MEMORANDUM OF LAW
FOR THE INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC.

Enforceability of the Termination, Close out Netting and Multibranch Provisions of the ISDA 1992 and 2002 Master Agreements

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1 Introduction

1.1 This Memorandum of Law deals with the enforceability of the termination, bilateral close-out netting and multibranch netting provisions contained in the 1992 ISDA Master Agreement (Multi-Currency – Cross Border) (the "Cross Border Master Agreement") and the 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction) (the "Single Jurisdiction Master Agreement") and, together with the Cross Border Master Agreement, the "1992 Master Agreements") and the 2002 ISDA Master Agreement (English/New York law) (the "2002 ISDA Master Agreement") the 2002 ISDA Master Agreement (French law) (the "2002 ISDA Master Agreement (French law)" and the 2002 ISDA Master Agreement (Irish law) (the "2002 ISDA Master Agreement (Irish Law)") and, together with the 2002 ISDA Master Agreement and the 2002 ISDA Master Agreement (French law), the "2002 Master Agreement Agreements" and together with the 1992 Master Agreements, the "Master Agreements" and each a "Master Agreement") against:

1.1.1 a company, including any exempted company (including segregated portfolio company), ordinary resident company, ordinary non-resident company and limited duration company (the "Company") incorporated under the Companies Law (2016 Revision) (the "Companies Law");

1.1.2 branches established or located in the Cayman Islands of companies incorporated or organised outside the Cayman Islands;

1.1.3 limited liability companies (each, an "LLC") formed under the laws of the Cayman Islands under the Limited Liability Companies Law, 2016 (2020 Revision) (the "LLC Law");

1.1.4 a company incorporated in the Cayman Islands acting as trustee (the "Trustee") of a Cayman Islands law governed trust (the "Trust");

1.1.5 an exempted limited partnership (an "Exempted Limited Partnership") established under the Exempted Limited Partnership Law, 2014 (2018 Revision) (the "Exempted Limited Partnership Law") or a limited partnership (together with an Exempted Limited Partnership, each a "Partnership"), established under the Partnership Law (2013 Revision) (the "Partnership Law"), each with one or more general partners (together and individually, the "General Partner").

1.2 Capitalized terms used in this Memorandum, which are not defined, have the meaning given to them in the Master Agreements as the context requires.

1.3 This Memorandum addresses the efficacy and enforceability of the termination, close-out netting and multibranch netting provisions of the Master Agreements without reference to any specific facts or circumstances. In view of this, the application of the principles set out in this Memorandum may varying depending upon the particular set of circumstances.

1.4 We have not made any independent examination of the laws of any jurisdiction other than the Cayman Islands or of the extent to which such laws may govern or affect the
transactions contemplated by the Master Agreements and we do not express or imply any views on any such laws in this Memorandum.

1.5 The views hereinafter expressed are given only as to circumstances existing on the date hereof and known to us and are limited to the laws of the Cayman Islands as in force on the date hereof.

1.6 We have reviewed the Master Agreements for the purposes of the opinions expressed in this Memorandum and have assumed that each Master Agreement will be entered into by the Company, the LLC, the Trustee as trustee of the Trust or a Partnership acting by its General Partner (the "Cayman Party") and a counterparty (the "Counterparty") and, pursuant to the terms of each Master Agreement, such parties will enter into Transactions of the type described in Appendix A to this Memorandum. The analysis in this Memorandum covers a Cayman Party which is a form of counterparty listed in Appendix B and also, subject to the discussion in paragraphs 4.13 - 4.18, a Cayman Party which is a Company registered as a segregated portfolio company under the Companies Law.

1.7 References in this Memorandum to the insolvency of a Cayman Party include:

1.7.1 in respect of a Trust, where the assets of the Trust are insufficient to meet liabilities incurred by the Trustee as trustee of the Trust; and

1.7.2 in respect of a Partnership, where the assets of the Partnership are insufficient to meet Partnership liabilities.

1.8 Paragraphs 4.19 – 4.32 and 4.33 - 4.47 below consider the legal nature of Trusts and Partnerships (other than Exempted Limited Partnerships) under Cayman Islands law.

1.9 The conclusions in this Memorandum in relation to a Company apply equally to the LLC, save where expressly stated otherwise.

2 Summary of Advice

On the basis of assumptions and qualifications in this Memorandum, we set out below a summary of our advice.

2.1 The provisions of the Master Agreements automatically terminating the Transactions or providing for the Non-Defaulting Party to terminate the Transactions upon the insolvency of the Cayman Party are enforceable.

2.2 If the Cayman Party is a Company, a LLC and an Exempted Limited Partnership, the provisions of the Master Agreements providing for the netting of termination values to determine a single lump-sum termination payment will be enforceable upon the insolvency of the Company, the LLC and the Exempted Limited Partnership.

2.3 If the Cayman Party is a Trust or a Partnership (other than an Exempted Limited Partnership) the close-out netting provisions will be enforceable if they take effect under the Governing Law as the termination of executory obligations or the non-fulfilment of conditions related to conditional obligations and their replacement with one agreed contractual payment (i.e. as a contractual accounting). If the close out netting provisions do not take effect under the Governing Law in this way, the close out netting provisions should be enforceable upon the insolvency of a Cayman Party that is a Trust or a Partnership (other than an Exempted Limited Partnership) as a valid contractual set off.
2.4 Claims in a winding up of a Cayman Party that is a Company, a LLC or an Exempted Limited Partnership must usually be converted into Cayman Islands Dollars or the functional currency of account determined in accordance with applicable accounting principles of the insolvent party. A similar rule should apply to Trusts and Partnerships because although there are no separate insolvency regimes as such for Trusts or Partnerships (other than Exempted Limited Partnerships), they may be wound up in certain circumstances by applying the principles in the Companies Law.

2.5 In the event of any proceedings being brought in the Cayman Islands in respect of a monetary obligation expressed to be payable in a foreign currency, we believe a Cayman Islands court would give judgment expressed as an order to pay that foreign currency or its Cayman Islands Dollar equivalent at the time of payment or enforcement of the judgment. There is no statutory enforcement of foreign money judgments (other than ones obtained from certain territories in Australia) but such foreign money judgments can be recognized as the basis of a claim in the Cayman Islands subject to satisfying certain conditions (see paragraph 4.53 below).

2.6 If a multibranch party which is a bank incorporated in the Cayman Islands enters into Transactions through its head office in the Cayman Islands and certain foreign branches the above conclusions will continue to apply although as a practical matter, if foreign insolvency proceedings have commenced in relation to a foreign branch, there may be practical issues in giving effect to close out netting which involves Transactions entered into by the foreign branch if close out netting is unenforceable in that jurisdiction.

2.7 In accordance with the Companies Law, the Cayman Islands court may make winding up orders in respect of:

   2.7.1 a company incorporated and registered under the Companies Law,

   2.7.2 a body incorporated under any other law; and

   2.7.3 a foreign company which:

   (a) has property located in the Cayman Islands;

   (b) is carrying on business in the Cayman Islands;

   (c) is the General Partner of a limited partnership; or

   (d) is registered under Part IX of the Companies Law.

However, notwithstanding the ability of the Cayman Islands court to make a winding up order in respect of a foreign company, we believe that insolvency proceedings are more likely to be opened in the jurisdiction of incorporation of the foreign company (or where the foreign company's centre of main interests is located), rather than in the Cayman Islands.

It should be noted that the Cayman Islands court may make a winding up order in respect of a LLC pursuant to Section 35 and 37 of the LLC Law.

In addition, we believe that the Cayman Islands Monetary Authority has the authority to commence insolvency or winding up proceedings in respect of regulated entities, including banks licensed under the Banks and Trust Companies Law (20132020 Revision) (the
"Banks and Trust Companies Law"), including any branch of a foreign entity. There is a judgment of the Grand Court which takes a contrary view to this position but we believe the case was a decision on its facts which should not be generally applied and does not, we believe, represent the position at law. Furthermore, even if we are wrong and the decision does represent the position at law it should not affect any of the conclusions in this Memorandum. As a practical matter a controller or liquidator appointed pursuant to a regulatory law may defer to any foreign proceedings and cooperate with the insolvency official in the foreign proceedings in relation to any Cayman assets. A local creditor could not initiate separate proceedings under the regulatory laws.

2.8 There is no authority on how a controller or liquidator of a foreign bank appointed pursuant to the Banks and Trust Companies Law would exercise his powers. However, we believe the close-out netting provisions of the Master Agreements would be enforceable to the same extent as if the foreign bank were established in the Cayman Islands.

2.9 The Master Agreement would be treated as a single, unified agreement by an insolvency official under the laws of the Cayman Islands, assuming the same is true as a matter of the governing law of such Master Agreement. The view taken by an insolvency official in the place of incorporation of a foreign bank or location of a foreign branch would not in principle affect the answer.

2.10 The inclusion of the Force Majeure Event would not affect our analysis of the close-out netting provision.

2.11 The inclusion of the Close-out Amount in lieu of the prior choice between Market Quotation and Loss would not affect our opinion on the enforceability of the termination, close-out netting and multi-branch netting provisions of the 2002 Master Agreement.

2.12 The inclusion of section 6(f) does not affect the above analysis of the close-out netting provisions.

2.13 The amendments made by the ISDA Close Out Amount Protocol published on 27 February 2009 do not affect our opinion on the enforceability of the termination, close-out netting and multi-branch netting provisions of the 2002 Master Agreement.

2.14 The June 2014 amendment to the ISDA Master Agreement does not have a material and adverse effect on our conclusions in this Memorandum.

3 Assumptions

3.1 In relation to the Master Agreements we have made the following assumptions:

3.1.1 the provisions of the Master Agreements have not been altered in any material respect (the selections contemplated by sections 5 and 6 of the Master Agreements would not be considered material for these purposes);

3.1.2 the Transactions entered into by the Cayman Party and the Counterparty pursuant to the Master Agreements provide for cash payments or for the physical delivery of shares, bonds or commodities in exchange for cash;

3.1.3 the parties have selected the second method as the payment method and have selected either Market Quotation or Loss as the payment measure for the purposes
of section 6 of the 1992 Master Agreements (the choice does not affect the analysis or conclusions);

3.1.4 the selection of the governing law (the "Governing Law") of the Master Agreements, being New York, or, English law, French law or Irish has been or will be made in good faith and is or will be binding as a matter of the Governing Law;

3.1.5 other than in relation to the opinions expressed in paragraph 4, that the Cayman Party is not acting as a multibranch party in entering into the Master Agreements; and

3.1.6 subject to the discussion in relation to the nature of Trusts and Partnerships below, each Cayman Party and Counterparty is personally liable as principal for its obligations and beneficially entitled as principal to its benefits under the Master Agreements (the analysis of multibranch parties will not be affected by this assumption to the extent the branches and head office are part of the same legal entity).

3.2 We have made the following further general assumptions:

3.2.1 the Master Agreements, each Transaction and each related Confirmation will be validly authorised, executed and unconditionally delivered by or on behalf of each party and will constitute legal, valid, binding and enforceable obligations of each party in accordance with their respective terms as a matter of the Governing Law and all other relevant laws, other than, with respect to section 2 and section 6 of the Master Agreements, the close-out netting provisions;

3.2.2 in so far as any obligation under the Master Agreements or any Transaction, including (for example, the obligation to make payments at a particular place or in a particular currency), is to be performed in any jurisdiction outside the Cayman Islands, its performance will not be illegal or ineffective by virtue of the law of that jurisdiction;

3.2.3 the Master Agreements and any Transaction are entered into in good faith and in the normal course of business and not with an intent to prefer, or at an undervalue or with an intent to defraud, any of their creditors and at a time which the Cayman Party and the Counterparty are solvent and not subject to any winding up proceedings;

3.2.4 in circumstances where the Cayman Party (including in the case of a Trust, the Trustee and, in the case of a Partnership, the General Partner) becomes insolvent and is the subject of winding-up proceedings, that such proceedings only take place in the Cayman Islands. (The position in relation to concurrent proceedings is considered briefly in paragraph 4.54.4.55 below);

3.2.5 factual representations, warranties and undertakings contained in the Master Agreements will be accurate and complied with and all preconditions of the parties to the Master Agreements have been satisfied or duly waived; and

3.2.6 there is nothing under any other applicable law (other than the laws of the Cayman Islands) which would or might affect any of the opinions in this Memorandum; and

3.2.7 for the purposes of this Memorandum, only the English language version of the 2002 ISDA Master Agreement (French law) has been reviewed and it is assumed there is
Questions

Termination upon Notice

Assuming the parties have not selected Automatic Early Termination upon certain insolvency events to apply to the Cayman Party, are the provisions of the Master Agreement permitting the Non-defaulting party to terminate all the Transactions upon the insolvency of the Cayman Party enforceable under Cayman Islands law?

4.1 We believe that notice under section 6(a) designating an Early Termination Date and terminating the obligations of each of the parties under all Transactions would be enforceable against the Cayman Party including in the event of voluntary or involuntary winding up or other insolvency proceeding of such party. We do not believe that any insolvency or other principles would apply to invalidate such termination because

4.1.1 to the extent the obligations in respect of Transactions are regarded under the Governing Law as conditional (upon an Early Redemption Date not having occurred or being designated), the condition has not been satisfied and there is therefore no further obligation: effectively the obligation is not terminated at all but rather the condition to its existence has not been satisfied; or

4.1.2 to the extent the obligations are in respect of Transactions which are executory contracts, there is English authority, which would be persuasive but not binding in the Cayman Islands courts, and long-standing commercial practice which recognises a party's right to terminate an executory contract for breach; and

4.1.3 amounts which have become unconditionally due are taken into account in the calculation of the single lump sum termination amount.

Automatic Termination

Assuming the parties have selected Automatic Early Termination upon certain insolvency events to apply to the Cayman Party, are the provisions of the Master Agreement automatically terminating all the Transactions upon the insolvency of the Cayman Party enforceable under Cayman Islands law?

4.2 We believe that effective contractual arrangements for the automatic termination of contracts would be respected in the Cayman Islands and therefore Automatic Early Termination would be enforceable in voluntary or involuntary winding up or other insolvency proceedings.

No Automatic Termination

Assuming the parties have not selected Automatic Early Termination upon certain insolvency events to apply to the insolvent counterparty organized in your jurisdiction, are the provisions of the ISDA Master Agreement permitting the Non-defaulting Party to terminate all the Transactions upon the insolvency of its counterparty enforceable under the law of your jurisdiction?"

4.3 We believe that effective contractual arrangements for the termination of Transactions upon the occurrence of an insolvency event applicable to the Cayman Party would be respected in...
the Cayman Islands and therefore non-automatic termination would be enforceable in voluntary or involuntary winding up or other insolvency proceedings.

Netting and Insolvency

Are the provisions of the Master Agreement providing for the netting of termination values in determining a single lump-sum termination amount upon the insolvency of the Cayman Party enforceable under Cayman Islands law?

4.4 Subject to the discussion below, we believe the netting of termination values to determine a single contractual payment would be or, in the case of a Trust or Partnership (other than an Exempted Limited Partnership) in circumstances where the contractual accounting analysis described below does not apply, should be enforceable against the Cayman Party including on the voluntary or involuntary winding up or other insolvency proceedings of such party.

Contractual Accounting

4.5 The close-out netting provisions may be regarded as a mere contractual accounting between the parties providing for the calculation of liquidated damages or an agreed termination payment rather than as a set-off subject to applicable insolvency rules including any requirement for pari passu distribution of the assets of the Cayman Party. Such calculation is effective under Cayman Islands law if it is a genuine and reasonable pre-estimate of each party's loss; if it constitutes a penalty, it will not be enforceable (see paragraph 4.48.5 below). We believe that the Cayman Islands courts should not regard the Close-Out Amount as determined in accordance with the Master Agreement, including the Quotation Method, where relevant, as constituting a penalty. The contractual accounting analysis would require that, under the Governing Law:

4.5.1 all the Transactions constitute one agreement between the Cayman Party and the Counterparty (this is expressly provided for in the Master Agreement);

4.5.2 the Transactions are entirely executory or are conditional obligations (this requirement will not be satisfied therefore to the extent obligations have fallen unconditionally due prior to the Early Termination Date);

4.5.3 in the event of the insolvency of the Cayman Party giving rise to an Event of Default (and assuming in the relevant case that notice of termination is given if this does not give rise to an Automatic Early Termination) the effect of section 6(e) under the Governing Law is to provide for the calculation of damages or for a contractually agreed payment due on early termination and not to create debts between the parties which are then offset; and

4.5.4 section 6(e) takes into account all the Transactions, as the case may be, under the Master Agreement in calculating the liquidated damages or agreed contractual amount payable by either party.

4.6 If section 6(e) cannot be analysed as a contractual accounting following the termination of obligations the following paragraphs consider the enforceability of the close-out netting provisions on the basis of netting and/or set off (as relevant) (the analysis is different depending upon whether the Cayman Party is a Company, a LLC, a Trustee acting as trustee of a Trust or a Partnership acting by its General Partner).
4.7 Agreements for the netting or set-off claims are generally effective in a winding-up of a Company, LLC or Exempted Limited Partnership. This is the case even where the netting or set-off is multi-lateral.

4.8 Upon the insolvency of a Company, Section 140(2) of the Companies Law provides, inter alios, that the collection in and application of the property of a Company is without prejudice to and after taking into account and giving effect to any contractual rights of set-off or netting of claims between the Company and any person or persons (including without limitation any bilateral or any multi-lateral set-off or netting arrangements between the Company and any person or persons), provided always that any such agreement between the Company and any person or persons has not been waived or limited in any way. Likewise, Section 37(3) of the LLC Law provides a similar provision in respect of LLC counterparties.

4.9 In accordance with the Exempted Limited Partnership Law, Section 140(2) of the Companies Law also applies upon the insolvency of an Exempted Limited Partnership.

4.10 We believe that section 6(e) would constitute an agreement for the netting or set-off of claims falling within Section 140(2) of the Companies Law which would be effective and enforceable on the winding-up of a Company, LLC or an Exempted Limited Partnership, subject to the following qualifications:

4.10.1 The right of netting or set-off under section 6(e) will be restricted to the extent that giving effect to such right deprives a secured creditor of one of the parties of a debt over which such creditor has taken security in circumstances where the security taken over the debt is not subject to the right of netting or set-off under section 6(e). In practice as the parties rights under the Master Agreement may not be assigned, charged or otherwise dealt with without the other party's written consent this is unlikely to be an issue. Furthermore, it is difficult to envisage a situation in which a party's rights under the Master Agreement could be assigned or charged otherwise than subject to the right of set-off contained in section 6(e).

4.10.2 If the claim against one of the parties is subordinated or deferred to other creditors, the right to net or set-off under section 6(e) will be restricted to the extent of such subordination or deferral. In practice, we assume that no agreement to subordinate or defer claims will be entered into by either party or, if one is, that appropriate advice will be obtained at that time concerning its effect.

4.11 Section 6(f) of the 2002 Master Agreements which provides for the set-off of further amounts between the Payee and the Payer, would not affect the analysis of the close-out netting provisions in section 6(e). We believe that section 6(f) of the 2002 Master Agreements would constitute an agreement for the set-off of claims falling within Section 140(2) of the Companies Law which would be effective and enforceable on the winding-up of a Company, LLC or an Exempted Limited Partnership, subject to the following qualifications:

4.11.1 The right of set-off under section 6(f) will be restricted to the extent that giving effect to such right deprives a secured creditor of one of the parties of a debt over which such creditor has taken security in circumstances where the security taken over the debt is not subject to the right of set-off under section 6(f). In practice as the parties rights under the Master Agreement may not be assigned, charged or otherwise dealt
with without the other party's written consent this is unlikely to be an issue. Furthermore, it is difficult to envisage a situation in which a party's rights under the Master Agreement could be assigned or charged otherwise than subject to the right of set-off contained in section 6(f).

4.11.2 If the claim against one of the parties is subordinated or deferred to other creditors, the right to set-off under section 6(f) will be restricted to the extent of such subordination or deferral. In practice, we assume that no agreement to subordinate or defer claims will be entered into by either party or, if one is, that appropriate advice will be is obtained at that time concerning its effect.

4.12 The analysis above in relation to Companies can be read to apply to LLCs save that, subject to Section 38(2) as described above in Paragraph 4.8, the assets of an LLC shall be applied in the following order of priority as between creditors and members in a winding up:

4.12.1 first, pari passu to creditors whose status as such is not derived from their membership, if any, of the limited liability company; and

4.12.2 unless otherwise provided in the limited liability company agreement:

   (a) secondly, to persons who have become entitled to a distribution from the limited liability company in connection with an LLC interest, in order of priority of the time of such entitlement and to the extent thereof (and pari passu where entitlements are of equal priority); and

   (b) thirdly, to members in connection with and according to the rights of their LLC interest.

General Insolvency Issues Affecting Close-out Netting in Relation to Companies and Exempted Limited Partnerships, as applicable.

4.13 The enforceability of the close-out netting provisions will also be subject to general insolvency rules applicable to Companies and, in some cases, Exempted Limited Partnerships, including:

   (a) Voidable Preference under the Companies Law - the entry by a Company, a LLC or Exempted Limited Partnership into a Transaction at any time within the six months immediately preceding the commencement of its winding up is, depending on the exact facts, theoretically capable of constituting a voidable preference if the pre-conditions for a voidable preference under Section 145(1) of the Companies Law were present. In accordance with Section 145(1), every conveyance or transfer of property or charge therein, every payment, every obligation and every judicial proceeding made, incurred, taken or suffered by any Company, LLC or Exempted Limited Partnership which is unable to pay its debts as they become due from its own monies in favour of any creditor with a view to giving such creditor a preference over the other creditors will be invalid if made within, incurred, taken or suffered within six months immediately preceding the commencement of a liquidation. Cayman Islands law provides that there must be a dominant intention to prefer the creditor. If the Company's, LLC's or Exempted Limited Partnership's primary purpose in entering into the transaction was to achieve something other than preferring a creditor, then it should not be a voidable preference, even if preferring that creditor was a collateral effect of that payment. In practice, we believe it is unlikely the Company's, LLC's or Exempted Limited Partnership's entry into a
Transaction on an arm's length basis would be regarded as a voidable preference. It would be extremely difficult to infer the necessary intention to prefer one creditor over another as the sum payable by way of liquidated damages (if any) by one party on early termination is dependent upon movements in market rates over which the parties have no control. It would therefore be impossible to predict with certainty what the outcome will be at any time in the future. Section 145(1) only applies to Exempted Limited Partnerships upon an involuntary winding up or dissolution of such Exempted Limited Partnership.

(b) Avoidance of dispositions made at an undervalue under the Companies Law – in accordance with Section 146(2) of the Companies Law, every disposition of property made at an undervalue by or on behalf of a Company, LLC or Exempted Limited Partnership with intent to defraud its creditors shall be voidable at the instance of its official liquidator. The burden of establishing an intent to defraud for the purposes of section 146(2) shall be upon the official liquidator. See the comments below in relation to the Fraudulent Dispositions Law (1996 Revision).

(c) Intention to defraud - if in the course of the winding up of a Company, LLC or Exempted Limited Partnership it appears that any business of the Company, LLC or Exempted Limited Partnership has been carried on with intent to defraud its creditors shall be voidable at the instance of the creditors or any other person or for any fraudulent purpose the liquidator may apply to the Court for a declaration under Section 147(1) of the Companies Law. Section 147(1) shall apply to Exempted Limited Partnerships or LLCs upon an involuntary winding up or dissolution of such Exempted Limited Partnership or LLC.

(d) The Fraudulent Dispositions Law (1996 Revision) may have the effect of making a Transaction or a payment or transfer voidable (although it is not an insolvency related provision as such as it applies both pre and post insolvency). Under the Fraudulent Dispositions Law (1996 Revision) any disposition of property made with an intent to defraud (which means an intention wilfully to defeat an obligation owed to another creditor) and at an undervalue is voidable at the instance of the creditor thereby prejudiced. A creditor may only commence an action under this Law within 6 years of the relevant disposition. Given the requirement for undervalue (which means the provision of no consideration for the disposition or a consideration the value of which in money or money's worth is significantly less than the property the subject of the disposition) we believe it is unlikely that this Law would apply to Transactions made on arms' length terms or payments or transfers made pursuant to contractual obligations under such Transactions.

(e) There is a further circumstance in which a creditor of a Company may be made subject to an arrangement or compromise affecting his rights without his consent. A creditor of a Cayman Islands Company or LLC may have a compromise or arrangement imposed upon him under section 86(1) of the Companies Law or Section 42(1) of the LLC Law, as applicable, if a majority in number representing three fourths in value of the creditors (or class of creditors including the affected creditor) have approved a compromise or arrangement and it has been sanctioned by the Grand Court of the Cayman Islands. It may be that on a particular set of facts a Counterparty would constitute a separate class and therefore have the power to veto any such compromise or arrangement. A class is constituted by "those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to their acting in their common interest".
 Void dispositions - section 99 of the Companies Law provides that, when a winding up order has been made in respect of a Company, any disposition of the Company's property and any transfer of shares or alteration in the status of the Company's members made after the commencement of the winding up is, unless the Court otherwise orders, void. If the counterparty and the Company enter into Transactions or the Company makes a payment under a Transaction after the commencement of the Company's winding up without the approval of the Grand Court, such transaction or payment would be void.

We confirm that a liquidator of an insolvent Company in the Cayman Islands has no statutory right to disclaim onerous contracts or "cherry pick". Contracts are not automatically terminated by the liquidation of one of the parties (unless the contract specifically provides for this), nor is the other party released from its obligations. The liquidator succeeds to all the rights and obligations of the insolvent party and is not entitled to avoid obligations or other contractual consequences arising as a result of the liquidation.\(^1\) We believe also that a liquidator would have no common law right to disclaim onerous contracts based on the English case *In re Katherine et Cie, Limited* [1932] 1 Ch (which would be persuasive but not binding in the Cayman Islands): in this case there is a clear judicial statement that prior to the introduction of the statutory right of a liquidator to disclaim contracts in the English Companies Act of 1929, there was no common law right to do so. Even if we are wrong in our opinion that a Cayman Islands liquidator has no right to disclaim onerous contracts a liquidator certainly has no right to pick and choose between different parts of the same contract, in other words, to seek to enforce rights of the Company to cash payments or the delivery of physical securities under one Transaction, as the case may be, but to disclaim obligations to make the same under others. Accordingly, even if such a power does exist, it is still our opinion that the Master Agreement will be upheld against a liquidator to the extent that it (together with the Transactions) is construed as a single contract as a matter of the Governing Law.

In the context of proceedings taken against a partner of a partnership under the Bankruptcy Law, there are specific provisions in the Bankruptcy Law which allow a trustee in bankruptcy to disclaim onerous contracts. Whilst we believe that disclaimers could apply to rights of set off, we do not believe that it could apply to different parts of the same contract and any such disclaimer would apply only to entire contracts.

**Segregated Portfolio Companies**

4.14 Whilst segregated portfolio companies are subject to the insolvency provisions of the Companies Law there are particular rules which apply to them which are relevant to insolvency and netting (or set off). These are discussed below.

4.15 Under Part XIV of the Companies Law, the assets and liabilities of a segregated portfolio company are allocated to segregated portfolios as determined by the directors or to the general assets of the company. In order for any liability or asset to be binding on or enure to the benefit of a segregated portfolio, that liability or asset must be contracted for by the segregated portfolio company on behalf of the relevant segregated portfolio and any written contract must identify the relevant segregated portfolio to which such asset or liability

\(^1\) This is subject to two limited exceptions. First, where a contractual provision was not intended to apply in liquidation it may not bind the liquidator. Secondly, pursuant to the rule in *ex parte James*, a liquidator may not be able to rely on a contractual provision where it would be unfair on creditors for him to do so.
relates. Under the Companies Law, assets of a segregated portfolio may only be used to meet liabilities attributable to that segregated portfolio and are not available to meet liabilities attributable to any other segregated portfolio notwithstanding that the segregated portfolios are simply segregated pools of assets and liabilities of the same legal entity and the segregated portfolios themselves do not constitute separate legal entities. In a winding up of a segregated portfolio company, the liquidator is required to deal with the company's assets in discharge of liabilities attributable to a segregated portfolio in accordance with Part XIV and Section 140(2) of the Companies Law (which contain the statutory recognition of contractual rights to set off or net claims), which are to be applied to segregated portfolio companies in accordance with Part XIV. In the event of any conflict between Section 140(2) and Part XIV, Part XIV will prevail.

4.16 As a result of these provisions, we believe that it is not possible to provide for the netting (or set-off), both pre and post insolvency, of a liability attributable to one segregated portfolio against an asset attributable to another segregated portfolio notwithstanding that the liability and asset are the liability and asset of the same legal entity (i.e. the segregated portfolio company). This is because were such netting (or set off) to be permitted, the result would be that the assets of one segregated portfolio would be used to meet the liabilities of another which is prohibited under Part XIV. Although the position is not without doubt we believe cross segregated portfolio netting (or set off) may be permissible if the segregated portfolio which provides its assets does so as part of an arms' length transaction having regard just to that portfolio (i.e. for full value). If Transactions are entered into by different portfolios of the same segregated portfolio company under one Master Agreement it would not be possible therefore to apply the netting and set-off analysis under the Companies Law to the close-out netting provisions. To the extent the liquidated damages or contractually agreed termination payment analysis applies (see paragraph 4.5 above) this may be effective as it does not strictly involve using assets of one portfolio to settle liabilities of another, although some redrafting of the Master Agreement may be required to achieve this.

4.17 If multiple transactions are entered into with one segregated portfolio, the usual netting and set off rules in Section 140(2) of the Companies Law will continue to apply to the close-out netting provisions in respect of that segregated portfolio. It is likely that as a commercial matter the intention of the parties will be that a particular segregated portfolio should be treated like a separate legal entity and the parties will have no expectation of netting Transactions entered into with one segregated portfolio against those entered into with another.

4.18 The court also has the power to make receivership orders in respect of segregated portfolios where the court is satisfied that (i) the assets attributable to the segregated portfolio and, if relevant, the general assets of the company are or are likely to be insufficient to discharge the claims of creditors of that segregated portfolio in full and (ii) that the making of a receivership order would achieve the orderly closing down of the business carried on by the segregated portfolio and the distribution of the segregated portfolio assets attributable to the segregated portfolio to those entitled to have recourse to them. An application for a receivership order may be made by the segregated portfolio company itself, the directors of the company, any creditor of the company and any holder of shares referable to the relevant segregated portfolio and, if the segregated portfolio company is regulated by the Cayman Islands Monetary Authority, the Cayman Islands Monetary Authority.

4.19 A receivership order may not be made if the Company is already in winding up. A resolution for the voluntary winding up of a segregated portfolio company of which any segregated portfolio is subject to a receivership order is ineffective without leave of the court. There is no general requirement for creditors of a segregated portfolio to be notified in advance of an
application for a receivership order being made. This means that secured creditors will not be able to pre-empt the application for a receivership order by petitioning to wind up the Company unless they are otherwise aware that an application for a receivership order is to be made.

Netting and set-off - Trusts

The Nature of a Trust

4.20 A Trust is not a separate legal entity as a matter of Cayman Islands law. It is simply a fiduciary relationship whereby a fund is held by the Trustee that is subject to equitable obligations to deal with the fund under the terms of the trust instrument and in equity for the benefit of the beneficiaries who may enforce such equitable obligations.

4.21 The Trustee will typically although not necessarily delegate certain functions to advisors, managers or other agents who will often have the authority, based on such delegation, to act on behalf of the Trustee and to execute documents on its behalf.

4.22 The Trustee is personally liable for obligations it incurs, even if expressed to be incurred as trustee, in the sense that they are obligations of the Trustee and it can be sued personally on them. If it has duly entered into the obligations as trustee of the Trust, it will have a right to discharge those obligations out of the trust funds, or if it pays them out of its own resources, to be indemnified or reimbursed out of the trust funds (such indemnity may be excluded or limited in the trust deed). If the trust funds are insufficient to meet the liability in full (assuming the Trustee's right to the indemnity has not been excluded), the Trustee will be personally liable to the relevant creditor for the balance. Trusts therefore do not afford limited liability as a matter of their structure. It is permissible, however, for the Trustee to enter into contracts which themselves provide limitations of liability or recourse as a matter of contract. In certain circumstances the Trustee may also have a personal indemnity from the beneficiaries but this right is usually excluded in the trust deed.

4.23 The discussion below considers whether a set off right is enforceable viewed in the context of a solvent or insolvent Trust where the Trustee, being a Company incorporated in the Cayman Islands that has entered into a Cayman Islands law governed trust deed, is either solvent or subject to winding up proceedings in the Cayman Islands.

4.24 If the trustee of the Trust is not incorporated in the Cayman Islands then the insolvency rules of the jurisdiction in which the trustee is established will need to be investigated.

Close-out Netting: Solvent Trust, Insolvent Trustee

4.25 On a winding up of a Trustee, assets held by the Trustee as trustee and their proceeds (provided they have not been mixed with the general assets of the Trustee and are readily identifiable) would not be available to satisfy the claims of general creditors of the Trustee (as such assets and their proceeds will be held on trust for the beneficiaries of the Trust), except:

4.25.1 to the extent that the Trustee has a personal right against such assets under the Trust (e.g. an indemnity for expenses); or

4.25.2 in respect of a secured creditor granted security over assets of the Trust, such a creditor would be entitled to rely on such security interest in such assets (at least to
the extent the security was granted by the Trustee in accordance with its rights, powers and duties under the Trust).

4.26 If the Trust is solvent but the Trustee is in winding up proceedings, we believe that close-out netting under section 6(e) and the rights of set-off under 6(f) should be effective as a contractual matter and that no insolvency rule should apply to displace this. The insolvency rules applicable to companies incorporated in the Cayman Islands (in particular the requirement for pari passu distribution of assets) should not be relevant as the assets held by the Trustee as assets of the Trust (assuming they have not been mixed with the personal assets of the Trustee and are readily identifiable) are not available to the Trustee’s general creditors in any event. Furthermore, even if a pari passu rule did apply to the distribution of the assets of the Trust, the Trust is solvent and so all creditors in respect of obligations regarding the Trust can be paid in full (even if the Trustee's general creditors cannot).

Close-out Netting: Insolvent Trust, Solvent Trustee

4.27 There are no specific insolvency proceedings in the Cayman Islands applicable to an insolvent Trust and no specific rules regarding how assets related to an insolvent Trust will be distributed amongst the outstanding creditors in respect of the Trust. In such circumstances, where the Trust fund is insufficiently valuable to discharge the contractual obligations regarding the Trust, the Trustee will bear the shortfall itself unless its liability is expressly limited in recourse to the Trust assets as a contractual matter. If a creditor in respect of an obligation regarding the Trust has a valid security interest over the Trust assets, such a creditor should be able to realise his security out of the secured Trust assets ahead of the other creditors in respect of the Trust (subject to the application of general insolvency rules, for example, fraudulent preferred disposition – see further below). Where the Trustee is faced by claims of competing unsecured creditors in respect of obligations regarding the trust, there are no statutory rules as such which are applicable. The Trustee may therefore either: and, as far as we are aware, no relevant Cayman Islands case law. In our view, there are two alternative distribution methodologies which are likely to apply to the distribution of an insolvent trust’s assets:

4.27.1 choose to pay out creditors in the order that they make their claims: (when the Trustee would be bound by the contractual arrangements including any right of set off); or

4.27.1 first, by ranking in time, so that the liability which arose first would be met first2 (and in our view the contractual terms applying to the liability, including any right of set off would be binding on the trustee); or

4.27.2 secondly, on a pari passu basis.3

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2 On the basis of the equitable principle that where there are competing equities the first in time should prevail.
3 Either by analogy to the position under the Companies Law or because it is just and equitable to do so. It should be noted that the Royal Court of Jersey in Rawlinson & Hunter Trustees SA v Z II Trust & ors [2018] JRC 119 on an application for directions from a trustee applied a pari passu basis of distribution. This was primarily on the basis that it was just and equitable to do so. The decision of the Royal Court of Jersey is likely to be persuasive before a Cayman Islands court. This is particularly the case because the Royal Court of Jersey relied on a number of English and common law cases which are likely to be equally relevant should the matter come before the Cayman Islands court. We also note that the New Zealand and Australian courts have also applied a pari passu basis of distribution. Therefore, the direction of travel is that distributions should be made on a pari passu basis and we would expect, but could not guarantee, that if the matter came before a Cayman Islands court that they would apply a pari passu basis of distribution.
4.28 Given the uncertainty as to correct method of distribution, the Trustee might simply refer the matter to the court for a determination. The court has an equitable discretion to determine how to deal with matters arising in relation to the administration of a Trust, such as the payment of creditors to effect the orderly distribution of the Trust assets in such circumstances. We believe that there should be no basis on which a court may ignore an otherwise enforceable contractual set off in such proceedings, including in circumstances where the court might impose a pari passu basis of distribution of Trust assets (see the discussion in paragraphs 4.29 – 4.31 below).

4.29 Accordingly whether the Trustee elects simply to collect in assets and pay creditors itself or if the Trustee makes an application to the Cayman Islands Court for directions, we believe that there should be no basis arising out of the insolvency of the Trust on which the Trustee or a court (in an application under the Trusts Law (2017 Revision)) would refuse to enforce the close-out netting under section 6(e).

Close-out Netting: Insolvent Trust, Insolvent Trustee

4.30 If the Trust is insolvent and the Trustee is subject to winding up proceedings, then whilst the analysis in paragraph 4.25 would still be applicable in relation to the Trustee's general creditors, the Trustee would also be liable to creditors in respect of obligations regarding the Trust and hold assets of the Trust (and its own general assets which would also be available to such creditors assuming the obligations regarding the Trust are not limited in recourse to the trust assets) which are insufficient to meet such obligations. In the absence of any insolvency rules applicable to Trusts as such, it is likely that if the matter came before a Cayman Islands court (because orders are sought from the court under the Trusts Law (2017 Revision) or because it is considered as part of a separate distribution scheme in relation to the Trust assets in the winding up of the Trustee) the court may either deal with the matter on the basis that the insolvency of the Trust does not affect the analysis because there are no separate insolvency rules applicable to Trusts or the court may apply, in our view, either order that the trust assets be distributed: (i) on a first in time basis; or (ii) a pari passu basis of distribution of the Trust assets (they may do this by analogy with the position under the Companies Law or because it is just and equitable (see paragraphs 4.27 – 4.29 above).

4.31 If a pari passu rule is applied then, although there is no authority on the point, we believe that a court should also allow set off as an exception – either because it is provided by the Companies Law (if it is treated as a separate distribution scheme of the Trust assets in the Trustee's winding up) or because it is just and equitable.

4.32 Although the position is not entirely clear, we believe that mutuality is a general requirement for set off under Cayman Islands law and this raises the question whether set off, in the context of an insolvent Trust and Trustee, is restricted by the absence of mutuality. The absence of mutuality arises, if at all, because the Trustee is personally liable for obligations related to the Trust but holds the assets, which includes the benefit of any claims, on trust for the beneficiaries. Whilst the necessary mutuality exists in one sense in respect of the claims arising under the Master Agreements, because they are assets and liabilities of the Trust, such assets and liabilities would not necessarily be beneficially owned by or wholly the liability of the Trustee.

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24 A Trustee has power to seek advice and directions from the court under section 48 of the Trusts Law (2017 Revision).

25 It is arguable that the Trustee's right of indemnity under the Trusts Law (2017 Revision) (or under an express provision in the trust deed) may give the Trustee sufficient interest in the trust's assets to establish the necessary mutuality but this is an
If the court determines that a *pari passu* rule, with a set off qualification, applies in circumstances where Trust assets are to be applied to meet claims of the creditors related to the Trust, we believe it would produce an unfair and unexpected result if it was not also accepted that mutuality exists in the broad sense that assets of the Trust are being used to satisfy liabilities related to the Trust. Accordingly whilst there is no authority exactly on this point in the Cayman Islands or, we believe, in England (which would otherwise be persuasive but not binding in the Cayman Islands), we believe that the fact that a Trust is insolvent and that the Trustee is in winding up, should not affect the enforceability of close-out netting under section 6(e) or set-off under section 6(f) either because no insolvency rules apply to the Trust (and therefore the pari passu rule is irrelevant) or because, if a pari passu rule does apply, set off should be permitted and sufficient mutuality should be established.

General Insolvency Issues affecting Close-out Netting in relation to Trusts

The general insolvency issues discussed above in paragraph 4.12 in relation to Companies and, in some cases, Exempted Limited Partnerships, will apply to the Trustee. There are no generally applicable insolvency provisions affecting Trusts as such.

Set-off - Partnerships

The Nature of a Partnership

A Partnership is not a separate legal entity under Cayman Islands law. The General Partner is liable for partnership debts (i.e. debts validly contracted for on behalf of the Partnership) to the extent the assets of the Partnership are insufficient to meet such debts, unless the General Partner has limited a creditor's claim or recourse to the Partnership assets. The General Partner enters into all agreements on behalf of the Partnership under general legal principles of agency as modified by the terms of the partnership agreement and either the Partnership Law or the Exempted Limited Partnership Law, as appropriate. It should be noted that at least one General Partner of an exempted limited partnership formed under the Exempted Limited Partnership Law must be either incorporated in the Cayman Islands, an exempted limited partnership, a foreign company registered in the Cayman Islands, a foreign limited partnership registered in the Cayman Islands or an individual resident in the Cayman Islands.

There are no statutory insolvency proceedings in respect of Partnerships other than certain provisions in the Bankruptcy Law (1997 Revision) (the "Bankruptcy Law") and, in the case of exempted limited partnerships, a general power given to the court under the Exempted Limited Partnership Law to decree dissolution of an exempted limited partnership and make such orders in connection with the winding up of its affairs as the court thinks just and equitable. A Partnership may have a General Partner that is not established in the Cayman Islands and in such a case we recommend that the insolvency rules applicable in the jurisdiction in which such General Partner is established be checked to ensure that there is nothing under the applicable local law which may affect the enforceability of the close-out netting provisions. The following discussion assumes that the General Partner is incorporated in the Cayman Islands.
The Bankruptcy Law allows proceedings to be taken against partners in the name of a Partnership. A bankruptcy petition presented against a Partnership under the Bankruptcy Law is an administratively convenient way of commencing bankruptcy proceedings against the partners to the extent those partners can be made subject to bankruptcy proceedings under the Bankruptcy Law. In general terms bankruptcy proceedings may be brought against individuals who are present, ordinarily resident, have a place of residence or carry on a business (either personally, through an agent or through a partnership of which they are a partner) in the Cayman Islands. If a partner of a Partnership is not susceptible to bankruptcy jurisdiction (a provisional order cannot be made against a company under the Bankruptcy Law – the procedure for winding up companies incorporated in the Cayman Islands is provided for in the Companies Law) an order can still be made against the Partnership. English authority suggests that, in such a case, a petition may be presented against the Partnership "other than" the relevant partner. The procedure under the Bankruptcy Law is therefore not a proceeding against the Partnership as such and is unlikely to be relevant in the context of the issues raised in this Memorandum (because most Partnerships are unlikely to have individuals as partners who are subject to jurisdiction under the Bankruptcy Law). It should be noted that to the extent that proceedings are taken under the Bankruptcy Law set off would be mandatory under section 127 of the Bankruptcy Law in respect of mutual credits, mutual debts and other amounts due between the parties as a result of mutual dealings.

Netting Analysis – Partnerships, excluding Exempted Limited Partnerships

Close-out Netting: Solvent Partnership, Insolvent General Partner

If the Partnership is solvent but the General Partner, being a company incorporated in the Cayman Islands, is in winding up proceedings, we believe that the close-out netting provisions in section 6(e) and the set-off provisions in section 6(f) should be effective and that there should be no basis on which they could be challenged simply as a result of the existence of winding up proceedings in respect of the General Partner. We believe that the insolvency rules applicable to Companies (in particular the requirement for pari passu distribution of assets) should not affect the outcome because the Partnership assets held by the General Partner are not available to the General Partner's general creditors. Furthermore, even if the Partnership assets were required to be distributed on a pari passu basis to the Partnership's creditors, the Partnership is solvent and so all Partnership creditors can be paid in full (even if the General Partner's general creditors cannot).

Close-out Netting: Insolvent Partnership, Insolvent General Partner

If the Partnership is insolvent and the General Partner is in winding up, then whilst the above analysis would still be applicable in relation to the General Partner's general creditors, the General Partner would also be liable to Partnership creditors and hold assets, both Partnership assets and, if the creditor's claim has not been limited to the Partnership assets, its own general assets, which are insufficient to meet such claims.

section 16(1) of the Exempted Limited Partnership Law provides for Partnership assets to be held or deemed to be held by the General Partner and, if more than one then by the General Partners jointly, upon trust as an asset of the partnership in accordance with the terms of the partnership agreement. The assets of a Partnership formed under the Partnership Law would be held jointly. The General Partner's rights under the partnership agreement in respect of such assets would be an asset available to its creditors.
4.40  In these circumstances, if the General Partner is a company incorporated in the Cayman Islands or is registered as a foreign company under the Companies Law, such General Partner will be subject to the statutory rights of set off provided by Section 140 of the Companies Law. Accordingly, subject to the qualifications discussed in 4.10 and 4.11 above, any contractual rights of netting and/or set off, such as those provided under the close-out netting provisions in section 6(e) and set-off provisions in section 6(f), would be effective in accordance with Section 140(2) of the Companies Law.

4.41  In the absence of any insolvency rules applicable to a Partnership, we believe it is likely that if the matter came before a Cayman Islands court, either because orders are sought under the Partnership Law or because it is considered as a separate distribution scheme of the Partnership assets in the winding up proceedings relating to the General Partner, the court may either deal with the matter on the basis that the insolvency of the Partnership does not affect the analysis because there are no separate insolvency rules applicable to the partnership or the court may apply a pari passu basis of distribution (they may do this by analogy with the position under the Exempted Limited Partnership Law and the Companies Law or simply because it is a just and equitable basis to proceed). If a pari passu rule is applied then, although there is no authority on the point, we believe that a court would also allow set off as an exception – either because it is provided by the Exempted Limited Partnership Law and the Companies Law or because it is just and equitable.

4.42  Although the position is not entirely clear, we believe that mutuality is a general requirement for set off under Cayman Islands law. This raises the question whether set off, in the context of an insolvent Partnership, is restricted by the absence of mutuality. The absence of mutuality arises, if at all, because the General Partner is personally liable for Partnership obligations but, in relation to a limited partnership formed under the Partnership Law, the Partnership assets are held by all the partners jointly. Whilst the necessary mutuality exists in a general sense in respect of the claims arising under the Agreements, because they are liabilities and assets of the Partnership, the asset and liability would not necessarily be wholly beneficially owned by or wholly the liability of the General Partner.

4.43  Having accepted that a pari passu rule, with a set off qualification, applies in circumstances where Partnership assets are to be applied to meet claims of the Partnership’s creditors, it would produce an unfair and unexpected result if it was not also accepted that mutuality exists in the broad sense that Partnership assets are being used to satisfy Partnership liabilities. Accordingly whilst there is no authority on this point in the Cayman Islands or, we believe, in England (which would otherwise be persuasive but not binding in the Cayman Islands)\(^5\), we believe that the fact that a Partnership is insolvent and that the General Partner is in winding up should not affect the enforceability of the close-out netting provisions in section 6(e) and set-off provisions in section 6(f), either because there are no insolvency proceedings which apply that are capable of displacing the otherwise effective contractual set off or, if there are insolvency proceedings, they recognise the contractual set off and mutuality is not an issue.

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\(^5\) There is authority in England in relation to the setting off of personal claims or personal liabilities of a partner against partnership liabilities and assets see eg *Piercy v Fynney* (1871) L.R. 12 Eq 69 and *Jones v Fleeming* (1827) 7 B&C 217 (which say that this is not permitted unless, in the case of a partnership liability, a partner is wholly liable for such debt when such debt may be set off against a personal claim of the partner).
Close-out Netting: Insolvent Partnership, Solvent General Partner

4.43 If the Partnership, not being an Exempted Limited Partnership, is insolvent but the General Partner is solvent and not in winding up proceedings we believe that the position would be the same as that discussed in paragraphs 4.37–4.38 – 4.41. As the General Partner is not in winding up the basis of any possible insolvency proceedings is limited to orders sought under the Partnership Law.

Changes to Partners

4.44 We would also mention that it has been suggested that changes of partners may give rise to mutuality issues because of the change of ownership of assets or in relation to changes of General Partners, changes to those liable in respect of claims. We do not consider this to be an issue (at least on the asset side) in relation to Exempted Limited Partnerships because of the entity type attributes accorded to them under the Exempted Limited Partnership Law, in particular, the fact that the assets are expressed to be held by the General Partner on trust for the Partnership and the fact that it is expressly provided that a change of limited partner or General Partner does not terminate or dissolve the Partnership. We think it would be usual in practice for liabilities of an outgoing General Partner of an Exempted Limited Partnership to be novated as no outgoing General Partner would wish to remain liable for partnership obligations. Limited partnerships formed under the Partnership Law (which are less common) may be affected by this issue but in practice liabilities would be novated and assets would be transferred in respect of any departing partner. It should also be noted that this point should not affect set off or netting under the same agreement because unless there is a transfer or novation the parties entitled to or liable under the agreement would remain the same.

General Insolvency Issues Affecting Close-out Netting in Relation to Partnerships

4.45 The general insolvency issues discussed above in paragraphs 4.12 in relation to Companies and, in some cases, Exempted Limited Partnerships, will apply to the General Partner. There are no generally applicable insolvency provisions affecting Partnerships (other than Exempted Limited Partnerships) as such.

4.46 If proceedings are taken against the Partnership in the partnership name under the Bankruptcy Law we believe the substantive provisions of the Bankruptcy Law relating to insolvency would apply. In the case of Exempted Limited Partnerships, the provisions discussed in paragraph 4.12 should instead apply. The following paragraphs summarise the principal provisions.

4.47 Section 111(1) makes void any fraudulent preference in similar circumstances to voidable preferences under section 145(1) of the Companies Law except that it applies when the relevant step is made, incurred, taken or suffered within six months before the provisional order takes effect. Furthermore section 107(1) makes void any settlement (which means a conveyance, gift or transfer of property) made within two years before a provisional order takes effect except where, inter alia, the settlement is made in favour of a purchaser or incumbrancer in good faith and for valuable consideration. It should be noted that a provisional order is deemed to have effect from the first "act of bankruptcy" committed by the debtor within six months preceding the date of presentation of the bankruptcy petition (provided at that time the debtor was indebted to a creditor(s) in an amount sufficient to support a petition (CIS$40 – approx. US$49) and such debt or debts were still outstanding at the date of the provisional order). The effect of a provisional order is to vest all the
bankrupt's property in the trustee with the result that any disposition made from the first act of bankruptcy is void. However, section 118 of the Bankruptcy Law validates certain transactions (including the payment of debtors, conveyance of property and grant of security) occurring prior to the filing of the petition but after the first act of bankruptcy provided the other party had no notice of any act of bankruptcy which could have formed the basis of a petition at the time the petition was filed. Any act of bankruptcy must have occurred within six months of the presentation of the petition to form the basis of that petition. The possible acts of bankruptcy are set out in section 14 of the Bankruptcy Law.

Sections 105 and 106 of the Bankruptcy Law allow a trustee in bankruptcy to disclaim (inter alia) onerous contracts (although not parts of the same contract). Onerous contracts include leases burdened with onerous covenants, unmarketable shares, unprofitable contracts or any other property that is unsaleable, or not readily saleable by reason of it binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money. There is no Cayman Islands authority on the meaning of "onerous contracts" for these purposes but we believe the interpretation of the equivalent provision in the English Insolvency Act 1986 would be regarded as persuasive, although not binding, by the courts in the Cayman Islands. In general terms assets are onerous where they are subject to a liability restriction or constraint - the onerous aspect does not necessarily have to impose a positive obligation but can be negative in character. Whilst, in our view, a disclaimer could apply to rights of netting and set-off, in our view it could not apply to different parts of the same contract and any such disclaimer would apply only to entire contracts (i.e. a trustee in bankruptcy has no rights to cherry pick or disclaim parts of a single agreement).

General Enforceability Qualifications Affecting Companies, Trusts and Partnerships

The term "enforceable" means that the obligations assumed by the Cayman Party under the close-out netting provisions are of a type which the courts of the Cayman Islands enforce. It does not mean that those obligations will necessarily be enforced in all circumstances in accordance with their terms. We would draw to your attention the following general limitations:

- enforcement may be limited by general principles of equity for example, equitable remedies such as specific performance for the delivery of physical securities may not be available, inter alia, where damages are considered to be an adequate remedy;

- claims may become barred under statutes of limitation or may become subject to defences of counterclaims, estoppel, laches and similar defences (the defence of set off is considered in detail above);

- nominal Cayman Islands stamp duty will be payable if the Master Agreements or any transfer of physical securities is brought to or executed in the Cayman Islands;

- a determination or calculation of any party to the Master Agreements as to any matter provided therein (for example, as to the amount of any termination payment with respect to the 1992 Master Agreement or Early Termination Amount with respect to the 2002 Master Agreement) might be held by a Cayman Islands court not to be conclusive, final and binding if, for example, it could be shown to have an unreasonable or arbitrary basis or in the event of manifest error;
The provisions of Cayman Islands regulatory laws providing for the appointment of controllers and liquidators will apply to a Company, a Trustee acting as trustee of a Trust and a Partnership regulated under the relevant regulatory law. In practice, if proceedings are taken under the regulatory laws in respect of a Cayman Party the analysis is the same as for the equivalent non-regulated entity because the effect of the regulatory laws is to apply the principles in the Companies Law.

Assuming the parties have entered into either a 1992 ISDA Master Agreement (Multicurrency-Cross Border) or a 2002 ISDA Master Agreement, one of the parties is insolvent and the parties have selected a Termination Currency other than Cayman Islands Dollars, Would a Cayman Islands court enforce a claim for the net termination amount in the Termination Currency?

In the event of any proceedings being brought in the Cayman Islands courts to enforce an obligation to make a termination payment in a Termination Currency selected by the Parties other than Cayman Islands dollars, a Cayman Islands court will give judgment expressed as an order to pay in such Termination Currency or its Cayman Islands dollar equivalent at the time of payment or enforcement of the judgment. A Cayman Islands court has jurisdiction to give judgments expressed in foreign currencies under the Grand Court Rules Order 42, Rule 8.

Cayman Islands law may also require that all claims or debts be converted either into Cayman Islands dollars or the Company's functional currency of account determined in accordance with applicable accounting principles at the exchange rate ruling at the date of commencement of a winding up of a Company. We believe this principle would also be relevant to Trusts and Partnerships to the extent insolvency proceedings are applicable.

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4.50.5 4.49.5-arrangements that constitute penalties will not be enforceable; and

4.50.6 4.49.6-the obligations of the Company under the Master Agreements which involve the government of any country which is currently the subject of United Nations sanctions extended to the Cayman Islands by Order or Orders in Council (an "Affected Country"), any person or body resident in, incorporated in or constituted under the laws of any Affected Country or exercising public functions in any Affected Country or any person or body controlled by any of the foregoing or by any person acting on behalf of any of the foregoing or any other person or body as prescribed in such Orders may be subject to restrictions or limitations pursuant to such Orders; and

4.50.7 enforcement or performance of any provision in a Master Agreement which relates, directly or indirectly, to an interest in a Company or LLC constituting shares, membership interests, voting rights or director or manager appointment rights in respect of such Company or LLC may be prohibited or restricted if any such relevant interest is or becomes subject to a restrictions notice issued under the Companies Law or the LLC Law.

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4.51 4.50-The provisions of Cayman Islands regulatory laws providing for the appointment of controllers and liquidators will apply to a Company, a Trustee acting as trustee of a Trust and a Partnership regulated under the relevant regulatory law. In practice, if proceedings are taken under the regulatory laws in respect of a Cayman Party the analysis is the same as for the equivalent non-regulated entity because the effect of the regulatory laws is to apply the principles in the Companies Law.

Assuming the parties have entered into either a 1992 ISDA Master Agreement (Multicurrency-Cross Border) or a 2002 ISDA Master Agreement, one of the parties is insolvent and the parties have selected a Termination Currency other than Cayman Islands Dollars, Would a Cayman Islands court enforce a claim for the net termination amount in the Termination Currency?

In the event of any proceedings being brought in the Cayman Islands courts to enforce an obligation to make a termination payment in a Termination Currency selected by the Parties other than Cayman Islands dollars, a Cayman Islands court will give judgment expressed as an order to pay in such Termination Currency or its Cayman Islands dollar equivalent at the time of payment or enforcement of the judgment. A Cayman Islands court has jurisdiction to give judgments expressed in foreign currencies under the Grand Court Rules Order 42, Rule 8.

Cayman Islands law may also require that all claims or debts be converted either into Cayman Islands dollars or the Company's functional currency of account determined in accordance with applicable accounting principles at the exchange rate ruling at the date of commencement of a winding up of a Company. We believe this principle would also be relevant to Trusts and Partnerships to the extent insolvency proceedings are applicable.

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4\[^2\] See the discussion in paragraphs 4.55 - 4.57.

25 Under certain of the regulatory laws (e.g. the Mutual Funds Law (20162020 Revision) the regulated entity is in fact the Trust and the Partnership notwithstanding that they do not have separate legal personality. We do not believe that the application of the insolvency provisions in the Companies Law to the Trust or the Partnership as such would affect the outcome and the analysis should be the same as for the equivalent unregulated entity as described in this Memorandum.
We would note that, pursuant to Order 16, Rule 13(6) of the Companies Winding Up Rules 2008, a creditor is not entitled to claim against an insolvent Company or Exempted Limited Partnership in liquidation any compensation for exchange losses resulting from changes in the market exchange rate occurring during the period between the date on which the winding up order was made and the date on which the dividend is paid.

Can a claim for the net termination amount be proved in insolvency proceedings in the Cayman Islands without conversion into the local currency?

4.54 A claim can be made in any proceedings in the Cayman Islands courts for an amount in a currency other than Cayman Islands dollars, however, the Cayman Islands court would give judgment expressed either as an order to pay such currency or its Cayman Islands dollar equivalent at the time of payment or enforcement of the judgment. A Cayman Islands court has jurisdiction to give judgments expressed in foreign currencies under the Grand Court Rules Order 42, Rule 8.

4.55 Although there is no statutory enforcement in the Cayman Islands of judgments obtained in New York or England and Wales, a judgment obtained in such jurisdiction will be recognised and enforced in the courts of the Cayman Islands at common law, without any re-examination of the merits of the underlying dispute, by an action commenced on the foreign judgment debt in the Grand Court of the Cayman Islands, provided such judgment:

4.55.1 is given by a foreign court of competent jurisdiction;

4.55.2 imposes on the judgment debtor a liability to pay a liquidated sum for which the judgment has been given;

4.55.3 is final;

4.55.4 is not in respect of taxes, a fine or a penalty; and

4.55.5 was not obtained in a manner and is not of a kind the enforcement of which is contrary to natural justice or the public policy of the Cayman Islands.

In relation to a multibranch party which is a bank incorporated in the Cayman Islands would there be any change in your conclusions concerning the enforceability of close-out netting under the Master Agreement based upon the fact that the bank has entered into an ISDA Master Agreement on a multibranch basis and entered into Transactions through its head office in the Cayman Islands and through one or more branches located in other jurisdictions that have been specified in the Schedule to the Master Agreement and then conducted business in that fashion prior to its insolvency and the commencement of its winding up in the Cayman Islands?

4.56 If the Company enters into a Master Agreement on a multibranch basis and enters into Transactions through a foreign branch, the above conclusions in relation to the enforceability of close-out netting will continue to apply. If the affairs of the foreign branch are wound-up in the jurisdiction in which the branch is situated, the Cayman Islands Court cannot recognise any foreign order in respect of such winding up. Instead, the Company must be wound up under the rules of Part V of the Companies Law and the liquidator of the Company should bring the branch assets into account in the winding up. This may be difficult to achieve as a practical matter if the official administering the winding up of the branch in the foreign jurisdiction is unwilling or unable to cooperate with the liquidator in the Cayman Islands.
In relation to a multibranch party ("Bank F") organized and with its head office in a country other than the Cayman Islands ("Country H") but with a branch (the "Local Branch") located in the Cayman Islands, which has entered into Transactions under an ISDA Master Agreement through its head office and also through one or more branches located in other jurisdictions that have been specified in the Schedule to the ISDA Master Agreement, including through the Local Branch:

would there be a separate proceeding in the Cayman Islands with respect to the assets and liabilities of the Local Branch at the start of the insolvency proceeding for Bank F in Country H? Or would the relevant authorities in the Cayman Islands defer to the proceedings in Country H so that the assets and liabilities of the Local Branch would be handled as part of the proceedings for Bank F in Country H? Could local creditors of the Local Branch initiate a separate proceeding in the Cayman Islands even if the relevant authorities in the Cayman Islands did not do so?

4.57 As discussed above, in accordance with the Companies law the Cayman Islands court may make winding up orders in respect of any foreign company which has property located in the Cayman Islands, is carrying on business in the Cayman Islands, is the General Partner of a Partnership, or is registered under Part IX of the Companies Law. A Cayman Islands branch of a foreign company regulated under certain regulatory laws e.g. the Banks and Trust Companies Law, the Mutual Funds Law (20152020 Revision), the Securities Investment Business Law (20152020 Revision), the Insurance Law, 2010 and certain other laws may also be wound up in accordance with such regulatory laws. As the provisions are very similar, the discussion below in relation to banks can be taken to be generally applicable to the other regulated entities.

4.58 Sections 18(1)(iv) and (v) of the Banks and Trust Companies Law empowers the Cayman Islands Monetary Authority to appoint a controller to (a) advise the licensee on the proper conduct of its affairs and to report to the Cayman Islands Monetary Authority, or (b) assume control of the licensee's affairs who shall have all the powers of a person appointed as a receiver of a business appointed under section 18 of the Bankruptcy Law. It should be noted that this provision is not available to creditors generally. Furthermore, the powers may only be exercised if the Cayman Islands Monetary Authority is of the opinion that the licensee has breached the Banks and Trust Companies Law, has failed to comply with a condition of its license, is carrying on its business in a manner detrimental to certain persons or the licensee is or it appears likely that the licensee will become unable to meet its obligations as they fall due. The controller is required to prepare a report for the Cayman Islands Monetary Authority and on receipt of such report the Cayman Islands Monetary Authority may revoke the license of the licensee and apply to the court for an order that the licensee be forthwith wound up by the court and in such winding up the provisions of the Companies Law relating to the winding up of a company apply. In our view, the exercise of these powers would result in the appointment of a liquidator of the company, trust or partnership with the powers given to a liquidator by the Companies Law. Theoretically a liquidator would have power in relation to all the assets of Bank F if it is the only insolvency official appointed in respect of Bank F. Although this opinion only extends to matters of Cayman Islands law, it is difficult to see how, in the circumstances, the liquidator could or would exercise his powers in relation to assets located outside the Cayman Islands. If an insolvency official is appointed in respect of Bank F in Country H, which is likely if there was an insolvency, then a Cayman Islands court is likely to limit the power of the liquidator appointed under the Banks and Trust Companies Law to collecting assets situated in the Cayman Islands.
The provisions of the Banks and Trust Companies Law will also apply to a foreign Trust or Partnership that has a branch in the Cayman Islands which is licensed as a Bank. In such a case we believe the principles discussed in paragraphs 4.54–4.55 above in relation to foreign banks that are Companies would apply (see also the previous discussion concerning proceedings under regulatory laws in relation to Cayman Parties).

If there would be a separate proceeding in the Cayman Islands with respect to the assets and liabilities of the Local Branch, would the relevant insolvency official and the courts in your jurisdiction, on the facts above, include Bank F's position under a Master Agreement, in whole or in part, among the assets of the Local Branch and, if so, would the insolvency official and the courts in your jurisdiction recognize the close-out netting provisions of the Master Agreement in accordance with their terms?

There is no authority on how a controller or liquidator appointed under the Banks and Trust Companies Law in respect of a Local Branch would exercise his powers. However, we believe the close-out netting provisions of the Master Agreement would be enforceable to the same extent as if Bank F were established in the Cayman Islands (as a Company, Trust or Partnership) and recognise the close-out netting provisions of the Master agreement in accordance with its terms.

Where the courts in the Cayman Islands have jurisdiction over the assets of a bank incorporated in the Cayman Islands or a Local Branch, would a multibranch master agreement, such as the Master Agreement, be treated as a single, unified agreement by an insolvency official under Cayman Islands law regardless of the treatment of the Master Agreement or Transactions thereunder by an insolvency official in a jurisdiction where close-out netting may be unenforceable?

The Master Agreement would be treated as a single, unified agreement by an insolvency official under the laws of the Cayman Islands, assuming the same is true as a matter of the governing law of such Master Agreement. The view taken by an insolvency official in the place of incorporation of a foreign bank or location of a foreign branch would not in principle affect the answer.

Would the inclusion of the Force Majeure affect your opinion?

The inclusion of a Force Majeure Event would not affect the analysis of the close-out netting provisions.

Would the inclusion of the Close-out Amount in lieu of the prior choice between Market Quotation and Loss affect your opinion on the enforceability of the termination, close-out netting and multi-branch netting provisions of the 2002 ISDA Master Agreement?

The inclusion of the Close-out Amount in lieu of the prior choice between Market Quotation and Loss would not affect our opinion on the enforceability of the termination, close-out netting and multi-branch netting provisions of the 2003 Master Agreement.

Without considering the enforceability of section 6(f), would the inclusion of section 6(f) affect your opinion on the enforceability of the close-out netting provisions of the 2003 ISDA Master Agreement?

See paragraph 4.49
4.64 The inclusion of section 6(f) does not affect the above analysis of the close-out netting provisions.

5 2001 ISDA Cross-Agreement Bridge (The "2001 Bridge")

5.1 We assume that the parties to the Master Agreements have agreed to the provisions of the 2001 Bridge and that the incorporation of such provisions into the Master Agreements is effective as a matter of all relevant laws including the governing law(s) of the 2001 Bridge. Under the 2001 Bridge, close out amounts under various industry master agreements would be taken into account in section 6 of the Master Agreements as Unpaid Amounts.

5.2 We confirm that the conclusions reached in this Memorandum would not be materially affected by the inclusion of the 2001 Bridge.

5.3 We give no opinion as to the validity or enforceability of the 2001 Bridge under Cayman Islands law.

6 2002 ISDA Energy Agreement Bridge (The "2002 Bridge")

6.1 We assume that the parties to the Master Agreements have agreed to the provisions of the 2002 Bridge and that the incorporation of such provisions into the Master Agreements is effective as a matter of all relevant laws including the governing law(s) of the 2002 Bridge. Under the 2002 Bridge, close out amounts under various industry master agreements would be taken into account in section 6 of the Master Agreements as Unpaid Amounts.

6.2 We confirm that the conclusions reached in this Memorandum would not be materially affected by the inclusion of the 2002 Bridge.

6.3 We give no opinion as to the validity or enforceability of the 2002 Bridge under Cayman Islands law.

7 June 2014 Amendment to the ISDA Master Agreement (The "Amendment")

7.1 We assume that the parties to the Master Agreements have agreed to the provisions of the Amendment and that the incorporation of such provisions into the Master Agreements is effective as a matter of all relevant laws including the governing law(s) of the Amendment.

7.2 We confirm that the conclusions reached in this Memorandum would not be materially affected by the amendments made by the Amendment.

7.3 We give no opinion as to the validity or enforceability of the Amendment under Cayman Islands law.

8 Pending Developments

We confirm there are no developments pending as a result of which the current regulatory or legal environment concerning the enforceability of close out netting may be expected to change in the foreseeable future.
This Memorandum has been prepared for the International Swaps and Derivatives Association, Inc. ("ISDA") and its members and may not be relied upon by any other person. Without limiting the foregoing, ISDA and its members may provide a copy of this Memorandum to (i) any competent regulatory authority or supervisory body (including the UK Financial Services Authority and the German Bundesanstalt für Finanzdienstleistungsaufsicht), and (ii) their legal advisors, provided that this Memorandum may not be relied upon by such parties.

Yours faithfully

Maples and Calder
APPENDIX A
August 2015
Transaction Types

**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.
### Counterparty Types

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<tr>
<th>Description</th>
<th>Covered by opinion</th>
<th>Legal form(s)</th>
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<tr>
<td>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)).</td>
<td>Yes</td>
<td>Entities as set out in section 1.1 of this opinion</td>
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<td>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).</td>
<td>Yes</td>
<td>Entities as set out in section 1.1 of this opinion</td>
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211 In these definitions, the term “legal entity” means an entity with legal personality other than a private individual.
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<td>Corporation. A legal entity that is organized as</td>
<td>Yes</td>
<td>A company, including any exempted, ordinary resident, ordinary non-resident, segregated portfolio company and limited duration company incorporated under the Companies Law (2016-2018 Revision) and a limited liability company formed under the Limited Liability Companies Law (2018 Revision).</td>
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<td>Hedge Fund/Proprietary Trader. A legal entity,</td>
<td>Yes</td>
<td>Entities as set out in section 1.1 of this opinion</td>
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<td>Insurance Company. A legal entity, which may be</td>
<td>Yes</td>
<td>Entities as set out in section 1.1 of this opinion</td>
</tr>
<tr>
<td>International Organization. An organization of</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>Investment Firm/Broker Dealer. A legal entity,</td>
<td>Yes</td>
<td>Entities as set out in section 1.1 of this opinion</td>
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<td>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.</td>
<td>Yes</td>
<td>Entities as set out in section 1.1 of this opinion</td>
</tr>
<tr>
<td>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.</td>
<td>Yes</td>
<td>An exempted limited partnership established under the Exempted Limited Partnership Law, 2014 (2018 Revision), or a limited partnership established under the Partnership Law (2013 Revision), each with one or more</td>
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<tr>
<td>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.</td>
<td>No</td>
<td>N/A</td>
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<td>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)</td>
<td>Yes</td>
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<td>and not for other purposes (for example, tax or personal liability).</td>
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<td>general partners.</td>
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<td>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.</td>
<td>Yes</td>
<td>Entities as set out in section 1.1 of this opinion</td>
</tr>
<tr>
<td>Sovereign. A sovereign nation state recognized 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”).</td>
<td>No</td>
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<td>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.</td>
<td>No</td>
<td>N/A</td>
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<td>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”).</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>State of a Federal Sovereign. The principal political subdivision 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.</td>
<td>No</td>
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