.2.3 There are adequate and effective documentation and procedures to cover the scale and types of Repo transactions that are intended to be undertaken.

6.2.4 Adequate policies, procedures and internal controls are established to ensure that any Repo transactions are properly authorized.

6.2.5 Management institutes the appropriate operational infrastructure to support its Repo activities including systems for the safe custody, valuation and management of the underlying collateral, risk management and record keeping.

6.2.6 The prospectus is approved by the Commission. The prospectus shall be valid only for a period of up to twelve months from the date of such approval as prescribed under section 92 (5) of the Act.

6.3 **Capital Requirements:** Licensed intermediaries engaged in the conduct of Repo transactions must have at least EC\$5 million in capital and be established or registered within a territory in the ECCU.

6.4 **Transaction Size:** The minimum transaction size for Repo transactions is EC\$5,000 and US\$5,000.

7.0 COLLATERAL SECURITIES

7.1 Eligibility Criteria

7.1.1 **Registration:** Securities held for the collateralization of Repo transactions must be registered with the Commission, approved for sale on the Regional Government Securities Market (RGSM) or registered in

accordance with the securities laws or regulations of the capital markets of an approved foreign jurisdiction.

7.1.2 **Allowable Securities:** The types of securities eligible for the collateralization of Repo transactions in the ECSM may only include Dematerialized and or Immobilized debt securities, such as:

- a) securities which are offered by the ECCB;
- b) offers of Treasury Bills, Treasury Notes, Bonds and other fixed income securities that are made or guaranteed by a Participating Government. These shall include debt securities issued on the RGSM and are registered and/or traded on the Eastern Caribbean Securities Exchange (ECSE);
- c) corporate bonds listed and traded on the ECSE;
- d) debt instruments issued or guaranteed by a foreign Government, as specified in the List of Approved Countries provided in Appendix I; and
- e) any other type of debt securities as may be specified and approved by the Commission for this purpose.

7.1.3 **Currency:** Two funding currencies would be permitted for Repo Transactions. Debt securities denominated in Eastern Caribbean Dollars (XCD) or United States Dollars (USD) may be used as collateral in Repos.

7.2 **Restrictions:**

7.2.1 The following restrictions shall apply to all securities to be used for the collateralization of Repos sold to Repo Buyers:

7.2.1.1 **Non-Institutional Investors:** The collateral for Repos sold to Repo Buyers other than Institutional Investors and Sophisticated Investors should be restricted to the types of securities specified under Guideline 7.1.2 (a), (b) and (c) above.

- 7.2.1.2 **Convertibility:** The collateral for Repo transactions must not be convertible.
- 7.2.1.3 **Credit Rating:** The underlying securities must not be rated non-investment grade at the inception of the Repo transaction.
- 7.2.1.4 **Short Selling:** Collateral securities must not be used to cover short sales.
- 7.2.1.5 **Margin Purchases:** Collateral securities must not be subject to margin purchases where these are held by other brokers
- 7.2.1.6 **Pledging:** Collateral securities must not be otherwise pledged or used as any other form of collateral
- 7.2.1.7 **Segregation of Assets:** Underlying security or collateral held for Repo transactions must be independent from that of the Repo Seller, unless otherwise required under a custody arrangement.

7.3 **Coupon Payment**

- 7.3.1 A Repo seller is entitled to receive all interest and other income on underlying securities subject to repurchase transactions to the same extent the Repo Seller would have been entitled to receive such income had it not entered into Repo transactions on the securities.

7.4 **Margin Requirements**

- 7.4.1 A haircut margin shall be applied at the time of issuance to all Repo transactions that these Interim Guidelines are intended to regulate. The recommended margins are contained in Appendix II of these Guidelines.
- 7.4.2 Repo transactions shall be marked to market at minimum on a monthly basis.

7.4.3 Unless the parties to the trade otherwise agree, margin calls in all repo transactions shall be met with transfers of collateral or cash, or a re-pricing of the existing transaction. In the event that the seller chooses to meet its margin calls with cash, such cash should not be used to change the substance of the trade, but it will bear interest at a rate to be determined between the Repo buyer and Repo Seller. In the event that the party whose securities are being marked-to-market chooses to meet its margin call with collateral, this call would be met with transfers of collateral with characteristics similar to or better than the collateral currently being used in the Repo transaction and if these securities are reasonably acceptable to the buyer.

8.0 CUSTODY AND CUSTODY ARRANGEMENT

- 8.1 All Repo transactions must involve a neutral third party custodian.
- 8.2 Repo Sellers must set up an appropriate custody arrangements for collateral held in custody on behalf of Repo Buyers. Adequate systems and procedures should be established to segregate the collateral held for Repo transactions from the assets of the Repo Seller and to monitor this collateral to avoid the risk of re-collateralisation of the collateral. Such systems and procedures shall also be subject to independent audit and risk assessments by the firm's internal and external auditors.
- 8.3 All securities that are used to collateralize Repos sold to Non-Institutional Investors shall be held in the custody of the ECCSD or another custodian approved by the Commission.
- 8.4 The ECCSD, or other custodian approved by the Commission, will serve as Trustee and registrar to hold the securities underlying a Repo, in trust for the benefit of the Repo investor. The securities held for the collateralization of Repos

shall be maintained segregated from the assets of the Repo Seller during the term of the Repo Agreement, so that the securities are easily identifiable as belonging to the Repo investors over the tenor of the Repo Agreement.

- 8.5 Foreign Securities used to collateralize Repo transactions must be held under the custodianship of an entity that is registered, licensed and or regulated by a Foreign Securities Regulator or banking regulator approved by the Commission. The Schedule of Approved Countries is shown in Appendix I.
- 8.6 The Repo Seller shall do all that is necessary and within its control to ensure that the Repo Buyer's interest in the underlying security is recorded, if not in the records of the foreign custodian's system, in the Repo Seller's own records.
- 8.7 Collateral sold under a Repo Agreement should not be reused as any other form of collateral during the term of the Repo transaction. However, subject to adequate legal provisions in the master repurchase agreement (MRA), such collateral may be substituted with equivalent collateral or other collateral as may be mutually agreed between both parties subject to the eligibility criteria of collateral specified in section (5) of the Interim Guidelines.
- 8.8 Custody arrangements should provide for all Repo Buyers to have a perfected interest in the Collateral securities in accordance with the rules and procedures of the custodian at the start date of the Repo transaction.
- 8.9 A Repo Buyers' interest or beneficial interest in Collateral securities held for Repo transactions shall be evidenced by an assignment in the books of the ECCSD or other custodian approved by the Commission.
- 8.10 The pledging of securities by the Repo Seller with the ECCSD, or other securities custodian approved by the Commission, shall represent an assignment of the said securities in favor of the Repo buyer. In the event of default in relation to either the Repo Buyer or Seller, the securities custodian will take the necessary steps as directed by the non-defaulting party in accordance with the Master Repurchase Agreement (MRA) and the securities custodian's operating rules.

- 8.11 The custodian shall maintain adequate and separate records in respect of Collateral securities including:
- 8.11.1 movements, sales and purchases, in the assigned pool of Repo securities;
 - 8.11.2 physical custody or location; and
 - 8.11.3 evidence that a hold has been placed on the underlying securities to avoid duplicative use during the term of the Repo transaction.
- 8.12 The custodian, in carrying out its duties in respect of the safekeeping of and dealing with the Collateral securities, shall exercise care, and diligence that a reasonably prudent custodian would exercise in the circumstances.
- 8.13 A repurchase agreement shall not release the securities custodian from liability to a Repo Buyer for losses arising out of failure of a custodian to exercise the standard of care and diligence imposed by this Part.
- 8.14 The terms and conditions set out in the custodian agreement including its consequential rights and obligations should be made clear to the Repo Buyer prior to entering into any Repo transaction.

9.0 SUBSTITUTIONS

- 9.1 Substitution of collateral securities should be allowed only where specified in an agreement between the Repo Buyer and the Repo seller, and the agreement shall include specification of the underlying securities that may be substituted, records to be kept and requirements for disclosure to the investor.
- 9.2 Collateral securities shall not be sold without first assigning another suitable asset in its place.

9.3 Substitution of assets will only be permitted by the Repo Buyer where the collateral to be substituted is of equal or greater value than the original asset. Where collateral securities are sold, the assigned underlying security must be of equal or greater value than the security that was sold.

10.0 LEGAL AGREEMENT

10.1 All Repo transactions shall be subject to a Master Repurchase Agreement (MRA) between the Repo Buyer and Repo Seller. The MRA between the two parties, at a minimum, shall:

- (i) be written in plain standard English;
- (ii) include a description of the nature of the security and the risk;
- (iii) provide for monthly mark-to-market of the collateral security;
- (iv) provide for appropriate Initial Margin and for Maintenance of Margin, or Re-Pricing, whenever Mark-to-Market reveals a material change in value;
- (v) specify clearly the events of default and the consequential rights and obligations of the counterparties;
- (vi) provide, in the event of default, for full set-off of claims between the parties;
- (vii) make provisions clarifying the rights of the parties regarding the substitution of collateral and the treatment of coupon and interest payments including, for example, the timing of any payments.
- ix) specify the custody arrangements regarding the underlying collateral.
- x) stipulate the rights and obligations of the Repo Buyer and the Repo Seller.
- xi) provide for the perfection of the interests in the security.

10.2 The MRA entered into by the parties shall be void if it contains provisions that conflict with these Guidelines or the Act.

10.3 A Repo Seller shall submit a copy of the MRA to the Commission for review and approval, prior to engaging in the sale of Repos in the ECSM.

11.0 CONFIRMATION OF DEALS

11.1 A Repo Seller shall, in respect of every contract for the purchase and sale of Repo securities entered into by it (whether as principal or agent), not later than the end of the next trading day after the contract was entered into, make out a contract note which complies with the requirements prescribed under section 73 Issue of Contract Notes sub-section (2) of the Act. The contract note for both legs of the repo transaction may be in the form of written or electronic confirmation and shall include, at a minimum, the following:

- (i) transaction settlement date, the date of the contract; and the date on which the contract note is made out;
- (ii) value date, that is, the date on which securities are first transferred by the Repo Seller to the Custodian;
- (iii) description, quantity and nominal amount of the security or pool of securities that is the subject of the Repo contract;
- (iv) price per unit at which the transaction was effected, coupon interest, if any, and the total proceeds of the transaction;
- (v) type of collateral;
- (vi) purchase price, the price at which securities are first transferred by the Repo Seller to the Custodian (the purchased securities);
- (vii) repurchase date, the date on which the Repo Seller is to repurchase the purchased securities from the Repo Buyer;
- (viii) particulars on whether there are rights of substitution;
- (ix) the rate or amount of commission payable in respect of the Repo contract;
- (x) such other information as may be prescribed to ensure that there is a complete audit trail for the execution of customer instructions and the settlement of Repo transactions

11.2 Electronic confirmation shall only be accepted by a Party to a Repo transaction, where the receipt by electronic message is automatically generated on the date on which the trade took place.

11.3 Each party to a Repo transaction shall ensure that any confirmations that are received are checked on the day of receipt and that any queries on the terms are immediately conveyed by the Repo Buyer to the Custodian.

12.0 SETTLEMENT

12.1 Unless mutually agreed between the buyer and seller, settlement shall be on the basis of payment against delivery of the security transacted.

12.2 All transactions shall be settled no later than at T+3.

12.3 Where the Repo Seller has caused any delay in settlement, the counterparty/Repo Buyer shall have the right to claim from the Repo Seller the loss of interest, if any, on the net amount of the transactions calculated in accordance with the terms of the MRA.

13.0 DEFAULT

13.1 In the event of a default, the procedures contained in the MRA shall be followed. Once a default has been declared -

- (i) the non-defaulting party shall do everything in its power to ensure that the default market values used in the close-out calculations are and can be shown to be fair; and
- (ii) if the non-defaulting party decides to buy or sell securities consequent to close-out, it shall make every effort to do so without unnecessarily disrupting the market.

14.0 OPERATIONAL, REPORTING AND SUPERVISORY REQUIREMENTS

14.1 **Repo Cost:** Unless otherwise agreed by the parties, calculation of repo cost is on the basis of 365 days per year.

- 14.2 **Business Day Convention:** All market participants shall use the Modified Following Business Day Convention, where if the maturity date of a repo falls on a day that is not a Business Day the maturity date shall be the first day following that is a Business Day, unless that day falls in the next calendar month, in which case the maturity date will be the first preceding day that is a business day. Market participants are encouraged to both inquire and to specify the exact maturity dates for transactions prior to maturity.
- 14.3 **Purchase Price:** Unless otherwise agreed between the Repo buyer and the Repo seller, the purchase price shall include the accrued interest. The prevailing market prices shall be used as a guide when determining the purchase price of the securities.
- 14.4 **Disclosure and Reporting**
- 14.4.1 The Repo seller shall comply with the provisions for continuous disclosure required under section 96 of the Act.
- 14.4.2 The Repo Seller shall submit to the Commission the following, including updates or revisions as they occur-
- (a) the prospectus on the repo products;
 - (b) policies and procedures for the repo operations;
 - (c) the MRA;
 - (e) the form of all other transaction documents, e.g. confirmations;
 - (f) advertisement and marketing material.
- 14.4.3 The Repo Seller shall prepare and submit to the Commission on a quarterly basis, in the format specified by the Commission:
- (i) ECSRC Quarterly Returns Form BD Q-1
 - (ii) ECSRC Quarterly Returns Form BD Q-2
 - (iii) ECSRC OR,
 - (iv) A report disclosing:

- (a) total investments, total repos and computation of the specific asset and capital ratios;
 - (b) number of repo clients that are not sophisticated purchasers;
 - (c) the total 'sales' of each asset and current margin on the asset.
- (v) A Declaration of Compliance with the Guidelines signed by the Chief Executive Officer and two Directors. The Compliance statement must include, at a minimum:
- (a) any deviations from the Guidelines and/or the Repo Seller's own processes and procedures that are designed to facilitate compliance with the Guidelines; and
 - (b) steps taken to rectify any deviations, the outcomes of such deviations, and the measures implemented to minimize the future occurrence of similar events

14.5 The audited Financial Statements of the Repo Seller shall be made available to all clients and the Commission. For the purpose of these guidelines, financial statements include –

- (iv) Interim Financial Statements which must be prepared on a quarterly basis and filed within 30 days of the quarter end;
- (v) Audited Annual Financial Statements which must be filed within 90 days of the end of the financial year as prescribed by section 82 of the Act; and
- (vi) Annual Reports which must be filed within 120 days after the end of the company's financial year pursuant to section 98 of the Act.

14.6 The advertising, marketing and promotional material shall –

- (i) be issued or caused to be issued in accordance with the requirements prescribed under the Securities (Advertisement) Regulations, 2001;
- (ii) identify the transactions as Repos;
- (iii) state that the funds invested are not deposits and not covered by any deposit insurance;
- (iv) describe the significant risks, e.g. the residual exposure to the credit risk of the company;

- (v) include a summary of the rights and obligations of both the Repo Buyer and the Repo Seller.
- (vi) Include a glossary of all technical terms related to Repo transactions

14.7 Access to account balances online – Investors should be able to view and monitor their account balances online using the service provided by either the licensed broker-dealer or limited Service Broker, the ECCSD or any other custodian approved by the Commission.

14.8 Operational Requirements

14.8.1 The main elements of Retail Repo Transactions include:

- a. The creation of a new Repo Contract
- b. The rollover of an existing Repo contract
- c. The termination of a Repo contract (full encashment)
- d. The partial encashment of a Repo contract; and
- e. The substitution of securities underlying a Repo contract.

14.8.2 The Repo Seller shall:

- (i) develop and implement documented policies and procedures, such as AML/CFT guidelines, procedural and trading manuals for governing the conduct of its Repo operations and to monitor compliance with these Guidelines and other relevant legislation.
- (ii) ensure that there are operational systems for transactional valuation and financial reporting, adequate human, financial and operational resources.
- (iii) maintain records of Repo securities and the specific assignment of each to Repo transactions; substitutions; and all agreements and communications with clients.

14.8.3 The total value of outstanding Repo obligations to total assets shall not exceed 60 per cent of the Repo Sellers' total assets, or as may be determined by the Commission.

- 14.8.4 The Commission shall be entitled to inspect and/or request copies of all records, including, but not limited to those records maintained in the ECCSD and the Repo seller as stipulated under these Guidelines, pursuant to section 135 of the Act.
- 14.8.5 Appropriate risk management measures should be formulated by the Repo Seller to address risks arising out of Repo transactions, including but not limited to:
- a) Counterparty Risk –
 - (iii) An exposure limit on all counterparties should be established based on the Repo Seller’s credit Assessment. The exposure limit shall be subject to review on a regular basis; and
 - (iv) Repo Sellers should apply suitable haircuts that reflect the assessments of the creditworthiness of the counterparty and monitor its net counterparty exposure on a monthly basis

 - b) Credit and Market Risk of Collateral –
 - (i) Repo Sellers should negotiate and apply suitable haircuts that reflect its assessment of the credit and market risks of the underlying collateral (such as duration and liquidity) involved in the Repo transaction.
 - (ii) Underlying Collateral should be marked-to-market on a monthly basis, or when necessary as frequently as possible. Where readily available sources of valuation is lacking, licensed intermediaries may adopt alternative valuation methodologies subject to approval by the Commission
 - (iii) Whenever a mark-to-market valuation reveals a significant exposure to its counterparty, over and above any agreed margin threshold, licensed intermediaries should initiate margin call, either in the form of cash or securities, promptly to restore the initial position

15.0 TIMELINES

- 15.1 The Interim Repo Guidelines will become effective three (3) months from the date of issuance of **02 May 2016**. Repo Sellers are required to comply with the Interim Guidelines by **01 August 2016**.
- 15.2 The Guidelines are intended to be applied to new Repo Transactions from 01 August 2016.
- 15.3 The Guidelines will not apply to existing Repo transactions. Repo transactions that are in existence and extend past 01 August 2016 will be allowed to mature. As such Repo Sellers would not be required to break these Repo Agreements.
- 15.4 Over the period 02 May 2016 to 31 July 2016, the Commission will be collaborating with existing Repo Sellers and the Commission's approved Custodian/Trustee, the ECCSD, to implement systems and procedures geared towards the reforming of the existing Repo operational framework so as to further enhance investor protection.
- 15.5 The Commission invites comments from all interested parties and financial institutions regulated by the Commission over the consultation period 01 to 30 April 2016.

Please submit written comments by **30 April 2016** to -

The Secretary
Eastern Caribbean Securities Regulatory Commission
ECCB Financial Complex
P Box 1855
Basseterre
St Kitts
Fax: (869) 465-7512
Email: info@ecsrc.com

Electronic submission is encouraged. We would appreciate it if you would use the Template for Response to Consultation Paper (P01-2016) for your submission and ease of

collation by the Commission. The consultation paper and the Template for Response to Consultation Paper (P01-2016) can be downloaded from the ECSRC website.

16.0 CONCLUDING REMARKS

16.1 The provisions of the Interim Repo Guidelines are not meant to be final. The Commission may review the Guidelines from time to time, as it deems appropriate.

16.2 The Commission intends to actively monitor the Repo market, primarily by reviewing periodic submissions that are required in the Guidelines and apply to Repo Sellers, the ECCSD and any other approved custodian by the Commission.

16.3 Enforcement:

16.3.1 It is the intent of the Commission to eventually make these guidelines into Rules so as to make them enforceable, pursuant to section 161(b) of the Act. On that basis, the Commission expects that all licensed and registered market intermediaries engaging in Repo transactions would comply with these Guidelines in order to strengthen investor confidence and reduce, manage and mitigate the risks in the Repo market and the ECSM as a whole.

16.3.2 These Guidelines are in keeping with market conduct requirements. Any Repo Seller who breaches these Guidelines may be subject to private reprimand or public censure or, in a flagrant case, further action as the Commission deems fit, including actions designed to deprive the offender temporarily or permanently of its ability to use the facilities of the ECSM. If the Commission finds evidence to show that a criminal offence has taken place, whether under the Companies Act, the Securities Act or any other applicable law, it will refer the matter to the appropriate authority.

Appendix I

LIST OF APPROVED COUNTRIES

Australia

Canada

Finland

Iceland

Japan

New Zealand

Norway

Singapore

Sweden

Switzerland

United States of America

A member state of the Caribbean Community (CARICOM)

A member of the European Union (EU) as at 1st July, 2003

The above list of approved jurisdictions may be modified from time to time and does not limit the discretionary authority of the Commission.

Appendix II

Margin Requirements

Security	Residual Maturity	Recommended
Investment Grade - Sovereign	Up to 1 yr	1%
	Over 1yr to 3yrs	3%
	Over 3 yrs to 7 yrs	4%
	Over 7 yrs to 11 yrs	5%
	Over 11 yrs	6%
Investment Grade - Corporate	Up to 1 yr	2%
	Over 1yr to 3yrs	4%
	Over 3 yrs to 7 yrs	7%
	Over 7 yrs to 11 yrs	8%
	Over 11 yrs	9%
Non – Investment Grade (rated above C)	Up to 1 yr	15%
	Over 1yr to 3yrs	15%
	Over 3 yrs to 7 yrs	15%
	Over 7 yrs to 11 yrs	15%
	Over 11 yrs	15%
Other Securities	Flat Rate	50%
Un-rated Securities	Flat Rate	50%