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**VALIDITY AND ENFORCEMENT OF COLLATERAL ARRANGEMENTS UNDER THE ISDA CREDIT SUPPORT DOCUMENTS - COLLATERAL TAKER INSOLVENCY**

**PART A. BACKGROUND**

**1 Introduction**

**1.1 Instructions**

This memorandum considers Australian Law (as defined below) as it applies to certain provisions of collateral arrangements entered into under the following standard form collateral documents published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”):

- (a) the 2016 Phase One Credit Support Annex for Initial Margin (IM) governed by New York law (the “**IM NY Annex**”) and the Recommended Amendment Provisions for the ISDA New York Law 2016 Phase One Credit Support Annex for Initial Margin (IM) with respect to Japanese Securities (the “**IM NY Annex Japanese Amendments**”); and
- (b) the 2016 Phase One IM Credit Support Deed governed by English law (the “**IM Deed**” and together with the IM NY Annex, the “**IM Security Documents**”) and the Recommended Amendment Provisions for the ISDA English Law 2016 Phase One Credit Support Deed for Initial Margin (IM) with respect to Japanese Securities (the “**IM Deed Japanese Amendments**”); and
- (c) the ISDA Euroclear Security Agreement (the “**Euroclear Security Agreement**”) and the Recommended Amendment Provisions for the Euroclear Security Agreement with respect to Japanese Collateral (the “**Euroclear Security Agreement Japanese Amendments**”); and

- (d) the ISDA Euroclear Collateral Transfer Agreement (NY Law) (the “**Euroclear NY CTA**”) and the Recommended Amendment Provisions for the Euroclear Collateral Transfer Agreements with respect to Japanese Collateral (the “**Euroclear CTA Japanese Amendments**”) and together with the Euroclear Security Agreement Japanese Amendments, the “**Euroclear Japanese Amendments**”); and
- (e) the ISDA Euroclear Collateral Transfer Agreement (Multi-Regime) (the “**Euroclear Multi-Regime CTA**”) and together with the Euroclear Security Agreement and the Euroclear NY CTA, the “**Euroclear Documents**”) and the Euroclear CTA Japanese Amendments; and
- (f) the ISDA Clearstream 2016 Security Agreement (the “**Clearstream Security Agreement**”) and the Novation Agreement (the “**Clearstream Security Agreement Japanese Amendments**”); and
- (g) the ISDA Clearstream 2016 Collateral Transfer Agreement (NY Law) (the “**Clearstream NY CTA**”) and the CBL Services Novation Agreement (the “**Clearstream CTA Japanese Amendments**”) and together with the Clearstream Security Agreement Japanese Amendments, the “**Clearstream Japanese Amendments**”); and
- (h) the ISDA Clearstream 2016 Collateral Transfer Agreement (Multi-Regime) (the “**Clearstream Multi-Regime CTA**”) and together with the Clearstream Security Agreement and the Clearstream NY CTA, the “**Clearstream Documents**”) and the Clearstream CTA Japanese Amendments,

in each case, when entered into to provide credit support for transactions (“**Transactions**”) entered into pursuant to a Master Agreement (defined below).

As requested, we have addressed the issues raised by ISDA in its letter to us of June 2017 (“**Instruction Letter**”) on the basis of the assumptions that we have been asked to make (which for convenience are repeated in Schedule 1 to this memorandum). We have also set out in Schedule 1 to this memorandum certain other assumptions that we consider necessary in order for us to answer the questions posed.

In this memorandum, we refer to:

- (i) our legal opinion to you dated 28 February 2017, regarding the enforceability under Australian law of close-out netting against an insolvent party under the Master Agreement (the “**Netting Opinion**”); and
- (ii) our legal opinion to you dated on or about the date of this memorandum, regarding the validity and enforceability under Australian law of collateral arrangements under the ISDA Credit Support Documents (as defined in the opinion) and certain other documents (the “**Collateral Provider Opinion**”).

This memorandum should be read in conjunction with our Netting Opinion and Collateral Provider Opinion. The analysis and conclusions set out in this memorandum are based on the assumptions and qualifications set out in our Netting Opinion and Collateral Provider Opinion. Where the context requires, references in this memorandum, our Netting Opinion or our Collateral Provider Opinion to a term which is defined in a Credit Support Document or other document listed in paragraphs 1.1(a) to 1.1(h) above covered by this memorandum or the other opinion (as applicable) should be taken to refer to the equivalent defined term used in another relevant Credit Support Document or document listed in paragraphs 1.1(a) to 1.1(h) above.

Defined terms in the Instruction Letter, the Master Agreement and documents listed in paragraphs 1.1(a) to 1.1(h) above have the same meaning in this memorandum.

For the purposes of this memorandum:

- (I) “**Collateral Provider**” refers to the Pledgor (under the IM NY Annex), the Chargor (under the IM Deed) or the Security-provider (under the Euroclear Security Agreement or the Clearstream Security Agreement), as context requires,
- (II) “**Collateral Taker**” refers to the Secured Party (under the IM Documents) or the Security-taker (under the Euroclear Security Agreement or the Clearstream Security Agreement);
- (III) “**Collateral**”, when used in this memorandum, refers, in the case of each IM Security Document, the Euroclear Documents, and the Clearstream Documents, to any assets in which a security interest is created by the Collateral Provider in favour of the Collateral Taker as credit support for the obligations of the Collateral Provider under the relevant Master Agreement.

## 1.2 Scope

This memorandum is given on the laws of the Commonwealth of Australia, New South Wales, Victoria, Queensland, Western Australia and the Australian Capital Territory (each an “**Australian Jurisdiction**”). The opinions expressed in this memorandum are limited to those laws. We express no opinion about the laws of any jurisdiction other than the Australian Jurisdictions, commercial, accounting, financial, prudential or factual matters. However, the *Corporations Act 2001* of Australia (“**Corporations Act**”) is uniform throughout Australia and the other statutes mentioned in this memorandum are Commonwealth statutes (other than the statutes relating to stamp duty). In this memorandum the courts of the Australian Jurisdictions are sometimes referred to as the “**Australian Courts**” and the laws in force in the Australian Jurisdictions are sometimes referred to as “**Australian Law**”.

This memorandum is subject to the following:

- (a) The advice in this memorandum is only in relation to Australian Law as it stands at the date of this memorandum, and we have assumed that no law of a jurisdiction other than the Australian Jurisdictions adversely affects the conclusions in this memorandum.
- (b) This memorandum incorporates all the assumptions contained in the Instruction Letter (which for convenience are repeated in Schedule 1 to this memorandum). We have also set out in Schedule 1 to this memorandum certain other assumptions that we consider necessary in order for us to answer the questions posed.
- (c) The entity type in respect of which this memorandum is given is “**Australian Company**” which means a company which is registered as a company under the *Corporations Act 2001* (Cth) (“**Corporations Act**”). Australian Company does not include foreign companies or entities.

We set out in Appendix B (September 2009) further information on whether entities meeting particular descriptions would, or could, be Australian Companies.

Also, we note that under Australian Law, superannuation funds, managed investment schemes and other trusts are not legal entities. The relevant entity is the superannuation

trustee acting in its capacity as trustee of the superannuation fund, the responsible entity of the scheme or the trustee of the other trust, respectively.

- (d) You have asked that we consider the list of transactions that can be documented under a Master Agreement in Appendix A (August 2015) ("**Transactions**"). We confirm that this memorandum applies to those Transactions.
- (e) You have asked us, when responding to each question, to distinguish between the following three fact patterns:
  - (i) The Location of the Collateral Taker is in Australia and the Location of the Collateral is outside Australia.
  - (ii) The Location of the Collateral Taker is in Australia and the Location of the Collateral is in Australia.
  - (iii) The Location of the Collateral Taker is outside Australia and the Location of the Collateral is in Australia.

For these purposes "Location" is determined by reference to the rules in the *Personal Property Securities Act 2009* of Australia, which is described in paragraph A.5 of our Collateral Provider Opinion.

We consider the issues set out in the questions below under Australian law relating to Collateral arrangements documented under each of the documents listed in paragraphs 1.1(a) to 1.1(h) above, when entered into in connection with either the 1992 ISDA Master Agreement or the 2002 ISDA Master Agreement (each referred to as a "**Master Agreement**"), against an Australian Company. Where the location of the Collateral or the jurisdiction in which a company is organised or its status affects our analysis, it is generally clear from the wording of our memorandum.

- (f) We do not consider in this memorandum the insolvency of any entity other than a Collateral Taker that is an Australian Company.
- (g) The advice in this memorandum assumes that any of the documents listed in paragraphs 1.1(a) to 1.1(h) above are used together with a Master Agreement.
- (h) This memorandum is given for the sole benefit of ISDA and its members and may not be relied upon by any other person unless we otherwise specifically agree with that person in writing.

## PART B. IM SECURITY DOCUMENTS

### 1 Exercise of rights under the IM Security Documents

*Would the Collateral Provider be entitled to exercise its contractual rights under the IM Security Documents and the custodial arrangements described in assumption (K) to recover the Collateral held by the Custodian in the Custodial Account?*

We understand that, under the governing law of the IM Security Document and the security in the Collateral, the IM Security Document does not involve a transfer of ownership of the Posted Collateral to the Collateral Taker.

We assume that the exercise by the Collateral Provider of its contractual rights under the IM Security Document and the custodial arrangements:

- (a) is not inconsistent with any interest of the Collateral Taker in, or right of the Collateral Taker in respect of, the Collateral held by the Custodian in the Custodial Account; and
- (b) is not, under the governing law of the IM Security Document and the security in the Collateral, conditional upon further action by the Collateral Taker.<sup>1</sup>

The different types of insolvency proceedings to which a Collateral Taker may be subject under Australian Law are described in Part I of our Netting Opinion (“**Insolvency Proceedings**”).

In our opinion, as a matter of Australian Law, the commencement of Insolvency Proceedings with respect to the Collateral Taker should not, of itself, affect:

- (i) any interest of the Collateral Provider in the Collateral under the IM Security Document; or
- (ii) subject to our response to question 4 below, the enforceability of the Collateral Provider’s contractual rights against the Custodian under the custodial arrangements to recover its interest in the Collateral held by the Custodian in the Custodial Account.

### 2 Requirements for custodial arrangements

*Assuming that the response to question 1 above is yes, are there any requirements that the custodial arrangements described in assumption (K) must satisfy in order to permit the Collateral Provider to exercise such rights?*

We assume that the effect of the custodial arrangements is that any interest of the Custodian or the Collateral Provider in the Collateral held by the Custodian in the Custodial Account is subject to the terms of the custodial arrangements.

There are no particular requirements or formalities to ensure that the Collateral Provider can exercise contractual rights under the custodial arrangements against the Custodian. It is not necessary as a matter of formal validity that the custodial arrangements be expressed to be governed by Australian Law or that they be translated into another language or for them to include specific wording. Please also see paragraph (e) of our response to question 9 below.

<sup>1</sup> Without limitation, we assume that the exercise by the Collateral Provider of its contractual rights under the IM Security Document and the custodial arrangements is not conditional upon the Collateral Taker being obliged to transfer or instruct the Custodian to transfer the Collateral to the Collateral Provider.

### 3 Outstanding obligations

*In order for the Collateral Provider to exercise its rights under the IM Security Documents and the custodial arrangements described in assumption (K) to recover the Collateral, is there a requirement that the Collateral Provider have no outstanding obligations to the Collateral Taker?*

We assume that there is no requirement under the IM Security Document and the custodial arrangements that the Collateral Provider have no outstanding obligations to the Collateral Taker in order to exercise those rights.

On this basis, there is no requirement under Australian Law that the Collateral Provider have no outstanding obligations to the Collateral Taker when it exercises its rights under the IM Security Document and the custodial arrangements to recover its interest in the Collateral held by the Custodian in the Custodial Account.

### 4 Stay on rights

*Would the Collateral Provider's ability to exercise its contractual rights be subject to any stay or freeze or otherwise be affected by commencement of the insolvency of the Collateral Taker?*

We assume that the exercise of the contractual rights of the Collateral Provider against the Custodian under the custodial arrangements do not, of itself, involve:

- (a) the denial of obligations, the acceleration of any debt, the closing out of any transaction;<sup>2</sup>
- (b) the enforcement of any security interest;<sup>3</sup> or
- (c) any dealing in relation to any property of the Collateral Taker,<sup>4</sup>

in each case, as noted in footnotes 2 to 4.

With respect to paragraph (c) above, we understand that, under the governing law of the IM Security Document, the grant of the security interest under the IM Security Document does not itself involve a transfer of ownership of the Posted Collateral to the Collateral Taker.

<sup>2</sup> As noted in our Netting Opinion, there are stays under the *Banking Act 1959* (Commonwealth) ("**Banking Act**"), *Insurance Act 1973* (Commonwealth) ("**Insurance Act**") and *Life Insurance Act 1995* (Commonwealth) ("**Life Insurance Act**") on denying any obligations or accelerating any debt under, or closing out any transaction relating to, a contract to which a bank, general insurer or life insurer is a party in certain circumstances, including, relevantly, due to the fact that the bank or insurer is subject to ADI statutory management or judicial management (respectively).

<sup>3</sup> As noted in our Collateral Provider Opinion:

- (a) section 440B of the Corporations Act provides that, during the administration of an Australian Company, no enforcement process in relation to property of the Australian Company can be begun or proceeded except with the leave of the court or the administrator's consent; and
- (b) there are stays under the Banking Act, Insurance Act and Life Insurance Act on enforcing security under a contract to which a bank, general insurer or life insurer is a party in certain circumstances, including, relevantly, due to the fact that the bank or insurer is subject to ADI statutory management or judicial management (respectively).

<sup>4</sup> As noted in our Collateral Provider Opinion, during the administration of an Australian Company no proceeding in a court or in relation to any property of the Australian Company can be begun or proceeded with except with the leave of the court or the administrator's consent.

On this basis, there are no such stays or freezes on the enforcement of those contractual rights against the Custodian that would be triggered merely by the Collateral Taker being subject to Insolvency Proceedings.

**5 Euroclear or Clearstream**

(a) *Please explain how your responses to questions 1 through 4 above would change if instead of entering into an IM Security Document and custodial arrangements described in assumption (K), the parties enter into the arrangements described in assumption (L).*

Subject to the following, our responses to questions 1 to 4 apply as if references to:

- (i) the IM Security Document were to the Euroclear Security Agreement or Clearstream Security Agreement (as applicable);
- (ii) the custodial arrangements were to the arrangements described in assumption (L);
- (iii) the Custodian were to Euroclear or Clearstream (as applicable); and
- (iv) the Custodial Account were to the “Pledged Securities Account” or “Pledged Cash Account” (in the case of Euroclear) or the “Collateral Account” (in the case of Clearstream), as referred to in assumption (L) (as applicable).

We assume that the effect of the arrangements described in assumption (L) is that the Collateral Provider grants to the Collateral Taker a first priority continuing security interest in all Collateral in the “Pledged Securities Account” or “Pledged Cash Account” (in the case of Euroclear) or the “Collateral Account” (in the case of Clearstream), as referred to in assumption (L).

In respect of our response to question 4 above, we assume in accordance with assumption (L) that the Collateral is held in the relevant account:

- (A) in the case of Euroclear, in the name of Euroclear acting in its own name but for the account of the Collateral Taker; and
- (B) in the case of Clearstream, in the name of the Collateral Provider.

We note in footnote 4 above that, during the administration of an Australian Company, no proceeding in a court or in relation to any property of the Australian Company can be begun or proceeded with except with the leave of the court or the administrator’s consent. This may be of particular relevance in the context in light of paragraph (A) above.

(b) *Please explain how your responses to questions 1 through 4 above would change if instead of entering into an IM Security Document and custodial arrangements described in assumption (K), the parties enter into the arrangements described in assumptions (L), as amended by the Euroclear Japanese Amendments or the Clearstream Japanese Amendments, as applicable.*

Our responses to part (a) of this question 5 apply as if references to the IM Security Document were to the Euroclear Security Agreement or Clearstream Security Agreement (as applicable), as amended by the Euroclear Japanese Amendments or the Clearstream Japanese Amendments (as applicable).<sup>5</sup>

However, in respect of our response to question 4 above, we assume that the Collateral is held in the relevant account in the case of Clearstream, in the name of the Collateral Taker. On this basis, the final paragraph of our response to part (a) of this question 5 is also relevant in respect of the Clearstream Security Japanese Amendments.

## 6 IM NY Annex Japanese Amendments

*Please explain how your responses to questions 1 through 4 would change if instead of entering into an IM NY Annex and custodial arrangements described in assumption (K), and disregarding assumption (F), the parties enter into an IM NY Annex, as amended by the IM NY Annex Japanese Amendments, and custodial arrangements described in the IM NY Annex Japanese Amendments.*

Subject to the following, our responses to questions 1 to 4 apply as if references to:

- (a) the IM Security Document were to the IM NY Annex as amended by the IM NY Annex Japanese Amendments; and
- (b) the Custodial Account were to the account of the Custodian in the name of the Collateral Taker.

We assume that the effect of the IM NY Annex, as amended by the IM NY Annex Japanese Amendments, and the agreement between the Collateral Provider, the Collateral Taker and the Custodian, is that Collateral comprised of Japanese Securities is held in an account of the Custodian in the name of the Collateral Taker.

We note in footnote 4 above that, during the administration of an Australian Company, no proceeding in a court or in relation to any property of the Australian Company can be begun or proceeded with except with the leave of the court or the administrator's consent. This may be of particular relevance in the context in light of paragraph (b) above.

## 7 IM Deed Japanese Amendments

*Please explain how your responses to questions 1 through 4 would change if instead of entering into an IM Deed and custodial arrangements described in assumption (K), and disregarding assumption (F), the parties enter into an IM Deed, as amended by the IM Deed Japanese Amendments, and custodial arrangements described in the IM Deed Japanese Amendments.*

Our responses to question 6 above applies as if references to the IM NY Annex and the IM NY Annex Japanese Amendments were to the IM Deed and IM Deed Japanese Amendments, respectively.

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<sup>5</sup> We have assumed that the Recommended Amendment Provisions for the ISDA 2017 Clearstream Security Agreement with respect to Japanese Collateral (as referred to in the Clearstream Japanese Amendments) do not adversely affect our conclusions.

## 8 Considerations for recovering the Collateral

*Are there any other local law considerations that you would recommend the Collateral Provider to consider in connection with recovering the Collateral?*

Where, under the custodial arrangements, the Custodian, Euroclear or Clearstream holds its interest in the Collateral as trustee for the Collateral Provider, we note the following:

- (a) as a general matter, a trustee has a right to be indemnified out of, and an equitable lien over, trust assets in respect of debts and liabilities properly incurred by it as trustee, and those rights normally have priority over, and must be satisfied and discharged prior to, the claims of the beneficiary; and
- (b) our conclusions above do not mean that a Collateral Provider can never suffer loss or fail to recover the Collateral. Without limitation, such a loss may arise as a result of fraud or breach of trust on the part of the Custodian, Euroclear or Clearstream.

## 9 Other circumstances

*Are there any other circumstances you can foresee in your jurisdiction that might affect the Collateral Provider's ability to enforce its contractual rights to recover the Collateral?*

We note the following:

- (a) the nature and enforcement of rights and obligations may be affected by lapse of time or laws, certain equitable remedies and defences generally affecting creditors' rights;
- (b) the rights of the Collateral Provider to enforce the custodial arrangements or arrangements with Euroclear or Clearstream may be limited or affected by:
  - (i) breaches by that party of its obligations under the arrangements, or misrepresentations made by it in, or in connection with, the arrangements; or
  - (ii) conduct of that party in relation to the arrangements which is unlawful; or
  - (iii) conduct of that party in relation to the arrangements which gives rise to an estoppel or claim against that party by the party against whom it is seeking to enforce its rights under the arrangements;
- (c) the availability of certain equitable remedies (including, without limitation, injunctions and specific performance) is at the discretion of a court in the Australian Jurisdictions;
- (d) the laws of the Australian Jurisdictions may require that:
  - (i) parties act reasonably, honestly and in good faith in their dealings with each other;
  - (ii) discretions are exercised reasonably; and
  - (iii) opinions are based on good faith; and

- (e) a document may not be admissible in court proceedings or enforceable unless applicable stamp duty has been paid.

Yours faithfully

A handwritten signature in black ink, consisting of stylized cursive letters that appear to read 'K & W M'. Below the signature is a thick, curved black line.

## SCHEDULE 1 ASSUMPTIONS

Following are the assumptions set out in the Instruction Letter which we have been instructed to assume in preparing this memorandum.

### Part 1 – Security interest approach pursuant to the Security Documents

#### *Assumptions relating to the Security Documents*

*Please make the following assumptions:*

- (A) *The Collateral Provider has entered into a Master Agreement and an IM Security Document with the Collateral Taker. Please assume that the parties have entered into either (i) a Master Agreement governed by New York law, or (ii) a Master Agreement governed by English law. If your answers differ depending upon whether (i) or (ii) applies or as a result of assumption (B) below, please indicate that clearly in your responses, distinguishing the position for each set of documents.*
- (B) *Each IM Security Document could be entered into in connection with either a New York law or English law governed ISDA Master Agreement and may be subject to a different governing law than the relevant ISDA Master Agreement (depending on whether the parties choose to align the governing law of the IM Security Document to (i) the Location of the relevant Custodial Account; or (ii) the governing law of the ISDA Master Agreement). The IM NY Annex forms a part of the relevant ISDA Master Agreement and therefore, unless revised by the counterparties, is subject to the same governing law as the relevant ISDA Master Agreement. In respect of an IM NY Annex entered into in connection with an English law governed ISDA Master Agreement, the parties will provide in paragraph 13 of the IM NY Annex that the Annex is governed by and construed in accordance with New York law.*
- (C) *Under the IM Security Documents, both parties will be required to post Collateral to the other (either under the same IM Security Document or under separate IM Security Documents) in an amount that depends on the IM calculation provisions. For the sake of simplicity you are only asked to consider the Collateral taking leg of one party – issues relating to the insolvency of the Collateral Provider are considered in a separate opinion.*
- (D) *Please assume that each party is either (i) a corporation, or (ii) a bank or other similar financial institution that is subject to the requirement to post or collect initial margin with respect to derivatives or swaps. However, if your opinion would also be applicable (without additional legal analysis) to other types of legal entities, arrangements or associations (such as trusts or partnerships), please so indicate, as requested above in relation to scope of counterparty type. Please indicate clearly if any type of financial institution that may be established in your jurisdiction is not covered by your opinion. Please set out all of this information, to the extent possible, in Appendix B, as requested above.*
- (E) *You may assume that each Master Agreement and each IM Security Document is enforceable under the laws of New York or England, as the case may be, and that each party has duly authorized, executed and delivered, and has the capacity to enter into, each document.*
- (F) *You may assume that any provisions of the Master Agreement and the relevant IM Security Document that you deem crucial to your opinion have not been altered in any material respect. Please state whether and how any selections contemplated by the Master Agreement or the relevant IM Security Document would change the substance of your opinion.*
- (G) *Pursuant to the relevant IM Security Document, the counterparties agree that Eligible Collateral will include cash credited to an account (as opposed to physical notes and coins) and certain types of securities (as further described below) that are located or deemed located either (i) in your jurisdiction, or (ii) outside your jurisdiction.<sup>6</sup>*

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<sup>6</sup> *This locational dichotomy presumes that the location of the Collateral will be the relevant inquiry for purposes of determining what is required in your jurisdiction to create, perfect and enforce a security interest in Collateral. If under*

- (H) Please assume that any securities provided as Eligible Collateral are denominated in either the currency of your jurisdiction or any freely convertible currency and consist of (1) corporate debt securities whether or not the issuer is organized or located in your jurisdiction; (2) debt securities issued by the government of your jurisdiction; (3) debt securities issued by the government of a member of the “G-10” group of countries; and (4) corporate equity securities whether or not the issuer is organized or located in your jurisdiction, in the form of intermediated securities.
- (I) Pursuant to the terms and conditions of the Master Agreement, the Collateral Provider enters into a number of Transactions with the Collateral Taker. Such Transactions include any or all of the transactions described in Appendix A.<sup>7</sup> Under the terms of each IM Security Document, the security interest created in the relevant Collateral secures the Obligations of the Collateral Provider arising under the Master Agreement as a whole.
- (J) Please assume that an Event of Default under Section 5(a)(vii) of the Master Agreement with respect to the Collateral Taker has occurred and a formal bankruptcy, insolvency, liquidation, reorganization, administration or comparable proceeding (collectively, the “insolvency”) has been instituted by or against the Collateral Taker. If there are different types of insolvency proceedings under the laws of your jurisdiction (for example, bankruptcy or liquidation proceedings where an entity does not emerge as a going concern, on the one hand, and a reorganization or administration proceeding where an entity is restructured and does continue as a going concern, on the other hand), please briefly describe the different types of proceedings and answer each question with respect to each such proceeding.
- (K) Please assume the Collateral provided under the IM Security Document is held in an account (which may hold cash (in a freely convertible currency) and securities) (a “**Custodial Account**”) with a third party custodian (“**Custodian**”), with the following characteristics: (x) the Custodian holds the Collateral in the Collateral Provider’s name pursuant to a custodial agreement between the Collateral Provider and custodian; (y) the Custodial Account is used exclusively for the Collateral provided by the Collateral Provider to the relevant Collateral Taker; and (z) the Collateral Provider, the Collateral Taker and the Custodian have entered into an agreement (which may be a separate control agreement or may be part of the custodial agreement) under which the Collateral Taker can take control of the margin under certain circumstances.
- (L) In certain circumstances, “initial margin” Collateral may be held at a central securities depository. In these circumstances, the parties will not enter into an IM Security Document. Instead please assume that (w) the Collateral is held in an account within Euroclear or Clearstream; (x) the parties have entered into the Euroclear Documents or the Clearstream Documents (as applicable) and other relevant documentation with Euroclear or Clearstream, which collectively establish collateral arrangements within Euroclear or Clearstream (as applicable) and set forth (i) the manner in which the Collateral is held in Euroclear or Clearstream and (ii) the manner in which the automated transfers of Collateral by Euroclear or Clearstream will be effected (i.e., upon receipt of matching instructions from the Collateral Provider and Collateral Taker as to the overall amount of initial margin Collateral that is required in respect of such Collateral Provider’s posting obligation, Euroclear or Clearstream, as applicable, will calculate any excess or deficit and make the relevant transfers accordingly on behalf of the parties in discharge of their obligations to one another); and (y) the Euroclear Documents or the Clearstream Documents and the other documents referred to in (x) (as applicable) are enforceable in accordance with their terms under applicable law (which may be different than the law of your jurisdiction).

With regard to the foregoing, you should be aware that:

- (I) in the case of Euroclear, the Collateral is held in a “Pledged Securities Account” and a “Pledged Cash Account” opened in the Euroclear System in the name of Euroclear acting in its own name but for the account of the Collateral Taker (as pledgee under the pledge granted under the Euroclear Security Agreement) and to be operated in accordance with the relevant Euroclear documents referred to in (x) above; and
- (II) in the case of Clearstream, the Collateral is held in a “Collateral Account” opened in the Clearstream system in the name of the Collateral Provider and pledged to the Collateral

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the laws of your jurisdiction the relevant inquiry is based on some other factor, please modify the locational dichotomy reflected in this assumption when answering each question to reflect such other factor, as applicable.

<sup>7</sup> See footnote 2 on page 2 of the Instruction Letter.

*Taker pursuant to the Clearstream Security Agreement and to be operated in accordance with the relevant Clearstream documents referred to in (x) above.*

- (M) *The parties may enter into more than one IM Security Document, including multiple IM Security Documents each subject to different governing laws, and/or may enter into Euroclear Documents and/or Clearstream Documents.*

### **General assumptions and qualifications**

Apart from other assumptions set out in various parts of this analysis, the conclusions set out in this memorandum are based on the assumptions that:

- (a) each Master Agreement and IM Security Document is completed and executed, so as to render each Master Agreement and IM Security Document valid and in all respects enforceable in accordance with the terms of its governing law;
- (b) the terms of the Master Agreement, including each Transaction under the Master Agreement, and the IM Security Document are agreed at arm's length by the parties so that there is no element of unfair preference of one party against the other party's other creditors;
- (c) no party is insolvent at the time of entering into the Master Agreement, a Transaction under it, or the IM Security Document or delivering Collateral under it, or becomes insolvent as a result of any of them;
- (d) each Collateral Provider has full legal and beneficial title to any credit support at the time that it delivers it under an IM Security Document;
- (e) the statutory regime governing personal property securities in Australia incorporates new concepts into Australian Law many of which, as of the date of this memorandum, have not been the subject of detailed analysis in the Superior Courts of Australia;
- (f) where the governing law of the Master Agreement and IM Security Document is not Australian Law, the rights and obligations of the parties to the Master Agreement and IM Security Document would be determined on the basis of the plain meaning of the text of the Master Agreement and IM Security Document; and
- (g) at the time the Collateral Provider exercises its contractual rights under the IM Security Documents and the relevant custodial arrangements or arrangements described in assumption (L) to recover the Collateral in the relevant account with the Custodian, Euroclear or Clearstream, the Collateral Taker has no right to enforce the security interest in accordance with its terms.

Each of the general qualifications expressed in paragraph 3.1 of Part K of our Netting Opinion is applicable to the IM Security Documents in the same manner as they are to the "Master Agreements".

## **CERTAIN TRANSACTIONS UNDER THE ISDA MASTER AGREEMENTS**

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

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

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

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

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

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

For purposes of Bullion Trades, Bullion Options and Bullion Swaps, "Bullion" means gold, silver, platinum or palladium and "Ounce" means, in the case of gold, a fine troy ounce, and in the case of silver, platinum and palladium, a troy ounce (or in the case of reference prices not expressed in Ounces, the relevant Units of gold, silver, platinum or palladium).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Freight Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency based on a fixed price and the other party pays an amount or periodic amounts of the same currency based on the price of chartering a ship to transport wet or dry freight from one port to another; all

calculations are based either on a notional quantity of freight or, in the case of time charter transactions, on a notional number of days.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX B  
(SEPTEMBER 2009)

**CERTAIN COUNTERPARTY TYPES**

Description	Covered by Memorandum
<p><u>Bank/Credit Institution.</u> 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 <u>only</u> 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 (<b>EC</b>) 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 (<b>UK</b>)).</p>	<p>Yes, covered by Memorandum provided it is an Australian Company. Partnerships are not covered by Memorandum.</p>
<p><u>Central Bank.</u> 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).</p>	<p>No, not covered by Memorandum.</p>
<p><u>Corporation.</u> A legal entity that is organized as a corporation or company rather than a partnership, is engaged in industrial and/or commercial activities and does not fall within one of the other categories in this Appendix B.</p>	<p>Yes, covered by Memorandum provided it is an Australian Company.</p>
<p><u>Hedge Fund/Proprietary Trader.</u> A legal entity, which may be organized as a corporation, partnership or in some other legal form, the principal business of which is to deal in and/or manage securities and/or other financial instruments and/or otherwise to carry on an investment business predominantly or exclusively as principal for its own account.</p>	<p>Yes, covered by Memorandum provided it is an Australian Company. Partnerships and individuals are not covered by Memorandum.</p>
<p><u>Insurance Company.</u> A legal entity, which may be organised as a corporation, partnership or in some other legal form (for example, a friendly society or industrial &amp; provident society in the UK), that is licensed to carry on insurance business, and is typically subject to a special regulatory regime and a special insolvency regime in order to protect the interests of policyholders.</p>	<p>Yes, covered by Memorandum provided it is an Australian Company. Partnerships and individuals are not covered by Memorandum.</p>

Description	Covered by Memorandum
<p><u>International Organization.</u> An organization of Sovereigns established by treaty entered into between the Sovereigns, including the International Bank for Reconstruction and Development (the World Bank), regional development banks and similar organizations established by treaty.</p>	<p>No, not covered by Memorandum.</p>
<p><u>Investment Firm/Broker Dealer.</u> A legal entity, which may be organized as a corporation, partnership or in some other form, that does not conduct commercial banking activities but deals in and/or manages securities and/or other financial instruments as an agent for third parties. It may also conduct such activities as principal (but if it does so exclusively as principal, then it most likely falls within the “Hedge Fund/Proprietary Trader” category above.) Its business normally includes holding securities and/or other financial instruments for third parties and operating related cash accounts. This type of entity is referred to as a “broker-dealer” in US legislation and as an “investment firm” in EC legislation.</p>	<p>Yes, covered by Memorandum provided it is an Australian Company. Partnerships and individuals are not covered by Memorandum.</p>
<p><u>Investment Fund.</u> 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.</p>	<p>Yes, covered by Memorandum to the extent that the relevant entity is a legal entity which is an Australian Company.</p>
<p><u>Local Authority.</u> 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.</p>	<p>No, not covered by Memorandum.</p>
<p><u>Partnership.</u> A legal entity or form of arrangement without legal personality that is (a) organised as a general, limited or some other form of partnership and (b) does not fall within one of the other categories in this Appendix B. If it does not have legal personality, it may nonetheless be treated as though it were a legal person for certain purposes (for example, for insolvency purposes) and not for other purposes (for example, tax or personal liability).</p>	<p>No, not covered by Memorandum.</p>

Description	Covered by Memorandum
<p><u>Pension Fund</u>. 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.</p>	<p>Yes, covered by Memorandum to the extent that the relevant entity is a legal entity which is an Australian Company.</p>
<p><u>Sovereign</u>. 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”).</p>	<p>No, not covered by Memorandum.</p>
<p><u>Sovereign Wealth Fund</u>. 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.</p>	<p>No, not covered by Memorandum.</p>
<p><u>Sovereign-Owned Entity</u>. 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”).</p>	<p>No, not covered by Memorandum.</p>
<p><u>State of a Federal Sovereign</u>. The principal political sub-division of a federal Sovereign, such as Australia (for example, Queensland), Canada (for example, Ontario), Germany (for example, Nordrhein-Westfalen) or the United States of America (for example, Pennsylvania). This category does not include a Local Authority.</p>	<p>No, not covered by Memorandum.</p>