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

WGMR Collateral Provider Supplement: Validity and Enforceability under English Law of Collateral Arrangements under the ISDA Credit Support Documents

1 September 2016

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I. INTRODUCTION

1. Overview and scope of issues covered by this memorandum

We refer 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 Memorandum of Law in respect of the 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 (the **2016 ISDA Collateral Taker WGMR Opinion**).

This memorandum is a supplement to the 2015 ISDA Collateral Opinion and must be read in conjunction with the 2015 ISDA Collateral Opinion.

In this memorandum we consider the validity and enforceability of the rights of the Collateral Taker under the WGMR Documents under English law[1]. The 2015 ISDA Collateral Opinion has not been updated generally other than in connection with the entry into WGMR Documents by the English Counterparties expressly referred to below.

The WGMR 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 IV 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:

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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 financial collateral arrangement of a type considered in this memorandum.

(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**).

In this memorandum, we assume that each variation 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 Credit Support Annex for Variation Margin (VM) governed by New York law (the **VM NY Annex**);

(b) the 2016 VM Credit Support Annex governed by English law (the **VM Transfer Annex** and, together with the VM NY Annex, the **VM Documents**).

The **WGMR Documents** are the IM Security Documents, the Clearing System IM Documents and the VM Documents. The **Credit Support Documents** are the IM Security Documents, the VM Documents and the documents referred to as Credit Support Documents in the 2015 ISDA Collateral Opinion.

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 WGMR 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 or the VM NY Annex, 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.

Similarly, in this memorandum:

(A) the term "**Security Collateral Provider**" refers to (i) the Pledgor under the IM NY Annex and the VM NY Annex; (ii) the Chargor under the IM Deed; or (iii) the Security-provider under an ISDA Euroclear Security Agreement or an ISDA Clearstream Security Document;

(B) the term "**Collateral Provider**" (and in part II where used in respect of the IM Security Documents, "**collateral-provider**") refers to the Security Collateral Provider under an IM Security Document, an ISDA Euroclear Security Agreement or an ISDA Clearstream Security Document or a VM NY Annex or the Transferor under a VM Transfer Annex; and

(C) the term "**Collateral Taker**" (and in part II where used in respect of the Credit Support Documents, "**collateral-taker**") refers to the Secured Party under an IM Security Document or VM NY Annex, the Security-taker under an ISDA Euroclear Security Agreement or an ISDA Clearstream Security Document, and the Transferee under a VM Transfer Annex.

The term "**Collateral**", when used in this memorandum (subject to the additional assumptions in part III below), refers, in the case of each IM Security Document, Clearing System IM Document or the VM NY Annex, to any securities or cash in respect of which a security interest is created by the Security Collateral Provider in favour of the Collateral Taker and, in the case of the VM Transfer Annex, to any securities or cash transferred by the Collateral

Provider to the Collateral Taker, in each case as credit support for the obligations of the Collateral Provider under the relevant ISDA Master Agreement.

This memorandum (other than part IX 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.

2. Scope of Counterparty types covered by this memorandum

In this memorandum, we consider Collateral Providers 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**).

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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.

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, 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 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) *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 WGMR Documents) in connection with an ISDA Master Agreement. 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 the WGMR Documents) 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 WGMR Documents) 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 WGMR Documents), and (iii) has duly executed and delivered the ISDA Master Agreement, each Transaction and the relevant Credit Support Documents (including the WGMR Documents).

(c) If the ISDA Master Agreement and any Credit Support Document (other than the WGMR Documents) is governed by English law, the ISDA Master Agreement (except, when used with the VM Transfer Annex, to the extent that the VM Transfer Annex relies on provisions of the ISDA Master Agreement for its effectiveness) and any Credit Support Document (other than the WGMR Documents) 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 any Credit Support Document (including the WGMR Documents) governed by any law other than English law (even in part), the relevant ISDA Master Agreement and any Credit Support Document (including the WGMR Documents) 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 such other law.

(d) Each of the parties to the ISDA Master Agreement and the relevant Credit Support Documents (including the WGMR Documents) 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 WGMR Documents) 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 WGMR Documents), 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 WGMR Documents) 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 WGMR Documents) 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 WGMR Documents), 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 WGMR Documents) 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 WGMR Documents), 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 WGMR Documents) or becomes insolvent as a result of entering into such documents.

(i) Each Security Collateral Provider, when transferring Collateral in the form of securities as part of a Delivery Amount under a 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 and (ii) in the case of the IM Security Documents, any lien applicable to all Collateral held in the Segregated Account in favour of the Custodian (IM)).

(j) Each party, when transferring Collateral in the form of securities as part of a Delivery Amount or Return Amount under the VM Transfer Annex, 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 a lien routinely imposed on all securities in a relevant clearance or settlement system).

(k) Each English Counterparty has its centre of main interests (**COMI**) for purposes of the EC Insolvency Regulation in England.[4] 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.[5]

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

5 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

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

(m) 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.

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

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

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.

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.

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 Provider is in England and the Location of the Collateral is outside England.

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

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

For the foregoing purposes:

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

(ii) the **Location** of the Collateral Provider 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 as supplemented by this memorandum for further details in this regard.[6]

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.

In respect of a Foreign Entity, we assume that no insolvency proceedings have been commenced, or resolution action taken, against the Foreign Entity in England or elsewhere and therefore only consider a Foreign Entity in respect of the questions that do not relate to insolvency proceedings or resolution action.

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" to refer to a 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 Taker is relevant to consideration of the enforceability of a collateral arrangement against a

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6 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).

Collateral Provider in the event of insolvency proceedings in England in respect of the Collateral Provider.

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.

II. FINANCIAL COLLATERAL ARRANGEMENTS – IM SECURITY DOCUMENTS

1. Introduction and the VM Documents

Before turning to the specific questions you have asked us to address, we consider Directive 2002/47/EC of the European Parliament and Council of 6 June 2002 on financial collateral arrangements (the **Collateral Directive**). The Collateral Directive was implemented in the United Kingdom, including England and Wales, by the Financial Collateral Arrangements (No. 2) Regulations 2003 (the **FCA Regulations**),[7] which came into effect on 26 December 2003.

The 2015 ISDA Collateral Opinion discusses the application of the FCA Regulations to the existing Credit Support Documents. The analysis in the 2015 ISDA Collateral Opinion in respect of (i) the New York Annex and (ii) the English Transfer Annex applies to the VM NY Annex and the VM Transfer Annex respectively subject to the discussion in part V below.

In respect of the IM Security Documents additional analysis is required with respect to the "possession or control" test as the Collateral is held in an account in the name of the Collateral Provider and is subject to a Control Agreement.

We have not reviewed any particular Control Agreement for the purpose of giving this opinion and so the analysis below is generic in nature. 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.

The analysis below should be read in conjunction with the 2015 ISDA Collateral Opinion.

2. Application of the FCA Regulations to the IM Security Documents

As described in our analysis below, whether an IM Security Document when entered into in connection with an ISDA Master Agreement should be characterised as a "security financial collateral arrangement" for the purposes of the FCA Regulations depends on whether the collateral-taker enjoys the requisite degree of legal and administrative control over the Collateral. This will depend to a large extent on the terms of the relevant Control Agreement.

Assuming that the Control Agreement has been drafted to comply with the analysis below, and on the basis of the assumptions in this memorandum and subject to the further analysis set out in the 2015 ISDA Collateral Opinion, we are of the view that, on the assumptions we have made, a collateral arrangement constituted by an IM Security Document in connection with an ISDA Master Agreement should be a security financial collateral arrangement as defined in the FCA Regulations.

The definition in the FCA Regulations of a "security financial collateral arrangement" is an agreement or arrangement evidenced in writing, where:

(a) the purpose of the agreement or arrangement is to secure "the relevant financial obligations" owed to the collateral-taker;

(b) the collateral-provider creates or there arises a security interest in "financial collateral" to secure those obligations;

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7 SI 2003/3226. The "(No. 2)" in the title of the FCA Regulations reflects the fact that the original set of implementing regulations were revoked before coming into effect due to technical errors in the text.

(c) the financial collateral is delivered, transferred, held, registered or otherwise designated so as to be in "the possession or under the control of the collateral-taker or a person acting on its behalf" (any right of the collateral-provider to substitute financial collateral of the same or greater value or withdraw excess financial collateral or to collect the proceeds of credit claims until further notice shall not prevent the financial collateral being in the possession or under the control of the collateral-taker); and

(d) the collateral-provider and the collateral-taker are both "non-natural persons".

In order to constitute a security financial collateral arrangement for the purposes of the FCA Regulations, it is necessary to ensure that the Security Documents satisfy each of the limbs set out above.

The first requirement is satisfied given that each Security Document is an arrangement evidenced in writing. The IM NY Annex is an annex to the Schedule to the ISDA Master Agreement and is expressed to supplement, form part of and be subject to the ISDA Master Agreement. The IM Deed is a stand-alone agreement between the parties and is expressed to be a Credit Support Document in relation to the related ISDA Master Agreement.[8] This aspect of the definition is, therefore, satisfied in relation to each Security Document.

We will now consider each of limbs (a) to (d) in turn.

2.1 *Is the purpose of the IM Security Document to secure "relevant financial obligations"?*

The term "relevant financial obligations" is defined in the FCA Regulations as "the obligations which are secured or otherwise covered by a financial collateral arrangement ...". That said, on reflection, we do not believe that this circularity in the definitions would trouble an English court or prevent it from concluding that the Obligations (as defined in Paragraph 12 of each IM Security Document) fall within the broad scope of "relevant financial obligations".

The drafting of the IM Security Documents, in particular Paragraph 2 of each of the IM Security Documents, clarifies that the security interests in the collateral granted to the collateral-taker are given to secure the Obligations. As such we believe that the purpose of the IM Security Documents is to secure "relevant financial obligations".

The amount of financial collateral to be provided by the collateral-provider under Paragraph 3 of each of the IM Security Documents to the collateral-taker is determined by reference to the amount of initial margin required to satisfy each of the specified Regimes (calculated either by using ISDA SIMM™ or the relevant Regime's Schedule based method). In other words, the amount of financial collateral to be provided by the collateral-provider under the IM Security Documents is primarily determined by reference to the potential future credit exposure of the collateral-taker to the collateral-provider under the ISDA Master Agreement as of the Calculation Date (IM). The definition of "relevant financial obligations" includes present or future, actual or contingent or prospective obligations (including such obligations arising under a master agreement or similar arrangement). Accordingly, the method of calculating the amount of financial collateral to be provided by the collateral-provider under the IM Security Documents does not affect the analysis.

8 The related ISDA Master Agreement is identified on the first page of the IM Deed by reference to the date of the ISDA Master Agreement and the identities of the parties.

2.2 *Is a security interest in "financial collateral" created?*

Regarding condition (b) of the definition, Paragraph 2 of the NY IM Annex expressly creates "a first priority continuing security interest in" the Segregated Account and all Posted Collateral (IM) transferred to the Segregated Account. As the New York Annex is governed by New York law and we are not opining on that law in this memorandum, we assume that the New York Annex is effective under New York law to create a security interest in Posted Collateral (IM). Paragraph 2(b) of the IM Deed also creates security over Posted Credit Support (IM).

The term "financial collateral" is defined in the FCA Regulations as being "either cash, financial instruments or credit claims" and "financial instruments" is defined as:

"(a) shares in companies and other securities equivalent to shares in companies;

(b) bonds and other forms of instruments giving rise to or acknowledging indebtedness if these are tradeable on the capital market; and

(c) any other securities which are normally dealt in and which give the right to acquire any such shares, bonds, instruments or other securities by subscription, purchase or exchange or which give rise to a cash settlement (excluding instruments of payment);

and includes units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000, eligible debt securities within the meaning of the Uncertificated Securities Regulations 2001, money market instruments, claims relating to or rights in or in respect of any of the financial instruments included in this definition and any rights, privileges or benefits attached to or arising from any such financial instruments;"

Prima facie the collateral contemplated by our assumption in part III.2 will constitute "financial collateral". However, in respect of debt securities, it is a question of fact whether any particular debt obligation would indeed constitute financial collateral (i.e. being "tradeable on the capital market").

2.3 *Is the financial collateral in the "possession or under the control" of the collateral-taker?*

"*Possession or control*"

The possession or control test and the approach of the English courts is discussed in further detail in the 2015 ISDA Collateral Opinion. In summary, it is not clear whether "possession" and "control" are intended to be distinct concepts. While the language used in the FCA Regulations suggests that they are, in *Re Lehman*[9], Briggs J indicated that the key question to establish whether the "possession or control" test has been satisfied is whether the collateral-provider been sufficiently dispossessed by virtue of the degree of administrative and legal control accorded to the collateral-taker, thus conflating the two tests. In determining whether the collateral-provider has been sufficiently "dispossessed" of the collateral, the scope and purpose of the Directive should be considered and emphasis should be placed on the extent of residual risk of fraud by the collateral-provider.[10] The purpose of the Directive is set out in

9 [2012] EWHC 2997 (Ch)

10 ibid [92] and [128]: Briggs J stated that it is for the national court to construe the domestic legislation (here the FCA Regulations) as far as possible in a manner which does not derogate from the intended scope of the Directive and that any interpretation of the Directive must be "purposive".

the Recitals. Recital 10 (cited by Briggs J in *Re Lehman*)[11] provides that there must be a "balance between market efficiency and the safety of the parties to the arrangement and third parties, thereby avoiding *inter alia* the risk of fraud".

It is not certain what features of a collateral arrangement are essential to establish that the collateral-provider has been sufficiently "dispossessed". This may depend on the nature of the financial collateral (for example, the requirements for establishing "possession or control" in relation to financial collateral in the form of credit claims may well be different to the requirements for establishing "possession or control" in relation to financial collateral in the form of book entry securities). However, it is clear from the statements of Vos J in *Gray* and Briggs J in *Re Lehman* that (i) "legal control" is required; and (ii) while the precise degree of "administrative" or "practical" control required in order to establish "possession or control" was not considered in detail in *Gray* or *Re Lehman*, in practice, given the holding structure envisioned by the IM Security Documents where there is a third party custodian which has opened a secured account in the name of the collateral-provider, it is our view that the collateral-taker would also need to retain administrative control in respect of the collateral in order to reduce residual risk of fraud by the collateral-provider, as contemplated by the concept of "dispossession".

Note that the better view is that the conduct of the parties to the collateral arrangement is also relevant when determining whether the collateral-provider has been sufficiently "dispossessed". So if legal rights of control are set out in the documentation but are not exercised by the collateral-taker there may be a risk that the possession or control test will not be satisfied.

2.4 *Application of the "possession or control" test to the IM Security Documents and the Control Agreement*

As the IM Security Documents relate to Segregated Accounts in the name of the Collateral Provider, the terms of both the IM Security Document and the Control Agreement will be key to establishing sufficient legal and administrative control. As we have not reviewed any particular Control Agreement for the purpose of giving this opinion, the below analysis is generic in nature (set out by theme) and focuses on features commonly found in Control Agreements.

We discuss below various possible rights of the Collateral Provider with respect to the Collateral and how such rights could affect the possession or control analysis.

Right to instruct the Custodian (IM) – Third Party

If the custody arrangement involves the Custodian (IM) following the manual instructions given in accordance with the Control Agreement (the market term for this type of arrangement is "third party"), then instructions to the Custodian (IM) must either be (i) joint matching instructions of both parties; or (ii) solely given by the Collateral Taker (although we discuss some exceptions to this below that we believe do not prejudice the analysis). This is necessary to establish administrative control and prevent the Collateral Provider from submitting a fraudulent instruction.

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11 ibid [78]: Briggs J considers the inclusion of a requirement for "possession or control" against the backdrop of the Directive, and states: *"But the need to balance the protection of the contracting parties, and third parties, from the risk of fraud meant that the new regime should extend only to financial collateral arrangements which provide some form of dispossession of the grantor in relation to the property provided as collateral: see Recital 10".*

Right to instruct the Custodian (IM) – Tri-party Custody Arrangements

Certain Custodians (IM) offer what are known as "tri-party" custody services where the Custodian (IM) is responsible for movements of the Collateral using automated systems. The parties will notify the Custodian (IM) of the total amount of Collateral that is required and the Custodian (IM) will (i) deliver additional Collateral to the Segregated Account on behalf of the Collateral Provider when required; (ii) release excess Collateral from the Segregated Account; and (iii) substitute Collateral in order to achieve an efficient allocation of Collateral and, in some cases, remove Collateral from the Segregated Account in advance of income being distributed.

In our view, tri-party services are compatible with the "possession or control" test if (i) the notice to the Custodian (IM) of the total amount of Collateral required is given either by (i) both parties; or (ii) solely by the Collateral Taker. Paragraph 13(n)(vi)(3) of each of the IM Security Documents acknowledges that the right to instruct the Custodian (IM) will be determined by the terms of the relevant Control Agreement.

Whilst the Collateral Taker is not directly involved in each movement of Collateral into or out of the Segregated Account, the Custodian (IM) has given contractual undertakings under the Control Agreement to the Collateral Taker. The Custodian (IM)'s valuations should be determined independently of the Collateral Provider and, accordingly, the Collateral Provider will not be able to force the Custodian (IM) to release Collateral that does not qualify as "excess". Accordingly, in our view, the Collateral Provider should be sufficiently dispossessed.

Excess Collateral

The Collateral Directive and the FCA Regulations do not define what constitutes "excess" but the better view is that it is an excess over a contractually agreed amount rather than an excess over the secured obligations. The purpose of the possession or control test under the Collateral Directive is to minimise fraud risk and treating "excess" as an excess over a contractually agreed amount does not introduce fraud risk. Similarly the fact that the contractually agreed amount fluctuates in an initial margin arrangement because the Credit Support Amount (IM) is determined in accordance with either (i) ISDA SIMM™ or (ii) under the relevant methodology set out in the relevant Regime (absent use of an initial margin model) does not introduce fraud risk. [12]

Under the IM Security Documents, the Collateral Provider has a contractual right under Paragraph 3 to require the Collateral Taker to release the Return Amount (IM) from the Segregated Account (being the excess of the Value of the Posted Credit Support (IM) over the Credit Support Amount (IM)) and we assume that such Return Amount (IM) will be rounded down in accordance with Paragraph 13.

The fact that the Calculation Agent (IM) is the party making the demand under paragraph 3 (i.e. the Collateral Provider in respect of a Return Amount (IM)) should not give rise to a problem from a control perspective (subject to the discussion below as to Control Agreement

12 This is also the basis on which we believe that Thresholds do not undermine the possession or control analysis in the 2015 ISDA Collateral Opinion. Note that the Financial Markets Law Committee in its Analysis of uncertainty regarding the meaning of "possession or ... control" and "excess financial collateral" under the Financial Collateral Arrangements (No. 2) Regulations 2003 also argued that this amount approach is consistent with the Collateral Directive on the basis that recital 10 focuses on balancing market efficiency with the risk of fraud (which is not raised by adopting this approach). (http://www.fmlc.org/uploads/2/6/5/8/26584807/0112121.pdf accessed on 1 September 2016). See also Yeowart and Parsons and others, Yeowart and Parsons on The Law of Financial Collateral (Edward Elgar Publishing, 2016), 8.11 – 8.18.

terms) as the Collateral Taker would be able to (i) decline to issue the appropriate instructions to the Custodian (IM) to effect the transfer of the relevant disputed amount and (ii) activate the Dispute Resolution Procedures in Paragraph 5 of the relevant IM Security Document (i.e. in circumstances where the Collateral Provider incorrectly or fraudulently makes a demand). However, it should be noted that the Calculation Agent (IM) for the purpose of the Dispute Resolution Procedures is still the Collateral Provider (assuming the standard Paragraph 13 election is made).

In respect of the Control Agreement, in third party custody, the Collateral Taker must have the right to (i) confirm any valuation of the Posted Credit Support (IM) and Credit Support Amount (IM); and (ii) veto any release of Collateral which is not in fact "excess". This can be achieved by requiring matching joint instructions or giving the Collateral Taker the sole right to instruct the Custodian (IM) to release the Collateral.

To the extent that the Control Agreement provides for tri-party custody, section 13(n)(vi) provides, inter alia, that (i) the parties will give such instructions to the Custodian (IM) as may be necessary and are not required to serve demands under Paragraph 3(b) if such demands are effectively made under the terms of the Control Agreement; and (ii) that determinations of Value made by the Custodian (IM) will apply for the purpose of the IM Security Document.

We assume that under the terms of the tri-party service, the Collateral Provider and the Collateral Taker will notify the Custodian (IM) of the quantum of the Credit Support Amount (IM) on each Calculation Date (IM) and the Custodian (IM) will then independently value the Posted Credit Support (IM) and determine whether either a Delivery Amount (IM) or a Return Amount (IM) arises. Assuming that the Custodian determines that a Return Amount (IM) is due, the Custodian (IM) will release the relevant portion of the Posted Credit Support (IM) from the Segregated Account. To the extent that a dispute arises as to quantum, then matched instructions would only be submitted as to the undisputed amount. Accordingly, the relevant portion of the Posted Credit Support (IM) released by the Custodian (IM) would constitute "excess".

We are of the view that the Collateral Provider should still be sufficiently dispossessed notwithstanding that the Custodian (IM) is responsible for valuing the Posted Credit Support (IM) since the Custodian (IM) has given contractual undertakings to the Collateral Taker and the Collateral Provider does not have administrative control over the Custodian (IM)’s valuations.

It would also be acceptable for the Custodian (IM) to rely on valuations of the Credit Support (IM) given by the Collateral Taker alone or both parties by matching instructions. It would of course be problematic for the dispossession analysis if the Custodian (IM) relied upon valuations given by the Collateral Provider alone as the Collateral Provider could submit incorrect valuations resulting in the release of Posted Credit Support (IM) other than as "excess" and increasing fraud risk.

Paragraph 13 of the IM Security Documents also provides for Ineligibility Notices to facilitate compliance with WGMR Regimes. Following the delivery of an Ineligibility Notice, the items specified in the relevant notice will be deemed to have a Value of zero from and including the relevant Ineligibility Date (which shall be no earlier than the fifth Local Business Day following effective delivery of the Ineligibility Notice) and provided the relevant failure to meet the Eligibility Requirements is continuing. Under the terms of the IM Security Document, assets deemed to have a Value of zero are released but only where at such time the

Collateral Provider has satisfied all of its transfer obligations and accordingly such assets with a Value of zero would be excess.

The bilateral position under the IM Security Documents should be straightforward to reflect in the case of a third party Control Agreement. In the case of tri-party, notwithstanding the bilateral position, until such time as the tri-party Control Agreement or the eligible asset schedule is updated, the Custodian (IM) may continue to ascribe the relevant ineligible items with a value and may, therefore, release other Posted Credit Support (IM). However, each party is under an obligation to use reasonable endeavours, as soon as reasonably practicable following the delivery of the Ineligibility Notice to update the Control Agreement and/or the eligible asset schedule to remove the relevant ineligible assets. Furthermore, a release of Collateral following the Ineligibility Date based on the value of the ineligible credit support would likely result in a shortfall and (depending on the facts) potentially an Event of Default. Such shortfall would arise because under paragraph 13(n)(vi) (as an exception to the general position) the valuations of the Custodian (IM) do not override the definition of Value in the IM Security Document in respect of items that have a Value of zero resulting from delivery of an Ineligibility Notice. Accordingly, we are of the view that this scenario does not prejudice the possession or control analysis.

Distributions and Income

The IM Security Documents are silent on the issue of distributions in respect of Posted Credit Support (IM) in the form of securities and interest on Posted Credit Support (IM) in the form of cash other than (i) Paragraph 6(d) of the IM NY Annex and 6(e) of the IM Deed which reflects the fact that the Segregated Account is an account in the name of the Collateral Provider; and (ii) the definition of Posted Credit Support (IM) includes "…other property, Distributions and all proceeds thereof". As a result, absent any specially negotiated position, income and Distributions should ultimately flow into Return Amount (IM) as "excess". However, this will depend on the terms of the Control Agreement.

In respect of income, at least in the case of tri-party Control Agreements, we understand that the accrual of interest on cash balances is unlikely as cash will be substituted out for securities in the normal course. To the extent that cash is credited to the Segregated Account and subsequently released as excess by way of a Return Amount (IM) under either a tri-party or third party Control Agreement, that will not be problematic for possession or control for the reasons given above.

In respect of Distributions, we understand that the tri-party Control Agreements in common use in the market by Collateral Providers that are English Counterparties (i) attempt to substitute securities out of the Segregated Account ahead of an income or distribution or dividend payment date; and (ii) if the substitution fails (or if the relevant service does not offer a “full substitution” facility such that no substitution ahead of a record date takes place), provide for the crediting of the distribution to the relevant account (in respect of distributions representing both capital and income). Such distributions would then be released as "excess" by way of a Return Amount (IM) (as discussed above). In the case of third-party Control Agreements we also assume that only Distributions that qualify as "excess" would be released (by way of a Return Amount (IM)).[13]

We express no view on arrangements that release Distributions other than by way of excess.

13 Note that to the extent that interest or distributions were deemed to have a value of zero, such interest or distributions could also be returned by way of the provisions relating to Posted Credit Support (IM) with a value of zero.

Voting

The IM Security Documents are silent as to voting rights in respect of the Posted Credit Support (IM). As a result, the Control Agreement will regulate the right to vote.

There is no case law of which we are aware which addresses the question of the extent to which the allocation of the entitlement to exercise voting rights arising with respect to financial collateral is a relevant factor in determining whether the collateral-provider can be said to have been sufficiently "dispossessed" and, in our view, the fact that a collateral-provider retains voting rights prior to an enforcement event should not mean that the collateral provider is not sufficiently "dispossessed" since the right to vote does not affect the risk of fraud. We note that voting rights could ultimately be used to (i) transform the Posted Credit Support (IM) into assets that no longer qualify as financial collateral; or (ii) diminish the value of the Posted Credit Support (IM). However, we do not believe that a court would construe the FCA Regulations on the assumption that a party would act irrationally or contrary to its own interests. Furthermore, even if the Posted Credit Support (IM) could in future be transformed into non-financial collateral, at the outset the relevant assets would qualify and that future risk should not affect the initial characterisation as a security financial collateral arrangement. Accordingly, we are of the view that the risk of "extreme" voting does not go to the question of possession or control.

Substitution

Paragraph 4 of the IM Security Documents permits the Collateral Provider to substitute replacement Eligible Credit Support (IM) for Posted Credit Support (IM) and the Collateral Taker is required to release the Posted Credit Support (IM) with a Value as close as practicable to, but not more than, the Value of the replacement Eligible Credit Support (IM).

The standard election in Paragraph 13 of the IM Security Documents provides that the prior consent of the Collateral Taker to substitution is required except that each party consents upfront to any substitutions of Posted Credit Support (IM) for replacement Eligible Credit Support (IM) that are made by the Pledgor and/or the Custodian (IM) in accordance with the terms of the Control Agreement (i.e. no further consent is required on a substitution by substitution basis).

As noted above, the FCA Regulations provide that any right of the collateral-provider to substitute financial collateral of the same or greater value does not prevent the financial collateral being in the possession or under the control of the collateral-taker. As a result substitution is permissible and prior consent is not crucial to the possession or control analysis (although it may impact the question of whether the arrangement constitutes a floating charge).

However, the Control Agreement must ensure that administrative control over substitutions is retained (e.g. to prevent a Collateral Provider fraudulently substituting one security for another of lower value).

In the case of third party Control Agreements, administrative control can be achieved by the Custodian (IM) acting only on matched joint instructions or sole instructions given by the Collateral Taker.

In the case of tri-party Control Agreements, the Custodian (IM) is likely to make frequent substitutions on its own initiative (as noted above the Collateral Taker provides upfront

consent to such substitutions in the IM Security Document). We do not think this is problematic from a possession or control perspective for the same reasons that apply to the release of Return Amounts (IM) under tri-party Control Agreements (in respect of which see "excess collateral" above).

Notice to Contest and Collateral Taker Insolvency

The Control Agreement will likely include the right for the Collateral Provider to serve a Chargor Access Notice or Pledgor Access Notice upon certain conditions including the default of the Collateral Taker. Please refer to the 2016 ISDA Collateral Taker WGMR Opinion for a discussion as to the enforceability of these provisions from the perspective of a Collateral Provider.

Under the IM Security Documents, the Collateral Provider covenants that it will not (i) give a Pledgor Access Notice or Chargor Access Notice (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)).

In our view, if the occurrence of a Pledgor Rights Event or Chargor Rights Event (as applicable) entitles the Collateral Provider to serve a Pledgor Access Notice or Chargor Access Notice (as applicable) on the Custodian (IM), then in order to satisfy the requirements for administrative control, the Control Agreement should include provisions such that (i) the Custodian (IM) must provide a copy of the Pledgor Access Notice or Chargor Access Notice to the Collateral Taker and there must be a delay before the Collateral Provider is entitled to withdraw the Posted Credit Support (IM); (ii) if the Pledgor Access Notice or Chargor Access Notice (as applicable) has been incorrectly given (e.g. because it has been given fraudulently), the Collateral Taker must be able to deliver a notice to the Custodian blocking the Pledgor Access Notice or Chargor Access Notice (as applicable) (such notice, the **Notice to Contest**); and (iii) if no Notice to Contest is given prior to the expiry of the delay period, then the Custodian (IM) may accept the sole instructions of the Collateral Provider with respect to the Posted Credit Support (IM). The delay period should be sufficiently long to enable the Collateral Taker to verify whether the Obligations have been satisfied – this will depend on the identity of the relevant parties and their sophistication.

Under the IM Security Documents, the Collateral Provider is contractually permitted to serve a Pledgor Access Notice or Chargor Access Notice (as applicable) to exercise the Delivery in Lieu Right. We assume that a Collateral Taker that is a party to an IM Security Document would serve a Notice to Contest in any circumstances where it was not able to determine that the exercise of the Delivery In Lieu Right would result in satisfaction of the Obligations. Accordingly, we are of the view that the inclusion of the Delivery in Lieu Right would not prejudice the possession or control analysis.

Custodial liens and rights of set-off

There is no case law of which we are aware which addresses the question of the extent to which a competing lien or security interest over the Posted Credit Support (IM) in favour of the Custodian (IM) arising under the terms of the Control Agreement or the related custody agreement could affect the possession or control analysis.

Given the requirements of the WGMR Regimes, we would expect that the lien or security interest is limited to *de minimis* amounts (i.e. fees and expenses) arising in relation to the specific Segregated Account and the holding of the Posted Credit Support (IM). Such liens or security interests should not be problematic as the Posted Credit Support (IM) is held by the Custodian (IM) on behalf of the Collateral Taker subject to the terms of the Control Agreement and the Collateral Provider is still dispossessed versus the Collateral Taker.

In our view, the position with respect to a right of set-off in favour of the Custodian (IM) (for example with respect to cash balances and the payment of fees and expenses) is the same.

Right of Custodian (IM) to Resign

The Control Agreement and/or the related custody agreement is likely to permit the Custodian (IM) to resign by notice. The Control Agreement may oblige the parties to agree at the relevant time to put a new initial margin structure in place and transfer the Posted Credit Support (IM) to the replacement Segregated Account. However, the right of the Custodian (IM) to resign is unlikely to be contingent on a replacement structure being put in place and the obligation on the parties to negotiate a replacement structure may be an agreement to agree and unenforceable in any event.

Upon the resignation of the Custodian (IM) in such circumstances, the Posted Credit Support (IM) could be transferred to either the Collateral Provider or the Collateral Taker. Whether the ability of a Custodian to resign (of its own volition and not following an instruction of the Collateral Provider) affects the possession or control analysis is not totally clear. The Collateral Provider is not able to force the resignation of the Custodian (IM) and accordingly, in the normal course, the Collateral Provider is dispossessed. However, particularly where the Collateral is returned to the Collateral Provider, upon the resignation of the Custodian (IM) the Collateral Provider regains the ability to deal in the Collateral.

Accordingly to minimise the risk to the extent possible, the IM Security Documents contain an Additional Termination Event in respect of each Covered Transaction (IM) triggered by a Custodian Event continuing after the CE End Date. When parties are entering into an IM Security Document, they should ensure that the time periods inserted in the definition of CE End Date are selected such that it is possible to (i) close-out the Covered Transactions (IM) and (ii) if necessary following a failure to pay the Early Termination Amount in respect of the prior close-out, close-out the remaining Transactions and enforce the security interest prior to the Custodian's resignation becoming effective.

Other features of the IM Security Documents

Note that in addition, from a legal control perspective:

(i) upon the occurrence of a Secured Party Rights Event, the Collateral Taker is able to exercise the relevant enforcement remedies;

(ii) the IM Deed includes a negative pledge at Paragraph 2(c) and each of the IM Security Documents includes representations as to the status of the security interest at Paragraph 9; and

(iii) the obligations of the Collateral Taker to release Posted Credit Support (IM) are subject to the conditions precedent specified in Paragraph 4 including that no Event of Default or Potential Event of Default has occurred and is continuing with respect to the Collateral Provider.

2.5 *Are the collateral-provider and the collateral-taker non-natural persons?*

Moving onto the final limb of the definition of "security financial collateral arrangements", under the FCA Regulations a "non-natural person" is "any corporate body, unincorporated firm, partnership or body with legal personality except an individual …". We assume that both parties to the IM Security Documents are non-natural persons.

3. Update on the Legal Basis of the FCA Regulations

Further to the discussion in the 2015 ISDA Collateral Opinion in respect of the possibility that the FCA Regulations could be ultra vires to the extent that the FCA Regulations exceed the scope of the Collateral Directive, we note that sections 255 and 256 of the Banking Act 2009 have now been brought into force although no regulations have yet been issued under such sections.

III. SECURITY INTEREST QUESTIONS – IM SECURITY DOCUMENTS

1. Introduction

By reference to the 2015 ISDA Collateral Opinion, in this part III we consider issues relating to the creation, perfection, and enforcement against an English Company of a security interest created 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.

Our conclusions in this respect in relation to an English Company apply in relation to:

(a) an English Bank, as modified and supplemented by Annex 1 of the 2015 ISDA Collateral Opinion;

(b) an English Investment Firm, as modified and supplemented by Annex 2 of the 2015 ISDA Collateral Opinion; and

(c) Standard Chartered Bank, as modified and supplemented by Annex 11 of the 2015 ISDA Collateral Opinion.

The references in those Annexes to the Security Documents should for this purpose be read as references to the IM Security Documents.

In this part III we also consider issues relating to the creation, perfection and enforcement of a security interest created in respect of Collateral delivered under each of the Security Documents by a Foreign Entity where the Collateral is located in England under fact pattern (c) as set out in part I.4 of this memorandum.

2. Assumptions

For the purpose of this part III, 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 posting leg of one party – issues relating to the insolvency of the Collateral Taker are considered in a separate opinion.

(d) We assume that each party is either an English Counterparty or a Foreign Entity as defined above and at least one party is subject to a regulatory 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 Credit Support (IM) 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.[14]

(h) Any securities provided as Eligible Credit Support (IM) 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.[15]

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

14 We do not consider Other Eligible Support (IM) under the NY IM CSA in this memorandum.

15 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.

assumption (i) below.[16] 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.

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. [17]

(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.

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16 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".

17 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.

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.

(k) 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 IV 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 Part V. This Part III relates only to the rights of the Collateral Provider under the IM Security Documents in the circumstances described above.

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

(m) In the case of questions 16 to 18 below which apply in respect of an English Counterparty only, that an Event of Default under Section 5(a)(vii) of the ISDA Master Agreement with respect to the Collateral Provider has occurred and a formal bankruptcy, insolvency, liquidation, reorganisation, administration or comparable proceedings (collectively, **insolvency proceedings**) have been instituted in respect of the Collateral Provider. In addition we assume that, upon the commencement of insolvency proceedings in respect of the Collateral Provider, the Collateral Taker seeks to enforce the financial collateral arrangement constituted by the relevant Security Document in accordance with its terms and that no further collateral will be delivered to the Collateral Taker. We make this assumption because any disposition of an insolvent party's property made after the commencement of the winding up is, unless the court orders otherwise, void: section 127 of the Insolvency Act 1986. The court has the discretion to validate a disposition if it was made honestly in the ordinary course of business and prior to the winding up order being made.

3. Questions relating to the IM Security Documents

Would any of the responses to questions 1 through 21 in the ISDA 2015 Collateral Opinion differ if such questions were asked in respect of the IM Security Documents and the assumptions set out above?

We set out each of the questions below and state where our conclusions would differ in respect of the IM Security Documents or otherwise state "As per 2015 ISDA Collateral Opinion". Note that the holding structure for IM Security Documents is different and so our answers to the 2015 ISDA Collateral Opinion should be read with this fact in mind. Similarly any defined terms in the questions below or our answers to the 2015 ISDA Collateral Opinion that do not appear in the IM Security Documents should be read as referring to the equivalent provision of the IM Security Documents.

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

This analysis is addressed separately in Part II as the terms of the Control Agreement will largely determine whether the arrangement will qualify as a security financial collateral arrangement.

Validity of Security Interests: Creation and Perfection

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

   As per ISDA 2015 Collateral Opinion.

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

   We would expect that an IM Security Document entered into by an entity within the scope of the Collateral Directive would be structured as a security financial collateral arrangement. Therefore, although local law implementations of the Collateral Directive may differ between European jurisdictions, we would generally expect parties to structure the arrangement such that it qualifies as a security financial collateral arrangement under the FCA Regulations (at least in circumstances where an English Company is the Collateral Provider or the relevant Segregated Account is located in England).

   Accordingly as discussed in the 2015 ISDA Collateral Opinion, Regulation 19 of the FCA

Regulations will be the primary conflicts of law rule that is relevant in respect of book entry securities. Regulation 19 broadly provides that with respect to book entry securities used as collateral under financial collateral arrangements and which are held through one or more intermediaries, any questions relating to the following matters shall be governed by the domestic law of the country in which the relevant account is maintained (for this purpose domestic law excludes any rule under which, in deciding the relevant question, reference should be made to the law of another country):

(a) the legal nature and proprietary effects of book entry securities collateral;

(b) the requirements for perfecting a financial collateral arrangement relating to book entry securities collateral and the transfer or passing of control or possession of book entry securities collateral under such an arrangement;

(c) the requirements for rendering a financial collateral arrangement which relates to book entry securities collateral effective against third parties;

(d) whether a person's title to or interest in such book entry securities collateral is overridden by or subordinated to a competing title or interest; and

(e) the steps required for the realisation of book entry securities collateral following the occurrence of any enforcement event.

See ISDA 2015 Collateral Opinion in respect of (i) cash and (ii) arrangements that do not qualify as financial collateral arrangements.

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

In our opinion the English courts would recognise a security interest in each type of Eligible Credit Support (IM) created under each IM Security Document, provided the security interest was valid under the governing law of the IM Security Document (if not English law) and provided also that any applicable requirements, including as to perfection, under the relevant proprietary law in relation to the Eligible Credit Support (IM) (determined in accordance with the rules of English private international law, as to which see the answer to question 2 above) had been complied with.

The location of the Segregated Account is not directly relevant to the question of recognition although see also our comments in our answer to question 12 below as to enforcement of an IM NY Annex where the Segregated Account is located in England. The currency in which the Collateral is denominated is not relevant to the question of recognition.

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

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

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

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

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

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

   As per 2015 ISDA Collateral Opinion other than in respect of specific question (e).

   In respect of (e), by entering into a variation margin arrangement under the relevant VM Document and a separate initial margin arrangement under the relevant IM Security Document, the Collateral Taker may hold Collateral in excess of its actual exposure. The parties have contractually agreed to this position and it is permissible under the laws of England.

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

   As per 2015 ISDA Collateral Opinion.

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

   As per 2015 ISDA Collateral Opinion.

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

   As per 2015 ISDA Collateral Opinion.

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

   As per 2015 ISDA Collateral Opinion

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

   Not applicable - the Posted Credit Support (IM) will be held by the Custodian (IM) rather than the Collateral Taker in accordance with the terms of the relevant custody agreement and the Control Agreement.

10. *Please note that pursuant to the terms of the English Deed, the Secured Party is not permitted to use any Collateral securities it holds. This is because it is thought, as a matter of English law, that any such use is or may be incompatible with the limited nature of the interest that the Secured Party has in the Collateral. On the other hand, unless otherwise agreed to by the parties, Paragraph 6(c) of the New York Annex grants the Secured Party broad rights with respect to the use of Collateral, provided that it returns equivalent Collateral when the Security Collateral Provider is entitled to the return of Collateral pursuant to the terms of the New York Annex. Such use might include pledging or rehypothecating the securities, disposing of the securities under a securities repurchase (repo) agreement or simply selling the securities. Do the laws of your jurisdiction recognize the right of the Secured Party so to use such Collateral pursuant to an agreement with the Security Collateral Provider? In particular, how does such use of the Collateral affect, if at all, the validity, continuity, perfection or priority of a security interest otherwise validly created and perfected prior to such use? Are there any other obligations, duties or limitations imposed on the Secured Party with respect to its use of the Collateral under the laws of your jurisdiction?*

    Not applicable – the IM Security Documents do not contain a right of use given the requirements of the WGMR Regimes.

11. *What is the effect, if any, under the laws of England on the validity, continuity, perfection or priority of a security interest in Eligible Collateral under each Security Document of the right of the Security Collateral Provider to substitute Collateral pursuant to Paragraph 4 of the New York Annex and the English Deed? How does the presence or absence of consent to*

substitution by the Secured Party affect your response to this question? Please comment specifically on whether the Security Collateral Provider and the Secured Party are able validly to agree in the Security Document that the Security Collateral Provider may substitute Collateral without specific consent of the Secured Party and whether and, if so, how this may affect the nature of the security interest or otherwise affect your conclusions regarding the validity or enforceability of the security interest.

See ISDA 2015 Collateral Opinion for a discussion of the analysis as to fixed versus floating charges.

Under tri-party Control Agreements, each party consents up front to the automated substitutions made by the Custodian (IM). This results in a significant risk that the arrangement constitutes a floating charge but does not prevent it qualifying as a security financial collateral arrangement. As noted in the ISDA 2015 Collateral Opinion, the FCA Regulations remove several of the limitations which would otherwise apply to a floating charge – in particular the FCA Regulations remove the following issues that otherwise apply to floating charges under English insolvency law:

(A) Certain statutorily preferred claims (the main types are claims by employees and contributions to pension schemes and, for relevant entities, debts due to depositors[18]) take priority over a creditor with a floating charge in a liquidation or an administration whereas a fixed charge ranks ahead of such claims.

(B) In respect of a floating charge created on or after 15 September 2003 a receiver, liquidator or administrator must set aside a prescribed part of the floating charge realisations for the benefit of the unsecured creditors.[19] The maximum amount of the ring-fenced fund is £600,000.[20]

(C) In an administration the remuneration and expenses of the administrator are payable out of assets subject to the floating charge.[21] Liquidation expenses are now also payable out of assets subject to a floating charge.[22]

(D) In an administration, the administrator may deal with the property covered by the floating charge without the leave of the court and without any need, for example, to make up to the chargee any shortfall in market value on a sale.

(E) A floating charge is subject to wider powers of avoidance under the Insolvency Act 1986 than a fixed charge would be by virtue of section 245 of the Insolvency Act 1986.

Note that a floating charge has weaker priority (compared with a fixed charge) against (i) purchasers and other chargees of the relevant assets; (ii) lien holders (iii) creditors with rights

18 Schedule 6 to the Insolvency Act 1986 sets out the categories of preferential debts. Preferential debts were previously limited, broadly, to unpaid contribution obligations to occupational pension schemes, certain claims of employees in relation to remuneration and unpaid levies on coal and steel production. This has now been significantly expanded in respect of credit institutions by the introduction of depositor preference. Broadly, debts due to the depositor up to the level protected by the FSCS and debts owed to the scheme manager of the FCSC rank alongside the other preferential debts and the balance forms a separate category of secondary preferential debts which rank in priority after ordinary preferential debts but ahead of floating charge holders and unsecured creditors (see section 175 Insolvency Act 1986 and Schedule 6).

19 Unless the realised value of the assets subject to floating charges is less than £10,000 and the relevant officeholder considers that the cost of distributing the prescribed part would be disproportionate to the benefit to unsecured creditors of doing so. See section 176A(3) Insolvency Act 1986.

20 Section 176A Insolvency Act 1986; Insolvency Act 1986 (Prescribed Part) Order 2003, SI 2003/2097.

21 Insolvency Act 1986, Sch B1, para 99(3) and (4).

22 Section 176ZA Insolvency Act 1986.

of set off; and (iv) judgment creditors (e.g. where a third party debt order is made in respect of the Collateral Provider).

In relation to fixed charge holders and purchasers, (x) the Control Agreement means that the Collateral Provider is not easily able to deal with the assets in the normal course whilst in the Segregated Account; (y) the relevant Custodian (IM) will likely declare that it is not aware of any adverse interest in the Segregated Account at the point that the Control Agreement is entered into; and (z) the Collateral Provider represents in the IM Security Document that upon transfer the Collateral is not subject to other security interests and in the case of the IM Deed gives a negative pledge at paragraph 2(c). Given the custody structure we also assume that the Custodian (IM) would be the most likely lien holder and therefore the Collateral Taker will likely be aware of the existence of the lien (see discussion in Part II).

In relation to third party custody, if the IM Security Document and the Control Agreement requires consent to substitution on a case by case basis, then the arrangement may constitute a fixed charge. Whether the arrangement in such cases is a fixed charge will primarily depend on the degree of control resulting from the IM Security Document and the Control Agreement.[23] In this regard see the analysis as to fixed and floating charges in the ISDA 2015 Collateral Opinion - note that the references to principal in respect of debt securities should be read as distribution of capital in respect of equities. To the extent that the arrangement is not a fixed charge but is a security financial collateral arrangement then the position is as set out above.

23 Note that "control" for the purpose of fixed charge and financial collateral analysis differs.

Enforcement of rights under the IM Security Documents by the Collateral Taker in the absence of an insolvency proceeding

Note the additional assumption in (l) in this Part III above which applies to questions 12 to 15 below.

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

In respect of the IM Deed and Posted Credit Support (IM) located in England, as per the 2015 ISDA Collateral Opinion except:

(A) (i) foreclosure (which is a remedy available to the holder of a legal mortgage or an equitable mortgage only); and (ii) the right of set-off will not be relevant given the IM Deed constitutes a charge and the Posted Credit Support (IM) is held by the Custodian (IM);

(B) the IM Deed includes an express contractual right to appoint a receiver reflecting the fact that the Posted Credit Support (IM) is held with a third party Custodian (IM);

(C) the IM Deed includes the right to appropriate and a valuation methodology for the appropriated collateral; and

(D) if "and the [Pledgor/Chargor] has not paid in full all of its Obligations that are then due" has been deleted from the definition of Secured Party Rights Event definition in Paragraph 13, then it would appear on a plain reading that it is possible for a Collateral Taker to enforce in circumstances where (i) the Collateral Taker has not terminated all Transactions under Section 6 of the ISDA Master Agreement and determined that an amount is payable by the relevant Collateral Provider under Section 6(e); and (ii) no amount is currently due and unpaid by the relevant Collateral Provider. We express no opinion on the enforceability of the enforcement remedies when used in such circumstances as it would likely require a detailed analysis of the relevant facts which is not possible in a generic opinion of this type.

As per the 2015 ISDA Collateral Opinion, as we are discussing the position under English law in this memorandum, we assume for the purposes of this question that the Collateral is governed by English law as determined by the applicable conflict of laws rules relevant to that category of Collateral (in respect of which see our answer to question 2 above). As New York law will govern the contractual aspects of the New York Annex (subject to our answer to question 19 below), we focus in the 2015 ISDA Collateral Opinion (as modified above) on the contractual position under the IM Deed, but the discussion will also be relevant to the IM NY Annex where the Collateral is governed by English law as determined by the applicable

conflict of laws rules relevant to that category of Collateral, but as applied to the contractual remedies the parties have specified under the IM NY Annex.[24]

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

As per 2015 ISDA Collateral Opinion

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

As per 2015 ISDA Collateral Opinion except see our answer to question 11 above in relation to the characterisation of the IM Security Document as a fixed or floating charge and the types of claims that may take precedence over a floating charge.

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

See the 2016 ISDA Collateral Taker WGMR Opinion in respect of the rights of a Collateral Provider following the default of the Collateral Taker and see also that opinion and Part II above in respect of our advice to include Notice to Contest provisions in the Control Agreement (to the extent that either the Collateral Provider is an English Company or the Collateral is located in England).

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24 An English court, if required to consider a right or remedy granted by the New York Annex, would consider whether the right or remedy is of a type known to English law and would then apply English law relevant to that type of right or remedy to determine whether it is enforceable under English law and, if so, the manner of enforcement. In particular, note that Regulation 19 of the FCA Regulations provides that any question relating to the steps required for the realisation of book entry securities collateral following the occurrence of any enforcement event shall be governed by the domestic law of the country in which the relevant account is maintained. See also H. Beale and others, *The Law of Security and Title-Based Financing*, (2nd edition, OUP 2012), ch 22.88.

Enforcement of rights under the IM Security Documents by the Collateral Taker after commencement of an English insolvency proceeding in respect of an English Company

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

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

Since the Segregated Account at the Custodian (IM) is in the name of the Collateral Provider the rule in *Dearle v Hall* will be relevant and accordingly the position differs from the position described in the ISDA 2015 Collateral Opinion.

As a matter of English insolvency law, secured claims take priority over unsecured claims and fixed charges have certain advantages over floating charges. However, as discussed in our answer to question 11, a number of the disadvantages to floating charges are removed in respect of security financial collateral arrangements by the FCA Regulations.

We discuss the priority position where there are competing secured creditors in respect of English located Collateral below.

The English law rules relating to priorities between creditors are complex and the below is a summary of basic principles only:

(a) Subject to certain exceptions including (b) below, secured claims take priority in the order in which the security interest was created.[25]

(b) Where there is a competition between a legal interest (including a legal security interest) and an equitable interest (including an equitable security interest), the legal interest will take precedence over the equitable interest irrespective of the time of creation, provided the legal interest was taken for value and without knowledge of the equitable interest.

The principles at (a) and (b) above are both subject to an overarching exception that they apply where "the equities are equal". In other words, they apply unless it would be inequitable to abide by them.

As noted, there are a number of exceptions to the general rules of priority expressed in (a) and (b) above. Of particular relevance is the rule in *Dearle v Hall*. This governs the priority of, amongst other things, competing assignments of a debt and will apply in relation to Posted Credit Support (IM) in the form of cash.

Under rule in *Dearle v Hall*, priority goes to the first assignee to give notice in writing to the relevant debtor of its assignment, provided that such assignee only has priority over an earlier assignee if it does not have notice of the earlier assignment. The relevant debtor in such cases would be the Custodian (IM) holding the cash as banker. Note that the timing of the notice is important – (i) notice may be given at the same time as or any time after the assignment (but not before); and (ii) the subject-matter of the assignment must have become present property at the time the notice is received (the notice will take effect on receipt rather than on sending).

25 Note that a prior security interest covering further advances loses priority to a subsequent security interest if the advances were made after the holder of the first security interest was aware of the subsequent security interest.

In the case of intermediated securities and the principles at (a) and (b) above, the interest of the Collateral Provider will inherently be equitable (and likewise with respect to the security interest of the Collateral Taker). As a result taking into account the nature of the securities and the Control Agreement, the priority afforded to a subsequent legal interest does not seem likely to be problematic in practice.

In any event the rule in *Dearle v Hall* applies to equitable interests as well as debts and therefore may apply to intermediated securities as the Collateral Provider's interest in the intermediated securities is equitable in nature.[26]

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

As per ISDA 2015 Collateral Opinion.

18. *Will the Security Collateral Provider (or its administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official) be able to recover any transfers of Collateral made to the Secured Party during a certain "suspect period" preceding the date of the insolvency as a result of such a transfer constituting a "preference" (however called and whether or not fraudulent) in favour of the Secured Party or on any other basis? If so, how long before the insolvency does this suspect period begins? If such a period exists, would the substitution of Collateral by a Counterparty during this period invalidate an otherwise valid security interest if the substitute Collateral is of no greater value than the assets it is replacing? Would the posting of additional Collateral pursuant to the mark-to-market provisions of the Security Documents during the suspect period be subject to avoidance, either because the Collateral was considered to relate to an antecedent or pre-existing obligation or for some other reason?*

As per 2015 ISDA Collateral Opinion.

Additional issues

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

In respect of (i) a NY IM Annex entered into in connection with an New York law governed ISDA Master Agreement; or (ii) the IM Deed, as per 2015 ISDA Collateral Opinion (although note that paragraph 11(g) of the IM Deed is clear that the parties submit to the non-exclusive jurisdiction of the English courts).

In respect of a NY IM Annex entered into in connection with an English law governed ISDA Master Agreement, split governing law (dépeçage) issues arise. We assume that the parties will amend the NY IM Annex to include a New York governing law clause. The remainder of the ISDA Master Agreement is subject to English law and the English jurisdiction clause will generally apply to the entire agreement.

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26 Guest and Khai Liew, *Guest on the Law of Assignment*, 2nd Edn (Sweet and Maxwell, 2015), Ch 6 (and 6-46 in respect of intermediated securities). Note also that some academic commentary suggests that the rule in *Dearle v Hall* does not apply to shares as common law recognises the transfer of shares. However, shares held in the form of intermediated securities are in our view distinguishable from this line of argument on the basis the interest in the shares is inherently equitable.

Article 3(1) of Rome I provides that the parties can select the law applicable to the whole or to part only of the contract. Rome I therefore clearly contemplates the possibility of different laws being chosen by contracting parties to apply to different parts of the same contract.[27] It is clearly important, however, that such a choice must relate to elements in the contract that can be governed by different laws without giving rise to contradictions.

An official report on the Rome Convention (that preceded Rome I) was produced by Professor Mario Giuliano and Professor Paul Lagarde and was reproduced in the edition of the Official Journal of the Communities (C282) of 31 October 1980 (the **Giuliano-Lagarde Report**). The Giuliano-Lagarde Report on its commentary on Article 3 of the Rome Convention acknowledges the possibility of *dépeçage* contemplated by the last sentence of Article 3(1) but confirms that such choice must not lead to a logical inconsistency.

One cannot for example, have two different laws purporting to apply to the "general obligation" of the contract. For example, one cannot have two different laws purporting to deal with the consequence of repudiation of the contract or whether the contract is discharged by frustration. If a choice were made in such a way as to lead to such a contradiction, there would be no effective governing law clause, and a court seeking to determine the law applicable to the contract would apply the general rules in Rome I that determine the law applicable to contractual obligations in the absence of choice.

In our view, the entry into a NY IM CSA (governed by New York law in accordance with a bespoke governing law clause in paragraph 13) and an English law governed ISDA Master Agreement would not lead to a logical inconsistency and therefore we believe that an English court would recognise and give effect to the mixed governing law clause (subject to the issues discussed in the 2015 ISDA Collateral Opinion).

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

As per ISDA 2015 Collateral Opinion.

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

As per ISDA 2015 Collateral Opinion.

27 *Dicey,. Morris and Collins on the Conflict of Laws* (15th Edn Sweet & Maxwell, London 2012), para 32-026.

4. 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 in Part II and III 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 this structure would not lessen "possession or control" since (i) as a matter of Japanese law it appears to be an account and/or ledger in the name of the Collateral Taker and has been developed to reduce the risk of a Japanese conflicts of law risk; and (ii) the un-amended terms of the NY IM CSA discussed previously also continue to apply all other Posted Credit Support (IM).

On the basis of the assumptions above, the financial collateral analysis in Part II and the conclusions in Part III are not affected by the inclusion of the Japanese Amendment Provisions to NY IM CSA in the NY IM CSA.

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 above. 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).

IV. CLEARING SYSTEM IM ARRANGEMENTS

1. Introduction

In this part IV we consider issues relating to a security interest created by the relevant Clearing System IM Documents in respect of Collateral held in a Clearstream account or a Euroclear account where the Collateral Provider is an English Counterparty.

2. Assumptions

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

(a) the parties will not enter into an IM Security Document in respect of a 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 IM Documents, the **Clearing System IM Documents**);

(d) if the parties wish to include Japanese government bonds as Collateral in cases where the Collateral is held in a Euroclear account, 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 and, in the case of Euroclear have made the relevant election to trap income distributions to the extent the relevant securities are not substituted out in advance (the **Relevant Tri-party Documents**);[28]

(g) 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**");

(h) 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**);[29]

(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;

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

(l) each relevant Clearstream or Euroclear entity 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 Clearstream or Euroclear (as applicable) in accordance with applicable law.

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

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28 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.

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

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. Analysis

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

Part II – Financial Collateral Analysis

The Clearstream Account is in the name of the Collateral Provider and the Euroclear Account is 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).

In our view, the issues highlighted above in Part II in respect of the IM Security Documents and a tri-party Control Agreement will be equally applicable to a Clearstream or Euroclear initial margin arrangement. References in Part II to provisions of the IM Security Documents should be read as references to the equivalent provision of the relevant Clearing System IM Documents for this purpose.

We consider certain aspects of the "possession or control" analysis in more detail below taking into account the terms of the relevant Clearing System IM Documents. As requested, we have not reviewed or considered the Relevant Tri-party Documentation for the purpose of the below discussion (even where such documentation is expressly referred to in the Clearing System IM Documents). Therefore, the generic analysis in Part II (as supplemented by the below) should be considered together with the terms of the Relevant Tri-party Documents in order to determine whether an arrangement is a security financial collateral arrangement.

Note that in our view, as per the analysis in Part II above, tri-party services are compatible with satisfying the requirements for administrative control under the "possession and control" test if the relevant instructions are given either (i) by both parties; or (ii) solely by the Collateral Taker.[30]

Excess Collateral

Paragraph 2.2 of each of the ISDA Clearstream CTA and ISDA Euroclear CTA follows the approach of the IM Security Documents. The Return Amount is calculated by reference to the amount by which the Value of all Posted Collateral exceeds the applicable Credit Support Amount and the Collateral Taker is obliged to transfer Posted Collateral having a Value as close as practicable to the applicable Return Amount. Accordingly, the Return Amount should qualify as "excess" for the reasons given in Part II above.

The Credit Support Amount is calculated by both parties in respect of a posting leg and joint instructions are required to notify Clearstream or Euroclear under Paragraph 3.3(b) and 3.3(c). As a result, a fraudulent or incorrect calculation of the Credit Support Amount by the Collateral Provider resulting in the release of Collateral other than as "excess" should not be possible. To the extent that a dispute arises as to the Credit Support Amount, the Collateral Taker would be able to refuse to submit a matched instruction in respect of the relevant disputed amount and trigger the Dispute Resolution procedures in Paragraph 4.

30 The Collateral Taker should of course be able to serve unilateral instructions post default of the Collateral Provider.

The Value of the Posted Collateral for the purpose of Return Amounts is determined by the Collateral Valuation Agent – this will usually be Clearstream or Euroclear but may also be the Collateral Taker. Our analysis in Part II above in respect of valuations by the Custodian (IM) would be equally applicable to valuations by Euroclear or Clearstream.

Note that under paragraph 2.3, each of the ISDA Clearstream CTA and ISDA Euroclear CTA envisage that Additional Transfers may take place on days which do not qualify as Transfer Dates under the agreements but are days on which the tri-party system operates. In such cases the Credit Support Amount notified to Clearstream or Euroclear on the preceding Transfer Date will continue to apply and the automated systems will continue to either top up or release the Collateral. Such Credit Support Amount is still the contractually agreed amount required to be collateralised for the purpose of the FCA Regulations and therefore any Collateral released would constitute "excess" for the reasons given above.[31]

Each of the ISDA Clearstream CTA and the ISDA Euroclear CTA include provisions relating to Ineligible Credit Support which require the parties to use reasonable endeavours, as soon as reasonably practicable, following effective delivery of such notice to provide matching instructions to update the relevant eligible collateral schedules with effect from the applicable Ineligibility Date which would trigger an automated substitution (in respect of which see below).

If the parties failed to update the relevant eligible collateral schedules, the analysis set out in Part II above would apply mutatis mutandis.

Distributions and Income

We assume that, as tri-party systems, Clearstream or Euroclear (as applicable) will seek to substitute securities out of the relevant Clearstream Account or Euroclear Account (as applicable) ahead of the relevant income or distribution or dividend date. To the extent that substitution does not occur (either because of a lack of eligible replacement assets in the relevant source account or because a “full substitution” service is not offered), we assume that parties will have made any relevant elections to ensure that Distributions are trapped in the relevant account or that the terms of the Relevant Tri-party Documentation are such that Distributions are only ever released to the extent they constitute excess collateral.

Paragraph 5.6 of the ISDA Euroclear CTA provides that Distributions credited to the relevant Secured Account will be released to the extent that a Delivery Amount would not be created or increased and all of the Collateral Provider’s transfer obligations have been satisfied. The Value of Distributions is determined by the Collateral Taker for this purpose and we understand that the release process would be manual. In such circumstances, Distributions would be "excess".

The ISDA Clearstream CTA is silent on Distributions so we assume Distributions would be released through the automated Return Amount process. Accordingly the release of the Distributions would constitute "excess" for the reasons set out above.

We express no view on arrangements that release Distributions other than by way of excess.

Our analysis in respect of interest on cash balances in Part II is equally applicable to the arrangements described in this Part IV.

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31 This scenario could arise in other tri-party scenarios as described in Part II above. The logic above would also apply in such circumstances.

Voting

The ISDA Euroclear CTA provides that unless and until an Enforcement Event occurs with respect to a Collateral Provider, it can exercise voting rights attached to the Posted Collateral. The ISDA Clearstream CTA is silent as to voting rights. For the reasons given in Part II above, we are of the view that retention of voting rights prior to an Enforcement Event should not mean that a Collateral Provider is not sufficiently "dispossessed".

Substitution

The parties agree in the ISDA Clearstream CTA and ISDA Euroclear CTA that substitution will take place in accordance with the Relevant Tri-party Documents. See Part II above in respect of substitution in a tri-party context.

Notice to Contest and Collateral Taker Insolvency

Each of the ISDA Clearstream Security Document and the ISDA Euroclear Security Document envisage the ability of a Collateral Provider to serve a Security-provider Access Notice. The ability to serve the notice is conditional on the same factors as under the IM Security Documents. Please refer to the 2016 ISDA Collateral Taker WGMR Opinion for a discussion of the enforceability of these provisions from the perspective of a Collateral Provider.

To ensure administrative control, the Relevant Tri-party Documents must comply with the conditions set out in Part II above including providing the Collateral Taker with the ability to serve a Notice to Contest. As set out in Part II above, the Collateral Taker should be aware of the need to serve a Notice to Contest if it is not able to determine that the exercise of the Delivery in Lieu Right would result in satisfaction of the Secured Liabilities.

Clearstream Event/Euroclear Event

The circumstances in which a Clearstream Event or a Euroclear Event, such as a resignation or a termination of the relevant service, could occur will depend in part on the terms of the Relevant Tri-party Documents.

To the extent that a Clearstream Event or Euroclear Event occurs and is continuing on the CE End Date or EE End Date, as applicable, the ISDA Clearstream CTA and ISDA Euroclear CTA include an Additional Termination Event. As with the IM Security Documents, parties should ensure that the time periods inserted in the definition of CE End Date or EE End Date are selected such that it is possible to (i) close-out the Covered Transactions and (ii) if necessary following a failure to pay the Early Termination Amount in respect of the prior close-out, close-out the remaining Transactions and enforce the security interest prior to the resignation or termination becoming effective (particularly in cases where the Collateral would be returned to the Collateral Provider under the Relevant Tri-party Documents).

Other features of the ISDA Clearstream IM Documents and ISDA Euroclear IM Documents

Note that in addition, from a legal control perspective:

(i) upon the occurrence of an Enforcement Event, the Collateral Taker is able to enforce its rights under the ISDA Clearstream Security Agreement or ISDA Euroclear Security Agreement (as applicable);

(ii) each of the ISDA Clearstream Security Agreement and ISDA Euroclear Security Agreement include a negative pledge and representations as to the status of the security interest;

(iii) the transfer obligations of the Collateral Taker are subject to the Conditions Precedent in Paragraph 3 including that no Event of Default or Potential Event of Default has occurred with respect to the Collateral Provider; and

(iv) certain unilateral rights of each party with regard to Clearstream or Euroclear under the Relevant Tri-party Documents are restricted under Paragraph 7.

See also the discussion below in respect of the Japanese Euroclear Provisions.

Part III – IM Security Documents

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. Therefore, the only scenario we need to consider is an English Company acting as Collateral Provider granting security under a foreign law security interest where the Location of the Collateral is outside of England.

Accordingly, our conclusions in Part III in respect of a IM Security Document entered into in respect of a tri-party Control Agreement also apply to this Part IV to the extent they relate to (i) foreign law governed security interests and the rights and obligations described above and (ii) Collateral located outside of England. In particular, our answers to (i) question 12 in respect of the enforcement of security interests over English located assets and (ii) question 16 in respect of competing priorities between creditors are likely to be of limited relevance to the enforcement of a Belgian or Luxembourg security interest over a Belgian or Luxembourg located account.

To the extent that the Japanese Euroclear Provisions have been included in the ISDA Euroclear IM Documents, we assume that as a matter of Belgian and Japanese law there are effectively two security interests. The Belgian pledge relates to all Collateral whereas the Japanese pledge relates to Japanese securities. The Japanese Euroclear Provisions do not appear to change the account structure or the terms on which Collateral can be released. Accordingly our description of the financial collateral analysis above and the extent to which the conclusions in Part III continue to apply are not affected by the Japanese Euroclear Provisions.

In respect of question 19 we address the position with respect to the ISDA Clearstream Security Agreement and the ISDA Euroclear Security Agreement only (being the relevant document under which the grant of security and enforcement remedies arise). The ISDA Clearstream Security Agreement provides that the governing law is Luxembourg law and the courts of Luxembourg-City have exclusive jurisdiction to settle any dispute arising out of or in connection with the ISDA Clearstream Security Agreement (including a dispute relating to the existence, validity, interpretation, performance, breach or termination or any non-contractual obligations arising out of or in connection with it). The ISDA Euroclear Security Agreement includes an equivalent provision in respect of Belgian law and the courts of Brussels, Belgium. See our discussion on the approach of an English court in respect of the choice of New York law and New York courts in respect of the NY IM Annex above (although, as both Belgium and Luxembourg are EU Member States, the reference to the

choice of law not prejudicing the application of European Union law which cannot be derogated from by contract will not apply).

To the extent that the Japanese Euroclear Provisions have been included 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 above. 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 Belgian and Japanese law).

V. VARIATION MARGIN

1. Introduction

In this part V we consider issues relating to the VM NY Annex and the VM Transfer Annex and whether:

(i) our conclusions in Part II and Part III the ISDA 2015 Collateral Opinion in respect of the New York Annex (as defined therein) would continue to apply to the VM NY Annex; and

(ii) our conclusions in Part II and Part IV the ISDA 2015 Collateral Opinion in respect of the English Transfer Annex (as defined therein) would continue to apply to the VM Transfer Annex.

Our conclusions in this respect in relation to an English Company apply in relation to:

(a) an English Bank, as modified and supplemented by Annex 1 of the 2015 ISDA Collateral Opinion;

(b) an English Investment Firm, as modified and supplemented by Annex 2 of the 2015 ISDA Collateral Opinion; and

(c) Standard Chartered Bank, as modified and supplemented by Annex 11 of the 2015 ISDA Collateral Opinion.

The references in those Annexes to the New York Annex or the Security Documents should for this purpose be read as references to the VM NY Annex and references to the English Transfer Annex as references to the VM Transfer Annex.

2. Assumptions

In respect of the VM NY Annex, we make each of the assumptions in the ISDA 2015 Collateral Opinion that we make in respect of the New York Annex.

In respect of the VM Transfer Annex, we make each of the assumptions in the ISDA 2015 Collateral Opinion that we make in respect of the English Transfer Annex.

In addition to the above, we assume that the Collateral Provider may also provide publically listed and traded corporate equity securities issued by a corporate (regardless of whether or not the issuer is organised or located in England) held in the form of intermediated securities.[32]

3. Financial Collateral Arrangements – VM NY Annex

Note that both the original New York Annex and the VM New York Annex differ substantially from the IM Security Documents discussed in Part II above as the Collateral is held by either the Collateral Taker or its Custodian (and not held in the name of the Collateral Provider with a third party custodian).

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32 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.

See part II of the ISDA 2015 Collateral Opinion for a discussion of the application of the FCA Regulations to the New York Annex which applies *mutatis mutandis* to the VM NY CSA. Note that you have asked us to assume that equity securities could also be posted under the VM NY CSA or the VM Transfer Annex – as set out in Part II above, equity securities are also within scope of the definition of financial collateral. Also note that as set out in Part II above, sections 255 and 256 of the Banking Act 2009 have been brought into force but no regulations under those sections have yet been enacted.

The analysis in part II of the ISDA 2015 Collateral Opinion should be read in conjunction with the below analysis of the specific provisions of the VM NY CSA.

Characterisation of the VM NY CSA as a "security financial collateral arrangement"

(a) As was the case under the New York Annex:

(i) under Paragraph 6(b) and subject to the satisfaction of any eligibility criteria in Paragraph 13, the Collateral Taker may either hold the Collateral itself or appoint a custodian to hold the Collateral on its behalf (rather than on behalf of the Collateral Provider – even if the eligibility criteria are breached, then the remedy is to transfer to an alternative custodian on behalf of the Collateral Taker);

(ii) under Paragraph 8(a) following an Event of Default or Specified Condition or the occurrence of an Early Termination Date as a result of such event, the Collateral Taker may unilaterally sell or otherwise dispose of the Collateral; and

(iii) the Collateral Provider gives certain representations in respect of transfers of Eligible Collateral (VM) including that it is free of other security interests and that the Collateral Taker has a first priority security interest.

(b) The Collateral Taker's obligation to transfer a Return Amount (VM) under paragraph 3(b) will be limited to the excess of the Value of all Posted Credit Support (VM) over the Collateral Taker's Exposure (being an amount calculated in respect of Covered Transactions (VM)) and we assume that such Return Amount (VM) will be rounded down in accordance with Paragraph 13.

Due to the definition of Covered Transaction under the VM NY CSA, the Exposure under the VM NY CSA will differ from the exposure arising under the ISDA Master Agreement in respect of all Transactions – the Exposure under the VM NY CSA could potentially be higher or lower. As discussed in Part II above the FCA Regulations do not define what constitutes "excess" but the better view is that it is an excess over a contractually agreed amount rather than an excess over the secured obligations.

The fact that the Valuation Agent is the party making the demand under paragraph 3 should not give rise to a problem from a control perspective as the Collateral Taker would be able to decline to transfer such portion of a Return Amount (VM) demanded by the Collateral Provider that did not constitute excess and activate the Dispute Resolution procedures in paragraph 5 (i.e. in circumstances where the Collateral Provider incorrectly or fraudulently made a demand). However, it should be noted that the Valuation Agent for the purposes of the Dispute Resolution procedures is still

the Collateral Provider (assuming the standard Paragraph 13 election is made).

(c) Under Paragraph 6(d), Distributions are only transferred to the extent that a Delivery Amount (VM) would not be created or increased by the relevant transfer. Posted Collateral (VM) includes all Distributions that have been received by the Collateral Taker. Distributions of (i) cash in the Base Currency or an Eligible Currency or (ii) securities will be ascribed a Value (subject to the Legal Eligibility Requirements) and accordingly will only be released to the extent that such Distribution is excess. Similarly, Posted Collateral (VM) that consists of items that are not eligible are ascribed a value of zero but under Paragraph 11(h) such assets are only transferred to the extent that, as of the date of such transfer, the Collateral Provider has satisfied all of its transfer obligations and accordingly such items should be excess.

(d) Under Paragraph 6(d), there are two options in respect of interest.

It is important to note when analysing the interest provisions that under the NY VM CSA Valuation Dates are daily and therefore any deficits will be cured daily (assuming the appropriate demands are made). If the parties elect for "Interest Payment" to apply, then the Interest Payment (VM) is applied first to discharge any Delivery Amount (VM) due on the same day. Only the excess of the Interest Payment (VM) is returned to the Collateral Provider and accordingly it should constitute "excess" for the purpose of the FCA Regulations.

Alternatively, if the parties elect for "Interest Adjustment" then positive interest constitutes Posted Collateral (VM) and accordingly will only be released to the extent that it is a Return Amount (VM) and accordingly "excess".

(e) As previously the obligations of the Collateral Taker to transfer Return Amount (VM), Distributions and the Interest Payment (VM) are subject to the conditions precedent in Paragraph 4 that no Event of Default, Potential Event of Default or Specified Condition has been designated with respect to the Collateral Provider and no Early Termination Date has occurred or been designated for which any unsatisfied payment obligations exist as a result of an Event of Default or Specified Condition with respect to the Collateral Provider.

(f) The default position under Paragraph 4(d) of the NY VM CSA permits the Collateral Provider to substitute Eligible Credit Support (VM) for Posted Credit Support (VM) without consent of the Collateral Taker. This is not problematic as the Collateral Taker retains control for the purpose of the FCA Regulations - it is only obliged to transfer Posted Credit Support (VM) with a value equal to the Substitute Credit Support (VM) and the Collateral Taker has administrative control of the relevant Posted Credit Support (VM) since the Collateral Taker holds it directly or via a custodian on behalf of the Collateral Taker.

(g) The NY VM CSA is silent as to voting and, therefore, we assume does not contractually entitle the Collateral Provider to exercise voting rights in respect of securities forming part of the Posted Credit Support (VM) (although we consider the better view to be that retention of voting rights prior to a default would not preclude a Collateral Taker from having the requisite level of possession or control for the reasons given in Part II above).

(h) The NY VM CSA includes certain Pledgor's Rights and Remedies at paragraph 8(b). Similar provisions were included in the New York CSA. In Part II, in the context of

the IM Security Documents, we discussed the rights of the Collateral Provider upon the default of a Collateral Taker in the context of the IM Security Documents and its impact on the financial collateral analysis. Our primary concern in that case was to minimise fraud risk (in accordance with the aims of the Collateral Directive) - i.e. the risk that the Collateral Provider fraudulently informs the Custodian (IM) that the Collateral Taker has defaulted and is able to recover its Collateral unilaterally. In the case of the NY VM CSA, the Collateral Taker inherently has sufficient administrative control to block a fraudulent attempt to access the Collateral as the Collateral Taker (or its custodian) is holding the Collateral and would need to take positive action to release the Collateral. The conditions that must be met to enable a Pledgor to recover the Collateral are less onerous than in the IM Security Documents – in particular there is no obligation in either the New York CSA or the NY VM CSA to ensure that any amount due to the Collateral Taker under Section 6(e) has been satisfied prior to the release of the Collateral. In our view, there are good arguments that the parties have agreed in advance that the security period ends in the circumstances specified in Paragraph 8(b) of the NY VM CSA (the occurrence of which circumstances are outside of the control of the Collateral Provider) and accordingly the release of Posted Credit Support (IM) in such circumstances would qualify as "excess". For the avoidance of doubt, we do not express an opinion on the validity or enforceability of the Collateral Provider's rights under these provisions – see the 2016 ISDA Collateral Taker WGMR Opinion in respect of issues relating to anti-deprivation which would also be relevant to the NY VM CSA.

On the basis of the above and the assumptions that we have made we believe that the Collateral Provider should be sufficiently dispossessed of the Collateral under the NY VM CSA in order to satisfy the "possession or control" test and accordingly the NY VM CSA should constitute a security financial collateral arrangement under the FCA Regulations. This is primarily because (i) the Collateral is posted to the Collateral Taker directly (or a custodian on its behalf) and (ii) absent an Event of Default or Specified Condition with respect to the Collateral Taker, the Collateral Provider has no ability to require the return of the Collateral other than where the withdrawal relates to excess or substitute collateral.

4. VM NY Annex – Security Documents Questions

Subject to the discussion above in respect of the financial collateral analysis, the answers to questions 1 to 21 in the ISDA 2015 Collateral Opinion in respect of the New York Annex would also apply to the VM NY CSA.

Please also refer to our answer to question 1 above for further detail on Regulation 19 of the FCA Regulations. In sub-paragraph (A) of our answer to question 11, note that depositor preference exists in respect of relevant deposit taking entities and separately in our answer to question 11 the reference to execution creditors should be read as a reference to judgment creditors.

See also Part VII below.

5. VM Transfer Annex – Financial Collateral Arrangements and Title Transfer Questions

Subject to the discussion below in respect of equity securities, (i) the conclusions in Part II of the ISDA 2015 Collateral Opinion that the English Transfer Annex would qualify as a "title transfer financial collateral arrangement" and (ii) the answers to questions 22 to 29 in Part IV of the ISDA 2015 Collateral Opinion apply to the VM Transfer Annex for the same reasons as given in respect of the English Transfer Annex.

The English Transfer Annex (on which the VM Transfer Annex was based) was drafted primarily with debt securities in mind. Notwithstanding this, the inclusion of equity securities would not negatively impact the conclusions in the ISDA 2015 Collateral Opinion. Eligible Credit Support (VM) would capture the original equity securities and "the proceeds of any redemption in whole or in part of the securities by the relevant issuer". A number of other corporate events may occur in respect of equity securities (e.g. mandatory tender offers where the cash amount would be paid by an entity other than the issuer and stock splits). Equivalent Credit Support (VM) (which is returned by way of Return Amount (VM)) requires that the asset be of the same type, nominal value, description and amount as that Eligible Credit Support (VM) and does not envisage the potential transformation of the equity security into something else.

However, "Distributions" (which form part of the Credit Support Balance (VM) to the extent not transferred) is sufficiently wide to capture "all principal, interest, and other payments and distributions of cash or other property" to which a holder of securities of the same type, nominal value, description and amount as such Eligible Credit Support (VM) would be entitled from time to time.

To the extent that the Distributions are still Eligible Credit Support (VM), then the Distributions will be ascribed a value and will only be transferred to the Collateral Provider to the extent that a Delivery Amount (VM) would not be created or increased by such transfer. To the extent that the Distributions do not qualify as Eligible Credit Support (VM) then paragraph 9(f) will apply and the Collateral Taker will only be obliged to transfer the Distributions to the Collateral Provider to the extent that all transfer obligations have been satisfied. Note that items in the Credit Support Balance (VM) that are deemed to have a Value of zero are given their true value for the purpose of Paragraph 6 (Default).

VI. ENFORCEABILITY OF THE IM DEED AND THE VM TRANSFER ANNEX AS A MATTER OF ENGLISH CONTRACT LAW

1. Introduction

The principal focus of this opinion is on the enforceability of the WGMR Documents against (i) an English Counterparty as Collateral Provider (including in the event of insolvency proceedings in England); or (ii) a Foreign Entity where the Collateral is located in England.

As the IM Deed is governed by English law and the VM Transfer Annex is intended to be entered into in connection with an ISDA Master Agreement governed by English law, you have asked us to opine on the validity and enforceability under English law of the IM Deed and the VM Transfer Annex against an English Counterparty or a Foreign Entity as a matter of contract absent insolvency or resolution proceedings in relation to either party.

2. The IM Deed

(a) Assumptions

For the purposes of this Part VI, our assumptions in Part I and Part III above apply on the basis that the relevant IM Security Document is an IM Deed other than assumptions (l) and (m) of Part III.

In particular, but without limiting the generality of the above, we assume:

(a) each party is able to enter into and has taken all corporate action necessary to authorise entry into the IM Deed; and

(b) insofar as any obligation under the IM Deed 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) Conclusion

On the basis of the assumptions above and the qualifications below, in the absence of insolvency proceedings in relation to the relevant counterparty (which is either an English Counterparty or a Foreign Entity within the scope of this memorandum), we are of the view that the IM Deed would constitute valid and enforceable obligations under English law and creates a security interest in the Posted Credit Support (IM).

(c) Qualifications

The foregoing conclusion is subject to the following qualifications:

(i) This is subject to all insolvency, resolution and other laws affecting the rights of creditors generally.

(ii) No opinion is expressed on matters of fact.

(iii) No opinion is expressed on tax matters.

(iv) No opinion is expressed in this Part VI on:

(I) the title of any English Counterparty or Foreign Entity to any Posted Credit Support (IM);

(II) the nature of the security created by the IM Deed (whether fixed or floating);

(III) the marketability of any Posted Credit Support (IM); or

(IV) any other restriction affecting any Posted Credit Support (IM) or the security created by the IM Deed.

(v) An English court may decline jurisdiction or stay or dismiss proceedings before it in some circumstances.

(vi) See Part I above as to the meaning of "enforceable".

(vii) We express no opinion on (i) the enforceability of the Delivery in Lieu Right or (ii) the ability of a Chargor to serve a Chargor Access Notice in circumstances where all Obligations of the Chargor have not been satisfied.

(viii) See our answer to question 12 in Part III in respect of enforcement rights over any Posted Credit Support (IM) located in England. We express no opinion on the enforcement rights over any Posted Credit Support (IM) located outside of England (as such enforcement rights will depend on the law of the relevant jurisdiction).

(ix) See our answer to question 16 in respect of the rules of priority applicable to the security created by an English Counterparty under the IM Deed with regard to Posted Credit Support (IM) located in England. We express no opinion on the priority of the security created by the IM Deed with regard to Posted Credit Support (IM) located outside of England or in relation to a Foreign Entity (as such priority will depend on the law of the jurisdiction of the location of the assets and/or the insolvency jurisdiction of the Foreign Entity).

(x) See our answer to question 19 in Part III as to the choice of law and jurisdiction provisions in the IM Deed.

(xi) Paragraph 11 of the IM Deed provides for Default Interest on Posted Credit Support (IM) where the Secured Party fails to instruct the Custodian (IM) to transfer it to the Chargor in accordance with the terms of the IM Deed. This may amount to a penalty under English law and may therefore not be recoverable.

(xii) Any provision of the IM Deed that states that a failure or delay, on the part of any party, in exercising any right or remedy under the IM Deed shall not operate as a waiver of such right or remedy may not be effective.

(xiii) There could be circumstances in which an English court would not treat as conclusive a certificate or determination or other evidence or statement that the IM Deed states is to be so treated.

(xiv) To the extent that any provision of the IM Deed purports to be an undertaking by a party to assume liability on account of the absence of payment of United Kingdom

stamp duty or an undertaking to pay United Kingdom stamp duty, such provision may be void.

(xv) Any provision of the IM Deed that provides for deemed receipt of notices may be ineffective if a party has actual evidence of non-delivery.

3. The VM Transfer Annex

The VM Transfer Annex forms part of and is subject to the relevant English law governed ISDA Master Agreement. We refer to Part V of the ISDA 2015 Netting Opinion. On the basis of the assumptions and qualifications set out there and assuming that each party is able to enter into and has taken all corporate action necessary to authorise entry into the relevant VM Transfer Annex and insofar as any obligation under the VM Transfer Annex 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, then the entry into a VM Transfer Annex by two parties within the scope of Part V of the ISDA 2015 Netting Opinion in connection with an English law governed ISDA Master Agreement would not affect the conclusions in Part V of the ISDA 2015 Netting Opinion.

VII UPDATES TO THE ISDA 2015 COLLATERAL OPINION

We refer above to the additional analysis in the Annexes to the ISDA 2015 Collateral Opinion. These should be read together with the updates to the ISDA 2015 Collateral Opinion below. This memorandum does not constitute a general update of the ISDA 2015 Collateral Opinion and the updates below are limited to issues that are relevant to the English Counterparties referred to in this memorandum.

Bank Recovery and Resolution Directive

(a) In respect of Article 55 of the BRRD, Commission Delegated Regulation ((EU) 2016/1075) supplementing the BRRD has entered into force. Article 55 requires that liabilities within scope of the BRRD's bail-in powers, but governed by the law of a third country (such as a New York law governed ISDA Master Agreement and Credit Support Document) include a contractual term stating that the liability may be subject to write-down and conversion powers of the relevant authority. We note that ISDA has published the ISDA 2016 Bail-in Art 55 BRRD Protocol (Dutch / French / German / Irish / Italian / Luxembourg / Spanish / UK entity-in-resolution version) (Bail-in Protocol) to help Dutch, French, German, Irish, Italian, Luxembourg, Spanish and UK entities meet the requirements of Article 55.

(b) Commission Delegated Regulation ((EU) 2016/1401) supplementing the BRRD with regulatory technical standards (RTS) for methodologies and principles on the valuation of liabilities arising from derivatives has been published in the Official Journal of the EU and will enter into force on 12 September 2016 and should be referred to for details of the valuation process applicable to the bail-in of derivatives.

PRA Stay In Resolution Rule

The PRA has introduced a Stay In Resolution rule that applies to CRR firms such as UK banks and qualifying parent undertakings. The Rule prohibits such entities from entering into new obligations or materially amending existing obligations under a third-country law financial arrangement unless the counterparty to the financial arrangement has agreed to be subject to stays on termination and enforcement of security interests that may apply under English law as a result of resolution. We note that ISDA produced the ISDA 2015 Universal Resolution Stay Protocol and the ISDA Resolution Stay Jurisdictional Modular Protocol including the ISDA UK (PRA Rule) Jurisdictional Module which facilitate compliance with contractual stay requirements including the PRA Rule.

Securities Financing Transactions Regulation (EU 2015/2365)

Article 15 of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse requires, inter alia, that Collateral Providers under title transfer arrangements and security financial collateral arrangements including a right of use (such as the VM Documents, the New York Annex and the English Transfer Annex) have been duly informed in writing by the Collateral Taker of the risks and consequences that are involved and the Collateral Provider has granted its prior consent, as evidenced by a signature, in writing or in a legally equivalent manner to the security financial collateral arrangements including a right of use or has expressly agreed to provide collateral by way of a title transfer collateral arrangement. We note that ISDA has produced (together with other industry trade associations) an SFTR Information Statement to help market participants comply with the requirements. Note that Article 15(4) states that it does not affect national law concerning the validity or effect of a transaction.

VIII CLOSE-OUT AMOUNT PROTOCOL

We have reviewed the Close-out Amount Protocol and confirm that if a 1992 Agreement between two parties, each of which is a Counterparty falling within the scope of this memorandum, governing Transactions each of which is of a type set out in Appendix A, were amended pursuant to the Close-out Amount Protocol, our conclusions in this memorandum regarding the enforceability of the IM Security Documents and the VM Documents would not be materially affected.

IX. 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 have some impact on our analysis in this memorandum.

The BRRD (as defined in Annex 1 to the ISDA 2015 Collateral Opinion) resulted in significant amendments to the Banking Act. Further implementing legislation and standards are expected at the European level – for example Article 76 of the BRRD relates to safeguards for counterparties in partial property transfers and provides that the European Commission shall adopt delegated acts further specifying the classes of arrangement that are to be protected. Further developments at the European level may necessitate further changes to the UK framework (such as to the Partial Property Safeguards Order).

In respect of the Collateral Directive, the decision in the ECJ case of Private Equity Insurance Group SIA v Swedbank AS (Case C – 156/15) is pending which will be the first ECJ decision on the Collateral Directive. The opinion of the Advocate General stated that in his view both legal and administrative control is required for a security financial collateral arrangement (as outlined in part II above).

In addition further UK developments are expected, including the implementation of Article 96 of the BRRD which requires that resolution authorities have the power to take stand-alone resolution action in respect of a branch of a third country entity.

There is also an on-going reform project to update and replace the Insolvency Rules 1986 with a new set of Insolvency Rules. The Insolvency Service has recently announced that the Insolvency Rules 2016 are to be laid before Parliament in October 2016 and, if approved, are likely to come into force in April 2017. The published draft 2016 Insolvency Rules include mutual insolvency set-off provisions.

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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 the relevant WGMR 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.[33]

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.[34]

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33 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.

34 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**[35]	**Legal form(s)**[36]
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[37]
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	

35 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.

36 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.

37 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[35]	Legal form(s)[36]
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[35]	Legal form(s)[36]
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[35]	Legal form(s)[36]
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[35]	Legal form(s)[36]
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
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:[38]

(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. [39]

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.

38 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.

39 Section 249 of the Enterprise Act 2002 also refers to English Building Societies, which are covered by this memorandum, as noted above.