ALLEN & OVERY

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

Rights of the Collateral Taker under the ISDA Credit Support Documents under Italian law upon the occurrence of an Event of Default under Section 5(a)(vii) of the ISDA Master Agreement in respect of the Collateral Provider (Collateral Provider Insolvency Opinion)

9 September 2016

Allen & Overy, Italy

I. INTRODUCTION

1. Overview and scope of issues covered by this memorandum

In this memorandum we examine the validity and enforcement under the laws of Italy of collateral arrangements entered into under:

(A) the 1994 Credit Support Annex governed by New York law (the "**1994 NY Annex**");

(B) the 2016 Credit Support Annex for Variation Margin (VM) governed by New York law (the "**VM NY Annex**");

(C) the 2016 Credit Support Annex for Initial Margin (IM) governed by New York law (the "**IM NY Annex**");

(D) the 1995 Credit Support Deed governed by English law (the "**1995 Deed**");

(E) the 2016 IM Credit Support Deed, governed by English law (the "**IM Deed**");

(F) the 1995 Credit Support Annex governed by English law (the "**1995 Transfer Annex**"); or

(G) the 2016 VM Credit Support Annex governed by English law (the "**VM Transfer Annex**");

in each case, when entered into to provide credit support for transactions ("**Transactions**") entered into pursuant to a 1992 or 2002 ISDA Master Agreement (the "**Master 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.

For the purposes of this memorandum:

- "**Annex**" means each of the 1994 NY Annex, the VM NY Annex and the IM NY Annex;
- "**Deed**" means each of the 1995 Deed and the IM Deed;
- "**Security Documents**" means the Annexes and the Deeds;
- "**IM Secnrity Documents**" means the IM NY Annex and the IM Deed;
- "**Non-IM Security Documents**" means the 1994 NY Annex, the VM NY Annex and the 1995 Deed;
- "**Transfer Annex**" means each of the 1995 Transfer Annex and the VM Transfer Annex; and
- "**Credit Support Documents**" means the Security Documents and the Transfer Annexes.

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

For the purposes of providing this advice, we have considered the list of Transactions which may be entered into the parties pursuant to a Master Agreement, as shown in Appendix A hereto.

In this letter:

I. in relation to the Security Documents, the term "**Security Collateral Provider**" shall refer to the Pledgor (under an Annex) or the Chargor (under a Deed), as context requires; and

II. "**Collateral Provider**" means the Security Collateral Provider under a Security Document or the Transferor under a Transfer Annex, according to context, in relation to which "**Collateral Taker**" means the Secured Party or the Transferee, as the case may be.

The term "**Collateral**", when used in this letter, is meant to refer, in the case of each Security Document, to any assets in which a security interest is created by the Security Collateral Provider in favor of the Secured Party and, in the case of each Transfer Annex, to any securities transferred as credit support or cash deposited, in either case, by the Transferor to or with the Transferee, as credit support for the obligations of the Collateral Provider under the relevant Master Agreement.

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

I. The Location of the Collateral Provider is in Italy and the Location of the Collateral is outside Italy.

II. The Location of the Collateral Provider is in Italy and the Location of the Collateral is in Italy.

III. The Location of the Collateral Provider is outside Italy and the Location of the Collateral is in Italy.

For the foregoing purposes:

(a) the Location of the Collateral Provider is in Italy if it is incorporated or otherwise organised in Italy or, in the case of a Commercial Corporation (as defined below), if it has its centre of main interests (as referred to in the Council Regulation (EC) No. 1346/2000 of 29 May 2000, the **Insolvency Regulation**) in Italy; and

(b) the Location of the Collateral is the place where an asset of that type is located under the private international law rules of Italy. See our answer to question 2 of the Italian Collateral Opinion in this regard.

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 terms "Commercial Corporation" or "Financial Institution" to refer to a counterparty clearly excludes fact pattern III. Generally, in the circumstances of fact pattern III, we believe that an Italian court would not seek to assert jurisdiction over the matter except to the extent of deciding whether or not the interest created in favour of the Collateral Taker was properly perfected under Italian law.

It should generally be clear from the terms of the question whether the Collateral is to be considered as located in Italy 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 issues discussed herein in the event of insolvency proceedings in Italy in respect of that Collateral Provider.

This memorandum is limited to matters of Italian law and the laws of the European Union as implemented or directly enforceable in Italy, in both cases as in effect on today's date. This letter expresses no opinion on the laws of England or the State of New York or any other jurisdiction (other than the laws of Italy and the European Union as aforesaid). Moreover, we note that we are not in a position to anticipate the nature of any potential changes to the advice set forth herein in connection with a future exit of the United Kingdom or any part thereof from the European Union. Without limiting this qualification, we note that the question of "Brexit" is of particular importance in relation to the potential defence from "claw-back" which applies under Article 13 of the Insolvency Regulation[1] and Article 30 of the Winding-up Directive[2]), so long as the "act" in question is subject to the law of a Member State. This memorandum is governed by Italian law and expresses no opinion on matters of fact.

The issues that you have asked us to address are set out below in italics, followed in each case by our analysis and conclusion. We have not analysed, and do not offer any advice on, issues relating to aspects of the Credit Support Documents not raised in the questions set forth below.

For purposes of our analysis below, we make reference to:

(i) our Memorandum of Law dated 3 May 2006 as subsequently integrated by our letters dated 23 October 2006 and 23 October 2007, 23 December 2008, 30 March 2010, 22 November 2011, 5 September 2013 and 14 September 2016 for ISDA on the validity and enforceability under English law of close-out netting under the 2002, 1992 and 1987 ISDA Master Agreements (together herein referred to as the **Italian Netting Opinion**);

(ii) our Memorandum of Law dated 20 October 2004, as subsequently integrated by our letter dated 17 July 2006, 1 July 2008, 21 April 2010, 22 November 2011, 5 September 2013 and 14 September 2016 on the validity and enforceability under Italian insolvency laws of collateral arrangements contemplated by: (i) the 1994 Credit Support Annex governed by New York law (the **NY Annex**); (ii) the 1995 Credit Support Deed governed by English law (the **Deed**) and, together with the NY Annex, the **Security Documents**); and (iii) the 1995 Credit Support Annex governed by English law (the **Transfer Annex**) and, together with the Security Documents, the **Credit Support Documents**), each providing for credit support for transactions (**Transactions**) entered into pursuant to an ISDA Agreement (together herein referred to as the **Italian Collateral Opinion** and together with the 2015 ISDA Netting Opinion, the **Italian ISDA Opinions**); and

(iii) our supplement to the Italian Collateral Opinion dated on or around the same date as this memorandum in respect of the enforceability under Italian insolvency laws of the rights of the Collateral Provider under the IM Security Documents in the event of the insolvency of the Collateral Taker, (the **IM Collateral Taker Insolvency Opinion**).

2. Scope of Counterparty types covered by this memorandum

In this memorandum, and as further specified in Appendix B hereto, we consider the enforceability of the rights of the Collateral Taker under the Credit Support Documents under Italian insolvency laws, following the occurrence of an Event of Default under Section 5(a)(vii) of the ISDA Master Agreement, in respect of the Collateral Provider, where the Collateral Provider falls within one of the following categories:

---

[1] Regulation (EC) 1346/2000.

[2] Directive 2001/24/EC

(1) **commercial entites** that are incorporated under the laws of Italy as either *società per azioni*, *società a responsabilità limitata*, *società in nome collettivo* or *società in accomandita per azioni* (herein "Commercial Corporations"[3]);

(2) **banks** which are licensed as such under Law no. 385 of 1 September 1993 (the "**Banking Law**")[4];

(3) **securities intermediary companies** (***società di investimento mobiliare*** or "**SIM's**") which are authorised to offer the provision of investment services to the public in accordance with Legislative Decree no. 58 of 24 February 1998 ("Decree 58");

(4) **financial intermediaries** registered as such pursuant to Article 107 of the Banking Law;

(5) **open-ended investment companies** ("**SICAV's**") having their registered office in Italy and incorporated pursuant to Chapter III of Title III of Decree 58; and

(6) **management companies for pension funds and investment funds** (***società di gestione di risparmio*** or "**SGR's**" and, together with the entities described under (2)-(5) above, "**Financial Institutions**").

In this memorandum, we do not consider any other type of entity organised under Italian law, whether or not falling within any description in Appendix B hereto.

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).

3. Summary of Credit Support Documents

All documents (other than the IM Security Documents) generally follow similar principles for determining the amount of credit support to be delivered or returned from time to time. The net mark-to-market value of the Transactions documented under the Master Agreement to which the Credit Support Document relates is determined at regular intervals specified by the parties (Valuation Dates) based on the amount that one party would be required to pay to the other if all outstanding Transactions between them were terminated as of the Valuation Date and a termination payment calculated in accordance with the close-out and netting provisions of Sections 5 and 6 of the Master Agreement.

Under the 1994 NY Annex, the 1995 Deed and the 1995 Transfer Annex, the party that has the net exposure at each interval (the Collateral Taker) is entitled to hold Eligible Credit Support with a value equal to (x) its Exposure, plus (y) an add-on amount of Collateral, if applicable, in excess of the Exposure to account for potential volatility in future Exposure (determined in accordance with the Independent Amount applicable to each party), less (z) the Threshold amount, if applicable, representing the permitted unsecured risk applicable to that counterparty.

Under the VM NY Annex and the VM Transfer Annex, the party that has the net exposure at each interval (the Collateral Taker) is entitled to hold Eligible Credit Support with a value equal to its Exposure.

The secured party under the IM NY Annex and the IM Deed (the Collateral Taker) is entitled to hold, via a third-party custodian, Eligible Credit Support with a value equal to a certain amount of Collateral to

---

[3] For the avoidance of doubt and as described in Appendix B hereto, sovereign-owned entities are not included in this category.

[4] The *Casse di Risparmio* are included in this definition.

account for potential future exposure (determined in accordance with the Delivery Amount (IM) applicable to the pledgor), less the Threshold amount, if applicable.

Collateral will either be transferred to the Collateral Taker (or a third-party custodian) or returned to the Collateral Provider depending on whether the amount of Collateral entitled to be held (the Credit Support Amount) is less than or greater than the Value of the Collateral transferred (subject to any applicable Minimum Transfer Amount and rounding provisions specified by the parties in the relevant Credit Support Document).

Under each Security Document, the Security Collateral Provider grants a security interest in the Collateral transferred to the Secured Party (or third-party custodian). The precise nature of this security interest is determined by the applicable law.

Under each Transfer Annex, the Transferor transfers outright full ownership in securities Collateral to the Transferee, subject to a conditional obligation to return equivalent fungible securities in various circumstances or, on default, to account for the value of those securities as part of the close-out netting calculations under Section 6(e) of the Master Agreement. We note that this is not intended to be a fiduciary transfer by way of security but an outright transfer of ownership under English law. This approach is analogous to a securities repurchase (repo) agreement, although, unlike a typical repo, the consideration for the transfer of securities is the Transferee's agreement to perform under the Master Agreement; there is no cash consideration passing at the time of the delivery or redelivery of the securities.

Under each Transfer Annex, the Transferor may provide cash Collateral. The Transferee is obliged to repay this amount in various circumstances, either with or without interest as the parties may agree, or, on default, to account for such amount as part of the close-out netting calculations under Section 6(e) of the Master Agreement. Cash Collateral is referred to commercially as "title transfer collateral" when provided under either Transfer Annex, but operates by the simple creation of debt obligations by way of payment rather than by way of transfer of ownership to any non-cash asset.

The facts and assumptions upon which this memorandum is based are presented below, followed by the issues that this memorandum addresses.

PART I

SECURITY INTEREST APPROACH PURSUANT TO THE SECURITY DOCUMENTS

1. Assumptions

For the purposes of providing this memorandum, we have made the following assumptions:

(A) The Security Collateral Provider has entered into a Master Agreement and a Security Document with the Collateral Taker. Both the Collateral Provider and the Collateral Taker are de facto "professional clients" for the purposes of Directive 2004/39/EC of 21 April 2004 (the MiFID) and at least one of the Parties is a financial institution subject to prudential supervision in its jurisdiction of incorporation[5]. The parties have entered into either (i) a Master Agreement governed by New York law, or (ii) a Master Agreement governed by English law. Our responses to the questions raised herein would not differ depending on whether (i) or (ii) applies.

[5] The reason for this assumption reflects the fact that this is a necessary condition for application of the beneficial regime for protection of financial collateral agreements introduced by Legislative Decree 170/2004 (implementing the EU Collateral Directive).

(B) In respect of our responses to the questions concerning the 1994 NY Annex, the 2016 VM NY Annex and the 1995 Deed, the parties will enter into (i) the 1994 NY Annex and/or the 2016 VM NY Annex in connection with a New York law governed ISDA Master Agreement; and (ii) the 1995 Deed in connection with an English law governed ISDA Master Agreement.

(C) 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.

(D) 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. However, for the sake of simplicity, we have only been asked to consider the Collateral taking leg of one party – issues relating to the insolvency of the Collateral Taker are considered in a separate opinion. Similarly, Although each of the Security Documents (other than the IM Security Documents) is a bilateral form in that it contemplates that either party may be required to post Collateral to the other depending on movements in Exposure under the relevant Credit Support Document, we assume herein, for the sake of simplicity, that the same party is the Security Collateral Provider at all relevant times under the applicable Security Document.

(E) Each ISDA 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 (i) is able lawfully to enter into the ISDA Master Agreement, the Transactions thereunder and the relevant Credit Support Documents (including the IM Security Document) under the laws of its jurisdiction of incorporation and under its relevant constitutional documents, (ii) has taken all corporate action necessary to authorise its entry into the ISDA Master Agreement, the Transactions thereunder and the relevant Credit Support Documents, and (iii) has duly executed and delivered the ISDA Master Agreement, each Transaction and the relevant Credit Support Documents, such that the obligations provided for under such documentation constitute legally binding, valid and enforceable obligations of each party.

(F) No provisions of Section 2(a)(iii), 5 or 6 of the Master Agreement and no provisions of the Credit Support Documents have been altered in any material respect. The making of standard elections contemplated to be made by the ISDA Master Agreements or the Credit Support Documents and the specification of standard variables (consistently with the other assumptions in this Memorandum) would not constitute material amendments for this purpose.

(G) Eligible Collateral may include cash denominated in a freely convertible currency and credited to an account (as opposed to physical notes and coins).

(H) Any securities provided as Eligible Collateral are denominated in Euro or a freely convertible currency and consist of (1) corporate debt securities whether or not the issuer is organized or located in your jurisdiction; (2) debt securities issued by the government of your jurisdiction; (3) debt securities issued by the government of a member of the "G-10" group of countries; and (4) corporate equity securities whether or not the issuer is organized or located in your jurisdiction. However, since Italian law imposes limitations on the ability of an Italian company to trade in its own shares,

we assume that no securities under (4) above will form part of the capital of the Collateral Provider. We note that we provide no advice herein in connection with any disclosure or other obligations existing under Italian securities laws in connection with holdings of Italian listed equities. We assume in the case of the 1994 NY Annex, the 2016 VM NY Annex and the 1995 Deed, the securities will be held in one of the following forms:

- directly held bearer securities: by this we mean securities issued in certificated form, in bearer form (meaning that ownership is transferable by delivery of possession of the certificate) and, when held by a Secured Party as Collateral under a Security Document, held directly in this form by the Secured Party (that is, not held by the Secured Party indirectly with an Intermediary (as defined below));

- directly held registered securities: by this we mean securities issued in registered form and, when held by a Secured Party as Collateral under a Security Document, held directly in this form by the Secured Party so that the Secured Party is shown as the relevant holder in the register for such securities (that is, not held by the Secured Party indirectly with an Intermediary);

- directly held dematerialized securities: by this we mean securities issued in dematerialized form and, when held by a Secured Party as Collateral under a Security Document, held directly in this form by the Secured Party so that the Secured Party is shown as the relevant holder in the electronic register for such securities (that is, not held by the Secured Party indirectly with an Intermediary); or

- 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 depositary (CSD) or a custodian, nominee or other form of financial intermediary, in each case an "Intermediary") in the name of the Secured Party where such interest has been credited to the account of the Secured Party in connection with a transfer of Collateral by the Security Collateral Provider to the Secured Party under a Security Document.

The precise nature of the rights of the Secured Party 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 Secured Party 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 Italian rules of private international law. We understand that the Secured Party's Intermediary may itself hold its interest in the relevant securities indirectly with another Intermediary or directly in one of the three forms mentioned in (i), (ii) and (iii). In practice, there is likely to be a number of tiers of Intermediaries between the Secured Party

(I) Pursuant to the terms and conditions of the Master Agreement, the Security Collateral Provider enters into a number of Transactions with the Secured Party. Such Transactions include any or all of the transactions described in Appendix A.[6] Under the terms of each Security Document, the security interest created in the relevant Collateral secures the Obligations of the Security Collateral Provider arising under the Master Agreement as a whole, including the net amount, if any, that would be due from the Security Collateral Provider under Section 6(e) of the Master Agreement if an Early Termination Date were designated or deemed to occur as a result of an Event of Default in respect of the Security Collateral Provider.

(J) For the purposes of questions 12 to 15 below, we have further assumed that after entering into the Transactions and prior to the maturity thereof, the rights of the Security Collateral Taker

under paragraph 8 of the relevant Annex or Deed (as applicable) have become exercisable following the occurrence of any of the relevant pre-conditions specified in the Annex or Deed (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 (K) and questions 16 to 18 below).

(K) For the purposes of questions 16 to 18 below, we have assumed that an Event of Default under Section 5(a)(vii) of the Master Agreement with respect to the Security Collateral Provider has occurred and a formal bankruptcy, insolvency, liquidation, reorganization, administration or comparable proceeding (within the list set forth in the discussion under question 15 below and collectively referred to herein as "insolvency proceedings") has been instituted by or against the Security Collateral Provider.

(L) With respect to IM Security Documents only, we assume the Collateral provided under the IM Security Document is held in an account (which may hold cash (in a freely convertible currency) and securities) (a "**Custodial Account**") with a third-party custodian ("**Custodian**"), with the following characteristics: (x) the Custodian holds the Collateral in the Collateral Provider's name pursuant to a custodial agreement between the Collateral Provider and custodian; (y) the Custodial Account is used exclusively for the Collateral provided by the Collateral Provider to the relevant Collateral Taker; and (z) the Collateral Provider, the Collateral Taker and the Custodian have entered into an agreement (which may be a separate control agreement or may be part of the custodial agreement) under which the Collateral Taker can take control of the margin under certain circumstances.

(M) In certain circumstances, "initial margin" Collateral may be held at a central securities depository. In these circumstances, the parties will not enter into an IM Security Document. Instead please assume that (x) the Custodian is a central securities depository and holds the Collateral in the Custodian's name, acting in its own name but for the account of the Collateral Taker; (y) the parties have entered into securities documents and/or other agreements governing the pledge of the Collateral held by the central securities depository and movement of the Collateral into and out of the Custodial Account; and (z) such securities documents and/or other agreements are enforceable in accordance with their terms under applicable law (which may be different than the law of your jurisdiction).

(N) The parties may enter into more than one Credit Support Document, including multiple Credit Support Documents each subject to different governing laws, and may also enter into arrangements described in assumption (O) instead of entering into an IM Security Document.

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

(P) Each of the parties to the ISDA Master Agreement and the relevant Credit Support Documents (including the IM Security Document) who is carrying on, or purporting to carry on, any regulated activity in Italy is an authorised person permitted to carry on that regulated activity.

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

(R) The terms of the ISDA Master Agreement, including each Transaction under the ISDA Master Agreement, and the relevant Credit Support 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.

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

(T) At the time of entry into the ISDA Master Agreement, including each Transaction under the ISDA Master Agreement, and the relevant Credit Support Documents, no insolvency, administration, resolution, rescue, 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 or becomes insolvent as a result of entering into such documents.

(U) Each 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 a lien routinely imposed on all securities in a relevant clearance or settlement system).

Questions relating to the Security Documents

A. *For Non-IM Security Documents, would any of your responses to questions 1 through 21 that you provided as of the last date such responses were provided with respect to your jurisdiction be different as a result of (a) any changes in law in your jurisdiction, (b) the inclusion of Security Documents in this opinion that were not previously included, (c), the inclusion of equity securities as Eligible Collateral described in assumption (I)(4)? If so, please comment specifically on any such changes.*

Our most recent update to the Italian Collateral Opinion is dated 14 September 2016 and there have been no further changes in the laws of Italy since that time which impact upon the views expressed in relation to questions 1 through 21 of the Italian Collateral Opinion. The inclusion of Non-IM Security Documents within the scope of analysis is specifically contemplated in our responses provided to questions 1 through 21 below. Finally, as noted in assumption (H) above, the inclusion of equity securities within the scope of analysis would be problematic to the extent that the shares in question form part of the capital of the Collateral Provider. Once again, as noted in assumption (H), we provide no advice herein in connection with any disclosure or other obligations existing under Italian securities laws in connection with holdings of Italian listed equities. Inclusion of equity securities which do not form part of the capital of the Collateral Provider would not affect the conclusions reached in our responses to questions 1 through 21 of the Italian Collateral Opinion.

B. For the IM Security Documents only, assume that the Collateral will be held in a Custodial Account with a Custodian as described in assumption (L) above and not pursuant to (i) the assumptions in (I)(i) to (iv) and (J) above or (ii) assumption (O) above.

(i) *Would any of your responses to questions 1 through 21 below with respect to Collateral held pursuant the custodial arrangement described in assumption (L) above be different than the responses to such questions that you provided as of the last date such responses were provided with respect to your jurisdiction as a result of (a) any changes in law in your jurisdiction, (b) the inclusion of the IM Security Documents in this opinion, (c) the inclusion of equity securities as Eligible Collateral described in assumption (I)(4), or (d) the holding of the Collateral pursuant to one of the custodial arrangements described in (L) above? If so, please comment specifically on any such changes.*

We believe that the arrangements contemplated by assumption (L) would not result in any change to the responses to questions 1 through 21 below and we note that Decree 170 requires, in order to consider collateral as having been "provided" to the secured party, that *"any acts, including delivery, transfer or registration of the collateral in order to provide the secured party* ***or a third party acting on behalf of the secured party, with possession or control over such assets...*** " must have been completed [emphasis added]. Based on our understanding of the arrangements contemplated by assumption (L), as described below, the Custodian will have possession and control over the assets registered in the Custodial Account acting on behalf of the Collateral Taker in order to meet the requirement of having collateral "provided" to the Collateral Taker for the purposes of Decree 170.

In reaching this conclusion, we have taken into consideration the fact that the contractual rights of the Collateral Taker under the Security Documents will depend on (i) the terms of the relevant Control Agreement entered into between the parties to the IM Security Documents and the Custodian (IM); and (ii) the provisions of the relevant IM Security Document. In the case of both of the IM Security Documents, it is envisaged that the Secured Party will be entitled to deliver a Notice of Exclusive Control pursuant to the Control Agreement if a NEC Event occurs, in order to provide the Secured Party with exclusive rights to direct the Custodian (IM) or to control the collateral, unless provision is made to the contrary. Similar provision is made for the Pledgor/Chargor to be in a position to deliver a Pledgor (or Chargor) Access Notice if a PAN\CAN Event occurs in relation to the Secured Party. If a Pledgor/Chargor Access Notice is delivered, the Pledgor/Chargor will have exclusive rights to control the collateral or provide instructions to the Custodian (IM). For the purposes of this advice, we assume that the Secured Party will have the right to deliver a Notice of Exclusive Control at least in the event that any Event of Default occurs in relation to the Chargor/Pledgor.

We likewise assume that the Pledgor/Chargor will *not* have the right to deliver a Pledgor/Chargor Access Notice unless an Early Termination Date in respect of all Transactions has occurred or been designated in circumstances where the Secured Party is the Defaulting Party or sole Affected Party. Although the provisions of the IM Security Documents indicate that each party as the Chargor covenants that it will not give a Chargor Access Notice under the Control Agreement unless and until a PAN/CAN Event occurs and that it will not otherwise exercise any rights or remedies with respect to collateral held by the Custodian (IM) unless and until a Pledgor/Chargor Enforcement Event occurs, we note that the definitions for the terms PAN/CAN Event, as well as Pledgor/Chragor Enforcement Event are left blank in the IM Security Documents, to be completed by the parties. Likewise, the definitions for the terms Pledgor/Chargor Access Notice refer simply to a notice which the Pledgor/Charger is entitled to give under the Control Agreement that has the effect of giving such party the exclusive right to direct the Custodian (IM) or to control the collateral, unless otherwise agreed to by the parties. As we are not in a position to anticipate how these various provisions may be adapted by the parties in the context of negotiation of individual IM Security Documents, the assumptions indicated in this paragraph are necessary to ensure that the requisite level of control in relation to the pledged/charged assets will reside with the Custodian (IM).

In addition to the foregoing, we believe that the question of rights of substitution in favour of the Collateral Provider may likewise impact on the question as to whether collateral has been "provided" to the Secured

Party for the purposes of Decree 170. As noted also in our comments to question 11 below, the level of control exercised by the Security Party (in this case the Custodian acting for the Secured Party) should ensure that any rights granted to the Collateral Provider to deal with the account will nevertheless guarantee that the value of assets registered to the account will at all times be at least equal to the value of relevant substituted Collateral. This does not necessarily require specific consent by the Secured Party to individual substitutions made by the Collateral Provider or Custodian, so long as systems are in place to ensure that the Secured Party (in this case acting through the Custodian) maintains control over the process, for instance by pre-agreeing the terms pursuant to which substitution may occur (*i.e.* eligibility criteria for substitute assets, valuation mechanism ensuring collateral levels are respected on an on-going basis, ability of Secured Party to block substitutions or any other dealings in the relevant account following the occurrence of an Event of Default in relation to the Collateral Provider).

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

See response to question (i) above.

C. *Assume that the Collateral will be held in a central securities depository as described in assumption (M) above and not pursuant to assumptions (H)(i)-(iv) and (I) above or assumption (L) above.*

(i) Would any of your responses to questions 1 through 9 and 12-21 below with respect to Collateral held pursuant the custodial arrangement described in assumption (M) above be different than the responses to such questions that you provided as of the last date such responses were provided with respect to your jurisdiction as a result of the holding of the Collateral pursuant to one of the custodial arrangements described in (M) above? If so, please comment specifically on any such changes. As noted in assumption (M) above, you may assume that the securities documents and other agreements referred to in assumption (M) are enforceable in accordance with their terms under applicable law (which may be different than the law of your jurisdiction).

There would be no changes in our responses to questions 1 through 9 and 12 – 21 below based on the arrangements contemplated in assumption (M). We note out comments under B(i) above concerning the need to ensure the Secured Party has adequate control over the Posted Credit Support.

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

Please see response in connection with question (i) under B above. The same considerations apply also in this case, with the CSD acting as Custodian.

Validity of Security Interests

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 recognize the validity of a security interest created under each Security Document, assuming it is valid under the governing law of such Security Document (taking into account assumptions (B) and (C) above)?*

Under Italian law, the law governing the contractual aspects of a security interest in the various forms of Collateral identified above is the governing law of the relevant Security Document, as recognised by criteria established by the Rome Convention of 29 June 1980 on the law applicable to contractual obligations, which entered into force in Italy on 1 April 1991 (the "Rome Convention").

Assuming that the choice of law in the relevant Security Document and Master Agreement is a valid and proper choice of law, the Italian courts would recognise the validity of a security interest created under a Security Document if that security interest was valid under the chosen governing law of the Security Document. In our view, the choice of New York law to govern the NY Annex, the VM Annex and the IM NY Annex and the choice of English law to govern the Deed and the IM Deed would, on the assumptions we have made, be a valid and proper choice of law and therefore the Italian courts would recognise the validity of a security interest created under either of the Security Documents, provided that such security interest is valid under New York law or English law, as applicable. Our responses to the questions raised below would not be affected by any difference in the governing law of a relevant IM Security Document *vis-à-vis* the corresponding ISDA Master Agreement.

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 organization 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 under (x) the Non-IM Security Documents pursuant to assumption (H) above; (y) the IM Security Documents pursuant to assumption (L)) above and (z) the arrangements described in assumption (M) above.*

Article 10 of Decree 170, in implementation of Article 9 of the Collateral Directive, provides for application of the so-called "PRIMA" (for "place of the relevant intermediary") rule to interests in intermediates securities. In particular, Article 10 of the Decree, provides as follows:

"Where rights in or concerning financial instruments are evidenced by entries or annotations in an accounting record, an account or a centralised management or depository system, the method for transferring such rights as well as for creating and realising collateral and other encumbrances in relation thereto, shall be governed exclusively by the laws of the legal system of the State where the accounting record, account or centralised management or depository system in which the entries or annotations directly in favour of the holder of the right are made is located, disregarding any reference to the law of another State."

On the basis of the foregoing, we believe that an Italian court should recognise that requirements relating to the creation of an interest in any securities provided as Eligible Collateral should be determined in accordance with the law of the place where the Collateral Taker's interest is shown at the time the interest is created. For example, if the Collateral Provider were to provide Collateral in the form of Italian government bonds which, prior to being pledged, were held centrally through Italy's CSD (Monte Titoli S.p.A.) in a proprietary account registered in Italy, and then transferred to the proprietary account of the Secured Party in England, we believe that an Italian court should recognise that formalities required for the perfection of the Secured Party's interest should be governed by English law. In the case of an arrangement described in assumption (M) above, we believe that perfection requirements would be determined pursuant to the law where the Custodial Account is located. In the case of an arrangement described in assumption (N) above,

we believe that perfection requirements would be determined pursuant to the law where the CSD account operated for the account of the Collateral Taker is located.

With regard to certificated securities in bearer form, it is widely held in Italy that the law of location applicable to creation of an interest in property will be the law of the location of the actual certificates. On the contrary, when dealing with certificated securities in registered form, the traditional view has been that one must look to the law of the place of the register, otherwise referred to as the *lex societatis* (the law of the issuer).However, we note that securities of Italian issuers will very rarely be issued in certificated form since Italian securities laws (in particular, the provisions of Articles 83bis to 83terdecies and Articles 85-89 of Decree 58) make specific provision for the dematerialisation and centralised administration even of securities which are not traded on a regulated market, in which case proprietary interests will be transferred solely via the intermediary accounts held in the name of the holder of the relevant interest (*i.e.* the PRIMA rule).

Finally, in the case of cash, the prevailing view of the legal scholars in Italy appears to be that one should look to the law of the place where the cash is deposited, regardless of the jurisdiction of the relevant currency or the place where the repayment obligation is owed. Where, for example, the Secured Party is operating out of its London office but US dollar cash collateral is credited to its bank account in New York, the prevailing view would be that New York law, rather than English law, would apply.

3. *Would the courts of your jurisdiction recognize 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 assumption (E) above with respect to Non-IM Security Documents, in assumption (L) above with respect to IM Security Documents and in assumption (M). 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 Italian courts would recognise a security interest in each type of Eligible Collateral created under each Security Document, provided that the security interest was valid under the governing law of the Security Document and provided also that any perfection requirements in relation to the Eligible Collateral had been complied with in the jurisdiction whose laws apply to the proprietary aspects of the security interest (as to which, see response in relation to question 2 above). Our answer does not change in the case of application of the facts as described under assumptions under (E), (L) or (M) above.

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 Master Agreement and the relevant Security Document (including as a result of entering into additional Transactions under the 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? It is understood that the security interest in any specific Collateral would only be relevant in relation to future obligations, if ever, at the time such future obligations arise and then only in relation to Collateral held at that time. This question concerns whether it would be necessary for either party to perform any action at such time in order to ensure the effectiveness of the security interest as security for such obligations or whether the security interest would take effect in relation to those future obligations without further action by either party.*

Although the provisions of the Italian Civil Code relating to the creation of a pledge do not specifically address the possibility to create security for future obligations, various pronouncements of the Court of

Cassation, *i.e.* the Italian Supreme Court, have expressly recognised this possibility[6]. The traditional approach of the Italian courts with respect to the so-called *pegno omnibus* (*i.e.* a pledge securing any and all possible obligations owed by a client to a bank as resulting - from time to time - from the debt balance of the current account opened with that bank) indicates that there should be a precise connection between the agreement regulating the granting of the pledge and future claims which actually come into existence, although a more recent pronouncement of the Court of Cassation has held that the connection may also be determined by *"elements [contained in the document constituting the pledge] which are suitable to allow for the identification of [the future claims] covered by the pledge*[7] [comments added].

We note that this discussion applies whether or not Collateral is located or deemed to be located in Italy and we believe that the provisions of the Security Documents, if properly adhered to as written in terms of the requesting of Delivery Amounts and the making of Return Amounts, should be deemed by an Italian court to meet these requirements.

(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)? It is understood that the security interest in Collateral to be delivered at some point in the future after the time of entry into the relevant Security Document would not take effect in relation to such Collateral until the Collateral had been delivered to the Secured Party in accordance with the Security Document. This question concerns whether it would be necessary for either party to perform any action at such time in order to ensure the effectiveness of the security interest in relation to such Collateral or whether the security interest would take effect in relation to such Collateral without further action (other than the delivery) by either party.

Subject only to actual delivery of the Eligible Collateral to the relevant account and annotation of the interest of the Secured Party in such account (including a Custodial account held with a third party Custodian or a CSD account operated by the CSD on behalf of the Collateral Taker), no further actions will be required by either party in order to ensure the effectiveness of the security interest in relation to future Collateral, whether or not Collateral is located or deemed to be located in Italy.

(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? In this context, we assume that each specific delivery to the Secured Party and return by the Secured Party of Collateral under the Security Document from time to time would be properly recorded by the Secured Party, so that, while the pool of Collateral would change from time to time, at any specific time the composition of the pool of Collateral could be clearly identified by the Secured Party.

By way of general background, we note that the Italian legislation governing the centralised administration of listed securities was amended in 1998 in order to provide for the possibility of creating a "regular" pledge over a securities account held with an intermediary acting as depository with Monte Titoli S.p.A. (Italy's CSD), allowing for substitution of securities held in such account and providing that the date of creation of the relevant pledge in the securities, even for the purposes of calculating the running of preference periods under insolvency laws, will be the date of creation of the original pledge, up to the value of the securities originally placed in the account. The current legislation providing for this type of security is found in Article 83-octies of Decree 58 and Article 38 of Regulation of the Consob and the Bank of Italy dated 22 February

---

[6] Court of Cassation no. 7794 of 12 July 1991; no. 1380 of 13 April 1977; and no. 2617 of 20 September 1971.

[7] Court of Cassation no. 7794 of 12 July 1991.

2008 concerning the governance of services for centralised securities deposit and clearing (the Consob/BOI Regulation).

In any case, we note that Decree 170 specifically recognises the enforceability of "substitution clauses", in the context of financial collateral agreements, namely a clause which provides for the possibility to substitute in whole or in part the object of the financial collateral agreement, within the limit of the value of the assets being substituted.

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

It is not necessary under Italian law for the amount secured by each Security Document to be a fixed amount or subject to a fixed maximum amount, although one should consult also the discussion under question 18 below with regard to the risk of "claw-back" for "top-up" collateral.

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

There would be no bar under Italian law for the Secured Party to hold collateral in excess of its actual current exposure to the Security Collateral Provider under the related Master Agreement, although it is possible that such over-collateralisation could be interpreted as reflecting a perception by the Secured Party of a deterioration in the creditworthiness of the Security Collateral Provider, which could become important in the context of preference actions under Italian insolvency laws, further discussed later in this opinion.

5. *Assuming that the courts of your jurisdiction would recognize 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.*

Whether or not Collateral is located or deemed to be located in Italy, no formalities are required for the attribution to the Secured Party of the enforcement, realisation and other rights granted by the Collateral Directive so long as (1) the financial collateral arrangement is evidenced in writing, and (2) the Collateral has been provided to the Secured Party and such provision is also evidenced in writing in a manner which allows for the identification of (i) the date of creation and (ii) the financial assets constituting the Collateral.

Book entries made by intermediaries holding securities and annotations of cash in the relevant account are sufficient evidence of the date of provision of Collateral. Moreover, the requirement for evidence "in writing" may be met also through electronic means of communication stored in a durable manner.

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?*

There are no other formalities required under the laws of Italy 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.

Translation of the Security Documents into Italian would only be necessary (as an evidentiary matter) in the context of potential future litigation before the Italian courts.

7. *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 set forth in your responses to questions 1 to 6 above, as applicable, 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 transferred by way of security from time to time whenever the Credit Support Amount (or the amount of Collateral required to be delivered under the relevant Security Document, as applicable) exceeds the Value of the Collateral held by the Secured Party?*

There are no subsequent or on-going formal or procedural requirements that must be undertaken to maintain or continue a security interest created in Eligible Collateral under the Security Documents in addition to those described in the discussion under point 5 of this Part 1 above.

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 transferred by way of security pursuant to each Security Document (for example, because such Collateral is located or deemed to be 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, 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?*

No further actions or other requirements would be imposed by Italian law to establish, perfect, continue or enforce the security interest in the Collateral.

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?*

The specifics of any duty of care would ultimately be determined by the relevant custodial rules applying under the law(s) applicable to the creation and perfection of the interest in Eligible Collateral as well as the provisions of any relevant custodial agreement concerning such things as segregated accounts and the attribution to the Secured Party of rights to use Collateral. Where rights of use are granted in favour of the Secured Party, this would likely result in a transfer of outright title to the assets in question even if such rights of use are not in fact implemented. Since the assets would thus become the property of the Secured Party, it would be entitled to deal with them freely, without any duty of care being owed to the Collateral Provider.

Where no rights of use are granted to the Secured party, then, to the extent that Italian law is relevant and subject to the provisions of any custody agreements between the parties, Article 2790 C.C. would attribute liability for loss of the property, unless caused by circumstances not attributable to the Secured Party. It is possible for the duty of custody to be modified by agreement, save that any provision which excludes or limits the liability of the counterparty for fraud, malice or gross negligence is void. However, to the extent

that the Secured Party does not have custody of the Collateral, *i.e.* the collateral is held in any account with a third party custodian or CSD, which merely registers the interest of the Secured Party pursuant to the Security Documents, it is difficult to see how any duty of care or liability under Article 2790 C.C. could arise.

10. *Please note that pursuant to the terms of each Deed and the IM NY Annex, the Secured Party is not permitted to use any Collateral securities it holds. This is because (a) at the time that the 1995 Deed was published, it was thought, as a matter of English law, that any such uses or may be incompatible with the limited nature of the interest that the Secured Party has in the Collateral[7], and (b) the rules promulgated by various regulators prohibit the use of any Collateral securities held by the Secured Party due to the Collateral being "initial margin". On the other hand, unless otherwise agreed to by the parties, Paragraph 6(c) of the 1994 NY Annex and the VM NY Annex grants the Secured Party broad rights with respect to the use of Collateral, provided that it returns equivalent Collateral when the Pledgor is entitled to the return of Collateral pursuant to the terms of the 1994 NY Annex or the VM NY Annex, as applicable. 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 Pledgor? 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?*

As noted in the response to question 9 above, to the extent that the Secured party is granted rights to use Collateral (by taking any of the actions indicated in this question 10), Italian law would, to the extent applicable, recognise the interest created as giving rise to a transfer of title to the Posted Collateral in favour of the Secured Party.

It follows that the Secured Party may re-pledge, rehypothecate or transfer Posted Collateral as it sees fit, and no such actions will affect the validity of the security interest; the Secured Party will, however, have a continuing obligation to account to the Security Collateral Provider for the value of equivalent collateral upon payment of the secured obligation.

11. *What is the effect, if any, under the laws of your jurisdiction on the validity, continuity, perfection or priority of a security interest in Eligible Collateral under each Security Document of the right of the Pledgor to substitute Collateral pursuant to Paragraph 4(d) (or in the case of the IM Deed, Paragraph 4(e)) of each Annex and 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 Pledgor and the Secured Party are able validly to agree in the Security Document that the Pledgor 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. Note that the parties may also give upfront consent in the IM Security Documents to any substitution made by the Security Collateral Provider and/or the Custodian in accordance with the terms of the agreement described in Assumption (M)(z)*

As described in the response to question 4(c) above, Italian law recognizes the right of a debtor to substitute the secured assets, so long as the relevant security agreement so provides. Since each of the Security Documents do set forth such a right of substitution, there would be no effect on the validity, continuity, perfection or priority of a security interest in Eligible Collateral under each Security Document as a result of the right of the Security Collateral Provider to substitute Collateral. Moreover, so long as the value of substitute Collateral remains within the parameters of the value of the Collateral originally provided, such substitution, even if occurred during a suspect period in the case of insolvency proceedings (see discussion

under question 18 below), would not, in our opinion, invalidate an otherwise valid pledge or constitute a preference.

The Secured Party should have some control over the substitution process in order to ensure that the value of assets provided by way of substitution is at least equal to the value of the assets which were substituted. In fact, as noted in the discussion under question B above, absence of control over Posted Credit Support may invalidate the interest of the Secured Party as a recognized "financial collateral agreement" for the purposes of Decree 170.

This requirement for control does not necessitate specific consent by the Secured Party to individual substitutions made by a Custodiau (in accordance with Assumption (L)(z) above) or the Collateral Provider, so long as systems are in place to ensure that the Secured Party maintains control over the process, for instance by pre-agreeing the terms pursuant to which substitution may occur (*i.e.* eligibility criteria for substitute assets, valuation mechanism allowing Secured Party to ensure collateral levels are respected on an on-going basis, ability of Secured Party to block substitutions following the occurrence of an Event of Default in relation to the Collateral Provider).

Based on our understanding of the provisions of the IM NY Annex, it appears that the Secured Party will have control over the substitution process, since it will be obligated to Transfer to the Pledgor the Pledged Credit Support only if no Early Termination Date has been specified in relation to the Pledgor and only to the extent of the Value of the Substitute Credit Support already provided by the Pledgor. In respect of the 1995 Deed, we note that express provision is made for consent to substitution by the Secured Party. In the case of the IM Deed, consent to substitution is optional (may be selected in Paragraph 13), but in any case it is clear that the Secured Party is obliged to transfer to the Chargor only assets having a Value at least equal to the Substitute Credit Support. Even where a Custodian will be taking action in respect of a Segregated Account, we note that the Custodian is obliged to act in conformity with the provisions of the relevant Security Document and that the Collateral Provider is generally liable to the Collateral Taker for any act of omission on the part of the Custodian

Enforcement of Rights under the Security Documents by the Secured Party in the Absence of an Insolvency Proceeding

We note the additional assumption in (J) 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 set forth in your 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 Master Agreement? Do such formalities or procedures differ depending on the type of Collateral involved?*

Pursuant to Decree 170, the Secured Party will be entitled, upon the occurrence of an Event of Default (as set forth in the Security Document), to enforce its rights as contemplated by the Security Document, in particular by:

(a) selling the Collateral and applying the proceeds towards satisfaction of its claim up to the amount of the secured obligation;

(b) appropriating any Collateral, other than cash, in satisfaction of the secured obligation provided that the Security Document sets forth the applicable valuation criteria; and

(c) using any cash Collateral to extinguish the secured obligation.

The Secured Party is required to provide immediate written notice to the Security Collateral Provider (or, if insolvency proceedings have been commenced, the relevant insolvency official), of the method of enforcement and the proceeds realised. Any excess value realised must be returned to the debtor (or relevant insolvency official).

Decree 170 provides that the means for realising financial assets as well as the criteria for valuing them and the secured obligations must be commercially reasonable and that such requirement is presumed to be met in the case of contractual models identified by the Bank of Italy with the Consob. It is worth noting that the explanatory report prepared by the government in connection with the passage of the Decree makes specific reference to ISDA as a professional association which has already elaborated agreements which have gained international acceptance and which should therefore be presumed to meet the requirement of commercial reasonableness. We would, however, caution that any material amendment to the provisions of the Security Documents as published by ISDA in relation to valuation and/or realisation could be deemed to require judicial scrutiny and therefore trigger court proceedings.

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, if any, that the Secured Party must observe or undertake in your jurisdiction in exercising its rights as a Secured Party under each Security Document?*

Italian law would not impose any formalities, notification requirements or other procedures in this case.

14. *Are there any laws of 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?*

In view of the type of Eligible Collateral and entities in respect of which this Memorandum is being given, there are no laws or regulations of Italy that would limit or distinguish the Secured Party's enforcement rights on the basis of any of these factors, save that we note our comments set forth in the Italian Opinions concerning the potential non-application of Decree 170 to EU Emission Allowance Transactions and Commodity Forward Transactions subject to physical settlement or to Physical Commodity Transactions.

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

So long as the occurrence of any of such circumstances in relation to the Secured Party does not, pursuant to a law otherwise applicable to the facts including the governing law of the Security Document, result in a limitation of the ability of the Secured Party to enforce its rights in Posted Collateral, then Italian law would not impose any such limitation, provided that, at the time of the enforcement being sought the Secured Party

is in effect the creditor of the Security Collateral Provider in respect of amounts then due and owing under the relevant Master Agreement.

Enforcement of Rights Under the Security Documents by the Secured Party after the Commencement of an Insolvency Proceeding

We note the additional assumption in (K) above which applies to questions 16 to 18 below and have set forth below a summary of the various insolvency related proceedings which could potentially be commenced in relation to an Italian Party based on current Italian laws.

In relation to Commercial Corporations:

(a) "*fallimento*" (**Bankruptcy**), which proceedings are initiated by petition filed with the competent court either by a creditor or by the company itself upon resolution passed by the shareholders or the board of directors or by the public prosecutor. In the first case, the insolvency is ordinarily proved by means of evidence of a plurality of unsuccessful attachments in execution, dishonoured bills, etc. Commencement of the proceedings results in an immediate suspension of the payment of liabilities of the debtor as from the date of the relevant judicial declaration commencing the proceedings, and the inability for all unsecured creditors to initiate or continue individual proceedings against the assets of the insolvent commercial corporation. The relevant proceedings are governed by the provisions of Title II of Royal Decree no. 267 of 16 March 1942 (the Bankruptcy Law), as amended by Law Decree no. 35 of 14 March 2005, converted into law by Law no. 80 of 14 May 2005 (Decree 35), Legislative Decree no. 5 of 9 January 2006 (Decree 5 and, together with Decree 35, the Bankruptcy Law Reform). Some of the most significant changes introduced by Decree 35 and Decree 5 relate to the shortening of "suspect periods" for the avoidance of transactions (see discussion under Section 3 below) and various provisions adopted in an attempt to modernise the types of insolvency proceedings which may apply to commercial corporations, notably with a view to the promotion of out of Court or Court-assisted arrangements. Of material significance to this opinion, Decree 5 has introduced rules which attempt to clarify the impact of liquidation proceedings on executory contracts and provisions which facilitate the continuation of the business or any line thereof of an insolvent. These issues are the subject of specific discussion below.

(b) "*concordato preventivo*" (preventative arrangement with creditors, herein **Concordato Preventativo**), which proceedings are governed by Title III of the Bankruptcy Law. In this procedure, the unsecured creditors, upon petition by the company to the competent Court, must decide whether or not to accept reduced payment of their claims. If the unsecured creditors accept a reduction in their claims, the company is required to provide adequate security for the payment of the reduced amount. Preferred creditors (*i.e.*, secured creditors and certain categories of creditors preferred by law such as employees and social security bodies) are not entitled to vote on the preventative agreement between the company and the unsecured creditors, since the amount of their claims is not subject to reduction. If the Court does not authorise commencement of the proceedings or the unsecured creditors do not vote in favour of the payment plan proposed by the company, the company is automatically declared bankrupt and the relevant proceedings are commenced. All debts of the company are frozen during the proceedings for the Concordato Preventivo, and individual collection proceedings by creditors are prohibited. Voting in favour of a composition plan requires only the vote of creditors representing a simple majority of claims or, as the case may be, creditors belonging to each class. Where creditors representing a simple majority of claims overall is achieved, there is also the possibility to "cram down" a vote in favour of the plan where the presiding judge is satisfied that creditors belonging to any dissenting class will be satisfied to a degree which is not less than what could have been achieved through alternative methods which are actually feasible. Only in this circumstance is the presiding judge seized with the competence to make any decision as to the merits of a composition plan, the general rule being in favour of the autonomy of creditors.

The provisions of Law no. 134 of 7 August 2012 (Law 134) have amended the provisions of the Bankruptcy Law applying to Concordato Preventivo to allow a creditor to file a petition for admission to the proceedings even before a composition plan has been approved with creditors, with the debtor benefiting from the stay against enforcement over the debtor's assets and being granted a maximum of up to 180 days in order to produce a composition plan for court approval or, as an alternative, reaching a court approved private restructuring as addressed by Article 182bis of the Bankruptcy Law (see description under (c) below). Article 186*bis* of the Bankruptcy Law, provides that if the composition plan contemplates business continuity during the procedure, a moratorium may be granted on payments to creditors benefiting from a pledge, privilege or mortgage for up to one year from the approval of the plan (unless the liquidation of the assets subject to security is contemplated in the plan) and secured creditors will have no vote on the plan. Article 186bis goes on to provide that, subject to the ability of the debtor to petition the court for termination of executory contracts, contractual termination provisions based on the commencement of proceedings will not be enforceable.

(c) hybrid restructuring pursuant to Article 182bis of the Bankruptcy Law (**Hybrid Restructuring**): This provision is governed by the provisions of the Bankruptcy Law, as amended by Law 134 and deals with a form of hybrid work-out, being a private agreement adhered to by creditors representing at least 60% of claims owed, but subject to court approval. Since external creditors remain extraneous to the restructuring plan, a report is required to be provided by an independent expert as to feasibility, particularly with relevance to the ability of the debtor to continue to satisfy non-participating creditors. Changes introduced by Law 134 allow the debtor a term of 120 days to make payment of amounts owed to non-participating creditors and also specify that from the date of publication of the court approved plan, creditors are prohibited from initiating or pursuing executory actions against the debtor or his assets for a period of 60 days. Moreover, as in the case of *Concordato Preventivo,* the debtor is able to petition the court for a stay on rights of enforcement even prior to an actual restructuring plan being in place, provided that an affidavit is filed by the debtor attesting that negotiations are ongoing with creditors representing at least 60% of claims owed and a declaration by an independent expert attests to the feasibility of such plan.

(d) *"amministrazione straordinaria delle grandi imprese insolventi"* (extraordinary administration for large companies), which proceedings, in relation to Commercial Corporations are governed by Legislative Decree no. 270 of 8 July 1999 ("Decree 270") apply to businesses which meet both of the following criteria: a) not less than 200 employees, including those on lay-off; and b) not less than two-thirds of the total assets shown on the financial statements are being produced by the provision of goods and services in the last fiscal year and may be commenced also if a debtor company has already been made subject to proceedings for *concordato preventivo.* The law provides that these proceedings should be commenced only where there is a concrete expectation that the debtor can be successfully restructured or sold as a going concern or as more than one branch of a going concern. Decree 270 provides for a preliminary judicial phase prior to the actual admission to extraordinary administration. This involves the issuing of a declaration of insolvency by the competent tribunal (*i.e.* the tribunal where the debtor has its registered office), following a hearing involving the Minister of Productive Activities[8] and subject to certain notice periods[9]. The petition for a declaration of insolvency may be filed either by the company itself or by creditors. The declaration of insolvency issued by the tribunal is accompanied by a nomination of between one to three judicial commissioners (*commissari giudiziali*), who replace existing management and act under the supervision of the courts. Under Decree 270 the decision as to admission to extraordinary administration is taken by the court within 70 days from the declaration of insolvency (30 days for

[8] Formerly the Minister of Industry.

[9] These notice periods may, however, be abridged and, for instance, in the Cirio case, the state of insolvency was declared by the Court of Rome only 5 days after the relevant petition was filed by the company.

the report of the judicial commissioners, plus 10 days for the opinion of the Minister of Productive Activities, plus 30 days to allow the court to decide). At such time, the judicial commissioners are replaced by one to three administrators (*commissari straordinari*), who act under the supervision of the Minister of Productive Activities. From the date of commencement, creditors are prohibited from undertaking or continuing executive measures against the debtor or its assets. Moreover, there is a provision to the effect that, until such time as the administrator elects to reject performance of outstanding executory contracts, the contracts will continue to be subject to performance.

(e) "*amministrazione straordinaria per la ristrutturazione industriale delle grandi imprese insolventi*" (extraordinary administration for the industrial restructuring of large insolvent companies and, together with the proceedings under (d) above, **Extraordinary Administration Proceedings**), which proceedings are governed by Law Decree no. 347 of 23 December 2003 as converted into law with amendments by Law no. 39 of 18 February 2004 (Decree 347), and by Legislative Decree no. 270 of 8 July 1999 (Decree 270), insofar as compatible. From the date of commencement of these proceedings, creditors are prohibited from undertaking or continuing executive measures against the debtor or its assets. Moreover, there is a provision to the effect that, until such time as the administrator elects to reject performance of outstanding executory contracts, such contracts will continue to be subject to performance. The proceedings apply to companies which meet the following criteria: (i) not less than 500 employees during the past calendar year, including those taking part in the special lay-off fund set up by the company; and (ii) debts, including those resulting from guarantees provided, of not less than EUR 300 million. Proceedings may be commenced directly by the Prime Minister or the Minister of Productive Activities. The decree of admission to proceedings will also appoint an extraordinary commissioner (*commissario straordinario* or Extraordinary Commissioner) who will manage the company. The Extraordinary Commissioner is required to file with the Court a report indicating the financial data and the list of creditors of the company. The Extraordinary Commissioner may request the admission to the proceedings with respect to other companies of the group. Within 180 days[10] from the issue date of the Decree, the Extraordinary Commissioner must file a restructuring plan with the Minister, which may provide for a composition with creditors. Decree 347 provides that the composition may provide for the subdivision of creditors into classes and different treatment applicable to creditors belonging to different classes. The composition is subject to the approval of the creditors according to the majority rules set forth in Decree 347. In certain circumstances, including a refusal of the Minister to authorise the execution of the restructuring plan, the Court may convert the proceedings into bankruptcy. Pursuant to Law Decree 134 of 28 August 2008 converted into law by Law no. 166 of 27 October 2008 (Decree 134), for companies providing essential public services, the powers of the Extraordinary Commissioner are expanded to undertake a sale of the business and, in order to facilitate the completion of a sale, to identify and compose lines of business or partial lines of business, even if not pre-existing, which shall be made subject to sale. The powers of identifying business lines and parts of business lines for sale appear to have been introduced in Decree 134 primarily for the purposes of facilitating employee transfers.

In the case of Financial Institutions:

(f) "*liquidazione coatta amministrativa*" (literally, compulsory administrative liquidation and herein referred to as **Liquidation**), governed by the provisions of articles 80 to 97 of the Banking Law, and by certain provisions of the Bankruptcy Law[11] to which specific reference is made in the Banking Law[12] or which, in any event, are not incompatible with the provisions set forth in the Banking Law. The proceedings may be initiated by the Ministry of Economy and Finance, acting on a

[10] Subject to a possible extension to be granted by the Minister for an additional 90 days.

[11] Royal Decree no. 267 of 1942, as amended.

[12] Legislative Decree no. 385 of 1993, as amended.

proposal of the Bank of Italy where there have been exceptionally serious administrative irregularities, losses or violations of laws. From the time that the liquidation takes effect, no actions against the debtor or its assets may be brought or prosecuted, nor may any actions be taken to perfect any security in the debtor's assets. The Banking Law provides that, under certain circumstances, the Bank of Italy may authorise the continuation of the business of an entity made subject to compulsory administrative liquidation. The Banking Law further provides that, at any stage of the proceedings, the liquidators may propose a composition with creditors, which composition, in order to be implemented, must be authorised by the Bank of Italy and approved by the competent court.

(g) "*amministrazione straordinaria*" (extraordinary administration and herein referred to as **Administration**), which proceedings may be initiated by the Ministry of Economy and Finance, acting on a proposal of the Bank of Italy where there have been exceptionally serious administrative irregularities, losses or violations of laws. These are the same criteria cited also in the Banking Law with reference to Liquidation as referred to under (f) above. There is no specification in the Banking Law as to any distinction in the nature of the "exceptionally serious administrative irregularities, losses or violations" which should give rise to the commencement of Liquidation vs. Administration. The view of commentators is that this is intentionally left to the discretion of the supervisor. The proceedings are governed pursuant to the provisions of articles 70 to 77 of the Banking Law. The Banking Law provides that, in the presence of exceptional circumstances (which term is not specifically defined), the administrator may, in order to protect the interests of creditors and subject to authorisation of the Bank of Italy, suspend payment of all debts for up to a maximum of three months. Creditors are prohibited from pursuing individual actions against the debtor or the debtor's assets based on an allegation of default resulting from the implementation of any such suspension of payments. The overall proceedings for extraordinary administration may last for up to a maximum of twenty months

(h) "*risoluzione*" pursuant to Decree 180, which may involve one or more of the following "resolution tools" (giving rise to what is referred to herein as **Resolution Proceedings**):

(i) sale of business – which enables resolution authorities to direct the sale of the bank or the whole or part of its business on commercial terms (the **Sale of Business Tool**);

(ii) bridge institution – which enables resolution authorities to transfer all or part of the business of the firm to a "bridge institution" (an entity created for this purpose that is wholly or partially in public control, herein referred to as a **Bridge Bank**) (the **Bridge Bank Tool**);

(iii) asset separation – which enables resolution authorities to transfer impaired or problem assets to one or more publicly owned asset management companies (each, an **AMC**) to allow them to be managed with a view to maximising their value through eventual sale or orderly wind-down (this can be used together with another resolution tool only) (the **Asset Separation Tool**); and

(iv) bail-in – which gives resolution authorities the power to write down certain claims of unsecured creditors (including, notably, investors in capital instruments and senior unsecured bonds issued by an Italian bank) of a failing institution and to convert certain unsecured debt claims to shares or other instruments of ownership (the **Bail-in Tool**).

We note that the Banking Law, in compliance with the BRRD, contemplates further "crisis prevention measures" or "*misure di prevenzione della crisi*" which may give rise to measures such as the implementation of recovery plans or the removal of directors and officers. Among these measures is the power to write-down permanently and/or convert into equity capital instruments such as Additional Tier 1 and Tier 2 at the point of non-viability and before any other resolution action is

taken with losses being taken in accordance with the priority of claims under normal insolvency proceedings (the **PONV Tool**).

Resolution Proceedings use of the PONV Tool may be initiated by the Bank of Italy, subject to approval by the MEF. For Italian banks subject to direct supervision by the European Central Bank in the context of the SSM, the Bank of Italy will act according to decisions taken by the SRB. Commencement of Resolution Proceedings must be prefaced by a determination that the following three conditions for resolution are met: 1) the institution is failing or likely to fail; 2) no private sector or alternative solutions are available to remedy the situation; and 3) resolution is in the public interest. The Bank of Italy or, as the case may be, the ECB, is responsible for determining that the entity in question is failing or likely to fail. The Bank of Italy, upon consultation with the ECB, is responsible for ascertaining that no private sector or alternative solutions are feasible to remedy the situation. The Bank of Italy alone is responsible for ascertaining that the resolution is necessary in the public interest (Article 19 of Decree 180).

In our view, each of the proceedings under (a) to (g) above would fall within the list of "Bankruptcy" events set forth in Section 5(a)(vii) of the ISDA Agreements. Nevertheless, we note that the proceedings under (g) do not purport to affect creditors' rights unless a suspension of payments is ordered. We understand that this circumstance may give rise to some doubt under English or New York law as to the Bankruptcy Event of Default being triggered under the ISDA Agreement until a suspension of payments is ordered, notwithstanding the fact that one or more administrators will be appointed for the relevant entity and the entirety of its assets as from the date of admission to Administration. We further note that Decree 180 provides that that admission to Administration will not, of itself, give rise to a judicial state of insolvency or an "enforcement event in relation to financial collateral" so long as all payment and collateral delivery obligations of the entity made subject to the proceedings continue to be met. As a result, we believe that the early termination, close-out netting and collateral enforcement rights provided to a Non-defaulting Party pursuant to the Master Agreements and Credit Support Documents would only become enforceable upon the institution of a suspension of payments or, even in the absence of an order for suspension of payments, if there is a default by the entity made subject to Administration in making one or more payments or deliveries, including collateral deliveries, following the date of admission to proceedings.

We believe that Resolution Proceedings, as well as exercise of the PONV Tool in the context of Resolution Proceedings, would be events falling within the definition of the Italian Special Resolution Regime for the purposes of the Italian Country Annex to the ISDA 2015 Universal Resolution Stay Protocol.

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?*

Generally, creditors possessing a perfected right of security under the law applicable to the creation of the interest will have priority in the proceedings to the extent of the liquidated value of the secured assets, ranking as unsecured creditors for any deficiency. While creditors benefiting from a security interest are normally required to submit a proof of claim and have their security realised within the framework of the insolvency proceedings, Decree 170 provides for directly rights of enforcement in favour of a creditor under a financial collateral agreement, such as the Credit Support Documents. In our view, this means that no interest will have priority over the right of the Secured Party to be satisfied out of the proceeds of the Collateral.

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?*

The Security Collateral Taker will be able to exercise its early termination, close-out netting rights and collateral enforcement rights in respect of the ISDA Master Agreement and Credit Support Documents (see details concerning collateral enforcement rights in the response to question 12 above) without being subject to any stay or delay which may otherwise be imposed in the context of insolvency proceedings, save for in the case of admission of a Collateral Provider which is a Financial Institution to Resolution Proceedings, in which case the following stays may apply:

(a) Temporary Stay on termination, close-out netting and collateral enforcement rights

The resolution authority may stay certain contractual rights for a period which, at a maximum, can extend from the date on which the exercise of such stay right is published until midnight of following business day (the **Temporary Stay Period**).

Contractual rights which may be subject to stay during the Temporary Stay Period are the following:

(a) any payment or delivery obligation arising under any contract entered into by the entity in resolution and due in the Temporary Stay Period (Article 66);

(b) the enforcement of collateral guarantees in respect of assets of the entity in resolution during the Temporary Stay Period (Article 67.4);

(c) the right to rely upon any contractual termination mechanism of a contract entered into by the entity in resolution or subsidiary of such entity if: (i) the resolution entity guarantees the subsidiary's payment obligation, (ii) the reason for termination is the parent resolution or insolvency or financial situation; and (iii) in the case of a transfer of shares, other instruments of ownership or assets and liabilities of the entity in resolution, all of the assets and liabilities of the of the relevant subsidiary are intended to be transferred to the same buyer or the resolution authority confers suitable protection to such undertaking (Article 68(2)).

Any of the contractual rights under (a) to (c) above may be exercised if the resolution authority notifies the counterparty to the relevant ISDA Agreement, prior to the expiration of the Temporary Stay Period, that the assets and liabilities covered by the ISDA Agreement will not be transferred to another entity nor be made subject to bail-in (Article 68(4)).

According to Article 68(5), upon expiration of the Temporary Stay Period, contractual termination rights, in addition to rights of set-off, netting or collateral enforcement, are reinstated, subject to the impact of the Permanent Close-out Stay (as defined below), if either of the following situations applies:

(i) in the case of a transfer of the relevant contract to another entity, an event of default, other than one linked to the actual transfer itself occurs with reference to the transfer; or

(ii) in the absence of any relevant transfer, the liability underlying the contract has not been subject to bail-in.

Absent an order for suspension of payment and delivery obligations pursuant to Article 66 Decree 180 does not provide that, in the event of resolution, payment or delivery obligations are suspended.

3.2 Permanent Stay on enforcement of certain contractual rights

Pursuant to Article 65 of Decree 180, the adoption of a resolution measure (even if accompanied by a judicial declaration of insolvency), as well as the occurrence of any event which is related to the adoption of such resolution measure will not, in the absence of a cause of breach in the payment or delivery obligations

(including by way of collateral) for the purposes of Article 1455 of the Italian Civil Code, constitute an event of default and will not entitle the counterparty of the Financial Institution in question (or of any group company in respect of which the relevant contract provides for a form of guarantee or cross-default relating to the Financial Institution) to:

(i) declare the early termination, suspension or amendment of contracts/transactions entered into with such entity;

(ii) exercise any set-off or close-out netting rights in respect of rights or obligations which result from such contract/transaction;

(iii) abstain from rendering counter-performance under such contractual relationship/transaction.

Any contractual provision which entitles a party to a contract with an entity in resolution to exercise any of the above rights will be unenforceable.

Article 1455 of the Civil Code provides that contractual termination rights may not be relied upon if the breach in question is of small importance having regard to the interest of the non-defaulting party. In other words, an Event of Default based on Misrepresentation or a failure to provide certain documents would not be sufficient in order to overcome the permanent stay. In practical terms, the right to trigger an early termination of the ISDA Agreements in respect of a Financial Institution made subject to Resolution Proceedings may only be exercised in the event of a failure on the part of the Financial Institution in question (whether prior to or following the initiation of resolution proceedings but subject to our comments under 3.1 above concerning the Temporary Stay Period), to make any payment or delivery, including any delivery of collateral due to the other party.

This is a permanent stay on resolution related termination rights (the **Permanent Close-out Stay**), so long as performance of payment and delivery obligations continues to be made by the Financial Institution in question. We note, however, that the Close-out Stay will not apply to subsequent and independent resolution proceedings.

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 (or the IM calculation provisions in the case of the IM Security Documents) 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?*

General background in connection with Italian claw-back rules

Articles 66 and 67 of the Bankruptcy Law, provide that an insolvency official is, in certain circumstances, entitled to set aside certain transactions entered into by the insolvent debtor, if the transactions occurred during a preference period preceding the declaration of bankruptcy (the **Suspect Period**). The purpose of this rule is to safeguard the equal treatment of creditors (*par condicio creditorum*) and to avoid transactions that may diminish the debtor's assets.

As relevant to the subject matter of this advice, we note that the following provisions of Article 67 of the Bankruptcy Law are relevant:

(i) Suspect Period of six months for the creation of security with respect to debts which, as of the date of creation of the security, have already matured;

(ii) Suspect Period of six months for the creation of security for debts simultaneously incurred; and

(iii) Suspect Period of one year for the creation of security for pre-existing but unmatured debts.

In the case of any transaction (whether subject to a one year or six month Suspect Period) the debtor's counterparty can oppose the setting aside, by giving evidence that he was not aware that the debtor was insolvent at the relevant time. In the case of transactions subject to a six month Suspect Period (except for case *sub* (i)), the burden of proof is on the relevant insolvency official to show that the counterparty was aware that the debtor was insolvent at the time of entering into the transaction.

Article 66 of the Bankruptcy Law, on the other hand, makes reference to the ordinary preference action available pursuant to Article 2901 C.C., where a right of revocation exists if:

(iv) a transaction causes prejudice to the other creditors;

(v) the debtor was aware of such prejudice; and

(vi) the debtor's counterparty was also aware of the prejudice caused to the other creditors.

Any such action must be initiated within five years of the date of the relevant transaction. If the action is a success, the transaction will be declared void and, therefore, each party must return the assets received under that transaction.

Article 67 does not normally apply to reorganisation proceedings under Italian law[13], although if it is not possible to assist the relevant debtor to overcome what is deemed initially to be a temporary financial crisis, such that liquidation proceedings are ultimately commenced, the suspect period for the purposes of any action under Article 67 will commence from the date of admission to reorganisation proceedings rather than the effective date of the liquidation proceedings.

We assume that all Collateral provided pursuant to any of the Security Documents will be delivered in respect of new Transactions, *i.e.* Transactions which were **not** already outstanding as of the date Collateral is first provided for them under the Security Documents. As a result, we believe that only the six month Suspect Period could apply to Collateral provided pursuant to the Security Documents.

Decree 170 has introduced rules specifically aimed at determining when additional Collateral should be determined to have been created for the purposes of Article 67 of the Bankruptcy Law. In particular, Article 9 of the Decree specifies that additional Collateral provided as a result of a change in the amount of the secured obligation following variations in current market values or the value of Collateral originally provided should be treated as having been provided at the time of provision of the original collateral. On the contrary, additional Collateral provided in any other circumstances (including, in our view, as a result of the conclusion

[13] Save in certain circumstances where Article 67 may apply in proceedings for extraordinary administration pursuant to Decree 270 and Decree 347. In particular, Article 49 of Decree 270 allows the extraordinary administrator to challenge transactions as a preference in compliance with Articles 66 and 67 of the Bankruptcy Law only if a programme for sale of the going concern had been authorised. The terms for proposing claw-back actions start running from the declaration of insolvency. Likewise, Decree 347 allows the extraordinary administrator to challenge transactions as a preference in compliance with Articles 66 and 67 of the Bankruptcy Law even after the authorisation of the restructuring programme, therefore, in the context of a pure restructuring without any sale, provided that the setting-aside of these transactions is advantageous for the relevant creditors.

of further Transactions or a deterioration in the credit-worthiness of the Security Collateral Provider) is treated as having been provided at the time of delivery of the additional Collateral.

In relation to substitute Collateral, we note that Decree 170 expressly provides that financial collateral provided in accordance with a "substitution clause"[14] does not give rise to a new provision of security for the purposes of Articles 66 and 67 of the Bankruptcy Law and is considered to have been provided on the date on which the original financial collateral was delivered.

Impact of EU law on risk of claw-back for collateral

The following discussion is subject to the general qualification expressed in the introductory portion of this memorandum, to the effect that we are not in a position to anticipate the potential consequences of a future exit of the United Kingdom, or any part thereof, from the European Union. This point is of particular importance in relation to the following discussion since the "safe-harbour" from avoidance actions available pursuant to the EU legislation referred to in the following paragraph only applies where the "act" in question is subject to the law of a Member State.

Notwithstanding the provisions of Article 66 and 67 of the Bankruptcy Law, as outlined above and discussed at length in the Italian Collateral Opinion, we believe that certain provisions of EU law substantially reduce the risk of claw-back under Italian law in the context of the Credit Support Documents.

In particular and in the context of Commercial Companies, we refer to the fact that Article 13 of the EU Insolvency Regulation allows a creditor a defence to any challenge of an "act" as a voidable preference where it can be proven that the act in question is subject to the law of another Member State and that law does not allow any means of challenge in the relevant case. In relation to Banks, Article 95ter of the Italian Banking Law (implementing Article 30 of the Winding-up Directive), contains the same provision. Article 95ter applies only to Italian Banks and not to the other types of Financial Institution included within the definition of this term as used in the Italian Collateral Opinion, whether or not such entities form part of the same corporate group as a Bank. Article 13 of the Insolvency Regulation and Article 95*ter* of the Italian Banking Law are herein collectively referred to as the EU Provisions.

It is important to note that the EU Provisions act as a defence to an action for avoidance. In other words, the EU Provisions do not exclude the ability of an insolvency official to undertake an action for claw-back and their impact will necessarily arise in the context of litigation before an Italian Court where an insolvency official feels that the requirements for avoidance under Italian law have otherwise been met.

The text of the EU Provisions is to some extent ambiguous and necessarily requires interpretation by the presiding Court. A few pronouncements by the Italian lower Courts in relation to Article 13 of the Insolvency Regulation provide what we believe to be fairly positive context to the impact of the provision in the context of Italian insolvency proceedings relating to Corporates. Because of the virtually identical language used in Article 95ter of the Banking Law, we believe that the considerations which emerge from these cases apply equally to Italian Banks.

Firstly, we note that a 2011 decision of the Tribunal of Rome , issued in connection with the insolvency of the Cirio group, held in favour of application of Article 13 in order to reject an action for claw-back in relation to payments made under a commercial contract for recycling which was determined to have a place of characteristic performance which coincided with the jurisdiction of the governing law, *i.e.* Germany in that case. In that decision, although no insolvency proceedings had been commenced in Germany in relation

[14] The definition of "substitution clause" set forth in Decree 170 refers to a clause inserted in a financial collateral agreement which provides for the possibility to substitute, in whole or in part, the collateral, within the limit s of the value of the assets originally provided by way of collateral.

to the debtor, the Court looked to German insolvency laws to ascertain whether the challenge brought by the administrator could succeed. The Court cited a particular statutory provision of German law and accepted that the relevant provision imposed a three month suspect period for payments made by an insolvent to a creditor. Since the payments at issue made by Cirio fell outside of that time frame, the Court held that the attempt by the Italian administrator to set-aside such payments must fail.

Notwithstanding the broadly positive result reached in this decision, it is not clear the extent to which the EU Provisions require a presiding judge to undertake an evaluation as to the place of "characteristic performance". While such an evaluation may be fairly straightforward in the case of many commercial contracts, in the case of cross-border financial transactions with reciprocal performance, it is more tenuous to identify a place of "characteristic performance". There is a statement by the Court in Cirio to the effect that "The will of the parties in subjecting their contractual relationship to German law, far from constituting a mere expedient to impede the application of Italian law (Article 3, Law no. 975 of 18 December 1984), represents an effective and intentional choice made by the parties, dictated by actual international commercial needs generated from the evident necessity to allow the exportation and sale of Cirio products in Germany, in compliance with German packaging laws.".

Law no. 975 of 1984 referred to in this passage was passed in order to ratify the Rome Convention and the reference to Article 3 thereof in this context would appear to indicate that the Court believed that a choice of law designed merely to frustrate the application of imperative rules of Italian insolvency proceedings could not be admitted for the purposes of Article 13 of the Insolvency Regulation. To this extent, we would agree with the reasoning of the Court in the Cirio decision, but we do not believe that this should be a bar to recognition of the application of English law to the CSA.

A further decision of the Tribunal of Rome dated 7 March 2012 has provided additional comfort as to the impact of application of Article 13 of the Insolvency Regulation, in a case involving the posting of collateral under an ISDA Credit Support Annex entered into between Alitalia and Credit Suisse International. In that decision, the Court confirmed Article 13 prevails over Article 67 of the Bankruptcy Law and is binding on an Italian court, provided only that the party invoking the protection of the Insolvency Regulation proves that the act in question is governed by the law of another Member State and that, in accordance with such law, claw-back would not be permitted. For this purpose, the Court was explicit to the effect that reference in Article 13 of the Insolvency Regulation (and also Article 95ter of the Banking Law) to the need to show that the "act" in question could not be set aside under the governing law "by any means" requires that reference be made to the English law of contracts, as well as insolvency laws and any other provision of English law which would allow for the claw-back action to be successful. The Court found it sufficient that the CSA and also the ISDA Master Agreement entered into between the parties were governed by English law and did not undertake any further examination as to the place of "characteristic performance". In addition, the Court held that expert witness evidence provided by the creditor as to the inability for postings of collateral or execution of the CSA to be set-aside under English insolvency laws or civil laws of general application was sufficient in order to meet the burden of proof required by Article 13.

We note an additional decision rendered by a smaller regional Court, namely the Tribunal of Busto Arsizio , which held in the context of reorganisation proceedings for an Italian private airline company that the attempt by the administrator to set-aside payments under airplane lease agreements made to an Irish lessor could not be allowed, in light of the fact that the lease agreements were subject to English law and the defendant was able to provide expert testimony via affidavit as to the non-availability of any action for claw-back based on the English Insolvency Act. In this case, the Court apparently took the additional step of appointing a court-appointed expert in order to verify the testimony provided via affidavit and was ultimately satisfied as there being no valid means of claw-back under English law, looking to the provisions of the Insolvency Act, as well as more general principles of English law, including case law. It is interesting to note that, prior to the commencement of insolvency proceedings, the debtor had defaulted on a number of lease payments and the parties eventually entered into a settlement agreement governed by Italian law in

order to quantify the amounts of payments owing under the lease going forward. The administrator attempted to use this circumstance in order to show that the payments should be subject to Italian, rather than English law. The Court undertook a close analysis of the drafting of the documentation and ultimately held that payments continued to be governed by the provisions of the English law lease agreements notwithstanding the debt rescheduling exercise documented in the settlement agreement.

MISCELLANEOUS

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?

The IM NY Annex forms part of and is subject to the ISDA Master Agreement. Where the relevant ISDA Master Agreement is governed by English law, but 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, the governing law of the ISDA Master Agreement will accordingly be split (i.e., dépeçage) – English law will govern the pre-printed ISDA Master Agreement, the Schedule and the Transactions but New York law will govern the IM NY Annex. The English jurisdiction provision of the ISDA Master Agreement would apply to the entire agreement including the IM NY Annex. Would the split governing law affect your answer above?

The IM Deed may be entered into in connection with either an English law ISDA Master Agreement or a New York law governed ISDA Master Agreement but as it as a separate agreement and does not form part of the relevant ISDA Master Agreement we assume that the differences in governing law between the relevant ISDA Master Agreement and the IM Deed will not affect your answer above.

Subject only to our comments concerning the law applicable to the creation and perfection of a security interest created in favour of the Secured Party under the relevant Security Document, the parties' agreement on governing law for each Security Document would be upheld by an Italian court. We do not believe that the split governing law would affect the position. We confirm that use of the IM Deed with a New York law governed ISDA Master Agreement would likewise not affect our conclusion.

The submission to the jurisdiction of the English courts would likewise be upheld in Italy, subject to the possible application of the jurisdiction of the Italian courts in the event of admission to insolvency proceedings in Italy.

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?

There are no other local law issues which we would recommend the Secured Party to consider in connection with taking and realising upon the Eligible Collateral from the Security Collateral Provider.

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?

We can foresee no such circumstances.

PART II

TITLE TRANSFER APPROACH PURSUANT TO EACH TRANSFER ANNEX

In this Part II, we consider issues relating to the Transfer Annex. For this purpose you have asked us to assume the same facts as set forth in Part 1, but on the assumption that the parties have entered into a Transfer Annex in connection with a Master Agreement rather than a Secnrity Docnment. For this pnrpose, assnmptions (A) through (K) should be read as modified by the following: references to the "Security Docnment(s)" should be deemed to be references to the "Transfer Annex"; references to the "Security Collateral Provider" and "Secured Party" shonld be deemed to be references to "Transferor" and "Transferee", respectively; and references to "Eligible Collateral" should be deemed to be references to "Eligible Credit Support". Assumptions (L) and (M) do not apply to this Part II.

In addition we make the following additional assumptions:

(l) The Transferor has entered into a Master Agreement governed by English law and a Transfer Annex with the Transferee. Pnrsuant to the terms of each Transfer Annex, and as a matter of English law, transfers of Eligible Credit Snpport involve an outright transfer of title, free and clear of any liens, claims, charges or encumbrances or any other interest of the transferring party or of any third person (other than a lien routinely imposed on all secnrities in a relevant clearance system). If an Event of Default exists with respect to either party, an amount equal to the Value of the Credit Support Balance is deemed to be an Unpaid Amount under the Master Agreement and therefore is taken into account for purposes of determining the amount due upon close-out of the Transaction pursuant to Section 6(e) of the Master Agreement. Although such arrangement has an economic effect similar to the Collateral arrangements evidenced by the Security Documents, neither Transfer Annex is intended to create any form of security interest.

(2) We have also assumed that transfers under the Transfer Annex would not be recharacterized as creating a form of security interest by an English court, provided that the Transfer Annex was not amended in any material way and provided further that the parties by their conduct did not otherwise clearly evidence an intention to create a security interest in the transferred Collateral.

Question relating to the VM Transfer Annexes

For Transfer Annexes, would any of your responses to questions 22 through 29 that you provided as of the last date such responses were provided with respect to your jurisdiction be different as a result of (a) any changes in law in your jurisdiction, (b) the inclusion of the VM Transfer Annex in this opinion that was not previously included, or (c), the inclusion of equity securities as Eligible Collateral described in assumption (I)(4)? If so, please comment specifically on any such changes.

Our most recent update to the Italian Collateral Opinion is dated 14 September 2016 and there have been no further changes in the laws of Italy since that time which impact upon the views expressed in relation to questions 22 through 29 of the Italian Collateral Opinion. The inclusion of the VM Transfer Annex within the scope of analysis is specifically contemplated in our responses provided to questions 22 through 29 below. Finally, as noted in assumption (H) and the discussion under question A of Part I above, the inclusion of equity securities within the scope of analysis would only be problematic to the extent that the shares in question form part of the capital of the Collateral Provider. As noted previously, we provide no advice herein in connection with any disclosure or other obligations existing under Italian securities laws in connection with holdings of Italian listed equities.

Questions relating to each Transfer Annex

22. *Would the laws of your jurisdiction characterize each transfer of Eligible Credit Support as effecting an unconditional transfer of ownership in the assets transferred? Is there any risk that any such transfer would be recharacterized as creating a security interest? If so, is there any way to minimize such risk? What would be the specific consequences of such a recharacterization*

(referring back to issues related to perfection, priority and formal requirements for establishing both as discussed with regard to the Security Documents in Part 1 above).

Article 6 of Decree 170 specifies that a financial collateral arrangement shall take effect in accordance with the terms of the relevant contract, regardless as to how such arrangement is classified[15]. We note, moreover, that Italian law has long recognised that a pledge, deposit or loan of fungible assets, without specific segregation rules, will give rise to an automatic transfer of title to the relevant assets in favour of the pledgee, deposit taker or borrower. In other words, even prior to adoption of Decree 170, Italian law would not have sought to recharacterise transfers under the Transfer Annex in a way which would impede recognition of full property rights over Eligible Credit Support in favour of the Transferee.

We further note that Article 2(a) of Decree 170 provides that a transfer of title with the function of providing security (which in our view would include transfers pursuant to the Transfer Annex) will be treated as equivalent to a pledge for the purposes of the claw-back actions permitted by the Bankruptcy Law. This does not impact upon the conclusions set forth in the preceding paragraph, but merely ensures that a new claw-back Suspect Period will not be instituted each time transfers of Eligible Credit Support are made in favour of the Transferee.

23. *Assuming that the Transferee receives an absolute ownership interest in the Eligible Credit Support, will it need to take any action thereafter to ensure that its title therein continues? Are there any filing or perfection requirements necessary or advisable, including taking any of the actions referred to in question 5? Are there any other procedures that must be followed or consents or other governmental or regulatory approvals that must be obtained to establish, enforce, or continue such ownership interest?*

No formalities are required for the attribution to the Transferee of the enforcement, realisation and other rights granted by the Collateral Directive so long as (1) the financial collateral arrangement is evidenced in writing, and (2) the Collateral has been provided to the Transferee and such provision is also evidenced in writing in a manner which allows for the identification of (i) the date of creation and (ii) the financial assets constituting the Collateral. Therefore, we believe that, assuming appropriate entry of the transfer of Eligible Credit Support to a proprietary account of the Transferee is made, no further actions need to be taken.

24. *What is the effect, if any, under the laws of your jurisdiction of the right of the Transferor to exchange Eligible Credit Support pursuant to Paragraph 3(c) of each Transfer Annex? Does the presence or absence of consent to exchange by the Transferee have any bearing on this question? Please comment specifically on whether the Transferor and the Transferee are able validly to agree in the Security Document that the Transferor may exchange Eligible Credit Support without specific consent of the Transferee and whether and, if so, how this may affect your conclusions regarding the validity or enforceability of each Transfer Annex.*

As was noted in connection with our advice in relation to the Security Documents under questions 4(c) and 11 above, we are of the opinion that both the express provisions of Decree 170 as well as the Italian case law and, by analogy, the Italian legislation dealing with the creation of regular pledges over securities accounts held with an intermediary acting as depository with Monte Titoli S.p.A. provide strong support for the ability to create a security interest, including an irregular pledge (or outright transfer of title), over a fluctuating pool of assets, provided only that the ability of the debtor to substitute assets is specifically foreseen in the relevant agreement with the secured creditor and the secured creditor maintains control over such process. We would imagine that, since each Transfer Annex contemplates a transfer or outright title to the assets in question in favour of the Transferee, there would in any case need to be some action by the Transferee in order to remove

---

[15] Pursuant to Article 6 of the Decree "*financial collateral arrangements which envisage the transfer of title by way of security, including repurchase agreements, shall take effect in accordance with their terms regardless of how such arrangements are classified.*"

the assets intended to be substituted from its proprietary account or, in any case, allow the Transferee to provide the Transferor with Equivalent Securities. We do not believe that any specific consents to substitution are needed in addition.

As to the implications of any exchanges of Eligible Credit Support from an insolvency "claw-back" perspective, we note our comments under question 27 below. For the sake of clarity, in relation specifically to the provisions of Paragraph 3(c) of the Transfer Annex, we note that any exchanges of Eligible Credit Support during the Suspect Period would, in our view, be treated in accordance with the rule set forth in Decree 170 in respect of "substitution clauses"[16], meaning that such exchanges would not give rise to a new provision of security for the purposes of Articles 66 and 67 of the Bankruptcy Law and the replacement Eligible Credit Support would be considered to have been provided on the date on which the original Eligible Credit Support was delivered.

25. *The Transferee's rights in relation to the transferred Eligible Credit Support upon the occurrence of an Event of Default will be governed by Section 6 of the Master Agreement. Assuming that Section 6 of the Master Agreement is valid and enforceable in your jurisdiction insofar as it relates to the determination of a net amount payable by either party on the termination of the Transactions, could you please confirm that Paragraph 6 of each Transfer Annex would also be valid to the extent that it provides for the Value of the Credit Support Balance to be included in the calculation of the net amount payable under Section 6(e) of the Master Agreement.*

Assuming that:

(a) the provisions of Paragraph 6 of the Transfer Annex are valid under English law to the extent that they provide for the Value of the Credit Support Balance to be included in the calculation of the net amount payable under Section 6 of the Master Agreement; and

(b) the parties will provide that, for the purposes of Paragraph 6, the Valuation Percentage will be 100 per cent for each type of Eligible Credit Support represented by the Credit Support Balance,

then such rights would be recognised also in Italy as valid and enforceable.

In fact, this is the way that the irregular pledge is intended to work under Italian law, *i.e.* the Transferee has only the obligation to return to the Transferor the value of the Eligible Credit Support transferred which exceeds the underlying debt, such excess value being determined by reference to the value of the Collateral upon maturity of the underlying debt. We further note that Article 7(1) of Decree 170 specifically provides that clauses for close-out netting are valid and shall take effect in accordance with their terms notwithstanding the commencement of winding-up proceedings or reorganisation proceedings in respect of either party.

26. *Would the rights of the Transferee be enforceable in accordance with the terms of the Master Agreement and each Transfer Annex, irrespective of the insolvency of the Transferor?*

Yes. Article 7 of Decree 170 specifically mandates recognition of close-out netting and collateral enforcement rights notwithstanding the commencement of insolvency proceedings. As a result, the Transferee will be entitled to enforce its rights as contemplated by the relevant Transfer Annex, in particular by:

[16] The definition of "substitution clause" set forth in Decree 170 refers to a clause inserted in a financial collateral agreement which provides for the possibility to substitute, in whole or in part, the collateral, within the limit s of the value of the assets originally provided by way of collateral.

(a) selling the Eligible Credit Support and applying the proceeds towards satisfaction of its claim up to the amount of the secured obligation;

(b) appropriating any Eligible Credit Support, other than cash, in satisfaction of the secured obligation provided that the Transfer Annex sets forth the applicable valuation criteria; and

(c) using any cash Collateral to extinguish the secured obligation.

The Decree requires the Transferee to provide immediate notice to the Transferor and, if applicable, any insolvency official, as to the method of enforcement and the proceeds realised, returning any excess.

27. *Will the Transferor (or its administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official) be able to recover any transfers of Eligible Credit Support made to the Transferee during a certain "suspect period" preceding the date of the insolvency? If so, how long before the insolvency does this suspect period begin? If such a period exists, would the substitution of Eligible Credit Support by a counterparty during this period invalidate an otherwise valid transfer, assuming the substitute assets are of no greater value than the asset they are replacing? Would the transfer of additional Eligible Credit Support pursuant to the mark-to-market provisions of each Transfer Annex during the suspect period be subject to avoidance, either because it was considered to relate to an antecedent or pre-existing obligation or for some other reason?*

The position in relation to "claw-back" of transfers of Eligible Credit Support made to the Transferee, including but not limited to the question of provision of security for pre-existing debts, would be the same as applicable to the Security Documents and is described in detail in the discussion under question 18 above.

28. *Would the parties' agreement on governing law of each Transfer Annex and submission to the jurisdiction be upheld in your jurisdiction, and what would be the consequences if it were not?*

The parties' agreement on English law as the governing law of the Transfer Annex would be upheld by an Italian court, subject to our comments concerning the law applicable to the creation and perfection of an interest created in favour of the Transferor under the Transfer Annex, as well as the possible application of Italian law as the *lex fori* of any insolvency proceedings. The submission to the jurisdiction of the English courts would likewise be upheld in Italy, subject once again to the possible application of the jurisdiction of the Italian courts in the event of admission to insolvency proceedings in Italy.

29. *Is the Transfer Annex in an appropriate form to create the intended outright transfer of ownership in the Eligible Credit Support to the Transferee? If there are any other requirements to ensure the validity of such transfer in each type of Eligible Credit Support by the Transferor under the Transfer Annex, please indicate the nature of such requirements. For example, are there any requirements of the type referred to in question 6?*

We believe that the Transfer Annex is an appropriate form to affect the intended transfers of Eligible Credit Support.

Close-out Amount Protocol

We also request your advice on the Close-out Amount Protocol. The 2009 ISDA Close- out Amount Protocol was published on Monday February 27, 2009. The purpose of the Protocol is to facilitate amendment of existing 1992 ISDA Master Agreements to replace Market Quotation and (subject to the election to preserve Loss provisions) Loss with Close-out Amount.

You can assume that as a matter of the relevant governing law of the agreement the amendments are valid and enforceable. Since all opinions commissioned by ISDA assume (as requested by ISDA) that the governing law of the agreement is either New York or English law, counsel in England and Wales and counsel in New York have each agreed to confirm not only that that the amendments made by the Protocol do not affect the conclusions reached in their opinions but also that they are valid and legally enforceable as a matter of their law.

On the basis that the amendments made by the Protocol to the 1994 NY Annex, 1995 Deed and 1995 Transfer Annex do not alter the security or transfer provisions of the documents but merely seek to ensure that the exposure calculation reflects the amended close-out amount calculations, we assume that this amendment will not affect the conclusions reached in your collateral opinion. We would be grateful if you could confirm this.

We have reviewed the ISDA 2009 Close-out Amount Protocol and confirm that if a Credit Support Document entered into by an Italian party falling within the scope of this memorandum, were amended pursuant to the ISDA 2009 Close-out Amount Protocol, our conclusions in this memorandum would not be materially affected.

Collateral Agreement Negative Interest Protocol

Finally, we request your advice on the Collateral Agreement Negative Interest Protocol. The 2014 ISDA Collateral Agreement Negative Interest Protocol was published on Monday May 12, 2014. The purpose of the Protocol is to allow adherent parties to address the uncertainty created by negative interest rates by allowing them to modify provisions in certain ISDA-published collateral agreements such that if an interest amount for an interest period is negative, the party pledging cash collateral pays the absolute value of that interest amount to the collateral receiver for that interest period.

On the basis that the amendments made by the Protocol to the 1994 NY Annex, 1995 Deed and 1995 Transfer Annex do not alter the security or transfer provisions of the documents but merely seek to ensure that parties can account for negative interest amounts on cash collateral, we assume that this amendment will not affect the conclusions reached in your collateral opinion. We would be grateful if you could confirm this.

We have reviewed the ISDA 2014 Collateral Agreement Negative Interest Protocol and confirm that if a Credit Support Document entered into by an Italian party falling within the scope of this memorandum, were amended pursuant to the ISDA 2014 Collateral Agreement Negative Interest Protocol, our conclusions in this memorandum would not be materially affected.

This letter is addressed to ISDA solely for the benefit of its members in relation to their use of the ISDA Master Agreements, the IM Security Documents and the Italian Opinions. 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 for or professional advisor to such ISDA member for purposes of information only, on the basis that we assume no responsibility to such authority, advisor or any other person as a result or otherwise and further that we assume no responsibility whatsoever in connection with any advice which may be rendered to or on behalf of such ISDA member by its professional advisors in connection with the matters discussed in this Memorandum or in the Italian Netting Opinion.

Yours faithfully,

Allen & Overy Italy

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.

CERTAIN COUNTERPARTY TYPES[17]

Description	Covered by opinion	Legal form(s)[18]
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 Community (**EC**) 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	Società per Azioni ("S.p.A.") Società cooperativa per azioni a responsabilità limitata ("S.c.a.r.l.") This definition includes the Italian savings banks (*casse di risparmio),* as well as the popular banks (*banche popolari)* and the credit unions (*banche di credito cooperativo).* Licensed under the Banking Art.
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 7Bank in respect of the euro zone).	No	Not Covered Notwithstanding the incorporation of the Bank of Italy into an S.p.A., the insolvency framework applicable to the Central Bank remains uncertain due to its continuing status as a public law entity.

[17] In these definitions, the term "legal entity" means an entity with legal personality other than a private individual.

[18] If appropriate, please indicate, as discussed in the instruction letter, any naming convention or rule that would help a reader of the opinion to identify and classify the entity.

Description	Covered by opinion	Legal form(s)[18]
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	Società per Azioni ("S.p.A.") Società a responsabilità limitata ("S.r.l.")
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.	No	These entities do not exist in Italy, though note description of Investment Fund below, which includes also speculative funds and funds reserved to professional investors.
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	Not Covered Insurance companies are subject to a special regime on insolvency as well as a specific regulatory framework in relation to derivatives trading for different business lines.
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	Not Covered Specific separate analysis would be required for International Organisations with their head offices in Italy (*e.g.* World Food Programme, Food and Agricultural Organisation)

Description	Covered by opinion	Legal form(s)[18]
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 EC legislation.	Yes	Società di investimento mobiliare ("SIM") in the form of a Società per Azioni ("S.p.A."), authorised to offer investment services in accordance with legislative decree n. 58 of 24 February 1998.
Investment Fund. A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide investors with a share in profits or income arising from property acquired, held, managed or disposed of by the manager(s) of the legal entity or arrangement or a right to payment determined by reference to such profits or income. This type of entity or arrangement is referred to as a "collective investment scheme" in EC legislation. It may be regulated or unregulated. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by general law and/or, typically in the case of regulated Investment Funds, financial services legislation. Where the arrangement does not have separate legal personality, one or more representatives of the Investment Fund (for example, a trustee of a unit trust) contract on behalf of the Investment Fund, are owed the rights and owe the obligations provided for in the contract and are entitled to be indemnified out of the assets comprised in the arrangement.	Yes.	These entities are referred to as *fondi comuni di investimento*, and may exist in Italy as open ("fondi aperti") or closed ("fondi chiusi"), including ("fondi immobilier") -ended funds, as well as funds reserved to professional investors (*fondi riservati ad investitori professionali)* and speculative funds (*fondi speculativi*). Note that none of these entities have legal personality and will therefore be entering into transactions through an investment manager, constituted in the form of a *società di gestione di risparmio* ("*S.g.r.*") authorised to offer the service of collective portfolio management pursuant to decree n. 58 of February 1998.

Description	Covered by opinion	Legal form(s)[18]
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	Not covered. Special rules apply to the ability of these entities to enter into derivatives, as well as to situations of insolvency.
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	Not covered. Many different types of Italian law entity could fit within this category, resulting in potential application of a variety of insolvency rules.
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 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.	No	Not Covered Italian law recognises various types of entity which fall within this category, each being subject to a special regime in insolvency.
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	No	Not Covered Special insolvency analysis would apply. Moreover, the Italian State currently does not execute ISDA Master Agreements, unless governed by Italian law. This differentiates substantially from the basis on

Description	Covered by opinion	Legal form(s)[18]
legal entity owned by a sovereign nation state (see "Sovereign-owned Entity").		which the Italian Netting Opinion is provided.
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").	No	Not Covered. Many of these entities (*e.g.* Cassa Depositi e Prestiti, SACE S.p.A., Poste Italiane S.p.A., are subject to special statute, requiring individual insolvency aualysis.
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	Not Covered Not applicable in Italy.