

ISDA
International Swaps and Derivatives Association, Inc.
360 Madison Avenue, 16th Floor
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United States of America

Zurich, May 31, 2017
M2.5686528_1 / HUNEP / HUNEP

Addendum to the Swiss ISDA Collateral Opinion with respect to the use of:

- IM NY Annex
- VM NY Annex
- IM Deed
- VM Transfer Annex

1. Terms of Reference

1.1. Introduction

You have asked us to give an opinion in respect of the validity and enforceability under the laws of Switzerland of collateral arrangements under the ISDA Margin Credit Support Documents when used in conjunction with a Master Agreement. ¹

1.2. Extension to Industry Opinions

You have asked us to prepare this opinion in the form of an addendum ("Addendum") to the opinion prepared by Lenz & Staehelin for the International Swaps and Derivatives Association, Inc. ("ISDA") on the validity and enforceability under the laws of Switzerland of collateral arrangements under the ISDA Credit Support Documents dated as of May 31, 2017 (the "Industry Collateral Opinion"). ²

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Accordingly this Addendum is to be read and construed in conjunction with the Industry Collateral Opinion. It does not repeat the discussions, assumptions, limitations and qualifications as per the Industry Collateral Opinion all of which shall be deemed incorporated and applicable *mutatis mutandis* to this Addendum as supplemented by the discussions, assumptions, limitations and qualifications in this Addendum. This in particular, but without limitation, applies to the description and discussion of certain Swiss Insolvency Proceedings and principles governing collateralization (as per the Industry Collateral Opinion) under Swiss law prior to or in the context of Insolvency Proceedings (as defined in the Industry Collateral Opinion).

1.3. Scope of Addendum

1.3.1. Scope of Transactions

The opinions expressed in this Addendum are given in respect of all Transactions that are of a type corresponding to the Transactions addressed in the Industry Collateral Opinion.

1.3.2. Scope of Swiss Counterparties

The opinions expressed in this Addendum are given in respect of all Swiss counterparties addressed and defined as "Swiss Counterparties" in the Industry Collateral Opinion and the Zurich Cantonal Bank, subject to the addendum to the Industry Opinions extending the conclusions of the Industry Opinions to Zurich Cantonal Bank dated May 31, 2017 ("**ZKB Addendum**") and in this context the reference to Industry Opinions shall include the ZKB Addendum.

1.3.3. Scope of ISDA Margin Credit Support Documents

The opinions expressed in this Addendum are based on and given in respect of the following credit support documents ("**ISDA Margin Credit Support Documents**"):

- (a) 2016 Credit Support Annex for Variation Margin (VM) governed by New York law ("**VM NY Annex**");
- (b) 2016 Phase One Credit Support Annex for Initial Margin (IM) governed by New York law ("**IM NY Annex**");
- (c) 2016 Phase One IM Credit Support Deed governed by English law ("**IM Deed**") and each of and together with the IM NY Annex a "**IM Security Document**"; and

- (d) 2016 VM Credit Support Annex governed by English law ("**VM Transfer Annex**"). 10

1.2 Definitions

Capitalized terms used in this Addendum and not otherwise defined herein shall have the respective meaning given such terms in the Industry Collateral Opinion or the respective ISDA Margin Credit Support Document. 11

2. Core Assumptions

2.1. General

The assumptions and fact patterns contained in the Industry Collateral Opinion that relate to the "Master Agreement", the "Credit Support Documents", "Collateral" and "Transactions" shall, unless stated otherwise in this Addendum, apply *mutatis mutandis* with respect to the ISDA Margin Credit Support Documents, being further understood that each of the VM NY Annex, the IM NY Annex and the IM Deed shall constitute a "Security Document" and the VM Transfer Annex shall constitute a "Transfer Annex" within the meaning of the Industry Collateral Opinion. We note, though, that the IM NY Annex governed by New York law and the IM Deed governed by English law could be used with a Master Agreement that is not governed by the law governing the respective IM Security Document, but rather English law when used with the IM NY Annex and New York law when used with the IM Deed. 12

2.2. The ISDA Margin Credit Support Documents

- (i) Two counterparties (the "**Parties**") have entered into an ISDA Margin Credit Support Document and one Party is a Swiss Counterparty and for purposes hereof the Collateral Provider. 13
- (ii) The ISDA Margin Credit Support Documents are governed by English law or New York law respectively and are legal, valid, binding and enforceable under the laws of England and New York as applicable. 14
- (iii) No provision of the ISDA Margin Credit Support Documents that is necessary for the giving of the opinion expressed herein by reference to the Industry Collateral Opinion has been altered in any material respect in the version entered into between the Parties. 15

- (iv) With respect to the IM NY Annex and the IM Deed, that the Control Agreement, under applicable law, satisfies the requirements to create and perfect the security interest contemplated under the IM NY Annex and the IM Deed. 16
- (v) With respect to a IM NY Annex or a IM Deed that is used with a Master Agreement governed by a law other than the law of such Securities Document that the IM NY Annex provide for an explicit choice of New York law to govern the IM NY Annex and the security interest granted thereunder and that the IM Deed provide for an explicit choice of English law to govern the IM Deed and the security interest granted thereunder. 17
- (vi) With respect to IM Security Documents only, the Collateral provided under the IM Security Document is held in an account (which may hold cash (in a freely convertible currency) and securities) (a "**Custodial Account**") with a third-party custodian ("**Custodian**"), with the following characteristics: (x) the Custodian holds the Collateral in the Collateral Provider's name pursuant to a custodial agreement between the Collateral Provider and custodian; (y) the Custodial Account is used exclusively for the Collateral provided by the Collateral Provider to the relevant Collateral Taker; and (z) the Collateral Provider, the Collateral Taker and the Custodian have entered into an agreement (which may be a separate control agreement or may be part of the custodial agreement) under which the Collateral Taker can take control of the margin under certain circumstances. 18
- (vii) In certain circumstances, IM Collateral may be held at a central securities depository. In these circumstances, the parties will not enter into an ISDA Margin Credit Support Document. Instead (x) the Custodian is a central securities depository and holds the Collateral in the Custodian's name, acting in its own name but for the account of the Collateral Taker; (y) the parties have entered into securities documents and/or other agreements governing the pledge of the Collateral held by the central securities depository and movement of the Collateral into and out of the Custodial Account; and (z) such securities documents and/or other agreements are enforceable in accordance with their terms under applicable law (which may be different than the law of your jurisdiction). 19

3. Discussion and conclusions

3.1. IM NY Annex

3.1.1. Discussion

The IM NY Annex is based on the NY Annex, whereby the Secured Party has no right of use and rehypothecation. The differences to the NY Annex that addresses needs of initial margin and legal requirements that may exist in respect of such initial margin in different jurisdictions and the limitation to certain covered transactions or sets of covered transactions are primarily amendments to the Security Undertaking and not the Act of Disposition and to this extent do not in our view affect the Swiss law analysis (Swiss conflict of laws and Swiss insolvency law analysis) relevant to the conclusions as per the Industry Collateral Opinion as it applies to the NY Annex and Eligible Credit Support provided by a Swiss Counterparty thereunder (in the alternative discussed in the Industry Collateral Opinion where the parties have excluded the right of use and rehypothecation and the security interest, hence, would qualify as regular pledge), other than with respect to Cash Collateral.

We note that contrary to the NY Annex where the Eligible Credit Support is being provided to a securities account or a cash account of the Secured Party, under the IM NY Annex, the Eligible Credit Support is to be provided to a Segregated Account with the Custodian (IM) which we understand and have assume for purposes hereof, is an account of the Pledgor with such Custodian (IM).

With respect to Intermediated Securities this means that the law applicable to the Act of Disposition with respect to Intermediated Securities is the law governing the Segregated Account. Where the Segregated Account is governed by Swiss law and held with a Qualified Intermediary in Switzerland the Intermediated Securities qualify as Book-Entry Securities and the Act of Disposition requires a control agreement within the meaning of Art. 25 BESA. We note that Art. 25 BESA requires that such control agreement irrevocably grant the instruction right in respect of that securities account to the Secured Party. Notwithstanding anything to the contrary in the IM NY Annex, hence, where the Act of Disposition is governed by Swiss law as set out above, the Control Agreement must contain an irrevocable agreement of the Pledgor (as account holder) and the Custodian (IM) that the Custodian (IM) must carry out instructions from the Secured Party without any further consent or cooperation on the part of the Pledgor.

With respect to Cash transferred to the Segregated Account, such Cash would for Swiss law purposes be analysed as a contract claim of the Pledgor against the Custodian (IM), that is subjected to a pledge in favour of the Secured Party. A contract claim not being of a fungible nature, the pledge would be qualified as a regular pledge. The Swiss conflict of law rule applicable to such contractual claim is Art. 105 PILA (discussed in further detail in the



Industry Collateral Opinion for certificated and uncertificated securities that do not constitute Intermediated Securities) (see paragraph IV.10. c) (*Securities that do not qualify as Intermediated Securities under the Hague Convention*) and paragraph V as it applies to directly held securities of the Industry Collateral Opinion) and replaces the analysis with respect to Cash Collateral under the Security Documents (see paragraph IV.10. f) (*Cash Collateral*) and paragraph V of the Industry Collateral Opinion) that does not apply to Cash Collateral where such Cash Collateral is provided to the Segregated Account of the Pledgor.

As the security interest would be qualified as a regular pledge, we further note that the Secured Party would as a rule lose the right to privately realize the Cash Collateral in case of Insolvency Proceedings against a Swiss Counterparty, which while preserving the security interest as such may significantly delay the realization of the Cash Collateral (see paragraph V, Question 17 of the Industry Collateral Opinion). Where the Swiss Counterparty is a Bank or Securities Dealer, though, the right to privately realize such Cash Collateral would in our view be safeguarded by Art. 27 para. 1 lit. b Banking Act in that Cash Collateral constitutes another financial instrument (*andere Finanzinstrumente / autres instruments financiers*) the value of which can be objectively determined within the meaning of such provision.

3.1.2. Conclusions

Based on the above, our conclusions can be summarized as follows:

Subject to the above discussion and subject to the more detailed discussion in the Industry Collateral Opinion, the Industry Collateral Opinion (as it relates to the NY Annex (in the alternative discussed in the Industry Collateral Opinion where the parties have excluded the right of use and rehypothecation and the security interest, hence, would qualify as regular pledge) and Eligible Credit Support) applies to the IM NY Annex; provided that the analysis made for Cash Collateral for the NY Annex in the Industry Collateral Opinion does not apply and instead the analysis and conclusions set out above and that correspond to the analysis in the Industry Collateral Opinion for directly held securities under a NY Annex (in the alternative discussed in the Industry Collateral Opinion where the parties have excluded the right of use and rehypothecation and the security interest, hence, would qualify as regular pledge) apply mutatis mutandis to Cash Collateral provided under the IM NY Annex.

3.2. VM NY Annex

3.2.1. Discussion

The VM NY Annex is based on the NY Annex, whereby the Secured Party has the right of use and rehypothecation. The differences to the NY Annex that addresses needs of variation margin and legal requirements that may exist in respect of such variation margin in different

jurisdictions and the limitation to certain covered transactions or sets of covered transactions are amendments to the Security Undertaking and not the Act of Disposition and thereby do not in our view affect the Swiss law analysis (Swiss conflict of laws and Swiss insolvency law analysis) relevant to the conclusions as per the Industry Collateral Opinion as it applies to the to the NY Annex and Eligible Credit Support provided by a Swiss Counterparty thereunder (in the alternative discussed in the Industry Collateral Opinion where the parties have granted the right of use and rehypothecation and the security interest, hence, would qualify as an irregular pledge).

3.2.2. Conclusions

Based on the above, our conclusions can be summarized as follows:

Subject to the above discussion and subject to the more detailed discussion in the Industry Collateral Opinion, the Industry Collateral Opinion (as it relates to the NY Annex (in the alternative discussed in the Industry Collateral Opinion where the parties have granted the right of use and rehypothecation and the security interest, hence, would qualify as irregular pledge) and Eligible Credit Support) applies to the IM NY Annex.

3.3. IM Deed

3.3.1. Discussion

The IM Deed is based on the Deed. The differences of the IM Deed to the Deed that addresses needs of initial margin and legal requirements that may exist in respect of such initial margin in different jurisdictions and the limitation to certain covered transactions or sets of covered transactions are primarily amendments to the Security Undertaking and not the Act of Disposition and to this extent do not in our view affect the Swiss law analysis (Swiss conflict of laws and Swiss insolvency law analysis) relevant to the conclusions as per the Industry Collateral Opinion as it applies to the Deed and Eligible Credit Support provided by a Swiss Counterparty thereunder, other than with respect to Cash Collateral.

We note that contrary to the Deed where the Eligible Credit Support is being provided to a securities account or a cash account of the Secured Party, under the IM Deed, the Eligible Credit Support is to be provided to a Segregated Account with the Custodian which we understand and have assume for purposes hereof, is an account of the Chargor with such Custodian.

With respect to Intermediated Securities this means that the law applicable to the Act of Disposition with respect to Intermediated Securities is the law governing the Segregated Account. Where the Segregated Account is governed by Swiss law and held with a Qualified Intermediary in Switzerland the Intermediated Securities qualify as Book-Entry Securities

and the Act of Disposition requires a control agreement within the meaning of Art. 25 BESA. We note that Art. 25 BESA requires that such control agreement irrevocably grant the instruction right in respect of that securities account to the Secured Party. Notwithstanding anything to the contrary in the IM Deed, hence, where the Act of Disposition is governed by Swiss law as set out above, the Control Agreement must contain an irrevocable agreement of the Chargor (as account holder) and the Custodian that the Custodian must carry out instructions from the Secured Party without any further consent or cooperation on the part of the Chargor.

With respect to Cash transferred to the Segregated Account, such Cash would for Swiss law purposes be analysed as a contract claim of the Chargor against the Custodian, that is subjected to a pledge in favour of the Secured Party. A contract claim not being of a fungible nature, the pledge would be qualified as a regular pledge. The Swiss conflict of law rule applicable to such contractual claim is Art. 105 PILA (discussed in further detail in the Industry Collateral Opinion for certificated and uncertificated securities that do not constitute Intermediated Securities) (see paragraph IV.10. c) (*Securities that do not qualify as Intermediated Securities under the Hague Convention*) and paragraph V as it applies to directly held securities of the Industry Collateral Opinion) and replaces the analysis with respect to Cash Collateral under the Security Documents (see paragraph IV.10. f) (*Cash Collateral*) and paragraph V of the Industry Collateral Opinion) that does not apply to Cash Collateral where such Cash Collateral is provided to the Segregated Account of the Chargor.

As the security interest would be qualified as a regular pledge, we further note that the Secured Party would as a rule lose the right to privately realize the Cash Collateral in case of Insolvency Proceedings against a Swiss Counterparty, which while preserving the security interest as such may significantly delay the realization of the Cash Collateral (see paragraph V, Question 17 of the Industry Collateral Opinion). Where the Swiss Counterparty is a Bank or Securities Dealer, though, the right to privately realize such Cash Collateral would in our view be safeguarded by Art. 27 para. 1 lit. b Banking Act in that Cash Collateral constitutes another financial instrument (*andere Finanzinstrumente / autres instruments financiers*) the value of which can be objectively determined within the meaning of such provision.

3.3.2. Conclusions

Based on the above, our conclusions can be summarized as follows:

Subject to the above discussion and subject to the more detailed discussion in the Industry Collateral Opinion, the Industry Collateral Opinion (as it relates to the Deed) applies to the IM Deed; provided that the analysis made for Cash Collateral for the Deed in the Industry Collateral Opinion does not apply and instead the analysis and conclusions set out above and that correspond to the analysis in the Industry Collateral Opinion for directly held securities under a Deed apply mutatis mutandis to Cash Collateral provided under the IM Deed.

3.4. VM Transfer Annex

The VM Transfer Annex is based on the CSA Transfer Annex. The differences of the VM Transfer Annex to the CSA Transfer Annex that address the specific needs of variation margin and legal requirements that may exist in respect of such variation margin in different jurisdiction and the limitation to certain covered transactions or sets of covered transactions are amendments to the Security Undertaking and not the Act of Disposition and thereby do not in our view affect the Swiss law analysis (Swiss conflict of laws and Swiss insolvency law analysis) relevant to the conclusions as per the Industry Collateral Opinion as it applies to the CSA Transfer Annex and Credit Support provided by a Swiss Counterparty thereunder.

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3.4.1. Conclusions

Based on the above, our conclusions can be summarized as follows:

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Subject to the above discussion and subject to the more detailed discussion in the Industry Collateral Opinion, the Industry Collateral Opinion (as it relates to the CSA Transfer Annex and Eligible Credit Support) applies to the VM Transfer Annex.

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3.5. IM Collateral held at a central securities depository

To the extent that IM Collateral is held at a central securities depository as described in assumption (vii), the Swiss law analysis would need to be made based on the underlying collateral arrangement of the central securities depository. Provided that the security interest granted under such collateral arrangement does neither result in a title transfer to the Secured Party nor grant the Secured Party a right of use and rehypothecation of such IM Collateral under the laws applicable to the security interest or the collateral arrangement and thereby for the Swiss law analysis the security interest would be treated as a regular pledge (*reguläres Pfandrecht / droit de gage régulier*) in favor of the Secured Party (as discussed in further detail in the Industry Collateral Opinion), we would expect that the Swiss law analysis and conclusions with respect to IM Collateral held under such collateral arrangement should be substantially similar to the conclusions reached herein with respect to the IM Deed and the IM NY Annex based on the discussion of the IM Deed and the IM NY Annex above.

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This Addendum is governed by and construed in accordance with Swiss law and shall be subject to the exclusive jurisdiction of the ordinary courts of Zurich, Canton of Zurich, Switzerland.

This Addendum is solely addressed to you and solely for the benefit of your members. It may not be relied upon by any other person, entity or corporation whatsoever and may, save as set forth hereinafter, not be disclosed to any other person, entity or corporation whatsoever without our prior

LENZ & STAEHELIN

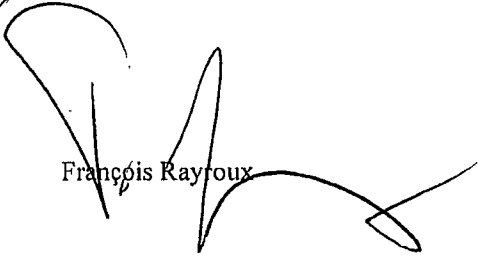
written consent. This Addendum may be disclosed to professional advisors of your members and to the appropriate bank regulatory and supervisory authorities for informational purposes, on the basis that we assume no responsibility to such professional advisors, authorities or any other person as a result.

Yours faithfully,

LENZ & STAEHELIN



Patrick Hünerwadel



François Rayroux