

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

Collateral Taker Insolvency -  
Certain Issues Relating to the IM Security Documents  
in German Law

September 1, 2017

**A.**  
**INTRODUCTION**

You have requested this Memorandum of Law in respect of issues arising under the laws of the Federal Republic of Germany ("**Germany**") regarding certain provisions of the following documents published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"):

- (i) the 2016 Phase One Credit Support Annex for Initial Margin (IM) governed by New York law (the "**IM NY Annex**") and the Recommended Amendment Provisions for the ISDA New York Law 2016 Phase One Credit Support Annex for Initial Margin (IM) with respect to Japanese Securities (the "**IM NY Annex Japanese Amendments**");
- (ii) the 2016 Phase One IM Credit Support Deed, governed by English law (the "**IM Deed**" and together with the IM NY Annex, and the securities documents and other agreements described in assumption B.(j) below, the "**IM Security Documents**") and the Recommended Amendment Provisions for the ISDA English Law 2016 Phase One Credit Support Deed for Initial Margin (IM) with respect to Japanese Securities (the "**IM Deed Japanese Amendments**");
- (iii) the ISDA Euroclear Security Agreement (the "**Euroclear Security Agreement**") and the Recommended Amendment Provisions for the Euroclear Security Agreement with respect to Japanese Collateral (the "**Euroclear Security Agreement Japanese Amendments**");
- (iv) the ISDA Euroclear Collateral Transfer Agreement (NY Law) (the "**Euroclear NY CTA**") and the Recommended Amendment Provisions for the Euroclear Collateral Transfer Agreements with respect to Japanese Collateral (the "**Euroclear CTA Japanese Amendments**"; and together with the Euroclear Security Agreement Japanese Amendments, the "**Euroclear Japanese Amendments**");
- (v) the ISDA Euroclear Collateral Transfer Agreement (Multi-Regime) (the "**Euroclear Multi-Regime CTA**"; and together with the Euroclear Security Agreement and the Euroclear NY CTA, the "**Euroclear Documents**") and the Euroclear CTA Japanese Amendments;
- (vi) the ISDA Clearstream 2016 Security Agreement (the "**Clearstream Security Agreement**") and the Novation Agreement (the "**Clearstream Security Agreement Japanese Amendments**");
- (vii) the ISDA Clearstream 2016 Collateral Transfer Agreement (NY Law) (the "**Clearstream NY CTA**") and the CBL Services Novation Agreement (the "**Clearstream CTA Japanese Amendments**" and together with the Clearstream Security Agreement Japanese Amendments, the "**Clearstream Japanese Amendments**"); and

(viii) the ISDA Clearstream 2016 Collateral Transfer Agreement (Multi-Regime) (the "**Clearstream Multi-Regime CTA**"; and together with the Clearstream Security Agreement and the Clearstream NY CTA, the "**Clearstream Documents**") and the Clearstream CTA Japanese Amendments,

in each case, when entered into to provide credit support for transactions ("**Transactions**") entered into pursuant to an ISDA master agreement (the "**Master Agreement**").

Capitalized terms used herein that are not defined herein shall have the meanings ascribed to such terms in the Master Agreement or the relevant IM Security Document, as applicable.

In this Memorandum:

- (a) the term "**Collateral Provider**" shall refer to the Pledgor (under the IM NY Annex) or the Chargor (under the IM Deed), as context requires, in relation to which "**Collateral Taker**" means the Secured Party; and
- (b) the term "**Collateral**" is meant to refer, in the case of each IM Security Document, to any assets in which a security interest is created by the Collateral Provider in favor of the Collateral Taker as credit support for the obligations of the Collateral Provider under the relevant Master Agreement.

This Memorandum and all conclusions expressed herein relate solely to matters of German law as in force at the date hereof and do not consider, except as expressly stated, the impact of any laws (including insolvency laws and conflict of laws rules) other than German law, even in the case where, under German law, any foreign law falls to be applied. Any description of, or other reference to, a legal position under any foreign law is based on information which we have received from you and which has not been verified by us. The accuracy of such information is assumed by us as a matter of fact. It is further assumed by us that all words and expressions in the IM Security Documents are to be understood in accordance with their plain meaning and without regard of any import which they may have under New York or English law, as the case may be.

This Memorandum is directed to you solely for the benefit of your members. The purpose of this Memorandum is to provide an aid to your members in understanding generally issues which may be relevant from the viewpoint of German law when any of them want to enter into IM Security Documents. We wish to emphasize, though, with your explicit approval, that the purpose of this Memorandum is not to provide a basis on which any of your members or any other person can rely with respect to, or in connection with, any transaction or act which any of them may undertake or omit to undertake. Accordingly, we assume no responsibility to any person in the context of this Memorandum.

This Memorandum constitutes a legal opinion for banking regulatory purposes and may be made available to the appropriate banking regulatory authorities administering capital adequacy rules. This Memorandum may also be made available to professional advisors of your members.

The specific questions which we have been asked to address and our answers thereto are set out under D. below. Our analysis and conclusions presented in these answers are subject to the description of legal positions and the qualifications expressed in other parts of this Memorandum.

**B.**  
**ASSUMPTIONS**

You have instructed us to assume the following facts:

- (a) The Collateral Provider has entered into a Master Agreement and an IM Security Document with the Collateral Taker. The parties have entered into either (i) a Master Agreement governed by New York law or (ii) a 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, unless revised by the counterparties, is subject to the same governing law as the relevant ISDA Master Agreement. In respect of an IM NY Annex entered into in connection with an English law governed ISDA Master Agreement, the parties will provide in paragraph 13 of the IM NY Annex that the Annex is governed by and construed in accordance with New York law.
- (c) Under the IM Security Documents, both parties will be required to post Collateral to the other (either under the same IM Security Document or under separate IM Security Documents) in an amount that depends on the IM calculation provisions. For the sake of simplicity we consider only the Collateral taking leg of one party.
- (d) Each party to an IM Security Document is an entity which, or the counterparty of which, is subject to a regulatory requirement to collect or post initial margin with respect to derivatives or swaps.
- (e) Each Master Agreement and each IM Security Document is enforceable under the laws of New York or England, as the case may be, and each party has duly authorized, executed and delivered, and has the capacity to enter into, each document.
- (f) No provisions of the Master Agreement and the relevant IM Security Document have been altered in any material respect. The making (i) of any selections contemplated pursuant to the standard form of Schedule to the Master Agreement, (ii) of standard elections in Paragraph 13 of either IM Security Document and (iii) the specification of

standard variables (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 parties agree that Eligible Collateral will include cash credited to an account (as opposed to physical notes and coins) ("**Cash**") and certain types of securities (as further described below) that are located or deemed located outside Germany as follows:
- (i) The parties enter into an IM NY Annex only in those circumstances where, in view of the type of Eligible Collateral, German conflict of laws rules refer to New York law, *i.e.*, (i) in the case of securities provided as Eligible Collateral in circumstances where the Custodial Account (as defined below) is maintained with a Custodian (as defined below) located in New York and (ii) in the case of Cash provided as Eligible Collateral in circumstances where the relevant payment claim against the Custodian is governed by New York law.
  - (ii) The parties enter into an IM Deed only in those circumstances where, in view of the type of Eligible Collateral, German conflict of laws rules refer to English law, *i.e.*, (i) in the case of securities provided as Eligible Collateral in circumstances where the Custodial Account is maintained with a Custodian located in England or Wales and (ii) in the case of Cash provided as Eligible Collateral in circumstances where the relevant payment claim against the Custodian is governed by English law.
- (h) Any securities provided as Eligible Collateral are denominated in either Euro or any freely convertible currency and consist of (1) corporate debt securities whether or not the issuer is organized or located in Germany; (2) debt securities issued by the German government; (3) debt securities issued by the government of a member of the "G-10" group of countries; and (4) corporate equity securities whether or not the issuer is organized or located in Germany, in the form of intermediated securities. By this we mean a form of interest in securities recorded in fungible book-entry form in an account maintained by a financial intermediary (which could be a central securities depository (CSD) or a custodian, nominee or other form of financial intermediary, in each case an "**Intermediary**") in the name of the Collateral Taker where such interest has been credited to the account of the Secured Party in connection with a transfer of Collateral by the Collateral Provider to the Collateral Taker under an IM Security Document.

The precise nature of the rights of the Collateral Taker in relation to its interest in intermediated securities and as against its Intermediary will be determined, among other things, by the law of the agreement between the Collateral Taker and its Intermediary relating to its account with the Intermediary, as well as the law generally applicable to the Intermediary, and possibly by other considerations arising under the general law or the rules of private international law of Germany. The Collateral Taker's Intermediary may itself hold its interest in the relevant securities indirectly with another Intermediary or directly.

- (i) Pursuant to the terms and conditions of the Master Agreement, the Collateral Provider enters into a number of Transactions with the Collateral Taker. Such Transactions include any or all of the transactions described in Appendix A. Under the terms of each IM Security Document, the security interest created in the relevant Collateral secures the Obligations of the Collateral Provider arising under the Master Agreement as a whole.
- (j) An Event of Default under Section 5(a)(vii) of the Master Agreement with respect to the Collateral Taker has occurred and a formal bankruptcy, insolvency, liquidation, reorganization, administration or comparable proceeding (collectively, the "**insolvency**") has been instituted by or against the Collateral Taker.
- (k) With respect to Collateral provided under any IM Security Document being held in an account which may hold cash (in a freely convertible currency) and securities (a "**Custodial Account**") with a third party custodian ("**Custodian**"), we assume it is held in the following form: (x) the Custodian holds the Collateral in the Collateral Provider's name pursuant to a custodial agreement between the Collateral Provider and custodian; (y) the Custodial Account is used exclusively for the Collateral provided by the Collateral Provider; and (z) the Collateral Provider, the Collateral Taker and the Custodian have entered into an agreement (which may be a separate control agreement or may be part of the custodial agreement) under which the Collateral Taker can take control of the margin under certain circumstances.
- (l) In certain circumstances, "initial margin" Collateral may be held at a central securities depository. In these circumstances, the parties will not enter into an IM Security Document. Instead, we assume that (w) the Collateral is held in an account within Euroclear or Clearstream; (x) the parties have entered into the Euroclear Documents or the Clearstream Documents (as applicable) and other relevant documentation with Euroclear or Clearstream, which collectively establish collateral arrangements within Euroclear or Clearstream (as applicable) and set forth (i) the manner in which the Collateral is held in Euroclear or Clearstream and (ii) the manner in which the automated transfers of Collateral by Euroclear or Clearstream will be effected (*i.e.*, upon receipt of matching instructions from the Collateral Provider and Collateral Taker as to the overall amount of initial margin Collateral that is required in respect of such Collateral Provider's posting obligation, Euroclear or Clearstream, as applicable, will calculate any excess or deficit and make the relevant transfers accordingly on behalf of the parties in discharge of their obligations to one another); and (y) the Euroclear Documents or the Clearstream Documents and the other documents referred to in (x) (as applicable) are enforceable in accordance with their terms under applicable law (which may be different than German law).

With regard to the foregoing, we note that:

- (I) in the case of Euroclear, the Collateral is held in a "Pledged Securities Account" and a "Pledged Cash Account" opened in the Euroclear System in the name of Euroclear acting in its own name but for the account of the Collateral Taker (as

pledgee under the pledge granted under the Euroclear Security Agreement) and to be operated in accordance with the relevant Euroclear documents referred to in (x) above; and

- (II) in the case of Clearstream, the Collateral is held in a "Collateral Account" opened in the Clearstream system in the name of the Collateral Provider and pledged to the Collateral Taker pursuant to the Clearstream Security Agreement and to be operated in accordance with the relevant Clearstream documents referred to in (x) above.
- (m) The parties may enter into more than one IM Security Document, including multiple IM Security Documents each subject to different governing laws, and/or may enter into Euroclear Documents and/or Clearstream Documents.

### C. FACT PATTERNS

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

- I. The Location of the Collateral Taker is in Germany and the Location of the Collateral is outside Germany.
- II. The Location of the Collateral Taker is in Germany and the Location of the Collateral is in Germany.<sup>1</sup>
- III. The Location of the Collateral Taker is outside Germany and the Location of the Collateral is in Germany.<sup>2</sup>

For the foregoing purposes:

- (a) the "**Location**" of the Collateral Taker is in Germany if it is incorporated or otherwise organized in Germany and/or if it has a branch or other place of business in Germany; and
- (b) the "**Location**" of Collateral is the place where an asset of that type is located under the private international law rules of Germany.

"**Located**" when used below in relation to a Collateral Taker or any Collateral should be construed accordingly.

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<sup>1</sup> Due to assumption B.(f), this fact pattern is not relevant for the discussion under D. below.

<sup>2</sup> Due to assumption B.(f), this fact pattern is not relevant for the discussion under D. below.

**D.**  
**ANSWERS TO QUESTIONS PRESENTED**

The specific questions which we have been asked to address are set out below in bold letters.

(A) *Rights of the Collateral Provider under the IM Security Documents*

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

Yes, subject to the answer to question 3 below. Under German insolvency law, Collateral pledged or charged, as applicable, under an IM Security Document does not form part of the insolvency estate of the Collateral Taker in German insolvency proceedings over the assets of such Collateral Taker. Accordingly, subject again to the answer to question 3 below, German insolvency law does not restrict the Collateral Provider to exercise its contractual rights under the IM Security Documents and the custodial arrangements described in assumption B.(j) to recover the Collateral held by the Custodian in the Custodial Account in such circumstances.

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

There are no such requirements under German law.

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

a. Requirement in respect of Obligations

Where (i) the Collateral Provider has outstanding Obligations (as defined in Paragraph 12 of the IM NY Annex and Paragraph 12 of the IM Deed) to the Collateral Taker, (ii) the Collateral Provider has under the terms of the IM Security Documents and the custodial arrangements described in assumption B.(j) the right to recover the Collateral without outstanding Obligations being satisfied prior to such recovery and (iii) the Collateral Provider exercises such right upon the insolvency of the Collateral Taker, there is a significant risk that (x) a Transfer of Posted Collateral (IM) to the Pledgor in accordance with Paragraph 8(b) of the IM NY Annex effected by the Custodian as provided for in the relevant agreement between the Collateral Provider, the Collateral Taker and the Custodian or (y) a transfer by the Custodian to the Chargor of Posted Credit Support (IM) and a release of the security interest granted under the Deed on Posted Credit Support (IM) effected by the Custodian in accordance with Paragraph 2(d) of the Deed and the

relevant Control Agreement is subject to avoidance under German insolvency law in German insolvency proceedings over the assets of the Collateral Taker. Such actions would lead to a transformation of the outstanding Obligations into unsecured claims of the Collateral Taker against the Collateral Provider and, therefore, would result in a loss for the Collateral Taker's insolvency estate where the Collateral Provider does not fulfill the Obligations or at least in a depreciation of such claims to the detriment of such insolvency estate and the other creditors of such Collateral Taker participating in the insolvency proceedings.

Although the avoidability of a transaction (*Rechtshandlung*) will be decided upon by the German courts by reference to the circumstances of a particular case, there is in our view a significant risk that the entry into the relevant IM Security Document may be avoided by the Collateral Taker's insolvency receiver (*Insolvenzverwalter*) in the circumstances described above, in particular under § 132(1) no. 1 or 2 or § 133(1) of the Insolvency Code (*Insolvenzordnung* – "**Insolvency Code**"):

- Pursuant to § 132(1) no. 1 of the Insolvency Code a transaction (*Rechtshandlung*) may be avoided if it is effected during a period of three months prior to the filing of the insolvency petition and results in immediate adverse effects on the position of the ordinary creditors of the party becoming subject to insolvency proceedings ("**Party A**") where at the time of such transaction Party A is insolvent and the other party ("**Party B**") has knowledge of, or of the relevant facts supporting a compelling conclusion with respect to, such insolvency.

Pursuant to § 132(1) no. 2 of the Insolvency Code a transaction may be avoided if it is effected subsequent to the filing of the insolvency petition and results in immediate adverse effects on the ordinary creditors of Party A where Party B has knowledge of, or of the relevant facts supporting a compelling conclusion with respect to, Party A's insolvency or the filing of the insolvency petition.

Pursuant to § 132(2) of the Insolvency Code, transactions accompanied by immediate adverse effects on the position of the ordinary creditors include, without limitation, transactions that result in the forfeiture or unenforceability of a right of Party A or in the preservation or enforceability of a liability of Party A.

- Pursuant to § 133(1) of the Insolvency Code a transaction may be avoided if such transaction is effected during a period of ten years prior to, or subsequent to, the filing of the insolvency petition where Party A has the intention to adversely affect the position of its creditors and Party B has actual knowledge of such intention. Such knowledge is presumed to exist in the case where Party B has knowledge of the imminent insolvency of Party A and the adverse effects caused thereby to the position of Party A's creditors (§ 133(1), 2<sup>nd</sup> sentence, of the Insolvency Code). The above period is shortened to four years where the relevant legal act results in, or puts the solvent party in a position to obtain or seek, credit support or satisfaction, respectively (§ 133(2)). Where the relevant legal act results in, or puts the solvent party in a position to obtain or seek, credit support or satisfaction, respectively,

which such party is entitled to in such way and at such time, instead of the imminent insolvency of the other party pursuant to § 133(1), second sentence, the actual insolvency of the other party shall be relevant (§ 133(3), first sentence).

Where the relevant insolvency proceedings have a cross-border effect, the above is subject to the rules of German international insolvency law (§§ 335, 339 of the Insolvency Code or, as applicable, Articles 13, 4(2)(m) of the Council Regulation (EC) No 1346/2000 of May 29, 2000 on insolvency proceedings, as amended) according to which the above rules do not apply where the person who benefited from an act detrimental to all the creditors provides proof that (i) the said act is subject to the law of a state other than that of the state of the opening of proceedings and (ii) that law does not allow any means of avoiding such act in the relevant case.

b. Requirement in respect of obligations other than Obligations

Where the Collateral Provider has outstanding obligations other than Obligations, but no outstanding Obligations to the Collateral Taker, *i.e.*, in circumstances where the relevant IM Security Document serves as security for the performance of Obligations, there is no requirement that such outstanding obligations must be satisfied prior to an exercise of the Collateral Provider's rights under the IM Security Documents and the custodial arrangements described in assumption B.(j) to recover the Collateral and the avoidance risk described under a. does not exist in these circumstances.

**4. Would the Collateral Provider's ability to exercise its contractual rights under the IM Security Documents and the custodial arrangements described in assumption B.(j) be subject to any stay or freeze or otherwise be affected by commencement of the insolvency of the Collateral Taker?**

Upon the opening of insolvency proceedings over the assets of the Collateral Taker, there is no such stay or freeze under German insolvency law.

Prior to the opening of such proceedings, the insolvency court (*Insolvenzgericht*) may pursuant to § 21(1) of the Insolvency Code take appropriate actions to prevent a deterioration of the insolvent debtor's financial position, in particular by prohibiting dispositions over its assets (§ 21(2), 1<sup>st</sup> sentence, no. 2 of the Insolvency Code). This may affect a release of Collateral pledged or charged, as applicable, under an IM Security Document until such ban is lifted or insolvency proceedings are opened. However, pursuant to § 21(2), 2<sup>nd</sup> sentence, of the Insolvency Code, measures taken by the insolvency court (*Insolvenzgericht*) do not affect dispositions in respect of collateral provided under a financial collateral arrangement within the meaning of § 1(17) of the Banking Act (*Kreditwesengesetz*).<sup>3</sup>

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<sup>3</sup> With respect to the requirements to be met for a financial collateral arrangement within such meaning, we refer to the discussion under B.1 of our Memorandum for ISDA on the validity and enforcement of collateral arrangements under the ISDA Credit Support Documents in German law dated September 1, 2017.

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

Our responses to questions 1 through 4 above would remain the same.

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

Our responses to questions 1 through 4 above would remain the same.

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

Our responses to questions 1 through 4 above would remain the same.

(B) *Miscellaneous*

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

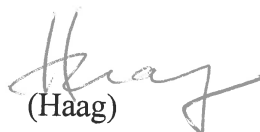
There are no such considerations under German law.

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

No.

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HENGELER MUELLER  
Partnerschaft von Rechtsanwälten mbB

  
(Haag)

## Appendix A

### Certain Transactions under the ISDA Master Agreements

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

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

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

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

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

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

of Bullion in exchange for a specified price or may be cash settled based on the difference between the market price of Bullion on the settlement date and the specified price.

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

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

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

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

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

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

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

Commodity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic amounts of the same currency based on

the price of a commodity, such as natural gas or gold, or a futures contract on a commodity (e.g., West Texas Intermediate Light Sweet Crude Oil on the New York Mercantile Exchange); all calculations are based on a notional quantity of the commodity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Freight Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency based on a fixed price and the other party pays an amount or periodic amounts of the same currency based on the price of chartering a ship to transport wet or dry freight from one port to another; all calculations are based either on a notional quantity of freight or, in the case of time charter transactions, on a notional number of days.

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

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

the difference between the agreed forward price and the redemption value measured as of the applicable valuation date or dates).

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

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

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

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

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

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

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

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

Swap Deliverable Contingent Credit Default Swap. A Contingent Credit Default Swap under which one of the Deliverable Obligations is a claim against the Reference Entity under an ISDA

Master Agreement with respect to which an Early Termination Date (as defined therein) has occurred.

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

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

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

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