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MEMORANDUM ON THE VALIDITY AND ENFORCEMENT OF COLLATERAL ARRANGEMENTS UNDER THE ISDA CREDIT SUPPORT DOCUMENTS

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VALIDITY AND ENFORCEMENT OF COLLATERAL ARRANGEMENTS UNDER THE ISDA CREDIT SUPPORT DOCUMENTS

INTRODUCTION

This Memorandum sets out our responses to the questions set out in the letter dated May 20, 2016 (the "**ISDA Letter**") from the International Swaps and Derivatives Association, Inc. ("**ISDA**") to us.

The ISDA Letter seeks our advice on various issues relating to the validity and enforcement of collateral arrangements under:

(i) the 1994 Credit Support Annex governed by New York law (the "**NY Annex**");

(ii) the 2016 Credit Support Annex for Variation Margin (VM) governed by New York law (the "**VM NY Annex**") and the Amendments for Independent Amounts to be included in Paragraph 13 of the New York law 2016 Credit Support Annex for Variation Margin (VM) (the "**VM NY Annex IA Amendments**");

(iii) the 2016 Phase One Credit Support Annex for Initial Margin (IM) governed by New York law (the "**IM NY Annex**") and the Recommended Amendment Provisions for the ISDA New York Law 2016 Phase One Credit Support Annex for Initial Margin (IM) with respect to Japanese Securities (the "**IM NY Annex Japanese Amendments**");

(iv) the 1995 Credit Support Deed governed by English law (the "**1995 Deed**");

(v) the 2016 Phase One IM Credit Support Deed, governed by English law (the "**IM Deed**") and the Recommended Amendment Provisions for the ISDA English Law 2016 Phase One Credit Support Deed for Initial Margin (IM) with respect to Japanese Securities (the "**IM Deed Japanese Amendments**");

(vi) the 1995 Credit Support Annex governed by English law (the "**1995 Transfer Annex**");

(vii) the 2016 VM Credit Support Annex governed by English law (the "**VM Transfer Annex**") and the Amendments for Independent Amounts to be included in Paragraph 11 of the English law 2016 Credit Support Annex for Variation Margin (VM) (the "**VM Transfer Annex IA Amendments**");

(viii) the ISDA 2018 Euroclear Security Agreement Subject to Belgian Law ("**2018 Euroclear Security Agreement**") and the 2018 Recommended Amendment Provisions for the ISDA Euroclear Security Agreement with respect to Japanese Collateral ("Shichiken") (the "**2018 Euroclear Security Agreement Japanese Amendments**");[1]

(ix) the ISDA 2018 Euroclear Collateral Transfer Agreement Subject to New York Law (Multi-Regime Scope) (the "**2018 Euroclear NY CTA**"); the ISDA 2018 Euroclear Collateral Transfer Agreement Subject to English Law (Multi-Regime Scope) (the "**2018 Euroclear English CTA**"); and the 2018 Recommended Amendment Provisions for the ISDA Euroclear Collateral Transfer Agreement (Subject to New York Law) and the ISDA Euroclear Collateral Transfer Agreement (Subject to English Law) with respect to Japanese Collateral ("Shichiken") (the "**2018 Euroclear CTA Japanese Amendments**);

[1] Can also be used with relevant 2016 and 2017 Euroclear Documents.

(x) the 2017 ISDA Euroclear Collateral Transfer Agreement Subject to English Law (Multi-Regime Scope) (the "**2017 Euroclear English CTA**");

(xi) the 2017 ISDA Euroclear Collateral Transfer Agreement Subject to New York Law (Multi-Regime Scope) (the "**2017 Euroclear NY CTA**");

(xii) the 2016 ISDA Euroclear Security Agreement subject to Belgian Law (the "**2016 Euroclear Security Agreement**", and together with the 2018 Euroclear Security Agreement, the "**Euroclear Security Agreements**") and the 2016 Recommended Amendment Provisions for the ISDA Euroclear Security Agreement with respect to Japanese Collateral ("Shichiken") (the "**2016 Euroclear Security Agreement Japanese Amendments**"; and together with the 2018 Euroclear Security Agreement Japanese Amendments, the "**Euroclear Security Agreement Japanese Amendments**");

(xiii) the 2016 ISDA Euroclear Collateral Transfer Agreement Subject to New York Law (Multi-Regime Scope) (the "**2016 Euroclear NY CTA**"); the 2016 ISDA Euroclear Collateral Transfer Agreement Subject to English Law (Multi-Regime Scope) (the "**2016 Euroclear English CTA**"); and the 2016 Recommended Amendment Provisions for the ISDA Euroclear Collateral Transfer Agreement (Subject to New York Law) and the ISDA Euroclear Collateral Transfer Agreement (Subject to English Law) with respect to Japanese Collateral ("Shichiken") (the "**2016 Euroclear CTA Japanese Amendments**"; and together with the 2018 Euroclear CTA Japanese Amendments, the "**Euroclear CTA Japanese Amendments**");

(xiv) the ISDA 2016 Clearstream Security Agreement subject to Luxembourg Law (Pledge account in the name of the Security-provider) (the "**Clearstream 2016 Security Agreement**"), the ISDA 2017 Clearstream Security Agreement subject to Luxembourg Law (Pledge account in the name of the Security-taker) (the "**Clearstream 2017 Security Agreement**"; and together with the Clearstream 2016 Security Agreement, the "**Clearstream Security Agreements**") and the Recommended Amendment Provisions for the ISDA 2017 Clearstream Security Agreement with respect to Japanese Collateral ("Shichiken") (the "**Clearstream Security Agreement Japanese Amendments**"); and

(xv) the ISDA Clearstream 2016 Collateral Transfer Agreement Subject to New York Law (Multi-Regime Scope) (the "**Clearstream NY CTA**"); the ISDA Clearstream 2016 Collateral Transfer Agreement subject to English Law (Multi-Regime Scope) (the "**Clearstream English CTA**") and the Recommended Amendment Provisions for the ISDA Clearstream Collateral Transfer Agreement (Subject to New York Law) and the ISDA Clearstream Collateral Transfer Agreement (Subject to English Law) with respect to Japanese Collateral ("Shichiken") (the "**Clearstream CTA Japanese Amendments**"; and together with the Clearstream Security Agreement Japanese Amendments, the "**Clearstream Japanese Amendments**"),

~~(viii) the ISDA 2018 Euroclear Security Agreement (the "**Euroclear Security Agreement**") and the 2018 Recommended Amendment Provisions for the Euroclear Security Agreement with respect to Japanese Collateral (the "**2018 Euroclear Security Agreement Japanese Amendments**");~~

~~(ix) the ISDA Euroclear Collateral Transfer Agreement (NY Law) (the "**Euroclear NY CTA**") and the Recommended Amendment Provisions for the Euroclear Collateral Transfer Agreements with respect to Japanese Collateral (the "**Euroclear CTA Japanese Amendments**"; and together with the Euroclear Security Agreement Japanese Amendments, the "**Euroclear Japanese Amendments**");~~

~~(x) the ISDA Euroclear Collateral Transfer Agreement (Multi-Regime) (the "**Euroclear Multi-Regime CTA**");~~

~~(xi) the ISDA Clearstream 2016 Security Agreement (the "**Clearstream Security Agreement**") and the Novation Agreement (the "**Clearstream Security Agreements Japanese Amendments**");~~

~~(xii) the ISDA Clearstream 2016 Collateral Transfer Agreement (NY Law) (the "**Clearstream NY CTA**") and the CBL Services Novation Agreement (the "**Clearstream CTA Japanese Amendments**"; and together with the Clearstream Security Agreement Japanese Amendments, the "**Clearstream Japanese Amendments**"); and~~

~~(xiii) the ISDA Clearstream 2016 Collateral Transfer Agreement (Multi-Regime) (the "**Clearstream Multi-Regime CTA**"),~~

in each case, when entered into to provide credit support for transactions ("**Transactions**") entered into pursuant to an ISDA master agreement[2] (the "**Master Agreement**").

Capitalised terms used herein that are not defined shall have the meanings ascribed to such terms in the ISDA Master Agreements, ~~or~~ the relevant Credit Support Document, Clearstream Documents or Euroclear Documents, as applicable.

In this Memorandum:

(i) "**Annex**" means each of the 1994 NY Annex, the VM NY Annex and the IM NY Annex;

(ii) "**Clearstream Documents**" means the Clearstream Security Agreements, the Clearstream NY CTA and the Clearstream English CTA;[3]

(iii) "**Credit Support Documents**" means the Security Documents and the Transfer Annexes;

(i~~i~~v) "**Deed**" means each of the 1995 Deed and the IM Deed;

(v) "**Euroclear Documents**" means the Euroclear Security Agreements, the Euroclear NY CTAs and the Euroclear English CTAs;

(vi) "**Euroclear English CTAs**" means the 2018 Euroclear English CTA, 2017 Euroclear English CTA and 2016 Euroclear English CTA;

(vii) "**Euroclear NY CTAs**" means 2018 Euroclear NY CTA, the 2017 Euroclear NY CTA and 2016 Euroclear NY CTA;

(viii) "**Euroclear Japanese Amendments**" means the Euroclear CTA Japanese Amendments and Euroclear Security Agreement Japanese Amendments;

[2] The forms of master agreement published by ISDA are (a) the 1987 Interest Rate Swap Agreement, (b) the 1987 Interest Rate and Currency Exchange Agreement, (c) the 1992 Master Agreement (Multicurrency - Cross Border), (d) the 1992 Master Agreement (Local Currency - Single Jurisdiction), and (e) the 2002 ISDA Master Agreement.

[3] The Clearstream Documents and the Euroclear Documents relate specifically to assumption (o) and related questions.

~~(iii) "**Security Documents**" means the Annexes and the Deeds;~~

(iix) "**IM Security Documents**" means the IM NY Annex and the IM Deed;

(x) "**Japanese Amendment Documents**" means the IM NY Annex Japanese Amendments, IM Deed Japanese Amendments, Euroclear Japanese Amendments and Clearstream Japanese Amendments;

(xi) "**JP Annex**" means each IM JP Annex, VM JP Annex, 1995 JP Annex and 2008 JP Annex;

(~~v~~xii) "**Non-IM Security Documents**" means the 1994 NY Annex, the VM NY Annex and the 1995 Deed.

(xiii) "**Security Documents**" means the Annexes and the Deeds;

(~~vi~~xiv) "**Transfer Annex**" means each of the 1995 Transfer Annex and the VM Transfer Annex;

~~(vii) "**Credit Support Documents**" means the Security Documents and the Transfer Annexes;~~

(~~viii~~xv) in relation to the Security Documents, the term "**Security Collateral Provider**" shall refer to the Pledgor (under the NY Annex) or the Chargor (under the 1995 Deed), as the context requires;

(~~ix~~xvi) "**Collateral Provider**" means the Security Collateral Provider under a Security Document or the Transferor under a Transfer Annex, the Obligor under a JP Annex or the Security-provider under the Euroclear Documents and Clearstream Documents, according to the context, ~~in relation to which~~ and "**Collateral Taker**" means the Secured Party, ~~or~~ the Transferee, the Obligee or the Security-taker as the case may be; ~~and~~

~~(x) "**Euroclear Documents**" means the Euroclear Security Agreement, the Euroclear NY CTA and the Euroclear Multi-Regime CTA;~~

~~(xi) "**Clearstream Documents**" means the Clearstream Security Agreement, the Clearstream NY CTA and the Clearstream Multi-Regime CTA;~~

(xvii) "**Business Trust**" means a business trust registered under the Business Trusts Act, Chapter 31A of Singapore, acting through a trustee-manager;

(xviii) "**LLP**" means a limited liability partnership established under the Limited Liability Partnership Act, Chapter 163A of Singapore;

(xi~~v~~x) "**Trust**" means a trust established under the laws of Singapore acting through a Trustee, and includes a Business Trust; and

(xv) "**Trustee**" means a Singapore-incorporated company acting as trustee and includes a trustee-manager of a Business Trust.

Our opinion is limited to the Credit Support Documents only. Although we have been provided with copies of the Euroclear Documents and the Clearstream Documents, these have only been provided to us for reference and we have only referred to these to provide context to the arrangements described in assumption (o) and the related questions ~~C~~. We express no opinion on the Euroclear Documents and the Clearstream Documents.

The term "**Collateral**", when used in this Memorandum, is meant to refer, in the case of each Security Document, to any assets in which a security interest is created by the Security Collateral

Provider in favour of the Secured Party and, in the case of each Transfer Annex, to any securities transferred as credit support or cash deposited, in either case, by the Transferor to or with the Transferee, as credit support for the obligations of the Collateral Provider under the relevant Master Agreement.

We set out below in italics each of the questions raised in the ISDA Letter, followed by our response to the question. In addition to the assumptions that we were asked to make in providing our advice (as listed in Part 1 below), this Memorandum is subject to the following:

(a) We have assumed that each of the parties to the Master Agreement and Credit Support Document which is carrying on any regulated activity in Singapore (including without limitation under the Securities and Futures Act, Chapter 289 or the Commodity Trading Act, Chapter 48A) is appropriately licensed (or is exempt from licensing).

(b) This Memorandum relates solely to matters of Singapore law of general application as in force at the date hereof, and as currently applied by the Singapore courts, and (other than as expressly stated below) does not consider the impact of any laws (including insolvency laws) other than Singapore law. We have made no investigation of, and do not express or imply any views on, the laws of any country other than Singapore.

(c) We assume that all the documents listed in paragraphs (i) to (xiii) above are legal, valid and enforceable under all applicable laws (other than the law of Singapore), and that there is nothing in any law other than the law of Singapore that affects our opinion.

FACT PATTERNS

We were asked, in responding to each question, to distinguish between the following three principal fact patterns:

I. The Location of the Collateral Provider is in Singapore and the Location of the Collateral is outside Singapore.

II. The Location of the Collateral Provider is in Singapore and the Location of the Collateral is in Singapore.

III. The Location of the Collateral Provider is outside Singapore and the Location of the Collateral is in Singapore.

For the foregoing purposes:

(a) the "**Location**" of the Collateral Provider is in Singapore if it is incorporated or otherwise organised in Singapore and/or if it has a registered branch or other place of business in Singapore; and

(b) the "**Location**" of Collateral is the place where an asset of that type is situated under the private international law rules of Singapore,

and the term "**Located**" when used below in relation to a Collateral Provider or any Collateral should be construed accordingly.

We have not expressly referred to each fact pattern in answering each question below, but we have taken the fact patterns into account in preparing our advice and, unless otherwise stated in our advice (or the relevant question), our advice generally applies to all three fact patterns.

In addition, unless specifically indicated below, our response applies to all counterparty types.

PART 1: SECURITY INTEREST APPROACH PURSUANT TO THE SECURITY DOCUMENTS

Assumptions relating to the Security Documents

As instructed, for the purposes of this Part 1, we have made the following assumptions:

(a) The Security Collateral Provider has entered into a Master Agreement and a Security Document with a Secured Party. The parties have entered into either (i) a Master Agreement governed by New York law, or (ii) a Master Agreement governed by English law. Our answers generally do not differ depending on whether (i) or (ii) applies or as a result of assumption (b) or (c) below, and we shall not be distinguishing the position for each set of documents unless we state otherwise.

(b) In respect of our responses to the questions in respect of the 1994 NY Annex, the 2016 VM NY Annex and the 1995 Deed, the parties will enter into (i) the 1994 NY Annex and/or the 2016 VM NY Annex in connection with a New York law governed ISDA Master Agreement; and (ii) the 1995 Deed in connection with an English law governed ISDA Master Agreement.

(c) In respect of our responses to the questions in respect of IM Security Documents, each IM Security Document could be entered into in connection with either a New York law or English law governed ISDA Master Agreement and may be subject to a different governing law than the relevant ISDA Master Agreement (depending on whether the parties choose to align the governing law of the IM Security Document to (i) the Location of the relevant Custodial Account; or (ii) the governing law of the ISDA Master Agreement). The IM NY Annex forms a part of the relevant ISDA Master Agreement and therefore, unless revised by the counterparties, is subject to the same governing law as the relevant ISDA Master Agreement. In respect of an IM NY Annex entered into in connection with an English law governed ISDA Master Agreement, the parties will provide in paragraph 13 of the IM NY Annex that the Annex is governed by and construed in accordance with New York law.

(d) Although each Security Document (other than the IM Security Documents) is a bilateral form in that it contemplates that either party may be required to post Collateral to the other depending on movements in Exposure under the relevant Security Document, we assume for the sake of simplicity that the same party is the Security Collateral Provider at all relevant times under the applicable Security Document. In the case of the IM Security Documents, both parties will be required to post Collateral to the other (either under the same IM Security Document or under separate IM Security Documents) in an amount that depends on the IM calculation provisions. For the sake of simplicity we have only considered the Collateral posting leg of one party – issues relating to the insolvency of the Collateral Taker are considered in a separate opinion.

(e) We assume that each party is (i) a corporation (including a bank or other similar financial institution[4]), (ii) a ~~limited liability partnership established under the Limited Liability Partnership Act, Chapter 163A of Singapore (an "**LLP**")~~n LLP or (iii) a trust established under the laws of Singapore acting through a ~~trustee (a "**Trustee**")~~ Trustee which is a

[4] In the case of an institution that is a Singapore company or branch of a foreign corporation that is a licensed insurer under the Insurance Act, Chapter 142 (the "**Insurance Act**"), the discussions in this memorandum apply to such an insurer only if all transactions entered into by it under the ISDA Master Agreement are attributable to the same insurance fund maintained by the insurer under the Insurance Act.

~~Singapore-incorporated company (a "**Trust**")~~Trust. Such Trusts include ~~business trusts registered under the Business Trusts Act, Chapter 31A of Singapore, acting through a trustee-manager (each, a "**Business Trust**")~~Business Trusts, as well as unit trusts.

(f) We assume that each Master Agreement and each Security Document are enforceable under the laws of New York or England, as the case may be, and that each party has duly authorised, executed and delivered, and has the capacity to enter into, each document. We will further assume that the choice of laws of New York or England to govern the Master Agreement and each Security Document is made in good faith and does not violate any applicable law or public policy which the Parties cannot derogate from.

(g) We assume that any provisions of the Master Agreement and the relevant Security Document that we deem crucial to our opinion have not been altered in any material respect. The selections contemplated by the Master Agreement or the relevant Security Document would not, unless otherwise mentioned below, change the substance of our opinion.

(h) We assume that pursuant to the relevant Security Document, the counterparties agree that Eligible Collateral will include cash credited to an account (as opposed to physical notes and coins) and certain types of securities (as further described below) that are located or deemed located either (i) in Singapore or (ii) outside Singapore.

(i) We assume that any Securities provided as Eligible Collateral are denominated in either Singapore dollars or any freely convertible currency and consist of (i) corporate debt securities, whether or not the issuer is organised or located in Singapore; (ii) debt securities issued by the Singapore government; (iii) debt securities issued by ~~the government of a member of the "G-10" group of countries~~multilateral development banks and international organisations; and (iv) ~~corporate~~ equity securities whether or not the issuer is organised or located in Singapore, and in the case of the 1994 NY Annex, the 2016 VM NY Annex and the 1995 Deed, is held in one of the following forms:

(1) directly held bearer securities: by this we mean securities issued in certificated form, in bearer form (meaning that ownership is transferable by delivery of possession of the certificate) and, when held by a Secured Party as Collateral under a Security Document, held directly in this form by the Secured Party (that is, not held by the Secured Party indirectly with an Intermediary (as defined below));

(2) directly held registered securities: by this we mean securities issued in registered form and, when held by a Secured Party as Collateral under a Security Document, held directly in this form by the Secured Party so that the Secured Party is shown as the relevant holder in the register for such securities (that is, not held by the Secured Party indirectly with an Intermediary);

(3) directly held dematerialised securities: by this we mean securities issued in dematerialised form and, when held by a Secured Party as Collateral under a Security Document, held directly in this form by the Secured Party so that the Secured Party is shown as the relevant holder in the electronic register for such securities (that is, not held by the Secured Party indirectly with an Intermediary);

(4) intermediated securities: by this we mean a form of interest in securities recorded in fungible book-entry form in an account maintained by a financial intermediary

(which could be a central securities depository ("**CSD**") or a custodian, nominee or other form of financial intermediary, in each case an "**Intermediary**") in the name of the Secured Party where such interest has been credited to the account of the Secured Party in connection with a transfer of Collateral by the Security Collateral Provider to the Secured Party under a Security Document.

The Secured Party's Intermediary may itself hold its interest in the relevant debt securities indirectly with another Intermediary or directly in one of the three forms mentioned in (1), (2) and (3). In practice, there is likely to be a number of tiers of Intermediaries between the Secured Party and the issuer of such securities, at least one of which will be an Intermediary that is a national or international CSD. Where responding to questions on the basis that Collateral is located or deemed to be located in Singapore, we assume that the relevant intermediary is located in Singapore.

(j) We assume that cash Collateral is denominated in a freely convertible currency and is held in an account under the control of the Secured Party.

The assumptions made in paragraphs (i) and (j) will be subject to modification as discussed below in paragraph (n) in respect of the IM Security Documents and (ii) paragraph (o) in respect of Collateral held in a CSD.

(k) Pursuant to the terms and conditions of the Master Agreement, the Security Collateral Provider enters into a number of Transactions with the Secured Party. Such Transactions include any or all of the transactions described in Appendix A. Under the terms of each Security Document, the security interest created in the relevant Collateral secures the Obligations of the Security Collateral Provider arising under the Master Agreement as a whole, including the net amount, if any, that would be due from the Security Collateral Provider under Section 6(e) of the Master Agreement if an Early Termination Date were designated or deemed to occur as a result of an Event of Default in respect of the Security Collateral Provider.

(l) In the case of questions 12 to 15 below, we assume that after entering into the Transactions and prior to the maturity thereof, the rights of the Security Collateral Taker under paragraph 8 of the relevant Annex or Deed (as applicable) have become exercisable following the occurrence of any of the relevant pre-conditions specified in the Annex or Deed (which shall comprise solely of the events listed in Paragraph 8 or as an election in the pro-forma Paragraph 13) which are then continuing, but that an insolvency proceeding has not been instituted (which is addressed separately in assumption (k) and questions 16 to 18 below).

(m) In the case of questions 16 to 18 below, we assume that an Event of Default under Section 5(a)(vii) of the Master Agreement with respect to the Security Collateral Provider has occurred and a formal bankruptcy, insolvency, liquidation, reorganisation, administration or comparable proceeding (collectively, the "**insolvency**") has been instituted by or against the Security Collateral Provider.

(n) With respect to IM Security Documents only, the Collateral provided under the IM Security Document is held in an account (which may hold cash (in a freely convertible currency) and securities) (a "**Custodial Account**") with a third-party custodian ("**Custodian**"), with the following characteristics: (x) the Custodian holds the Collateral in the Collateral

Provider's name pursuant to a custodial agreement between the Collateral Provider and custodian; (y) the Custodial Account is used exclusively for the Collateral provided by the Collateral Provider to the relevant Collateral Taker; and (z) the Collateral Provider, the Collateral Taker and the Custodian have entered into an agreement (which may be a separate control agreement or may be part of the custodial agreement) under which the Collateral Taker can take control of the Collateral under certain circumstances.

(o) In certain circumstances, "initial margin" Collateral may be held at a CSD. In these circumstances, the parties will not enter into an IM Security Document. Instead, we assume ~~–~~that (w) the Collateral is held in an account within Euroclear or Clearstream; (x) the parties have entered into the Euroclear Documents or the Clearstream Documents (as applicable) and other relevant documentation with Euroclear or Clearstream, which collectively establish collateral arrangements within Euroclear or Clearstream (as applicable) and set forth (i) the manner in which the Collateral is held in Euroclear or Clearstream and (ii) the manner in which the automated transfers of Collateral by Euroclear or Clearstream will be effected (*i.e.,* upon receipt of matching instructions from the Collateral Provider and Collateral Taker as to the overall amount of initial margin Collateral that is required in respect of such Collateral Provider's posting obligation, Euroclear or Clearstream, as applicable, will calculate any excess or deficit and make the relevant transfers accordingly on behalf of the parties in discharge of their obligations to one another); and (y) the Euroclear Documents or the Clearstream Documents and the other documents referred to in (x) (as applicable) are enforceable in accordance with their terms under applicable law (which may not be Singapore law).

We understand that:

(~~i~~i) in the case of Euroclear, the Collateral is held in a "Pledged Securities Account" and a "Pledged Cash Account" opened in the Euroclear System in the name of Euroclear acting in its own name but for the account of the Collateral Taker (as pledgee under the pledge granted under the Euroclear Security Agreements) and to be operated in accordance with the relevant Euroclear ~~d~~Documents ~~referred to at (x) above~~; and

(~~ii~~ii) in the case of Clearstream, the Collateral is held in a "Collateral Account" opened in the Clearstream system in the name of (in the case of the Clearstream 2016 Security Agreement) the Collateral Provider ~~and pledged to~~ or (in the case of the Clearstream 2017 Security Agreement) the Collateral Taker ~~pursuant to the Clearstream Security Agreement~~ and to be operated in accordance with the relevant Clearstream ~~d~~Documents ~~referred to at (x) above~~.

In respect of the Clearstream Documents, the parties have entered into (A) any of (I) the Clearstream 2016 Security Agreement, (II) the Clearstream 2017 Security Agreement, or (III) the Clearstream 2016 Security Agreement, the ISDA 2016 Clearstream Security Novation Agreement and the Clearstream 2017 Security Agreement and (B) either the Clearstream NY CTA or the Clearstream English CTA.

For the avoidance of doubt, if the parties have entered into the documents referred to at (III) above, the Clearstream 2016 Security Agreement is entirely replaced by the Clearstream 2017 Security Agreement and accordingly, Collateral is held in a "Collateral Account" opened in the Clearstream system in the name of the Collateral Taker.

(p) We assume that the parties may enter into more than one Credit Support Document, including multiple Credit Support Documents each subject to different governing laws, and may also enter into Euroclear Documents and/or Clearstream Documents.

Appendix B to this memorandum lists certain types of counterparties and states whether this memorandum applies to each of those counterparty types.

Questions relating to the Security Documents

~~*A. For Non-IM Security Documents, would any of your responses to questions 1 through 21 that you provided as of the last date such responses were provided with respect to your jurisdiction be different as a result of (a) any changes in law in your jurisdiction, (b) the inclusion of Security Documents in this opinion that were not previously included, (c) the inclusion of equity securities as Eligible Collateral described in assumption (i)(iv)? If so, please comment specifically on any such changes.*~~

~~*B. For the IM Security Documents only, assume that the Collateral will be held in a Custodial Account with a Custodian as described in assumption (n) above and not pursuant to the assumptions in (i)(1) to (4) and (j) above or assumption (o) above.*~~

~~*(i) Would any of your responses to questions 1 through 21 below with respect to Collateral held pursuant the custodial arrangement described in assumption (n) above be different than the responses to such questions that you provided as of the last date such responses were provided with respect to your jurisdiction as a result of (a) any changes in law in your jurisdiction, (b) the inclusion of the IM Security Documents in this opinion, (c) the inclusion of equity securities as Eligible Collateral described in assumption (i)(iv), or (d) the holding of the Collateral pursuant to one of the custodial arrangements described in (n) above? If so, please comment specifically on any such changes.*~~

~~*(ii) Please describe any requirements that the custodial arrangements described in assumption (n) above must meet to permit the Collateral Taker to exercise its rights as the secured party.*~~

~~*C. Assume that the Collateral will be held by Euroclear or Clearstream, as contemplated by assumption (o), and not pursuant to assumptions (i)(1) to (4) and (j) above or assumption (n) above.*~~

~~*(i) Would any of your responses to questions 1 through 9 and 12-21 below with respect to Collateral held pursuant the arrangement described in assumption (o) above be different than the responses to such questions that you provided as of the last date such responses were provided with respect to your jurisdiction as a result of the holding of the Collateral pursuant to one of the arrangements described in (o) above? If so, please comment specifically on any such changes. As noted in assumption (o) above, you may assume that the security documents and other agreements referred to in assumption (o) are enforceable in accordance with their terms under applicable law (which may be different than the law of your jurisdiction).*~~

~~*(ii) Please describe any requirements that the arrangements described in assumption (o) above must meet to permit the Collateral Taker to exercise its rights as secured party.*~~

~~*D. Notwithstanding assumptions (g) and (n), please assume that the IM NY Annex is amended by the IM NY Annex Japanese Amendments. Would any of your responses to questions 1 through 21 below with respect to Collateral held pursuant the custodial arrangement described in the IM NY Annex Japanese Amendments be different than the responses to such questions that you provided as of the last date such responses were provided with respect to your jurisdiction as a result of (a) the inclusion of the IM NY Annex, as amended by the IM NY Annex Japanese Amendments, in this opinion or (b) the holding of the Collateral pursuant to one of the custodial arrangements described in the IM NY Annex Japanese Amendments? If so, please comment specifically on any such changes.*~~

~~*E. Please assume that the VM NY Annex is amended by the VM NY Annex IA Amendments. Would any of your responses to questions 1 through 21 below be different than the responses to such questions that you provided as of the last date such responses were provided with respect to your jurisdiction as a result of the inclusion of the VM NY Annex, as amended by the VM NY Annex IA Amendments, in this opinion? If so, please comment specifically on any such changes.*~~

~~*F. Notwithstanding assumptions (g) and (n), please assume that the IM Deed is amended by the IM Deed Japanese Amendments. Would any of your responses to questions 1 through 21 below with respect to Collateral held pursuant to the custodial arrangement described in the IM Deed Japanese Amendments be different than the responses to such questions that you provided as of the last date such responses were provided with respect to your jurisdiction as a result of (a) the inclusion of the IM Deed, as amended by the IM Deed Japanese Amendments, in this opinion or (b) the holding of the Collateral pursuant to one of the custodian arrangements described in the IM Deed Japanese Amendments? If so, please comment specifically on any such changed.*~~

For questions 1-21, please opine on each of the following scenarios: (i) the Collateral will be held pursuant to the assumptions in (I)(i) to (iv) and (J), (ii) with respect to the IM Security Documents, the Collateral will be held in a Custodial Account with a Custodian as described in assumption (N) above and (iii) the Collateral will be held by Euroclear or Clearstream, as contemplated by assumption (o) above. Please either confirm that your answer applies to all three scenarios or explain how your answer differs for each scenario. Note that question 10 is not applicable to scenarios (ii) and (iii) (the rules promulgated by various regulators prohibit the use of any Collateral securities held by the Secured Party as "initial margin").

We have not expressly referred to each of the foregoing assumptions and fact patterns in answering each question below, but we have taken the fact patterns into account in preparing our advice and, unless otherwise stated in our advice (or the relevant question), our advice generally applies to all the fact patterns. As noted above, our opinion is limited to the Credit Support Documents only.

Validity of Security Interests

1. *Under the laws of your jurisdiction, what law governs the contractual aspects of a security interest in the various forms of Eligible Collateral deliverable under the Security Documents? Would the courts of your jurisdiction recognise the validity of a security interest created under each Security Document, assuming it is valid under the governing law of such Security Document (taking into account assumptions (b) and (c) above)?*

A. Non-IM Security Documents

Under Singapore conflicts of laws rules, the law governing the contractual aspects of a Security Document in the various forms of Eligible Collateral deliverable under the Security Documents is the proper law (i.e., the governing law) of the relevant Security Document.

The courts of Singapore would generally recognise the validity of a security interest created under each Security Document, assuming it is valid under the governing law of such Security Document, and assuming further that the proprietary aspects of the security interest are valid under the laws of the relevant jurisdiction (as described in our response to the following question) and the mandatory requirements of Singapore law (as described in our response to question 5 are fulfilled.

B. IM Security Documents

The response above would apply equally to the IM Security Documents.

2. *Under the laws of your jurisdiction, what law governs the proprietary aspects of a security interest (that is, the formalities required to protect a security interest in Collateral against competing claims) granted by the Security Collateral Provider under each Security Document (for example, the law of the jurisdiction of incorporation or organisation of the Security Collateral Provider, the jurisdiction where the Collateral is located, or the jurisdiction of location of the Secured Party's Intermediary in relation to Collateral in the form of indirectly held securities)? What factors would be relevant to this question? Where the location (or deemed location) of the Collateral is the determining factor, please briefly describe the principles governing such determination under the law of your jurisdiction with respect to the different types of Collateral. In particular, please describe how the laws of your jurisdiction apply to each form in which securities Collateral may be held under (x) the Non-IM Security Documents pursuant to assumption (i) above; (y) the IM Security Documents pursuant to assumption (n) above; and (z) the arrangements described in assumption (o) above.*

A. Non-IM Security Documents

Under the conflict of law rules of Singapore, the law which governs the proprietary aspects of a security interest in Collateral (other than cash Collateral) is the law of the jurisdiction where the Collateral is situate (the *lex situs*). For the different types of such Collateral, while there is some uncertainty in the relevant caselaw as to how their location should be determined, our views on this issue are as follows:

(a) Directly held bearer debt securities are located in the jurisdiction where the relevant certificate are located.

(b) Directly held registered debt securities are located in the jurisdiction where the relevant register is located.

(c) Directly held dematerialised debt securities are located in the jurisdiction where the relevant electronic register is located.

(d) In the case of intermediated securities (debt or equity), the conflicts of laws rules are especially unclear; but in our view, a Singapore court is likely to hold that the rights against the custodian or intermediary to such securities are located in the jurisdiction in which the account with the relevant custodian or other intermediary is maintained.

In the case of cash Collateral, we assume that such Collateral takes the form of a debt claim against the bank with whom the relevant account is maintained. On this basis, a Singapore court would take the view that the proprietary aspects of a security interest over such Collateral is governed by the governing law of the account agreement with the bank.

B. IM Security Documents

The response above would apply equally to the IM Security Documents. Thus, in the case of intermediated securities, this is likely to be the jurisdiction of the Custodian (although as stated above, the position is not clear).

3. *Would the courts of your jurisdiction recognise a security interest in each type of Eligible Collateral created under each Security Document? In answering this question, please bear in mind the different forms in which securities Collateral may be held, as described in assumption (g) above with respect to Non-IM Security Documents, in assumption (n) above with respect to IM Security Documents and in assumption (o). Please indicate, in relation to cash Collateral, if your answer depends on the location of the account in which the relevant deposit obligations are recorded and/or upon the currency of those obligations.*

A. Non-IM Security Documents

Subject to the discussion below regarding Singapore government securities, Singapore courts would recognise a security interest in each type of Eligible Collateral created under each Security Document, provided the security interest is valid under the governing law of the Security Document, the law governing the proprietary aspects of the security interest (as described in our response to question 2 above), and any mandatory provisions of Singapore law have been complied with (as described in our response to question 5 below).

The foregoing applies in the case of cash Collateral, regardless of the location of the account where the relevant deposit obligations are recorded or the currency of those obligations.

In the case of Singapore government securities, there is a statutory method of taking security over such securities as set out under the Government Securities Acts (as defined below). Before we discuss this, it may be useful to explain briefly the form which Singapore government securities may take.

The issue, transfer and pledge of securities issued by the Government of Singapore are governed by the Government Securities Act, Chapter 121A of Singapore, the Local Treasury Bills Act, Chapter 167 of Singapore, the Development Loan Act, Chapter 81 of Singapore and the Development Loan (1987) Act, Chapter 81A of Singapore (together, the "**Government Securities Acts**"). Under the Government Securities Acts, Singapore government securities may be issued in registered, bearer or book-entry form. In the case of registered Singapore government securities, the Monetary Authority of Singapore (the "**MAS**") will maintain a register of all such securities, and legal title in the securities will be vested in the individual or corporation whose name is entered on the register in respect of the securities. In the case of bearer Singapore government securities, the holder of the certificates evidencing the securities will be deemed to be the legal owner of the securities. Singapore government securities may also be issued by the MAS in a dematerialised form

by means of book-entries in its records which include the name of the depositor and the amount and description of the securities. The MAS will, in respect of such book-entry securities, maintain accounts for, *inter alia*, any depositor for the book-entry securities which such depositor holds for its own account, or where the depositor is a depository institution, for the account of its customers.

Under the Government Securities Acts, pledges of book-entry Singapore government securities (hereinafter referred to as "**statutory pledges**") to any pledgee (who must be eligible to maintain an appropriate account in its name with the MAS[5]) shall be effected by the execution by the parties of an instrument of transfer and the making of an appropriate entry by the MAS in its records of the securities pledged. The making of such an entry in the records of the MAS will constitute the pledgee as the holder of the securities and will have the effect of vesting a security interest over the securities in favour of the pledgee. Further, pledges effected by this method will have priority over any pledge effected or created in any other manner and whether created prior to, on or after the date of creation of the pledge. Accordingly, if it is desired to take a statutory pledge over Singapore government securities, it would be necessary to comply with the steps prescribed under the Government Securities Acts in addition to executing the NY Annex or the Deed (either of which will be the "instrument of transfer").

However, to the best of our knowledge, a statutory pledge has rarely been resorted to. In practice, the usual method of taking security interest over the Singapore government securities would be for the Security Collateral Provider to create a common law security interest over the Security Collateral Provider's interest to the securities[6].

We would also highlight the following development in respect of the discussions in question 3, Part I, regarding taking security over Singapore Government securities. On 31 August 2015, the Government Securities (Amendment) Act 2015 (the "**Amendment Act**") came into operation. The Amendment Act amends the Government Securities Act, Chapter 121A of Singapore which currently, *inter alia*, allows Government securities to be freely transferred and pledged.

The Amendment Act provides that whether book-entry Government securities can be transferred or pledged will be determined by the terms of their issue. This will allow the Government to impose restrictions on such transfers and pledges in future new issues.

B. IM Security Documents

The response above would apply equally to the IM Security Documents.

4. *What is the effect, if any, under the laws of your jurisdiction of the fact that the amount secured or the amount of Eligible Collateral subject to the security interest will fluctuate under the Master Agreement and the relevant Security Document (including as a result of entering into additional Transactions under the Master Agreement from time to time)? In particular:*

[5] While there is no guideline as to the types of persons which are eligible to maintain such an account in its own name with the MAS, it is presently the policy of the MAS for only banks licensed in Singapore to establish such an account.

[6] In addition to a statutory pledge, it is also possible for the Security Collateral Provider to create a common law Security Interest over its rights against a depository institution in favour of the Secured Party if the Security Collateral Provider holds the government securities through a depository institution.

(a) *would the security interest be valid in relation to future obligations of the Security Collateral Provider?*

(b) *would the security interest be valid in relation to future Collateral (that is, Eligible Collateral not yet delivered to the Secured Party at the time of entry into the relevant Security Document)?*

(c) *is there any difficulty with the concept of creating a security interest over a fluctuating pool of assets, for example, by reason of the impossibility of identifying in the Security Documents the specific assets transferred by way of Security?*

(d) *is it necessary under the laws of your jurisdiction for the amount secured by each Security Document to be a fixed amount or subject to a fixed maximum amount?*

(e) *is it permissible under the laws of your jurisdiction for the Secured Party as Secured Party to hold Collateral in excess of its actual exposure to the Security Collateral Provider under the related Master Agreement*?

A. Non-IM Security Documents

We advise that, generally, the fact that the amount secured or the amount of Eligible Collateral subject to the security interest will fluctuate under the Master Agreement and the relevant Security Document (including as a result of entering into additional Transactions under the Master Agreement from time to time) will not create any difficulty under Singapore law provided that the security document permits or contemplates such fluctuation. We advise as follows on the specific queries above:

(a) the security interest over the Eligible Collateral would be valid in relation to obligations incurred after the date such Eligible Collateral was given to the Secured Party if the relevant Security Document expressly provides for this;

(b) it is possible to provide in the relevant Security Document that the Secured Party's security interest will also extend to any future Eligible Collateral not yet delivered to the Secured Party at the time of entry into the relevant Security Document. Accordingly, if the Security Document provides for this, the security interest would extend to future Collateral as well. Please note, however, that the provision of such additional Eligible Collateral as security may be set aside as an unfair preference upon the bankruptcy, winding-up or judicial management of the Security Collateral Provider (please refer to the answer to question 18 below for a full discussion on unfair preferences);

(c) there is no difficulty, under Singapore law, with the concept of creating a security interest over a fluctuating pool of assets. However, there is the risk that if the Security Collateral Provider has the right to use or substitute Eligible Collateral without the consent of the Secured Party, the Secured Party's security interest will be deemed under Singapore law to be a floating charge and will require registration pursuant to Section 131 of the Companies Act (please see the answer to question 5 below with respect to registration requirements for certain types of security interests);

(d) it is not necessary under the laws of Singapore for the amount secured by each Security Document to be a fixed amount or subject to a fixed maximum amount

and the Security Document may secure any amount as stated in that Security Document; and

(e) it is permissible under the laws of Singapore for the Secured Party to hold collateral in excess of its actual exposure to the Security Collateral Provider under the related Master Agreement. In respect of the question of holding of collateral in excess of exposure, we would note that the overcollateralisation cannot be so far in excess of the potential liability of the Security Collateral Provider that it becomes unfair and unconscionable. In this regard, we would note that since the VM NY Annex allows parties to designated Covered Transactions (which may be a subset of all Transactions entered into under the Master Agreement), but the VM NY Annex secures obligations under the entire Master Agreement (i.e. in respect of all Transactions), it is possible for the Security Collateral Provider to become overcollateralised as a result of this (since the net liability in respect of all Transactions may be lower than the exposure calculated in respect of the Covered Transactions).

However, we are of the view that if in taking the Collateral, the parties are acting *bona fide* and there is a reasonable basis for calculating the Collateral requirements, an argument that the overcollateralisation is unfair or unconscionable is unlikely to succeed.

B. IM Security Documents

The response above would apply equally to the IM Security Documents.

5. *Assuming that the courts of your jurisdiction would recognise the security interest in each type of Eligible Collateral created under each Security Document, is any action (filing, registration, notification, stamping, notarisation or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval) required in your jurisdiction to perfect that security interest? If so, please indicate what actions must be taken and how such actions may differ depending on the type of Eligible Collateral in question.*

A. Non-IM Security Documents

Although the term "perfection" in the context of a security interest is not a term of art under Singapore law, it would generally be construed to refer to all the steps required to be taken in order to render the security interest effective and valid as against all third parties and we shall adopt this construction in advising on the perfection procedures of a statutory security interest and other security interests (as opposed to the *creation* of the security interest) which renders the security interest valid as against the Security Collateral Provider.

Under Singapore law, the applicable law to determine questions relating to the perfection of a security interest over Collateral located in a particular jurisdiction is the law of such jurisdiction or the *lex situs*. In the case of cash in a bank account, this will be considered to be "located" in the jurisdiction of the deposit bank. We shall first discuss the perfection requirements where the Eligible Collateral is located in Singapore (in which case the applicable law to determine the issue of perfection is Singapore law). As mentioned in our response to question 2, there are also certain provisions of Singapore law that, in our

view, are mandatory and would apply regardless of whether the *lex situs* is Singapore or not. These requirements include:

(a) registration requirements under the Companies Act, Chapter 50 of Singapore (the "**Companies Act**");

(b) requirements for the creation of security interests over Singapore book-entry securities; and

(c) the payment of stamp duty.

Where the lex situs is Singapore

If the *lex situs* of the Eligible Collateral is Singapore, it would be necessary to give a notice of assignment or charge to the sub-custodian in Singapore (in the case of Eligible Collateral in the form of dematerialised or immobilised securities) and to the bank with which the Security Collateral Provider has deposited its cash (in the case of cash Collateral). This is pursuant to the rule in the English case of *Dearle v Hall* which states that the priority of legal and equitable assignees of choses in action is governed by the order in which notice is given to the debtor. This is considered a perfection requirement as the failure to give the relevant notice will have the effect of postponing the priority of the Secured Party's security interest over the chose in action. This requirement applies regardless of the location of the Security Collateral Provider. If the security interest over a debt or other legal chose in action is intended to be by way of absolute assignment (not purporting to be by way of charge only), written notice to the debtor is also needed for the assignment to take effect as a legal assignment (rather than only as an equitable assignment) under Section 4(8) of the Civil Law Act, Chapter 43 of Singapore.

Mandatory requirements of Singapore law

(i) Registration requirements

Corporates

The security interest created under the Security Document may also need to be registered under the Companies Act. Under Section 131 of the Companies Act, a charge created by a Singapore incorporated company over certain assets is required to be registered with the Registrar of Companies in Singapore within 30 days of the creation of the charge (if the documents creating the charge are executed by the company in Singapore) or within 37 days after the creation of the charge (if the documents creating the charge are executed by the company outside Singapore). A failure to register the charge, if registration is required, will render the charge void as against the liquidator and any creditor of the company.

As for a charge created by a foreign company over certain assets, which, if such a charge is created by a Singapore company is required to be registered with the Registrar of Companies, the registration requirement will apply but only if the foreign company has a registered Singapore branch and those assets are located in Singapore (for example, in the case of cash, if the cash is maintained with a bank account in Singapore). A foreign company which does not have a Singapore branch registered with the Singapore Registrar of Companies does not have to comply with any such requirement.

The following charges are among those to which the registration requirements of the Companies Act apply:

(a) a charge over cash will have to be registered with the Registrar of Companies, if the cash constitutes a "book debt" of the Security Collateral Provider; and

(b) a floating charge over the undertaking or property of the Security Collateral Provider, and this will include securities and cash (whether or not such cash constitutes a book debt of the Security Collateral Provider).

If a security interest extends to the dividends or interest payable on any securities, or to other rights or entitlements attaching to the securities, such security interest should be registered with the Registrar of Companies on the basis that it may constitute a charge over the book debts of the Security Collateral Provider. It should be noted that a charge over Singapore government securities is not a charge over book debts for the purposes of the registration requirements under Section 131 of the Companies Act and is not therefore required to be registered.

Trusts

Section 131 is expressed to apply to Singapore incorporated companies (and foreign companies) where security is created over the company's property or undertaking. "Property" or "undertaking" is not defined, and the question of whether this would include property held by a Trustee on trust has not been tested in Singapore. However, we are of the view that trust property should be considered the Trustee's property or undertaking for the purposes of Section 131 – this is because the Trustee is the legal owner of the assets, and additionally, the Trustee generally has a right of a recourse against the assets. Accordingly, the security interest should be registered where it falls within one of the registrable categories of charges (e.g. charges over book debts and floating charges) as described above.

If the registration requirement is found to apply, a failure to register the security interest would render the security interest void as against the liquidator of the Trustee in a Trustee Insolvency.

LLPs

The charge registration requirements under Section 131 of the Companies Act would not apply to LLPs. However, there is a requirement under paragraph 83 of the Fifth Schedule of the LLP Act to register assignments of book debts under the Bills of Sale Act, Chapter 24 of Singapore. This applies where an LLP makes a general assignment to another person of its existing or future book debts, or any class of them. Where the LLP is subsequently wound up, the assignment will, unless registered, be void against the liquidator as regards book debts which were not paid before the commencement of winding up of the LLP.

For this purpose, "assignment" includes an assignment by way of security or charge on book debts, but "general assignment" does not include:

(a) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts; or

(b) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.

Accordingly, if the book debts are due from specified debtors, or are debts becoming due under specified contracts, this would be a specific assignment and not a general assignment and would not trigger the registration requirements.

(ii) Creation of security interests over book-entry securities

Singapore laws provide for certain requirements for the creation of a security interest over securities that are listed and traded on the Singapore Exchange Securities Trading Limited (the "**SGX-ST**") and which have been deposited in the book-entry system ("**book-entry securities**") of the Central Depository (Pte) Ltd (the "**Depository**").

In particular, a security interest may be created over book-entry securities under Singapore law in one of the following ways.

(a) First, Section 81SS of the Securities and Futures Act, Chapter 289 of Singapore (the "**SFA**") provides for the creation of a statutory security over book-entry securities. A statutory security can only be created in favour of a person maintaining a securities account directly with the Depository (a "**Direct Account**"). This effectively means that unless the secured party has a Direct Account with the Depository, the secured party will never be able to have any statutory security in book-entry securities created in its favour under Section 81SS of the Companies Act. A statutory security has to be in one of the following two forms:

(i) by way of statutory assignment, which is created by an instrument of assignment in the prescribed form executed by the assignor; or

(ii) by way of statutory charge, which is created by an instrument of charge in the prescribed form executed by the chargor.

We would highlight that, at present, it is not possible to create security over a pool of securities (as contemplated by the Security Documents). This would mean that each time there is a transfer of securities, the statutory charge or assignment would need to be amended, which may be operationally difficult and there are proposals to address this – please refer to sub-paragraph (c) below.

(b) Secondly, the common law method of creating security over book-entry securities may be used, pursuant to regulation 21 of the Securities and Futures (Central Depository System) Regulations 2015, provided that the conditions set out therein are satisfied.

Regulation 21 provides that, notwithstanding Section 81SS of the Companies Act, a person which is a holder of a sub-account (a "**Sub-Account**") with a depository agent of the Depository may create under common law a security interest over book-entry securities in favour of any other Sub-Account holder who maintains a Sub-Account with the same depository agent, or in favour of the depository agent with whom that person maintains the Sub-Account for such book-entry securities.

Pursuant to regulation 21, a chargor may therefore create a charge over the book-entry securities credited to its Sub-Account with a depository agent, but only in favour of another Sub-Account holder who maintains a Sub-Account with the same depository agent or in favour of such depository agent.

If the chargor creates a charge over the book-entry securities credited to its Sub-

Account in favour of another holder who maintains a Sub-Account with the same depository agent, the secured party may insist on a transfer of the securities to the secured party's Sub-Account. Although this is not legally required in order to create a charge over the chargor's book-entry securities, it is a practical protective measure to give the secured party control of the collateral.

Accordingly, we advise that if the Collateral Provider grants security over any book-entry securities pursuant to the Security Document, the Collateral Provider and the Collateral Taker should each maintain a Sub-Account with the same depository agent in Singapore in order to ensure that the security interest is valid. The book-entry securities should be held in the Sub-Account of either the Collateral Taker or the Collateral Provider (as mentioned above, the latter would confer on the Collateral Taker control over the securities).

(c) Third, ~~on 18 September 2015, the MAS issued a consultation paper proposing to introduce a new option for investors to pledge securities held in their Direct Accounts with the Depository. Under the proposed option, investors would be able to create a statutory charge over a pool of securities in a segregated sub-balance of their Direct Accounts. An~~ investors can create a statutory charge over a pool of securities in a segregated sub-balance of their Direct Accounts. An investor who wishes to pledge securities to a broker would be able to transfer these securities from the main balance in his Direct Account to a sub-balance linked to that broker; all securities in that sub-balance would then be automatically charged. The charge is treated as discharged if the book-entry securities are returned to the investor's control with the approval in writing of the broker. However, this mode of taking security is restricted to secured parties who have Direct Accounts with the Depository. ~~As this proposal is intended to streamline the taking of statutory security described under (a) above, this mode of taking security may also be restricted to secured parties who have Direct Accounts with the Depository. It is also unclear if it will be limited to situations where the Secured Party is a securities broker.~~

We would also highlight Section 81SS(19) of the SFA. This provides that nothing in Section 81SS shall affect the validity and operation of floating charges on book-entry securities created under common law, but that the Depository shall not be required to recognise, even when having notice thereof, any equitable interest in the book-entry securities under a floating charge except the power of the chargee, upon the crystallisation of the floating charge, to sell the book-entry securities in the name of the chargor in accordance with the provisions of Section 81SS.

It is arguable that Section 81SS(19) would permit security interests to be created over book-entry securities by way of a floating charge, although we would note that this position has not been tested in Singapore. Accordingly, the Collateral Taker may be able to obtain security over book-entry securities by creating a general floating charge over the Collateral Provider's account (though the Collateral Taker should note the requirements for registration for floating charges under Section 131 of the Companies Act, as described in sub-paragraph (i) above, and that floating charges are subject to certain disadvantages in terms of priority, as opposed to a fixed charge). The position with regard to a floating charge created specifically over book-entry securities is less clear, and we are of the view

that there is a risk that such a floating charge may be regarded as an attempt to avoid the requirements of Section 81SS and may not be valid.

It is not clear from the Security Documents whether the security interest is by way of a floating charge. If parties wish to create a floating charge in order to rely on Section 81SS(19) of the SFA, they may wish to consider expressly providing in the Security Documents that the security interest is by way of a floating charge.

(iii) Stamp duty

Under the Stamp Duties Act, Chapter 312 of Singapore (the "**Stamp Duties Act**"), each Security Document will attract stamp duty of up to S$500. Such stamping must be effected within 14 days of execution of the Security Document if it was executed in Singapore, or within 30 days of the Security Document being first brought into Singapore, if the Security Document was executed outside Singapore. A document that is not stamped within the prescribed period(s) may still be stamped but would be subject to the payment of a penalty of up to four times the amount stampable. Failure to pay such stamp duty does not affect the validity or enforceability of the Security Document, but it will render the Security Document inadmissible as evidence before a Singapore court and other tribunals. The requirement to stamp a Security Document applies if any mortgage (as defined in the Stamp Duties Act) is created or given therein over any immovable property in Singapore or over any stock or shares, unless such mortgage is over stock or shares and is executed under hand only.

Apart from the foregoing, there is no other action required under Singapore law in order to perfect the security interest under a Security Document.

B. IM Security Documents

The response above would apply equally to the IM Security Documents. We would highlight that in order to comply with the holding structure in respect of book-entry securities:

(a) for assumption (l), either the Collateral Taker will need to have a Direct Account with the Depository and security will need to be taken over the Collateral Taker's account (for statutory security), or the Collateral Provider will need to maintain the Custodial Account as a sub-account with a Custodian that is a Depository Agent, and the Collateral Taker will need to maintain a separate sub-account with the same Depository Agent; and

(b) for assumption (m), this would be in compliance with the holding structure assuming that the Custodian is the Depository and the Collateral Taker has a Direct Account with the Depository.

As highlighted in respect of the Non-IM Security Documents above, where the parties take security by way of statutory security under Section 81SS (i.e. where the Collateral Taker maintains a Direct Account with the Depository), this runs into practical difficulties as, at present, it is not possible to create security over a pool of securities (as contemplated by the Security Documents). This would mean that each time there is a transfer of securities, the statutory charge or assignment would need to be amended, which may be operationally difficult. In addition, the prescribed forms for the creation of a statutory

charge or statutory assignment under Section 81SS appear to contemplate that the Collateral Provider must also have a Direct Account with the Depository[7].

6. *If there are any other requirements to ensure the validity or perfection of a security interest in each type of Eligible Collateral created by the Security Collateral Provider under each Security Document, please indicate the nature of such requirements. For example, is it necessary as a matter of formal validity that the Security Document be expressly governed by the law of your jurisdiction or translated into any other language or for the Security Document to include any specific wording? Are there any other documentary formalities for a security interest created under each Security Document to be recognised as valid and perfected in your jurisdiction?*

A. Non-IM Security Documents

Save as stated in the answer to question 5 above, there is no other requirement under Singapore law to ensure the validity or perfection of a security interest in each type of Eligible Collateral created by the Security Collateral Provider under each Security Document. In particular, it is not necessary as a matter of formal validity under Singapore law that the Security Documents be expressly governed by the law of Singapore or translated into any other language or for them to include any specific wording, assuming, of course, that the Security Document is adequate under its governing law to create the security interest over the Eligible Collateral. Save as stated in our response to question 5 above, there is no other documentary formality for a security interest created under each Security Document to be recognised as valid and perfected in Singapore.

B. IM Security Documents

The response above would apply equally to the IM Security Documents.

7. *Assuming that the Secured Party has obtained a valid and perfected security interest in the Eligible Collateral under the laws of your jurisdiction, to the extent such laws apply, by complying with the requirements set forth in your responses to questions 1 to 6 above, as applicable, will the Secured Party or the Security Collateral Provider need to take any action thereafter to ensure that the security interest in the Eligible Collateral continues and/or remains perfected, particularly with respect to additional Collateral pledged from time to time whenever the Credit Support Amount exceeds the Value of the Collateral held by the Secured Party?*

A. Non-IM Security Documents

As noted in question 5 above, where taking statutory security over book-entry securities, it is necessary to submit a new form every time the Collateral Provider wishes to charge the securities pledged with the CDP as collateral, and every time the Collateral Provider wishes to discharge the security interest. The MAS has proposed to change this, but at present, these proposals have not been implemented.

For other forms of security (including the creation of a common law security interest over book-entry securities), where additional Eligible Collateral is pledged pursuant to the Security Documents, if the forms lodged with the Registrar of Companies for registration of

[7] It is not possible to simply send a notice with deemed acceptance language, as there are prescribed forms which must be lodged with the Depository – and these require the exact securities to which the security interest applies to be specified.

any charge, and if the notice of assignment or charge given to the bank, CSD or Intermediary, as the case may be, make it clear that the security extends to additional Eligible Collateral pledged, it will not be necessary to repeat the formalities described in the answer to question 5 above again to ensure that the security interest in the Eligible Collateral continues to be and/or remains perfected. This is on the assumption that the Security Documents expressly provide for the pledging of additional Eligible Collateral and no additional documentation is executed to create the security over the additional Eligible Collateral (otherwise, it will be necessary to register the document with the Registrar of Companies in Singapore as described in the answer to question 5 above).

B. IM Security Documents

The response above would apply equally to the IM Security Documents.

8. *Assuming that (a) pursuant to the laws of your jurisdiction, the laws of another jurisdiction govern the creation and/or perfection of a security interest in the Eligible Collateral transferred by way of security pursuant to each Security Document (for example, because such Collateral is located or deemed to be located outside your jurisdiction) and (b) the Secured Party has obtained a valid and perfected security interest in the Eligible Collateral under the laws of such other jurisdiction, will the Secured Party have a valid security interest in the Collateral so far as the laws of your jurisdiction are concerned? Is any action (filing, registration, notification, stamping or notarisation or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval) required under the laws of your jurisdiction to establish, perfect, continue or enforce this security interest? Are there any other requirements of the type referred to in question 6 above?*

A. Non-IM Security Documents

If, pursuant to the laws of Singapore, the laws of another jurisdiction govern the creation and/or perfection of a security interest in the Eligible Collateral pledged pursuant to each Security Document and the Secured Party has obtained a valid, enforceable and perfected security interest in the Eligible Collateral under the laws of such other jurisdiction, we advise that the Secured Party will have a security interest in the Collateral so far as the laws of Singapore are concerned, provided the requirements relating to charge registration are met (if the Security Collateral Provider is a company incorporated in Singapore, or is a foreign company with a registered Singapore branch and the relevant assets are located in Singapore and the charge is of a type which requires registration) and the creation of security over book-entry securities as described under question 5 above are met. (We deal with the enforcement of the security interest in questions 12 to 15 below).

B. IM Security Documents

The response above would apply equally to the IM Security Documents.

9. *Are there any particular duties, obligations or limitations imposed on the Secured Party in relation to the care of the Eligible Collateral held by it pursuant to each Security Document?*

A. Non-IM Security Documents

Under Singapore law, the Secured Party is required to exercise reasonable care in relation to the Eligible Collateral held by it pursuant to each Security Document. In the case of certificated securities, this would mean that the Secured Party is required to keep the certificates in safe custody while in the case of dematerialised securities and indirectly held securities, the Secured Party should not deal with the securities in a manner inconsistent with the provisions of the Security Documents.

B. IM Security Documents

The response above would apply equally to the IM Security Documents.

10. *Please note that pursuant to the terms of ~~each~~ the 1995 Deed ~~and the IM NY Annex~~, the Secured Party is not permitted to use any Collateral securities it holds. This is because ~~(a)~~ at the time that the 1995 Deed was published, it was thought, as a matter of English law, that any such use is or may be incompatible with the limited nature of the interest that the Secured Party has in the Collateral[8] ~~, and (b) the rules promulgated by various regulators prohibit the use of any Collateral securities held by the Secured Party due to the Collateral being "initial margin"~~. On the other hand, unless otherwise agreed to by the parties, Paragraph 6(c) of the 1994 NY Annex and the VM NY Annex grants the Secured Party broad rights with respect to the use of Collateral, provided that it returns equivalent Collateral when the Pledgor is entitled to the return of Collateral pursuant to the terms of the 1994 NY Annex or the VM NY Annex, as applicable. Such use might include pledging or rehypothecating the securities, disposing of the securities under a securities repurchase (repo) agreement or simply selling the securities. Do the laws of your jurisdiction recognise the right of the Secured Party so to use such Collateral pursuant to an agreement with the Pledgor? In particular, how does such use of the Collateral affect, if at all, the validity, continuity, perfection or priority of a security interest otherwise validly created and perfected prior to such use? Are there any other obligations, duties or limitations imposed on the Secured Party with respect to its use of the Collateral under the laws of your jurisdiction?*

A. Non-IM Security Documents

There is no express provision of Singapore law which states that the Secured Party cannot use or otherwise deal with the Eligible Collateral freely for its own benefit. The better view is that the Secured Party is able to do so, if the relevant Security Document gives the Secured Party such rights, and if such rights are valid and enforceable under the governing law of the Security Document and the law governing the proprietary aspects of the security interest. The legal basis for this view is that Singapore law generally recognises the freedom of contract and the parties are free to agree that the Secured Party may deal with the Eligible Collateral, provided it agrees to return equivalent Eligible Collateral to the Security Collateral Provider when the obligations secured by such Eligible Collateral have been fully discharged. In such a case, the use of the Eligible Collateral would not affect the validity, continuity, perfection or priority of the security interest validly created and perfected under all applicable laws prior to such use. Apart from the obligations imposed on the Security Collateral Provider as described in question 9 above, there are no other obligations, duties

[8] These concerns remain as a matter of English law unless the Deed falls within the scope of the Financial Collateral Arrangements (No. 2) Regulations 2003, which implement in the United Kingdom the Directive 2002/47/EC of 6 June 2002 on financial collateral arrangements.

or limitations imposed on the Secured Party with respect to its use of the Collateral under the laws of Singapore.

B. IM Security Documents

Not applicable.

11. *What is the effect, if any, under the laws of your jurisdiction on the validity, continuity, perfection or priority of a security interest in Eligible Collateral under each Security Document of the right of the Pledgor to substitute collateral pursuant to Paragraph 4(d) (or in the case of the IM Deed, Paragraph 4(e) of each Annex and Deed? How does the presence or absence of consent to substitution by the Secured Party affect your response to this question? Note that the parties may also give upfront consent in the IM Security Documents to any substitution made by the Security Collateral Provider and/or the Custodian in accordance with the terms of the agreement described in assumption (n). Please answer this question in connection with the Euroclear and Clearstream arrangements as the terms of the tri-party agreements will permit substitutions (see Paragraph 3.5 of the Euroclear CTA and Clearstream CTA for where this is contemplated in the bilateral agreements). Please assume that the tri-party documents contemplate substitutions being made by Euroclear/Clearstream and opine on the effect on the security of such an arrangement.*

A. Non-IM Security Documents

Under the laws of Singapore, there is a risk that if the Security Collateral Provider has the right to use or substitute Collateral without the consent of the Secured Party, the Secured Party's security interest will be deemed under Singapore law to be a floating charge and will (in the case of a corporate or a Trust) require registration pursuant to Section 131 of the Companies Act (please see the answer to question 5 above). A floating charge will generally rank behind a fixed charge over the Collateral whether created before or after the floating charge and behind certain preferential debts, and a floating charge is generally more vulnerable in the event of the winding-up of the Security Collateral Provider. In order to create a first fixed charge over the Collateral, the Secured Party must have some control over the Collateral pledged, and the right of the Security Collateral Provider to use or substitute the Collateral must be made subject to the consent of the Secured Party, and such consent to use or substitute security should not be readily given.

We have been asked to comment specifically on whether the Pledgor and the Secured Party are able validly to agree in the Security Document that the Pledgor may substitute Collateral without specific consent of the Secured Party and whether and, if so, how this may affect the nature of the security interest or otherwise affect our conclusions regarding the validity or enforceability of the security interest. We confirm that the Pledgor and the Secured Party are able validly to agree on such substitution of Collateral. This will (as stated above) result in there being a risk that the security interest may then be characterised as a floating charge instead of a fixed charge.

The same analysis would apply to the Euroclear CTA and the Clearstream CTA, including the risk of recharacterisation as a floating charge if the Security Collateral Provider has the right to substitute Collateral.

B. IM Security Documents

The response above would apply equally to the IM Security Documents.

Enforcement of Rights under the Security Documents by the Secured Party in the Absence of an Insolvency Proceeding

Note the additional assumption (j) above which applies to questions 12 to 15 below.

12. *Assuming that the Secured Party has obtained a valid and perfected security interest in the Eligible Collateral under the laws of your jurisdiction, to the extent such laws apply, by complying with the requirements set forth in your responses to questions 1 to 6 above, as applicable, what are the formalities (including the necessity to obtain a court order or conduct an auction), notification requirements (to the Security Collateral Provider or any other person) or other procedures, if any, that the Secured Party must observe or undertake in exercising its rights as a Secured Party under each Security Document, such as the right to liquidate Collateral? For example, is it free to sell the Collateral (including to itself) and apply the proceeds to satisfy the Security Collateral Provider's outstanding obligations under the Master Agreement? Do such formalities or procedures differ depending on the type of Collateral involved?*

A. Non-IM Security Documents

Under Singapore law, the Secured Party may immediately exercise its rights to seize and/or sell the Collateral upon the default by the Security Collateral Provider of any or all of its obligations under the relevant Master Agreement (whether the default is a payment default or otherwise) and apply the proceeds to satisfy the Security Collateral Provider's outstanding obligations under the Master Agreement as long as the relevant Security Document grants the Secured Party such rights. In addition, the Secured Party may also proceed to enforce its security over the Collateral without the requirement to give any notice to the Security Collateral Provider as long as the Security Documents so provide (although it would be advisable to do so notwithstanding that it is not a requirement, in order to persuade the court to hold that the Secured Party has acted reasonably). This is subject to the duty imposed on the Secured Party under Singapore law to use reasonable efforts to obtain the best available price for the Collateral which it or its agent is selling and to follow professional advice as to the best method of sale, pursuant to enforcement of such Collateral.

The position is different if the Secured Party wishes to sell the Collateral to itself. Quite apart from the fact that the Secured Party may be in the position of conflict of interest if it wishes to transfer title to itself and hold the Collateral in a proprietary position instead of selling the Collateral, the sale of the Collateral by the Secured Party to itself would be akin to a foreclosure on the Collateral, and under Singapore law, the Secured Party may not transfer title to itself without a foreclosure order and without following the proper procedures. The remedy of foreclosure is discretionary and since it is seen as confiscatory, will only be ordered by the court if the amount of debt outstanding exceeds the value of the security. The Security Collateral Provider will usually be given six months to redeem the Collateral before a foreclosure order nisi is made absolute and the foreclosure becomes effective.

In the case of Collateral in the form of cash deposited by the Security Collateral Provider with the Secured Party, the Secured Party may, assuming that the relevant Security Document confers on the Secured Party a contractual right of set-off, immediately set off the amount of cash against the Security Collateral Provider's outstanding obligations under the Master Agreement.

In the case of Collateral in the form of Singapore book-entry securities, where a statutory security interest has been taken over the securities under ~~s~~Section 81SS of the SFA, the Collateral Taker has the following powers:

(a) a power, when the liability has become due and payable, to sell the book-entry securities or any part thereof and in the case where the security is by way of charge, to sell the book-entry securities or any part thereof in the name of and for and on behalf of the Collateral Provider;

(b) any other power which may be granted to it in writing by the Collateral Provider in relation to the book-entry securities provided that the Depository shall not be concerned with or affected by the exercise of any such power.

Upon the sale by the Collateral Taker in exercise of its power of sale of the book-entry securities, the Collateral Taker is required to immediately notify the Depository of the sale and the particulars of the book-entry securities sold by it, and the Depository shall (a) in the case where security is by way of statutory assignment, notify the Collateral Provider of the sale, and (b) in the case where security is by way of statutory charge, effect a transfer of the book-entry securities to the buyer and notify the Collateral Provider.

Save as stated above, there are no other special formalities (including the necessity to obtain a court order or conduct an auction), notification requirements (to the Security Collateral Provider or any other person) or other procedures that the Secured Party must observe or undertake in exercising its rights as a Secured Party under each Security Document.

B. IM Security Documents

The response above would apply equally to the IM Security Documents.

13. *Assuming that (a) pursuant to the laws of your jurisdiction, the laws of another jurisdiction govern the creation and/or perfection of a security interest in the Eligible Collateral transferred by way of security pursuant to each Security Document (for example, because such Collateral is located or deemed to be located outside Singapore) and (b) the Secured Party has obtained a valid and perfected security interest in the Eligible Collateral under the laws of such other jurisdiction, are there any formalities, notification requirements or other procedures, if any, that the Secured Party must observe or undertake in Singapore in exercising its rights as a Secured Party under each Security Document?*

A. Non-IM Security Documents

The Secured Party would need to comply with the formalities and procedures described in our response to question 12 above in the event it enforces its security interest under the Security Documents in Singapore. However, if the Collateral is located outside Singapore, it is likely that any enforcement will take place in the jurisdiction where it is located, with the result that the laws of such jurisdiction will be relevant in defining the duties and obligations of the Secured Party in the enforcement of the security interest. The foregoing statements must, however, be qualified in that they are concerned with the exercise by the Secured Party of its enforcement rights under the Security Documents. The Secured Party is at all times free to exercise its other contractual rights under the Security Documents, which would be governed by the law chosen to govern the Security Documents.

B. IM Security Documents

The response above would apply equally to the IM Security Documents.

14. *Are there any laws or regulations in your jurisdiction that would limit or distinguish a creditor's enforcement rights with respect to Collateral depending on (a) the type of transaction underlying the creditor's exposure, (b) the type of Collateral, or (c) the nature of the creditor or the debtor? For example, are there any types of "statutory liens" that would be deemed to take precedence over a creditor's security interest in the Collateral?*

A. Non-IM Security Documents

Corporates and LLPs

Assuming that the security interest in the Eligible Collateral has been properly created and perfected under all applicable laws with the appropriate priority and in the absence of any insolvency proceedings with respect to the Security Collateral Provider, there is no law or regulation in Singapore that would limit or distinguish a creditor's enforcement rights with respect to the Eligible Collateral depending on (a) the type of transaction underlying the creditor's exposure, (b) the type of Collateral or (c) the nature of the creditor or the debtor.

In general, there are no statutory or preferential liens under Singapore law that would take precedence over the Secured Party's security interest in the Eligible Collateral, if the security interest takes the form of a fixed charge. We would, however, highlight ~~s~~Section 33 of the Employment Act, Chapter 91 of Singapore, which accords priority to the salary of certain employees to other debts in certain limited situations. Section 33 provides that when, on the application of a person holding a mortgage, charge or lien, the property of an employer is sold, or any money due to the employer is garnished, the court ordering the sale or garnishment shall not distribute the proceeds unless it has ascertained and paid the salary due to all the employees (who are workmen who receive a salary not exceeding S$4,500 a month, or who are employees other than workmen whose salary does not exceed S$2,500 a month) employed by that employer or engaged by a contractor and working for that employer. This priority only applies, however, to (a) property on which those employees were working, (b) property which is the produce of the employees' work, or (c) movable property which is used by those employees in the course of their work, or (d) money due to the employer in respect of work done by those employees. The amount payable to each employee is capped at 5 months' salary. We would also highlight, in respect of security interests over book-entry securities, security interests by way of statutory security have priority over security interests created under the common law method.

In addition, certain preferred claims do take priority over a floating charge (as described in our response to question 11 above).

Trusts

The application of ~~s~~Section 33 of the Employment Act, Chapter 91 of Singapore to a Trust has not been tested in Singapore. There is a question of whether the distribution of Trust assets would be subject to the statutory priority accorded to employee's wages under the Employment Act.

The priority given to employee's wages under ~~s~~Section 33 applies to the distributions from the sale of "property of an employer" or the garnishing of "money due to the employer". A Trust itself may in practice generally not have employees - however, it is not clear if the Trustee's employees could be considered to be employees of the Trust for the purposes of ~~s~~Section 33. This may be a question of fact. In our view, it is arguable that where the Trustee is a professional trustee and not established specifically for the purpose of being the Trustee of that specific Trust, the employees should not be regarded as hired specifically for the Trust and should not therefore be regarded as employees of the Trust. If that is the case, ~~s~~Section 33 should not apply to distributions of the Trust's assets (although it may still apply to a distribution of the Trustee's personal assets).

B. IM Security Documents

The response above would apply equally to the IM Security Documents.

15. *How would your responses to questions 12 to 14 change, if at all, assuming that an Event of Default exists with respect to the Secured Party rather than or in addition to the Security Collateral Provider (for example, would this affect the ability of the Secured Party to exercise its enforcement rights with respect to the Collateral)?*

Our responses to questions 12 to 14 above would not change in such a scenario.

Enforcement of Rights Under the Security Documents by the Secured Party after the Commencement of an Insolvency Proceeding

Note the additional assumption in (m) above which applies to questions 16 to 18 below.

Before addressing questions 16 to 18, we describe generally the different types of insolvency proceedings under Singapore law.

Companies

Insolvency Proceedings

In general, the types of insolvency proceedings to which a Security Collateral Provider that is a Singapore incorporated company or a Singapore registered branch of a foreign company[9] may be subject in Singapore are the following:

(a) Winding-up: A winding-up under Part X of the Companies Act. This may be (i) an involuntary winding-up effected by the court, (ii) a voluntary winding-up approved by a special resolution of its members or (iii) a voluntary winding-up at the end of the fixed term or upon the occurrence of some other event specified in the Security Collateral Provider's articles of association and approved by an ordinary resolution of its members. A "members' voluntary winding-up" or solvent voluntary liquidation requires the directors of the Security Collateral Provider to make a statutory declaration to the effect that they believe that the Security Collateral Provider will be able to pay its debts in full within 12 months of the date of the declaration; a voluntary winding-up in which such a declaration cannot be given is a "creditors' voluntary winding-up" or insolvent liquidation. A provisional liquidator may be appointed by the court at any time after the making of a winding-up application and before the making of a winding-up order.

[9] For completeness, we would highlight that foreign companies with a substantial connection to Singapore may be subject to these proceedings even if they do not have a registered Singapore branch.

(b) Judicial Management: Judicial management under Part VIIIA of the Companies Act (which does not apply to a company which has gone into liquidation, banks, finance companies and insurance companies licensed in Singapore, unless the public interest so requires). The Security Collateral Provider, its directors or any of its creditors may make an application to court applying for a judicial management order and the court may make the order if it is satisfied that the Security Collateral Provider is or is likely to become unable to pay its debts and it considers that to do so would be likely to result in, *inter alia*, the survival of the Security Collateral Provider, or the whole or part of its undertaking as a going concern, the approval under Section 210 or 211I of the Companies Act of a compromise or arrangement between the company and any such persons as are mentioned in that section, or in a more advantageous realisation of the Security Collateral Provider's assets than would be achieved upon a winding-up. The Companies Act expressly allows the court to apply any provisions on winding-up within Part X of the Companies Act to judicial management (and certain provisions of Part X of the Companies Act apply automatically under Section 227X(b) of the Companies Act).

(c) Arrangement: A compromise or arrangement under Sections 210, 211, 212 and 309 of the Companies Act (an "**arrangement**") whereby proposals between the Security Collateral Provider and its creditors, members, or holders of units of shares (or a class of any of the foregoing)[10] for a composition in satisfaction of its debts can, if resolved upon by the requisite number of creditors (and if sanctioned by the court), bind all its creditors, members, or holders of units of shares (or the relevant class). In the case of Singapore-incorporated banks or insurers, the court will not approve arrangements which have been proposed for the purposes of or in connection with any scheme under Section 212 under which the whole or any part of the undertaking or property of the company is to be transferred, unless the Minister charged with responsibility for banking or insurance matters has consented to such an arrangement or certified that his consent is not required.

Resolution Proceedings

The MAS has powers to undertake the following resolution measures in respect of Singapore licensed financial institutions such as banks, approved merchant banks, financial holding companies, licensed insurers and licensed trust companies[11]:

(i) require the financial institution to immediately take any action or to do or not to do any act or thing in relation to its business as the MAS may consider necessary;

(ii) appoint one or more statutory advisers to advise the financial institution on the proper management of such of the business of the financial institution as the MAS may determine (in the case of a bank incorporated outside Singapore, this is only in relation to the business and affairs of the bank carried on, or managed in, or from Singapore, or the property of the bank located in Singapore, or reflected in the books of the bank in Singapore in relation to its operations in Singapore); or

[10] In the case of a Singapore incorporated company or branch under judicial management, this would be limited to the creditors of the company or branch only.

[11] Section ~~30AAB~~33 of the MAS Act, for merchant banks and financial holding companies, ~~s~~Section 49 of the Banking Act, Chapter 19, for banks, ~~s~~Section 41 of the Insurance Act, for insurers, ~~s~~Section 21C of the Trust Companies Act, Chapter 336 of Singapore, for licensed trust companies.

(iii) assume control of or manage such of the business of the financial institution as the MAS may determine, or appoint one or more statutory managers to do so (in the case of a bank incorporated outside Singapore, this is only in relation to the business and affairs of the bank carried on, or managed in, or from Singapore, or the property of the bank located in Singapore, or reflected in the books of the bank in Singapore in relation to its operations in Singapore).

The foregoing powers may generally be exercised if:

(x) the financial institution is, or informs the MAS that it is or is likely to become insolvent or unable to meet its obligations, or that it has suspended or is about to suspend payments;

(y) the MAS is of the opinion that the financial institution is or is likely to become insolvent, is or is likely to become unable to meet its obligations, is about to suspend payments, is carrying on business in a manner likely to be detrimental to depositors or policy owners, or has contravened applicable laws or its licence conditions; or

(z) the MAS considers it in the public interest to do so.

In addition, the Monetary Authority of Singapore Act, Chapter 186 of Singapore (the "**MAS Act**") confers the following broad resolution powers on the MAS to deal with, inter alia, banks, insurance companies, licensed trust companies and other financial institutions:

(1) Power to issue directions: Under ~~s~~Section ~~30AAM~~51, the MAS may issue directions or make regulations concerning any person that has ceased to be a specified financial institution[12], (a) in order to discharge, or facilitate the discharge of, any binding obligation of the person, or (b) where it is in the public interest to do so;

(2) Power to issue moratoria: Under ~~s~~Section ~~30AAO~~53(1), the MAS may, if it considers it to be in the interests of the affected persons of a specified financial institution[13], make an order prohibiting that specified financial institution from carrying on its significant business or from doing or performing any act or function connected with its significant business or any aspect thereof;

(3) Power to apply for court orders: Under ~~s~~Section ~~30AAO~~53(2), the MAS may, if it considers it to be in the interests of the affected persons of a specified financial institution, apply to

[12] A specified financial institution is defined to mean a "pertinent financial institution" (which would be a Singapore licensed bank, insurer, finance company, merchant bank, financial holding company, operator or settlement institution of a designated payment system, an approved exchange, recognised market operator, licensed trade repository, approved clearing house, approved holding company, holder of a capital markets services licence (other than a holder of a capital markets services licence who carries on a business in the regulated activity of providing credit rating services), an approved trustee for an authorised collective investment scheme or a licensed trust company) or an "excluded financial institution" (which would be a licensed or exempt financial adviser (other than a pertinent financial institution), a person exempted from the requirement to hold a capital markets services licence (other than a pertinent financial institution), ~~a licensed insurer, a registered insurance intermediary,~~ a holder of a capital markets services licence under the SFA who carries on business in the regulated activity of providing credit rating services, an authorised reinsurer under section 1A of the Insurance Act, a member of Lloyd's that is permitted to carry on general class of insurance business in accordance with regulation 3 of the Insurance (Lloyd's Scheme) Regulations, or any insurance business specified in the First Schedule to the Insurance (Lloyd's Asia Scheme) Regulations in accordance with regulation 3 of those regulations, an insurance agent or insurance broker registered or otherwise regulated under the Insurance Act, a licensed money-changer, a licensed remitter, the holder of a stored value facility or a trustee-manager of a registered business trust).

[13] In respect of this section ~~30AAO~~53, a specified financial institution is as set out above in respect of section ~~30AAM~~51, save that it does not include the trustee-manager of an approved business trust.

the Singapore High Court for certain orders (the duration of which may not exceed 6 months). These include orders that no execution, distress or other legal process shall be commenced, levied or continued against any property of the specified financial institution, no steps shall be taken to enforce any security over any property of the specified financial institution, and/or that no steps shall be taken by any person to sell, transfer, assign or otherwise dispose of any property of the specified financial institution; and

(4) Power to order a compulsory transfer of business, transfer of shares or compulsory restructuring of share capital: The MAS may make a determination that (i) the whole or any part of the business of a transferor that is a pertinent financial institution shall be transferred to a transferee[14], (ii) all or any of the shares held by a transferor in a pertinent financial institution incorporated in Singapore be transferred to a transferee; or (iii) the share capital of a pertinent financial institution incorporated in Singapore be reduced by the cancellation of any share capital (whether paid-up or not). The exact grounds on which the MAS exercises these powers would vary depending on the type of financial institution in question, but in the case of banks and merchant banks, would generally involve the same grounds on which the MAS' powers to appoint a statutory adviser or statutory manager (as described above) may be exercised. In making such a determination, the MAS would generally also have regard to factors such as the interests of affected persons of the transferor and the transferee and the stability of the financial system in Singapore. These powers are subject to approval by the Minister. In the case of a bank incorporated in Singapore, the Minister will not approve the transfer or the restructuring unless he is satisfied that it is in the national interest to do so.

~~In June 2015 the MAS released a consultation paper on Proposed Enhancement to the Resolution Regime for Financial Institutions in Singapore. This was followed by a second consultation paper in April 2016, which set out the proposed legislative amendments to effect these proposals ("**Resolution CP 1**" and "**Resolution CP 2**", respectively). These consultation papers set out proposed restrictions on termination rights in relation to resolution proceedings.~~

~~Following these consultations, the Monetary Authority of Singapore (Amendment) Act (the "**MAS Amendment Act**") was gazetted on 4 August 2017. The MAS Amendment Act has not come into force, but when it does, it will amend the MAS Act was amended to introduce the following~~The MAS Act also includes the following stays in connection with resolution proceedings:

(a) ~~a new~~ Section 83 ~~that will~~ provide~~s~~ that, in relation to a contract entered into by:

(i) a pertinent financial institution[15] that is subject to a resolution measure; or

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[14] Where the transferor is incorporated or established outside Singapore, any determination shall only be in respect of the transferor's business which is reflected in the books of the transferor in Singapore in relation to the transferor's operations in Singapore.

[15] ~~A "pertinent financial institution" means a licensed bank, finance company, merchant bank, financial holding company, operator or settlement institution of a designated payment system, an approved exchange, recognised market operator, licensed trade repository, licensed foreign trade repository, approved or recognised clearing house, approved holding company, holder of a capital markets services licence (other than a holder of a capital markets services licence who carries on a business in the regulated activity of providing credit rating services), an approved trustee for an authorised collective investment scheme or a licensed trust company. The definition of a pertinent~~

(ii) an entity that is part of the pertinent financial institution's group, where the pertinent financial institution is the subject of a resolution measure and the obligations of the entity under the contract are guaranteed or otherwise supported by the pertinent financial institution,

and where all the substantive obligations of the contract continue to be performed by the parties to the contract, the resolution measure[16] and any event directly linked to it will be disregarded in determining the applicability of any termination rights, and any exercise of a termination right on the basis of the resolution measure or linked event will have no effect.

This ~~would~~ essentially ha~~ve~~s the effect of preventing parties from terminating such a contract on the basis of the occurrence of a resolution measure or events which are directly linked to resolution; and

(b) ~~a new~~ Section 84 ~~that will introduce~~ gives the MAS a right to temporarily suspend termination rights for contracts where one of the parties is:

(i) a pertinent financial institution that is the subject or proposed subject of a Singapore resolution measure;

(ii) a pertinent financial institution which is the subject of a foreign resolution or for which the foreign resolution authority has informed the MAS that there are grounds for carrying out such resolution; or

(iii) an entity within the pertinent financial institution's group that is the subject or proposed subject of a resolution measure and whose obligations under the contract are guaranteed or otherwise supported by that pertinent financial institution, where the contract has a termination right that is exercisable if the pertinent financial institution becomes insolvent or is in a certain financial condition.

The suspension does not affect termination rights under the contract which become exercisable for a breach of a basic substantive obligation only. "Basic substantive obligation" means, in relation to a contract, an obligation provided by the contract for payment, delivery or the provision of collateral.

The suspension must expire no later than the same time on the second business day after it takes effect.

Certain persons are excluded from Section 84 under regulation 27 of the Monetary Authority of Singapore (Resolution of Financial Institutions) Regulations 2018. The stay under Section 84 does not affect a termination right under a contract between a pertinent financial institution on one hand and a central bank of a country or territory outside Singapore, an operator or a settlement institution of a designated system under the Payment and Settlement Systems (Finality and Netting) Act, an

~~financial institution is prescribed in regulations and the MAS has not (to date) released updated regulations in connection with the MAS Amendment Act.~~ See footnote 12.

[16] A resolution measure can also include a determination by the MAS that a foreign resolution action be recognised in whole or in part.

approved or a recognised clearing house or a depository under the Securities and Futures Act, Chapter 289 of Singapore.

We would note, in respect of early termination rights that arise in connection with the entry of the pertinent financial institution into resolution, that:

(i) Section 83~~, if enacted in its present proposed form, would~~ prevents a termination right from being triggered under the contracts described above in connection with the MAS' exercise of resolution powers. However, this is limited to termination rights which are exercised on the basis of the implementation of a resolution measure or an event directly linked to the resolution measure and is subject to the express proviso that substantive obligations provided for in the contract continue to be performed. Accordingly, termination rights which are not triggered by a resolution measure or events directly linked thereto would continue to be enforceable; and

(ii) the suspension under Section 84, if invoked by the MAS, would serve to suspend any termination right (including termination rights that do not arise due to a resolution measure or a directly linked event). However, this stay is temporary and limited strictly in time, as described above. Furthermore, the suspension does not affect termination rights under the contract which become exercisable for a breach of a basic substantive obligation.

In addition, on 16 July 2018, the MAS released a Consultation Paper on Proposed Regulations to Enhance Resolution Regime for FIs in Singapore (the "**July 2018 CP**"). This follows from the previous consultations in June 2015 and April 2016 on the resolution regime. The July 2018 CP sets out the detailed regulations that supplement the proposals set out in the April 2016 CP. In particular, the July 2018 CP sets out a requirement for "qualifying pertinent financial institutions" to ensure that "financial contracts" governed by foreign laws (i.e. laws other than the law of Singapore) and which contain a termination right, the exercise or enforcement of which could be suspended or prevented or the application of which would be disregarded under the MAS Act if the financial contract had been governed by the laws of Singapore, contain enforceable provisions, the effect of which is that all parties to the contract agree that their exercise of termination rights may be subject to the MAS' stay powers under the proposed Sections 83 and 84 of the MAS Act. The qualifying pertinent financial institution is also required to ensure that its related entities comply with this requirement if the obligations of the related entity under the contract are guaranteed or otherwise supposed by the qualifying pertinent financial institution.

"Qualifying pertinent financial institutions" are certain Singapore licensed financial institutions that are incorporated in Singapore and which have been issued a direction by the MAS under Section 43(1) of the MAS Act (concerning directions for recovery planning and implementation). "Financial contracts" is defined to mean securities contracts, derivatives contracts, securities lending and repurchase agreements and spot contracts. The full definitions of these terms are

the same as those set out under the Companies (Prescribed Arrangements) Regulations 2017, as set out in Appendix D.

The contractual recognition provisions essentially aim to give contractual backing to the statutory requirements set out in Sections 83 and 84.

Trusts

We would make the following preliminary comments in respect of Trusts. Under Singapore law, trusts are not separate legal entities and accordingly cannot be subject to insolvency proceedings applicable to a company. Trusts cannot sue or be sued but instead are operated by, or may only transact through, the Trustee. Accordingly, in the case of a Trust, the Trustee would be the contracting party under the Master Agreement and the Credit Support Documents.

Two types of insolvency proceedings are potentially relevant to Trusts:

(a) First, insolvency of the Trustee (a "**Trustee Insolvency**"), which as a Singapore-incorporated company can be subject to winding up proceedings under the Companies Act in the same way as any other Singapore-incorporated company.

(b) Second, insolvency of the Trust, in the sense that the Trust's liabilities exceed its assets. There are no formal insolvency proceedings for a Trust (other than a Business Trust) and no Singapore case law on the applicable procedures for dealing with the insolvency of a trust. Accordingly, there is some uncertainty as to the position of competing creditors and other claimants when trust assets are insufficient to satisfy all claims. In the case of the insolvency of a Trust other than a Business Trust (a "**Trust Insolvency**"), the most likely course of action that a creditor may take in the event that a Trust is unable to pay its debts would be to apply to the court for an administration order under Order 80 of the Rules of Court. Order 80 provides the court with a discretion to determine, *inter alia*, "any question arising ... in the execution of a trust", and to make "an order directing any act to be done ... in the execution of a trust". The court's powers under Order 80 are discretionary and are not subject to fixed statutory rules or guidelines. The court will only make an order under Order 80 if it is of the opinion that the questions at issue between the parties cannot properly be determined otherwise than under such an order. If it does make such an order, the Trust's assets will be administered in such manner as directed in the order.

   In the case of a Business Trust, there are provisions in the Business Trust Act providing for the winding up of a Business Trust (a "**Business Trust Insolvency**"). In general, a Business Trust may be wound up by the trustee-manager in accordance with the provisions of the trust deed or a court order. The court may also appoint an approved liquidator to take responsibility for winding up a Business Trust in accordance with the trust deed. In both cases, the court may, by order, give directions as to the procedures for the winding up of a registered business trust if the court thinks it necessary to do so for reasons including the inadequacy or impracticability of the provisions in the trust deed of the Business Trust. The court's powers are also discretionary and not subject to fixed statutory rules or guidelines.

The MAS has the same resolution powers in respect of approved trustees of collective investment schemes[17].

LLPs

[17] Section 292D of the SFA for approved trustees

Under Singapore law, an LLP has separate legal personality, and is capable of suing and being sued, and acquiring, owning, holding and developing or disposing of property, and doing and suffering such other acts and things as bodies corporate may lawfully do and suffer. An LLP may be wound up under the LLP Act – such a winding up may be voluntary (by resolution which has been passed by the partners of the LLP), or involuntary (effected by the court).

16. *How are competing priorities between creditors determined in your jurisdiction? What conditions must be satisfied if the Secured Party's security interest is to have priority over all other claims (secured or unsecured) of an interest in the Eligible Collateral?*

A. Non-IM Security Documents

Corporates

We shall discuss the priorities position between creditors in the event that an insolvency proceeding as described above has been instituted by or against the Security Collateral Provider as it is usually in such event that the priorities position becomes critical.

In general, in the event of the winding-up of the Security Collateral Provider, the secured creditors of the Security Collateral Provider will first be paid out of assets which have been charged or mortgaged in their favour (subject to the possibility of super priority financing being granted, as discussed below) while the remainder of the assets will generally be distributed among the other creditors as follows:-

(a) the cost and expenses of the winding-up;

(b) the wages and salary of employees;

(c) retrenchment benefits or ex gratia payment;

(d) workers' compensation due in respect of injury compensation under the Work Injury Compensation Act;

(e) contributions to provident funds;

(f) remuneration in respect of vacation leave;

(g) taxes (including taxes payable under Section 24 of the Singapore Tourism (Cess Collection) Act and Section 24 of the Skills Development Levy Act);

(h) retirement and retrenchment benefits under Section 47 of the Employment Act;

(i) liabilities in Singapore of a bank specified in Section 62(1) of the Banking Act, and certain liabilities in respect of a licensed insurer; and

(i) the remainder will be paid to the unsecured creditors.

The debts referred to in paragraphs (a) to (g) above and sometimes (h) and (i) as well are usually referred to as preferred debts as they rank ahead of unsecured debts. If the assets of the company are inadequate to pay a particular class of preferred debts in full, the debts ranking in the subsequent class will not be paid and the unsecured creditors will obviously get nothing at all. Although we have stated that the secured creditors will be paid ahead of the preferred debts, this is subject to the proviso that the preferred debts referred to in (a), (b), (c), (e) and (f) above will be paid ahead of the debts secured by a floating charge. Accordingly, this should be borne in mind when the parties consider any selection in the

Security Documents permitting substitution of collateral without permission as this may result in the creation of a floating charge. Parties should also note that (1) net amounts due in respect of contracts of insurance previously taken out in respect of third parties are to be paid to the relevant third parties, (2) all debts due and claims owing from time to time to the Government ("**Government Debts**") would have in our view priority over any non-preferential unsecured debts, incurred subsequent to the time the Government Debts were contracted or incurred under Section 10 of the Government Proceedings Act, and (3) before a Singapore liquidator of a registered foreign company remits the net assets recovered and realised by him to the foreign liquidator appointed in the place of incorporation, he has to pay off the statutory preferential debts under section 328 of the Companies Act and, in the case of companies that are "relevant companies"[18], all debts and liabilities incurred by the registered foreign company in Singapore under Section 377(3)(c) of the Companies Act.

We should also add that the proper costs and expenses of judicial management also prevail over the claims secured by a floating charge.

Accordingly, the Secured Party as a secured party will, subject as stated above, have priority over the unsecured creditors of the Security Collateral Provider with respect to the Eligible Collateral in the winding-up of the Security Collateral Provider. However, as far as the priority of the Secured Party with respect to the Eligible Collateral over the other secured creditors of the Security Collateral Provider with an interest in the Eligible Collateral is concerned, this will depend on whether the Secured Party's security interest is a first ranking security interest.

In order to ensure that the Secured Party's security interest has priority over all other security interests, the Security Documents should provide for the security over the Eligible Collateral to be the senior or first claim over the Eligible Collateral. Apart from this, the Secured Party should also observe the following:

(i) the position with respect to the priorities of competing security interests under Singapore law is fairly complex and we would not propose to discuss it in detail. As a practical matter, the Secured Party should first ascertain whether anyone else already has an interest in the Eligible Collateral by checking the register of charges maintained by the Registrar of Companies of Singapore as to whether any charge over the Eligible Collateral has been created. Unfortunately, under Singapore law, even where the security interests are registrable under Section 131 of the Companies Act, priorities are not determined by the order of registration. Thus, even if the Secured Party manages to register its security interest first, it will not automatically obtain priority as long as another creditor with a prior charge registers its security interest within the prescribed period of its creation. As between two properly registered interests, it will be necessary to look at the instruments creating the security, and the normal rules of priority will apply. This generally means that as

[18] "Relevant company" means a licensed bank, a merchant bank or other financial institution approved under ~~s~~Section 28 of the MAS Act, a finance company, a person licensed to carry on remittance business, a licensed insurer, a recognised market operator, a licensed foreign trade repository, a recognised clearing house, an approved holding company, a holder of a capital markets services licence that does not carry on the business of providing credit rating services, a Registered Fund Management Company as defined under the Securities and Futures (Licensing and Conduct of Business) Regulations, a licensed financial adviser, a licensed trust company, an operator of a designated payment system, and an approved holder of a widely accepted stored value facility.

between two security interests of the same nature, *i.e.*, both legal or both equitable, the first in time will have priority. Otherwise, as between a legal security interest and an equitable security interest, the legal security interest will prevail unless at the time of the creation of the legal security interest, the creditor had notice (either actual or constructive) of the equitable security interest. However, once the Secured Party's security interest is properly registered, all subsequent creditors of the Security Collateral Provider will be deemed to have notice of the Secured Party's prior claim to the Eligible Collateral concerned. We would also highlight, in respect of security interests over book-entry securities, security interests by way of statutory security have priority over security interests created under the common law method, and once a statutory security interest has been created, any subsequent security interest in the book-entry securities is void;

(ii) insofar as cash deposited by the Security Collateral Provider with a bank in Singapore is concerned, the Security Collateral Provider can assign in favour of the Secured Party all of its rights, title and interest to the cash and create a charge in favour of the Secured Party over the account in which the cash is deposited. In the event of a default by the Security Collateral Provider, the Secured Party may enforce the charge created in its favour and apply the cash in satisfaction of the amounts owing by the Security Collateral Provider to the Secured Party under the Master Agreement (assuming that no application for the judicial management of the Security Collateral Provider has been made (please see the answer to question 17 below).

The risk in such an arrangement is that the bank with which the cash is deposited may set off such deposit against amounts owing by the Security Collateral Provider to the bank. There is also a risk that the Security Collateral Provider may create a security interest over the cash in favour of other persons. To reduce such a risk, an acknowledgement should be obtained from the bank that it will not exercise any right of set-off and that it has not received notice of any other assignment or charge in respect of such cash;

(iii) with respect to physical securities under Singapore law, the most effective means of ensuring that the Secured Party has a first priority claim would be for the Security Collateral Provider to create a legal mortgage over such securities in favour of the Secured Party and for such securities to be delivered to the Secured Party or its custodian and (if they are registered securities) to be registered in the name of the Secured Party or its custodian. If registration in the name of the Secured Party or its custodian is not feasible, the Secured Party should still ensure that it or its custodian has possession of the certificates evidencing the securities and transfer forms duly executed in its or its custodian's favour; and

(iv) in the case of physical Singapore government securities which are in registered form (please see the answer to question 3 above), the Secured Party should obtain a legal mortgage of such securities by the delivery of the securities to the Secured Party or its custodian and registration in the name of the Secured Party or its custodian. Where book-entry Singapore government securities are concerned, the Government Securities Acts provide that pledges of such securities can be made by

the MAS making an appropriate entry in its records, and pledges made by such entry will take priority over transfer or pledges effected by any other means.

Super priority for rescue financing

Notwithstanding the foregoing, where the Security Collateral Provider has made an application for a scheme of arrangement under Section 210(1) or an application to Court to restrain proceedings against the company under Section 211B(1), or where a judicial management order is in force, the Security Collateral Provider (in the case of a scheme of arrangement) or the judicial manager (in the case of judicial management) may make an application for an order that a debt arising from any rescue financing[19] to be obtained by the Security Collateral Provider is to be secured by security interests on the property of the company. Such security interests may be granted over property of the company that is subject to an existing security interest, and may be of the same priority as, or a higher priority than, that existing security interest if:

(a) the company would not have been able to obtain the rescue financing from any person unless the debt arising from the rescue financing is secured in this manner; and

(b) there is adequate protection for the interests of the holder of that existing security interest. There is deemed to be adequate protection for the interests of such holders if:

(i) the Court orders the company to make one or more cash payments to the holder, the total amount of which is sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order granting super priority;

(ii) the Court orders the company to provide to the holder additional or replacement security of a value sufficient to compensate the holder for any decrease in the value of the holder's existing security interest that may result from the making of the order granting super priority; or

(iii) the Court grants any relief (other than compensation) that will result in the realisation by the holder of the indubitable equivalent of the holder's existing security interest.

If the property of the company available for the payment of the super priority debts is insufficient to meet the super priority debts, the super priority debts have priority over the claims of the holders of any debentures of the company secured by a floating charge (which, as created, was a floating charge), and can be paid out of any property that is subject to the floating charge.

Where a company or judicial manager makes an application for an order granting super priority, the company or judicial manager must send a notice of the application to each

[19] Rescue financing is financing that is necessary for the survival of a company that obtains the financing, or of the whole or any part of the undertaking of that company, as a going concern, and/or the financing is necessary to achieve a more advantageous realisation of the assets of the company, than on the winding up of that company. In the case of judicial management, rescue financing can also include financing which is necessary for the Court's approval of a creditor compromise or a scheme of arrangement involving the company.

creditor of the company (unless otherwise ordered by Court). In the case of judicial management, the creditors may oppose the application.

It is therefore possible for super priority debts to be granted priority equal or ~~or~~ even higher than the Secured Party's security interest. However, this can be mitigated by the following:

(a) as an order for super priority is only granted upon application, and the company or judicial manager is obliged to send notice of the application to each creditor of the company unless otherwise ordered by Court, the Secured Party may be able to enforce its security interest before the order is granted, though this may be subject to the stays discussed in question 17 below; and

(b) there are safeguards to ensure that secured creditors are not unfairly prejudiced as the Court must be satisfied that the existing security holders are adequately protected, such as compensation or the granting of relief.

Stays on enforcement

We should mention that even if the appropriate steps have been taken under Singapore law to ensure that the Secured Party has a first ranking security interest, the position with respect to the priority of the Secured Party's security interest may in some circumstances be affected by the stay on the enforcement of the Security Document as more particularly described in our answer to question 17 below.

Trusts

In a Trustee Insolvency, the waterfall described above in respect of Companies would apply to a Trustee's personal assets. However, we are of the view that the Trust assets, not being available for distribution to the Trustee's general creditors who are not Trust creditors, should not be subject to the distribution list set out above, save where the Trustee is entitled to remuneration or other recoveries personally out of the Trust assets. In the case of assets to which the Trustee has recourse, such assets would, where distributed to the Trustee, form part of the Trustee's assets and be subject to the usual scheme of distributions along with the rest of the Trustee's personal property.

In a Trust Insolvency or a Business Trust Insolvency, the statutory order of priorities should not apply to a Trust and there are no fixed statutory rules as to distributions of Trust property. Nevertheless, Singapore courts may still follow the general order of priority described in question 16. Accordingly, secured creditors under a fixed charge should still be paid first out of the Trust assets which have been charged or mortgaged in their favour. It should however be noted that certain preferred debts may rank ahead of even a fixed charge in a corporate winding-up, and the same may apply to a Trust Insolvency or a Business Trust Insolvency. As an example, a statutory charge in favour of certain workmen and employees (discussed in question 14 above) may rank ahead of a fixed charge.[20] In the case of a floating charge, as noted in our response to question 16, in the

[20] Other examples (not exhaustive) of preferred debts which may rank ahead of a fixed charge in the case of a Trust Insolvency or a Business Trust Insolvency include (although we note that these may not necessarily arise in the context of Credit Support Documents with Trust counterparties):

(i) a statutory charge in favour of the tax authority in respect of unpaid property tax under section 6(4) of the Property Tax Act, Chapter 254 of Singapore and unpaid estate duty arising by virtue of section 29 of the Estate Duty Act, Chapter 96 of Singapore, and

winding-up of a corporate counterparty, certain preferred debts would be paid ahead of debts secured by a floating charge. It is possible that these preferred debts may be of limited application in the case of a Trust Insolvency. For instance, a Trust may not have employees (please see our discussions in question 14 above), which would mean that there should be no wages or salaries, retrenchment benefits or ex gratia payments, contributions to provident funds or remuneration for vacation leave to contend with. We are also of the view that the costs and expenses of winding-up of a professional Trustee should not generally be regarded as a preferred debt of the Trust and taken out of the Trust assets (although it is not clear how this would apply where the Trustee only acts as trustee for the Trust, and no other), and only the costs and expenses of the winding-up of the Trust itself should be considered a preferred debt vis-à-vis the Trust.

If this is the case, this could effectively mean that there are fewer preferred debts that would be paid out in advance of secured creditors under a fixed or floating charge, as compared to a corporate insolvency.

LLPs

In the winding-up of an insolvent LLP, a statutory order of priorities similar to that which applies to corporates undergoing winding-up would apply to the distribution of the assets of the LLP by virtue of paragraphs 75(2) and 76 of Schedule 5 to the LLP Act. Schemes of arrangement and judicial management do not apply to LLPs, and therefore the concerns surrounding super priority would not apply.

Paragraph 75(2) provides that subject to paragraph 76, in the winding-up of an insolvent LLP the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the law relating to bankruptcy in relation to the estates of bankrupt persons, and all persons, who in any such case would be entitled to prove for and receive dividends out of the assets of the LLP, may come in under the winding-up and make such claims against the LLP as they respectively are entitled to by virtue of the paragraph.

Paragraph 76 then sets out the order of priority of debts to be paid before all other unsecured debts. In other words, in the event of the winding-up of an insolvent LLP, the secured creditors of the LLP will first be paid out of assets which have been charged or mortgaged in their favour, while the remainder of the assets will generally be distributed among the other creditors in the order set out in paragraph 76.

There is some uncertainty with regards to whether taxes payable under Section 24 of the Singapore Tourism (Cess Collection) Act, Chapter 305C of Singapore and Section 24 of the Skills Development Levy Act, Chapter 306 of Singapore, which are expressly included in the order of priority for corporates, would also be included in the order of priority. This is because these two sections make direct reference to Section 328 of the Companies Act, rather than paragraph 76 of the LLP Act, by providing that they shall be included in the taxes which, under Section 328 of the Companies Act, are paid in priority to all other unsecured debts in a winding up.

(ii) a charge under section 43 of the Building Maintenance and Strata Management Act, Chapter 30C of Singapore in relation to certain amounts payable to the management corporation by the subsidiary proprietors.

It should be noted that certain preferred debts may rank ahead even of a fixed charge in a corporate winding-up, and the same would apply to the winding-up of an insolvent LLP.

B. IM Security Documents

The response above would apply equally to the IM Security Documents.

17. *Would the Secured Party's rights under each Security Document, such as the right to liquidate the Collateral, be subject to any stay or freeze or otherwise be affected by commencement of the insolvency (that is, how does the institution of an insolvency proceeding change your responses to questions 12 and 13, if at all)?*

A. Non-IM Security Documents

Corporates

(a) Winding-up: Pursuant to Section 258 of the Companies Act, in the case where a winding-up proceeding has been commenced against the Security Collateral Provider, a stay of proceedings may be obtained by the Security Collateral Provider or any creditor or member of the Security Collateral Provider at any time after the making of the winding-up application and before the winding-up order is made by application to the court, and the court may stay or restrain the proceedings accordingly on such terms as it thinks fit. In addition, pursuant to Section 262(3) of the Companies Act, once the winding-up order is made, no action or proceeding may be commenced against the Security Collateral Provider or proceeded with except with the leave of the court and upon such terms as the court may impose. The leave of the court must be sought by any person who wishes to commence or continue proceedings against a company in liquidation. Where the Security Collateral Provider has a creditors' voluntary liquidation commenced against it, under Section 299 of the Companies Act, any attachment, sequestration, distress or execution put in force against the estate or effects of the company shall be void, and no action or proceeding shall be proceeded with or commenced against the Security Collateral Provider except by leave of the Court and subject to such terms as the Court imposes.

In deciding whether to stay any proceeding pursuant to Section 258 of the Companies Act or to give leave pursuant to Section 262(3) or Section 299(2) of the Companies Act, the court will consider whether, according to the balance of convenience and the demands of justice, it is necessary that the action be continued or whether the claim of the plaintiff is one that could just as easily be dealt with in the winding-up. Thus, leave may be given where a secured creditor wishes to enforce his security, as long as it cannot be shown that there is some advantage in requiring it to do so within the scope of the winding-up.

Accordingly, if the security interest in favour of the Secured Party is properly created, there is no requirement for the Secured Party to obtain any judicial consent or approval prior to enforcing its security. However, the effect of the making of the winding-up application or the commencement of a creditors voluntary liquidation in respect of the Security Collateral Provider is that if the Secured Party was compelled to commence an action or counterclaim to defend its security interest in the

Singapore courts, there may be some delay before the Secured Party is able to enforce its security interest over the Eligible Collateral.

There is a possibility that a Secured Party may have to realise its security within six months of the making of the winding up order or the passing of the resolution for winding up, where the Secured Collateral Provider is insolvent, failing which the Secured Party may not be able to claim post winding up interest unless the six months period is extended by the Official Receiver. This possibility arises if Section 76(4) of the Bankruptcy Act is made applicable to insolvent winding up by Section 327(2) of the Companies Act. Such a possibility may also apply to judicial management if the court so orders under Section 227X of the Companies Act.

(b) Judicial Management: If the Security Collateral Provider is subject to judicial management proceedings, there may be the following delays in the enforcement of the Secured Party's security interest:

(i) During the period commencing on the making of an application for a judicial management order and ending on the making of such an order or the dismissal of the application, pursuant to Section 227C(b) of the Companies Act, the Secured Party may not take any step to enforce a charge or security against the Security Collateral Provider's property and may not commence or continue actions and proceedings against the Security Collateral Provider except with the leave of the High Court of Singapore.

(ii) During the period when the judicial management order is in force, pursuant to the provisions of Section 227D(4) of the Companies Act, the Secured Party may not take any step to enforce a charge or security against the Security Collateral Provider's property and may not commence or continue actions and proceedings against the Security Collateral Provider except with the leave of the High Court of Singapore or with the consent of the judicial manager (the "**JM Order Moratorium**"). There are carve-outs for certain types of Transactions from the JM Order Moratorium. We have discussed these carve-outs in Appendix D.

(iii) If the Secured Party wishes to seek the leave of the High Court of Singapore to enforce its security in the abovementioned circumstances, an application to the High Court by way of originating summons must be made. The length of time required for such a process depends on the circumstances of the application, including whether the application is opposed by the judicial manager. In the ordinary course, a period of approximately two to three months would generally be required. However, if the Secured Party is able to convince the High Court of the urgency of the application, it may be able to obtain a hearing for the application within approximately one to two weeks.

We would point out that the exercise by the Secured Party of a right of proper set-off is not subject to the abovementioned delays. Further, such delays in the ability of the Secured Party to enforce its security do not mean that the Secured Party ceases to have a valid security interest in the Collateral. The Secured Party would continue to have such a security interest, which is valid as against the judicial manager or, as

the case may be, the liquidator of the Security Collateral Provider and which the judicial manager or, as the case may be, the liquidator would have to recognise.

Further, if for any reason the High Court declines to grant leave for the enforcement of the Secured Party's security in the circumstances referred to in paragraphs (a) and (b) above and the Eligible Collateral is subsequently sold by the judicial manager or, as the case may be, the liquidator, the Secured Party will have the same priority in respect of the proceeds of such sale as the Secured Party would have had in respect of the Eligible Collateral. Accordingly, the Secured Party will have the same priority over all other creditors of the Security Collateral Provider in relation to the Eligible Collateral (assuming that its security interest has been properly and validly created and ranks ahead of any other security created over the same Eligible Collateral), including any preferential debtors of the Security Collateral Provider. That said, it is open to the court to make an order under Section 227X of the Companies Act to confer the same priority that applies by reason of Section 328 of the Companies Act in an insolvent winding up to certain preferential creditors, such as to prevail over a floating charge. These preferential claims are those discussed in our response to question 16 above.

If the proceeds of the sale of the Eligible Collateral are insufficient to satisfy the amounts owing by the Security Collateral Provider to the Secured Party under the Master Agreements, the Secured Party may claim the balance of such amounts as an unsecured creditor of the Security Collateral Provider.

(c) Arrangement: There are certain moratoria in connection with schemes of arrangements that may stay the Secured Party's rights to enforce its security interests:

(i) Where a company proposes or intends to propose a compromise or arrangement between itself and its creditors, the company may apply under Section 211B for the court to make certain orders, which include orders to restrain the passing of a resolution for winding-up, and orders restraining the taking of steps to enforce security (the "**SOA Court-ordered Moratorium**").

(ii) Upon the making of an application under Section 211B, an automatic moratorium will apply from the date of the application to court for a period of 30 days (or until the court has decided the application, if earlier), similarly restraining matters such the taking of steps to enforce security or the commencement of any proceedings (the "**SOA Automatic Moratorium**").

(iii) In addition to the moratoria under Section 211B, moratoria may be made (pursuant to Section 211C) against the subsidiary, holding company or ultimate holding company of a company against which an order has been made under Section 211B(1). Such moratoria have the same scope as the Section 211B moratoria and include moratoria restraining enforcement of security (the "**SOA Related Company Moratorium**").

(iv) once the scheme of arrangement has taken effect, it is theoretically capable of having an unlimited effect on the rights of creditors (subject to

approval of the terms of the arrangement by the appropriate majority of the creditors). Accordingly, depending on the terms of the arrangement, the rights of a secured creditor to enforce its security or indeed, the rights of the Secured Party to the Eligible Collateral itself, may be compromised.

There are carve-outs from the moratoria described under sub-paragraphs (i) to (iii) above at an entity level and a transaction level. These are discussed in further detail in Appendix D.

(d) Resolution Powers: Where the Collateral Provider is a financial institution in respect of which the MAS may exercise its resolution powers, there may be delays in enforcing the security interest:

(i) if the MAS exercises its power to issue moratoria or obtains a court order prohibiting the enforcement of security over any property of the Collateral Provider;

(ii) ~~when~~ under Sections 83 and 84 of the MAS Act ~~come into force~~. These would prevent the Collateral Taker from exercising termination rights that arise out of the MAS' exercise of resolution powers and in the case of Section 84, during the period of the temporary stay. By extension, these sections are likely to prevent the Collateral Taker from enforcing its security interest to the extent that such enforcement is contingent on the termination of the Master Agreement.

We would highlight that Sections 83 and 84 also apply to an entity that is part of the pertinent financial institution's group, where the pertinent financial institution is the subject of a resolution measure (and in the case of Section 84, a proposed resolution measure) and the obligations of the entity under the contract are guaranteed or otherwise supported by the pertinent financial institution. Accordingly, for such related ~~corporations~~ entities of pertinent financial institutions, such powers may be exercised even when the related ~~corporation~~ entity is not itself insolvent or under resolution, as long as it is related to a pertinent financial institution that is the subject or proposed subject of a resolution measure.

With regards to the MAS' other resolution powers (i.e. the MAS' powers to issue directions, moratorium powers and powers to obtain court orders prohibiting the enforcement of security interests), we are of the view that although these resolution powers may result in delays in the ability of the Collateral Taker to enforce its security interest, the MAS would not exercise its resolution powers in such a way as to affect the operation of netting arrangements.

On 9 October 2014, the MAS issued a letter to ISDA which stated that it is not the MAS' intent, in the exercise of resolution powers over financial institutions, to defeat or otherwise affect the preservation of bilateral netting arrangements. This letter also mentioned the MAS will be introducing powers to prescribe safeguards from the exercise of resolution powers which may affect the contractual rights of parties under set-off *and* collateral arrangements in industry master agreements. We understand from discussions with the MAS that the MAS essentially regards collateral arrangements (including security interests) that are entered into in

connection with bilateral netting arrangements as being a part of these bilateral netting arrangements, and that, as a consequence, the MAS' statements that it is not its policy intention to defeat bilateral netting arrangements are also intended to extend to collateral arrangements.

Consistent with this, the MAS issued a further letter to ISDA on 26 August 2016 clarifying that for avoidance of doubt, it is not the MAS' intent to defeat or otherwise affect the preservation of bilateral netting arrangements, including any related security interests or collateral arrangements.

Copies of the letters have been attached in Appendix C.

~~We would also highlight that the MAS, in Resolution CP 2, set out the draft legislative amendments that would introduce safeguards to preserve netting and set-off arrangements. In particular, the proposed regulation 15 (the "**Regulation 15 Safeguard**") prevents the cherry-picking of transactions during a partial transfer of business of a financial institution by providing that the Minister will not approve a partial transfer of business unless it provides for the transfer of protected rights and liabilities from the transferor to the transferee. Rights and liabilities are considered to be protected if they are rights and liabilities which arise from all financial contracts between a transferor on one part and a counterparty, which are rights and liabilities of the counterparty which the counterparty is entitled to set-off or net under a set-off arrangement or netting arrangement.~~

~~We understand from discussions with the MAS that the policy intention behind the proposed safeguard in the Regulation 15 Safeguard is that this safeguard is intended to apply equally to collateral arrangements (including security interests) entered into in relation to netting arrangements, and that it is not the MAS' policy intention to exercise its powers to conduct a partial transfer of business in such a way as to adversely affect or invalidate such collateral arrangements.~~

Given the statements made by the MAS, it is clear that the policy intent is to uphold collateral arrangements (including security interests) which are entered into in connection with netting arrangements. We would highlight that the MAS' statements with regards to bilateral netting arrangements follow on from parliamentary statements that Singapore regards itself as a good netting jurisdiction and that the policy intention is to preserve bilateral netting arrangements (which is discussed in further detail in our Memorandum of Law on the Validity and Enforceability of Close-out Netting Provisions under the 1992 ISDA Master Agreement, the 2002 ISDA Master Agreement, the 2001 ISDA Cross-Agreement Bridge and the 2002 ISDA Energy Agreement Bridge (the "**Netting Opinion**").

Consistent with this, the Resolution Regulations provide for a safeguard for secured liabilities.

Regulation 14 provides a safeguard for liabilities that are secured against any property or rights by providing that a partial transfer of the business of the transferor under Section 57 of the MAS Act must not provide for:

(i) the transfer of the liability without the benefit of the security;

(ii) the transfer of the benefit of the security without the liability; or

(iii) the transfer of the property or rights without the liability and benefit fo the security.

This effectively means that security must be transferred together with secured liabilities.

We would also note that the MAS previously had equivalent powers in respect of licensed banks and insurance companies to order moratoria and~~,~~ apply to the High Court for orders, ~~and to order compulsory transfers of business,~~ but the MAS has not, to our our knowledge, exercised these powers in such a way as to affect the validity of collateral arrangements entered into in connection with netting arrangements. ~~We are also not aware of any exercise by the MAS of its powers under Section 30AAS in such a way as to affect the validity of collateral arrangements.~~

(e) Recognition of and Assistance to Foreign Insolvency Proceedings

There is also the possibility that a Singapore court may be able to take certain steps in support of foreign insolvency proceedings, including the granting of relief staying enforcement of security.

UNCITRAL Model Law

Singapore has adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency (the "**Model Law**"), which is given force of law in Singapore under Section 354B of the Companies Act read with the Tenth Schedule. Situations in which the Model Law applies include (i) where assistance is sought in Singapore by a foreign court or a foreign representative in connection with a foreign proceeding, (ii) where a foreign proceeding and a proceeding under Singapore insolvency law in respect of the same debtor are taking place concurrently. The Model Law does not apply to certain entities such as certain financial institutions.[21]

Article 19 sets out the relief that may be granted by a Singapore court (at the request of a foreign representative) from the time of filing an application for recognition until the application is decided upon, while Article 20 sets out the effects of recognition of a foreign main proceeding and Article 21 sets out the relief that may be granted upon the recognition of a foreign proceeding (whether a foreign main proceeding or a foreign non-main proceeding).

These forms of relief include, for instance, the staying of the commencement of actions or proceedings against a debtor, execution against the debtor's property, suspension of the right to transfer, encumber or dispose of the debtor's property,

[21] The current list of exempted entities is set out under the Companies (Prescribed Companies and Entities) Order 2017. These are licensed banks, merchant banks and other financial institutions approved under section 28 of the MAS Act, finance companies, money changers, corporations carrying on remittance business, insurers, insurance brokers, recognised market operators, licensed foreign trade repositories, recognised clearing houses, approved holding companies, capital markets services licence holders, approved trustees, Registered Fund Management Companies, financial advisers, licensed trust companies, designated payment system operators, approved holders of widely accepted stored value facilities, designated payment system operators, and trustee managers of business trusts.

as well as any additional relief that may be available to a Singapore insolvency officeholder.

We would note that the mere recognition of a foreign proceeding does not, of itself, preclude enforcement of collateral rights. Article 20 sets out certain automatic effects of the recognition of a foreign main proceeding, but provides that these do not affect any right to take any steps to enforce security over the debtor's property. Specific relief must therefore be sought pursuant to Articles 19 or 21, which may give the ~~Clearing Member~~Secured Party time to exercise its rights to enforce its security interest before any relief is granted (subject to any stays in connection with local insolvency proceedings).

Where relief is granted, this is subject to the following:

(i) a qualification under Article 22 which provides that in granting or denying relief under Articles 19 or 21, or in modifying or terminating relief under paragraph 3 of Article 22 or Article 20(6), the Singapore court must be satisfied that the interests of the creditors and other interested persons, including if appropriate the debtor, are adequately protected; and

(ii) a qualification under Article 1(3), which provides that the Singapore court must not grant any relief, or modify any relief already granted, or provide any cooperation or coordination, if such relief or modified relief or cooperation or coordination would, in the case of a proceeding under Singapore insolvency law, be prohibited by the Companies Act or certain other written law. While it has not been established whether "prohibited" includes situations where transactions or arrangements are simply carved-out from the scope of a moratorium (as opposed to an express prohibition against the imposition of a moratorium), we believe that the better view is courts should not be able to grant relief under the Model Law that impinges on the subject of carve-outs. Firstly, Articles 19 and 21 refer specifically to additional relief that may be available to a Singapore insolvency officeholder, *including any relief provided under Section 227D(4) of the Companies Act*. The transaction level carve-outs described in Appendix D are made specifically with respect to Section 227D(4), and we believe the better view is that the carve-outs are similarly intended to apply to the relief granted under the Model Law. Secondly, from a policy perspective, this is consistent with the view taken by the Ministry of Law ("**MinLaw**"), which stated in its response to feedback received from the consultation on the Draft Companies (Amendment) Bill 2017, dated 27 February 2017, that "the exclusion of prescribed transactions from the moratorium addresses a further concern that set-off and netting rights should be preserved under the [Model Law]. Under the Model Law, a Singapore court may not grant relief or co-operation that is contrary to the provisions of the Companies Act. Since certain prescribed arrangements, including set-off and netting arrangements, are excluded from the moratorium under the Companies Act, the enforcement of these arrangements may not be restrained under the Model Law."

Consistent with this, in a note released by the Senior Minister of State for Law and Finance Ms Indranee Rajah, SC, titled "Enhancing Singapore as an International Debt Restructuring Centre for Asia and Beyond"[22], the Minister discussed the carve outs, and stated that:

> *"There are also carve outs for certain arrangements, such as derivative transactions in relation to closeout netting. While the exercise of netting and set-off rights under these contracts are not affected by the moratoria, this carve out ensures that rights under surrounding security interest arrangements are not affected by the moratoria."*

Singapore courts are required to adopt a purposive approach in statutory interpretation that promotes the purpose of the law[23] and we believe the better view that is that Singapore courts should not grant relief that impinges on the ability to enforce security arrangements in connection with the Transactions that are the subject of carve-outs as described in Appendix D.

Common law

There is also the possibility of recognition under common law in Singapore of the appointment of the liquidator or other insolvency officer in the Counterparty's home jurisdiction, and for the Singapore courts to assist, at common law, foreign insolvency proceedings. Such possibility has been made clear in the recent Singapore Court of Appeal decision of *Beluga Chartering GmBH (in liquidation) & Ors v Beluga Projects (Singapore) Pte Ltd (in liquidation) & Anor (deugro (Singapore) Pte Ltd, non party)* [2014] SGCA 14. However, the precise extent of recognition and assistance has yet to be worked out in Singapore.

Trusts

The same analysis as set out in respect of corporates would apply in the case of a Trustee Insolvency. In the case of a Trust Insolvency or a Business Trust Insolvency, the right to liquidate the Collateral would not be subject to any automatic stay or freeze upon the commencement of insolvency proceedings. However, we would note that a moratorium that applies to the Trustee may directly impede the enforcement of the Collateral. For instance, if any moratorium is made against the Trustee and it was necessary to sue the Trustee in order to enforce the security interest (for example, to obtain orders directing the Trustee to carry out certain actions), the court's permission would first have to be obtained. As noted in the Collateral Opinion, court orders are not generally required for appropriation and sale of Collateral (other than foreclosure). We would also note that there are no

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22 A copy of this note ~~has been attached as Appendix E to this memorandum.~~is available online at: https://www.mlaw.gov.sg/content/minlaw/en/news/legal-industry-newsletters/note-by-senior-minister-of-state-for-law-and-finance--indranee-r5.html

23 Section 9A of the Interpretation Act requires that in the interpretation of a provision of written law, an interpretation that would be promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object. See e.g. *ABU v Comptroller of Income Tax* [2015] 2 SLR 420, which upheld this approach. The case of *Beluga Chartering GmbH v Beluga Projects (Singapore) Pte Ltd* [2014] 2 SLR 833 held that an absurd interpretation or one that leads to unworkable consequences that are patently contrary to Parliament's intent should be avoided.

automatic moratoria on commencing action against the Trustee in a Trust Insolvency or a Business Trust Insolvency.

We would highlight that the MAS' resolution powers also extend to Trustees which are approved trustees for authorised collective investment schemes, and (for certain resolution powers) to trustee-managers of Business Trusts. However, our analysis set out above in respect of the exercise of the MAS' resolution powers in respect of financial institutions that are corporates would apply equally to such Trustees.

LLPs

Similar to a corporate winding-up, the court has powers to stay or restrain proceedings in the case where a winding-up application has commenced against an LLP. However, there is no automatic stay or freeze on the enforcement of the security interest.

Pursuant to Paragraph 7 of Schedule 5 to the LLP Act, at any time after the filing of a winding-up application against an LLP and before a winding-up order has been made, the LLP or any creditor or partner may, where any action or proceeding against the LLP is pending, apply to the court to stay or restrain further proceedings in the action or proceeding, and the court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

In addition, pursuant to Paragraph 9(3) of Schedule 5 to the LLP Act, once the winding-up order is made or a provisional liquidator has been appointed, no action or proceeding may be commenced against the LLP or proceeded with except with the leave of the court and in accordance with such terms as the court imposes.

Where the LLP has a creditors' voluntary winding-up commenced against it, under Paragraph 46 to Schedule 5 of the LLP Act, any attachment, sequestration, distress or execution put in force against the estate or effects of the LLP shall be void, and no action or proceeding shall be proceeded with or commenced against the LLP except by leave of the court and subject to such terms as the court imposes.

The principles enumerated in question 17(A)(a) above in respect of a corporate winding-up should equally apply in the case of the winding-up of an LLP (i.e. factors a court would take into account to decide whether to stay any proceeding or to give leave to commence or continue with any proceeding; and the possible delay in enforcing a security interest occasioned by the making of the winding-up application or the commencement of a creditors' voluntary winding-up).

B. IM Security Documents

The response above would apply equally to the IM Security Documents.

18. *Will the Security Collateral Provider (or its administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official) be able to recover any transfers of Collateral made to the Secured Party during a certain "suspect period" preceding the date of the insolvency as a result of such a transfer constituting a "preference" (however called and whether or not fraudulent) in favour of the Secured Party or on any other basis? If so, how long before the insolvency does this suspect period begin? If such a period exists, would the substitution of Collateral by a counterparty during this period invalidate an otherwise valid security interest if the substitute Collateral is of no*

greater value than the assets it is replacing? Would the posting of additional Collateral pursuant to the mark-to-market provisions (or the IM calculation provisions in the case of the IM Security Documents) of the Security Documents during the suspect period be subject to avoidance, either because the Collateral was considered to relate to an antecedent or pre-existing obligation or for some other reason?

A. Non-IM Security Documents

The following transactions (which include transfers of collateral by the Security Collateral Provider) may be set aside:

(a) Transactions at an undervalue

Under the Bankruptcy Act (the "**Bankruptcy Act**"), Chapter 20 of Singapore (which is applied to companies pursuant to the Companies Act), transactions entered at an undervalue at the relevant time may be set aside or varied by the court. A transaction is entered into at an undervalue if the Security Collateral Provider:

(i) makes a gift or otherwise enters into a transaction where no consideration is received; or

(ii) enters into a transaction for a consideration the value of which, in money's worth, is significantly less than the value of the consideration provided.

The "**relevant time**" is defined as any time within a period of five years ending with the day of commencement of winding-up or judicial management. For this purpose, winding up should in principle have commenced on the earliest of:

(a) the filing of the winding up application;

(b) the passing of the winding up resolution; and

(c) where a provisional liquidator has been appointed before the resolution for winding up had been passed, at the time when the declaration of the inability by reason of its liabilities of the company to continue its business is lodged with the Registrar of Companies.

In the case of judicial management, judicial management should for this purpose be regarded as having been commenced on the making of the judicial management application.

In addition, the Security Collateral Provider must, at the time the transaction was entered into, be insolvent, or become insolvent immediately after the transaction.

(b) Unfair preference

Under the Bankruptcy Act (which is applied to companies pursuant to the Companies Act), unfair preferences given at the relevant time may be set aside or otherwise altered by the court with a view to restoring the position of parties. An unfair preference is given by the Security Collateral Provider to a person:

(i) where that person is one of the Security Collateral Provider's creditors or a surety or guarantor for any of its debts or other liabilities; and

(ii) the Security Collateral Provider does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the winding-up or judicial management of the Security Collateral Provider, will be better than the position it would have been in if that thing had not been done.

The test for unfair preference is the requirement "that the bankrupt who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect" mentioned in paragraph (ii) above.

The "**relevant time**" for the purpose of unfair preference is:

(aa) in the case of an unfair preference which is not a transaction at an undervalue and is given to a person who is connected to the Security Collateral Provider, the period of two years ending with the day of commencement of winding-up or judicial management ("**that day**"); and

(bb) in any other case of an unfair preference which is not a transaction at an undervalue, the period of six months ending with that day.

The relevant time is subject to one further qualification, i.e., the Security Collateral Provider must when entering into the transaction be insolvent or become insolvent immediately after the transaction.

We are of the view that in general the substitution of collateral by the counterparty during the suspect period is unlikely to invalidate an otherwise valid security interest if the substitute Collateral is of no greater value than the assets it is replacing. First, it is unlikely to be a transaction at an undervalue as the consideration received by the Security Collateral Provider for the provision of the substituted Collateral is the returned Collateral. Secondly, there is unlikely to be any unfair preference as it can be argued that the Security Collateral Provider is not preferring the Secured Party by providing it with substituted Collateral, as it is being provided in exchange for Collateral released to the Security Collateral Provider by the Secured Party (however, this is a question of fact to be determined by the Singapore courts).

With regards to the posting of additional Collateral during the suspect period pursuant to the mark-to-market provisions of the Security Documents, we are of the view that the Singapore courts would consider such topping-up to be made on an arms'-length basis (assuming that the pre-existing Security Documents were entered into on an arms'-length basis) and therefore, not exercise its rights to avoid such posting of additional Collateral as an undervalue transaction or an unfair preference.

(c) Floating charges

If a floating charge was created by a company within six months of the commencement of its winding up, Section 330 of the Companies Act provides that the floating charge will be invalid, unless it can be shown that:

(i) the chargor was solvent immediately after the floating charge was created; or

(ii) the chargee advanced cash to the chargor when the charge was created or subsequently, in which case the charge will be valid to cover the amount of

the cash advanced together with interest thereon at five per cent. per annum.

(d) Conveyances to defraud creditors

Under Section 73B of the Conveyancing and Law of Property Act, Chapter 61 of Singapore, conveyances of property (which includes real and personal property, and any debt and any thing in action, and any other right or interest in the nature of property, whether in possession or not) with intent to defraud creditors are voidable at the instance of any person thereby prejudiced. This does not extend to any estate or interest in property disposed of for valuable consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the disposition, notice of the intent to defraud creditors.

Trusts

The same analysis as set out in respect of corporates would apply in the case of a Trustee Insolvency. In the case of a Trust Insolvency or a Business Trust Insolvency, there are no fixed statutory rules on clawbacks during suspect periods. Accordingly, the rules relating to transactions at an undervalue and unfair preferences would not automatically apply.

With regards to the rule on floating charges under Section 330 of the Companies Act, this rule may still apply where the floating charge was created six months before a Trustee Insolvency.

LLPs

Similar to the situation in a corporate winding-up, where an LLP is wound-up, certain transactions may be set aside or varied by the court if it was a transaction at an undervalue or if it constituted an unfair preference. The relevant provisions are set out in paragraphs 77 to 81 of Schedule 5 to the LLP Act and substantially replicate the position in respect of companies (in respect of winding-up proceedings).

Accordingly, our comments in relation to the substitution of collateral and the posting of collateral during the suspect period would also apply in relation to LLPs.

B. IM Security Documents

The response above would apply equally to the IM Security Documents.

Miscellaneous

19. *Would the parties' agreement on governing law of each Security Document and submission to jurisdiction be upheld in your jurisdiction, and what would be the consequences if they were not?*

The IM NY Annex forms part of and is subject to the ISDA Master Agreement. Where the relevant ISDA Master Agreement is governed by English law, the parties will provide in paragraph 13 of the IM NY Annex that the Annex is governed by and construed in accordance with New York law, the governing law of the ISDA Master Agrement will accordingly be split (i.e., dépeçage) – English law will govern the pre-printed ISDA Master Agreement, the Schedule and the Transactions but New York law will govern the IM NY Annex. The English jurisdiction provision of the ISDA Master Agreement would apply to the

entire agreement including the IM NY Annex. Would the split governing law affect your answer above?

The IM Deed may be entered into in connection with either an English law ISDA Master Agreement or a New York law governed ISDA Master Agreement but as it as a separate agreement and does not form part of the relevant ISDA Master Agreement we assume that the differences in governing law between the relevant ISDA Master Agreement and the IM Deed will not affect your answer.

A. Non-IM Security Documents

Governing law

We advise that a Singapore court would recognise and uphold the validity of the governing law clause of each Security Document, provided that the choice of law in the governing law clause has been made in good faith and is not intended to evade the provisions of Singapore law or another legal system with which the Security Documents may have a closer connection and that none of the terms of the Security Documents nor any provision of the chosen law applicable to the Security Documents is contrary to Singapore public policy. We do not have any reason to believe that the choice of English or, as the case may be, New York law in the Security Documents is intended to evade any provision of Singapore law or is otherwise contrary to Singapore public policy.

Submission to jurisdiction

We also advise that a Singapore court would recognise and uphold an express submission to jurisdiction by the Security Collateral Provider in the Security Documents, save that in cases where the Singapore courts have jurisdiction over a dispute, Singapore is a more appropriate forum for determination of the matter and the ends of justice will be better served by the dispute being determined in Singapore courts, the Singapore court may in appropriate cases nonetheless exercise its residual jurisdiction to determine the matter.

We would also highlight that Singapore has ratified the Hague Convention on Choice of Court Agreements ("**Convention**"). The Convention came into force in Singapore on 1 October 2016. Singapore implemented the Convention by the Choice of Court Agreements Act 2016 (the "**CCA Act**").

The CCA Act gives effect to the Convention, which establishes an international legal regime for upholding exclusive choice of court agreements in international civil or commercial cases, and governs the recognition and enforcement of judgments amongst parties to the Convention. If a Singapore court is the chosen court under an exclusive choice of court agreement, the Singapore court will have the jurisdiction to decide the dispute at hand. The Singapore court generally cannot decline jurisdiction on the ground that the dispute should be decided by a court of another state. Conversely, if the chosen court is a court in another jurisdiction which is a party to the Convention, the Singapore court must generally stay or dismiss the matter.

B. IM Security Documents

The response above would apply equally to the IM Security Documents.

The split in governing law will not affect our responses above, assuming that the split in governing law is valid and enforceable under English and New York law.

20. *Are there any other local law considerations that you would recommend the Secured Party to consider in connection with taking and realising upon the Eligible Collateral from the Security Collateral Provider?*

We would highlight the following consideration in respect of the VM NY Annex and the IM Security Documents. The scope of the VM NY Annex and the IM Security Documents are limited to Covered Transactions, and as a consequence, the Exposure (and by extension the Delivery Amount) are calculated with reference to Covered Transactions. As it is up to parties to specify what is a Covered Transaction, it is possible that not all Transactions under a Master Agreement may be designated as Covered Transactions.

We have considered whether this could raise a possible argument that this dilutes the characterisation of the Master Agreement and the Transactions as a single agreement. We are of the view that this would not affect the characterisation of the Master Agreement with the Transactions as a single agreement, assuming that:

(a) the parties have entered into the VM NY Annex or the IM Security Documents and selected the Covered Transactions in good faith, for *bona fide* commercial reasons (for instance, where this is driven by requirements of applicable law) and not for the purposes of evading applicable law;

(b) the parties are solvent and viable as a going concern at the time they enter into the VM NY Annex or the IM Security Documents;

(c) the parties intend for the Master Agreement and all Transactions to take effect as a single agreement and would not otherwise have entered into the Master Agreement and the Transactions (including the VM Transfer Annex); and

(d) under the governing law of the VM NY Annex or the IM Security Documents and the Master Agreement, the election of Covered Transactions is merely a metric used by the parties to calculate credit support, and the credit support is applied to meet obligations under the Master Agreement and all Transactions as a whole (and not merely the Covered Transactions).

We take this view on the basis that, as a matter of contract and proper commercial dealings, parties should have latitude to agree overall that the Master Agreement is a single agreement and the computation of the amount of credit support should only be calculated with reference to specific Covered Transactions.

Aside from the foregoing, there are no other Singapore law considerations that we would recommend the Secured Party to consider in connection with taking and realising upon the Eligible Collateral from the Security Collateral Provider.

21. *Are there any other circumstances you can foresee that might affect the Secured Party's ability to enforce its security interest in Singapore?*

Singapore has released the Insolvency, Restructuring and Dissolution Bill (the "**Insolvency Bill**"), which was read in Parliament for the first time on 10 September 2018 and passed on 1 October 2018. This omnibus insolvency legislation combines the bankruptcy legislation in the Bankruptcy Act, Chapter 20 of Singapore, with the corporate insolvency legislation in the Companies Act, into a single Bill. The Insolvency Bill is only expected to come into force in 2019.

For the most part, the provisions of the Bankruptcy Act and the Companies Act concerning bankruptcy and insolvency (including winding-up, judicial management, consequences of schemes of arrangement, and others) will be moved to the Insolvency Bill when this comes into force. There are some changes in the provisions, and in particular:

(a) there will be carve-outs for the JM Automatic Moratoria. The carve-outs will be specified in subsidiary legislation (which has not been released), and are expected to replicate the existing carve-outs for the scheme of arrangement moratoria and the JM Order Moratoria;

(b) the Insolvency Bill will introduce a new stay on termination rights during restructuring proceedings. This is set out in section 440 of the Insolvency Bill, which provides that no person may, after the commencement and before the conclusion of proceedings by a company, terminate or amend any agreement with company, or claim an accelerated payment under such agreement, by reason only that the proceedings are commenced or that the company is insolvent. This will not apply to "eligible financial contracts", which will be prescribed in subsidiary legislation; and

(c) there will be changes to the duration of the claw back periods – the clawback period for transactions at an undervalue will be shortened from 5 years before the commencement of winding up or judicial management to 3 years.

The exact impact of the proposals in the Insolvency Bill will depend on the carve-outs set out in supporting subsidiary legislation. These are also expected to be released in 2019.

~~We would bring to your attention the following pending development or change in the laws of Singapore. In October 2002, several proposals for changes to the laws of Singapore were published by a committee known as the Company Legislation and Regulatory Framework Committee (the "**CLRFC**"). These proposals have been accepted by the Singapore government. Some of the amendments have been implemented in 2017 (and are reflected in our responses to the questions above), but there are other proposals that have not been implemented. One change recommended by the CLRFC, and accepted by the government, was the consolidation and refinement of Singapore's insolvency legislation, which at present is set out in discrete portions of the Companies Act and in the Bankruptcy Act. There is therefore a possibility that, when this consolidation and refinement takes place, the insolvency laws could be amended in a way which affects the conclusions reached in this Memorandum. Following the proposals of the CLRFC, the Minister for Law set up the Insolvency Law Review Committee (the "**ILRC**") to review the existing personal and corporate insolvency regimes. The ILRC has come up with key recommendations and the Ministry of Law is conducting a public consultation, from 7 October 2013 to 2 December 2013, on the key recommendations made in a final report by the ILRC in relation to Singapore's personal and corporate insolvency regimes -- this can be accessed at the following link: http://www.mlaw.gov.sg/news/public-consultations/public-consultation-on-ILRC-report.html. The Ministry of Law issued its response to the feedback received from its public consultation on the report of the ILRC on 6 May 2014.~~

~~In respect of the proposals by the ILRC which have not been implemented, while much would depend on the final product or legislation, we do not expect that these proposals, if implemented, should adversely affect the conclusions reached in this memorandum.~~

Save as stated above, there are no other foreseeable circumstances that might affect the Secured Party's ability to enforce its security interest in Singapore.

22. Please assume that the VM NY Annex is amended by the VM NY Annex IA Amendments. Would any of your responses to questions 1 through 21 be different as a result of the inclusion of the VM NY Annex, as amended by the VM NY Annex IA Amendments, in this opinion? If so, please comment specifically on any such changes.

No, our responses would not change.

23. Please describe any requirements that the custodial arrangements described in assumption (n) above must meet to permit the Collateral Taker to exercise its rights as secured party.

The perfection requirements described in question 5 would apply. In particular, we would highlight that there are specific requirements as to the creation of security interests over Singapore book-entry securities as highlighted part (A)(ii) of our response to question 5.

With regards to enforcement, please refer to our responses in question 12.

24. Please describe any requirements that the arrangements described in assumption (o) above must meet to permit the Collateral Taker to exercise its rights as secured party.

(We have discussed the Japanese Amendments in question 25 below.) Aside from the Japanese Amendments, the same requirements as set out in question 23 above would apply.

Japanese Amendments

For opinions on Australia, Canada, England & Wales, France, Germany, Japan, Hong Kong, India, Netherlands, Singapore, South Korea, Switzerland, Taiwan and the U.S (New York law) only, please consider the following questions:

25. With respect to Collateral held by Euroclear or Clearstream as contemplated by assumption (o), would any of your responses to questions 1 through 9 and 11-21 change if (a) the Euroclear Documents were amended by the Euroclear Japanese Amendments and the Collateral were held pursuant to the custodial arrangement described in the Euroclear Japanese Amendments or (b) the Clearstream Documents were amended by the Clearstream Japanese Amendments and the Collateral were held pursuant to the custodial arrangement described in the Clearstream Japanese Amendments? If so, please comments specifically on any such changes.

We understand that, from a Japanese law perspective, in order to create and perfect the Japanese pledge over Japanese Collateral, the assets over which the pledge is created need to be recorded and registered to the pledge ledger (*shichiken ran*) of a security account opened in the name of the Collateral Taker. In the case of Eligible Collateral which is in the form of Japanese Collateral, the Japanese Collateral will be transferred from the proprietary ledger (*hoya ran*) of the 'Collateral Giver's Account' to the pledge ledger (*shichiken ran*) of the Secured Account pursuant to the provisions of the Japanese

Book-entry Transfer Act. We understand, however, that the Collateral Provider remains "title holder" of the Japanese Collateral even after the pledged Japanese Collateral has been transferred to the Collateral Taker.

We assume that under all applicable laws (including the governing law of the relevant Control Agreement), despite the fact that the Collateral Account may be in the name of the Collateral Taker, this is merely nomenclature and the Collateral Provider continues to retain the title to and the beneficial interest in the Japanese Collateral. We further assume that the assets continue to be segregated from the other assets of the Collateral Taker. In relation to non-Japanese Collateral, we assume that such non-Japanese Collateral continues to be placed in a Collateral Account maintained in the name of the Collateral Provider such that there is no change to the account structure.

We also assume that the Japanese pledge is valid and enforceable under all applicable laws (other than the laws of Singapore) and the security interest created thereunder is of or is equivalent to a type recognised in Singapore (such as a pledge or a charge).

On the basis of the foregoing assumptions, our responses would not change. We would highlight that if the Collateral Provider has control over the Collateral, there is a risk that the security interest will be deemed under Singapore law to be a floating charge. Please refer to question 11.

26. *Notwithstanding assumptions (g) and (n), please assume that the IM NY Annex is amended by the IM NY Annex Japanese Amendments. Would any of your responses to question 1 through 9 and 11-21 change if the IM NY Annex were amended by the IM NY Annex Japanese Amendments and the Collateral were held pursuant to the custodial arrangement described in the IM NY Annex Japanese Amendments? If so, please comment specifically on any such changes.*

Subject to the assumptions set out in question 25 above, our responses to the relevant questions would not change.

27. *Notwithstanding assumptions (g) and (n), please assume that the IM Deed is amended by the IM Deed Japanese Amendments. Would any of your responses to question 1 through 9 and 11-21 change if the IM Deed were amended by the IM Deed Japanese Amendments and the Collateral were held pursuant to the custodial arrangement described in the IM Deed Japanese Amendments? If so, please comment specifically on any such changes.*

Subject to the assumptions set out in question 25 above, our responses to the relevant questions would not change.

Part 2

TITLE TRANSFER APPROACH PURSUANT TO THE TRANSFER ANNEX

Assumptions relating to the Transfer Annex

We assume the same facts as set forth in Part 1, but on the assumption that the parties have entered into a Transfer Annex in connection with a Master Agreement rather than a Security Document. For this purpose, assumptions (a) to (m) should be read as modified by the following:

references to the "Security Document(s)" shall be deemed to be references to the "Transfer Annexes"; references to the "Security Collateral Provider" and "Secured Party" shall be deemed to be references to "Transferor" and "Transferee", respectively; and references to "Eligible Collateral" shall be deemed to be references to "Eligible Credit Support". Assumptions (n) and (o) in Part 1 do not apply to Part 2.

As instructed, we make the following additional assumptions:

(1) The Transferor has entered into a Master Agreement governed by English law and a Transfer Annex with the Transferee (in this respect, we assume that the Transfer Annex is being used together with either the 1992 or the 2002 versions of the Master Agreement). Pursuant to the terms of the Transfer Annex, and as a matter of English law, transfers of Eligible Credit Support involve an outright transfer of title, free and clear of any liens, claims, charges, or encumbrances or any other interest of the transferring party or of any third person (other than a lien routinely imposed on all securities in a relevant clearance system). If an Event of Default exists with respect to either party, an amount equal to the Value of the Credit Support Balance is deemed to be an Unpaid Amount under the Master Agreement and therefore is taken into account for the purposes of determining the amount due upon close-out of the Transactions pursuant to Section 6(e) of the Master Agreement. Although such arrangement is in substance and effect similar to the Collateral arrangements evidenced by the Security Documents, the Transfer Annex is not intended to create any form of security interest.

(2) We assume that transfers under the Transfer Annex would not be recharacterised as creating a form of security interest by an English court, provided that the Transfer Annex was not amended in any material way and provided that the parties by their conduct did not otherwise clearly evidence an intention to create a security interest in the transferred Collateral.

Questions relating to the Transfer Annexes

~~*For Transfer Annexes, would any of your responses to questions 22 through 29 that you provided as of the last date such responses were provided with respect to your jurisdiction be different as a result of (a) any changes in law in your jurisdiction, (b) the inclusion of the VM Transfer Annex in this opinion that was not previously included, or (c) the inclusion of equity securities as Eligible Collateral described in assumption (i)(iv)? If so, please comment specifically on any such changes. Please assume that the VM Transfer Annex is amended by the VM Transfer Annex IA Amendments. Would any of your responses to questions 22 through 29 below be different than the responses to such questions that you provided as of the last date such responses were provided with respect to your jurisdiction as a result of the inclusion of the VM Transfer Annex, as amended by the VM Transfer Annex IA Amendments, in this opinion? If so, please comment specifically on any such changes.*~~

~~Unless otherwise stated in our advice (or the relevant question), our advice generally applies to all the foregoing situations.~~

~~22~~1. *Would the laws of Singapore characterise each transfer of Eligible Credit Support as effecting an unconditional transfer of ownership in the assets transferred? Is there any*

risk that any such transfer would be recharacterised as creating a security interest? If so, is there any way to minimise such risk? What would be the specific consequences of such a recharacterisation (referring back to issues related to perfection, priority and formal requirements for establishing both as discussed with regard to the Security Documents in Part 1 above)?

We wish to point out that the concept of an absolute transfer of title of the Eligible Credit Support rather than the creation of a security interest over such Eligible Credit Support has not been tested in the Singapore courts and there is a risk that the transfer of the Eligible Credit Support by the Transferor to the Transferee may be re-characterised by the Singapore courts as creating a security interest in favour of the Transferee (especially when considered together with the underlying transactions), notwithstanding that transfers under the Transfer Annex would not be recharacterised as creating a form of security interest by an English court. In our view, the risk of the Singapore courts adopting this approach is minimal as the Singapore courts are likely to give effect to the express intent of the parties acting in good faith and actually intending the transaction.

If, however, the Transfer Annex is construed by the Singapore courts to create a security interest in favour of the Transferee over the Eligible Credit Support transferred to it, it is arguable that if the Transferee is permitted to substitute or exchange the Eligible Credit Support without the consent of the Transferee, a floating charge may be construed to have been created, and thus give rise to registration requirements under the Companies Act (in respect of corporates and Trusts). As mentioned in our answer to question 5 above, any failure to so register the floating charge will render the floating charge void as against the liquidator or any creditor of the Security Collateral Provider.

~~23~~2. *Assuming that the Transferee receives an absolute ownership interest in the Eligible Credit Support, will it need to take any action thereafter to ensure that its title therein continues? Are there any filing or perfection requirements necessary or advisable, including taking any of the actions referred to in question 5 in Part 1? Are there any other procedures that must be followed or consents or other governmental or regulatory approvals that must be obtained to establish, enforce, or continue such ownership interest?*

If the Transferee receives an absolute ownership interest in the Eligible Credit Support, it will not need to take any action thereafter to ensure that its title therein continues. In addition, there are no filing or perfection requirements necessary or advisable under Singapore law to maintain its ownership interest, including the taking of any of the actions referred to in question 5. There are also no other procedures that must be followed or consents or other governmental or regulatory approvals that must be obtained to establish, enforce or continue such ownership interest.

~~24~~3. *What is the effect, if any, under the laws of your jurisdiction of the right of the Transferor to substitute Eligible Credit Support pursuant to Paragraph 3(c) of the Transfer Annex? Does the presence or absence of consent to substitution by the Transferee have any bearing on this question?*

Under the laws of Singapore, the right of the Transferor to substitute the Eligible Credit Support pursuant to Paragraph 3(c) of the Transfer Annex will not have any effect unless the transfer of the Eligible Credit Support is re-characterised by the Singapore courts as

creating a security interest. In such a case, the right of the Security Collateral Provider to substitute the Eligible Credit Support without the consent of the Secured Party will be more likely to lead the court to hold that a floating charge has been created which is required to be registered under the Companies Act, failing which it will be void as against the creditors and the liquidator of the Transferor.

We have been asked to comment specifically on whether the Transferor and the Transferee are able validly to agree in the Transfer Annex that the Transferor may exchange Collateral without specific consent of the Transferee and whether and, if so, how this may affect our conclusions regarding the validity or enforceability of the Transfer Annex. We confirm that the Transferor and the Transferee are able validly to agree on such exchange of Collateral. This will have no effect unless the transfer of Collateral is re-characterised by the Singapore courts as a security interest, in which case (as stated above) there is the risk that such deemed security interest will be a floating charge instead of a fixed charge and will be void for non-registration.

~~254~~. *The Transferee's rights in relation to the transferred Eligible Credit Support upon the occurrence of an Event of Default will be governed by Section 6 of the Master Agreement. Assuming that Section 6 of the Master Agreement is valid and enforceable in your jurisdiction insofar as it relates to the determination of the net amount payable by either party on the termination of the Transactions, could you please confirm that Paragraph 6 of the Transfer Annex would also be valid to the extent that it provides for the Value of the Credit Support Balance to be included in the calculation of the net amount payable under Section 6(e) of the Master Agreement.*

Corporates

We confirm that Paragraph 6 of the Transfer Annex would be valid under Singapore law to the extent that it provides for the Value of the Credit Support Balance to be included in the calculation of the net amount payable under Section 6(e) of the Master Agreement.

We would highlight the following consideration in respect of the VM Transfer Annex. The scope of the VM Transfer Annex is limited to Covered Transactions, and as a consequence, the Exposure (and by extension the Delivery Amount) is calculated with reference to Covered Transactions. As it is up to parties to specify what is a Covered Transaction, it is possible that not all Transactions under a Master Agreement may be designated as Covered Transactions.

We have considered whether this could raise a possible argument that this dilutes the characterisation of the Master Agreement and the Transactions as a single agreement. We are of the view that this would not affect the characterisation of the Master Agreement with the Transactions as a single agreement, assuming that:

(a) the parties have entered into the VM Transfer Annex and selected the Covered Transactions in good faith, for *bona fide* commercial reasons (for instance, where this is driven by requirements of applicable law) and not for the purposes of evading applicable law;

(b) the parties are solvent and viable as a going concern at the time they enter into the VM Transfer Annex;

(c) the parties intend for the Master Agreement and all Transactions to take effect as a single agreement and would not otherwise have entered into the Master Agreement and the Transactions (including the VM Transfer Annex); and

(d) under the governing law of the VM Transfer Annex and the Master Agreement, the election of Covered Transactions is merely a metric used by the parties to calculate credit support, and the credit support is applied to meet obligations under the Master Agreement and all Transactions as a whole (and not merely the Covered Transactions).

We take this view on the basis that, as a matter of contract and proper commercial dealings, parties should have latitude to agree overall that the Master Agreement is a single agreement and the computation of the amount of credit support should only be calculated with reference to specific Covered Transactions.

Trusts

Paragraph 6 of the Transfer Annex would be valid under Singapore law to the extent that it provides for the Value of the Credit Support Balance to be included in the calculation of the net amount payable under Section 6(e) of the ISDA Master Agreement. The analysis with respect to the enforceability of the close-out netting provisions of the ISDA Master Agreement with respect to Trusts would be as set out in the Netting Opinion.

LLPs

Paragraph 6 of the Transfer Annex would be valid under Singapore law to the extent that it provides for the Value of the Credit Support Balance to be included in the calculation of the net amount payable under Section 6(e) of the ISDA Master Agreement. The analysis with respect to the enforceability of the close-out netting provisions of the ISDA Master Agreement with respect to LLPs would be as set out in the Netting Opinion.

~~26~~5. *Would the rights of the Transferee be enforceable in accordance with the terms of the Master Agreement and the Transfer Annex, irrespective of the insolvency of the Transferor?*

Subject to the above assumptions and the discussions in our answer to question 27 below, the rights of the Transferee under the Master Agreement and the Transfer Annex would be enforceable under Singapore law in accordance with the terms of the Master Agreement and the Transfer Annex, irrespective of the subsequent insolvency of the Transferor.

We would highlight that this is subject to our comments on the enforceability of Section 6 of the Master Agreement as set out in the Netting Opinion, including our analysis of the effects of the MAS' resolution powers (existing and proposed).

~~27~~6. *Will the Transferor (or its administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official) be able to recover any transfers of Eligible Credit Support made to the Transferee during a certain "suspect period" preceding the date of the insolvency? If so, how long before the insolvency does this suspect period begin? If such a period exists, would the substitution of Eligible Credit Support by a counterparty during this period invalidate an otherwise valid transfer, assuming the substitute assets are of no greater value than the assets they are replacing? Would the transfer of additional Eligible Credit Support pursuant to the mark-to-market provisions of*

the Transfer Annex during the suspect period be subject to avoidance, either because it was considered to relate to an antecedent or pre-existing obligation or for some other reason?

Corporates

Our advice in relation to question 18 above concerning transactions at an undervalue, unfair preferences, and conveyances to defraud creditors relating to the creation of security interest over Eligible Collateral applies in the case of an absolute transfer of Eligible Credit Support by the Transferor to the Transferee. Accordingly, any transfer of Eligible Credit Support by the Transferor during the suspect period may result in the avoidance of the transfer.

Trusts

The suspect periods would only apply to a Trustee Insolvency. There are no fixed statutory rules on suspect periods per se in a Trust Insolvency or a Business Trust Insolvency.

LLPs

As in the case of question 18, the suspect periods would apply to an LLP.

~~28~~7. *Would the parties' agreement on governing law of the Transfer Annex and submission to jurisdiction be upheld in your jurisdiction, and what would be the consequences if it were not?*

Our advice in relation to question 19 of Part 1 above concerning governing law and submission to jurisdiction applies in the case of the Transfer Annex.

~~29~~8. *Is the Transfer Annex in an appropriate form to create the intended outright transfer of ownership in the Eligible Credit Support to the Transferee? If there are any other requirements to ensure the validity of such transfer in each type of Eligible Credit Support by the Transferor under the Transfer Annex, please indicate the nature of such requirements. For example, are there any other requirements of the type referred to in question 6?*

Under Singapore conflicts of laws rules, the law governing the transfer of property is the law of the jurisdiction where the property is located. Accordingly, it would be necessary to ensure that the requirements of the law of such jurisdiction are complied with. In the case of book-entry Singapore government securities, pursuant to the Government Securities Acts, transfers of book-entry Singapore government securities shall be effected by the execution by the parties of an instrument of transfer (for this purpose, the Transfer Annex will qualify as an instrument of transfer) and the making of an appropriate entry by the MAS in its records of the securities transferred. Subject as stated above, the Transfer Annex is in an appropriate form under Singapore law to create the intended outright transfer of ownership in the Eligible Credit Support to the Transferee and there are no other requirements to ensure the validity of such transfer of each type of Eligible Credit Support by the Transferor under the Transfer Annex.

9. *Please assume that the VM Transfer Annex is amended by the VM Transfer Annex IA Amendments. Would any of your responses to questions 1 through 8 be different as a result of the inclusion of the VM Transfer Annex, as amended by the VM Transfer Annex IA Amendments, in this opinion? If so, please comment specifically on any such changes.*

No, our responses would not change.

PART 3: OTHERS

~~30~~1. *Close-out Amount Protocol*

We refer to the Close-out Amount Protocol published by ISDA on 27 February 2009 (the "**Protocol**"). On the assumption that the changes intended by the Protocol are effective as a matter of the governing law of the Covered Master Agreement (as defined in the Protocol) and the relevant Credit Support Document, we confirm that the changes made by the Protocol (including, without limitation, Annexes 10, 11 and 12) are not material to and do not affect the conclusions reached in the Memorandum.

~~31~~2. *Collateral Agreement Negative Interest Protocol*

We refer to the 2014 ISDA Collateral Agreement Negative Interest Protocol published on Monday May 12, 2014 (the "**Negative Interest Protocol**"). On the assumption that the changes intended by the Negative Interest Protocol are effective as a matter of the governing law of the Covered Master Agreement (as defined in the Protocol), and the amendments made by the Negative Interest Protocol to the 1994 NY Annex, 1995 Deed and 1995 Transfer Annex do not alter the security or transfer provisions of the documents but merely seek to ensure that parties can account for negative interest amounts on cash collateral, this amendment will not affect the conclusions reached in this Memorandum.

This Memorandum is addressed to ISDA solely for the benefit of its members. No other person may rely on this Memorandum for any purpose without our prior written consent.

ALLEN & GLEDHILL LLP

~~7 AUGUST 2017~~12 DECEMBER 2018

APPENDIX A

(AUGUST 2015)

CERTAIN TRANSACTIONS UNDER

THE ISDA MASTER AGREEMENTS

Basis Swap. A transaction in which one party pays periodic amounts of a given currency based on a floating rate and the other party pays periodic amounts of the same currency based on another floating rate, with both rates reset periodically; all calculations are based on a notional amount of the given currency.

Bond Forward. A transaction in which one party agrees to pay an agreed price for a specified amount of a bond of an issuer or a basket of bonds of several issuers at a future date and the other party agrees to pay a price for the same amount of the same bond to be set on a specified date in the future. The payment calculation is based on the amount of the bond and can be physically-settled (where delivery occurs in exchange for payment) or cash-settled (where settlement occurs based on the difference between the agreed forward price and the prevailing market price at the time of settlement).

Bond Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified amount of a bond of an issuer, such as Kingdom of Sweden or Unilever N.V., at a specified strike price. The bond option can be settled by physical delivery of the bonds in exchange for the strike price or may be cash settled based on the difference between the market price of the bonds on the exercise date and the strike price.

Bullion Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified number of Ounces of Bullion at a specified strike price. The option may be settled by physical delivery of Bullion in exchange for the strike price or may be cash settled based on the difference between the market price of Bullion on the exercise date and the strike price.

Bullion Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency or a different currency calculated by reference to a Bullion reference price (for example, Gold-COMEX on the COMEX Division of the New York Mercantile Exchange) or another method specified by the parties. Bullion swaps include cap, collar or floor transactions in respect of Bullion.

Bullion Trade. A transaction in which one party agrees to buy from or sell to the other party a specified number of Ounces of Bullion at a specified price for settlement either on a "spot" or two-day basis or on a specified future date. A Bullion Trade may be settled by physical delivery of Bullion in exchange for a specified price or may be cash settled based on the difference between the market price of Bullion on the settlement date and the specified price.

For purposes of Bullion Trades, Bullion Options and Bullion Swaps, "Bullion" means gold, silver, platinum or palladium and "Ounce" means, in the case of gold, a fine troy ounce, and in the case of

silver, platinum and palladium, a troy ounce (or in the case of reference prices not expressed in Ounces, the relevant Units of gold, silver, platinum or palladium).

Buy/Sell-Back Transaction. A transaction in which one party purchases a security (in consideration for a cash payment) and agrees to sell back that security (or in some cases an equivalent security) to the other party (in consideration for the original cash payment plus a premium).

Cap Transaction. A transaction in which one party pays a single or periodic fixed amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified floating rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap) in each case that is reset periodically over a specified per annum rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap).

Collar Transaction. A collar is a combination of a cap and a floor where one party is the floating rate, floating index or floating commodity price payer on the cap and the other party is the floating rate, floating index or floating commodity price payer on the floor.

Commodity Forward. A transaction in which one party agrees to purchase a specified quantity of a commodity at a future date at an agreed price, and the other party agrees to pay a price for the same quantity to be set on a specified date in the future. A Commodity Forward may be settled by the physical delivery of the commodity in exchange for the specified price or may be cash settled based on the difference between the agreed forward price and the prevailing market price at the time of settlement.

Commodity Index Transaction. A transaction, structured in the form of a swap, cap, collar, floor, option or some combination thereof, between two parties in which the underlying value of the transaction is based on a rate or index based on the price of one or more commodities.

Commodity Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified quantity of a commodity at a specified strike price. The option can be settled either by physically delivering the quantity of the commodity in exchange for the strike price or by cash settling the option, in which case the seller of the option would pay to the buyer the difference between the market price of that quantity of the commodity on the exercise date and the strike price.

Commodity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic amounts of the same currency based on the price of a commodity, such as natural gas or gold, or a futures contract on a commodity (e.g., West Texas Intermediate Light Sweet Crude Oil on the New York Mercantile Exchange); all calculations are based on a notional quantity of the commodity.

Contingent Credit Default Swap. A Credit Default Swap Transaction under which the calculation amounts applicable to one or both parties may vary over time by reference to the mark-to-market value of a hypothetical swap transaction.

Credit Default Swap Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to enter into a Credit Default Swap.

Credit Default Swap. A transaction in which one party pays either a single fixed amount or periodic fixed amounts or floating amounts determined by reference to a specified notional amount, and the other party (the credit protection seller) pays either a fixed amount or an amount determined by reference to the value of one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity") upon the occurrence of one or more specified credit events with respect to the Reference Entity (for example, bankruptcy or payment default). The amount payable by the credit protection seller is typically determined based upon the market value of one or more debt securities or other debt instruments issued, guaranteed or otherwise entered into by the Reference Entity. A Credit Default Swap may also be physically settled by payment of a specified fixed amount by one party against delivery of specified obligations ("Deliverable Obligations") by the other party. A Credit Default Swap may also refer to a "basket" (typically ten or less) or a "portfolio" (eleven or more) of Reference Entities or may be an index transaction consisting of a series of component Credit Default Swaps.

Credit Derivative Transaction on Asset-Backed Securities. A Credit Default Swap for which the Reference Obligation is a cash or synthetic asset-backed security. Such a transaction may, but need not necessarily, include "pay as you go" settlements, meaning that the credit protection seller makes payments relating to interest shortfalls, principal shortfalls and write-downs arising on the Reference Obligation and the credit protection buyer makes additional fixed payments of reimbursements of such shortfalls or write-downs.

Credit Spread Transaction. A transaction involving either a forward or an option where the value of the transaction is calculated based on the credit spread implicit in the price of the underlying instrument.

Cross Currency Rate Swap. A transaction in which one party pays periodic amounts in one currency based on a specified fixed rate (or a floating rate that is reset periodically) and the other party pays periodic amounts in another currency based on a floating rate that is reset periodically. All calculations are determined on predetermined notional amounts of the two currencies; often such swaps will involve initial and or final exchanges of amounts corresponding to the notional amounts.

Currency Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified amount of a given currency at a specified strike price.

Currency Swap. A transaction in which one party pays fixed periodic amounts of one currency and the other party pays fixed periodic amounts of another currency. Payments are calculated on a notional amount. Such swaps may involve initial and or final payments that correspond to the notional amount.

Economic Statistic Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency by reference to interest rates or other factors and the other party pays or may pay an amount or periodic amounts of a currency based on a specified rate or index pertaining to statistical data on economic conditions, which may include economic growth, retail sales, inflation, consumer prices, consumer sentiment, unemployment and housing.

Emissions Allowance Transaction. A transaction in which one party agrees to buy from or sell to the other party a specified quantity of emissions allowances or reductions at a specified price for settlement either on a "spot" basis or on a specified future date. An Emissions Allowance

Transaction may also constitute a swap of emissions allowances or reductions or an option whereby one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which the specified quantity of emissions allowances or reductions exceeds or is less than a specified strike. An Emissions Allowance Transaction may be physically settled by delivery of emissions allowances or reductions in exchange for a specified price, differing vintage years or differing emissions products or may be cash settled based on the difference between the market price of emissions allowances or reductions on the settlement date and the specified price.

Equity Forward. A transaction in which one party agrees to pay an agreed price for a specified quantity of shares of an issuer, a basket of shares of several issuers or an equity index at a future date and the other party agrees to pay a price for the same quantity and shares to be set on a specified date in the future. The payment calculation is based on the number of shares and can be physically-settled (where delivery occurs in exchange for payment) or cash-settled (where settlement occurs based on the difference between the agreed forward price and the prevailing market price at the time of settlement).

Equity Index Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an equity index either exceeds (in the case of a call) or is less than (in the case of a put) a specified strike price.

Equity Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified number of shares of an issuer or a basket of shares of several issuers at a specified strike price. The share option may be settled by physical delivery of the shares in exchange for the strike price or may be cash settled based on the difference between the market price of the shares on the exercise date and the strike price.

Equity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed or floating rate and the other party pays periodic amounts of the same currency or a different currency based on the performance of a share of an issuer, a basket of shares of several issuers or an equity index, such as the Standard and Poor's 500 Index.

Floor Transaction. A transaction in which one party pays a single or periodic amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified per annum rate (in the case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in the case of a commodity floor) over a specified floating rate (in the case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in the case of a commodity floor).

Foreign Exchange Transaction. A deliverable or non-deliverable transaction providing for the purchase of one currency with another currency providing for settlement either on a "spot" or two-day basis or a specified future date.

Forward Rate Transaction. A transaction in which one party agrees to pay a fixed rate for a defined period and the other party agrees to pay a rate to be set on a specified date in the future. The payment calculation is based on a notional amount and is settled based, among other things, on the difference between the agreed forward rate and the prevailing market rate at the time of settlement.

Freight Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency based on a fixed price and the other party pays an amount or periodic amounts of the same currency based on the price of chartering a ship to transport wet or dry freight from one port to another; all calculations are based either on a notional quantity of freight or, in the case of time charter transactions, on a notional number of days.

Fund Option Transaction: A transaction in which one party grants to the other party (for an agreed payment or other consideration) the right, but not the obligation, to receive a payment based on the redemption value of a specified amount of an interest issued to or held by an investor in a fund, pooled investment vehicle or any other interest identified as such in the relevant Confirmation (a "Fund Interest"), whether i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests in relation to a specified strike price. The Fund Option Transactions will generally be cash settled (where settlement occurs based on the excess of such redemption value over such specified strike price (in the case of a call) or the excess of such specified strike price over such redemption value (in the case of a put) as measured on the valuation date or dates relating to the exercise date).

Fund Forward Transaction: A transaction in which one party agrees to pay an agreed price for the redemption value of a specified amount of i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests at a future date and the other party agrees to pay a price for the redemption value of the same amount of the same Fund Interests to be set on a specified date in the future. The payment calculation is based on the amount of the redemption value relating to such Fund Interest and generally cash-settled (where settlement occurs based on the difference between the agreed forward price and the redemption value measured as of the applicable valuation date or dates).

Fund Swap Transaction: A transaction a transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency based on the redemption value of i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests.

Interest Rate Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an interest rate either exceeds (in the case of a call option) or is less than (in the case of a put option) a specified strike rate.

Interest Rate Swap. A transaction in which one party pays periodic amounts of a given currency based on a specified fixed rate and the other party pays periodic amounts of the same currency based on a specified floating rate that is reset periodically, such as the London inter-bank offered rate; all calculations are based on a notional amount of the given currency.

Longevity/Mortality Transaction. (a) A transaction employing a derivative instrument, such as a forward, a swap or an option, that is valued according to expected variation in a reference index of observed demographic trends, as exhibited by a specified population, relating to aging, morbidity, and mortality/longevity, or (b) A transaction that references the payment profile underlying a specific portfolio of longevity- or mortality- contingent obligations, e.g. a pool of pension liabilities or life insurance policies (either the actual claims payments or a synthetic basket referencing the profile of claims payments).

Physical Commodity Transaction. A transaction which provides for the purchase of an amount of a commodity, such as oil including oil products, coal, electricity or gas, at a fixed or floating price for actual delivery on one or more dates.

Property Index Derivative Transaction. A transaction, often structured in the form of a forward, option or total return swap, between two parties in which the underlying value of the transaction is based on a rate or index based on residential or commercial property prices for a specified local, regional or national area.

Repurchase Transaction. A transaction in which one party agrees to sell securities to the other party and such party has the right to repurchase those securities (or in some cases equivalent securities) from such other party at a future date.

Securities Lending Transaction. A transaction in which one party transfers securities to a party acting as the borrower in exchange for a payment or a series of payments from the borrower and the borrower's obligation to replace the securities at a defined date with identical securities.

Swap Deliverable Contingent Credit Default Swap. A Contingent Credit Default Swap under which one of the Deliverable Obligations is a claim against the Reference Entity under an ISDA Master Agreement with respect to which an Early Termination Date (as defined therein) has occurred.

Swap Option. A transaction in which one party grants to the other party the right (in consideration for a premium payment), but not the obligation, to enter into a swap with certain specified terms. In some cases the swap option may be settled with a cash payment equal to the market value of the underlying swap at the time of the exercise.

Total Return Swap. A transaction in which one party pays either a single amount or periodic amounts based on the total return on one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity"), calculated by reference to interest, dividend and fee payments and any appreciation in the market value of each Reference Obligation, and the other party pays either a single amount or periodic amounts determined by reference to a specified notional amount and any depreciation in the market value of each Reference Obligation.

A total return swap may (but need not) provide for acceleration of its termination date upon the occurrence of one or more specified events with respect to a Reference Entity or a Reference Obligation with a termination payment made by one party to the other calculated by reference to the value of the Reference Obligation.

Weather Index Transaction. A transaction, structured in the form of a swap, cap, collar, floor, option or some combination thereof, between two parties in which the underlying value of the transaction is based on a rate or index pertaining to weather conditions, which may include measurements of heating, cooling, precipitation and wind.

Appendix B
(September 2009)

CERTAIN COUNTERPARTY TYPES

Description	**Covered by opinion**	**Legal form(s)**
Bank/Credit Institution. A legal entity, which may be organized as a corporation, partnership or in some other form, that conducts commercial banking activities, that is, whose core business typically involves (a) taking deposits from private individuals and/or corporate entities and (b) making loans to private individual and/or corporate borrowers. This type of entity is sometimes referred to as a "commercial bank" or, if its business also includes investment banking and trading activities, a "universal bank". (If the entity only conducts investment banking and trading activities, then it falls within the "Investment Firm/Broker Dealer" category below.) This type of entity is referred to as a "credit institution" in European Community (**EC**) legislation. This category may include specialised types of bank, such as a mortgage savings bank (provided that the relevant entity accepts deposits and makes loans), or such an entity may be considered in the local jurisdiction to constitute a separate category of legal entity (as in the case of a building society in the United Kingdom (**UK**)).	Yes, provided it takes the form of a Company or a Branch	A company incorporated in Singapore under the Companies Act, Chapter 50 (a "**Company**") or a foreign corporation registered in Singapore as a branch under the Companies Act, Chapter 50 (a **Branch**")
Central Bank. A legal entity that performs the function of a central bank for a Sovereign or for an area of monetary union (as in the case of the European Central Bank in respect of the euro zone).	No[24]	

[24] Consideration of the position with regard to this counterparty type requires further legal analysis and is thus outside the scope of this memorandum.

Description	Covered by opinion	Legal form(s)
Corporation. A separate legal entity that is organized as a corporation or company rather than a partnership, is engaged in industrial and/or commercial activities and does not fall within one of the other categories in this Appendix B.	Yes, provided it takes the form of a Company or a Branch	
Hedge Fund/Proprietary Trader. A legal entity, which may be organized as a corporation, partnership or in some other legal form, the principal business of which is to deal in and/or manage securities and/or other financial instruments and/or otherwise to carry on an investment business predominantly or exclusively as principal for its own account.	Yes, provided it takes the form of a Company, a Branch, an LLP or a Trust	
Insurance Company. A legal entity, which may be organised as a corporation, partnership or in some other legal form (for example, a friendly society or industrial & provident society in the UK), that is licensed to carry on insurance business, and is typically subject to a special regulatory regime and a special insolvency regime in order to protect the interests of policyholders.	Yes, provided that it takes the form of a Company or a Branch, and in the case of a licensed insurer under the Insurance Act, all transactions entered into by it under the ISDA Master Agreement are, and all Collateral posted by it in respect of such Transactions is, attributable to the same insurance fund maintained by the insurer under the Insurance Act.	
International Organization. An organization of Sovereigns established by treaty entered into between the Sovereigns, including the International Bank for Reconstruction and Development (the World Bank), regional development banks and similar organizations	No[25]	

[25] Consideration of the position with regard to this counterparty type requires further legal analysis and is thus outside the scope of this memorandum.

Description	Covered by opinion	Legal form(s)
established by treaty.		
Investment Firm/Broker Dealer. A legal entity, which may be organized as a corporation, partnership or in some other form, that does not conduct commercial banking activities but deals in and/or manages securities and/or other financial instruments as an agent for third parties. It may also conduct such activities as principal (but if it does so exclusively as principal, then it most likely falls within the "Hedge Fund/Proprietary Trader" category above.) Its business normally includes holding securities and/or other financial instruments for third parties and operating related cash accounts. This type of entity is referred to as a "broker-dealer" in US legislation and as an "investment firm" in EC legislation.	Yes, provided it takes the form of a Company, a Branch, or an LLP and (in each case it is transacting as principal and not as trustee, agent or in some other capacity), or the form of a Trust acting through a Trustee (where the Trustee is acting solely in its capacity as trustee of the Trust).	
Investment Fund. A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide investors with a share in profits or income arising from property acquired, held, managed or disposed of by the manager(s) of the legal entity or arrangement or a right to payment determined by reference to such profits or income. This type of entity or arrangement is referred to as a "collective investment scheme" in EC legislation. It may be regulated or unregulated. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by general law and/or, typically in the case of regulated Investment Funds, financial services legislation. Where the arrangement does not have separate legal personality, one or more representatives of the Investment Fund (for example, a trustee of a unit trust) contract on behalf of the Investment Fund, are owed the rights and owe the obligations provided for in the contract and are entitled to be indemnified out of the assets comprised in the arrangement.	Yes, provided it takes the form of a Company, a Branch, or an LLP and (in each case it is transacting as principal and not as trustee, agent or in some other capacity), or the form of a Trust acting through a Trustee (where the Trustee is acting solely in its capacity as trustee of the Trust).	

Description	Covered by opinion	Legal form(s)
Local Authority. A legal entity established to administer the functions of local government in a particular region within a Sovereign or State of a Federal Sovereign, for example, a city, county, borough or similar area.	No[26]	
Partnership. A legal entity or form of arrangement without legal personality that is (a) organised as a general, limited or some other form of partnership and (b) does not fall within one of the other categories in this Appendix B. If it does not have legal personality, it may nonetheless be treated as though it were a legal person for certain purposes (for example, for insolvency purposes) and not for other purposes (for example, tax or personal liability).	No[27]	
Pension Fund. A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide pension benefits to a specific class of beneficiaries, normally sponsored by an employer or group of employers. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by pensions legislation. Where the arrangement does not have separate legal personality, one or more representatives of the Pension Fund (for example, a trustee of a pension scheme in the form of a common law trust) contract on behalf of the Pension Fund and are owed the rights and owe the obligations provided for in the contract and are entitled to be indemnified out of the assets comprised in the arrangement.	Yes, provided it takes the form of a Company, a Branch, or an LLP and (in each case it is transacting as principal and not as trustee, agent or in some other capacity), or the form of a Trust acting through a Trustee (where the Trustee is acting solely in its capacity as trustee of the Trust).	
Sovereign. A sovereign nation state recognized	No[28]	

[26] Consideration of the position with regard to this counterparty type requires further legal analysis and is thus outside the scope of this memorandum.

[27] Consideration of the position with regard to this counterparty type requires further legal analysis and is thus outside the scope of this memorandum. LLPs, which are in-scope for this opinion, are distinct from partnerships and limited partnerships.

Description	Covered by opinion	Legal form(s)
internationally as such, typically acting through a direct agency or instrumentality of the central government without separate legal personality, for example, the ministry of finance, treasury or national debt office. This category does not include a State of a Federal Sovereign or other political sub-division of a sovereign nation state if the sub-division has separate legal personality (for example, a Local Authority) and it does not include any legal entity owned by a sovereign nation state (see "Sovereign-owned Entity").		
Sovereign Wealth Fund. A legal entity, often created by a special statute and normally wholly owned by a Sovereign, established to manage assets of or on behalf of the Sovereign, which may or may not hold those assets in its own name. Such an entity is often referred to as an "investment authority". For certain Sovereigns, this function is performed by the Central Bank, however for purposes of this Appendix B the term "Sovereign Wealth Fund" excludes a Central Bank.	Yes, provided it takes the form of a Company or a Branch	
Sovereign-Owned Entity. A legal entity wholly or majority-owned by a Sovereign, other than a Central Bank, or by a State of a Federal Sovereign, which may or may not benefit from any immunity enjoyed by the Sovereign or State of a Federal Sovereign from legal proceedings or execution against its assets. This category may include entities active entirely in the private sector without any specific public duties or public sector mission as well as statutory bodies with public duties (for example, a statutory body charged with regulatory responsibility over a sector of the domestic economy). This category does not include local governmental authorities (see "Local Authority").	Yes, provided it takes the form of a Company or a Branch	

[28] Consideration of the position with regard to this counterparty type requires further legal analysis and is thus outside the scope of this memorandum.

Description	Covered by opinion	Legal form(s)
State of a Federal Sovereign. The principal political sub-division of a federal Sovereign, such as Australia (for example, Queensland), Canada (for example, Ontario), Germany (for example, Nordrhein-Westfalen) or the United States of America (for example, Pennsylvania). This category does not include a Local Authority.	No[29]	

[29] Consideration of the position with regard to this counterparty type requires further legal analysis and is thus outside the scope of this memorandum.

APPENDIX C

[MAS Letter to ISDA]

APPENDIX D

Carve-outs from Judicial Management and Schemes of Arrangement Moratoria

1. Transaction Level Carve-Outs

1.1 Pursuant to the Companies (Prescribed Arrangements) Regulations 2017, the exercise of all legal rights under any "security interest arrangement" is carved-out from the scope of the JM Order Moratorium, the SOA Automatic Moratorium, the SOA Court-ordered Moratorium and the SOA Related Company Moratorium.

1.2 In this connection, “security interest arrangement” means an arrangement under which:

(a) a mortgage, charge, pledge, lien or other type of security interest recognised by law is created; and

(b) that mortgage, charge, pledge, lien or other type of security interest secures an obligation under any of the following:

(i) a securities contract;

(ii) a derivatives contract;

(iii) a master netting agreement;

(iv) a securities lending or repurchase agreement;

1.3 “Securities contract” means a contract for or with a view to acquiring, disposing of, subscribing for, or underwriting securities.

1.4 “Derivatives contract” means any contract or arrangement under which:

(a) a party to the contract or arrangement is required to, or may be required to, discharge all or any of its obligations under the contract or arrangement at some future time; and

(b) the value of the contract or arrangement is determined (whether directly or indirectly, or whether wholly or in part) by reference to, is derived from, or varies by reference to, either of the following:

(1) the value or amount of one or more “underlying things”;

(2) fluctuations in the values or amounts of one or more underlying things,

but does not include:

(i) securities;

(ii) a deposit as defined in section 4B of the Banking Act, Chapter 19 of Singapore, where the deposit is accepted by a bank licensed under that Act or a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act , Chapter 186 of Singapore;

(iii) a deposit as defined in section 2 of the Finance Companies Act, Chapter 108 of Singapore, where the deposit is accepted by a finance company as defined in that section of that Act; and

(iv) any contract of insurance in relation to any class of insurance business specified in section 2(1) of the Insurance Act, Chapter 142 of Singapore.

1.5 "Underlying thing" is defined to mean:

(a) a unit in a collective investment scheme;

(b) a commodity;

(c) a financial instrument. This is defined under Section 2(1) of the SFA to include any currency, currency index, interest rate, interest rate instrument, interest rate index, securities, securities index, a group or groups of such financial instruments, and any other thing that is prescribed by the MAS in regulations;

(d) the price of transporting goods as freight or of hiring vessels for the purpose of transporting goods;

(e) the credit of any person;

(f) a numerical indicator, model or statistic relating to weather;

(g) a numerical indicator, model or statistic relating to the emission of pollutants;

(h) real property; or

(i) a numerical indicator, model or statistic that is a measure of economic performance or economic conditions.

~~(d) goods transported by freight; or~~

~~(e) the credit of any person.~~

1.6 "Master netting agreement" means an agreement under which 2 or more claims or obligations under one or more of the following:

(a) securities contracts;

(b) derivatives contracts;

(c) securities lending or repurchase agreements;

(d) spot contracts,

can be converted into a net claim or obligation, and includes an agreement under which actual or theoretical debts arising under or in connection with a contract or an agreement mentioned in paragraph (a), (b), (c) or (d) are calculated and:

(i) set off against each other; or

(ii) converted into a net debt.

1.7 "Securities lending or repurchase agreement" means an agreement under which:

(a) a person (called in this definition the transferor) transfers the legal interest in any certificates of deposit, banker's acceptances or securities (called in this definition the transferred securities) to another person (called in this definition the transferee);

(b) the transferor reacquires the transferred securities or acquires equivalent certificates of deposit, banker's acceptances or securities from the transferee:

(i) at a later time not later than one year after the date of the transfer mentioned in paragraph (a); or

(ii) on demand;

(c) the transferor retains the risk of loss or opportunity for gain in respect of the transferred securities;

(d) the transferor does not dispose of (by transfer, declaration of trust or otherwise) the right to receive any part of the total consideration payable or to be given by the transferee under the agreement; and

(e) if any distribution is made in respect of the transferred securities during the period between the date of the transfer mentioned in paragraph (a) and the date of the reacquisition mentioned in paragraph (b), the transferor receives from the transferee the distribution or compensatory payment equal to the value of the distribution.

1.8 "Spot contract" means a contract or an arrangement for the sale or purchase of any currency or commodity at the spot price, where it is intended for a party to the contract or arrangement to take delivery of the currency or commodity immediately or within a period which must not be longer than the period determined by the market convention for delivery of the currency or commodity.~~"Spot contract" means a contract for the sale of a foreign currency or commodity at its market price on the spot date, where the contract provides for the delivery of that foreign currency or commodity.~~

1.9 The list of transactions that forms the subject of the carve-outs is exhaustive. Accordingly, care should be exercised to ensure that the specific Transaction in question falls within the definitions set out above. If a Transaction is not covered by the list, it would not be carved out from the scope of the moratoria. ~~there are certain types of Transactions set out in Appendix A that are not covered by the carve-outs:~~

~~(a) Economic Statistic Transactions;~~

~~(b) Emissions Allowance Transactions;~~

~~(c) Longevity/Mortality Transactions;~~

~~(d) Property Index Derivative Transactions;~~

~~(e) Weather Index Transactions;~~

~~(f) Repurchase Transactions, to the extent that they do not fall within the specific conditions of the definition of "securities lending or repurchase agreement"; and~~

~~(g) Securities Lending Transactions, to the extent that they do not fall within the specific conditions of the definition of "securities lending or repurchase agreement".~~

~~1.10 With regards to spot foreign exchange contracts and spot commodity contracts, there is some ambiguity as to whether the requirement for delivery means that the carve-out is limited only to spot foreign exchange or commodity contracts which are physically delivered. There is also ambiguity as to whether "foreign currency" would include Singapore dollars.~~

2. Entity Level Carve-outs

2.1 Pursuant to the Companies (Prescribed Companies and Entities) Order 2017, certain entities are carved out from the scope of the SOA Automatic Moratorium and the SOA Court-ordered Moratorium:

(a) a company that is a bank;

(b) a company that is an airport licensee licensed under section 36 of the Civil Aviation Authority of Singapore Act, Chapter 41 of Singapore;

(c) a company that is a licensee for the provision of district cooling services licensed under section 10 of the District Cooling Act, Chapter 84A of Singapore;

(d) a company that is an electricity licensee licensed under section 9 of the Electricity Act, Chapter 89A of Singapore;

(e) a company that is a public waste collector licensee licensed under section 31 of the Environmental Public Health Act, Chapter 95 of Singapore;

(f) a company that is a finance company licensed under section 6 of the Finance Companies Act, Chapter 108 of Singapore;

(g) a company that is a gas transporter or an LNG terminal operator licensed under section 7 of the Gas Act, Chapter 116A of Singapore;

(h) a company that is an approved securitisation company as defined in section 13P(4) of the Income Tax Act, Chapter 134 of Singapore;

(i) a company that is a licensed insurer licensed under section 8 of the Insurance Act, Chapter 142 of Singapore;

(j) a company that is a public licensee licensed under section 81 of the Maritime and Port Authority of Singapore Act, Chapter 170A of Singapore to provide any port service or facility relating to any container terminal service or facility;

(k) a company that is a merchant bank, or any other financial institution, approved under section 28 of the Monetary Authority of Singapore Act, Chapter 186 of Singapore;

(l) a company that is a licensee licensed to operate a rapid transit system under section 13 of the Rapid Transit Systems Act, Chapter 263A of Singapore;

(m) a company that is a specified telecommunication licensee declared under section 32H of the Telecommunications Act, Chapter 323 of Singapore; and

(n) a company that is a covered bond special purpose vehicle.

2.2 There is a technical question as to whether the entity carve-outs extend to the SOA Related Company Moratorium, where the related company falls within one of the classes of entities set out in paragraph 2.1 above. This ambiguity arises as, on one hand, "company" for the purposes of moratoria provisions under Section 211B is defined in Section 211A, and the exclusions under the Companies (Prescribed Companies and Entities) Order 2017 are similarly prescribed with reference to Section 211A, while on the other hand, the SOA Related Company Moratorium applies to "subsidiaries" and "holding

companies", which are defined in Section 5 of the Companies Act, and cross-refer to the definition of a "corporation" under Section 4 of the Companies Act. There are no carve-outs prescribed in relation to the definition of "corporation" under Section 4 of the Companies Act. On a technical reading, it could therefore be argued that the carve-outs do not apply to subsidiaries and holding companies for the purposes of the SOA Related Company Moratorium. However, we believe that the better view is that the carve-outs should also apply to subsidiaries and holding companies that fall within the list of prescribed entities. Firstly, the carve-outs are prescribed in respect of the definition of "company" under Sections 211B to 211J, which suggests that the policy intention is for the carve-outs to extend to Section 211C. Secondly, MinLaw stated in its response to feedback from public consultation on the draft Companies (Amendment) Bill 2017 that it recognised that the new schemes may not be appropriate for all types of potential debtors. MinLaw stated that "In the case of regulated financial institutions, the resolution regime administered by the Monetary Authority of Singapore ("**MAS**") provides a more appropriate mechanism for such entities, as compared to a scheme of arrangement or judicial management. […] In order to cater for appropriate exclusions, the revised Bill empowers the Minister to exclude companies or classes of companies, such as financial institutions, from the new scheme provisions and judicial management." If such entities are expressly carved-out from the moratoria under schemes of arrangement, Section 211C should not afford a backdoor by which to circumvent the carve-outs.

~~APPENDIX E~~

~~[Note by Indranee Rajah]~~