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

Rights of the Collateral Provider under the IM Security 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 Taker
(Collateral Taker Insolvency Opinion)

~~[...]~~16 July 2020

Allen & Overy, Italy

I. INTRODUCTION

1. Overview and scope of issues covered by this memorandum

In this memorandum we consider the rights of the Collateral Provider under the IM Security Documents upon the occurrence of an admission of the Collateral Taker (where the Collateral Taker is one of the entities specified below) to insolvency proceedings in Italy.

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

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

(ii) the 2016 Credit Support Annex for Variation Margin (VM) governed by New York law (the "**VM NY Annex**") and the Amendments for Independent Amounts to be included in Paragraph 13 of the New York law 2016 Credit Support Annex for Variation Margin (VM) (the "**VM NY Annex IA Amendments**");

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

(iv) the ISDA 2018 Credit Support Annex for Initial Margin (IM) governed by New York law (the "**2018 IM NY Annex**");

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

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

(vii) the ISDA 2018 Credit Support Deed for Initial Margin (IM) governed by English law (the "**2018 IM Deed**");

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

(ix) the 2016 VM Credit Support Annex governed by English law (the "**VM Transfer Annex**") and together with the 1995 Transfer Annex, the "**English Law Transfer Annexes**") and the Amendments for Independent Amounts to be included in Paragraph 11 of the English law 2016 Credit Support Annex for Variation Margin (VM) (the "**VM Transfer Annex IA Amendments**");

(x) the 1995 Credit Support Annex governed by French law (the "**1995 Transfer Annex (French law)**");

(xi) the 2016 Credit Support Annex for Variation Margin (VM) governed by French law (the "**VM Transfer Annex (French law)**", and together with the 1995 Transfer Annex (French law), the "**French Law Transfer Annexes**");

(xii) the 1995 Credit Support Annex governed by Irish law (the "**1995 Transfer Annex (Irish law)**");

(xiii) the 2016 Credit Support Annex for Variation Margin (VM) governed by Irish law (the "**VM Transfer Annex (Irish law)**", and together with the 1995 Transfer Annex (Irish law), the "**Irish Law Transfer Annexes**");

(xiv) the 2016 ISDA Euroclear Collateral Transfer Agreement subject to New York law (Multi- Regime Scope) (the "**2016 Euroclear NY CTA**");

(xv) the 2016 ISDA Euroclear Collateral Transfer Agreement subject to English law (Multi- Regime Scope) (the "**2016 Euroclear English CTA**");

(xvi) the 2017 ISDA Euroclear Collateral Transfer Agreement subject to English law (Multi- Regime Scope) (the "**2017 Euroclear English CTA**");

(xvii) the 2017 ISDA Euroclear Collateral Transfer Agreement subject to New York law (Multi- Regime Scope) (the "**2017 Euroclear NY CTA**");

(xviii) the 2018 ISDA Euroclear Collateral Transfer Agreement subject to New York law (Multi- Regime Scope) (the "**2018 Euroclear NY CTA**");

(xix) the 2018 ISDA Euroclear Collateral Transfer Agreement subject to English law (Multi- Regime Scope) (the "**2018 Euroclear English CTA**");

(xx) the ISDA Euroclear 2019 Collateral Transfer Agreement (Multi-Regime Scope) (the "**2019 Euroclear CTA**"); supplemented as the case may be by the French Law Addendum Annex for use with ISDA Euroclear 2019 Collateral Transfer Agreement (the "**2019 Euroclear CTA Additional French Provisions**" and/or the Rider for the ISDA Euroclear 2019 Collateral Transfer Agreement with respect to the use of a Pledgee Representative (the "**CTA Pledgee Representative Rider**") (the "**2019 Euroclear CTA**");

(xxi) the 2016 ISDA Euroclear Security Agreement subject to Belgian law (the "**2016 Euroclear Security Agreement**");

(xxii) the 2018 ISDA Euroclear Security Agreement subject to Belgian law ("**2018 Euroclear Security Agreement**");

(xxiii) the ISDA 2019 Euroclear Security Agreement subject to Belgian law ("**2019 Euroclear Security Agreement**" and, together with the 2016 Euroclear Security Agreement and the 2018 Euroclear Security Agreement, the "**Euroclear Security Agreements**"); and the Rider for the ISDA 2019 Euroclear Security Agreement with respect to the use of a Pledgee Representative (the "**ESA Pledgee Representative Rider**");

(xxiv) the ISDA Clearstream 2016 Collateral Transfer Agreement subject to New York law (Multi- Regime Scope) (the "**Clearstream NY CTA**");

(xxv) the ISDA Clearstream 2016 Collateral Transfer Agreement subject to English law (Multi- Regime Scope) (the "**Clearstream English CTA**");

(xxvi) ISDA Clearstream 2019 Collateral Transfer Agreement (Multi-Regime Scope), supplemented as the case may be, by the French Law Addendum Annex for use with ISDA Clearstream 2019 Collateral

Transfer Agreement (the "**Clearstream 2019 CTA Additional French Provisions**") (the "**Clearstream 2019 CTA**");

(xxvii) the ISDA 2016 Clearstream Security Agreement subject to Luxembourg law (pledged account in the name of the Security-provider) (the "**Clearstream 2016 Security Agreement"**);

(xxviii) the ISDA 2017 Clearstream Security Agreement subject to Luxembourg law (pledged account in the name of the Security-taker) (the "**Clearstream 2017 Security Agreement**");

(xxix) ISDA 2019 Clearstream Security Agreement subject to Luxembourg law (pledged account in the name of the Security-taker) (the "**Clearstream 2019 Security Agreement (ST)**");

(xxx) ISDA 2019 Clearstream Security Agreement subject to Luxembourg law (pledged account in the name of the Security-provider) (the "**Clearstream 2019 Security Agreement (SP)**" and, together with the Clearstream 2016 Security Agreement, the Clearstream 2017 Security Agreement and the Clearstream 2019 Security Agreement (ST), the "**Clearstream Security Agreements**");

(xxxi) the ISDA 2019 Collateral Transfer Agreement for Initial Margin (IM) (Multi-Regime Scope) (the "2019 Multi Law CTA"), supplemented as the case may be, by the French Law Addendum Annex for use with ISDA 2019 Collateral Transfer Agreement for Initial Margin (IM) (the "**2019 Multi Law CTA Additional French Provisions**") and the ISDA 2019 Collateral Transfer Agreement for Initial Margin (IM) which incorporates the 2019 Multi Law CTA Additional French Provisions (the "**2019 CTA**")[1] (the 2019 Multi Law CTA together with the 2019 CTA, the "**2019 Multi Law CTAs**");

(xxxii) the ISDA 2019 Security Agreement for Initial Margin (IM) subject to English Law (the "**2019 English Security Agreement**");

xxxiii) the ISDA 2019 Security Agreement for Initial Margin (IM) subject to New York Law (the "**2019 New York law Security Agreement**");

(xxxiv) the ISDA 2019 Security Agreement governed by Irish law (for use with the 2019 Multi Law CTA) (the "**2019 Irish Security Agreement**");

(xxxv) the ISDA 2019 Security Agreement governed by Luxembourg law (for use with the 2019 Multi Law CTA) (the "**2019 Luxembourg Security Agreement**");

(xxxvi) the ISDA 2019 Security Agreement governed by Belgian law (for use with a 2019 Multi Law CTA) (the "**2019 Belgian Security Agreement**"); and

xxxvii) the ISDA 2019 Security Agreement governed by French law (for use with a 2019 Multi Law CTA) (the "**2019 French Security Agreement**")[2],

in each case, when entered into to provide credit support for transactions ("**Transactions**") entered into pursuant to any of the following forms of ISDA Master Agreement:

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[1] You have informed us that the 2019 CTA is the same as the 2019 Multi Law CTA except that the former also includes the 2019 Multi Law CTA Additional French Provisions in Paragraph 13(v) so that it may be used if the Master Agreement is governed by French law. For the purposes of this memorandum, we have considered only the English language version of the 2019 CTA

[2] For the purposes of this memorandum, we have considered only the English language version of the 2019 French Security Agreement.

(a) the ISDA 2002 Master Agreement (the **2002 Agreement**);

(b) the 1992 ISDA Master Agreement (Multicurrency – Cross Border) (the **1992 Agreement**);

(c) the 2002 ISDA Master Agreement governed by French law (the **2002 French Agreement**); and

(d) the 2002 ISDA Master Agreement governed by Irish law (the **2002 Irish Agreement**).

References below to "the ISDA Master Agreement" or "an ISDA Master Agreement" apply equally, unless context otherwise requires, to the 2002 Agreement, the 1992 Agreement, the 2002 French Agreement and the 2002 Irish 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:

(a) "**2019 Security Agreements**" means the 2019 English Security Agreement, the 2019 New York law Security Agreement, the 2019 Irish Security Agreement and, the 2019 Luxembourg Security Agreement, the 2019 Belgian Security Agreement and the 2019 French Security Agreement;

(b) "**Additional French Provisions**" means the 2019 Euroclear CTA Additional French Provisions, the Clearstream 2019 CTA Additional French Provisions and the 2019 Multi Law CTA Additional French Provisions;

(d) "**Bank Custodian Documents**" means the 2019 Multi Law CTA and the 2019 Security Agreements;

(e) "**Clearstream CTAs**" means the Clearstream English CTA, the Clearstream NY CTA and the Clearstream 2019 CTA;

(f) "**Clearstream Documents**" means the Clearstream Security Agreements and the Clearstream CTAs;

(i) "**Euroclear CTAs**" means the Euroclear English CTAs, the Euroclear NY CTAs and the 2019 Euroclear CTA;

(j) "**Euroclear Documents**" means the Euroclear Security Agreements and the Euroclear CTAs;

(k) "**Euroclear English CTAs**" means the 2018 Euroclear English CTA, 2017 Euroclear English CTA and 2016 Euroclear English CTA;

(l) "**Euroclear NY CTAs**" means the 2018 Euroclear NY CTA, 2017 Euroclear NY CTA and 2016 Euroclear NY CTA;

(m) "**IM Security Documents**" means the IM NY Annex, the 2018 IM NY Annex, the IM Deed, the 2018 IM Deed and the Bank Custodian Documents;

(n) "**Multi Law CTAs**" means the 2019 Euroclear CTA, the Clearstream 2019 CTA and the 2019 Multi Law CTAs;

(o) "**Non-IM Security Documents**" means the 1994 NY Annex, the VM NY Annex and the 1995 Deed; and

(p) "**Pledgee Representative Riders**" means the CTA Pledgee Representative Rider and the ESA Pledgee Representative Rider,

Capitalized terms used herein that are not defined herein shall have the meanings ascribed to such terms in the ISDA Master Agreement, the relevant Credit Support Document, Clearstream Documents, or Euroclear Documents, 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 an ISDA Master Agreement, as shown in Appendix A hereto.

We assume that each initial margin collateral arrangement entered into in connection with an ISDA Master Agreement between two parties is documented under one or more of the IM NY Annex, the IM Deed, the Euroclear Documents and the Clearstream Documents.

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

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

Similarly, in this memorandum:

(A) in relation to the IM Security Documents, the term "**Collateral Provider**" refers to the Pledgor (under the IM NY Annex and the 2018 IM NY Annex), the Chargor (under the IM Deed and the 2018 IM Deed), or the Security-provider under the Bank Custodian Documents, the Euroclear Documents and the Clearstream Documents, as context requires; and

(B) the term "**Collateral Taker**" refers to the Secured Party (under the IM Security Documents except the Bank Custodian Documents) or the Security-taker (under the Bank Custodian Documents, the Euroclear Documents and the Clearstream Documents).

The term "**Collateral**", when used in this memorandum, refers, in the case of each IM Security Document, to any of the types of collateral described below in respect of which a security interest has been created by the Collateral Provider in favour of the Collateral Taker to provide credit support for the obligations of the Collateral Provider under the relevant ISDA Master Agreement:

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

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

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

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

For the foregoing purposes:

(a) the Location of the Collateral Taker 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 Provider is relevant to consideration of the issues discussed herein in the event of insolvency proceedings in Italy in respect of that Collateral Taker.

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

This memorandum 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 and interpreted on today's date. This memorandum 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). We have assumed that no foreign law qualifies or affects our analysis or conclusions set out below. 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. This memorandum is governed by Italian law and expresses no opinion on matters of fact.

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

(i) our Memorandum of Law dated 18 January 2018 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 18 January 2018 for ISDA 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; (ii) the 1995 Credit Support Deed governed by English law; and (iii) the 1995 Credit Support Annex governed by English law, the IM Security Documents, VM CSA and VM Transfer Annex against the Collateral Provider (the **Italian Collateral Provider 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 Provider under the IM Security 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 Taker where the Collateral Taker falls within one of the following categories:

(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** with fixed or variable capital (respectively, "**SICAF's**" and "**SICAV's**") having their registered office in Italy and incorporated pursuant to Part II, Title III of Decree 58;

(6) fund management companies (*società deli gestione del risparmio* or **SGR's**) authorised to offer the service of collective portfolio management pursuant to Decree 58;and, together with the entities described under (2)-(5) above, "**Financial Institutions**"); and

(7) insurance companies (**Insurance Companies**) registered as such pursuant to Article 14 of Legislative Decree no. 209 of 7 September 2005, as amended (the **Insurance Code**).

We note that our advice in relation to SGR's can be interpreted as applying to situations where an SGR enters into an ISDA Credit Support Document as manager of one or more investment funds (**Investment Funds**) created pursuant to Italian law as a ring-fenced asset pool without legal personality in the form of any of the following:

(i) open or closed investment funds, as contemplated by Article 1(1)(k), (k-bis) and (k-ter) of Decree 58; and

(ii) alternative investment funds (AIF's) as contemplated by Article 1(1)(m-ter) and (m-quarter) of Decree 58.

As noted under point 5.7 of the Italian Netting Opinion, the enforceability of close-out netting in relation to Investment Funds may only be obtained on a "fund-by-fund" basis. This situation applies whether or not an ISDA Credit Support Document is in place and the rights of the Collateral Provider as discussed herein should be interpreted accordingly.

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.

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[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.

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. Assumptions

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

(A) The 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.

(B) Each IM Security Document could be entered into in connection with either a New York law or English law governed ISDA Master Agreement or the ISDA 2002 Master Agreement (French law) or the ISDA 2002 Master Agreement (Irish law), 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 and the 2018 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 or 2018 IM NY Annex entered into in connection with an English law governed ISDA Master Agreement or the ISDA 2002 Master Agreement (French law) or the ISDA 2002 Master Agreement (Irish law), the parties will provide in paragraph 13 of the IM NY Annex or the 2018 IM NY Annex that the Annex is governed by and construed in accordance with New York law. In the case of the Bank Custodian Documents, the 2019 Multi Law CTAs are subject to the same governing law as the related Master Agreement and there are variations of the 2019 Security Agreement with different governing laws to be used in conjunction with a 2019 Multi Law CTA.

(C) 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, for the sake of simplicity, that the same party is the Security Collateral Provider at all relevant times under the applicable Security Document. In the case of the IM Security Documents, both parties will be required to post Collateral to the other (either under the same IM Security Document (in the case of the Bank Custodian Documents, the same 2019 Multi Law CTA may be used in conjunction with a second 2019 Security Agreement to document the other posting leg) or under separate IM Security Documents or under the Euroclear Agreements or the Clearstream Agreements) in an amount that depends on the IM calculation provisions. For the sake of simplicity we have been asked to consider only the Collateral posting leg of one party.

[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).

(D)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 (including the IM Security Document), and (iii) has duly executed and delivered the ISDA Master Agreement, each Transaction and the relevant Credit Support Documents (including the IM Security Document), such that the obligations provided for under such documentation constitute legally binding, valid and enforceable obligations of each party.

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

(F)Eligible Collateral may, pursuant to the IM Security Documents, include cash denominated in a freely convertible currency and credited to an account (as opposed to physical notes and coins) and certain types of securities (as further described below) that are located or deemed located either (i) in Italy, or (ii) outside Italy.

(G)Any securities provided as Eligible Collateral are denominated in either Euro or any freely convertible currency and consist of (1) corporate debt securities whether or not the issuer is organized or located in Italy; (2) debt securities issued by the government of Italy ; (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 Italy, in the form of intermediated securities. 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 assume that all of the securities indicated under (1) to (4) above will exist in the form of intermediated securities.

By ‘intermediated securities’ we mean a form of interest in securities recorded in fungible book-entry form in an account with a financial intermediary.[6]

The financial intermediary will either itself hold the underlying security directly (for example, in certificated bearer or registered form (which may be 'immobilised'), or dematerialised form) or indirectly through a chain (composed of one or more tiers) of other financial intermediaries (sub-custodians). At the top of the multi-tiered holding structure,[7] the underlying security would typically be held by a financial intermediary or other person in certificated bearer or registered form (which may be 'immobilised'), or dematerialised

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

[7] It has become conventional in the international literature on intermediated securities to apply a vertical metaphor to these holding patterns, so that "upper-tier" intermediaries are considered to be closer to the intermediary or other person in a direct relationship with the issuer of the relevant security while "lower-tier" intermediaries are closer to the financial intermediary with a direct relationship with the ultimate holder of the interest. We follow this convention in this memorandum.

form in a direct relationship with the issuer of the security. In practice, there is likely to be a number of tiers of intermediaries between the entity with the ultimate interest in the security and the issuer of such security, at least one of which will be an intermediary that is a national or international central securities depositary (a **CSD**).[8]

(H) Pursuant to the terms and conditions of the Master Agreement, the Collateral Provider enters into a number of Transactions with the Collateral Taker. Such Transactions include any or all of the transactions described in Appendix A. Under the terms of each IM Security Document, the security interest created in the relevant Collateral secures the Obligations of the Collateral Provider arising under the Master Agreement as a whole.

(I) An Event of Default under Section 5(a)(vii) of the Master Agreement with respect to the Collateral Taker has occurred and a formal bankruptcy, insolvency, liquidation, reorganization, administration or comparable proceeding (collectively, the "insolvency") has been instituted by or against the Collateral Taker according to the laws of Italy. We indicate under point 4 below a list of the relevant insolvency proceedings which may apply to a Collateral Taker under Italian law.

(J) 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 (i.e. is an individually segregated account, referred to in the IM Security Documents as a Segregated Account); 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. This agreement is referred to as the Control Agreement in the IM Security Documents and we assume that the Control Agreement constitutes legal, valid and binding obligations under its governing law.

(K) In certain circumstances, "initial margin" Collateral may be held at a central securities

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[8] Article 3(2) of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories (the **CSDR**) suggests that where 'transferable securities' are transferred pursuant to a financial collateral arrangement (as defined in the Collateral Directive) those securities must be in book-entry form in a CSD. Under Recital 11 and Article 3(1) immobilisation and dematerialisation both qualify as methods for book-entry recording.
The full implications of this provision are not clear but, in addition to the obvious application to title transfer financial collateral arrangements, it is possible that this requirement in the CSDR could also have implications in relation to a security financial collateral arrangement where the nature of the security interest effects a 'transfer' of the transferable securities. As a matter of English law this would be the case where a legal mortgage over those securities is taken and could, in theory, also include an equitable mortgage.
The CSDR appears less directly relevant to collateral arrangements of the type envisioned by the IM Security Documents – the grant of the security interest will not itself constitute a 'transfer' (although of course the securities will need to transferred into the Segregated Account as a pre-condition to becoming subject to the financial collateral arrangement). Article 3(2) refers to securities being transferred following a financial collateral arrangement but recital 11 refers to the collateral being 'provided' pursuant to a financial collateral arrangement which suggests that the requirement relates to a transfer at the time of creation rather than enforcement (see also Yeowart and Parsons with Murray and Patrick, *Yeowart and Parsons on the Law of Financial Collateral* (Elgar Financial Law and Practice 2016 ch 16)).
As the CSDR provides, at Article 8(3), that an infringement of Article 3(2) shall not affect the validity of the relevant contract, we do not consider the CSDR further in this memorandum. However, ISDA members should be aware that failure to comply could result in liability for breach.

depository. In these circumstances, the parties will not enter into an IM Security Document. Instead we assume that (x) the Collateral is held in an account within Euroclear or Clearstream; (y) the parties have entered into the Euroclear Documents or the Clearstream Documents (as applicable) and other relevant documentation with Euroclear or Clearstream, which collectively establish collateral arrangements within Euroclear or Clearstream (as applicable) and set forth (i) the manner in which the Collateral is held in Euroclear or Clearstream and (ii) the manner in which the automated transfers of Collateral by Euroclear or Clearstream will be effected (i.e., upon receipt of matching instructions from the Collateral Provider and Collateral Taker as to the overall amount of initial margin Collateral that is required in respect of such Collateral Provider's posting obligation, Euroclear or Clearstream, as applicable, will calculate any excess or deficit and make the relevant transfers accordingly on behalf of the parties in discharge of their obligations to one another) (the **Collateral Management Services Documents**[9];and (z) the Euroclear Documents or the Clearstream Documents and the Collateral Management Services Documents (as applicable) are enforceable in accordance with their terms under applicable law (which may be different than the laws of Italy) and have been entered into by each party thereto following the taking of all necessary action to duly authorise, execute and deliver the such documents.

With regard to the foregoing, we note that:

(I) in the case of Euroclear, the Collateral is held in a "Pledged Securities Account" and a "Pledged Cash Account" opened in the Euroclear System in the name of Euroclear acting in its own name but for the account of the Collateral Taker (as pledgee under the pledge granted under the Euroclear Security Agreement) and to be operated in accordance with the relevant Euroclear documents referred to at (y) above; and

(II) in the case of Clearstream, the Collateral is held in a "Collateral Account" opened in the Clearstream system in the name of the Collateral Provider and pledged to the Collateral Taker pursuant to the Clearstream Security Agreement and to be operated in accordance with the relevant Clearstream documents referred to at (y) above.

In respect of the Clearstream Documents, the parties have entered into (A) any of (I) the Clearstream 2016 Security Agreement, (II) the Clearstream 2017 Security Agreement, (III) the Clearstream 2016 Security Agreement, the ISDA 2016 Clearstream Security Novation Agreement and the Clearstream 2017 Security Agreement, (IV) the Clearstream 2019 Security Agreement (SP) or (V) the Clearstream 2019 Security Agreement (ST) and (B) the Clearstream CTAs.

For the avoidance of doubt, if the parties have entered into the documents referred to in the previous paragraph, the Clearstream 2016 Security Agreement is entirely replaced by the Clearstream 2017 Security Agreement and accordingly, Collateral is held in a "Collateral Account" opened in the Clearstream system in the name of the Collateral Taker.

(L) The Multi Law CTAs are subject to the same governing law as the related Master Agreement. In relation to any Multi Law CTA governed by French law, we assume that the relevant

[9] For the avoidance of doubt, we have not reviewed the terms of any Collateral Management Services Documents for the purposes of providing this advice.

Additional French Provisions apply.

(M)The parties may enter into more than one IM Security Document, including multiple IM Security Documents each subject to different governing laws, and/or may enter into arrangements described in assumption (K) instead of entering into an IM Security Document.

(N)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.

(O)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.

(P)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.

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

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

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

(T)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).

(U) After entering into the Transactions and prior to the maturity thereof, an Event of Default under Section 5(a)(vii) of the ISDA Master Agreement has occurred and is continuing in respect of the Collateral Taker as a result of a formal bankruptcy, insolvency, liquidation, reorganisation, administration or comparable proceeding (within the list set forth under point 4 below and collectively referred to herein as ‘‘insolvency proceedings’’) that has been instituted against the Collateral Taker.

(V) No provision of any Control Agreement, custodial agreement or other document or agreement of whatever nature and however described referred to in any Security Document, Euroclear Document or Clearstream Document is inconsistent with the terms of that Security Document, Euroclear Document or Clearstream Document or the analysis set out, or opinions expressed, in this Opinion in respect thereof.

4. Insolvency Proceedings in respect of an Italian Party

The following is 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 the case of 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[10].

(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[11] and subject to certain notice periods[12]. 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 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

[10] Refer to Italian Netting Opinion for further information.

[11] Formerly the Minister of Industry.

[12] 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.

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[13] 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.

The proceedings described under (a) to (d) above are initiated upon petition made to the competent court. The proceedings under (e) above are initiated upon petition made by the debtor company to the Minister or, in the case of companies performing essential public services, may be commenced directly pursuant to an order issued by the Prime Minister or the Minister.

In addition to the above, we note that Legislative Decree no.14 of 12 January 2019, which has introduced a "Code of business crisis and insolvency" (the **Insolvency Code**) substantially reforms the landscape of Italian insolvency proceedings which apply to Commercial Corporations. Most of the provisions of the Insolvency Code (and certainly those of relevance to the issues discussed in this Memorandum) were scheduled to enter into force on 14 August 2020 but, as a consequence of Covid-19 related legislation[14], will now enter into force on 1 September 2021.

One of the primary objectives of the Insolvency Code was to encapsulate and, to the extent possible, harmonise all of the various types of insolvency measures and procedures which may be applied to Commercial Corporations. Notwithstanding this objective, the Insolvency Code does not address measures for Extraordinary Administration pursuant to Decrees 270 and 347, such that the proceedings described under points (iv) and (v) remain governed by their current legislative sources. The following is an indication of insolvency proceedings which will apply to Commercial Corporations as from 1 September 2021, in substitution of the proceedings described under point (i) to (iii) above.

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

[14] See Article 5 of Law Decree no. 23 of 3 April 2020.

The Insolvency Code distinguishes between early intervention proceedings which will involve only key creditors and are addressed in Title I which is entitled "Procedures of Alert and Assisted Composition of the Crisis" (herein the **Alert Procedure**) and procedures involving participation by all creditors for satisfaction of their claims ("Procedures Regulating Crisis and Insolvency", herein **Competition Procedures**).

The Alert Procedure is to be managed on application by the debtor to a newly-instituted Organism for Composition of Business Crises (**OCRI**) or, in the case of Small Debtors (as defined under 2 below), Organism for Composition of Crises (**OCC**). The OCRI and the OCC are agencies to be stationed with each territorial Chamber of Commerce.

In relation to Competition Procedures, the Insolvency Code addresses proceedings for Judicial Liquidation (formerly known as "*fallimento*" and identified under point (i) above as Bankruptcy Proceedings), Concordato Preventivo and Hybrid Restructuring, in addition to separate proceedings which apply to individuals (including consumers) and Small Debtors (as defined below). For Small Debtors, the Insolvency Code sets forth rules for Small Composition (*Concordato Minore*) or Controlled Liquidation (*Liquidazione Controllata*)

For completeness, we note that the Insolvency Code includes reference also to the use of a "certified restructuring plan" (*piano attestato di risanamento* or **Recovery Plan**) as a non-judicial "instrument for management of the crisis" (*strumento di regolazione della crisi*). A Recovery Plan may be entered into by a debtor with a group of creditors (and not necessarily all creditors) and does not require court approval, although it must be certified by an independent professional expert who meets certain qualifications. The expert must, inter alia, attest to the feasibility of the Recovery Plan and the accuracy of the financial and related business information on which it is based. Actions taken in furtherance of a Recovery Plan will benefit from certain exemptions from "claw-back", subject to the relevant insolvency judge finding that the Plan met all relevant requirements and that disposals of assets (including as to the granting of security) were made in strict compliance with the provisions of the Recovery Plan. Reference to the use of a Recovery Plan was previously made also in the Bankruptcy Law, although solely in connection with the terms of Article 67(3) which specified a list of exemptions from "claw-back". In any case, since the use of a Recovery Plan does not involve a situation affecting the rights of non-participating creditors, we do not consider it an "insolvency proceeding" for the purposes of this Memorandum.

Finally, we note that the Insolvency Code provides that the following types of debtor (herein **Small Debtors**), which may or may not be incorporated as an entity type included in the definition of Commercial Corporation, will be subject to a separate set of proceedings and will not be the subject to Judicial Liquidation, Concordato Preventivo or Hybrid Restructuring:

(a) minor businesses (*imprese minore*) defined as businesses which meet all of the following criteria;

(i) assets measured on the balance sheet on an annual basis not exceeding Euro 300,000 for the three fiscal years preceding the date of deposit of the petition for admission to proceedings;

(ii) annual turnover, in whatever method realised, not exceeding Euro 200.000 for the past three fiscal years;

(iii) debts, including those not yet matured, not exceeding Euro 150,000 (with such amount capable of adjustment on a quarterly basis through publication by the Ministry of Justice of a decree)~~;~~.

(e) farming businesses (*imprenditori agricolo*), which are businesses organised pursuant to Article 2135 of the Italian Civil Code (C.C.) and undertake activities of cultivation of produce or undeveloped lands and/or livestock raising; and

(f) innovative start-ups (start-up *innovativi*) meeting the criteria set forth in Article 25 of Law Decree no. 179/2012 , among which we note the following:

(i)not be listed on any regulated market or MTF;

(ii)be in existence for not more than 5 years;

(iii)have an annual production value of not more than 5 million Euro starting from its second year;

(iv)not have profits or have distributed profits;

(v)have as its exclusive or prevalent corporate object the development, production and sale of technologically innovative products or services; and

(vi)not result from a merger, spin-off or transfer.

As a result, while it is possible that an entity bearing a "naming convention" which applies to a Commercial Corporation (i.e. *Società per Azioni* (S.p.A.), *Società a responsabilità limitata* (S.r.l.), *Società in nome colletivo* (S.n.c) and *Società in accomandita per azioni* (S.a.p.A.) may be a Small Debtor, it should not be difficult in practice to ascertain whether an Italian Customer falls within any of the categories described under a) to c) above. In light of our assumption under (A) above, we assume for the purposes of this Memorandum that an Italian Party will not be a Small Debtor.

Unless otherwise noted in our responses to Questions 16 to18 below, the impact of the Insolvency Code does not affect our analysis and conclusions.

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[15] to which specific reference is made in the Banking Law[16] 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 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.

15 Royal Decree no. 267 of 1942, as amended.

16 Legislative Decree no. 385 of 1993, as amended.

(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. In the case of a banking group, the maximum period is nine months[17]. 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 Legislative Decree no. 180 of 2015, implementing in Italy the provisions concerning conduct of resolution proceedings as detailed in Directive 59/2014/EU (the **BRRD**), 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**)[18]; 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**)[19].

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[17] There is no guarantee that the ECB will in all cases be the supervisor for a banking group. As noted in the discussion which follows the list of insolvency proceedings, we believe that the early termination, close-out netting and collateral enforcement rights provided to a Non-defaulting Party pursuant to the ISDA Master Agreement would become enforceable upon the institution of a suspension of payments or, even in the absence of a suspension order, if the Italian Party were to default on any obligation owed to the Non-Defaulting Party.

[18] See discussion under point 5.6 of the Italian Netting Opinion for a description of the safeguards against transfers (whether in favour of a Bridge Bank, AMC or private purchaser), amendment or termination of less than all of the rights and liabilities underlying, inter alia, an agreement for netting.

[19] The definition of "derivative" for the purposes of the BRRD refers to the definition set forth in point (5) of Article 2 of Regulation (EU) No 648/2012 (**EMIR)**, which in turn refers to a financial instrument as set out in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC (the **MiFID)** as

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 Agreement 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 and the Italian Jurisdictional Module of the ISDA Resolution Stay Jurisdictional Modular Protocol.

If the Italian Party is an Insurance Company

(i) compulsory administrative liquidation (*liquidazione coatta amministrativa*) pursuant to Title XVI, Chapter IV of the Insurance Code (herein **Insurance Liquidation**), pursuant to Article 245 of the Insurance Code, in the event that: (i) there is a material non-compliance by the Insurance Company of

implemented by Article 38 and 39 of Regulation (EC) No 1287/2006. We believe that the definition of "derivative" for the purposes of the BRRD would apply to all of the Transactions included in Appendix A, save potentially for Physical Commodity Transactions and Commodity Forwards subject to physical settlement. We note in any case that the Bail-in Tool may be used pursuant to the BRRD and Decree 180 in respect of any liability of a Bank, regardless as to whether such liability is in the form of a "derivative".

the regulatory framework; and/or (ii) the measures undertaken in a Plan are not sufficient. An Insurance Administration may be converted into an Insurance Liquidation. An Insurance Liquidation is commenced upon proposal by IVASS to the Minister of Productive Activities. Due to the public interest at stake in the regulation of insurance companies, it is not possible for liquidation proceedings to be initiated directly by court order upon petition by one or more creditors. Creditors may, however, petition the court for a declaration of insolvency on the basis of unpaid claims and, if issued by the court, the declaration of insolvency will certainly be brought to the attention of the Minister of Productive Activities and IVASS for formal commencement of an Insurance Liquidation. As from the date of commencement of the Insurance Liquidation, creditors are prohibited from undertaking or continuing executive measures against the debtor or its assets. An Insurance Liquidation may be converted into a procedure aimed at the composition with, or for the benefit of, creditors; the proposal for the conversion may be submitted by the Insurance Company's debtors, the commissioner or the Insurance Company itself and must be authorised by IVASS.

We believe that Insurance Liquidation would fall within the "Bankruptcy" Event of Default as set out in Section 5(a)(vii) of the ISDA Master Agreement.

For completeness, we note that the Insurance Code also empowers IVASS to undertake certain "*misure di salvaguardia*", pursuant to Title XVI, Chapter I of the Insurance Code (**Safeguard Measures**) and "*misure di risanamento*" pursuant to Title XVI, Chapter II of the Insurance Code (**Restoration Measures**). However, since neither Safeguard Measures nor Restoration Measures purport to impact the rights of creditors, we do not consider them to be insolvency proceedings for the purposes of this Memorandum or to fall within the Bankruptcy Event of Default found in Section 5(a)(vii) of the ISDA Maser Agreement. The following provides a brief description of Restoration Measures and Safeguard Measures.

(A) Restoration Measures may take the form of:

(i) appointment of a commissioner ("*commissario*"), either for the accomplishment of specific actions or, in the event of situations of absolute urgency, for a temporary management of the Insurance Company, pursuant to Article 229 or 230 of the Insurance Code in the event of material non-compliance by an Insurance Company of legislative or regulatory provisions applicable to it, to act in place of the Insurance Company. Once the appointed commissioner has performed the actions in question, the activity of the Insurance Company will continue as before the appointment of the commissioner, unless the proceedings under (b) below are commenced; and

(ii) commencement of an extraordinary administration proceeding (an **Insurance Administration**) pursuant to Article 231 of the Insurance Code, in the event of (i) serious administrative irregularities or breach of applicable legislative or statutory provisions by an Insurance Company or (ii) potential financial losses which cannot be overcome by the appointment of a commissioner. An Insurance Administration is initiated upon a proposal made by IVASS (which may be acting upon request of the Insurance Company's internal organs). Insurance Administration is commenced by decree of the Minister of Productive Activities, will result in the appointment of one or more extraordinary commissioners in replacement of the corporate organs, and may last for a maximum of one year starting from the enactment of the relevant decree (although may be extended for another one year period).

(B) Safeguard Measures, which may be used in the event of, *inter alia*:

(i) a breach of the provisions relating to technical reserves, in which case, pursuant to Article 221 of the Insurance Code, IVASS will notify the Insurance Company a term for cure of the relevant breach and,

if the Insurance Company fails to act within such term, IVASS may, among other actions, appoint a commissioner pursuant to Article 229 of the Insurance Code or, depending on the seriousness of the breach, order that assets used for covering technical reserves registered in a special register held by the company (**Special Register**) be ear-marked and frozen until the company has cured the relevant breach;

(ii) a breach of the solvency capital requirement or minimum capital requirement, in which case, pursuant to Article 222 and of the Insurance Code, IVASS will require the Insurance Company to submit a financial plan (so called *piano di risanamento* or *piano di finanziamento*) indicating the measures that are intended to be adopted to stabilise the financial situation (the **Plan**). IVASS may then subsequently order that assets used for covering technical reserves registered in the Special Register are frozen until completion of, or failure to comply with, the Plan; and

(iii) a situation of financial distress capable of jeopardising the rights of policyholders, in which case, pursuant to Article 222-*bis* of the Insurance Code, IVASS may require the Insurance Company to submit a Plan and may also order the Insurance Company to abstain from disposing of its assets in Italy and order the freezing of assets in the Special Register.

II. IM SECURITY DOCUMENTS, THE EUROCLEAR DOCUMENTS AND THE CLEARSTREAM DOCUMENTS

Introduction

In this Part II we consider issues relating to the rights of a Collateral Provider under the IM Security Documents, the Euoclear Documents and the Clearstream Documents against a Financial Institution or Commercial Corporation acting as Collateral Taker in respect of Collateral delivered under each of the Security Documents, whether the Location of the Collateral is in or outside of Italy.

In this Part II we also consider issues relating to the to the rights of a Collateral Provider under the IM Security Documents, the Euroclear Documents and the Clearstream Documents against a Collateral Taker that is a non-Italian entity where the Collateral is Located in Italy.

By way of general description of the IM Security Documents, we note that the Collateral Taker under the IM Security Documents, is entitled to hold - via a third-party custodian - Eligible Credit Support with a value equal to a certain amount of Collateral to 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 of the IM Security Documents, the 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.

Alternatively, the parties may instead create a collateral arrangement within Euroclear or Clearstream in which case the parties will enter into the Euroclear Documents or Clearstream Documents instead of an IM Security Document (or, in the case of the Bank Custodian Documents, the ~~2019a2019~~2019 Multi Law CTA and a 2019 Security Agreement – see below).

Under the Euroclear Documents or the Clearstream Documents, in either case, there is (i) a relevant Collateral Transfer Agreement which governs the obligations of the parties to transfer or return the Collateral; and (ii) a Security Agreement that creates a security interest under (x) Belgian law (in the case of Euroclear); or (y) Luxembourg law (in the case of Clearstream).

The Bank Custodian Documents are structured in a similar manner to the Euroclear Documents and the Clearstream Documents. The 2019 Multi Law CTAs govern the obligations of the parties to transfer or return the Collateral and there are various 2019 Security Agreements with different governing laws that can be used in conjunction with it that, in each case, create the security interest under the relevant governing law.

Finally, we note by way of general comment that the answers provided below in relation to the IM Security Documents, the Euroclear Documents and the Clearstream Documents assume that the Collateral Provider will be able to exercise its early termination and close-out netting rights in respect of the ISDA Master Agreement. As noted in the Italian Netting Opinion, the enforceability of such rights is generally ensured under Italian law in all cases where trading under the ISDA Master Agreement is supported by the exchange of collateral pursuant to an ISDA Credit Support Document, but this is subject to the temporary and permanent stays on exercise of such rights (discussed at length in the Italian Netting Opinion) which may apply where a Financial Institution acting as Collateral Taker is subject to Resolution Proceedings.

The IM Deed

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

(a) The IM Deed and the Control Agreement

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

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

In the case of the IM Deed, it is envisaged that the Chargor will be entitled to deliver a Chargor Access Notice if a Chargor Rights Event occurs in relation to the Secured Party. If a Chargor Access Notice is delivered, the Chargor will have exclusive rights to control the collateral or provide instructions to the Custodian (IM).

We note that Chargor will not have the right to deliver a 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 Affected Party. 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 Chargor Rights 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 Chargor Rights Event occurs. The definitions for the term Chargor Access Notice refers to a notice which the 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.

The rights of the Collateral Provider under any particular Control Agreement will depend on the contractual terms agreed by the Custodian (IM), the Collateral Provider and Collateral Taker. We assume for the purpose of this question that the Control Agreement permits the Collateral Provider to serve a Chargor Access Notice on the Custodian (IM) (being a notice that gives the Collateral Provider exclusive right to direct the Custodian (IM) to block withdrawals or to control the Collateral) in the event of admission of the Collateral Taker to insolvency proceedings in Italy. We further assume that the provisions of any Control Agreement will be valid and enforceable in accordance with the chosen governing law and that each party thereto will have the capacity to enter into the Control Agreement and taken all necessary action to duly authorise, execute and deliver the Control Agreement.

In connection with the provisions of the IM Deed, we note that, pursuant to Paragraph 8(b) (assuming it is not amended by Paragraph 13(m)), if at any time a Chargor Rights Event has occurred and is continuing, then broadly (i) the Collateral Provider may exercise all rights and remedies under applicable law; and (ii) the Collateral Taker is obliged to immediately Transfer all Collateral to the Collateral Provider (which we assume would occur by way of instruction to the Custodian (IM) to immediately release the Collateral).

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

We note that Segregated Accounts are accounts opened with the Custodian in the name of the Chargor. The IM Deed does not purport to create a transfer of title in favour of the Collateral Taker and, as a result, in the event of admission of the Collateral Taker to insolvency proceedings in Italy, the Collateral in the Segregated Account would not form part of the proprietary assets of the Collateral Taker.

At the same time, however, we note that Italian law does not provide a pledgor with specific enforcement rights in relation to collateral, and this is true also in the case of qualifying "financial collateral agreements" for the purposes of Legislative Decree no. 170 of 21 May 2004, as amended, implementing Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (**Decree 170**). In other words, the reference in Paragraph 8(b)(i) of the IM Deed to general rights and remedies under applicable law is unlikely to be of assistance in recovering the Collateral at least from an Italian law perspective. There is no general principle of Italian law that would require a defaulting secured creditor (or its insolvency official) to release a security interest simply because the secured creditor has defaulted.

As a result, we have considered that there is authoritative legal theory and case law to the effect that a contractual provision which provides a creditor with a right to restitution or damages is unenforceable[20] in the context of insolvency proceedings, as a violation of the *pari passu* principle. The objection in these cases has been that a claim for restitution or damages would result in an alteration of the liability/asset position of the bankrupt, as well as the relative position of creditors amongst themselves, in violation of the principle of crystallisation as of the date of admission to proceedings and the rateable distribution of assets among all creditors.

The concern which arises in the case of the IM Deed is thus that the rights of the Collateral Provider to obtain redelivery of Collateral upon admission of the Collateral Taker to insolvency proceedings could be considered to constitute a form of restitution in violation of the *par condition creditorum.* Article 51 of the Bankruptcy Law provides that, unless a statutory exemption applies, as from the date of opening of liquidation proceedings, no individual executory or cautionary actions may be initiated or continued. Article 52 of the Bankruptcy Law requires all creditors, as well as the holders of any real or personal right over moveables or immoveables to submit a claim in the proceedings, to be approved by the presiding judge, even in cases where there is a statutory exemption for the prohibition described in Article 51. We note that these rules are replicated without

[20] Umberto Azzolina, *Il fallimento e le altre procedure concorsuali*, II, UTET, 1966, p. 1203; Renzo Provinciali, *Trattato di diritto fallimentare*, II, Giuffre, 1994, p. 1186.

material change in Articles 150 and 151 of the Insolvency Code. The fact that the Collateral Provider would be able to obtain redelivery of Collateral outside of the proceedings could potentially be seen as problematic from the perspective of this reasoning, i.e. the Collateral Provider would be in a position to satisfy its right to restitution of collateral outside of the insolvency proceedings .

Notwithstanding this issue, we believe that the specific recognition of "close-out netting" pursuant to Article 7 of Decree 170 effectively removes any impediment to the Collateral Provider obtaining redelivery of the Collateral from the Custodian, so long as prior to such redelivery taking place, all outstanding obligations owed by the Collateral Provider to the Collateral Taker have been satisfied. This is because the definition of "close-out netting clause" for this purpose makes reference to "*a provision in a financial collateral arrangement, or in an arrangement of which a financial collateral arrangement forms part, or, in the absence of any such contractual provision, any statutory rule by which, on the occurrence of an enforcement event in relation to the financial collateral…[omissis] an account is taken of that which is due from each party to the other in respect of the single obligations and a net global sum is determined resulting from the balance is payable by the party from whom the larger amount is due, by way of extinction of the reciprocal obligations.*". Based on this definition, we would advise that Paragraph 13(m) be elected as Applicable in respect of an IM Deed entered into with an Italian Collateral Taker in order to add a final paragraph at the end of 8(b) to the IM Deed contemplating the "Delivery in Lieu Right".

We understand that, following exercise of the Delivery in Lieu Right, the Collateral Provider would be entitled, pursuant to Paragraph 8(c) of the IM Deed, to obtain the transfer and release to the Collateral Provider of any excess Collateral. We note in this connection that various references are made in Paragraph 8(c) to the Collateral Provider, in its role as Exercising Party, acting as the Collateral Taker. In this regard, we note that admission to insolvency proceedings will in most cases[21] deprive the debtor of the capacity to administer its assets. We also note that admission to liquidation proceedings results in an immediate termination of any agency relationship where the insolvent is the principal. Our point in this regard is simply that, technically, there may be limitations under Italian law as to the ability of the Security Provider to take action in relation to the Collateral by purporting to act in the name and/or the capacity of the Collateral Taker. Finally, we note that Article 7 of Decree 170 states specifically that *"the close-out netting provision is valid and takes effect in accordance with its term, also in the event of the opening of a proceeding for reorganisation or liquidation* ***with respect to one of the parties****."* [emphasis added]. This drafting is consistent with the provisions of Article 7 of the Italian language version of the Collateral Directive, which provides that close-out netting is enforceable notwithstanding the commencement of insolvency proceedings in relation to *"the collateral provider and/or the collateral taker"*. Article 7 is recognised not only in the Italian academic theory on point, but also in the Governmental Report which accompanied publication of Decree 170, as being necessary in order to protect the risk management practices commonly used in the financial markets, allowing operators to manage and limit, on a net basis, the exposures deriving from all types of financial transactions with a given counterparty. In light of this express recognition of the very important rationale for Article 7, as well as the clear discrepancies with between the drafting of "enforcement event in relation to the financial collateral" and the Italian language version of the Collateral Directive, we believe that an Italian court would uphold the meaning of Article 7 and not limit its effect only to cases where the Collateral Provider becomes subject to insolvency. For similar reasons, we believe that the risk of an insolvency official formally challenging a release of excess Collateral to the Collateral Provider pursuant to the provisions of Paragraph 8(c) of the IM Deed should be limited.

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

[21] In the case of Hybrid Restructuring and *Concordato Preventivo*, the debtor is left in control of its assets, albeit subject to court supervision.

Other than as referred to in the discussion under question 1 above, there are no requirements that the custodial arrangements described in assumption (J) must satisfy in order to permit the Collateral Provider exercise to its contractual rights.

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

Yes. See response to questions 1 and 2 above.

4. *Would the Collateral Provider's ability to exercise its contractual rights be subject to any stay or freeze or otherwise be affected by commencement of the insolvency of the Collateral Taker?*

No, other than the temporary and permanent stays imposed in the context of Resolution Proceedings pursuant to Italian legislation implementing the BRRD. We refer in this connection to the contents of our advice set forth in the Italian Netting Opinion which discusses the impact of certain provisions Legislative Decree no. 18/2015 (**Decree 180**) that allow a resolution authority to:

(i) stay certain contractual rights (including those for the enforcement of close-out netting and/or rights over financial collateral) 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**); and

(ii) provide for a further stay on exercise of contractual rights (including once again rights for close-out netting and collateral enforcement) for so long as there is no default in the payment or delivery obligations (including by way of collateral) on the part of the entity under resolution (the **Permanent Stay**.

5. *Please explain how your responses to questions 1 through 4 above would change if instead of entering into an IM Security Document (or, in the case of the Bank Custodian Documents, a 2019 Multi Law CTA together with a 2019 Security Agreement) and custodial arrangements described in assumption (J), the parties enter into custodial arrangements described in assumption (K)?*

We believe that the arrangements contemplated by assumption (K) would not result in any change to our response to question 1 above in terms of the rights of the Security-provider under the Euroclear Documents and the Clearstream Documents and note in this regard the fact that the provisions of 12.2 and 22.2 of each of the Euroclear Security Agreement and the Cleastream Security Agreement are essentially equivalent to the provisions of, respectively, Paragraph 8(b) and 13(m) of the IM Deed.

Based on our understanding of the arrangements contemplated by assumption (K) and our review of the Euroclear Documents and the Clearstream Documents, 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.

However, we note that a Security–provider Access Notice (which is the equivalent of a Chargor Access Notice in the case of the IM Deed) may be provided by the Collateral Provider if a Security-provider Access Event has occurred, following which the Security-taker will be obliged to immediately transfer all of the Collateral held by Euroclear or Clearstream, as the case may be, to the Security-provider, but without prejudice to the

Security-taker's right to deliver a Notice of Contest to Euroclear or Clearstream in the event that the Security-provider Access Notice was served improperly by the Security-provider[22].

In our view, so long as an election is made for the Delivery in Lieu Right to apply, the provisions of Article 7 of Decree 170 would apply to the rights of the Security-provider to instruct Euroclear or, as the case may be, Clearstream, to make the transfers contemplated by Section 22.2 of the Euroclear Security Agreement and the Clearstream Security Agreement by way of enforcement of the close-out netting rights available to the Security-provider in the event of an admission of the Collateral Taker to insolvency proceedings in Italy, following which the Security-provider would be in a position to obtain redelivery of any excess Collateral. As to the rights of the Security-provider to obtain redelivery of any excess Collateral or proceeds of Collateral, it appears to us from the text of each of the Euroclear Security Agreement and the Clearstream Security Agreement that matching instructions are required from each of the Collateral-provider and the Collateral-taker.

6. *Please explain how your resonses to question 5 above would change if, in relation to the 2019 Eurocler Security Agreement and the 2019 Euroclear CTA, the relevant Pledgee Representative Riders applied and the custodial arrangements were as described in the Pledgee Representative Riders. Please assume that the Representative is either (a) locaed in Italy or (b) not located in Italy, in which latter case please assume that it is not subject to any insolvency proceeding.*

We do not believe that our responses to question 5 above would be altered in the event of application of the Pledgee Representative Riders.

We assume that, as a matter of Belgian law, the Representative (within the meaning of the Pledgee Representative Riders) is acting as security agent in its own name and for the account of the Represented Party for the purposes of the Belgian Financial Collateral Law the consequences of which are, amongst other things, that: (i) the Representative is authorised to exercise all rights and prerogatives which would normally be reserved to the beneficiary of the pledge for whose account the Representative is acting; but (ii) the rights nevertheless form part of the assets of the Represented Party and are valid and enforceable by the Represented Party against third parties including the Representative.

We further assume that the Representative is either (a) located in Italy or (b) located outside of Italy, in which latter case we assume that it is not subject to any insolvency proceeding and, to the extent that the Representative is not incorporated or otherwise organized in Italy, that the laws of its jurisdiction of incorporation or organization would defer to Belgian law in determining the proprietary entitlement of the Represented Party.

In particular, based on the assumptions outlined above, we believe that the courts of Italy would recognise the proprietary rights of the Represented Party (within the meaning of the Pledgee Representative Riders) in the security created pursuant to the 2019 Euroclear Security Agreement incorporating the ESA Pledgee Representative Rider.

In the event of the appointment of an Italian entity as Pledgee Representative, and a subsequent admission of such Italian entity to insolvency proceedings in Italy, we believe that the laws of Italy would respect the application of Belgian law to the security structure created between the Collateral provider and the Collateral taker.

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[22] For reasons set forth in the Italian Collateral Provider Opinion, we assume that the Security-taker will have the right to deliver a Notice of Contest at least in the event that any Event of Default occurs in relation to the Collateral Provider under the ISDA Master Agreement at the time that the Security-provider Access Notice is served.

In reaching this conclusion, we note that the only rule of Italian private international law which applies to the creation of an interest in intermediated securities is the so-called "PRIMA" (or "place of the relevant intermediary" rule), which is discussed in our response to question 2 above. Therefore, assuming that the Pledged Securities Accounts for the purposes of the Pledgee Representative Riders will be opened within the Euroclear system in Belgium, the reasoning set forth in our response to question 2 above would apply, also in the case of admission to of the Italian Representative to insolvency proceedings.

With regard to the Pledged Cash Accounts, once again as noted in the discussion in our response to question 2 above, 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. Therefore, provided that the Pledged Cash Accounts will be opened in the Euroclear system in Belgium, then we believe an Italian court would recognise that Belgian law would apply to the interest created between the collateral taker and collateral provider.

In addition to the above, we believe that the Pledgee Representative Riders clearly illustrate that the Pledgee Representative performs a purely administrative role and certainly has no higher rights in respect of the Pledged Accounts – and in fact a much weaker right – than the Represented Party. In other words, we see no reason for an Italian court to seek to interfere with the application of the PRIMA rule to the Pledged Accounts based on the role of the Pledgee Representative in respect of such accounts or to otherwise seek to assume jurisdiction over the Pledged Accounts, based on any presumed benefit for the estate of the Pledgee Representative in respect of assets credited to the Pledged Accounts. In support of this view as to the absence of any pertinent claim in favour of an Italian Party acting as Pledgee Representative, we note that the provisions of the Riders clarify that that the Represented Party is responsible to the Non-Represented Party for the actions and obligations of the Pledgee Representative in respect of the relevant security arrangements. Likewise, the Riders clarify that the Pledgee Representative has no rights against the Non-Represented Party.

III. MISCELLANEOUS

~~6~~7. *Are there any other local law considerations that you would recommend the Collateral Provider to consider in connection with recovering the Collateral?*

As noted above, it is important for Italian law purposes that the arrangements contemplated by the IM Deed be recognised as giving rise to a financial collateral agreement pursuant to Decree 170. In this connection, 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. This issue could arise where any one of the Collateral Provider, the Collateral Taker or the Collateral itself is Located in Italy.

The requirement for "possession" or "control" in favour of the Collateral Taker or a person acting on its behalf could potentially be impacted by the ability of the Collateral Provider to give instructions in the context of a Chargor Access Notice to the Custodian (IM) upon the occurrence of an event with respect to the Collateral Taker.

In the case of the IM Deed, it is envisaged that the Chargor will be entitled to deliver a Chargor Access Notice if a Chargor Rights Event occurs in relation to the Secured Party. If a Chargor Access Notice is delivered, the Chargor will have exclusive rights to control the collateral or provide instructions to the Custodian (IM).

We note that Chargor will not have the right to deliver a 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 Affected Party. 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 Chargor Rights 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 Chargor Rights Event occurs. The definitions for the term Chargor Access Notice refers to a notice which the 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.

We believe that these arrangements would not prejudice a finding by an Italian Court to the effect that 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 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. 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).

~~7~~8. *Are there any other circumstances you can foresee in Italy that might affect the Collateral Provider's ability to enforce its contractual rights to recover the Collateral?*

We have assumed for the purpose of our answers above that (i) the Custodian (IM) has not also entered into any form of insolvency proceedings; (ii) the Collateral has been properly segregated from the assets of the Custodian (IM); and (iii) accordingly the Collateral will be available to be returned to the Collateral Provider. If the Custodian (IM) were to enter insolvency proceedings, then the ability of the Collateral Provider to recover the Collateral may be impacted, particularly where the Custodian (IM) had failed to properly segregate the assets of its clients from its own assets (in breach of the relevant client asset rules applicable to it).

Notwithstanding the contractual position, it is also possible that a Custodian (IM) would seek to resist acting upon the instructions of the Collateral Provider until a court order has been obtained (in order to insulate the Custodian (IM) from any action of the insolvency official of the Collateral Taker). However, the practical requirement of obtaining such an order would not ultimately prevent the Collateral Provider from enforcing its contractual rights for the reasons given above.

IV. The IM NY ANNEX

Subject to the following, our answers above would also apply to the IM NY Annex, on the assumption that no election has been made in Paragraph 13 to allow the Secured Party to sell, pledge, re-hypothecate or otherwise use the Posted Collateral and/or register the Posted Collateral in the name of the Secured Party, its custodian or a nominee for either.

Where any such rights of use have been granted to the Secured Party, then it is likely that, at least from an Italian law perspective, title to the Posted Collateral would have passed to the Collateral Taker and be deemed to form part of the insolvency estate. As a result, the right of the Collateral Provider would be limited to the right to exercise its early termination and close-out netting rights under the ISDA Master Agreement. Any net amount owed to the Collateral Provider (following enforcement of any rights it may have in respect of Collateral Posted to it by the Collateral Taker), would be subject to rateable satisfaction in any Italian insolvency proceedings applicable to the Collateral Taker.

(a) The terms of the IM NY Annex where Paragraph 8(b)(iii) and (iv) are not amended by Paragraph 13(m)

As is the case with the IM Deed, the contractual rights of the Collateral Provider upon the occurrence of a Pledgor Rights Event under the IM NY Annex will depend on the terms of the relevant Control Agreement and the IM NY Annex.

Under the provisions of Paragraph 8(b) of the IM NY Annex, (assuming it is not amended in Paragraph 13), if at any time a Pledgor Rights Event (which requires that, *inter alia*, an Early Termination Date in respect of all outstanding Transactions have occurred or been designated as the result of an Event of Default or Specified Condition in relation to the Secured Party) has occurred and is continuing, then broadly (i) the Collateral Provider may exercise all rights and remedies under applicable law; (ii) the Collateral Taker is obliged to immediately Transfer all Collateral to the Collateral Provider (which we assume would occur by way of instruction to the Custodian (IM) to immediately release the Collateral); and (iii) to the extent the Collateral is not so transferred/released, the Collateral Provider may Set-off any amounts payable against the value of the Collateral or withhold payment in an amount equal to the Collateral until such time as it is returned.[23]

The reference to general rights and remedies under applicable law in Paragraph 8(b)(i) is unlikely to be of assistance in recovering the Collateral at least from an Italian law perspective. There is no general principle of Italian law that would require a defaulting secured creditor (or its insolvency official) to release a security interest simply because the secured creditor has defaulted.

Paragraph 8(b)(iii) is problematic for the reasons given in our answer to question 1 under Part II above in respect of the IM Deed. In particular, the requirement upon the Secured Party to immediately instruct the Custodian (IM) to transfer all of the Collateral may be considered in violation of the rule considering claims for restitution of assets to be in violation of the *pari passu* principle. As noted in the discussion under question 1 of Part II above, we believe that the only way to render the Collateral Provider's claim to Collateral in the possession or under the control of the Collateral Taker enforceable in the context of insolvency proceedings affecting the Collateral Taker would be by way of exercise of the Collateral Provider's close-out netting rights pursuant to the relevant ISDA Master Agreement, which would ensure that all relevant obligations owed by the Collateral Provider must be satisfied.

In our view the occurrence of a Pledgor Rights Event would not allow the exercise of Set-off rights pursuant to the IM NY Annex or the right to withhold payments of remaining amounts owed to the Collateral Taker, other than by way of enforcement of the close-out netting provisions of the relevant ISDA Master Agreement, as discussed in the response to question 1 of Part II above.

(b) The terms of the IM NY Annex where Paragraph 8(b)(iii) and (iv) are amended by Paragraph 13(m)

[23] We do not consider the remedies for Other Posted Credit Support (IM) as it would depend on the terms of the Other Posted Credit Support (IM).

If the amendment to Paragraph 8(b)(iii) and (iv) in Paragraph 13(m) is applicable, then Paragraph 8(b)(iii) and (iv) of the IM NY Annex are replaced by an equivalent provision to Paragraph 13(j)(viii) of the IM Deed. Our conclusions above in respect of Paragraph 13(j)(viii) of the IM Deed would apply equally to Paragraph 8(b)(iii) and (iv) of the IM NY Annex (as amended by Paragraph 13(m) of the IM NY Annex). In other words, we believe that Paragraph 13(m) should be elected as applicable to the IM NY Annex, in order to ensure that the Collateral Provider will be able to exercise its rights in respect of Collateral in the possession or under the control of the Collateral Taker as a consequence of exercise of its "close-out netting" rights pursuant to Article 7 of Decree 170, and as an exception to the general prohibition on individual actions for restitution of assets in insolvency.

As in the case of our comments under 1(b) of Part I above with respect to the IM Deed, we understand that, following exercise of the Delivery in Lieu Right, the Collateral Provider would be entitled, pursuant to Paragraph 8(c) of the IM NY CSA, to obtain the transfer and release to the Collateral Provider of any excess Collateral. We note in this connection that the various references are made in Paragraph 8(c) to the Collateral Provider, in its role as Exercising Party, acting as the Collateral Taker would give rise to the same issues identified under 1(b) of Part I above in terms of the inability of an Italian debtor admitted to insolvency proceedings to deal with its assets and the termination of agency relationships in the context of liquidation proceedings. Once again, our point in this regard is that, technically, there may be limitations under Italian law as to the ability of the Security Provider to take action in relation to the Collateral by purporting to act in the name and/or the capacity of the Collateral Taker, although the risk of any such formal challenge should be limited in practical terms.

V. COLLATERAL LOCATED IN ITALY

To the extent that Italian law were to apply to the case of enforcement of rights over Collateral Located in Italy in respect of a Collateral Taker made subject to insolvency proceedings outside of Italy (and regardless as to the Location of the Collateral Provider inside or outside of Italy), we believe that the limitations noted above concerning the need for any rights of the Collateral Provider in respect of such Collateral to be subject to the satisfaction of all obligations owed to the Collateral Taker would equally apply. In our view, an Italian court would be likely in any case to look to the question of enforcement of rights over the Collateral in the context of Decree 170 and the protection provided therein in respect of close-out netting. As noted above, Decree 170 does not grant any independent collateral enforcement rights to a Collateral Provider.

VI. PENDING DEVELOPMENTS

Other than as discussed under point 4 of Part I above in connection with Law 155, we are aware of no developments pending in relation to the matters discussed in this Memorandum as a question of Italian law.

* * *

This memorandum is addressed to ISDA solely for its benefit and 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 ISDA or an ISDA member to a competent regulatory or supervisory authority for an ISDA member or professional advisor to ISDA or its 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 AGREEMENT**

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

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

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

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

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

Bullion Trade. A transaction in which one party agrees to buy from or sell to the other party a specified number of Ounces of Bullion at a specified price for settlement either on a "spot" or two-day basis or on a specified future date. A Bullion Trade may be settled by physical delivery of Bullion in exchange for a specified price or may be cash settled based on the difference between the market price of Bullion on the settlement date and the specified price.

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

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

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

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

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

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

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

Commodity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic amounts of the same currency based on the price of a commodity, such as natural gas or gold, or a futures contract on a commodity (e.g., West Texas Intermediate Light Sweet Crude Oil on the New York Mercantile Exchange); all calculations are based on a notional quantity of the commodity.

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

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

Credit Default Swap. A transaction in which one party pays either a single fixed amount or periodic fixed amounts or floating amounts determined by reference to a specified notional amount, and the other party (the credit protection seller) pays either a fixed amount or an amount determined by reference to the value of one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity") upon the occurrence of one or more specified credit events with respect to the Reference Entity (for example, bankruptcy or payment default). The amount payable by the credit protection seller is typically determined based upon the market value of one or more debt securities or other debt instruments issued, guaranteed or otherwise entered into by the Reference Entity. A Credit Default Swap may also be physically settled by payment of a specified fixed amount by one party

against delivery of specified obligations ("Deliverable Obligations") by the other party. A Credit Default Swap may also refer to a "basket" (typically ten or less) or a "portfolio" (eleven or more) of Reference Entities or may be an index transaction consisting of a series of component Credit Default Swaps.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

on the amount of the redemption value relating to such Fund Interest and generally cash-settled (where settlement occurs based on the difference between the agreed forward price and the redemption value measured as of the applicable valuation date or dates).

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

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

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

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

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

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

Repurchase Transaction. A transaction in which one party agrees to sell securities to the other party and such party has the right to repurchase those securities (or in some cases equivalent securities) from such other party at a future date.[24]

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.[25]

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.

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

[25] For the reasons set out in the note above relating to the definition of "Repurchase Transaction", we assume that the reference to identical securities is to be construed as a reference to "fungible" securities rather than the exact same securities originally lent to the borrower. Again, this assumption is consistent, as far as we are aware, with market practice in relation to securities lending transactions governed by English law.

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[26]

Description	**Covered by opinion**	**Legal form(s)**[27]
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.

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

[27] 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)**[27]
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.	Yes	Covered
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)**[27]
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)[27]
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)[27]
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 analysis.
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.

APPENDIX C
RECOMMENDED AMENDMENTS TO DOCUMENTS*

This Appendix aims to assist firms in the consumption and processing of information. We recommend that readers review all relevant sections of this opinion and satisfy themselves as to the conclusions reached prior to making any determinations and do not rely solely upon the information contained in this Appendix.

Application (counterparties)	**Application (documents)**	**Required or optional?**	**Information on amendment**	**Summary of amendment**	**Example wording**
Insurance Companies	*Schedule to ISDA Master Agreement*	*Recommended*	*Discussion under 5.8.1 of this Opinion*	*In order to exclude Transactions constituting assets covering the technical reserves, which must be exempt from set-off or netting, from being documented under the same ISDA Master Agreement as other Transactions. Transactions of this nature should be documented in a single Transaction ISDA Master Agreement.*	*"Party [A/B Insurance Company] hereby represents and warrants that any Transactions entered into hereunder are not being used by Party [A/B] to constitute assets covering the technical reserves (reserve tecniche) of Party [A/B].".*
Insurance Company	*Schedule to the ISDA Master Agreement*	*Required*	*Discussion under 5.8.2 of this Opinion*	*In order to exclude Transactions relating to pension funds, which could be subject to netting purely on a fund-by-fund bases, being documented under the same ISDA Master Agreement as other Transactions. Transactions relating to pension funds should be documented under a separate Master Agreement for the pension fund in question.*	*"Party [B] hereby represents and warrants that any Transactions entered into hereunder are not being used by Party [A/B] in order to hedge, and do not relate or constitute part of, the assets of a pension fund.".*

~~[Please include Appendix C]~~

Summary report: Litera® Change-Pro for Word 10.10.0.103 Document comparison done on 27/08/2020 13:57:56	
Style name: Standard	
Intelligent Table Comparison: Active	
Original filename: Original ISDA Collateral Taker Insolvency Opinion - revised.docx	
Modified filename: EUO1-#2001190684-v1 EUP1-#2003083618-v1 ISDA Collateral Taker Insolvency Opinion - FINAL.docx	
Changes:	
Add	7
~~Delete~~	9
~~Move From~~	0
Move To	0
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	2
Embedded Excel	0
Format changes	0
Total Changes:	18