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

Rights of the Collateral Provider under the IM Security Documents under English Law upon the occurrence of an Event of Default under Section 5(a)(vii) of the ISDA Master Agreement in respect of the Collateral Taker

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I. INTRODUCTION

1. Overview and scope of issues covered by this memorandum

In this memorandum we consider the enforceability of the rights of the Collateral Provider under the IM Security Documents and Clearing System IM Documents under English Law[1] upon the occurrence of a Pledgor Rights Event or Chargor Rights Event (as applicable) arising as a result of an Event of Default under Section 5(a)(vii) of the ISDA Master Agreement in respect of the Collateral Taker (where the Collateral Taker is one of the entities specified below). We do not consider any other ISDA collateral documents in this memorandum.

The IM Security Documents are entered into in connection with an agreement between two parties based on one of the following standard form master agreements published by the International Swaps and Derivatives Association, Inc. (**ISDA**):

(1) the ISDA 2002 Master Agreement (the **2002 Agreement**); and

(2) the 1992 ISDA Master Agreement (Multicurrency – Cross Border) (the **1992 Agreement**).

References below to "the **ISDA Master Agreement**" or "an ISDA Master Agreement" apply equally, unless context otherwise requires, to an agreement based on the 2002 Agreement and one based on the 1992 Agreement. Where a distinction between the forms of ISDA Master Agreement is relevant to the analysis, we refer expressly to the relevant form.[2]

In this memorandum (except as described in part III where we discuss collateral arrangements involving Euroclear or Clearstream accounts), we assume that each initial margin collateral arrangement entered into in connection with an ISDA Master Agreement between two parties is documented under one of the following standard form documents published by ISDA:

(a) the 2016 Phase One Credit Support Annex for Initial Margin (IM) governed by New York law (the **IM NY Annex**);

(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**).

A capitalised term used and not defined in this memorandum has the meaning given to that term in the ISDA Master Agreement or the relevant IM Security Document, according to context.

The term "**security interest**", when used in this memorandum, refers to any form of security interest that may be created under an IM Security Document, although the precise nature of the interest will vary according to the governing law, the nature of the assets over which security is created, and other relevant circumstances.

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1 England and Wales form a single legal jurisdiction. In this memorandum, a reference to "English law" is a reference to the law of England and Wales (other than legislation passed by the Welsh Assembly) and, unless context indicates otherwise, a reference to "England" is a reference to the legal jurisdiction of England and Wales.

2 Other forms of master agreement are published by ISDA, but the 2002 Agreement and 1992 Agreement are the two most widely used forms of master agreement, particularly for use in connection with a collateral arrangement of a type considered in this memorandum.

Similarly, in this memorandum:

(A) in relation to the IM Security Documents, the term "**Collateral Provider**" refers to the Pledgor under the IM NY Annex or the Chargor under the IM Deed; and

(B) the term "**Collateral Taker**" refers to the Secured Party under an IM Security Document.

The term "**Collateral**", when used in this memorandum (subject to the additional assumptions applicable in respect of part III), refers, in the case of each IM Security Document, to any of the types of collateral described in part II.2(g) to (i) below in respect of which a security interest has been created by the Collateral Provider in favour of the Collateral Taker to provide credit support for the obligations of the Collateral Provider under the relevant ISDA Master Agreement.

The issues that you have asked us to address are set out below in italics, followed in each case by our analysis and conclusions.

This memorandum (other than part IV in which we describe certain pending developments which we are aware may occur in the future) is limited to matters of English law as in effect on today's date. We have assumed that no foreign law qualifies or affects our analysis or conclusions set out below. No opinion is expressed on matters of fact.

As used in this memorandum, the term "**enforceable**" means that each obligation or document is of a type and form enforced by the English courts. It is not certain, however, that each obligation or document will be enforced in accordance with its terms in every circumstance, enforcement being subject to, among other things, the non-conclusivity of certificates, doctrines of good faith and fair conduct and the nature of the remedies available in the English courts (including the availability of equitable remedies). The power of an English court to grant an equitable remedy such as an injunction or specific performance is discretionary, and accordingly an English court might make an award of damages where an equitable remedy is sought. Enforcement is also subject to the discretion of the courts in the acceptance of jurisdiction, the power of such courts to stay proceedings, the provisions of the Limitation Act 1980, doctrines of good faith and fair conduct and laws based on those doctrines and other principles of law and equity of general application.

Finally, for purposes of our analysis below, we make reference to:

(i) our Memorandum of Law dated 30 December 2015 for ISDA on the validity and enforceability under English law of close-out netting under the 2002, 1992 and 1987 ISDA Master Agreements (the **2015 ISDA Netting Opinion**);

(ii) our Memorandum of Law dated 30 December 2015 for ISDA on the validity and enforceability under English law of Collateral Arrangements under the ISDA Credit Support Documents (the **2015 ISDA Collateral Opinion** and together with the 2015 ISDA Netting Opinion, the **2015 ISDA Opinions**); and

(iii) our supplement to the 2015 ISDA Collateral Opinion dated on or around the same date as this memorandum in respect of the enforceability under English law of the IM Security Documents, VM CSA and VM Transfer Annex against the Collateral Provider (the **2016 ISDA Collateral Provider WGMR Opinion**).

A references to Credit Support Documents in this memorandum has the meaning given to it in the 2016 ISDA Collateral Provider WGMR Opinion.

2. Scope of Counterparty types covered by this memorandum

In this memorandum, we consider Collateral Takers that are one of the types of English entity specified below and, to the extent indicated in (b) below, certain foreign entities.

(a) *English entities*

You have asked us to consider in this memorandum the following types of entities described in Appendix B (together, where applicable with a Foreign Entity, a **Counterparty**):

(i) a Corporation, if registered as a company in England under the Companies Act 2006[3] other than a company falling within Appendix C (an **English Company**);

(ii) a Bank/Credit Institution, if established as an English Company, having its head office in England and permitted under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits (an **English Bank**);

(iii) an Investment Firm/Broker Dealer, if established as an English Company (an **English Investment Firm**); and

(iv) Standard Chartered Bank, which is a Bank/Credit Institution that is a body corporate established by royal charter granted by the Crown, having its head office and principal place of business in England and permitted under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits.

(each, an **English Counterparty**).

In this memorandum, we do not consider any other type of entity organised under English law, whether or not falling within any description in Appendix B and nor do we consider English branches of Foreign Entities.

For the avoidance of doubt, and without limiting the generality of the above, the following types of entity that may be established under English law are outside the scope of this memorandum: a trust, a general partnership, a limited partnership, a limited liability partnership, a building society, a friendly society, a registered society under the Co-operative and Community Benefit Societies Act 2014, a body corporate established by private Act of Parliament, a body corporate established by royal charter granted by the Crown (other than Standard Chartered Bank), insurance companies, reinsurance companies, underwriting members of Lloyds of London, pension funds, a private registered provider of social housing or a registered social landlord (commonly known as a housing association), a credit union, a local authority[4], an educational establishment established under the Further and Higher Education Act 1992, a European Public Limited-Liability Company (or Societas Europaea), investment funds (such as open-ended investment companies or authorised contractual

3 As provided in section 1 of the Companies Act 2006, this includes companies formed and registered under the Companies Act 2006, as well as companies formed and registered under a prior Companies Act or, in certain cases, formed under other English legislation or letters patent. This does not include branches of foreign corporations (referred to as "overseas companies" in the Companies Act 2006) registered as such under Part 34 of the Companies Act 2006.

4 This exclusion includes a local authority acting in relation to its local authority pension scheme, administered by the local authority under specific legislation in connection with the national Local Government Pension Scheme.

schemes) a charity, a charitable incorporated organisation, a charitable common investment fund, a charitable common deposit fund, other charitable investment funds, a Banking Group Company and a Bank Holding Company (each as defined in the 2015 ISDA Opinions), the Bank of England or the United Kingdom acting through Her Majesty's Treasury.

We also do not consider ISDA Master Agreements entered into on a joint, several or joint and several basis (for example, where a bank is one party to the ISDA Master Agreement and the other named party is in fact two separate entities).

Finally, we do not consider a natural person (private individual) in this memorandum, whether acting for his or her own account or as a trustee in relation to any form of trust or in any other capacity.

(b) *Foreign Entities*

A **Foreign Entity** is a corporate entity that is a Corporation, Bank/Credit Institution, Investment Firm/Broker Dealer or Hedge Fund/Proprietary Dealer organised/incorporated in a foreign jurisdiction under a foreign law.

(c) *Legal capacity and regulatory issues generally*

Each of the Counterparty types you have asked us to consider in this memorandum is potentially subject to requirements under its constitutional document or to legal or regulatory requirements/restrictions that may affect the legality or validity of its entering into certain types of Transaction under an ISDA Master Agreement or a Credit Support Document (including the IM Security Documents) in connection with an ISDA Master Agreement. We do not consider such issues in this memorandum. The list of Transactions in Appendix A should therefore be read accordingly – the inclusion of a Transaction in Appendix A does not mean that a particular English Counterparty has capacity to enter into that Transaction.

Therefore issues of the legal capacity and authority of a Counterparty to enter into any specific type of Transaction is outside the scope of this memorandum. Note that we also do not consider the various powers that may be available in respect of each type of Counterparty to transfer all or part of its assets to another entity or convert itself into another type of entity.

More generally, we do not advise in this memorandum on regulatory issues relating to derivatives dealings by any Counterparty type falling within the scope of this memorandum. Without prejudice to the generality of the foregoing, we do not consider whether any Collateral would constitute client assets or client money for the purposes of the Client Assets sourcebook (CASS) (forming part of the FCA Handbook).

3. Assumptions

We indicate where relevant any assumptions that you have asked us to make.

In addition, we make the following assumptions throughout this memorandum:

(a) To the extent that any obligation arising under the ISDA Master Agreement or Credit Support Document (including an IM Security Document) falls to be performed in any jurisdiction outside England, its performance will not be illegal or ineffective by virtue of the laws of that jurisdiction.

(b) Each party (i) is able lawfully to enter into the ISDA Master Agreement, the Transactions thereunder and the relevant Credit Support Documents (including the IM Security Document) under the laws of its jurisdiction of incorporation and under its relevant constitutional documents, (ii) has taken all corporate action necessary to authorise its entry into the ISDA Master Agreement, the Transactions thereunder and the relevant Credit Support Documents (including the IM Security Document), and (iii) has duly executed and delivered the ISDA Master Agreement, each Transaction and the relevant Credit Support Documents (including the IM Security Document).

(c) If the ISDA Master Agreement and any Credit Support Document (other than the IM Security Document) is governed by English law, the ISDA Master Agreement and any Credit Support Document (other than the IM Security Document) would, when duly entered into by each party, constitute legally binding, valid and enforceable obligations of each party under English law. In respect of an ISDA Master Agreement and Credit Support Document (including the IM Security Documents) governed by any law other than English law (even in part), the relevant ISDA Master Agreement or Credit Support Document (including the IM Security Document) governed by any law other than English law would, when duly entered into by each party, constitute legally binding, valid and enforceable obligations of each party under each other law.

(d) Each of the parties to the ISDA Master Agreement and the relevant Credit Support Documents (including the IM Security Document) who is carrying on, or purporting to carry on, any regulated activity in the United Kingdom is an authorised person permitted to carry on that regulated activity or an exempted person in respect of that regulated activity under the Financial Services and Markets Act 2000 and neither the ISDA Master Agreement nor any Credit Support Document (including the IM Security Document) was entered into in consequence of a communication made in breach of section 21(1) of the Financial Services and Markets Act 2000.

(e) Each of the parties is acting as principal and not as agent in relation to its rights and obligations under the ISDA Master Agreement and the relevant Credit Support Documents (including the IM Security Document), and no third party has any right to, interest in, or claim on any right or obligation of either party under either document.

(f) The terms of the ISDA Master Agreement, including each Transaction under the ISDA Master Agreement, and the relevant Credit Support Documents (including the IM Security Document) are agreed at arms' length by the parties so that no element of gift or undervalue from one party to the other party is involved.

(g) In deciding to enter into the ISDA Master Agreement, including each Transaction, and the relevant Credit Support Documents (including the IM Security Document) or to make any payment or delivery in accordance with the ISDA Master Agreement, including each Transaction, and the relevant Credit Support Documents (including the IM Security Document), neither party was influenced by a desire to put the other party into a position which, in the event of the former party going into insolvent liquidation, would be better than the position the latter party would have been in if the ISDA Master Agreement, such Transaction or the relevant Credit Support Documents (including the IM Security Document) had not been entered into or such payment or delivery had not been made.

(h) At the time of entry into the ISDA Master Agreement, including each Transaction under the ISDA Master Agreement, and the relevant Credit Support Documents (including the IM Security Document), no insolvency, administration, voluntary

arrangement, resolution, rescue, receivership, compulsory management or composition proceedings have commenced in respect of either party, and neither party is insolvent at the time of entering into the ISDA Master Agreement, including each Transaction under the ISDA Master Agreement, or the relevant Credit Support Documents (including the IM Security Document) or becomes insolvent as a result of entering into such documents.

(i) Each Collateral Provider, when transferring Collateral in the form of securities as part of a Delivery Amount under an IM Security Document, will have full legal title to such securities at the time of transfer, free and clear of any lien, claim, charge or encumbrance or any other interest of the transferring party or of any third person (other than (i) a lien routinely imposed on all securities in a relevant clearance or settlement system; or (ii) any lien applicable to all Collateral held in the Segregated Account in favour of the Custodian (IM)).

(j) Each English Counterparty has its centre of main interests (**COMI**) for purposes of the EC Insolvency Regulation in England.[5] We make this assumption because if the EC Insolvency Regulation applies and the COMI is in another member state of the European Union, then that other member state has primary insolvency jurisdiction under the EC Insolvency Regulation (that is, it has, in the terminology of the EC Insolvency Regulation, jurisdiction to open "main proceedings") and the jurisdiction of the English courts is limited to opening either "secondary proceedings" or "territorial proceedings", in either case only if there is an establishment in the United Kingdom.[6]

(k) To the extent applicable, each Foreign Entity has its COMI for the purposes of the EC Insolvency Regulation outside of England.

(l) The Custodian (IM) will comply with its obligations and is not subject to any insolvency or resolution proceedings and the Collateral is segregated from the proprietary assets of the Custodian (IM) in accordance with applicable law.

(m) No English Counterparty or Foreign Entity is able to avail itself of immunity.

(n) None of the ISDA Master Agreement, the transactions subject to the ISDA Master Agreement or the Credit Support Documents (including the IM Security Documents) have as their predominant purpose or one of their main purposes the deprivation of the property of one of the parties on bankruptcy.

4. Fact patterns

You have asked us, when responding to each question, to distinguish between the following three fact patterns:

(a) The Location of the Collateral Taker is in England and the Location of the Collateral

5 Council Regulation 1346/2000/EC on insolvency proceedings [2000] OJ L160.

6 Article 3 of the EC Insolvency Regulation. If main proceedings have been opened in another EU member state, only secondary proceedings may be opened in England. Secondary proceedings must be winding up proceedings and would not be conducted on a universal basis but would be limited in effect to assets and liabilities of the establishment of the English Company in the United Kingdom. Prior to the opening of main proceedings, "territorial proceedings" may be opened in England, subject to certain additional conditions set out in Article 3(4) of the EC Insolvency Regulation. Territorial proceedings may, under Articles 36 and 37 of the EC Insolvency Regulation, be converted in effect to secondary proceedings at the request of the liquidator in the main proceedings. Note that not all of the English Counterparty types are within the scope of the EC Insolvency Regulation – for example a separate regime is applicable to EU credit institutions which is discussed separately.

is outside England.

(b) The Location of the Collateral Taker is in England and the Location of the Collateral is in England.

(c) The Location of the Collateral Taker is outside England and the Location of the Collateral is in England.

For the foregoing purposes:

(i) the **Location** of the Collateral Taker is in England if it is an English Counterparty.

(ii) the **Location** of the Collateral Taker is outside England if it is a Foreign Entity.

(iii) the **Location** of Collateral is the place where an asset of that type is located under the private international law rules of England. See our answer to question 2 in part III of the 2015 ISDA Collateral Opinion for further details in this regard.[7]

Although we do not expressly refer to each fact pattern in our answer to each question, we have taken the fact patterns into consideration in developing our analysis. It should generally be clear from the context which of the fact patterns is being discussed in each case. For example, the use of the defined term "English Company" or "English Counterparty" clearly excludes a Foreign Entity under fact pattern (c). In addition, it should generally be clear from the answers where the position depends on whether the Collateral is to be considered as located in England or in a foreign jurisdiction.

Note that, as a general rule, neither the location nor the form of organisation of the Collateral Provider is relevant to consideration of the enforceability of its rights in the event of insolvency proceedings in England in respect of the Collateral Taker.

5. Insolvency Proceedings in respect of an English Counterparty

Please refer to part III.1(4) of the 2015 ISDA Netting Opinion for a discussion of the insolvency proceedings that may be commenced in England in relation to an English Company. Please refer to the relevant Annexes of the 2015 ISDA Opinions in respect of other English Counterparties.

7 Unless otherwise indicated, when we talk of the 'location' of Collateral in this memorandum, we mean the legal jurisdiction that governs the proprietary aspects of the Collateral determined in accordance with our answer to question 2 in part III of the 2015 ISDA Collateral Opinion. As explained in more detail in the 2015 ISDA Collateral Opinion, in respect of a financial collateral arrangement, Regulation 19 of the FCA Regulations provides that the domestic law of the country in which relevant account is maintained will apply. Outside the implementation of the Settlement Finality Directive, the Financial Collateral Directive and the Winding Up Directive, there is no statutory framework in England for determining the *lex situs* of an interest in intermediated securities. Whilst there is some academic debate, we believe that the relevant law in the case of intermediated securities outside of the FCA Regulations is the place of the account, register or other recording in book entry form of the most immediate intermediary (regardless of where other links in the chain may be).

II. IM SECURITY DOCUMENTS

1. Introduction

In this part II we consider issues relating to the rights of a Collateral Provider under the IM Security Documents against an English Counterparty acting as Collateral Taker in respect of Collateral delivered under each of the IM Security Documents under fact patterns (a) and (b) as set out in part I.4 of this memorandum.

In this part II we also consider issues relating to the rights of a Collateral Provider under the IM Security Documents against a Collateral Taker that is a Foreign Entity where the Collateral is located in England under fact pattern (c) as set out in part I.2(b) and part I.4 of this memorandum.

2. Assumptions

For the purpose of this part II, in addition to the assumptions set out at part I.3, you have asked us to make the following assumptions:

(a) The Collateral Provider has entered into an ISDA Master Agreement and an IM Security Document with the Collateral Taker. The parties have entered into either (i) an ISDA Master Agreement governed by New York law; or (ii) an ISDA Master Agreement governed by English law.

(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 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 we only consider the Collateral taking leg of one party – issues relating to the insolvency of the Collateral Provider are considered in a separate opinion.

(d) We assume that each party is either an English Counterparty or a Foreign Entity as defined above that is subject to the requirement to post or collect initial margin with respect to derivatives or swaps.

(e) If the ISDA Master Agreement is governed by New York law, the ISDA Master Agreement would, when duly entered into, constitute legal, valid and binding obligations of each party under New York law. If the IM Security Document is an IM NY Annex, it would, when duly entered into, constitute legal, valid and binding obligations of each party under New York law. Each party has duly authorised, executed and delivered, and has the capacity to enter into, each document.

(f) No provision of the ISDA Master Agreement or relevant IM Security Document has been altered in any material respect. The making of standard elections in Paragraph 13 of either IM Security Document (consistently with the other assumptions in this memorandum) would not in our view constitute material alterations, except where expressly indicated in the discussion below.

(g) Pursuant to the relevant IM Security Document, the counterparties agree that Eligible Collateral will include cash denominated in a freely convertible currency 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 England or (ii) outside England.

(h) Any securities provided as Eligible Collateral are denominated in either Sterling or any freely convertible currency and consist of:

(i) debt securities issued by:

(1) a corporate (regardless of whether or not the issuer is organised or located in England);

(2) the government of the United Kingdom (commonly referred to as "UK Government Stock", "gilt edged securities", or "gilts"); and

(3) the government of another member of the "G-10" group of countries (being Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland and the United States);

(ii) publically listed and traded corporate equity securities issued by a corporate (regardless of whether or not the issuer is organised or located in England),

in each case in the form of intermediated securities.[8]

By 'intermediated securities' we mean a form of interest in securities recorded in fungible book-entry form in an account with a financial intermediary as described in assumption (i) below.[9] The method through which the financial intermediary will itself hold the underlying security will depend on the particular security and jurisdictions involved.

In general terms, securities may be issued in (i) bearer form; (ii) registered form; or (iii) dematerialised form. Bearer securities are typically immobilised through use of a 'global security' (i.e. a single security representing all, or the relevant part, of the entire issue) which is held by or on behalf of the relevant national or international central securities depositary (a **CSD**) enabling settlement through the relevant clearing system. Registered securities, including equity securities, can also be immobilised.

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8 We assume that all of the intermediated securities are freely transferable and not subject to restrictions. In particular, we do not consider in this memorandum any regulatory requirements that may arise in the context of taking security over equity securities or corporate events that may restrict transferability of the relevant equity securities. We also assume that any transfer or stamp taxes are satisfied to the extent that non-payment would affect the validity of the transfer or the grant of the security interest.

9 Intermediated securities are also referred to as "indirectly held" securities. The terms are interchangeable. In this memorandum for clarity we use only the term "intermediated".

Alternatively securities may be dematerialised such that the ultimate root of title is not recorded in a physical certificate or register – instead the electronic entry in the books of the central operator is determinative.

In this Part II, we assume that the Collateral Provider is holding its interest in the intermediated securities through a financial intermediary (referred to as the Custodian (IM) below) who in turn may hold directly within the relevant clearing system or through a chain of other financial intermediaries. [10]

(i) The Collateral provided under the IM Security Document is held in a cash or securities account (as applicable) (a **Segregated Account**) with a third party custodian (a **Custodian (IM)**) where (x) the Custodian (IM) holds the Collateral in the Collateral Provider's name pursuant to a custodial agreement between the Collateral Provider and the Custodian (IM); (y) the Segregated Account is used exclusively for the Collateral provided by the Collateral Provider in respect of the IM Security Document; and (z) the Collateral Provider, the Collateral Taker and the Custodian (IM) 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 is able to issue instructions in respect of the Collateral to the Custodian (IM) in certain circumstances.

This agreement is referred to as the Control Agreement in the IM Security Documents and we assume that the Control Agreement constitutes legal, valid and binding obligations under its governing law and each party has duly authorised, executed and delivered, and has the capacity to enter into, the Control Agreement. For the avoidance of doubt we have not reviewed any particular Control Agreement for the purpose of giving this opinion.

(j) Pursuant to the ISDA Master Agreement, the Collateral Provider enters into a number of Transactions with the Collateral Taker. Such Transactions include only Transactions of a type falling within one or more of the types of transaction described in Appendix A. 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.

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10 Article 3(2) of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories (the **CSDR**) suggests that where 'transferable securities' are transferred pursuant to a financial collateral arrangement (as defined in the Collateral Directive) those securities must be in book-entry form in a CSD. Under Recital 11 and Article 3(1) immobilisation and dematerialisation both qualify as methods for book-entry recording.

The full implications of this provision are not clear but, in addition to the obvious application to title transfer financial collateral arrangements, it is possible that this requirement in the CSDR could also have implications in relation to a security financial collateral arrangement where the nature of the security interest effects a 'transfer' of the transferable securities. As a matter of English law this would be the case where a legal mortgage over those securities is taken and could, in theory, also include an equitable mortgage.

The CSDR appears less directly relevant to collateral arrangements of the type envisioned by the IM Security Documents – the grant of the security interest will not itself constitute a 'transfer' (although of course the securities will need to transferred into the Segregated Account as a pre-condition to becoming subject to the financial collateral arrangement). Article 3(2) refers to securities being transferred following a financial collateral arrangement but recital 11 refers to the collateral being 'provided' pursuant to a financial collateral arrangement which suggests that the requirement relates to a transfer at the time of creation rather than enforcement (see also Yeowart and Parsons with Murray and Patrick, *Yeowart and Parsons on the Law of Financial Collateral* (Elgar Financial Law and Practice 2016 ch 16)).

As the CSDR provides, at Article 8(3), that an infringement of Article 3(2) shall not affect the validity of the relevant contract, we do not consider the CSDR further in this memorandum. However, ISDA members should be aware that failure to comply could result in liability for breach.

(k) After entering into the Transactions and prior to the maturity thereof, an Event of Default under Section 5(a)(vii) of the ISDA Master Agreement has occurred and is continuing in respect of the Collateral Taker as a result of a formal bankruptcy, insolvency, liquidation, reorganisation, administration or comparable proceeding (collectively, ''**insolvency proceedings**'') that has been instituted against the Collateral Taker (such proceedings are English proceedings in respect of an English Counterparty). Note that this opinion does not address issues that may arise if the Custodian (IM) becomes subject to insolvency proceedings and we assume the Custodian (IM) (i) is not at any point insolvent; and (ii) has properly segregated and safeguarded the Collateral.

(l) The parties may enter into separate IM Security Documents in respect of each collateral posting leg and may also enter into arrangements described in Part III instead of entering into an IM Security Document in respect of a posting leg. The parties may also enter into VM Documents as described in the 2016 ISDA Collateral Provider WGMR Opinion. This Part relates only to the rights of the Collateral Provider under the IM Security Documents in the circumstances described above.

To the extent that the documents above are governed by foreign laws, we have reviewed such documents on the basis of a plain reading of the relevant terms. To the extent that the documents include either (i) technical legal terms as applied in a legal system other than English law; or (ii) terms in another language such as Japanese, we assume such technical or foreign language terms do not affect our conclusions below.

3. Questions relating to the IM Security Documents

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

(a) *Pledgor/Chargor Rights Event*

It is important to note that the occurrence of an Event of Default under Section 5(a)(vii) of the ISDA Master Agreement alone is not sufficient to trigger a Pledgor Rights Event or Chargor Rights Event (as applicable).

A Pledgor Rights Event or Chargor Rights Event (as applicable) requires that: (1) an Early Termination Date has occurred or been designated as a result of an Event of Default or Access Condition with respect to the Collateral Taker; (2) the Collateral Provider has provided a statement to the Collateral Taker in respect of such Early Termination Date pursuant to Section 6(d) of the ISDA Master Agreement; and (3) an amount under Section 6(e) of the ISDA Master Agreement is payable to the Collateral Provider, is zero or was payable by the Collateral Provider but has been discharged in full together with any accrued interest (including pursuant to the Delivery in Lieu Right if applicable). There may also be a delay period between the statement being provided under Section 6(d) and the Pledgor Rights Event or Chargor Rights Event (as applicable) being triggered.

(b) *Pledgor/Chargor Access Notices*

The contractual rights of the Collateral Provider to recover the Collateral it has transferred to the Segregated Account under the IM Security Document will depend on (i) the terms of the relevant Control Agreement entered into between the parties to the IM Security Document and the Custodian (IM); and (ii) the IM Security Document.

Under each of the IM Security Documents, the Collateral Provider covenants that it will not (i) give a Pledgor Access Notice or Chargor Access Notice[11] (as applicable) under the Control Agreement or (ii) exercise any rights or remedies arising from the delivery of such notice with respect to Posted Credit Support (IM) unless and until a Pledgor Rights Event or Chargor Rights Event (as applicable) occurs (except where it does so to exercise the Delivery in Lieu Right, if applicable, or in order to exercise its right to return of Posted Credit Support (IM) pursuant to Paragraph 8(d)).

We assume that the terms of the Control Agreement provide the Collateral Provider with the ability to serve a Pledgor Access Notice or Chargor Access Notice (as applicable) on the Custodian (IM) if a Pledgor Rights Event or Chargor Rights Event occurs.

Paragraph 2(d) of the IM Deed also provides that if a transfer of Collateral is made in accordance with the Control Agreement following a default in respect of the Collateral Taker, the security interest under the IM Deed is released.

(c) *Paragraph 8(b) of the IM Security Documents*

Separately under Paragraph 8(b) upon the occurrence of a Pledgor Rights Event or Chargor Rights Event (as applicable),[12] the Collateral Provider is permitted under the terms of the IM

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11 A notice that gives the Collateral Provider exclusive right to direct the Custodian (IM) to block withdrawals or to control the Collateral.

12 We assume that the Pledgor Additional Rights Event /Chargor Additional Rights Event definition is not applicable.

Security Document to (i) exercise all rights and remedies available to a pledgor/chargor under applicable law; and (ii) the Secured Party is obligated to immediately transfer or instruct the Custodian (IM) to transfer all Posted Credit Support (IM) to the Collateral Provider (although under Paragraph 13(n)(v) this is without prejudice to any delay or contest period expressly specified in the Control Agreement). Whilst Paragraph 8(b) is relevant, we would expect the primary means of a Collateral Provider recovering its Collateral to be the service of a Pledgor Access Notice or Chargor Access Notice (as applicable) since (i) (at least if the Collateral is located in England) the Collateral Provider is unlikely to have any particular rights and remedies under applicable law to promptly recover the Collateral;[13] and (ii) if the Collateral Taker is in insolvency proceedings, Paragraph 8(b)(ii) may be of limited practical assistance (see discussion in (d) below).

We express no opinion on the enforceability of Paragraph 8(b)(iv) of the IM NY Annex or the Delivery in Lieu Right in either IM Security Document.[14]

(d) *Impact of an Event of Default under Section 5(a)(vii) in respect of the Collateral Taker*

The Segregated Account is not an account in the name of the Collateral Taker so as to segregate the Collateral from the assets of the Collateral Taker and minimise the impact of insolvency proceedings in respect of the Collateral Taker.

The nature of the Collateral Provider's interest in the Segregated Account will depend on (i) the location of the Segregated Account and (ii) in respect of intermediated securities, the holding structure and chain of intermediation (including the relevant jurisdictions in the chain) (as described in assumptions (g) to (i) of this part above).

Assuming that the Collateral and the Segregated Account are located in England, the interest which the Collateral Provider has in respect of (i) cash in the Segregated Account will likely be a debt claim against the Custodian (IM);[15] and (ii) intermediated securities will be an interest in the relevant account and related rights.

In contrast, the Collateral Taker has a security interest in respect of the relevant account and related rights. The nature of the security interest will vary according to the law of the IM Security Document and the location of the relevant assets over which security is granted. If absolute title is not conveyed to the Collateral Taker upon the grant of the security interest, then the relevant assets over which security is granted should not form part of the proprietary assets of the Collateral Taker.

The IM Deed is a charge which by its very nature is a mere encumbrance on the asset rather than a transfer of ownership. Accordingly, on the basis of the assumptions we have been asked to make, the above conditions will be satisfied where the parties have entered into an IM Deed and the account is located in England.

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13 Whilst there is no general principle of English law that would require a defaulting secured creditor (or its insolvency official) to release a security interest simply because the secured creditor has defaulted, this is not to say that the Collateral would not eventually be returned once the insolvency official had determined in the normal course that no further amounts are owing to the Collateral Taker.

14 Whilst no opinion is expressed on these provisions, their inclusion in the IM Security Document does not prejudice the other opinions set out in this memorandum.

15 A detailed discussion of the precise nature of the interests of the Collateral Provider in the securities is beyond the scope of this opinion and will vary depending on the jurisdictions involved. The key is that the interests are held by the Collateral Provider rather than the Collateral Taker. As a matter of practice, we understand the custodians will hold cash as banker rather than as client money.

We assume that this is also the position under any relevant foreign law where (i) the IM Security Document is governed by a law other than English law and/or (ii) the Segregated Account is not located in England.

Accordingly, upon the occurrence of an Event of Default under Section 5(a)(vii) in respect of the Collateral Taker, a liquidator or administrator would have no ability to utilise the Collateral to satisfy the creditors of the Collateral Taker.[16]

Subject to our answer to question 3 below, nor is there any principle of English law that would prohibit a Collateral Provider utilising its contractual rights to serve a Pledgor Access Notice or Chargor Access Notice and instruct the Custodian (IM) to return the Collateral from the Segregated Account merely because the Collateral Taker has become subject to insolvency proceedings.

The issues relating to client assets and the 'trapping' of collateral were considered in England in the context of the insolvency of Lehman Brothers International (Europe). In *RAB Capital Plc v Lehman Brothers International (Europe)*[17] the High Court refused an application for the claimant's claim to be dealt with as a matter of urgency. The claim arose in the context of a prime brokerage agreement and the return of client assets – in that case the High Court refused to assist the claimants on the basis that the administrators as officers of the court have the job of appraising the claims and giving effect to such rights as were clearly established. The fact pattern in *RAB Capital* is clearly distinguishable from the facts set out in the assumptions you have asked us to make – in *RAB Capital* the assets were held by the insolvent entity (LBIE) whereas in the case of the IM Security Documents the assets will be held by a third party Custodian (IM). The process envisaged by the IM Security Documents simply requires a contractual notice be given to the Custodian (IM) – it does not require the active participation of the insolvency officials and nor does it require court action against the Collateral Taker that would be subject to an insolvency moratorium.[18]

2. *Assuming that the answer to question (1) above is yes, are there any requirements that the custodial arrangements described in assumptions (g) to (i) above must satisfy in order to permit the Collateral Provider to exercise such rights?*

See our answers to question 3 below in respect of the definitions of Pledgor Rights Event and Chargor Rights Event and question 5 below in respect of financial collateral arrangement requirements.

As we have not reviewed the terms of any particular Control Agreement, we assume that the elections made in the IM Security Document and the terms of the Control Agreement will correspond with each other such that the contractual framework provides the Collateral Provider with the right to serve the relevant Pledgor Access Notice or Chargor Access Notice (as applicable) and instruct the Custodian (IM) to transfer the Collateral as directed by the Collateral Provider in accordance with its instructions.[19]

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16 Unless of course the security interest of the Collateral Taker can be enforced in accordance with its terms for an unrelated reason in which case the proceeds of enforcement used to satisfy the obligations of the Collateral Provider would form part of the insolvent estate of the Collateral Taker.

17 [2008] EWHC 2335 (Ch)

18 See footnote 19 below in respect of a Notice to Contest.

19 As discussed in our answer to question 5 below, the Control Agreement may provide the Collateral Taker with the ability to serve a Notice to Contest if (i) a Pledgor Rights Event or Chargor Rights Event has not occurred and (ii) the Collateral Provider has wrongly served a Pledgor Access Notice or Chargor Access Notice. No opinion is expressed as to the consequences of a Collateral Taker (or its insolvency official) serving a Notice to Contest in breach of the terms of the relevant Control Agreement in circumstances where a Pledgor Rights Event or Chargor Rights Event has in fact occurred.

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

Aside from the Delivery in Lieu Right in respect of which no opinion is given, the definition of Pledgor Rights Event or Chargor Rights Event in Paragraph 13(j) would only be triggered where the Collateral Provider has satisfied the amount under Section 6(e) (including accrued interest) payable to the Collateral Taker (if any).

If Paragraph 13 were amended so as to amend the definition of a Pledgor Rights Event or Chargor Rights Event so that, for example, the mere occurrence of an Event of Default under Section 5(a)(vii) of the ISDA Master Agreement in respect of the Collateral Taker were the trigger, then under the terms of the IM Security Document and the Control Agreement the Collateral Provider may be able to instruct the Custodian (IM) to transfer the Collateral to the Collateral Provider and extinguish the security interest of the Collateral Taker without satisfying the obligations owing to the Collateral Taker. Taking such action could be subject to challenge on the basis of the anti-deprivation rule of English insolvency law.

The leading case on the anti-deprivation principle is *Belmont Park Investments PTY Limited v BNY Corporate Trustee Services Limited*[20]. The Supreme Court, in the majority judgment given by Lord Collins, established the principle that an arrangement does not violate the anti-deprivation principle if it forms part of a bona fide commercial transaction entered into in good faith and which does not have as its predominant purpose, or one of its main purposes, the deprivation of the property of one of the parties on bankruptcy.[21] Lord Collins characterised this as a substance over form approach.[22] It should not be the case that whether or not the rule applies turns purely on a question of drafting.[23]

Limited analysis was provided in the decision with respect to the intended meaning of these concepts, and the application of them to an arrangement will ultimately depend upon the corresponding facts and circumstances. If, prior to the Collateral Provider satisfying its obligations, the terms of the IM Security Document and the Control Agreement authorise the Collateral Provider to direct the Custodian (IM) to transfer the Collateral to the Collateral Provider (thus extinguishing the security interest of the Collateral Taker in circumstances where the Collateral Taker is insolvent), we are of the view that the anti-deprivation principle may be engaged.

Accordingly, we would advise that the Collateral Provider ensure that all of its outstanding Obligations (as defined under the relevant IM Security Document) (including any Obligations arising other than under Section 6(e)) owed to the Collateral Taker are satisfied as a pre-condition to exercising any right to instruct the Custodian (IM) to transfer the Collateral.

See also question 5 below in respect of the financial collateral arrangement analysis.

20 [2011] UKSC 38

21 ibid [104], [108].

22 ibid [105].

23 ibid [87].

4. *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?*

As described in our response to question 17 in part III.3 of the 2015 ISDA Collateral Opinion, there is a stay on enforcement (i) under Schedule B1 of the Insolvency Act in relation to administration and (ii) under Schedule A1 of the Insolvency Act 1986 in relation to a CVA.

The exercise of the Collateral Provider's rights to instruct the Custodian (IM) to transfer the Collateral as directed by the Collateral Provider would not be subject to a stay or freeze as a result of administration or a CVA because it would not be enforcement or execution or distress for these purposes. Similarly it does not require legal proceedings or a legal process. Legal process is not defined in the Insolvency Act 1986 but has been considered by the courts and involves a judicial or quasi-judicial process.[24] Accordingly, the Collateral Provider's right to serve a Pledgor Access Notice or Chargor Access Notice (being a contractual notice it is entitled to give under the Control Agreement) would not be within the scope of legal process for the purpose of the moratorium.

Miscellaneous

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

If the IM Security Document is governed by English law, the Collateral Provider is an English entity or the Collateral is located in England, the parties will likely require that the IM Security Document and the Control Agreement constitute a security financial collateral arrangement under the Financial Collateral Arrangements (No 2) Regulations 2003 (the **FCA Regulations**).

The requirements for constituting a security financial collateral arrangement are discussed in more detail in the 2016 ISDA Collateral Provider WGMR Opinion.

However, one of the key requirements is that the collateral is in the "possession or under the control of" the Collateral Taker or a person acting on its behalf. In our view, the right of a Collateral Provider to give instructions to the Custodian (IM) upon the occurrence of an event with respect to the Collateral Taker is relevant to the possession or control test. Briggs J's judgment in *Re Lehman*[25] appears to involve a conflation of the control and possession tests, with an emphasis on dispossession and the need to prevent fraud risk on the part of the Collateral Provider (such that a degree of practical as well as legal control is required).

Accordingly, the IM Security Document and Control Agreement should provide the Collateral Taker with the ability to block the withdrawal of Collateral so as not to be at risk of fraud on the part of the Collateral Provider incorrectly or falsely claiming that the Collateral Taker has defaulted. In our view, such provisions would require the Custodian (IM) to notify the Collateral Taker that a Pledgor Access Notice or Chargor Access Notice has been delivered and a period of time during which the Collateral Taker can deliver a notice blocking any such false/incorrect notice (a **Notice to Contest**).[26] This is discussed in further detail in the 2016 ISDA Collateral Provider WGMR Opinion.

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24 See *Re Olympia and York Canary Wharf Limited* (1993) BCLC 453, *Re Frankice (Golders Green) Limited (In Administration)* (2010) EWHC 1229 (Ch) and *Ernest Fulton v AIB Group (UK) plc* [2014] NICh 8 (which is a Northern Irish case).

25 [2012] EWHC 2997 (Ch)

26 See footnote 19 above in respect of a Notice to Contest.

6. *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?*

Banking Act considerations

You should refer to the 2015 ISDA Opinions and the 2016 ISDA Collateral Provider WGMR Opinion for a description of the insolvency and, if applicable, the resolution regimes applicable in respect of each type of English Counterparty.

English Banks, Standard Chartered Bank and English Investment Firms (subject to the detailed analysis set out in the opinions referred to above) may be subject to resolution under Part 1 of the Banking Act. We do not discuss the impact of resolution in detail in this opinion. However, we note the following (in each case subject to the detailed analysis set out in the opinions referred to above):

(i) Share transfer powers: For the reasons given in the opinions referred to above, the exercise of share transfer powers would not affect the rights or obligations of the parties to the IM Security Document.

(ii) Property transfer powers: Property transfer powers may be made in respect of all or some of the property (i.e. a partial property transfer power). However, the Partial Property Safeguards Order provides that it is generally not possible to transfer the benefit of the security unless the liability that is secured is also transferred.

(iii) Bail-in: As the assets (including cash) are held in a Segregated Account in the name of the Collateral Provider (rather than an account maintained directly with the Collateral Taker), the assets in the Segregated Account are not relevant for the application of bail-in arising in the context of the resolution of the Collateral Taker.[27]

(iv) Overrides and Stays: Crisis prevention measures and crisis management measures taken in relation to a bank or a member of its group (and any event directly linked to such measures) are disregarded when determining whether a default event provision applies. Accordingly, in such circumstances it will not be possible to terminate the relevant ISDA Master Agreement and trigger a Pledgor Rights Event or a Chargor Rights Event (as applicable). Separately, the Bank of England may suspend obligations to make a payment or delivery under a contract where it is exercising a stabilisation power in respect of one of the parties to the contract. Any such suspension must end no later than midnight at the end of the first business day following the day on which the instrument providing for the suspension is published. There are similar restrictions on termination rights and enforcement of security. During the temporary suspension it will not be possible to terminate the relevant ISDA Master Agreement and trigger a Pledgor Rights Event or a Chargor Rights Event (as applicable).

(b) *Other issues*

The Custodian (IM) may have a custodial lien or other security interest in the Collateral in the Segregated Account which may need to be satisfied in advance of the Custodian (IM) releasing the Collateral to the Collateral Provider.

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27 Unless of course the relevant securities were issued by the Collateral Taker or another member of its group in resolution proceedings.

Japanese Amendment Provisions to NY IM CSA

Would the inclusion of 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 ("Shichiken") (the "Japanese Amendment Provisions to NY IM CSA") in the NY IM CSA affect your conclusions above?

To the extent that the Japanese Amendment Provisions to NY IM CSA have been included in the NY IM CSA, we assume that as a matter of New York and Japanese law there are effectively two security interests and each security interest continues to constitute legally valid, binding and enforceable obligations under its respective governing law. The New York law security interest relates to all Posted Credit Support (IM) whereas the Japanese pledge relates to Japanese Securities only.

The footnote to the Japanese Amendment Provisions to NY IM CSA states that from a Japanese law perspective, the account will need to be maintained in the name of the Collateral Taker and a pledge ledger and proprietary ledger will record the transfers of Japanese Securities as set out in the amended definition of Transfer. The nature of the relevant account will depend on the relevant Custodian (IM) and the terms of the relevant Control Agreement. We assume that as a matter of Japanese law the Collateral Taker does not acquire absolute and unconditional beneficial ownership of the Japanese Securities (or in any related Distributions) and the assets are segregated from the other assets of the Collateral Taker.

To the extent that the Japanese Amendment Provisions to NY IM CSA are included in the NY IM CSA, then issues relating to *dépeçage* will arise – in respect of which see our discussion in respect of a party entering into a NY IM CSA with an English law governed ISDA Master Agreement in the 2016 ISDA Collateral Provider WGMR Opinion. Similar issues arise in this context. In our view this would not result in a logical inconsistency as the two security interests are complementary (rather than conflicting) and provide additional comfort to the Collateral Taker (although this will of course depend on how the two security interests fit together as a matter of New York law and Japanese law).

On the basis of the above the inclusion of the Japanese Amendment Provisions in the NY IM CSA would not affect our conclusions in this part.

4. Foreign Entities

In this part II.4 we discuss the position with regard to

(i) a Foreign Entity that has entered into an IM Security Document as Collateral Taker where the Collateral is located in England; and

(ii) a Foreign Entity that has entered into an IM Deed as Collateral Taker where the Collateral is located outside of England.

We assume the Collateral Taker has subsequently become subject to insolvency proceedings outside of England.[28] Outside of an English insolvency proceeding, and subject to the impact of the foreign insolvency proceedings, our answers to each of the questions above (other than question 4) would continue to apply.

Note that the anti-deprivation principle discussed in question 3 could in particular continue to be relevant.[29] In Belmont, the relevant insolvency proceeding under consideration was the entry of Lehman Brothers Special Financing Inc. into US Chapter 11 proceedings – at the Court of Appeal Patten LJ noted that it was common ground that, for the purposes of applying the anti-deprivation rule, the court should treat the US Chapter 11 filings as if they were insolvency proceedings in England[30] and the point was not argued before the Supreme Court.[31]

The foreign insolvency proceeding and the powers of the foreign insolvency official will be a matter to be considered under the laws of the jurisdiction of the relevant insolvency proceeding. The impact of such foreign insolvency proceedings from an English law perspective is a complex question of cross-border insolvency law. We assume that those foreign proceedings and the powers of the foreign insolvency official will not negatively impact the rights of the Collateral Provider.[32]

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28 We assume for this purpose that there are no concurrent insolvency proceedings in respect of the Foreign Entity in England.

29 Including in the fact pattern where both parties are Foreign Entities and the Collateral is located outside of England but the parties enter into the IM Deed which is governed by English law.

30 *Belmont Park Investments Pty Ltd v BNY Corporate Trustee Services Ltd* [2009] EWCA Civ 1160

31 Note that in the High Court, the Chancellor went further and held that it would be absurd to find that the principle in British Eagle is not applicable due to the lack of an English insolvency process. However, his reasoning was based on the decision of the Privy Council in *Cambridge Gas* and the Supreme Court and Privy Council moved away from the universalism of *Cambridge Gas* in later cases (see *Rubin* and *Singularis*).

32 For example, we have not considered the effect of section 426 of the Insolvency Act 1986 or the Cross Border Insolvency Regulations where foreign proceedings are commenced or the cross-border recognition of resolution or winding-up proceedings under the Banking Act 2009 or the Credit Institutions (Reorganisation and Winding Up) Regulations 2004.

III. CLEARING SYSTEM IM ARRANGEMENTS

1. Introduction

In this part III we consider issues relating to the rights of a Collateral Provider where the Collateral is held in a Clearstream account or a Euroclear account and the Collateral Taker is an English Counterparty.

2. Assumptions

For the purpose of this part III we make each of the assumptions applicable to part II except that:

(a) the parties will not enter into an IM Security Document in respect of the posting leg where the Collateral will be held in a Euroclear or Clearstream account;

(b) if the posting leg involves holding the Collateral in a Clearstream account, the parties will instead enter into:

(i) an ISDA Clearstream Collateral Transfer Agreement governed by either English law or New York law (the **ISDA Clearstream CTA**); and

(ii) a Luxembourg law ISDA Clearstream Security Agreement (the **ISDA Clearstream Security Agreement**¸ and together with the ISDA Clearstream CTA, the **ISDA Clearstream IM Documents**);

(c) if the posting leg involves holding the Collateral in a Euroclear account, the parties will instead enter into:

(i) an ISDA Euroclear Collateral Transfer Agreement governed by either English law or New York law (the **ISDA Euroclear CTA**); and

(ii) a Belgian law ISDA Euroclear Security Agreement (the **ISDA Euroclear Security Agreement** and together with the ISDA Euroclear CTA, the **ISDA Euroclear IM Documents** and together with the ISDA Clearstream Documents, the **Clearing System IM Documents**);

(d) if the parties wish to include Japanese government bonds as Collateral, then:

(i) the ISDA Euroclear CTA will be amended by the inclusion of the Recommended Amendment Provisions for the ISDA Euroclear Collateral Transfer Agreement (Subject to New York Law) and the ISDA Euroclear Collateral Transfer Agreement (Subject to English Law) with respect to Japanese Collateral; and

(ii) the ISDA Euroclear Security Agreement will be amended by the inclusion of the Recommended Amendment Provisions for the ISDA Euroclear Security Agreement with respect to Japanese Collateral (such provisions together with the provisions at (i) above, the **Japanese Euroclear Provisions**),

such that the Collateral Provider has entered into a Japanese law pledge in addition to the Belgian law pledge normally constituted by the ISDA Euroclear Security Agreement.

(e) references to IM Security Documents should accordingly be read as references to the ISDA Clearstream IM Documents or the ISDA Euroclear IM Documents (as applicable);

(f) the Collateral Provider, Collateral Taker and Clearstream or Euroclear (as applicable) have also entered into the relevant tri-party documentation specifically designed for initial margin arrangements in respect of uncleared derivatives as at the date of this opinion (the **Relevant Tri-party Documents**);[33]

(g) 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) and to be operated in accordance with the Relevant Tri-party Documents (the **Euroclear Accounts**);[34]

(h) in the case of Clearstream, the "Collateral Account" opened in the Clearstream system in the name of the Collateral Provider and pledged to the Collateral Taker pursuant to the ISDA Clearstream Security Document and to be operated in accordance with the Relevant Tri-party Documents (the "**Clearstream Account**"); and

(i) in respect of each of the ISDA Clearstream IM Documents and ISDA Euroclear IM Documents governed by a law other than English law, the relevant agreements would, when duly entered into, constitute legal, valid and binding obligations of each party under such foreign law and each party has duly authorised, executed and delivered, and has the capacity to enter into, each document;

(j) the Relevant Tri-party Documentation constitutes legal, valid and binding obligations under its governing law and each party has duly authorised, executed and delivered, and has the capacity to enter into, the Relevant Tri-party Documentation; and

(k) the Euroclear Accounts are located in Belgium and the Clearstream Account is located in Luxembourg.

For the avoidance of doubt we have not reviewed the Relevant Tri-party Documentation for the purpose of giving this opinion and we assume the Relevant Tri-party Documentation does not conflict with the relevant Clearing System IM Documents.

To the extent that the documents above are governed by foreign laws, we have reviewed such documents on the basis of a plain reading of the relevant terms. To the extent that the documents include either (i) technical legal terms as applied in a legal system other than England; or (ii) terms in another language such as Japanese, we assume such terms do not affect our conclusions below.

3. *Please explain how your responses in Part II would change if instead of entering into an IM Security Document and custodial arrangements as described in Part II, the parties enter into the arrangements described above?*

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33 As with the Control Agreement referred to in Part II, we have not reviewed the Relevant Tri-party Documents for the purpose of giving this opinion. The Relevant Tri-party Documents are referred to as the Euroclear Agreements in the ISDA Euroclear CTA and the Clearstream Agreements in the ISDA Clearstream CTA.

34 We understand from discussions with Euroclear that this is also the case where the ISDA Euroclear IM Documents include the Japanese Euroclear Provisions.

Each of the ISDA Clearstream IM Security Agreement and the ISDA Euroclear IM Security Agreement:

(i) regulate the giving of a Security-provider Access Notice (which is the equivalent of a Pledgor Access Notice or Chargor Access Notice);

(ii) upon a Security-provider Access Event the Collateral Provider may exercise all rights and remedies available to a pledgor under applicable law with respect to the Collateral;

(iii) the Collateral Taker is obligated to immediately transfer all the Collateral to the Collateral Provider (subject to the Notice of Contest right); and

(iv) include a Delivery in Lieu Right (we express no opinion on the enforceability of the Delivery in Lieu Right).

The Collateral Provider's right to send a Security-provider Access Notice and the Collateral Provider's right to send a Notice to Contest in each case arises under the Relevant Tri-party Documents (which are beyond the scope of this opinion).

Each of the Euroclear Accounts and the Clearstream Account are located outside of England and the security interest is governed by Belgian or Luxembourg law respectively. We assume that as a matter of Belgian or Luxembourg law, the Collateral Taker does not acquire absolute and unconditional beneficial ownership of the assets in the Euroclear Accounts or the Clearstream Account and the assets are segregated from the other assets of the Collateral Taker.

Accordingly, our conclusions in Part II also apply to this Part III to the extent that they relate to (i) foreign law governed security interests and the rights and obligations described above and (ii) Collateral located outside of England.

For this purpose the defined terms should be read as references to the equivalent terms in the ISDA Clearstream IM Documents or the ISDA Euroclear IM Documents and references to the Custodian (IM) should be read as references to Clearstream or Euroclear (as applicable).

To the extent that the Japanese Euroclear Provisions have been included, we assume that as a matter of Belgian and Japanese law there are effectively two security interests and each security interest continues to constitute legally valid, binding and enforceable obligations under its respective governing law. The Belgian law security interest relates to all Posted Credit Support (IM) whereas the Japanese pledge relates to Japanese Securities only.

We assume that as a matter of Japanese law the Collateral Taker does not acquire absolute and unconditional beneficial ownership of the Japanese Securities and the assets are segregated from the other assets of the Collateral Taker.

To the extent that the Japanese Euroclear Provisions are included, then issues relating to *dépeçage* will arise – in respect of which see our discussion in respect of a party entering into a NY IM CSA with an English law governed ISDA Master Agreement in the 2016 ISDA Collateral Provider WGMR Opinion. Similar issues arise in this context. In our view this would not result in a logical inconsistency as the two security interests are complementary (rather than conflicting) and provide additional comfort to the Collateral Taker (although this will of course depend on how the two security interests fit together as a matter of the governing law of the ISDA Euroclear IM Documents and Japanese law).

On the basis of the above the inclusion of the Japanese Euroclear Provisions would not affect our conclusions in this part.

IV. PENDING DEVELOPMENTS

Our views expressed in this memorandum are based on our understanding of English law as in effect on the date of this memorandum. Subject to this, we note that there are a number of pending developments in the form of proposals for English and European legislative changes that may be relevant to the issues discussed in this memorandum. These are described in the 2016 ISDA Collateral Provider WGMR Opinion.

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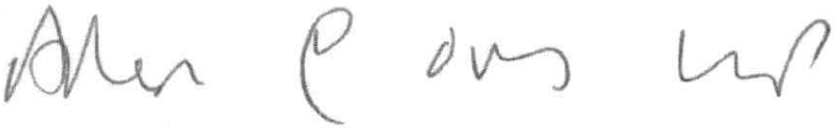
This memorandum is addressed to ISDA solely for the benefit of its members in relation to their use of the ISDA Master Agreement together with an IM Security Document or the Clearing System IM Documents. No other person may rely on this memorandum for any purpose without our prior written consent. This memorandum may, however, be shown by an ISDA member to a competent regulatory or supervisory authority or professional advisors for such ISDA member for the purposes of information only, on the basis that we assume no responsibility to such authority or any other person as a result, or otherwise.



ALLEN & OVERY LLP
1 September 2016

CERTAIN TRANSACTIONS UNDER THE ISDA MASTER AGREEMENT

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.[35]

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.[36]

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35 We assume, for this purpose, that under the Repurchase Transaction, the original seller's right to repurchase securities is limited to fungible securities and that it has no right to repurchase the exact same securities that it originally sold. This assumption is consistent with market practice, as far as we are aware, in relation to securities repurchase transactions governed by English law, and is necessary to avoid a risk that the transaction might otherwise be characterised by an English court as a secured loan.

36 For the reasons set out in the note above relating to the definition of "Repurchase Transaction", we assume that the reference to identical securities is to be construed as a reference to "fungible" securities rather than the exact same securities originally lent to

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.

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the borrower. Again, this assumption is consistent, as far as we are aware, with market practice in relation to securities lending transactions governed by English law.

APPENDIX B
September 2009

CERTAIN COUNTERPARTY TYPES

Description	**Covered**[37]	**Legal form(s)**[38]
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 Union (**EU**) legislation. This category may include specialised types of bank, such as a mortgage savings bank (provided that the relevant entity accepts deposits and makes loans), or such an entity may be considered in the local jurisdiction to constitute a separate category of legal entity (as in the case of a building society in the United Kingdom (**UK**)).	Yes	English Company[39]
Central Bank. A legal entity that performs the function of a central bank for a Sovereign or for an area of monetary union (as in the case of the European Central Bank in respect of the euro zone).	No	

37 This column indicates whether an entity of the relevant type falls within the scope of this memorandum. Where the answer is "No", this is due to the fact that to include this type of entity would require substantial additional legal analysis, beyond the scope of our current instructions.

38 This column indicates the legal form in which an entity of the relevant type is typically organised in England under English law. While it is possible, in some cases, that an entity falling within the commercial description in the left-hand column could organised in a different legal form in England, any such entity would not fall within the scope of this memorandum, unless expressly provided to the contrary. For example, an investment firm organised as a limited liability partnership is not within the scope of this memorandum. A capitalised term used in this column has, unless context indicates otherwise, the meaning given to that term in this memorandum.

39 There are various forms of English Company, including a public limited company, a private company with limited liability, a private company with unlimited liability and a private company limited by guarantee. Our conclusions in this memorandum apply to each type of English Company. The naming conventions for English Companies are set out in sections 58(1) and 59(1) of the Companies Act 2006. An English Company that is a public limited company must have a name that ends with the words "public limited company" or the abbreviation "plc". A private company with limited liability or limited by guarantee must have a name ending with the word "Limited" or the abbreviation "ltd". In either case, the abbreviation may be all upper case, all lower case, with an initial upper case letter only and with or without full stops between the letters (in the case of "plc"). A private company with unlimited liability is not required to have any specific word or abbreviation at the end of its name. In the case of a company registered under the Companies Act 2006 with its registered office in Wales, the name of the company may end with the Welsh equivalents of these terms.

Description	Covered[37]	Legal form(s)[38]
Corporation. 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.	Yes	English Company
Hedge Fund/Proprietary Trader. A legal entity, which may be organized as a corporation, partnership or in some other legal form, the principal business of which is to deal in and/or manage securities and/or other financial instruments and/or otherwise to carry on an investment business predominantly or exclusively as principal for its own account.	Yes	English Company
Insurance Company. A legal entity, which may be organised as a corporation, partnership or in some other legal form (for example, a friendly society or industrial & provident society in the UK), that is licensed to carry on insurance business, and is typically subject to a special regulatory regime and a special insolvency regime in order to protect the interests of policyholders.	No	
International Organization. An organization of Sovereigns established by treaty entered into between the Sovereigns, including the International Bank for Reconstruction and Development (the World Bank), regional development banks and similar organizations established by treaty.	No	
Investment Firm/Broker Dealer. A legal entity, which may be organized as a corporation, partnership or in some other form, that does not conduct commercial banking activities but deals in and/or manages securities and/or other financial instruments as an agent for third parties. It may also conduct such activities as principal (but if it does so exclusively as principal, then it most likely falls within the "Hedge Fund/Proprietary Trader" category above.) Its business normally includes holding securities and/or other financial instruments for third parties and operating related cash accounts. This type of entity is referred to as a "broker-dealer" in US legislation and as an "investment firm" in EU legislation.	Yes	English Company
Investment Fund. A legal entity or an arrangement without legal personality (for example, a common	No	

Description	Covered[37]	Legal form(s)[38]
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 EU 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.		
Local Authority. A legal entity established to administer the functions of local government in a particular region within a Sovereign or State of a Federal Sovereign, for example, a city, county, borough or similar area.	No	
Partnership. A legal entity or form of arrangement without legal personality that is (a) organised as a general, limited or some other form of partnership and (b) does not fall within one of the other categories in this Appendix B. If it does not have legal personality, it may nonetheless be treated as though it were a legal person for certain purposes (for example, for insolvency purposes) and not for other purposes (for example, tax or personal liability).	No	
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	No	

Description	Covered[37]	Legal form(s)[38]
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.		
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").	No	
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.	No	
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").	An English Company wholly or majority-owned by a sovereign that is active entirely in the private sector with no specific public duties or public sector mission is covered. All other Sovereign-Owned Entities are not covered.	English Company

Description	Covered[37]	Legal form(s)[38]
State of a Federal Sovereign. The principal political sub-division of a federal Sovereign, such as Australia (for example, Queensland), Canada (for example, Ontario), Germany (for example, Nordrhein-Westfalen) or the United States of America (for example, Pennsylvania). This category does not include a Local Authority.	No	
Banking Group Company and Bank Holding Companies	No	
Standard Chartered Bank	Yes	Chartered corporation
Building Society	No	
English Trust	No	
English Charity	No	
Friendly Society	No	
C/CB Society	No	
Statutory Corporation	No	
Chartered Corporation	No (except for Standard Chartered Bank as per the above)	

APPENDIX C

EXCLUDED ENGLISH COMPANIES

The following types of English Company are excluded from the scope of this memorandum:[40]

(a) water and sewage undertakers under the Water Industry Act 1991;

(b) a qualifying licensed water supplier within the meaning of section 23(6) of the Water Industry Act 1991;

(c) protected railway companies under the Railways Act 1993 (as extended by the Channel Tunnel Rail Link Act 1996);

(d) air traffic services companies under the Transport Act 2000; and

(e) a public-private partnership company under the Greater London Authority Act 1999. [41]

In addition, this memorandum does not consider issues relating to a clearing house organised as an English Company. This is because, among other things, an ISDA Master Agreement entered into between a clearing house and a clearing member is typically so tailored to the specific requirements of the clearing house structure and rules that it requires a separate analysis.

More generally we assume that the English Company is not subject to a special regulatory regime not contemplated by this memorandum.

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40 Each of these entities is subject to a special insolvency regime as specified in section 249 of the Enterprise Act 2002, which would require a separate analysis from that set out in this memorandum in relation to English Companies generally.

41 Section 249 of the Enterprise Act 2002 also refers to English Building Societies, which are not covered by this memorandum, as noted above.