Dated ~~7 December 2015~~1 September 2017

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

Validity and Enforceability of Collateral Arrangements
under the ISDA Credit Support Documents
- Issues and Analysis under Japanese Law

Linklaters

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International Swaps and Derivatives
Association, Inc.
360 Madison Avenue, 16th Floor
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U.S.A.

~~7 December 2015~~1
September 2017

Dear ISDA and ISDA members:

THE ISDA CREDIT SUPPORT DOCUMENTS; ENFORCEABILITY OF THE COLLATERAL ARRANGEMENTS UNDER JAPANESE LAW

INTRODUCTION

We have been asked by the International Swaps and Derivatives Association, Inc. ("**ISDA**") to produce this memorandum of law with respect to the validity and enforceability under Japanese law of collateral arrangements in connection with transactions entered into under an ISDA master agreement (a "**Master Agreement**")[1], which is documented based on any of the following standard forms published by ISDA:

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

[1] In this memorandum, an "**(ISDA) Master Agreement**" shall mean, unless otherwise specified, a master agreement based on any of the following forms published by ISDA; (a) the 2002 ISDA Master Agreement; (b) the 1992 ISDA Multicurrency – Cross Border Master Agreement; (c) the 1992 ISDA Local Currency – Single Jurisdiction Master Agreement; (d) the 1987 ISDA Interest Rate and Currency Exchange Agreement; and (e) the 1987 ISDA Interest Rate Swap Agreement.

(ii) The 2016 Credit Support Annex for Variation Margin (VM) governed by New York law (the "**VM NY Annex**"), 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**") and the Recommended Amendment Provisions for 2016 Credit Support Annex for Variation Margin (VM) (New York Law) with respect to Japanese Party (the "**VM NY Annex Japanese Party Provisions**");

(iii) The 2016 Phase One Credit Support Annex for Initial Margin (IM) governed by New York law (the "**IM NY Annex**") and the Recommended Amendment Provisions for the ISDA New York Law 2016 Phase One Credit Support Annex for Initial Margin (IM) with respect to Japanese Securities (the "**IM NY Annex Japanese Amendments**");

(iv) ~~(iii)~~The 1995 ISDA Credit Support Deed governed by English Law (the "~~**Deed**" and, together with the NY Annex, the "**Security Documents**"); or~~**1995 Deed**");

(v) The 2016 Phase One IM Credit Support Deed governed by English law (the "**IM Deed**") and the Recommended Amendment Provisions for the ISDA English Law 2016 Phase One IM Credit Support Deed with respect to Japanese Securities (the "**IM Deed Japanese Amendments**");

(vi) ~~(iv)~~The 1995 ISDA Credit Support Annex governed by English law (the "~~**Transfer Annex**" and, together with the Security Documents, the "**Credit Support Documents**").~~**1995 Transfer Annex**").

(vii) The 2016 Credit Support Annex for Variation Margin (VM) governed by English law (the "**VM Transfer Annex**"), 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**") and the Recommended Amendment Provision for the 2016 Credit Support Annex for Variation Margin (VM) (English Law) with respect to Japanese Party (the "**VM Transfer Annex Japanese Party Provisions**");

(viii) The ISDA Euroclear Security Agreement (the "**Euroclear Security Agreement**") and the Recommended Amendment Provisions for the Euroclear Security Agreement with respect to Japanese Collateral (the "**Euroclear Security Agreement Japanese Amendments**");

(ix) The ISDA Euroclear Collateral Transfer Agreement (NY Law) (the "**Euroclear NY CTA**") and the Recommended Amendment Provisions for the Euroclear Collateral Transfer Agreements with respect to Japanese Collateral (the "**Euroclear CTA Japanese Amendments**"; and together with the Euroclear Security Agreement Japanese Amendments, the "**Euroclear Japanese Amendments**");

(x) The ISDA Euroclear Collateral Transfer Agreement (Multi-Regime) (the "**Euroclear Multi-Regime CTA**") and the Euroclear CTA Japanese Amendments;

(xi) The ISDA Clearstream 2016 Security Agreement (the "**Clearstream 2016 Security Agreement**");

(xii) The ISDA Clearstream 2017 Security Agreement (the "**Clearstream 2017 Security Agreement**"; and together with the Clearstream 2016 Security Agreement, the "**Clearstream Security Agreement**") and the Recommended Amendment

Provisions for the ISDA 2017 Clearstream Security Agreement with respect to Japanese Collateral (the "**Clearstream Security Agreement Japanese Amendments**");

(xiii) The ISDA Clearstream 2016 Collateral Transfer Agreement (NY Law) (the "**Clearstream NY CTA**") and the Recommended Amendment Provisions for the ISDA Clearstream Collateral Transfer Agreement (Subject to New York Law) and the ISDA Clearstream Collateral Transfer Agreement (Subject to English Law) with respect to Japanese Collateral (the "**Clearstream CTA Japanese Amendments**"; and together with the Clearstream Security Agreement Japanese Amendments, the "**Clearstream Japanese Amendments**");

(xiv) The ISDA Clearstream 2016 Collateral Transfer Agreement (Multi-Regime) (the "**Clearstream Multi-Regime CTA**") and the Clearstream CTA Japanese Amendments;

(xv) The Novation Agreement and the CBL Services Novation Agreement (collectively, the "**Clearstream Novation Agreement**");

(xvi) The 2016 Phase One IM Credit Support Annex for Initial Margin (IM) governed by Japanese law (the "**IM JP Annex**");

(xvii) The 2016 Credit Support Annex for Variation Margin (VM) governed by Japanese law (the "**VM JP Annex**");

(xviii) The 1995 Credit Support Annex governed by Japanese law (the "**1995 JP Annex**");

(xix) The 2008 Credit Support Annex governed by Japanese law (the "**2008 JP Annex**"); and

(xx) The Trust Scheme Addendum to the IM JP Annex (the "**Trust Addendum**").

~~A collateral arrangement entered into based on each of the above forms is, for~~ For the purposes of this memorandum~~, referred to respectively as a "**NY Annex**", a "**Deed**" or a "**Transfer Annex**", and a "**Security Document**" means either a NY Annex or a Deed.~~:

(i) "**Annex**" means each of the 1994 NY Annex, the VM NY Annex, the IM NY Annex;

(ii) "**Deed**" means each of the 1995 Deed and the IM Deed;

(iii) "**Security Documents**" means the Annexes and the Deeds;

(iv) "**IM Security Documents**" means the IM NY Annex and the IM Deed;

(v) "**JP Annex**" means each IM JP Annex, VM JP Annex, 1995 JP Annex and 2008 JP Annex.

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

(vii) "**Transfer Annex**" means each of the 1995 Transfer Annex and the VM Transfer Annex;

(viii) "**Credit Support Documents**" means the Security Documents and the Transfer Annexes;

(ix) "**Euroclear Documents**" means the Euroclear Security Agreement, the Euroclear NY CTA and the Euroclear Multi-Regime CTA; and

(x) "**Clearstream Documents**" means the Clearstream 2016 Security Agreement, the Clearstream 2017 Security Agreement, the Clearstream NY CTA, the Clearstream Multi-Regime CTA and the Clearstream Novation Agreement.

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement and the relevant Credit Support Document, as applicable.

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

(b) "**Collateral Provider**" means the Security Collateral Provider under a Security Document ~~or~~ , the Transferor under a Transfer Annex or the Obligor under a JP Annex, according to the context, in relation to which "**Collateral Taker**" means the Secured Party ~~or~~ , the Transferee or the Obligee, as the case may be.

The term "**Collateral**", when used in this memorandum, is meant to refer, in the case of each Security Document, to any assets in which a security interest is created by the Security Collateral Provider in favor of the Secured Party and, in the case of ~~the~~ each Transfer Annex, to any securities transferred as credit support or cash deposited, in either case, by the Transferor to or with the Transferee, as credit support for the obligations of the Collateral Provider under the relevant Master Agreement. ~~Collateral, proprietary interests in which are governed by Japanese law pursuant to the Japanese conflict of laws rules, is referred to as "**Japanese Collateral**" and any Collateral other than Japanese Collateral is referred to as "**Non-Japanese Collateral**".~~

The term "**Japanese Collateral**", when used in this memorandum, is meant to refer to the Collateral in respect of which, where such Collateral is subject to a security interest, the law governing such security interest is determined to be Japanese law pursuant to the Japanese conflict of laws rules. The term "**Non-Japanese Collateral**", when used in this memorandum, is meant to refer to any Collateral other than Japanese Collateral.

In this memorandum, we cover the scenario where a Collateral Provider is the Covered Entity (as defined in Part 1 below): i.e. an entity specified in Appendix B as being covered by this opinion.

FACT PATTERNS

With respect to the Security Documents, three fact patterns need to be considered concerning the Location (as defined below) of the Collateral Provider and the Collateral. These are as follows:

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

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

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

The Location of the Collateral Taker is irrelevant in forming our opinion on any of the questions.

For purposes of this memorandum:

(a) the "Location" of the Collateral Provider is in Japan if it is incorporated or otherwise organized in Japan and/or if it has a branch or other place of business in Japan; and

(b) the "Location" of the Collateral is, in connection with any asset that is (or is construed as) a movable or tangible asset, the place where that asset constituting the Collateral is construed to be located under the private international law rules of Japan.

Part 1 - SECURITY INTEREST APPROACH PURSUANT TO SECURITY DOCUMENTS

Assumptions relating to the Security Documents

For purposes of this section, we have assumed the following:

(a) The Security Collateral Provider has entered into with the Secured Party, ~~either~~ (i) a Master Agreement governed by New York law and ~~a~~ (A) the 1994 NY Annex, (B) the VM NY Annex, (C) the IM NY Annex and/or (D) the IM Deed; ~~or~~ (ii) a Master Agreement governed by English law and ~~a~~ (A) the 1995 Deed, (B) the IM NY Annex (in which case, the parties have provided in paragraph 13 of the IM NY Annex that the IM NY Annex is governed by and construed in accordance with New York law) and/or (C) the IM Deed; or (iii) a Master Agreement governed by Japanese law and (A) the 1994 NY Annex (in which case, the parties have provided in paragraph 13 of the 1994 NY Annex that the 1994 NY Annex is governed by and construed in accordance with New York law), (B) the 1995 Deed, (C) the VM NY Annex (in which case, the parties have provided in paragraph 13 of the VM NY Annex that the VM NY Annex is governed by and construed in accordance with New York law), (D) the IM NY Annex (in which case, the parties have provided in paragraph 13 of the IM NY Annex that the IM NY Annex is governed by and construed in accordance with New York law) and/or (E) the IM Deed. The Security Collateral Provider and the Secured Party are both derivatives dealers or either the Security Collateral Provider or the Secured Party is a derivatives dealer and the other party is a sophisticated end-user of derivatives.

(b) At all relevant times the same party is the Security Collateral Provider under the applicable Security Document.

(c) The Security Collateral Provider is organized, incorporated or formed under Japanese law (the "**Japanese Party**") and is a type of entity falling within one of the category types specified in Appendix B as covered by this opinion. In other words, the Japanese Party is any of: (i) a corporation incorporated under the Companies Act (*kaisha hou*) (Act No. 86 of ~~2004~~2005, as amended) (the "**Companies Act**") as a joint stock company (*kabushiki kaisha*) ("**Corporation**"); (ii) another form of legal entity organized under the laws of Japan (each a "**Non-Corporate Entity**"); ~~or~~ (iii) arrangements without juridical personality (*houjin kaku*) formed under the laws of Japan (each a "**Fund Vehicle**"[2]); or (iv) local authorities organized under the Local Autonomy Act (*chihou jichi hou*) (Act No. 67 of 1947, as amended) (the "**Local Autonomy Act**") (each a "**Local Authority**" and collectively with Corporation ~~and~~, Non-Corporate Entity and Fund Vehicle, a "**Covered Entity**").

(i) A Corporation may be either a financial institution or a non-financial institution. A financial institution may include (without limitation):

A. Japanese banks (*ginkou*)[3] as defined in Article 2, paragraph 1 of the Banking Act (*ginkou hou*) (Act No. 59 of 1981, as amended) (the "**Banking Act**") (but excluding Japanese branches of non-Japanese banks) or long-term credit banks (*chouki shin'you ginkou*)[4] as defined in Article 2 of the

[2] We use the phrase "Fund Vehicle" here as a convenience; however, please note that certain arrangements referred to herein as the Fund Vehicle (e.g. PS, defined below) may be used for a purpose other than as an investment vehicle.

[3] Banks (*ginkou*) licensed by the Prime Minister under Article 4, Paragraph 1of the Banking Act.

[4] Long-term Credit Banks (*chouki shin'yo ginkou*) licensed by the Prime Minister under Article 4, Paragraph 1of the LTCBA.

Long Term Credit Bank Act (*chouki shin'you ginkou hou*) (Act No. 187 of 1952, as amended) (the "**LTCBA**") (collectively, "**Japanese Banks**");

B. Japanese financial instruments business operators (*kin'yuu shouhin torihiki gyousha*) as defined in Article 2, paragraph 9 of the Financial Instruments and Exchange Act (*kin'yuu shouhin torihiki hou*) (Act No. 25 of 1948, as amended) (the "**FIEA**")[5] [6] ("**Japanese Financial Instruments Dealers**");

C. Japanese insurance companies (*hoken kaisha*) as defined in Article 2, paragraph 2 of the Insurance Business Act (*hokengyou hou*) (Act No. 105 of 1995, as amended) (the "**IBA**")[7] ("**Japanese Insurance Companies**");

D. The Shoko Chukin Bank, Ltd.[8];

E. Development Bank of Japan Inc.[9]; and

F. Japan Bank for International Cooperation.[10]

(ii) A Non-Corporate Entity may be the following financial institutions organized under special laws and the entities listed herein:[11]

A. quasi-partnership depository institutions, namely, shinkin banks (*shin'you kinko*), credit co-operatives (*shin'you kumiai*) and labor credit associations (*roudou kinko*) (collectively, "**Cooperative Financial Institutions**");

B. Shinkin Central Bank[12] and The Norinchukin Bank[13];

C. Japanese Insurance Companies in the form of a mutual company (*sougo kaisha*);

D. corporations incorporated under the Companies Act as a general partnership company (*goumei kaisha*), a limited partnership company (*goushi kaisha*) or limited liability company (*goudou kaisha*)[14];

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[5] Corporations who have obtained business registration with the Prime Minister pursuant to Article 29 of the FIEA.

[6] The Securities and Exchange Law (the "**SEL**") has been amended and renamed as the Financial Instruments and Exchange Act since 30 September 2007. The "securities companies" under the SEL are defined as "financial instruments dealers" under the FIEA. Please note that the existing financial instruments dealers are allowed to continue the use of the term "*shouken kaisha*" in their corporate name.

[7] Corporations who have obtained a business license issued by the Prime Minister under Article 3, Paragraph 1 of the IBA.

[8] The Shoko Chukin Bank, Ltd. is organized under the Shoko Chukin Bank Limited Act (*kabushiki kaisha shoukou kumiai chuuou kinko hou*) (Act No. 74 of 2007, as amended). Its purpose is to facilitate the financing of co-operative societies of small businesses as well as organizations of small business operators.

[9] Development Bank of Japan Inc. is a Corporation incorporated under the Act on Development Bank of Japan Inc. ~~Act~~ (*kabushiki kaisha nihon seisaku toushi ginkou hou*) (Act No. 85 of 2007, as amended).

[10] Japan Bank for International Cooperation ("**JBIC**") is a legal entity incorporated in a form of a joint stock company (*kabushiki kaisha*) pursuant to Article 1 of the Act on Japan Bank for International Cooperation (*kabushiki kaisha kokusai kyouryoku ginkou hou*) (Act No. 23 of 2011, as amended) (the "**JBIC Act**"). Although it is not clearly stipulated in the JBIC Act, it is construed that JBIC is governed by the Companies Act and would fall within a category of Corporation.

[11] Non-Corporate Entities which are neither financial institutions nor entities listed herein are not covered in this memorandum.

[12] Shinkin Central Bank, formerly known as the Zenshinren Bank is established under the Shinkin Bank Act (*shin'you kinko hou*) (Act No. 238 of 1951, as amended) as the central institution for shinkin banks; the individual shinkin banks being its members. A shinkin bank can be distinguished from other institutions by its name, which always includes the word "*shin'you kinko*".

[13] The Norinchukin Bank is the central financial institution for co-operatives serving the agricultural, forestry and fishery industries which was established under the Norinchukin Bank Act (*nourin chuuou kinko hou*) (Act No. 93 of 2001, as amended).

E. investment corporations (*toushi houjin*) incorporated under the Act on Investment Trusts and Investment Corporations (*toushi shintaku oyobi toushi houjin ni kansuru houritsu*) (Act No. 198 of 1951, as amended) (the "**AITIC**") ("**Investment Corporation**"); and

F. specified purpose companies (*tokutei mokuteki kaisha*) incorporated under the Act on Securitization of Assets (*shisan no ryuudouka ni kansuru houritsu*) (Act No. 105 of 1998, as amended) (the "**Asset Securitization Act**").

(iii) A Fund Vehicle may be the following arrangement without legal personality formed under the laws of Japan[15]:

A. partnerships (*kumiai*) formed under the Civil Code (*minpou*) (Act No. 89 of 1896, as amended) (the "**Civil Code**") ("**PS**")~~.~~;

B. limited partnerships (*toushi jigyou yuugen sekinin kumiai*) formed under the Limited Partnership Act for Investment (*toushi jigyou yuugen sekinin kumiai keiyaku ni kansuru houritsu*) (Act No.90 of 1998, as amended) ("**LPS**"); and

C. trusts (*shintaku*) established under the Trust Act (*shintaku hou*) (Act No.108 of 2006, as amended) (the "**New Trust Act**") or the old Trust Act (Act No. 62 of 1922, as amended) (the "**Old Trust Act**") ("**Trust**")[16], a settlor (*itakusha*) of which may be pension funds established pursuant to Japanese pension-related special acts including national pension funds (*kokumin nenkin kikin*) and National Pension Fund Association (*kokumin nenkin kikin rengoukai*) established pursuant to the National Pension Act (*kokumin nenkin hou*) (Act No~~16~~. 141 of 1959, as amended), employees' pension funds (*kousei nenkin kikin*) and Pension Fund Association (*kigyou nenkin rengoukai*) established pursuant to the Employees' Pension Insurance Act (*kousei nenkin hoken hou*) (Act No. 115 of 1954, as amended) and Government Pension Investment Fund (*nenkin tsumitatekin kanri un'you dokuritsu gyousei houjin*) established pursuant to the Government Pension Investment Fund Act (*nenkin tsumitatekin kanri un'you dokuritsu gyousei houjin hou*) (Act No. 105 of 2004, as amended) (each, a "**Pension Fund**").

(iv) A Local Authority may be one of the following:

A. Japanese prefectural governments (*to, dou, fu, ken*);

B. municipalities (*shi, chou, son*); and

C. special districts (*tokubetsu ku*).

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[14] *Goumei kaisha* is a legal entity whose members' liabilities are unlimited, *goushi kaisha* is a legal entity which has two types of members; one with limited liability and the other with unlimited liability, and *goudou kaisha* is a legal entity whose members' liabilities are limited.

[15] Legal arrangements which are not listed herein are not covered in this memorandum.

[16] Including investment trusts (*toushi shintaku*) established under the AITIC and specified purpose trusts (*tokutei mokuteki shintaku*) established under the Asset Securitization Act.

~~[16] Including investment trusts (*toushi shintaku*) established under the AITIC and specified purpose trusts (*tokutei mokuteki shintaku*) established under the Asset Securitization Act.~~

(d) Each Master Agreement and each Security Document is enforceable under New York law or English law, as the case may be, and each party has duly authorized, executed and delivered, and has the capacity to enter into, each document.

(e) Any provisions of the Master Agreement and the relevant Security Document have not been altered in any material respect. The selections contemplated by the Master Agreement or the relevant Security Document as well as the changes contemplated by the IM NY Annex Japanese Amendments, the IM Deed Japanese Amendments, the Euroclear Japanese Amendments or the Clearstream Japanese Amendments would not, unless otherwise mentioned below, change the substance of this memorandum.

(f) Pursuant to the relevant Security Document, the counterparties agree that Eligible Collateral will include cash credited to an account (as opposed to physical notes and coins, "**Cash Collateral**") and certain types of securities (as further described below).

(g) Any securities provided as Eligible Collateral are denominated in either the currency of Japan or any freely convertible currency and consist of (~~i~~1) corporate debt securities the issuer of which may or may not be organized or located in Japan ("**Corporate Debt Securities**"); (~~ii~~2) debt securities issued by the government of Japan ("**JGBs**")[17]; ~~or (iii~~(3) debt securities issued by the government of other members of the "G-10" group of countries ("**Foreign Government Securities**")~~, in each case~~; or (4) corporate equity securities the issuer of which may or may not be organized or located in Japan ("**Corporate Equity Securities**"), and in the case of the 1994 NY Annex, the VM NY Annex and the 1995 Deed, are held in one of the following forms:

(i) directly held bearer ~~debt~~ securities: ~~debt~~ securities issued in certificated form and, when held by a Secured Party as Collateral under a Security Document, held directly in this form by the Secured Party (that is, not held by the Secured Party indirectly with an Intermediary (as defined below));

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

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

(iv) intermediated ~~debt~~ securities: a form of interest in ~~debt~~ securities recorded in fungible book-entry form in an account maintained by a financial intermediary (which could be a central securities depositary ("**CSD**") or a custodian, nominee or other form of financial intermediary, in each case an "**Intermediary**") in the name of the Secured Party where such interest has been credited to the account of the

[17] In some case JGBs are non-assignable to certain persons (c.f. Article 2-2 of the Act Concerning JGBs defined later). However, the effect of the transfer of such non-assignable JGBs would be held valid, in the light of a Supreme Court precedent dated June 15, 1973 (*minshu* 27-6-700) indicating that the transfer of non-assignable shares will be held effective.

Secured Party with the Intermediary in connection with a transfer of Collateral by the Security Collateral Provider to the Secured Party under a Security Document.[18]

(h) Cash Collateral is denominated in a freely convertible currency and is held in an account under the control of the Secured Party maintained in Japan or, if located outside Japan, in the jurisdiction of the relevant currency.[19]

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

(j) In the case of questions 12 to 15 below, after entering into the Transactions and prior to the maturity thereof, ~~an Event of Default or Specified Condition occurs and is continuing with respect to the Security Collateral Provider, in the case of the NY Annex, or a Relevant Event or Specified Condition occurs and is continuing with respect to the Security Collateral Provider, in the case of the Deed, and, in either case, an Early Termination Date has occurred or been designated as a result thereof (however,~~ the rights of the Collateral Taker under Paragraph 8 of the relevant Annex or Deed (as applicable) have become exercisable following the occurrence of any of the relevant pre-conditions specified in the Annex or Deed (which shall comprise solely of the events listed in Paragraph 8 or as an election in the pro-forma Paragraph 13) which are then continuing, but an insolvency proceeding has not been instituted with respect to the Security Collateral Provider~~)~~.

(k) In the case of questions 16 to 18 below, an Event of Default under Section 5(a)(vii) of the Master Agreement with respect to the Security Collateral Provider has occurred and the Security Collateral Provider becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of Japan. An insolvency proceeding means a proceeding under (i) the Bankruptcy Act of Japan (*hasan hou*)[20] (the "**JBA**", a proceeding under which is referred to as a "**Bankruptcy Proceeding**"), (ii) the Corporate Reorganization Act of Japan (*kaisha kousei hou*)[21] (the "**CRA**", a proceeding under which is referred to as a "**Corporate**

[18] When responding to a question under the assumption that the Collateral is located or deemed to be located in Japan, we assume that the relevant Intermediary is located in Japan (or that the collateral is held in another manner such that it is deemed to be so located under the laws of Japan).

[19] We note that the definition of "**Cash**" in the NY Annex would have to be modified when currency other than US Dollars is used as Eligible Collateral. In connection therewith, the relevant Security Document would have to provide for a mechanism to accommodate collateral denominated in Yen (e.g. JGBs or in any currency other than the base currency contemplated in such Security Document).

[20] Act No. 75 of 2004, as amended. This law was amended and restated effective as of January 1, 2005, and this opinion reflects the revised numbering of the articles thereof. The JBA applies to any individual, corporation or other type of legal entity in Japan, and also applies to certain legal arrangements formed under Japanese law. The aim of bankruptcy is liquidation of the debtor's assets through a court-appointed trustee to pay creditors' claims in an orderly, fair and equitable manner.

[21] Act No. 154 of 2002, as amended. This law was amended and restated effective as of October 1, 2003, and this opinion reflects the revised numbering of the articles thereof. The proceedings under the CRA are designed to help a corporate debtor rehabilitate and reorganize its failing business through reduction or other adjustment of debts. The CRA applies only to Corporations and certain types of non-corporate Financial Institutions. Corporate reorganization is essentially a rehabilitative proceeding to avoid liquidation so that the insolvent entity may stay in business and is designed to apply to relatively large corporations.

Reorganization Proceeding"), (iii) the Civil Rehabilitation Act (*minji saisei hou*)[22] (the "**CIRA**", a proceeding under which is referred to as a "**Civil Rehabilitation Proceeding**"), or (iv) the Act on Special Treatment of Corporate Reorganization Proceedings and Other Insolvency Proceedings of Financial Institutions (*kin'yuu kikan tou no kousei tetsuzuki no tokurei tou ni kansuru houritsu*)[23] (the "**AST"**), a proceeding under which is a Corporate Reorganization Proceeding governed by both the CRA and the AST. Please note that insolvency proceedings may also be instituted under the sections of the Companies Act relating to Special Liquidation (*tokubetsu seisan*)[24] [25] (the aforementioned sections of the Companies Act, collectively with the JBA, the CRA, the CIRA and the AST, are referred to as the "**Insolvency Acts**", and proceedings thereunder are referred to as "**Insolvency Proceedings**").

(l) Upon the occurrence of an Event of Default or a Termination Event under Section 5 of the Master Agreement or a Relevant Event or Specified Condition under the relevant Security Document, the party that has the right to terminate the relevant Master Agreement will act in good faith and in a commercially reasonable manner in the exercise of the rights granted to it under Sections 5 and 6 of the Master Agreement and under the relevant Security Document.

(m) Any payments made by the Security Collateral Provider and any security interest granted to the Secured Party over any assets of the Security Collateral Provider were received by the Secured Party without knowledge (as explained more fully in our opinion as to question 18 below) of suspension of payments[26] ("*shiharai teishi*") by the Security Collateral Provider or any application by the Security Collateral Provider for an Insolvency Proceeding and without the knowledge that such payment or granting of security interest would prejudice the other creditors.

(n) The Master Agreement and all Transactions carried out under the Master Agreement are entered into prior to the formal commencement of an Insolvency Proceeding with respect to the Security Collateral Provider and/or the Secured Party.

(o) With respect to IM Security Documents only, if any of the Collateral provided under any 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**"), it is held in the following form: (x) the Custodian holds the Collateral in the

[22] Act No. 225 of 1999, as amended. This law is the replacement of the former Composition Law and applies to any individual and corporation (including foreign entities insofar as it relates to their Japanese branch(es)) in Japan, and also applies to certain legal arrangements formed under Japanese law. This law is reorganization-orientated, and designed to apply to individuals and small or medium sized corporations.

[23] Act No. 95 of ~~1997~~1996, as amended. Under the AST, the provisions in the CRA will apply *mutatis mutandis* to certain types of non-corporate financial institutions, such as insurance companies in the form of a "mutual company" (*sougo kaisha*), quasi-partnership depository institutions (*shin'you kinko*), credit cooperatives (*shin'you kumiai*) and labor credit association (*roudou kinko*). Unless otherwise stated herein, our discussions with respect to the CRA will, in addition to Corporations, apply *mutatis mutandis* to such non-corporate Financial Institutions.

[24] A Special Liquidation procedure is commenced when a liquidating joint stock company (i.e. a joint stock company being dissolved other than by bankruptcy or merger) is faced with circumstances giving rise to an extraordinary obstacle to the pursuit of liquidation or when the relevant court suspects, in the course of such a liquidation proceeding, that the company's total liabilities exceed its total assets, and the competent court has the authority to issue an order to commence such proceedings. It applies to Corporations as well as to Japanese branches of a foreign corporation ("Japanese Branches"), and the proceedings thereunder are in many respects similar to bankruptcy.

[25] Reorganization was abolished under the Companies Act.

[26] "Suspension of payments" (*shiharai teishi*) is the equivalent of a failure to pay. Under Paragraph 2, Article 15 of the JBA, if a debtor has failed to pay his debts, he is presumed to be "unable to pay his debts" (*shiharai funou*), and being unable to pay debts can trigger bankruptcy proceedings. If, after a failure to pay, the debtor proves that he has the ability to pay debts, the presumption of "*shiharai funou*" is overridden.

Collateral Provider's name pursuant to a custodial agreement between the Collateral Provider and the Custodian; (y) the Custodial Account is used exclusively for the Collateral provided by the Collateral Provider; and (z) the Collateral Provider, the Collateral Taker and the Custodian have entered into an agreement (which may be a separate control agreement or may be part of the custodial agreement) under which the Collateral Taker can take control of the margin under certain circumstances.

(p) In the circumstances where "initial margin" Collateral is held at a central securities depository, the parties will not enter into an IM Security Document. Instead, (w) Collateral is held in an account within Euroclear or Clearstream; (x) the parties have entered into the Euroclear Documents or the relevant 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 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 the Collateral Taker as to the overall amount of initial margin Collateral that is required in respect of such Collateral Provider's posting obligation, Euroclear or Clearstream, as applicable, will calculate any excess or deficit and make the relevant transfers accordingly on behalf of the parties in discharge of their obligations to one another); and (y) the Euroclear Documents or the relevant Clearstream Documents and the other documents referred to in (x) (as applicable) are enforceable in accordance with their terms under applicable law (which may be different than the laws of Japan).

With regard to the foregoing, we are aware that:

(i) in the case of Euroclear, 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 (x) above; and

(ii) in the case of Clearstream, Collateral is held in a "Collateral Account" opened in the Clearstream system in the name of (in the case of the Clearstream 2016 Security Agreement) the Collateral Provider or (in the case of the Clearstream 2017 Security Agreement) the Collateral Taker and to be operated in accordance with the relevant Clearstream documents referred to at (x) above.

In respect of the Clearstream Documents referred to at (x) above, the parties have entered into (A) any of (I) the Clearstream 2016 Security Agreement, (II) the Clearstream 2017 Security Agreement, or (III) the Clearstream 2016 Security Agreement, the Clearstream Novation Agreement and the Clearstream 2017 Security Agreement and (B) either the Clearstream NY CTA or the Clearstream Multi-Regime CTA.

For the avoidance of doubt, if the parties have entered into the documents referred to at (III) above, 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.

(q) With respect to the IM JP Annex only, the Collateral provided under the IM JP Annex is held in the following form: (x) the Collateral is transferred on a title transfer basis to a third party trustee (the "**Trustee**") in its capacity as trustee (*jutakusha*) for a Trust created specifically for purposes of holding and managing the Collateral (the "**IM Trust**") pursuant

to the Trust Agreement by and between the Collateral Provider as first beneficiary (*daiichi juekisha*), the Collateral Taker as settlor (*itakusha*) and second beneficiary (*daini juekisha*) and the Trustee as trustee, (y) the Trustee holds title to the Collateral in its capacity as trustee for the IM Trust and the Collateral forms a part of trust assets (*shintaku zaisan*) of the IM Trust and (z) the Trust Agreement is enforceable in accordance with its terms under the laws of Japan.

(r) The parties may enter into more than one Credit Support Document, including multiple Credit Support Documents each subject to different governing laws, and/or may also enter into Euroclear Documents and/or Clearstream Documents.

Questions relating to the Security Documents

Validity of Security Interests

1. Recognition of the Validity of Security Interests; Law Governing the Contractual Aspect of Security Interests

Under the laws of Japan, what law governs the contractual aspects of a security interest in the various forms of Eligible Collateral deliverable under the Security Documents? Would the Japanese courts recognize the validity of a security interest created under each Security Document, assuming it is valid under the governing law of such Security Document ~~?~~(taking into account assumptions (a) above)?

Governing law of contractual aspects of security interests

~~The courts of Japan would recognize the validity of a security interest created (or intended to be created) under each Security Document assuming it is valid under the governing law of such Security Document (i.e. New York law or English law, as the case may be), to the extent it is valid under the law governing such security interest as determined by Japanese conflict of laws rules as described in 2 below. If, under the Japanese conflict of laws rules, a security interest under a Security Document (whether it is a NY Annex or a Deed) is governed by Japanese law notwithstanding the specified governing law, then the Japanese courts would characterize the security interest as a "statutory pledge" (*shichiken*) under Japanese law.~~

Japanese law distinguishes the law governing a Security Document, which is a contract, and the law governing a security interest created or intended to be created thereunder. Although Japanese law recognizes that the contractual aspects of a security interest are governed by the governing law of the relevant Security Document, under the laws of Japan, a security interest is categorized as a proprietary interest (*bukken*). The issue under Japanese law is therefore whether that particular proprietary interest is valid. In this regard, we refer you to our ~~answer~~ response to your question 2 below.

Validity of security interests – Non-IM Security Documents

The courts of Japan would recognize the validity of a security interest created (or intended to be created) under each Non-IM Security Document assuming it is valid under the governing law of such Non-IM Security Document (i.e. New York law or English law, as the case may be), provided that the governing law is determined as the law applicable to such security interest under Japanese conflict of laws rules as described in 2 below.

Accordingly, if, under the Japanese conflict of laws rules, a security interest under a Non-IM Security Document (whether it is a 1994 NY Annex[27], VM NY Annex[28] or 1995 Deed) is determined to be governed by Japanese law notwithstanding the governing law chosen by the parties (i.e. if the Collateral is Japanese Collateral), then, the Japanese courts would not recognize the validity of a security interest created (or intended to be created) under each Non-IM Security Document. This is because, under Japanese law, no new category of security interest can be established by agreement outside the law[29] (unless the courts specifically recognize a new category of security interest (currently, only the assignment by way of security (*jouto tanpo*) falls into such category)), which means that Japanese courts would only recognize security interests existing under Japanese law if the relevant Collateral is Japanese Collateral. A security interest under a Non-IM Security Document would not fall within any of the existing types of Japanese security interests. In addition, as far as Japanese Book-entry Securities Collateral (as defined below) is concerned, another requirement for creation and perfection would need to be considered. We will discuss more details at "Validity of security interests – IM Security Documents" below.

Although we do not deny the possibility that the Japanese courts recognize a security interest under a Non-IM Security Document (whether it is a 1994 NY Annex, VM NY Annex or 1995 Deed) over Japanese Collateral as falling within one of the existing types of Japanese security interests, for legal certainty, it would be advisable that the Non-IM Security Documents be amended to expressly state that the security interest created therein shall include a statutory pledge (*shichiken*) under Japanese law, to the extent consistent with Japanese law. Sample amendment provisions to the 1994 NY Annex are attached hereto as Annex I. Please note, however, that this memorandum does not consider whether incorporation of Annex I into the 1994 NY Annex would prejudice a security interest created under 1994 NY Annex or otherwise cause any legal issue from the perspective of applicable law other than Japanese law.

An alternative to Annex I which treats a security interest created over Japanese Collateral under the 1994 NY Annex or VM NY Annex as a statutory pledge (*shichiken*) is to deem transfer of the Japanese Collateral under such document as a loan for consumption under Japanese law. In particular, if a party is a Japanese Party, it is advisable for the parties to incorporate Annex II into the 1994 NY Annex or the VM NY Annex Japanese Party Provisions into the VM NY Annex, as applicable, clearly stating that the transfer of collateral should be construed as a loan for consumption (*shouhi taishaku*) from the view of Japanese law in order to ensure the application of the Netting Act and Article 58 of the JBA.

Validity of security interests – IM Security Documents

The courts of Japan would recognize the validity of a security interest created (or intended to be created) under each IM Security Document assuming it is valid under the governing law of such IM Security Document (i.e. New York law or English law, as the case may be), provided that the governing law is determined as the law applicable to such security interest under Japanese conflict of laws rules as described in 2 below.

[27] For the avoidance of doubt, this refers to a 1994 NY Annex that does not incorporate the "Recommended Amendment Provisions for the 1994 NY Annex with respect to Japanese Party" attached hereto as Annex II.

[28] For the avoidance of doubt, this refers to a VM NY Annex that does not incorporate the VM NY Annex Japanese Party Provisions.

[29] Article 175 of the Civil Code.

Accordingly, if, under the Japanese conflict of laws rules, a security interest under an IM Security Document (whether it is an IM NY Annex or an IM Deed) is determined to be governed by Japanese law notwithstanding the governing law chosen by the parties (i.e. if the Collateral is Japanese Collateral), then, the Japanese courts would not recognize the validity of a security interest created (or intended to be created) under each IM Security Document for the same reasons as discussed with respect to the Non-IM Security Documents (i.e. a security interest under each IM Security Document would not fall within any of the existing types of Japanese security interests).

In addition, even if a security interest under each IM Security Document falls within any of the existing types of Japanese security interests, such security interest would not satisfy the requirements for creation and perfection of a security interest over Japanese Collateral under Japanese law. The requirements are different based on the type of assets as discussed in 2 below. While we discuss the cases of bearer form and registered form Japanese Collateral in 2 below, Japanese Collateral which qualifies as eligible under the initial margin requirements implementing the policy framework for margin requirements for non-centrally cleared derivatives issued by the Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions in 2013[30] is limited to those in dematerialized book-entry form in a practical sense. Accordingly, our analysis in respect of the IM Security Documents is focused on Japanese Collateral that is in dematerialized book-entry form (the "**Japanese Book-entry Securities Collateral**").

Under the Book-Entry Transfer Act, in order to create and perfect a pledge (which is a type of Japanese law security interest) over Corporate Debt Securities, JGBs or Corporate Equity Securities which, in each case, are Japanese Book-entry Securities Collateral, the amount of such Japanese Collateral needs to be credited and recorded in the pledge ledger (*shichiken ran*) of the pledgee's account. Although the Book-Entry Transfer Act is not clear as to the criteria for an account to be considered as the 'pledgee's account', in our view, this depends partly on who is recognised by the Account Management Institution as the owner of the 'account' and partly on who would be so recognised by an objective third party (i.e. whether any third party is able to identify the relevant account as belonging to an identified person). This reflects the fact that, if an Account Management Institution becomes bankrupt, the bankruptcy administrator for the Account Management Institution will need to identify which account belongs to which person. We understand that the recognition of the Account Management Institution is reflected in its account management or control agreement; whereas the naming convention of the accounts is the most critical factor for a third party's recognition.

Under assumption (o), the Custodian holds the Collateral in the Collateral Provider's name pursuant to a custodial agreement between the Collateral Provider and the Custodian. Accordingly, the account in which the Collateral is held would not be considered as the 'pledgee's account' for the purposes of the Book-Entry Transfer Act.

We note that in foreign jurisdictions securities may be held differently from under Japanese legislation. In Japan, in the case of securities issued and held in dematerialized book-entry form, securities are deemed to be directly held by the ultimate beneficiary of the securities in whose account (on the proprietary ledger (*hoyu ran*)) such securities are credited. In contrast, there may be jurisdictions where an ultimate beneficiary of securities does not hold the securities directly, but has an indirect *pro rata* proprietary interest in the securities. Therefore, the question arises whether "Posted Collateral (IM)" in the form of securities is

[30] http://www.bis.org/publ/bcbs261.pdf.

construed to mean the securities themselves or an indirect proprietary interest in respect of the securities. While the answer to the question depends on the relevant facts, a security interest under an IM Security Document would not, under either construction, be considered as a statutory pledge over Japanese Collateral (i.e. if construed as the securities themselves, a security interest would not satisfy the requirements under Japanese law as discussed above, and if construed as an indirect proprietary interest, a security interest would be deemed to be created over the Collateral Provider's rights against the Custodian, which is considered to be a security interest over an intangible claim against the Custodian rather than over the proprietary claim represented by the securities).

Therefore, in order to create a security interest over Collateral which is Japanese Book-entry Securities Collateral, we strongly recommend (in particular, in the case where there is a possibility that a Japanese court is involved) that the Collateral Provider and the Collateral Taker agree that a Japanese law pledge is created over Japanese Collateral and that the relevant amount of Japanese Collateral is credited to the pledge ledger (*shichiken ran*) of the Custodial Account which, for these purposes, would need to be the Collateral Taker's account for the purposes of the Book-Entry Transfer Act. For this purpose, incorporating the IM NY Annex Japanese Amendments into the IM NY Annex or incorporating the IM Deed Japanese Amendments into the IM Deed would, upon satisfaction of the conditions described in sub-paragraphs (i), (iii), (iv) and (v) below, enable the parties to properly create a Japanese law pledge over Japanese Book-entry Securities Collateral.

We are of the view that the parties' agreement under the IM NY Annex Japanese Amendments or the IM Deed Japanese Amendments to create a Japanese law pledge (*shichiken*) over relevant Japanese Collateral in favour of the Collateral Taker would be valid and binding on the parties thereto, and the pledge would be duly created, valid and perfected provided that:

(i) the Custodian is an Account Management Institution (*kouza kanri kikan*) as defined in Article 2, paragraph 4 of the Book-Entry Transfer Act;

(ii) the Collateral Provider and the Collateral Taker have entered into an IM NY Annex or IM Deed as amended by the provisions set out in the IM NY Annex Japanese Amendments or IM Deed Japanese Amendments (as applicable);

(iii) a Custodial Account constitutes the Collateral Taker's account for the purpose of the Book-Entry Transfer Act;

(iv) immediately before the transfer from the proprietary ledger (*hoyu ran*) of the account of the Collateral Provider to the pledge ledger (*shichiken ran*) of the Custodial Account, the amount of Japanese Book-entry Securities Collateral relating to the creation of the Japanese law pledge was recorded in the proprietary ledger (*hoyu ran*) of the account of the Collateral Provider pursuant to the provisions of the Book-Entry Transfer Act; and

(v) the amount of Japanese Book-entry Securities Collateral relating to the creation of the Japanese law pledge is credited and recorded in the pledge ledger (*shichiken ran*) of the Custodial Account pursuant to the provisions of the Book-Entry Transfer Act;

and would be enforceable if the relevant secured obligation has become due but unperformed.

Our responses to questions 1 through 21 with respect to Collateral held pursuant to the custodial arrangement described in the IM NY Annex Japanese Amendments or IM Deed Japanese Amendments would not be different than the responses to such questions in this memorandum as a result of (a) the inclusion of the IM NY Annex or IM Deed, as amended by the provisions set out in the IM NY Annex Japanese Amendments or the IM Deed Japanese Amendments (as applicable), in this memorandum or (b) the holding of Collateral pursuant to the custodial arrangement described in the IM NY Annex Japanese Amendments or IM Deed Japanese Amendments.

Please note that this memorandum does not consider whether incorporation of the IM NY Annex Japanese Amendments into the IM NY Annex or incorporation of the IM Deed Japanese Amendments into the IM Deed would prejudice a security interest created under the IM NY Annex or IM Deed or otherwise cause any legal issue from the perspective of New York law or English law (or other applicable law other than Japanese law).

Validity of security interests – Euroclear Documents and Clearstream Documents

The courts of Japan would recognize the validity of a security interest created (or intended to be created) under the Euroclear Security Agreement and/or Clearstream Security Agreement assuming it is valid under the governing law of such agreement, provided that the governing law is determined as the law applicable to such security interest under Japanese conflict of laws rules as described in 2 below. For the avoidance of doubt, this conclusion in the preceding sentence would equally apply regardless of whether a "Collateral Account" is opened in the name of the Collateral Provider, the Collateral Taker or any third party.

Accordingly, if, under the Japanese conflict of laws rules, a security interest under the Euroclear Security Agreement and/or Clearstream Security Agreement is determined to be governed by Japanese law notwithstanding the governing law chosen by the parties (i.e. if the Collateral is Japanese Collateral), then the Japanese courts would not recognize the validity of a security interest created (or intended to be created) under the Euroclear Security Agreement, Clearstream 2016 Security Agreement or Cleastream 2017 Security Agreement for the same reasons as discussed with respect to the IM Security Documents.

Therefore, in order to create a security interest over Collateral which is Japanese Book-entry Securities Collateral, we strongly recommend (in particular, in the case where there is a possibility that a Japanese court is involved) that the Collateral Provider and the Collateral Taker agree that a Japanese law pledge is created over Japanese Book-entry Securities Collateral and that the relevant amount of Japanese Book-entry Securities Collateral is credited to the pledge ledger (*shichiken ran*) of the relevant account.

For this purpose, we assume that, if parties intend to use Japanese Book-entry Securities Collateral held in an account within Clearstream, the parties have entered into the 2017 Clearstream Security Agreement (including as a replacement of 2016 Clearsream Security Agreement by entering into the Clearstream Novation Agreement). In this case, the relevant Collateral Account would be the account of the Collateral Taker for the purpose of the Book-Entry Transfer Act.

If parties use Japanese Book-entry Securities Collateral held in an account within Euroclear, the relevant account would be opened 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). Euroclear is regarded as acting as a representative of the Collateral Taker under a Belgian law agency (*commissionaire*) structure and, from a Japanese law perspective we believe that such relevant account should be treated as the account of the Collateral Taker under the Book-Entry Transfer Act, the pledge ledger of which is to be credited with pledged Japanese Book-entry Securities Collateral to perfect a valid Japanese pledge over such Japanese Book-entry Securities Collateral.

As such, incorporating the Euroclear Japanese Amendments into the Euroclear Documents or incorporating the Clearstream Japanese Amendments into the relevant Clearstream Documents would, upon satisfaction of the conditions described in sub-paragraphs (i), (iv) and (v) above, enable the parties to properly create a Japanese law pledge over Japanese Book-entry Securities Collateral. Our analysis in this memorandum is based on the assumption that the parties satisfy such requirements and conditions.

We are of the view that the parties' agreement under the Euroclear Japanese Amendments or the Clearstream Japanese Amendments to create a Japanese law pledge (*shichiken*) over relevant Japanese Collateral in favour of the Collateral Taker would be valid and binding on the parties thereto, and the pledge would be duly created, valid and perfected, provided that the conditions described in sub-paragraphs (i), (iv) and (v) above are satisfied, and would be enforceable if the relevant secured obligation has become due but unperformed.

Please note that this memorandum does not consider whether incorporation of the Euroclear Japanese Amendments into the Euroclear Documents or incorporation of the Clearstream Japanese Amendments into the relevant Clearstream Documents would prejudice a security interest created under the Euroclear Security Agreement or the relevant Clearstream Security Agreement or otherwise cause any legal issue from the perspective of applicable law other than Japanese law."

2. Governing Law and Determining Factors Regarding the Perfection of Security Interests

Under the laws of Japan, what law governs the proprietary aspects of a security interest (that is, the formalities required to protect a security interest in Collateral against competing claims) granted by the Security Collateral Provider under each Security Document (for example, the law of the jurisdiction of incorporation or organization of the Security Collateral Provider, the jurisdiction where the Collateral is located, or the jurisdiction of location of the Secured Party's Intermediary in relation to Collateral in the form of intermediated securities)? What factors would be relevant to this question? Where the location (or deemed location) of the Collateral is the determining factor, please briefly describe the principles governing such determination under the Japanese law with respect to the different types of Collateral. In particular, please describe how the laws of Japan apply to each form in which securities Collateral may be held under (x) the Non-IM Security Documents pursuant to assumption (g) above; (y) the IM Security Documents pursuant to assumption (o) above and (z) the arrangements as described in assumption (~~g~~p) above.

Generally, Japanese conflict of laws rules, as currently effective, take a traditional "*lex situs*" position.

Under Article 13 of the Act on General Rules for the Application of Laws (*hou no tekiyou ni kansuru tsuusoku hou*) (the "**Conflict of Laws**")[27][31], which constitutes the main body of Japanese conflict of law rules, the law governing ownership and other proprietary rights (*bukken*), including security interests, in movable personal property and immovable real property is the law of the jurisdiction where the property is located. Therefore, if the Collateral is, or is construed as, a movable asset (*dousan*), the law governing both the creation and perfection of a security interest over such Collateral is the law of the Location of such Collateral.

There is, however, no provision in the Conflict of Laws directly dealing with the issue of which law governs a security interest created over an asset that is not a movable or immovable asset but an intangible claim. In relation to this issue, there is a Supreme Court judgment made in 1978 (the "**1978 Supreme Court Precedent**")[28][32] that is treated as providing the authoritative interpretation of law in this regard. The 1978 Supreme Court Precedent indicates that the creation and perfection of a pledge over a claim (not being a tangible object) is to be governed by the law governing the pledged claim. The law governing a claim is the governing law of the contract giving rise to the claim. If a law is specified as the governing law in the contract, then such specified law is the law governing the claim. If no law is specified as the governing law in the contract, the law of the place where the debtor is located, in most cases, would be deemed to be the governing law of the claim.

In summary, under Japanese law, the creation and perfection of (i) a security interest over any Collateral that is a movable asset shall be governed by the law of the Location of such asset and (ii) a security interest over any Collateral that is an intangible claim shall be governed by the law governing the claim.

The application of the rules described in the preceding paragraphs may not be straightforward depending on the type of assets or as a result of complexities in how the assets are held. In the case of Collateral consisting of ~~debt~~ securities, the determination of whether such securities are movable assets or not may require a complicated analysis of the law and the facts due to their immobilization or dematerialization, or the involvement of Intermediaries. Further, even where the securities are categorized as movable assets, the determination of their "Location" may sometimes be difficult. It is likely that, under the current Japanese conflict of laws rules, the so-called "look through" approach would be taken in determining the Location of such assets. The Conflict of Laws does not specifically deal with these issues. Consequently, although the views expressed below are those of this firm, there are many issues discussed in this section for which no precedent exists and/or no authoritative views are available under Japanese law.

Applying the rules described above, the governing law of a security interest for each of the following asset types would be determined as follows:

(i) **directly held bearer ~~debt~~ securities**: the law of the location of the securities;

[27][31] Act No. 78 of 2006, as amended. *Hourei*, the former conflict of laws of Japan, was replaced by this new law effective 1 January 2007.

[28][32] Judgment of the Supreme Court, April 20, 1978, *minshu* 32-3-616.

Debt obligations in "non-nominative" form (*mukimei saiken*)[29][33] are construed as movable assets (tangible personal property) pursuant to Paragraph 3, Article 86, of the Civil Code. Accordingly, bearer securities are categorized as movable assets.

(ii) **directly held registered ~~debt~~ securities**: the relevant law is determined depending on whether "underlying certificates" exist or are deemed to exist (physical or notional, global or individual) for the securities. If underlying certificates exist or are deemed to exist, the relevant law will be the law of the Location of the underlying certificates (whether physical or notional). If no such certificates exist or are deemed to exist, the relevant law will be the law governing the issuance of the securities;

There is an argument as to whether registered securities should be characterized as movable assets or intangible claims. The legal nature of registered securities is very similar to that of "nominative" (*kimei shiki*) securities in that holders' names are indicated in the register. However, in our view, registered Corporate Debt Securities registered under the Bonds and Other Securities Registration Act[30][34] (the "**Bond Registration Act**") would be characterized as bearer securities. The provisions of the Bond Registration Act assume the existence of underlying certificates for registered securities, and that registered securities are convertible to bearer securities upon request by the holder. Similarly, registered JGBs are deemed to be bearer securities under the Act Concerning Government Securities (the "**JGB Act**")[31][35], which governs the issuance of JGBs, including the registration system. Registered Corporate Debt Securities registered in Japan and registered JGBs are, therefore, considered Japanese Collateral.

(iii) **directly held dematerialized ~~debt~~ securities**: the same rule as set forth in (ii) above applies;

With respect to dematerialized book entry debt securities, answering the question as to whether they are movable assets or intangible claims is more difficult than in the case of registered securities due to the fact that no physical certificates are issued for such securities. Under the previous regime (which ended on 31 December 2002), book-entry JGBs were categorized as registered JGBs, and thus were regarded as bearer securities. However, book entry securities including Corporate Debt Securities and JGBs are now governed by the Act on Book-Entry Transfer of Company Bonds, Shares, etc.[32][36] (the "**Book-Entry Transfer Act**"), which became effective on 1 January, 2003. The regime under the Book-Entry Transfer Act is fundamentally different from that of the Bond Registration Act or the provisions of the JGB Act in that the Book-Entry Transfer Act does not assume the existence of underlying certificates and, except for extraordinary situations involving default of an intermediary, no physical certificates will be issued for such securities. Therefore, in our view, it is likely that book-entry ~~debt~~ securities

[29][33] A "*mukimei saiken*" means a debt obligation which does not specify the name of the obligation holder and is payable to the bearer.

[30][34] *Shasai tou touroku hou* (Act No. 11 of 1942, as amended). This law was replaced by Book-Entry transfer Act on January 6, 2003, but the provisions which relate to registration of securities will remain effective until all existing registered securities are redeemed.

[31][35] *Kokusai ni kansuru houritsu* (Act No. 34 of 1906, as amended).

[32][36] *Shasai, kabushiki tou no furikae ni kansuru houritsu* (Act No. 75 of 2001, as amended). Previously, the Act Concerning Book-Entry Transfer of Corporate and Other Debt Securities (*shasai tou no furikae ni kansuru houritsu*) was amended and renamed as of 5 January 2009, expanding its scope of dealing with securities: stocks, investment trust beneficial interest and other securities became subjects of the Book-Entry Transfer Act.

governed by the Book-Entry Transfer Act would be characterized as nominative securities rather than "non-nominative", bearer securities, and thus categorized as intangible claims. However, whether they are categorized as movable assets or intangible claims, both book-entry Corporate Debt Securities governed by Japanese law having the ultimate book entry institution located in Japan and JGBs are, under the current Japanese conflict of laws rules, Japanese Collateral.

(iv) **intermediated ~~debt~~ securities**: the same rule as (ii) above applies: i.e. the relevant law is determined depending on the Location of the underlying certificates (whether physical or notional), if no such certificates exist or are deemed to exist, the relevant law will be the law governing the issuance of the securities.

(v) **Cash Collateral**: the law specified as governing law of the deposit agreement relating to the account in which Cash Collateral is deposited, and in the absence of the specified governing law, the law that is reasonably determined as the "implied" governing law of the deposit agreement.

Cash in a bank account is characterized under Japanese law as a claim of the depositor against the bank for the return of the same amount of currency deposited. Therefore, a security interest over Cash Collateral is characterized as a security interest over an intangible claim. According to the 1978 Supreme Court precedent referred to above, if no governing law is specified in the deposit agreement, a pledge over such deposit is governed by the law that is deemed to be the "implied governing law" by taking into consideration factors such as (i) the place of the branch which accepted the deposit, (ii) the law licensing or regulating the relevant deposit transaction and (iii) the currency of the deposit, which, in most cases, would be determined as the law of the place where the branch is located. A security interest over a cash account maintained with a bank located in Japan is therefore governed by Japanese law.

3. Recognition of Security Interests in Each Type of Eligible Collateral Created

Would the Japanese courts recognize a security interest in each type of Eligible Collateral created under each Security Document? In answering this question, please bear in mind the different forms in which securities Collateral may be held, as described in assumption (g) above with respect to Non-IM Security Documents, in assumption (o) above with respect to IM Security Documents and in assumption (p). Please indicate, in relation to cash Collateral, if your answer depends on the location of the account in which the relevant deposit obligations are recorded and/or upon the currency of those obligations.

Non-IM Security Documents

The courts of Japan would recognize a security interest in each type of Eligible Collateral created under each ~~Security Document~~Non-IM Security Document assuming it is valid under the governing law of such Non-IM Security Document, provided that the governing law is determined as the law applicable to such security interest under Japanese conflict of laws rules as described in 2 above. ~~As~~ However, as mentioned in our response to question 1 ~~above~~, ~~if the collateral is Japanese Collateral, a security interest created under a Security Document will be characterized and treated as a statutory pledge (*shichiken*) under the Civil Code.[33] For legal certainty, if the counterparties intend to include Japanese Collateral~~

~~[33] Articles 342-368 of the Civil Code set out the requirements for creating a pledge, and the respective rights and duties of the pledgor and the pledgee. Such requirements have been expanded by case law and modified by special laws, in certain respects.~~

~~as Eligible Collateral, it is advisable that the~~ ~~Security Documents be amended to expressly state that the security interest created therein shall include a statutory pledge (*shichiken*) under Japanese law, to the extent consistent with Japanese law. Sample amendment provisions are attached hereto as Annex I.~~a security interest created over Eligible Collateral that is Japanese Collateral would not be recognized by Japanese courts for the reasons stated in our response to question 1.

IM Security Documents

The courts of Japan would recognize a security interest in each type of Eligible Collateral created under each IM Security Document assuming it is valid under the governing law of such IM Security Document, provided that the governing law is determined as the law applicable to such security interest under Japanese conflict of laws rules as described in 2 above. However, as mentioned in our response to question 1, a security interest created over Eligible Collateral that is Japanese Collateral would not be recognized by Japanese courts for the reasons stated in our response to question 1.

Euroclear Documents and Clearstream Documents

The courts of Japan would recognize a security interest in each type of Eligible Collateral created under the Euroclear Documents or relevant Clearstream Documents assuming it is valid under the governing law of such Euroclear Documents or Clearstream Documents, provided that the governing law is determined as the law applicable to such security interest under Japanese conflict of laws rules as described in 2 above. However, as mentioned in our response to question 1, a security interest created over Eligible Collateral that is Japanese Collateral might not be recognized by Japanese courts for the reasons stated in our response to question 1.

4. Effect of Fluctuation of Amount Secured or Eligible Collateral Amount Subject to Security Interest

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

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

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

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

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

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

The effect of the amount secured or the amount of Eligible Collateral subject to the security interest fluctuating under the Master Agreement and the relevant Security Document (including as a result of entering into additional Transactions under the Master Agreement from time to time) is as follows:

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

(b) creating and perfecting a security interest over Collateral being delivered from time to time does not create any problem under Japanese law as long as necessary procedures (as discussed more fully in our response to question 5) are complied with each time such additional Collateral is posted;[34][37]

(c) the concept of creating a security interest over a fluctuating pool of assets pursuant to the Security Documents does not create any difficulties under Japanese law;

(d) it is not necessary under the laws of Japan for the amount secured by each Security Document to be a fixed amount or subject to a fixed maximum amount; and

(e) it is permissible under the laws of Japan for the Secured Party to hold Collateral in excess of its actual exposure to the Security Collateral Provider under the related Master Agreement provided that such excess is not significant in which case would constitute a violation of public policy[35][38].

5. Actions Required to Perfect Security Interests in Eligible Collateral

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

Where the Eligible Collateral is Non-Japanese Collateral, perfection of a security interest therein will be subject to the relevant foreign law and no actions are required in Japan. Where the collateral is Japanese Collateral, certain actions must be taken in Japan to perfect the security interest. These are set out below.

Where a pledge is over movable personal property (*dousan shichi*), transfer of the possession of the property from the pledgor to the pledgee is required to create such pledge[36][39] and continuous possession thereof is required to perfect such pledge[37][40]. However, according to the 1978 Supreme Court Precedent, where the pledge is over an intangible claim (*saiken shichi*), the pledge will be created upon agreement and (only if transfer of the relevant intangible claim requires delivery of the documents certifying such

[34][37] There is some doubt under Japanese law as to the effectiveness of creating and perfecting a security interest in Eligible Collateral that has not yet been delivered. Thus, the prescribed procedures need to be followed when Japanese law applies each time additional collateral is provided. See our responses to questions 3 and 5. In practice, however, concerns with creating and perfecting security interests in new collateral are a serious problem only when taking cash deposits held with a third party bank that is Japanese Collateral, because, as described in our response to question 5 below, a security interest created over cash deposits will always be interpreted under Japanese law as a pledge over a claim for the return of deposited cash so that it is necessary to take certain specific procedures to perfect such pledge.

[35][38] Article 90 of the Civil Code.

[36][39] Article 344 of the Civil Code.

[37][40] Article 352 of the Civil Code.

claim) delivery of the documents certifying such claim[38][41], and such pledge will be perfected by either (a) a date certified notice from the pledgor to the obligor of the relevant claim or (b) a date certified consent for the creation of such pledge by such obligor[39][42]. Notwithstanding the foregoing, if, in relation to any type of assets, the relevant law (e.g. the Bond Registration Act, Book-Entry Transfer Act or the JGB Act) sets out specific requirements for creation or perfection of a pledge over such type of assets, those provisions will apply. With respect to Japanese Collateral, the perfection requirements are as follows:

(i) Corporate Debt Securities:

Corporate Debt Securities may be in (a) bearer form, (b) registered form or (c) dematerialized book entry form[40][43].

(a) A pledge over Corporate Debt Securities in bearer form is construed as a security interest over a tangible movable asset, and, thus, is created when the Secured Party takes possession of the physical certificates and is perfected by the Secured Party's continuous possession thereof.

(b) A pledge over Corporate Debt Securities in registered form is created by agreement but will not be perfected unless such creation of a pledge is registered with the registrar.

(c) A pledge over dematerialized Corporate Debt Securities in book-entry form is created and perfected by crediting and recording the amount relating to such creation of a pledge in the "pledge ledger" (*shichiken ran*) of the proprietary account of the pledgee with Japan Securities Depository Center, Inc., if held directly, or with the custodian, if held indirectly.[41][44]

(ii) JGBs:

JGBs may be in (a) bearer form, (b) registered form or (c) dematerialized book-entry form (*furiketsu kokusai*).

(a) A pledge over bearer JGBs is created when the Secured Party takes possession of the physical certificates and is perfected by the Secured Party's continuous possession thereof.

(b) A pledge over registered JGBs is created by agreement but will not be perfected unless the creation of such pledge is registered in the register with Bank of Japan[42][45].

(c) A pledge over book-entry JGBs is created and perfected by crediting and recording the amount in the "pledge ledger" (*shichiken ran*) of the

[38][41] Article 363 of the Civil Code.

[39][42] Article 364, paragraph 1 of the Civil Code.

[40][43] A full-fledged book entry system for Corporate Debt Securities was commenced on January 10, 2006. However, as of the date of this memorandum, not all of the Corporate Debt Securities are dematerialized.

[41][44] Article 74 of the ~~Bond~~ Book-Entry Transfer Act. The term "*shichiken ran*" used in the ~~Bond~~ Book-Entry Transfer Act, is in practice taken to refer to the proprietary position of the pledgee representing collateral taken from other parties. The book-entry system regarding Corporate Debt Securities has not yet commenced in respect of all the Corporate Debt Securities.

[42][45] Article 3 of the JGB Act.

proprietary account of the pledgee with Bank of Japan, if held directly, or with the custodian, if held indirectly.[43][46]

(iii) Foreign Government Securities:

The creation and perfection of a security interest over Foreign Government Securities which is Japanese Collateral, namely Foreign Government Securities that are in bearer form and located in Japan will be treated in the same way as Corporate Debt Securities or JGBs in bearer form. Therefore, it is necessary for the Secured Party to have continuous possession of the Foreign Government Securities to perfect the pledge over them.

(iv) Cash Collateral:

As mentioned in our response to question 2 above, under the laws of Japan, a pledge over cash in a bank account is characterized as a pledge over a claim for the return of the deposited cash, and the general rule applicable to a claim, as described above, applies to cash Collateral. A security interest over cash Collateral is created by agreement and perfected by either (a) a date certified notice from the pledgor to the bank maintaining the deposit account[44][47], or (b) a date certified consent for the creation of such pledge by the bank. The "date certified" herein means that this notice or consent has to be made in a notarized form with a certified fixed date (*kakutei hizuke*) stamped thereon or in the manners stipulated under applicable laws.

Where the Secured Party maintains the deposit account, however, the agreement between the parties to create such pledge will be the only procedure required. Furthermore, as a practical matter, such pledge need not be perfected (i.e. protected against third parties) because, upon default of the pledgor/depositor, the Secured Party can resort to rights of set-off[45][48] instead of enforcing such pledge.[46][49]

6. Other Requirements

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[43][46] Article 99 of the ~~Bond~~ Book-Entry Transfer Act.

[44][47] Under the laws of Japan, a pledge can be created over an obligation where the pledgee is the debtor to that pledged claim. Judgment of the Supreme Tribunal February 25, 1936, *shinbun* 3959.12.

[45][48] ~~Paragraph 8(a)(iii) of the NY Annex and Paragraph 8(ii) (B) of the Deed.~~ Insofar as Japanese law is concerned, even when insolvency proceedings have commenced with respect to the Security Collateral Provider, the Secured Party would, in our view, receive protection superior to general creditors with rights of set-off (*sousai*) under Article 505 of the Civil Code upon the occurrence of an Event of Default with respect to the Security Collateral Provider. This is because such set-off agreement does not go against the provisions of Insolvency Acts prohibiting preferential set-off, such as Article 71 of the JBA. However, the claims of the Secured Party to be set-off against its obligation to return the deposited cash to the Security Collateral Provider would be limited to claims arising before suspect period starts. See our answer to question 18 below.

[46][49] When a cash deposit opened with a third party (bank) is being pledged, on the other hand, certain specific procedures for perfection must be followed. Firstly, the consent of that third party bank to the creation of the pledge must be obtained. Secondly, either a notice by the pledgor should be delivered to, or, a consent for creation of pledge should be issued by, the deposit obligor (bank). Further, in practice, documents evidencing such deposit will be obtained from the pledgor/depositor. To ensure the enforceability of the pledge, it is further recommended that the deposit obligor (bank) issues an unconditional consent. This notice or consent, as the case may be, has to be made in a notarized form with a certified fixed date (*kakutei hizuke*) stamped thereon in order for the pledge to be protected against third parties. In addition, demand deposit accounts *(futsuu yokin*) should be avoided for the purpose of pledging and fixed term deposits (*teiki yokin*) should be used, as suitability of such demand deposit accounts for pledge is less certain. These notification or consent requirements can be substituted by registration under the Act on Special Provisions, etc. of the Civil Code Concerning the Perfection Requirements for the Assignment of Movables and Claims (*dousan oyobi saiken no jouto no taikouyouken ni kansuru minpou no tokureitou ni kansuru houritsu*) (Act No. 104 of 1998, as amended) which became effective as of October 1, 1998; however bank deposit contracts usually include agreements requiring prior consent to create security over deposit from the bank, therefore such consent is required as practice.

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

~~Under the laws of Japan~~Except as discussed in 1 and 2 above, ~~there~~ we are ~~no~~ not aware of any other requirements ~~to ensure~~ for the validity or perfection of a security interest in each type of Eligible Collateral created by the Security Collateral Provider under each Security Document.

7. Further Action Necessary to Ensure That the Security Interest in the Eligible Collateral Continues and/or Remains Perfected

Assuming that the Secured Party has obtained a valid and perfected security interest in the Eligible Collateral under the laws of Japan, to the extent such laws apply, by complying with the requirements set forth in your responses to questions 1 to 6 above, as applicable, will the Secured Party or the Security Collateral Provider need to take any action thereafter to ensure that the security interest over the Eligible Collateral continues and/or remains perfected, particularly with respect to additional Collateral transferred by way of security from time to time whenever the Credit Support Amount (or the amount of Collateral required to be delivered under the relevant Security Document, as applicable) exceeds the Value of the Collateral held by the Secured Party?

When the Eligible Collateral is Non-Japanese Collateral, as far as Japanese law is concerned, the requirement to ensure that the security interest in the Eligible Collateral continues and/or remains perfected will be subject to the relevant foreign law. Where the Eligible Collateral is Japanese Collateral, assuming that the Secured Party has obtained a valid and perfected security interest by complying with the requirements set forth in our responses to questions 1 through 6 above, as applicable, neither the Security Collateral Provider nor the Secured Party needs to take any further action to ensure that the security interest in the Eligible Collateral continues and/or remains perfected. Please note that, in the case of Collateral comprising movable assets, the Secured Party must maintain continuous possession of the pledged assets in order to keep such pledge perfected.

However, with respect to additional Collateral transferred from time to time whenever the Credit Support Amount exceeds the Value of the Collateral held by the Secured Party, both the Security Collateral Provider and the Secured Party must satisfy the requirements set forth in our responses to questions 1 through 6 above each time such additional Collateral is transferred in order to create and perfect a security interest over additional Collateral since under Japanese law there is some doubt as to the validity of a security interest over Collateral not yet delivered.[~~47~~50]

8. Validity of Security Interest Held by the Secured Party in the Collateral

[~~47~~50] See our response to question 4 above and our suggested modifications with respect to Japanese Collateral in our response to question 3 above.

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

With respect to Eligible Collateral which is Non-Japanese Collateral, when the Secured Party has obtained a valid and perfected security interest in such Eligible Collateral under the laws of the relevant jurisdiction, the Secured Party will have a valid security interest in the Collateral so far as the laws of Japan are concerned and no action (filing, registration, notification, stamping, or notarization or any other action or the obtaining of any governmental, judicial, regulatory, or other order, consent or approval) is required under the laws of Japan to establish, perfect, continue or enforce such security interest.

9. Duties, Obligations or Limitations Imposed on the Secured Party in Relation to the Eligible Collateral

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

The laws of Japan are irrelevant if the collateral is Non-Japanese Collateral. With respect to Japanese Collateral, the law states that a pledgee such as the Secured Party in possession of collateral must handle the collateral with the care of a good manager (*zenkan chuui gimu*).[~~48~~51] We think such degree of care would be referred to when determining "reasonable care to assure the safe custody of all Posted Collateral to the extent required by applicable law" as prescribed in Paragraph 6(a) of the 1995 Deed. Such statutory degree of care is higher than "the same degree of care as it would exercise with respect to its own property" as provided in Paragraph 6(a) of the 1994 NY Annex or VM NY Annex. However, this duty may be disclaimed or amended by agreement. We think the aforementioned provision of the 1994 NY Annex or VM NY Annex is sufficient to override such statutory requirement.

10. Right of the Secured Party to Use Collateral Pursuant to an Agreement with the Pledgor

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

[~~48~~51] Article 350 of the Civil Code (Article 298 to apply *mutatis mutandis*).

the 1994 NY Annex or the VM NY Annex, as applicable. Such use might include pledging or rehypothecating the securities, disposing of the securities under a securities repurchase (repo) agreement or simply selling the securities. Do the laws of Japan recognize the right of the Secured Party so to use such Collateral pursuant to an agreement with the Pledgor? In particular, how does such use of the Collateral affect, if at all, the validity, continuity, perfection or priority of a security interest otherwise validly created and perfected prior to such use? Are there any other obligations, duties or limitations imposed on the Secured Party with respect to its use of the Collateral under the laws of Japan?

The laws of Japan recognize the right of the Secured Party to use Collateral, but the Secured Party may only re-hypothecate it[49]52 and not sell it (by a repurchase agreement or otherwise). In addition, the laws of Japan require a pledgee to return collateral identical (i.e. as opposed to equivalent) to that posted. It is thought that the restrictions are due to the limited statutory nature of the interest the pledgee holds in the collateral and the parties cannot change such requirement by agreement. Violation thereof may jeopardize a perfected security interest. Paragraph 6(c) of the 1994 NY Annex and VM NY Annex should therefore be amended in consideration of these restrictions to the extent Japanese law is applicable (please refer to Modification to Paragraph 6(c) in the Recommended Amendment Provisions 1, attached hereto as Annex I in relation to the 1994 NY Annex).

Please note that the above restrictions do not apply to Cash Collateral if the deposit account is held with the Secured Party, i.e. the Secured Party is free to use the deposited cash (not in its capacity as the pledgee, but in its capacity of the obligor under the deposit agreement), subject to its obligation to return the same amount of currency when due. This is because of the fact that under Japanese law, a security interest over cash credited in an account (not notes and coins) is characterized as a security interest over a claim of the depositor against the bank for the return of the same amount of cash[50]53. Therefore, a security interest over a cash account with a bank does not affect the bank's right to use the deposited currency in line with its ordinary banking business; for the purpose of funding loans or otherwise.

Again, please note that the restriction under Japanese law referred to in the first paragraph does not apply when the Collateral is Non-Japanese Collateral. Please refer to our response to question 2 above for the rules to determine whether or not an asset constituting Eligible Collateral is Japanese Collateral.

As is discussed in Part 3, it is possible to document transfers of Japanese Collateral using the NY Annex or VM NY Annex, and characterize such transfers as loans under Japanese law by incorporating special provisions applicable only to Japanese Collateral similar to the ~~"Recommended Amendment Provisions 2" attached hereto as Annex II~~relevant NY Law-Japanese Party Annex. In such case, the Secured Party may use and dispose of the Japanese Collateral posted.

11. Effect of the Right of the Pledgor to Substitute Collateral

What is the effect, if any, under the laws of Japan on the validity, continuity, perfection or priority of a security interest in Eligible Collateral under each Security Document of the right of the Pledgor to substitute Collateral pursuant to Paragraph ~~4(b~~4(d) (or in the case of

[49]52 Article 348 of the Civil Code.

[50]53 Under Japanese law, a deposit of cash with a bank is regarded as a "deposit for consumption" (*shouhi kitaku*) of money. Under a "deposit for consumption", the deposit taker's obligation is to return to the depositor an asset of the same type, class and amount as the asset deposited, and not the same asset that is deposited.

the ~~NY~~ IM Deed, Paragraph 4(e)) of each Annex and ~~the~~ Deed? How does the presence or absence of consent to substitution by the Secured Party affect your response to this question? Please comment specifically on whether the Pledgor and the Secured Party are able validly to agree in the Security Document that the Pledgor may substitute Collateral without specific consent of the Secured Party and whether and, if so, how this may affect the nature of the security interest or otherwise affect your conclusions regarding the validity or enforceability of the security interest. Note that the parties may also give upfront consent in the IM Security Documents to any substitution made by the Security Collateral Provider and/or the Custodian in accordance with the terms of the agreement described in assumption (o)(z).

With respect to Non-Japanese Collateral, the laws of Japan are not relevant. Regarding Eligible Collateral which is Japanese Collateral, under Japanese law, substitution of Collateral would not have any effect on the validity, continuity, perfection or priority~~51~~54 of a security interest in Eligible Collateral under each Security Document, but such substitution can be made only when both parties agree or when the Secured Party consents to such substitution. In our view, substitution without consent is permissible under Japanese law if parties so agree beforehand upon entry into the Security Document with respect to substitutions that meet certain criteria agreed in advance by the parties and if the proposed substitution is in accordance with such criteria. We think that Paragraph 4(d) (or in the case of the ~~NY~~ IM Deed, Paragraph 4(e)) of each Annex and Deed is sufficient in this regard, provided that any security interest over substituted Collateral that is Japanese Collateral is effectively created and perfected only after the procedures described in our responses to questions 1 through 6 above, as applicable, have been taken.

With regard to the effect of substitution, please see our response to question 24.

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

We note that additional assumption in (j) above applies to questions 12 to 15 below.

12. Formalities Necessary For the Exercise of the Secured Party's Rights as a Secured Party Assuming a Valid and Perfected Security Interest in the Eligible Collateral under the Laws of Japan

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

Non-Japanese Collateral

~~51~~54With respect to priority, as far as no other security interest has been created over the Substitute Collateral and perfected before the substitution.

If the Collateral is Non-Japanese Collateral, a security interest is governed by the law determined in accordance with the Japanese conflict of laws rules and the process of enforcement would be governed by such law to the extent it is not regarded as contrary to Japanese public policy or good morals.

Japanese Collateral

If the Collateral is Japanese Collateral, the process of enforcement would be governed by Japanese law. While Article 349 of the Civil Code prohibits an agreement under which the pledgee is allowed to dispose of the pledged asset without resorting to court proceedings, Article 515 of the Commercial Code exempts from such prohibition a pledge securing obligations arising out of commercial transactions. The obligations under the Master Agreement to which a Corporation that will be subject to the initial margin requirements (an "**IM Corporation**") is a party would almost certainly qualify for the exemption.

Given that Aritcle 515 of the Commercial Code applies, the Collateral Taker and the Security Collateral Provider may agree on how the pledge is enforced. We discuss below possible methods of enforcement for each type of collateral.

With respect to movable assets such as bearer securities, the Secured Party is free to sell Collateral (or purchase the Collateral itself) and apply the proceeds to satisfy the Security Collateral Provider's outstanding obligations under the Master Agreement ~~unless both the Security Collateral Provider and the Secured Party are Non-Corporate Entities, in which case the Secured Party must follow official foreclosure procedures to enforce its rights as a secured party~~.

With respect to registered and book-entry securities, the Secured Party may either claim for payment of the pledged claim from the obligor of the claim (i.e. receive payment from the issuer)~~52~~55 and apply the proceeds in satisfaction of the obligations of the Security Collateral Provider, or liquidate the Collateral posted by the Security Collateral Provider and set-off its claim against the claim of the Security Collateral Provider without ~~formal procedures. However, in order to effect this, the Secured Party will require the~~ any cooperation of the Security Collateral Provider. ~~If the Security Collateral Provider refuses to cooperate with the Secured Party, then the Secured Party must file a petition with the court in order to foreclose on its security interest.~~[53]

With regard to Cash Collateral, if the deposit account is maintained with the Secured Party, the Secured Party may set-off the amounts due from the Security Collateral Provider against its obligations to return the deposited cash to Security Collateral Provider without any official foreclosure procedures. If the deposit account is maintained with any other bank, the procedures for enforcement are the same as those for registered and book entry securities.

13. Formalities Necessary for the Exercise of the Secured Party's Rights as a Secured Party Assuming a Valid and Perfected Security Interest in the Eligible Collateral under the Laws of Another Jurisdiction

~~52~~55 Article 367 of the Civil Code.

[53] ~~For example, with respect to registered and book-entry JGBs, the Security Collateral Provider would have to file a petition for a court order to attach and transfer such bonds and to make an appropriate registration (Articles 159 and 164 of the Civil Execution Act (*minji shikkou hou*), Act No.4 of 1980, as amended). These procedures may take one month or longer. Although use of an irrevocable prior consent (power of attorney) may be considered to deal with this problem, the validity and enforceability of such a power of attorney upon insolvency is not certain. See discussion in our response to question 17 at page 17 below.~~

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

Assuming that the Eligible Collateral is Non-Japanese Collateral and the Secured Party has obtained a valid and perfected security interest in the Eligible Collateral under the applicable laws of the relevant jurisdiction, there is no formality, notification requirement or other procedure that the Secured Party must observe or undertake in Japan in exercising its rights as a Secured Party under each Security Document.

14. Laws or Regulations in Japan Affecting a Creditor's Enforcement Rights

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

There are no laws or regulations in Japan that would limit or distinguish a creditor's enforcement rights with respect to Collateral depending on (i) the type of transaction underlying the creditor's exposure or (ii) the type of Collateral. Please note, however, that a creditor's enforcement rights would be limited by statutory liens under the laws of Japan. For example, national and local government has priority over other creditors to enforce their claims over a security interest with respect to the collection of taxes. Furthermore, a creditor's claim for expenses relating to the preservation of the Collateral on behalf of all creditors would have priority over the claims of all creditors who benefited from such preservation.

15. Event of Default, Etc., on the Part of the Secured Party

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

Assuming that an Event of Default~~, Relevant Event or Specified Condition, as the case may be,~~ existed with respect to the Secured Party rather than or in addition to the Security Collateral Provider and the Security Collateral Provider chose to terminate a Master Agreement, there would be no changes to our responses to questions 12 to 14 above. Such a situation would not affect the ability of the Secured Party to exercise its enforcement rights with respect to the Collateral.

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

We note that additional assumption (k) applies to questions 16 to 18 below.

16. Determination of Competing Priorities Between Creditors

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

Because of the deletion of provisions stating territorial effect by amendments made in 2001, Japanese Insolvency Acts now have extra-territorial effect. Therefore, a security interest in both Japanese Collateral and Non-Japanese Collateral would be subject to Japanese Insolvency Proceedings.

Under the JBA and CIRA, a creditor who holds a perfected security interest in particular assets belonging to the debtor's estate has a right of exclusive preference (*betsujo ken*)[54][56]. The right of exclusive preference is a right to receive payment of the secured debt out of particular assets belonging to the estate in preference to ordinary creditors. This right may be exercised without complying with the proceedings for the general distribution of the estate. The position and treatment of such creditor under Special Liquidation is basically the same as under the JBA or CIRA. Thus, with respect to the above listed proceedings, without having to satisfy any specific conditions, a Secured Party with a duly created and perfected security interest enjoys absolute priority over other creditors.

In a Corporate Reorganization Proceeding, unlike in the other Insolvency Proceedings, a security interest becomes a "reorganization security interest" (*kousei tanpo ken*[55][57]). Although a "reorganization security interest" has priority over general creditors, the amount of the secured claims is subject to certain limitations, i.e. the priority of such claims over unsecured claims is only to the extent of the going concern value of the Collateral as discounted from the current market value, and the payment therefor is made by installments pursuant to the reorganization plan[56][58]. As a matter of experience it is very unlikely that full satisfaction of the debt will be obtained under Corporate Reorganization Proceedings.

Therefore, a claim of the Secured Party is given less than absolute priority under the CRA. The limitations which may be applicable under the CRA to enforcement of a security interest are more fully described in our response to question 17 below.

In all Insolvency Proceedings, an unperfected security interest has no priority among the creditors and must be treated as an unsecured claim.

There may be cases where more than one security interest is created over the same Collateral. In such case, priority will be determined by reference to the actual dates of perfection. In the case of debt securities in registered or book-entry form, only the creditor having a first priority is registered in the registry or recorded in the books. Creditors having a subsequent interest need to evidence the perfection and priority of their interest in such securities by obtaining a fixed date certification stamp on the relevant document evidencing creation of the security interest. The same procedures apply for cash.

17. Effect of Commencement of Insolvency Proceedings on the Secured Party's Rights under Each Security Document

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[54][56] Article 65 of the JBA and Article 53, paragraph 1 of the CIRA.

[55][57] Article 2 paragraph 10 of the CRA.

[56][58] This restriction is one of the main reasons the ~~1995 ISDA Credit Support Annex (Security Interest subject to Japanese Law) and the 2008 ISDA Credit Support Annex (Loan/Japanese pledge) (collectively "**ISDA Japanese** JP Annexes")~~ adopted the Loan & Set-off method, enforcement of which is considered to be permissible outside CRA proceedings. For general information on the structure adopted in the ~~ISDA Japanese~~ JP Annexes, see "User's Guide to the 1995 ISDA Credit Support Annex (Security Interest Subject to Japanese Law)" or "Guidebook for ISDA Credit Support Annexes (Japanese language)" published by ISDA.

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

Discussion in relation to Security Documents generally

The Secured Party's rights under each Security Document, such as the right to liquidate the Collateral, would not be subject to any stay or freeze or otherwise be affected by the commencement of a Bankruptcy Proceeding. In Corporate Reorganization Proceedings, however, enforcement of security interests are subject to certain limitations due to the measures taken by the court to preserve the debtor's estate.

Article 47 of the CRA provides that, in principle, after the commencement of a Corporate Reorganization Proceeding, the reorganizing company may not pay debts (including secured debts) other than in accordance with or subject to the reorganization plan. Although enforcement of security interests before the official commencement of the proceeding is not completely prohibited, in practice, the measures taken by the court to preserve the debtor's estate mean that enforcement of security interests is usually not permitted, even before the official commencement of the proceeding. Such measures include issuing (i) "stay orders"[57][59] (*chuushi meirei*) to stay existing individual foreclosure proceedings and "comprehensive prohibition orders"[58][60] (*houkatsu teki kinshi meirei*) to prohibit all proceedings for foreclosure (whether existing or in the future) comprehensively, (ii) orders to prohibit the debtor from disposing of its property[59][61] (including payment of debts by applying collateral through private sale of the pledged assets or permitting creditors to collect directly from the third party obligor of the pledged claims); and (iii) orders to appoint "administrator(s)" (*hozen kanrinin*)[60][62] or "supervisor(s)" (*kantoku iin*)[61][63] to control the debtor's estate (see our response to question H in Part 3).

Usually, the court takes all of the actions referred to above concurrently once the application for the commencement of a Corporate Reorganization Proceeding is made. In particular, a "preservation order" (*hozen meirei*), which is an order issued in connection with the actions referred to in (ii) above has the effect of prohibiting the debtor from any kind of act to dispose, in whatever form, of the debtor's property. It is usual, if not always, that a "preservation order" is issued as soon as the court accepts the application for the commencement of a Corporate Reorganization Proceeding. Therefore, even before the official commencement of the Corporate Reorganization Proceeding, enforcement of security interests is restricted, and upon the finalization of the reorganization plan, all security interests become "reorganization security interests" (*kousei tanpo ken*) (see our response to question 16).

Under the CIRA, a "rehabilitation security interest" (*saisei tanpo ken*), including a statutory pledge, will neither be subject to a stay order nor a comprehensive prohibition order since a statutory pledge will be a right of exclusive preference; however, it will be subject to an "auction stay" order (*tanpo ken no jikkou tetsuzuki no chuushi meirei*) which would stay foreclosure proceedings of security interests for a certain period.[62] [64] In such case,

[57][59] Paragraph 1, Article 24 of the CRA.

[58][60] Article 25 of the CRA.

[59][61] Article 28 of the CRA.

[60][62] Article 30 of the CRA.

[61][63] Article 35 of the CRA.

[62][64] Article 31 of the CIRA.

enforcement of a security interest will not be allowed until the end of such stay (usually a month or so).

The trustee or receiver, as the case may be, may at its discretion, avoid some acts by the Secured Party as preference (as discussed in our response to question 18 below) (*hinin ken*). Such acts conducted in the suspect period could be avoided retroactively.[65] ~~64~~[66]

~~63~~Where a petition has been filed for the commencement of proceedings under the CRA, bearing in mind that the Secured Party is unlikely to recover its claims even if it waits until the finalization of the corporate reorganization plan (see our response to question 17 above), it is advisable to enforce a security interest as soon as the petition is filed. The more quickly enforcement is completed, the less risk there is under the CRA of any intervention or avoidance by the trustee. For the foregoing reasons, it is our considered opinion that the Secured Party should never wait for the commencement of the proceeding under the CRA or enactment of the plan under the CRA (which could take years). Automatic Early Termination in ISDA Master Agreements upon the application for commencement of proceedings under the CRA should be effective since a Secured Party becomes entitled to enforce their security interest immediately upon the application. Therefore, we emphatically recommend that Automatic Early Termination be made applicable in such circumstances to counterparties of the parties who may be holding any Japanese Collateral.

Suppmental Discussion in relation to IM Security Documents, Euroclear Documents and Clearstream Documents

While the discussion above would apply to each Security Document, we have made further consideration with respect to IM Security Documents, Euroclear Documents and Clearstream Documents.

Bankruptcy Proceeding

We note that the JBA provides that a bankruptcy trustee needs to obtain permission of the court in order to admit a right of exclusive preference unless such admittance relates to the assets whose value is not more than JPY 1,000,000 or permitted in advance by the court. This permission requirement is imposed on the bankruptcy trustee's action. Therefore, if the exercise of a right of exclusive preference requires action by the bankruptcy trustee and/or insolvent debtor, the exercise of such right would be subject to the court's permission (unless the relevant value is not more than JPY 1,000,000). In contrast, if no action is required to be taken by the bankruptcy trustee and/or insolvent debtor in respect of an exercise of a right of exclusive preference, we believe that the exercise would not be subject to the court's permission.

In this regard, when the Custodian, Euroclear or Clearstream, as applicable, is authorized and instructed to transfer the Collateral as per the instruction of the Collateral Taker upon satisfaction of certain conditions (e.g. an occurrence of a Secured Party Rights Event (as defined in each IM Security Document) and delivery of a notice thereof) without any further

[65] It is considered that such right of avoidance (*hinin ken*) may also be exercised against a private enforcement (See Decision of Kobe District Court, February 28 1977, *Hanrei* Times 861 at 108 and Decision of Osaka District Court, December 18, 1997, *Kin'yuu Houmu Jijou* 1518 at 40).

~~64~~

~~63~~ ~~It is considered that such right of avoidance (*hinin ken*) may also be exercised against a private enforcement (See Decision of Kobe District Court, February 28 1977, *Hanrei* Times 861 at 108 and Decision of Osaka District Court, December 18, 1997, *Kin'yuu Houmu Jijou* 1518 at 40).~~

instruction from the Collateral Provider under the custodial arrangement described in assumption (o) or arrangement described in assumption (p), a right of exclusive preference in respect of the Collateral can be exercised without any action by the bankruptcy trustee and/or insolvent debtor.

Accordingly, if such custodial arrangement or arrangement is structured so that the Custodian, Euroclear or Clearstream is authorized and instructed to transfer the Collateral as per the instruction of the Collateral Taker upon satisfaction of certain conditions without any further instruction from the Collateral Provider, exercise of a right of exclusive preference in respect of the Collateral would not be subject to the permission requirement under the JBA.

Corporate Reorganization Proceeding

As discussed in our response to question 16, the Collateral Taker's security interest (regardless of whether it is created under Japanese law or the laws of a foreign jurisdiction)[67] created under each Security Document would be subject to a Corporate Reorganization Proceeding if such proceeding is commenced with respect to the Collateral Provider. Therefore, if a Corporate Reorganization Proceeding commences with respect to the Collateral Provider, the Collateral Taker cannot enforce its security interest in a timely manner (a "**moratorium**").

However, we have concluded that, by focusing on IM Corporations, the Collateral Taker's security interest granted by an IM Corporation will be highly unlikely to be subject to a Corporate Reorganization Proceeding, while it is impossible to rule out the possibility of commencement of a Corporate Reorganization Proceeding in relation to Corporations (not the IM Corporations) in general.

(i) Low possibility of filing for commencement of Corporate Reorganization Proceedings

A Corporate Reorganization Proceeding is commenced by a court issuing the order of commencement following its receipt of a petition.[68] Accordingly, if no petition is filed, the Collateral Taker's security interest would not be subject to a moratorium. In that respect, we could say that the possibility of commencement of the proceedings would be quite low because the qualified petitioners for the commencement of the proceedings are restricted.

A petition for commencement of a Corporate Reorganization Proceeding with respect to an IM Corporation may be filed by:

(a) such IM Corporation;[69]

(b) a creditor whose claims against such IM Corporation account for 10% or more of the amount of the stated capital of such IM Corporation;[70]

[67] Although Article 2, paragraph 10 of the CRA only lists security interests under Japanese law as interests constituting a reorganization security interest (*kousei tanpo ken*) which would be subject to a moratorium under a Corporate Reorganization Proceeding, in our view, a security interest created under foreign law would, to the extent it is equivalent or substantially similar to a Japanese law security interest, also become a reorganization security interest by analogy because otherwise a creditor is able to circumvent a moratorium by changing the governing law of its security interest, which would create inequality among creditors and not meet the purpose of the CRA.

[68] Article 41, paragraph 1 of the CRA.

[69] Article 17, paragraph 1 of the CRA.

[70] Article 17, paragraph 2, item 1 of the CRA.

(c) a shareholder who holds 10% or more of the voting rights in such IM Corporation;[71] or

(d) the Commissioner of the FSA.[72]

In reality, however, a petition is unlikely to be filed by such persons for the following reasons.

Firstly, in relation to (a) above, an IM Corporation is regulated by the FSA and in practice would almost certainly consult with the FSA if it considers to file for an insolvency proceeding. Since the FSA takes a view that a Corporate Reorganization Proceeding should not be applied to an IM Corporation (as discussed below), an IM Corporation is highly unlikely to file a petition against itself.

Secondly, since the size of business of an IM Corporation is very large,[73] the existence of a single creditor who falls within (b) above or a single third party shareholder who falls within (c) above is unlikely. In addition, in respect of (c) above, if an IM Corporation is owned by a holding company, the only shareholder is such holding company, which is subject to the FSA's supervision and thus highly unlikely to file a petition for the same reasons as discussed in the paragraph above. It should be noted that a person filing a petition is required to make a *prima facie* case demonstrating the grounds[74] for the commencement of a Corporate Reorganization Proceeding,[75] which would make it in reality difficult for creditors, who (unlike the FSA) do not have the authority to investigate and collect evidence from financial institutions (including IM Corporations), to file a petition.

Finally, in respect of (d) above, the FSA, in response to a question as to how the "immediately available" requirement of collected initial margin should be satisfied in the event of insolvency of G-SIBs, stated in item 104 of its responses to public comments published on its website[76] dated 31 March 2016 (the "**FSA 2016 Responses**") that the requirement would not be a concern because a failing G-SIB would be resolved in accordance with "The FSA's Approach to Introduce the TLAC Framework" (including the annex thereto) published on its website[77] dated 15 April 2016 (the "**FSA TLAC Approach**") under which assets and liabilities of a failing G-SIB including shares in an operating financial institution are anticipated to be transferred in accordance with the DIA to a bridge institution (and the operating

[71] Article 17, paragraph 2, item 2 of the CRA.

[72] Article 377, paragraph 1 of the AST. The authority to file a petition is delegated from the Prime Minister (Article 548 of the AST, c.f. Article 56 of the Order for Enforcement of the Act on Special Treatment of Corporate Reorganization Proceedings and Other Insolvency Proceedings of Financial Institutions (*kin'yuu kikan tou no kousei tetsuzuki no tokurei tou ni kansuru houritsu sekou rei*) (Cabinet Order No. 118 of 2003, as amended) (the "**AST Enforcement Order**")).

[73] Article 123, paragraph 11, item 4, c of the Cabinet Office Ordinance on Financial Instruments Business, etc. (*kin'yuu shouhin torihiki gyou tou ni kansuru naikakufurei*) (Cabinet Office Ordinance No. 52 of 2007, as amended) (the "**Financial Instruments Business Ordinance**"). Technically speaking, the threshold for applicability of the initial margin regulation is measured at a group level rather than at an entity level.

[74] Article 41, paragraph 1 of the CRA provides that the court would issue an order for commencement only if it determines that (i) an event constituting the grounds for commencement of a Bankruptcy Proceeding is likely to occur or (ii) the Corporation is likely to experience significant hindrance to the continuation of its business if it pays its debts that are due.

[75] Article 20, paragraph 1 of the CRA.

[76] http://www.fsa.go.jp/news/27/syouken/20160331-4.html.

[77] http://www.fsa.go.jp/news/27/ginkou/20160415-3.html (Japanese) and http://www.fsa.go.jp/en/news/2016/20160415-1.html (English).

financial institution would continue its business) (see paragraph (ii) below for more details of the FSA TLAC Approach). The FSA further stated in the above-mentioned item 104 that, in light of the systemic importance of financial institutions with a large volume of over-the-counter derivatives transactions that become subject to the initial margin regulation from September 2016, it is highly important to put such financial institutions into an orderly resolution in the substantially same fashion as G-SIBs. Although the FSA 2016 Responses mentioned only IM Corporations subject to the initial margin regulation from 1 September 2016, the statement should be considered to apply to IM Corporations to be subject to the initial margin regulation at a later phase because the FSA stated in item 19 of the FSA 2016 Responses that financial institutions subject to the initial margin requirements are systemically important by referring to JPY 1.1 trillion threshold (which is the number to be in effect at the final phase). From the above, it is clear that, for systemically important financial institutions, the FSA is of the view that when those financial institutions are in a distressed situation, they will be resolved in accordance with the resolution process under the DIA rather than being subject to restructuring under Corporate Reorganization Proceedings.

While FSA's responses to public comments are not legally binding, they are viewed by the industry as equivalent to legislation. This is because the view reflected in the responses is not the personal view of a governmental official at the FSA but rather the official view/guidance of the entire FSA, a governmental organization responsible for the enforcement of the relevant law.

Accordingly, given the above-mentioned statements by the FSA, we believe that the FSA would take the view that an orderly resolution regime should be applied to IM Corporations and that a Corporate Reorganization Proceeding should not be instituted against IM Corporations. Therefore it is highly unlikely that the Commissioner of the FSA would file a petition for commencement of a Corporate Reorganization Proceeding against an IM Corporation.

Based on the foregoing, in a practical sense, a petition for commencement of a Corporate Reorganization Proceeding is unlikely to be filed against an IM Corporation. Since, from a legal perspective, we cannot eliminate the possibility of a petition being filed, we will examine further the cases where a petition for the commencement of the Corporate Reorganization Proceedings is filed.

(ii) No credit deterioration

Even if a petition for commencement of a Corporate Reorganization Proceeding is filed, the court would not issue an order of commencement if the creditworthiness of the IM Corporation has not deteriorated to the point where it could become subject to a Corporate Reorganization Proceeding.[78]

In this respect, if a regulation implementing the standard established by the "Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution" issued by the Financial Stability Board, as contemplated by the FSA TLAC Approach, is introduced in Japan, it would provide strong evidence for the argument that IM Corporations, which are operating financial institutions within their corporate groups, would not become insolvent. This is because under the anticipated regulation, which essentially adopts a single point of entry strategy,

[78] Please see footnote 74 for the grounds for the commencement of a Corporate Reorganization Proceeding.

losses incurred by an operating financial institution to be designated by the FSA would be absorbed by its parent holding company, assets and liabilities of the parent holding company (including shares in the operating financial institution) would be transferred to a bridge institution, and the operating financial institution would continue its business in the ordinary course (while the parent holding company would be unwound).

However, as there is no such regulation currently in place, we need to consider that it is possible that the creditworthiness of an IM Corporation has deteriorated to the above-mentioned point.

(iii) Dismissal or delay of a ruling as to a petition for commencement of Corporate Reorganization Proceedings

Even though the creditworthiness of the IM Corporation has deteriorated, the court would highly likely dismiss a petition for commencement of a Corporate Reorganization Proceeding or delay its ruling for the commencement of the Corporate Reorganization Proceedings and in such cases a preservation order (*hozen kanri meirei*) (which is equivalent to a moratorium) under the Corporate Reorganization Proceedings would not be issued by the court.

As mentioned above, the FSA has shown in the FSA 2016 Responses its intention that it will not have IM Corporations become subject to Corporate Reorganization Proceedings. Therefore, should a petition be filed by any other person, we expect that the FSA would take measures to ensure that the petition is dismissed or at least that a ruling for the commencement of the proceedings is delayed by the court. We will further examine whether the FSA has, as a practical matter, the ability to cause the petition to be dismissed or the ruling for the commencement of the proceedings to be delayed.

FSA being notified: If a petition for commencement of a Corporate Reorganization Proceeding is filed with a court, the court clerk shall notify the Commissioner of the FSA [79] of the filing. [80] Separately, an IM Corporation is required to notify the Commissioner of the FSA[81] if it files, or becomes aware of a filing by a third party of, a petition for the commencement of a Corporate Reorganization Proceeding.[82] Accordingly, the FSA would become aware if a petition for the commencement of a Corporate Reorganization Proceeding is filed against an IM Corporation. This gives the FSA the chance to create the grounds for which the court could dismiss the petition or delay its ruling for the commencement of the Corporate Reorganization Proceedings (as discussed more fully in the paragraph "Expected Court's response to FSA's opinion or Court's ruling" below)

Specified Confirmation: The FSA which has been notified of a filing would be able to cause an orderly resolution proceeding to commence. An orderly resolution proceeding is initiated by a Specified Confirmation. The authority to make a

[79] The authority to receive notification is delegated from the Prime Minister (Article 548 of the AST, c.f. Article 56 of the AST Enforcement Order).

[80] Article 379 of the AST.

[81] The authority to receive notification is delegated from the Prime Minister (Article 194-7, paragraph 1 of the FIEA, c.f. Article 42, paragraph 2, item 4 of the Order for Enforcement of the Financial Instruments and Exchange Act (*kin'yuu shouhin torihiki hou sekou rei*) (Cabinet Order No. 321 of 1965, as amended)).

[82] Article 50, paragraph 1, item 7 and item 8, Article 199, item 5 and Article 200, paragraph 2 of the Financial Instruments Business Ordinance.

Specified Confirmation belongs solely to the Prime Minister.[83] However, the Prime Minister is required to make a Specified Confirmation following deliberation at the Financial Crisis Response Council (*kin'yuu kiki taiou kaigi*) (the "**FCRC**"). Since the Commissioner of the FSA, who is in charge of the supervision of financial institutions,[84] is a member of the FCRC, the Prime Minister would certainly respect the opinion of the Commissioner of the FSA.

It should be noted that the FCRC is convened if the Prime Minister consults with the FCRC.[85] While the Prime Minister is not required to consult with the FCRC, it is highly likely that the Prime Minister would consult the FCRC if the FSA advised the Prime Minister to do so. Accordingly, it is highly likely that the Prime Minister would consult the FCRC to make a deliberation regarding the making of a Specified Confirmation in accordance with the advice of the FSA.

Timing of Specified Confirmation: From a procedural perspective, there is no notice period or other waiting period required to convene the FCRC or to make a Specified Confirmation. Therefore it is possible to hold the FCRC meeting and make a Specified Confirmation on the same day as the day on which the FSA is notified of the filing of the petition for the commencement of a Corporate Reorganization Proceeding. In fact, the meeting of the FCRC and a determination to institute a resolution proceeding was made on the same day in previous cases[86]. On the basis of past cases, we have concluded that the meeting of the FCRC and issuance of a Specified Confirmation to institute an orderly resolution proceeding would be able to take place on the same day.

By taking the above action to procure the making of a Specified Confirmation, the FSA may create grounds on which the court could dismiss the petition (as discussed more fully below).

Petition for Civil Rehabilitation Proceedings or Bankruptcy Proceedings: Alternatively or in conjunction with a Specified Confirmation, the FSA may take other measures to prevent a Corporate Reorganization Proceeding. As one of such measures, the FSA may file a petition for the commencement of a Civil Rehabilitation Proceeding[87] or Bankruptcy Proceedings[88], thereby creating grounds

[83] Article 139 of the DIA and Article 39, item 3 of the DIA Enforcement Order.

[84] Article 4, paragraph 1, item 3 of the Act for Establishment of the Financial Services Agency (*kin'yuu chou secchi hou*) (Act No. 130 of 1998, as amended).

[85] Article 42, paragraph 1 of the Act for Establishment of the Cabinet Office (*naikakufu secchi hou*) (Act No. 89 of 1999, as amended).

[86] The first meeting of the FCRC relating to the injection of public funds into Resona Bank, Limited was held on 17 May 2003, the day on which Resona Bank, Limited applied for such injection, and the determination to approve the necessity of recapitalisation was also made on the same day. In addition, the second meeting of the FCRC relating to the special crisis management of The Ashikaga Bank, Ltd. was held on 29 November 2003, the day on which the results of the inspection by the FSA was revealed, and the decision was made on the same day that The Ashikaga Bank, Ltd. became subject to the special crisis management. Although these cases occurred prior to the amendment to the DIA introducing an orderly resolution regime in 2014 and the cases under Article 102 (not Article 126-2) of the DIA, a similar timing is anticipated for future cases.

[87] Article 446, paragraph 1 of the AST. The right to decide to file a petition for commencement of civil rehabilitation proceedings is delegated to the Commissioner of the FSA

[88] Article 490, paragraph 1 of the AST, provides that the right to file a petition for commencement of bankruptcy proceedings belongs only to the Prime Minister (see Article 548 of the AST and Article 56 of the Enforcement Order thereof). However, if a Specified Confirmation is issued, the Prime Minister must have agreed to handle the failing financial institution in accordance with the orderly resolution regime introduced by the amendments to the DIA. The FSA also may take this approach pursuant to the Prime Minister's instruction.

on which the court could dismiss the petition for commencement of a Corporate Reorganization Proceeding (as discussed more fully below).

Statement of opinion: Even if the FSA is not able to arrange a Specified Confirmation immediately for any operational reasons, if the FSA was notified of or becomes aware of a petition filed against the IM Corporation, the FSA would be able to state its opinion before the court on the timing of the court's ruling[89]. Even if the FSA is not requested by the court for an opinion, the FSA could voluntarily submit its opinion to the court in accordance with Article 8, paragraph 4 of the CRA.

Further, if a Specified Confirmation is issued and the FSA causes the financial institution to become subject to Special Surveillance (*tokubetsu kanshi*) as defined in Article 126-3, paragraph 1 of the DIA,[90] the Commissioner of the FSA[91] may, before a ruling in relation to a petition for the commencement of a Corporate Reorganization Proceeding is given, state its opinion on matters such as the timing of such ruling before the court (see Article 126-15 of the DIA).

Given that the FSA in its FSA 2016 Responses, having considered that a moratorium under Corporate Reorganization Proceedings may give rise to systemic risk, takes the view that an IM Corporation should not be subject to a Corporate Reorganization Proceeding, it is highly likely that, should such action be required to avoid or delay such Corporate Reorganization Proceedings, the FSA will state its opinion requesting the court to dismiss the petition or to delay its ruling until the FSA completes relevant measures (including the relevant transfer of assets and/or liabilities to a bridge institution) to effect an orderly resolution of the IM Corporation.

Expected Court's response to FSA's opinion or Court's ruling: Since "timing of a ruling" is expressly mentioned in Article 126-15 of the DIA as a matter on which the FSA may state its opinion, we are of the view that the court would follow the FSA's opinion on the timing of a ruling in respect of the petition stated in accordance with the DIA. We believe that it would be the case in respect of the FSA's opinion stated in accordance with the CRA as well if the insolvent person concerned is an IM Corporation because the amendment in 2014 to add the above-mentioned Article 126-15 is understood to, in practice, require the court to respect the FSA's opinion (although such opinion does not legally bind the court) in the context of insolvency of systemically important financial institutions even before an orderly resolution proceeding is in effect. Therefore, we believe that the court will highly likely delay its ruling until the FSA completes relevant measures (including the relevant transfer of assets and/or liabilities to a bridge institution) to effect an orderly resolution of the IM Corporation. In addition, we believe that a court would take into account that (i) the purpose behind the introduction of the orderly resolution regime for systemically important financial institutions in Japan (as introduced by amendments to the DIA in 2014 to implement the Key Attributes (as defined in the Netting Opinion) issued in October 2011) was to avoid systemic risks that may be caused by or upon the default of a systemically important financial institution, and that if a court does not follow the FSA's opinion and rules

[89] Article 8, paragraph 4 of the CRA.

[90] A determination of Special Surveillance is made immediately following a Specified Confirmation.

[91] The authority to state an opinion is delegated from the Prime Minister (Article 139 of the DIA, c.f. Article 39 of the DIA Enforcement Order).

in favour of commencing Corporate Reorganization Proceedings in respect of a IM Corporation, this will be contrary to the purpose of such amendments to the DIA in 2014; and (ii) that the CRA and DIA specifically allows the FSA as the governmental authority in charge of supervision of financial institutions and the Commissioner of the FSA to state its opinion on the proceedings and that this is likely because the reorganization, rehabilitation and/or liquidation of systemically important financial institutions are very complicated and will require a significant political decision. Accordingly, we believe that a court will highly likely follow the FSA's opinion stated pursuant to the CRA or the DIA.

Moreover, if a Specified Confirmation is issued and/or if a petition for commencement of the Civil Rehabilitation Proceedings or Bankruptcy Proceedings is made by the FSA, the court is required to dismiss the petition for commencement of the Corporate Reorganization Proceedings.

Even though the creditworthiness of a Corporation, against which a petition of commencement of Corporate Reorganization Proceedings is filed, has deteriorated to the point as set out in footnote 74, the court is required to dismiss a petition for commencement of a Corporate Reorganization Proceeding in the exceptional cases provided for under the CRA. Those exceptional cases include (a) a situation where a Bankruptcy Proceeding, Civil Rehabilitation Proceeding or Special Liquidation is pending before the court, and enforcing such proceeding conforms to the common interests of creditors (the "**Item 2 Situation**") and (b) a situation where it is apparent that a proposed reorganization plan providing for the continuation of the business is unlikely to be prepared or approved, or a reorganization plan providing for the continuation of the business is unlikely to be confirmed by the court (the "**Item 3 Situation**"). Following the filing of a petition for commencement of Corporate Reorganization Proceedings, it is possible that the FSA causes an Item 2 Situation or Item 3 Situation to occur so that the court would be required to dismiss such petition. If a Specified Confirmation is made, it is anticipated that some assets and liabilities of the failing financial institution will be transferred to a bridge institution and the rest will remain with the financial institution for liquidation. Given this anticipated transfer, the court is highly likely to dismiss the petition for commencement of the Corporate Reorganization Proceedings on the grounds that the case falls within the Item 3 Situation because a turnaround is not reasonably expected. Even if that is not the case, assuming that the FSA has filed a petition for the commencement of Civil Rehabilitation Proceedings or Bankruptcy Proceedings, the court would be required to dismiss the petition on the grounds that the case falls within the Item 2 Situation on the basis that it is apparent that avoiding a moratorium to be caused by the commencement of the Corporate Reorganization Proceedings which could cause systemic risk would conform to the common interests of everyone, including creditors of the failing financial institution.

(iv) Transfer of derivatives

If all Transactions under the Master Agreement including the collateral arrangement under the IM Security Document are transferred to a solvent institution (e.g. a bridge institution) prior to the commencement of a Corporate Reorganization Proceeding, the counterparties to the IM Corporation would not need to be concerned about any moratorium risk. In this regard, under the orderly

resolution regime under the DIA, the resolution authority has a power to transfer assets and liabilities of financial institutions.

While the FSA takes a view that IM Corporations should be subject to the orderly resolution regime contemplated in the FSA TLAC Approach, given the lack of actual legislation, the FSA would seek the most appropriate means of an orderly resolution available under the current legislation. That is, in our view, application of the resolution regime to an IM Corporation that is an operating financial institution (rather than to the parent holding company in accordance with the single point of entry strategy). In fact, when the orderly resolution regime was introduced, the regime was anticipated to be applied not only to holding companies but also to operating financial institutions.[92]

The FSA 2016 Responses could be read as the FSA's intention that it will always impose the Temporary Stay to all derivatives transactions which the failing financial institution (which is an IM Corporation) has entered into. As discussed in our Netting Opinion, if the Temporary Stay is imposed on all the derivatives transactions, the transactions will be transferred to a solvent institution. Please see the detailed discussions set out in II.C.3.f of the Netting Opinion.

Based on the foregoing, a petition for commencement of a Corporate Reorganization Proceeding is highly unlikely to be filed and, should it be filed, it is highly likely that the petition would be dismissed or, if the petition is not dismissed, the Transactions under the Master Agreement are highly likely to have been transferred to a solvent institution prior to commencement of the Corporate Reorganization Proceeding.

18. The Security Collateral Provider's Ability to Recover Transfers of Collateral Made to the Secured Party during the Suspect Period

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

After the Security Collateral Provider has suspended payments or has filed for Insolvency Proceedings, as part of the exercise of the right of avoidance pursuant to Article 162 of the JBA, Article 86-3 of the CRA and Article 127-3 of the CIRA, the Security Collateral Provider (or its administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official) will be able to recover any transfers of Collateral made to the Secured Party if the Secured Party had knowledge (meaning, as a matter of law, actual knowledge, as

[92] See page 18 of the explanatory material published by the FSA on its website (http://www.fsa.go.jp/common/diet/183/index.html).

opposed to constructive[6593]) of such suspension or filing at the time of the transfer of Collateral. Although there are no judicial precedents on point, our view is that the substitution of Collateral by a counterparty during on or after the suspension of payments or the filing for Insolvency Proceedings would not invalidate an otherwise valid pledge if the substitute Collateral is of no greater value than the assets it is replacing, because such substitution would not be considered preferential to other creditors under the Insolvency Acts. If the substitute Collateral is greater in value than the Collateral it is replacing, our view is that such substitution may be subject to avoidance only to the extent of such excess. However, we believe that the posting of additional Collateral pursuant to the mark-to-market provisions of the Security Documents on or after such time may be subject to avoidance as described above.

Miscellaneous

19. Validity of the Agreement of the Law governing Each Security Document and Submission to Jurisdiction

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

The IM NY Annex forms part of and is subject to the ISDA Master Agreement. Where the relevant ISDA Master Agreement is governed by English law, but the parties will provide in paragraph 13 of the IM NY Annex that the Annex is governed by and construed in accordance with New York law, the governing law of the ISDA Master Agreement will accordingly be split (i.e., dépeçage) – English law will govern the pre-printed ISDA Master Agreement, the Schedule and the Transactions but New York law will govern the IM NY Annex. The English jurisdiction provision of the ISDA Master Agreement would apply to the entire agreement including the IM NY Annex. Would the split governing law affect your answer above? The IM Deed may be entered into in connection with either an English law ISDA Master Agreement or a New York law governed ISDA Master Agreement but as it as a separate agreement and does not form part of the relevant ISDA Master Agreement we assume that the differences in governing law between the relevant ISDA Master Agreement and the IM Deed will not affect your answer above.

The parties' agreement on the governing law of each Security Document and the submission to jurisdiction would be upheld in Japan; provided, however, that the law applicable to the validity issues of a security interest under such agreement would be determined based on the Japanese conflict of laws rules, regardless of the governing law clause of such agreement (see our response to question 1 above). Under such rules, Japanese law will always apply with respect to the creation and perfection of a security interest in Japanese Collateral. If some of the Collateral is Japanese Collateral and some is Non-Japanese Collateral, then the courts of Japan will apply the laws of Japan to the Japanese Collateral. The parties' agreement on the submission to jurisdiction in the Security Documents would be upheld in Japan.

As discussed in Part 3.A, *dépeçage* would be valid under Japanese law, and thus, would be upheld by the Japanese courts except where the result of application of one law governing one part of an agreement conflicts with the result of application of the other law

[6593] Supreme Court precedent dated April 26, 1960 (*minshu* 14-6-1046). This precedent indicated that the "knowledge" required in this provision is actual knowledge but it did not indicate the specific guideline or example of such actual "knowledge".

governing the other part of such agreement in the same subject matter. Assuming that there is no such conflict between English law and New York law, our response to this questions 19 above would not be affected by the split of governing law.

20. Other Local Law Considerations

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

There are no other local law considerations that we would recommend the Secured Party to consider in connection with taking and realizing the Eligible Collateral from the Security Collateral Provider.

21. Other Circumstances that Might Affect the Secured Party's Ability to Enforce its Security Interest in Japan

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

There are no other circumstances we can foresee that might affect the Secured Party's ability to enforce its security interest in Japan.

VM NY Annex IA Amendments

None of our responses to questions 1 through 21 above would be different than the responses to such questions that we provided in this memorandum as a result of the inclusion of the VM NY Annex, as amended by the VM NY Annex IA Amendments, in this memorandum.

Part 2 - TITLE TRANSFER APPROACH PURSUANT TO THE TRANSFER ANNEX

Assumptions relating to the Transfer Annex

We have made the same assumptions as set forth in Part 1 except that the first sentence of assumption (a) should read as follows:

> "The Security Collateral Provider has entered into a Master Agreement governed by English law and a Transfer Annex with the Transferee."

In connection therewith, for the purposes of this Part 2, in assumptions (a) to (k): references to the "Security Document(s)" shall be deemed to be references to the "Transfer ~~Annex~~Annexes"; references to the "Security Collateral Provider" and "Secured Party" shall be deemed to be references to "Transferor" and "Transferee", respectively; and references to "Eligible Collateral" shall be deemed to be references to "Eligible Credit Support". In addition, such assumptions should be read as modified, where necessary, to be consistent with the fact that no security interest is created under the Transfer Annex and such other differences between the structures of the Security Documents and the Transfer Annex. Assumptions (o) and (p) in Part 1 will not apply to this Part 2.

Further, the following assumption is added as assumption (~~o~~s):

> "(~~o~~s) Transfers under ~~the~~ each Transfer Annex would not be recharacterized as creating a form of security interest by an English court; provided that the relevant Transfer Annex is not amended in any material way and provided further that the parties by their conduct have not otherwise clearly evidenced an intention to create a security interest in the transferred Collateral."

Questions relating to ~~the~~ each Transfer Annex

22. Unconditional Transfer of Ownership in the Assets Transferred and Risk of Recharacterization as a Security Interest

Would the laws of Japan characterize each transfer of Eligible Credit Support as effecting an unconditional transfer of ownership in the assets transferred? Is there any risk that any such transfer would be recharacterized as creating a security interest? If so, is there any way to minimize such risk? What would be the specific consequences of such a recharacterization (referring back to issues related to perfection, priority and formal requirements for establishing both as discussed with regard to the Security Documents in Part 1 above)?

Although we cannot completely rule out the possibility that such transfers would be recharacterized as creating a security interest (*tanpo bukken*, namely a *jouto tanpo* or transfer by way of security) due to the lack of judicial precedent, it is our view that each transfer of Eligible Credit Support would be characterized under Japanese law as an unconditional transfer of ownership in the assets transferred and would not be

recharacterized as creating a security interest, provided that the parties truly had such intention and acted consistently with such intention.[6694]

"*Jouto tanpo*" under Japanese law is a type of security arrangement taking the form of a sale which is treated as a *de facto* security interest. Although both ~~the~~ a Transfer Annex and a "*jouto tanpo*" arrangement take the form of a sale, the main difference between the two arrangements is that, in the case of a *jouto tanpo*, the transferor of the asset transfers only the ownership right and continue to possess and use it while, in the case of ~~the~~ a Transfer Annex, the Transferor transfers all proprietary rights with respect to the asset and the Transferee is entitled to use or sell it. Because of this difference, we are of the view that transfers of title under ~~the~~ each Transfer Annex would not be characterized as *jouto tanpo*.

In our view, the title transfer method adopted in ~~the~~ each Transfer Annex is similar in its substance and effect to the loan and set-off method, the title transfer approach commonly adopted in Japan. Please note, however, that apart from the similarity in economic effects between the two methods, transfers of title under ~~the~~ each Transfer Annex could be characterized as "*jouto*" (sale) rather than typical or straight forward "*shouhi taishaku*" (loan) under Japanese law because Japanese courts may determine that provision referring to or implying the collateral taker's obligation to repay or return the assets of the same type and amount (one of the fundamental factors for an agreement to be a loan under Japanese law) is missing and may proceed to further confusion.

Given the fact that the enforceability of the loan and set-off approach has been confirmed by the Act on Collective Liquidation of Specified Financial Transactions Conducted by Financial Institutions, etc.[6795] (*kin'yuu kikan tou ga okonau tokutei kin'yuu torihiki no ikkatsu seisan ni kansuru houritsu*, the "**Netting Act**") and there is no such confirmation available for the outright title transfer approach under Japanese law, it would, however, be prudent to document transfers of Collateral using the loan and set-off method to ensure enforceability in Insolvency Proceedings in Japan. Therefore, in cases where it is possible that an Insolvency Proceeding may be instituted in Japan with respect to the Transferor for the reason that its Location is in Japan or otherwise, we recommend that the relevant Transfer Annex be amended so that transfers of Collateral are characterized as loans under Japanese law.

Consequences of Recharacterization

The consequence of a transfer being recharacterized as "*jouto tanpo*" is that the transferred Collateral will be treated as security for the Obligations and, as a result, the Transferor or the relevant insolvency official will be able to demand the return of the Collateral or the equivalent thereof.

The perfection requirements under Japanese law are the same whether transfers of Collateral are *jouto tanpo* or outright transfers of title for each type of Collateral. Therefore, the validity of transfer of title would not be affected by such recharacterization.

[6694] It is the general tendency of the courts in Japan to regard the true intent of the parties to be determined by the conduct of the parties to an agreement and the economic purpose of the transaction. These are the most important factors in the characterization of a transaction. We think that if the title transfer approach is adhered to in practice and the conduct of the parties is consistent with title transfer, there is very little risk of re-characterization of title transfer as the creation of a security interest. On the other hand, if the parties were to amend the Transfer Annex by agreeing to transfer "back" the original Collateral itself, instead of "equivalent" Collateral as contemplated in the Transfer Annex or so imply by restricting the Transferee from freely using or otherwise disposing the transferred Collateral, the court might find that the parties intended to create a security interest instead of an outright title transfer.

[6795] Act No. 108 of 1998, as amended.

A sample of the relevant amendment provisions are attached hereto as Annex III. For further discussion relating to such provisions, see Part 3.

23. Additional Action to Ensure Continuation of Title Filing or Perfection Requirements

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

Under the Japanese conflict of laws rules, the law governing perfection of a transfer of title (the ownership interest) in movable assets and intangible claims is determined in the same way as that of a security interest. Therefore, as a matter of Japanese law, perfection requirements for Japanese Collateral are to be determined in accordance with Japanese law.[~~68~~96] Set out below are the perfection requirements for transfers of each type of Japanese Collateral:

(i) Corporate Debt Securities:

(a) in bearer form: delivery of the physical certificates from the Transferor to the Transferee;

(b) in registered form: the Transferee's name is recorded as the title holder in the relevant register with the registrar; and

(c) in dematerialized book-entry form: the amount of the securities is credited to the proprietary account of the Transferee with the relevant book-entry institution.

(ii) JGBs: the same as (i) above.

(iii) Foreign Government Bonds in bearer form: delivery of the physical certificates from the Transferor to the Transferee.

24. Effect of the Right of the Transferor to Substitute Eligible Credit Support

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

The substitution of Eligible Credit Support will be construed as an unconditional transfer of the Original Credit Support to the Transferor and of the New Credit Support to the Transferee. As the substitution takes the form of new transfers, our view is that the Transferee's consent to substitution is necessary. However, we think that substitutions without consent are permissible under Japanese law if the parties so agree upon their

[~~68~~96] Under Japanese law, title over an asset can be transferred generally by an agreement. However, title so acquired can not be used as protection against third parties (i.e. another transferee with respect to the same asset) unless perfected (e.g. by taking possession of such asset).

entry into the Transfer Annex with respect to substitutions that meet certain specified criteria and if the proposed substitution is in accordance with such criteria.

25. Validity of Paragraph 6 of ~~the~~ each Transfer Annex

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

Assuming that Section 6 of the Master Agreement is valid and enforceable in Japan insofar as it relates to the determination of a net amount payable by either party on the termination of the Transactions, which, in our view, would be the case, we hereby confirm that Paragraph 6 of ~~the~~ each Transfer Annex would also be valid to the extent that it provides for the Value of the Credit Support Balance or Credit Support Balance (VM), as applicable, to be included in the calculation of the net amount payable under Section 6(e) of the Master Agreement.

In the absence of an Insolvency Proceeding, Section 6(e) together with Paragraph 6 of ~~the~~ each Transfer Annex would be treated as a set-off agreement under Japanese law. A set-off agreement is valid under Japanese law, based on the principle of freedom of contract, to the extent it is not regarded as contrary to public policy or good morals. For the discussions of enforceability of such provisions in the context of an Insolvency Proceeding in Japan with respect to the Transferor, however, please refer to our response to question 26 below.

If no Insolvency Proceedings are possible in Japan, the Japanese law considerations described above are not relevant. Also, the Location of ~~the~~ Collateral is not relevant where a title transfer approach (whether that is the English law title transfer approach or the Japanese law loan and set-off approach) is adopted because, in the case of a title transfer, once ~~the~~ Collateral is transferred, the Transferor shall merely have a claim for the value of the Collateral against the Transferee which is to be included in the calculations of, or set off against, the termination value, or for the delivery of the asset of the same type and amount.

26. Enforceability of the Rights of Transferee

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

The rights of the Transferee would be enforceable in accordance with the terms of the Master Agreement and ~~the~~ each Transfer Annex, irrespective of the insolvency of the Transferor; provided, however, that, as we mentioned in our response to question 22 above, there is a risk, albeit a low risk, that transfers of Collateral would be recharacterized as *jouto tanpo* under Japanese law and, as a result, if the Transferor is subject to Japanese insolvency proceedings, the right of the Transferee to effect netting pursuant to Paragraph 6 would not be recognized. To reduce such risk and to enhance enforceability of ~~the~~ Collateral under ~~the~~ each Transfer Annex, the incorporation of amendment provisions

to characterize transfers of Collateral as loan under Japanese law, such as those attached in Annex III hereto, is recommended.

For more detailed discussions on this issue, see Part 3 of this memorandum.

27. The Transferor's Ability to Recover Transfers of Eligible Credit Support made to Transferee during Suspect Period

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

Notwithstanding our opinion (stated in our response to question 22 above) that the transfer of Eligible Credit Support would not be recharacterized as creation of a security interest, in the context of the Insolvency Acts, such transfers may be treated as the granting of a security interest. Therefore, any transfer of Eligible Credit Support after the Transferor becomes unable to pay debts (*shiharai funou*) or a petition is filed for the commencement of an Insolvency Proceeding of the Transferor where the Transferee has knowledge of such an event will be subject to avoidance by the trustee or receiver of the Transferor's assets, as described in our response to question 18, although, we believe, such situation is highly unlikely. Apart from this situation, we do not think that such a transfer would be subject to avoidance as a preference. The principles described in our response to question 18 above would also apply to the substitution of Eligible Credit Support and the transfer of additional Eligible Credit Support.

28. Validity of the Parties' Agreement on Governing Law of the Transfer Annex and Submission to Jurisdiction

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

Pursuant to Article 7 of the Conflict of Laws, if the parties to an agreement specify a law as governing law of such agreement, such choice of law will be recognized unless such choice of law is contrary to any other provisions of law. In accordance with this principle, the parties' agreement on governing law of ~~the~~ each Transfer Annex and submission to jurisdiction would be upheld in Japan except that, with respect to the issue of the validity or perfection[~~69~~97] of transfers of Eligible Credit Support consisting of Japanese Collateral, as we explained in our response to question 23 above, Japanese law will apply.

29. Whether each Transfer Annex is an Appropriate Form by which to Create the Intended Outright Transfer of Ownership in the Eligible Credit Support to Transferee

[~~69~~97] Under Japanese law, title over an asset can be transferred generally by an agreement. However, title so acquired can not be used as protection against third parties (i.e. another transferee with respect to the same asset) unless perfected (i.e. by taking possession of such asset).

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

~~The~~ Each Transfer Annex is in an appropriate form to create the intended outright transfer of ownership in the Eligible Credit Support to the Transferee except that, as we mentioned above, if there is any possibility that an Insolvency Proceeding will be commenced with respect to the Transferor in Japan, we recommend the incorporation of amendment provisions to characterize transfers of Eligible Credit Support as loans under Japanese law to enhance the enforceability of the close-out netting contemplated under ~~the~~ each Transfer Annex.[~~70~~98] Other than the requirements described in our response to question 23 above, under Japanese law, there are no requirements to ensure the validity of such transfer, and no other requirements of the type referred to in question 6.

VM Transfer Annex IA Amendments

None of our responses to questions 22 through 29 above would be different than the responses to such questions that we provided in this memorandum as a result of the inclusion of the VM Transfer Annex, as amended by the VM Transfer Annex IA Amendments, in this memorandum.

[~~70~~98] Even in cases where the party with respect to which an Insolvency Proceeding in Japan is possible is the Transferee, such amendment to characterize transfers of Collateral as loans under Japanese law might be recommended to ensure the enforceability in Japan of the intended netting or set-off of the obligations under the ISDA Master Agreement and the value of Collateral. The form or method which is most appropriate or advantageous to a party differs case by case, and parties should select the best form or method taking into consideration all relevant issues such as the other party's nationality, types of collateralized transactions and terms of the collateral transactions.

Part 3 - JAPANESE COLLATERAL/PARTY PROVISIONS AND ~~JAPANESE~~ JP ANNEX

In addition to the ~~NY Annex~~Annexes, the ~~Deed~~Deeds, and the Transfer ~~Annex~~Annexes, ISDA has published another form for credit support arrangements for use with an ISDA Master Agreement; the 1995 ~~ISDA Credit Support~~ JP Annex, 2008 JP Annex,[99] VM JP Annex and ~~2008 ISDA Credit Support~~ IM JP Ann~~[71]~~ex each governed by Japanese law ~~(collectively the "**Japanese Annexes**", and each the "**Japanese Annex**")~~, which were prepared to deal with the cases where Japanese law considerations are required or relevant with respect to the validity and enforceability of the intended collateral arrangements. The ~~Japanese~~ JP Annexes were drafted having in mind the fact that the governing law of the Master Agreement is ~~either~~ New York law ~~or~~ , English law or Japanese law, unless the parties specify otherwise, and the structure of ~~the Japanese~~ each JP Annex not being a part of the Schedule to the ISDA Master Agreement but constituting a separate document relating to the ISDA Master Agreement is a result of such fact. In this Part 3, we discuss certain issues relating to the ~~Japanese~~ JP Annexes and also that relating to the ~~NY Annex~~ Annexes and the Transfer ~~Annex~~ Annexes where each such document is used with the special amendment provisions (attached hereto as Annexes I, II and III) to deal with Japanese law considerations~~[72]~~[100].

We have prepared the respective recommended amendment provisions attached hereto as Annexes I, II and III for the following purposes: (i) to ensure that the validity and enforceability of the collateral arrangements under the Credit Support Document (as defined below) will be upheld and the collateral arrangements will not be recharacterized in a Japanese court, (ii) to modify and adjust the provisions relating to transfer and/or delivery of Collateral pursuant to market practice in Japan, (iii) to modify the provisions relating to treatment of withholding tax for clarification and (iv) to incorporate certain practice often provided under agreements/contracts relating to Japanese banking transactions into the Credit Support Document (see footnotes in respective Annexes for which purpose certain provision is provided)~~[73]~~[101]. The main purpose of the recommended amendment provisions is (i) above and the issues discussed in this Part 3 are related to the purpose (i) above. Therefore, as long as the recommended amendment provisions in Annexes I, II and III provided for the purpose (i) are duly incorporated, the discussion in this Part 3 would apply

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[99] The 2008 JP Annex was prepared to refine the 1995 JP Annex based on the enactment of the Netting Act after publication of the 1995 JP Annex and discussions among members; thus, the contents and the construction of the 2008 JP Annex are almost the same as the 1995 JP Annex and current users of the 1995 JP Annex may continue to use this without taking special measures. The main amendments from the 1995 JP Annex are, for example, (i) the deletion of the word "Security Interest" used on the cover page and the title of the paragraph 2 of the 1995 JP Annex and the use of the word "Security Transaction": this is for clarification that the Loan under the paragraph 2(a) is not a statutory security interest under the Japanese law and (ii) streamlining of the paragraph 8 (Certain Rights and Remedies) to correspond to both the situation where the Netting Act applies and where it does not apply.

~~[71] The 2008 Japanese Annex was prepared to refine the 1995 Japanese Annex based on the enactment of the Netting Act after publication of the 1995 Japanese Annex and discussions among members; thus, the contents and the construction of the 2008 Japanese Annex are almost the same as the 1995 Japanese Annex and current users of the 1995 Japanese Annex may continue to use this without taking special measures. The main amendments from the 1995 Japanese Annexes are, for example, (i) the deletion of the word "Security Interest" used on the cover page and the title of the paragraph 2 of the 1995 Japanese Annex and the use of the word "Security Transaction": this is for clarification that the Loan under the paragraph 2(a) is not a statutory security interest under the Japanese law and (ii) streamlining of the paragraph 8 (Certain Rights and Remedies) to correspond to both the situation where the Netting Act applies and where it does not apply.~~

~~[72]~~[100] In our memorandum dated 21 June 2012, ~~We~~ we made amendments on the Recommended Amendment Provisions for the purpose of clarification and adjustments based on market practice. However, please note that the discussion in this Part 3 applies in the same way where each of the 1994 NY Annex and the 1995 Transfer Annex is used with the special amendment provisions attached as Annexes I, II and III to our memorandum dated 18 January 2007 and 7 July 2008 or those to our memorandum dated 24 March 2010 and 11 April 2011.

~~[73]~~[101] Annex IV attached hereto is prepared for parties which would like to incorporate a modification to accomplish the purpose (iii) only.

to the Credit Support Document (i.e. the parties to the Credit Support Document may amend or exclude the provisions for the purposes (ii) to (iv) at a mutual agreement and this will not affect the discussion in this Part 3, although we recommend to include such provisions for the purpose of (ii) above at least in order to prevent failure of transfer and delivery of ~~the~~ Collateral).

Please note that the recommended amendment provisions in Annex I, II and III are prepared for the 1994 NY Annex and 1995 Transfer Annex. With respect to the VM NY Annex and VM Transfer Annex, ISDA has published the VM NY Annex Japanese Party Provisions and the VM Transfer Annex Japanese Party Provisions.

For the purposes of this Part 3:

"**NY Law-Japanese Collateral Annex**" means the 1994 NY Annex incorporating the "Recommended Amendment Provisions for the ~~New York Law CSA~~ 1994 NY Annex with respect to Japanese Collateral" attached hereto as Annex I;

"**NY Law-Japanese Party Annex**" means the 1994 NY Annex incorporating the "Recommended Amendment Provisions for the ~~New York law CSA~~ 1994 NY Annex with respect to Japanese Party" attached hereto as Annex II and the VM NY Annex incorporating the VM NY Annex Japanese Party Provisions;

"**English Law-Japanese Party Annex**" means the 1995 Transfer Annex incorporating the "Recommended Amendment Provisions for the 1995 Transfer Annex with respect to Japanese Party" attached hereto as Annex III and the VM Transfer Annex incorporating the VM Transfer Annex Japanese Party Provisions;

A "**NY Law-Japanese Collateral Annex**", a "**NY Law-Japanese Party Annex**" and an "**English Law-Japanese Party Annex**" shall mean a collateral arrangement documented under each of the NY Law-Japanese Collateral Annex, the NY Law-Japanese Party Annex and the English Law-Japanese Party Annex, respectively. Also, only for purposes of this Part 3, a "**Credit Support Document**" means a NY Law-Japanese Collateral Annex, a NY Law-Japanese Party Annex or an English Law-Japanese Party Annex. For each of the 1994 NY Annex and the 1995 Transfer Annex, if it incorporates all recommended amendment provisions provided for the purpose (i) above as explained in relevant Annex I, II or III attached hereto, such 1994 NY Annex or 1995 Transfer Annex shall be deemed to be the NY Law-Japanese Collateral Annex, the NY Law-Japanese Party Annex or the English Law-Japanese Party Annex, as the case may be.

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the ISDA Master Agreement, the relevant Credit Support Document, and in Parts 1 and 2 of this memorandum, unless otherwise specified. For purposes of this Part 3, the term "**Credit Support Documents**" include the ~~Japanese Annex~~ JP Annexes and the term "**Annex**" means any form of ISDA Credit Support Annex.

For the purposes of this Part 3, we have made the following assumptions:

a. One of the following patterns applies:

   (i) Party B (the "**Collateral Provider**") enters into with Party A (the "**Collateral Taker**") an ISDA Master Agreement governed by New York law and a NY Law-Japanese Collateral Annex and transfers to the Collateral Taker Eligible Collateral consisting of Japanese Securities or cash, and such Japanese Securities (as defined in paragraph 3 below) or cash are/is maintained in a Japanese Account (as defined in paragraph 4 below);

(ii) The Collateral Provider enters into with the Collateral Taker an ISDA Master Agreement governed by New York law and a NY Law-Japanese Party Annex and transfers to the Collateral Taker Eligible Collateral consisting of Japanese Securities, Outside Securities (as defined in paragraph 3 below) or cash, and such securities or cash are/is transferred to a Japanese Account or an Outside Account (as defined in paragraph 3 below);

(iii) The Collateral Provider enters into with the Collateral Taker an ISDA Master Agreement governed by English law and an English Law-Japanese Party Annex and transfers to the Collateral Taker Eligible Credit Support consisting of Japanese Securities, Outside Securities or cash, and such cash is transferred to a Japanese Account or an Outside Account;

(iv) The Collateral Provider enters into with the Collateral Taker (a) an ISDA Master Agreement governed by New York law and a ~~Japanese~~ JP Annex, and transfers to the Collateral Taker Eligible Collateral consisting of Japanese Securities, Outside Securities or cash as loan under Paragraph 2(a) (in the case of the ~~Japanese~~ VM JP Annex and IM JP Annex, Paragraph 2) of the JP Annex and such securities or cash are/is transferred to a Japanese Account or an Outside Account; or (b) an ISDA Master Agreement governed by New York law and ~~a Japanese~~ the 1995 JP Annex or 2008 JP Annex and transfers to the Collateral Taker Eligible Collateral consisting of Japanese Securities or cash as pledge under Paragraph 2(b) of the ~~Japanese~~ JP Annex and such securities or cash is maintained in a Japanese Account; or

(v) The Collateral Provider enters into with the Collateral Taker an ISDA Master Agreement governed by English law and a ~~Japanese~~ JP Annex, and transfers to Collateral Taker Eligible Credit Support consisting of Japanese Securities, Outside Securities or cash, and such securities or cash is transferred to a Japanese Account or an Outside Account.

"**Party B**" or the "**Collateral Provider**" means a party who is eligible to file, or has filed against itself, a proceeding seeking protection or relief under any of the Insolvency Acts, and also called as a "**Japanese Party**". "**Party A**" or the "**Collateral Taker**" refers to the other party.

The method of collateralization by which ~~the~~ Collateral is transferred as a loan under Japanese law (*shouhi taishaku*) is called the "**Loan and Set-off Method**", and that by which a statutory pledge under Japanese law (*shichiken*) is created in ~~the~~ Collateral is called the "**Pledge Method**".

b. Each Master Agreement and each of the Credit Support Documents are enforceable under the laws of the State of New York ("**NY law**"), England or Japan, as the case may be, and each party has duly authorized, executed and delivered, and has the capacity to enter into, each document.

c. Party B will transfer to Party A Japanese Securities and/or cash as Collateral either as a loan under the Loan and Set-off Method or a pledge under the Pledge Method.

"**Japanese Securities**" means any of the following listed securities in book-entry form held, directly or indirectly, through a securities intermediary ("**Security Intermediary**") which maintains an account with a book-entry transfer institution or a securities book entry system in Japan.

(a) JGBs;

(b) Equity shares ("**Equity Shares**") issued by a Corporation; and

(c) Corporate bonds (including electric commercial paper, "**Corporate Bonds**") issued by a Corporation.

Hereinafter, a Securities Intermediary located in Japan is referred to as a "**Japanese Securities Intermediary**" and one located outside Japan is referred to as an "**Outside Securities Intermediary**".

"**Outside Securities**" means any book-entry securities other than Japanese Securities including book entry Foreign Government Securities.

d. Cash transferred as Collateral is denominated in a freely convertible currency and is held in, or transferred through, an account under the control of Party A maintained in or outside Japan.

For the purposes hereof, an account maintained or booked in Japan is referred to as a "**Japanese Account**" and an account maintained or booked outside Japan is referred to as an "**Outside Account**".

In addition to the above, we have made the assumptions listed as assumptions (e), (i), (l), (m) and (n) in Part 1 of this memorandum.

Questions relating to ~~Japanese~~ JP Annex and Japanese Collateral/Party Provisions

A. *Dépeçage*

In the case where parties enter into a NY Law-Japanese Collateral Annex, NY Law-Japanese Party Annex or an English Law-Japanese Party Annex, would such choice of one law to govern a certain part and another law to govern the remaining part of one agreement, namely dépeçage, be upheld by the Japanese Courts? If not, what would be the likely consequences?

In the NY Law-Japanese Collateral Annex, NY Law-Japanese Party Annex and the English Law-Japanese Party Annex, the parties provides that, notwithstanding the choice of governing law of the relevant Credit Support Document, Japanese law shall apply to the extent necessary in order to interpret and give effect to the provisions relating to Japanese Collateral or ~~the~~ Collateral transferred under Japanese law; a circumstance called "*dépeçage*". We are of the view that *dépeçage* produced in such provisions would be upheld by the Japanese Courts.

Under Article 7 of the Conflict of Laws, the law applicable to the creation and validity of an "act of law" (*houritsu koui*) shall be determined based on the governing law specified or intended as such by the relevant party or parties. Basically, Japanese law recognizes the parties' autonomy regarding choice of law of an agreement based on the principle of freedom of contract.

While there is no provision regarding *dépeçage* in the Conflict of Laws, there is no provision in such law that invalidates *dépeçage*. In addition, there are some precedents admitting enforceability of *dépeçage*.[~~74~~102] Therefore, in general, *dépeçage* would be valid under Japanese law, and thus, would be upheld by the Japanese Courts except for the cases where the *dépeçage* intended therein raises the issues described below.

The enforceability of *dépeçage* may not be recognized in certain circumstances where the result of the application of one law governing one part of an agreement conflicts with the result of the application of another law governing the other part of such agreement in the

[~~74~~102] Judgment of the Tokyo High Court, February 9, 2000, *Hanrei Jihou* 1749 at 157.

same subject matter (for example, where "A" law governing one part of an agreement requires or provides for termination of the agreement but "B" law governing the other part of the agreement provides otherwise, such conflict arises). In the case of the NY Law-Japanese Collateral Annex, NY Law-Japanese Party Annex or the English Law-Japanese Party Annex, no such conflict arises. Therefore, in cases where such an Annex is used, dépeçage would be upheld by the Japanese Courts.

B. Law governing Netting/Set-off under the NY Annex or Transfer Annex in the case of *Dépeçage*

Assuming dépeçage is upheld, in the case where parties enter into a NY Law-Japanese Party Annex or an English Law-Japanese Party Annex, which law governs the close-out netting and/or set-off under the 1994 NY Annex, 1995 Transfer Annex, VM NY Annex or VM Transfer Annex? If Party A had posted Outside Securities as collateral, and Party B had posted Japanese Securities at the time Party B files or has filed on its behalf the petition for commencement of one of the Insolvency Proceedings, would Party A be able to net or set-off its obligation to pay back the cash equivalent of the Japanese Securities against its claim for return of the Outside Securities?

If the NY Law-Japanese Party Annex or the English Law-Japanese Party Annex is used, transfers of Collateral from Party B are governed by Japanese law to the extent necessary to enable such transfers to be regarded as loans under Japanese law, while all other transfers of Collateral are governed by the governing law of the 1994 NY Annex ~~(i.e. NY law) or the~~ , 1995 Transfer Annex ~~(i.e. English law)~~, VM NY Annex or VM Transfer Annex.

In the case of the English Law-Japanese Party Annex, the law governing the netting provisions of Paragraph 6 of ~~the~~ each Transfer Annex is specified as English law, and in the case of the NY Law-Japanese Party Annex, the law governing the set-off provisions contained in Paragraph 8(a) and (b) of the 1994 NY Annex or VM NY Annex is specified as NY law, despite the fact that there is a *dépeçage* with respect to the governing law of the claims contained in (or used for) such netting or set-off (i.e. in the given example, the law governing the obligation of Party A to pay back the cash equivalent of the Japanese Securities is Japanese law, and the law governing the claim of Party A for return of the Outside Securities is NY law or English law, as the case may be).

Under Japanese law, the close-out netting provisions of Section 6(e) and Paragraph 6 of ~~the~~ each Transfer Annex, and Paragraph 8(a) and (b) of the 1994 NY Annex or VM NY Annex (to the extent of set-off provided therein) will be construed as a "set-off" (*sousai*) agreement. Therefore, the law governing such provisions is the specified governing law ~~(i.e. NY law in the case of the NY Annex, and English law in the case of the Transfer Annex)~~ in accordance with Article 7 of the Conflict of Laws, as explained above.

In the context of Insolvency Proceedings, however, the enforceability of set-off or close-out netting provisions will be subject to the mandatory provisions of the relevant Insolvency Act. If Party B files or has filed on its behalf an Insolvency Proceeding, Japanese law would apply to such close-out netting or set-off.~~75~~103 As discussed more fully below, we are of the view that the close-out netting or set-off contemplated in the NY Law-Japanese

~~75~~103 There are, however, two different views under Japanese law as to which law should govern such provisions in the context of an insolvency proceeding. Under one view, which we think is the prevailing view, the law governing the validity of a set-off or close-out netting agreement shall be the law of the jurisdiction where the relevant insolvency proceeding has been commenced, and under the other view, the applicable law shall be the governing law of the relevant agreement.

Party Annex and the English Law-Japanese Party Annex would be enforceable under Japanese law.

C. Choice of NY or English Law as Governing Law for Loan of Japanese Securities

If the parties were to choose either NY law or English law as the governing law for the loan of Japanese Securities, would such choice of law be valid under Japanese law?

As discussed in A above, under Article 7 of the Conflict of Laws, the law governing a loan agreement will be the law specified as governing law in such agreement. Therefore, such choice of NY law or English law by the parties to govern the loan will be held valid under Japanese law regardless of the law governing the proprietary interests in such securities, or the account(s) through which transfer of the securities are made.

However, even if this is the case, for the reasons described more fully below, it is prudent that the parties expressly state in the relevant Annex that such loan should be characterized as "*shouhi taishaku*" under Japanese law in order to achieve utmost certainty that the transfer will be characterized as a loan for the purposes of Japanese law and therefore that the close-out netting provisions of the Matter Agreement will be upheld in the event of Insolvency Proceedings with respect to Party B. We therefore recommend the use of the NY Law-Japanese Party Annex or the English Law-Japanese Party Annex.

Please note that the perfection of the transfer of the Japanese Securities in connection with such loan from Party B to Party A will be governed by the law determined under Japanese conflict of laws rules. Under Japanese law, the validity of the perfection of the transfer of title to the Japanese Securities is governed by the law governing ownership interests in such securities, as determined by Japanese conflict of laws rules. The rules described in Part 1 above equally apply to transfers of title in the form of a loan.

D. Choice of Japanese Law as Governing Law for Loan of Outside Securities/Cash Collateral

Would the choice of Japanese law to govern a loan of Outside Securities be valid under Japanese law? Would the choice of Japanese law to govern cash deposited as collateral held in an Outside Account be valid under Japanese law?

Summary

Even where the relevant securities are governed by a law other than Japanese law or transferred through an Outside Account, with respect to the validity of the loan, such choice of Japanese law will be held valid; however, under Japanese law, the law governing the perfection of the transfer of title to such securities will be governed by the law determined by the Japanese conflict of laws rules.

Likewise, the choice of Japanese law to govern the validity of a loan of cash effected through an Outside Account will be held valid under Japanese law; however, under Japanese law, the law governing the perfection of the transfer of such cash will be determined under Japanese conflict of laws rules described in Part 1 above (which will likely be the place of the relevant Outside Account). The choice of Japanese law to govern the creation and the perfection of a pledge in cash deposited as collateral held in an Outside Account will be held valid only when the law governing the deposit agreement is determined to be Japanese law by the Japanese Courts after considering the factors referred to in D.b below.

a. Loan of the Outside Securities and Cash Lent as Collateral

As discussed in Part 2 above, the choice of law to govern a loan agreement will be held valid regardless of the Location or the governing law of the relevant securities, where applicable; provided that as to the perfection of title to such securities, the relevant law (as determined by applying the same rules as described in Part 1 above) will apply. Even in the case where the relevant securities are governed by a law other than Japanese law, or transferred through an Outside Account, such choice of Japanese law to govern the loan will be held valid; however, under Japanese law, the law governing the perfection thereof will be determined pursuant to Japanese conflict of laws rules.

For the same reason as set forth in the preceding paragraph, the choice of Japanese law to govern a loan of cash effected by crediting an Outside Account will be held valid under Japanese law; provided that the perfection of such transfer will be governed by the law determined in accordance with the Japanese conflict of laws rules.

As discussed more fully below, however, with respect to transfers of Collateral from a Japanese Party in the form of title transfer, it might be prudent that parties expressly provide that such transfers of Collateral from the Japanese Party will be characterized as a "*shouhi taishaku*" under Japanese law through the use of the NY Law-Japanese Party Annex or the English Law-Japanese Party Annex or otherwise.

b. Security Interest in Cash Deposited as Collateral

As explained in detail in Part 1, under Japanese law, a security interest in cash deposited as collateral will be construed as a pledge over a claim for the return of the deposited cash.

In the 1978 Supreme Court Precedent, where the validity of a pledge over a deposit account was tested, the Supreme Court ruled that the creation and perfection of a pledge over a claim (not a tangible object) shall be governed by the governing law of the pledged claim, and when the law governing the relevant deposit agreement is not explicitly specified by the parties thereto, the implied governing law shall be determined reasonably by taking into consideration various factors. In the 1978 Supreme Court Precedent, the following factors were considered relevant in rendering the judgment that the law governing the fixed-term deposit (*teiki yokin*) was Japanese law: (i) the depositor was domiciled in Japan as of the time of the deposit transaction; (ii) the deposit was denominated in Japanese Yen; (iii) the deposit agreement was executed in Japan; and (iv) the agreement was a "stereotyped" ordinary banking transaction entered into in the location of the bank, and (v) the branch who accepted the deposit was required to be licensed by the Japanese authorities to conduct banking business in Japan.

According to the 1978 Supreme Court Precedent, the choice of Japanese law to govern cash deposited as collateral held in an Outside Account will be held valid when the governing law of the deposit agreement is held by the Japanese courts to be Japanese law. When the governing law thereof is explicitly or impliedly specified by the parties, the Japanese courts will recognize such agreement on governing law. To determine an implied agreement as to governing law by the parties, the Japanese courts will consider factors such as, (i) domicile of the depositor, (ii) denomination of the currency of the deposit, (iii) place where the agreement is executed, (iv) whether the deposit agreement is a "stereotyped" ordinary banking transaction or not and (v) whether the branch needs to be licensed to conduct banking business or not.

The choice of Japanese law to govern the creation and perfection of a security interest in cash deposited as collateral held in an Outside Account will therefore be held valid when

the governing law of the deposit agreement is held to be Japanese law by the Japanese courts after considering the above factors.

With respect to transfers of Japanese Collateral from a Japanese Party in the form of a pledge, it would be prudent for the parties to document the transfer of such Collateral so that such pledge constitutes a statutory pledge ("*shichiken*") under Japanese law, through the use of the ~~Japanese~~ JP Annex, the NY Law-Japanese Collateral Annex or otherwise.

E. Issues relating to Netting Act; Enforceability of Netting/Set-off of Transactions against Collateral

Assuming (i) at least one of the parties is a Financial Institution (kin'yui kikan tou) as defined under the Netting Act, (ii) the parties have elected to loan Japanese Securities, and (iii) one of the parties becomes subject to one of the Insolvency Proceedings, would the 1994 NY Annex ~~or~~ , VM NY Annex, 1995 Transfer Annx or VM Transfer Annex together with the relevant ISDA Master Agreement be treated as a Master Agreement (kihon keiyakusho) under the Netting Act? When Party B files or has filed on its behalf the petition for commencement of one of the Insolvency Proceedings, would Party A be able to net or set-off the outstanding Transactions under the relevant ISDA Master Agreement and the value of Posted Collateral under the ~~Japanese~~ JP Annex?

Summary

If the NY Law-Japanese Party Annex or the English Law-Japanese Party Annex is used to document transfers of Collateral from a Japanese Party, such Annex together with the relevant Master Agreement would likely be construed as a "Master Agreement" under the Netting Act. Also, we are of the view that, in the case of an Insolvency Proceeding with respect to Party B, the set-off of obligations under the relevant Master Agreement against the value of Posted Lending Collateral will be enforceable in accordance with the provisions of the ~~Japanese~~ JP Annex.

a. Would the 1994 NY Annex ~~or~~ , VM NY Annex, 1995 Transfer Annx or VM Transfer Annex together with the relevant Master Agreement be treated as a "Master Agreement" under the Netting Act?

Where the Netting Act applies to transfers of Collateral under the NY Law-Japanese Party Annex or the English Law-Japanese Party Annex as well as transactions under the relevant Master Agreement, the close-out netting and/or set-off under such agreements will be enforceable based on the affirmation given by the Netting Act. (Note that Collateral transferred under the Pledge Method is not eligible for protection under the Netting Act; and therefore, Collateral transferred under the NY Law-Japanese Collateral Annex or under the ~~Japanese~~ 1995 JP Annex or 2008 JP Annex adopting the Pledge Method is not eligible for protection under the Netting Act.)~~76~~104

The Netting Act confirms the enforceability of transactions (including collateral transactions relating thereto taking the form of a "*taishaku*"~~77~~ 105 (loan) or "*kitaku*" (deposit) under Japanese law) which qualify as "Specified Financial Transactions" (*tokutei kin'yuu torihiki*) and are documented under a "Master Agreement" (*kihon keiyakusho*) as defined in

~~76~~104 Notwithstanding this fact, the Pledge Method may be preferable from the perspectives of a party who will be the collateral provider rather than the collateral taker. We express no opinion as to which method should be selected, which would vary depending on the circumstances.

~~77~~105 "*Shouhi taishaku*" (loan for consumption) is a form of loan (*taishaku*) where the obligation of the borrower is to return to the lender an asset of the same type, class and amount as the asset lent, and not the same asset that is lent. *Shouhi taishaku* and *shouhi kitaku* are very similar in nature.

paragraph 5, Article 2 thereof (subject to satisfaction of all other requirements stated in the law). While, if the Loan and Set-off Method is adopted, the requirement of "*taishaku* or *kitaku*" is satisfied, the use of a "Master Agreement" to document both the collateralized transactions and collateral transactions therefor is another requirement for the Netting Act to apply to the netting and/or set-off of the Transactions and the value of Collateral.

Although ~~a~~ each of the 1994 NY Annex ~~or a~~, VM NY Annex, 1995 Transfer Annex and VM Transfer Annex is physically separate from the relevant ISDA Master Agreement, it is stated in ~~the NY Annex and the Transfer Annex that such Annex~~ each such document that it "forms part of, and is subject to" the relevant Master Agreement. Therefore, the 1994 NY Annex ~~or~~, VM NY Annex, 1995 Transfer Annex or VM Transfer Annex together with the relevant ISDA Master Agreement can be construed to be one agreement.

We are not aware of any law, regulation or guidelines so far that describes or implies the scope of the definition of "Master Agreement" under the Netting Act. However, in light of the purpose of the Netting Act, which is to officially announce and confirm the validity and enforceability of netting agreements rather than to validate otherwise invalid or unenforceable netting agreements, we believe that the definition of "Master Agreement" should be taken as referring to a broad range of agreements that provide for close-out netting or set-off of termination payments, and contain basic terms and conditions, relating to transactions governed by such agreements. The NY Law-Japanese Party Annex and English Law-Japanese Party Annex together with the relevant Master Agreement satisfy such criteria. Therefore, in our view, the 1994 NY Annex ~~or~~, VM NY Annex, 1995 Transfer Annx or VM Transfer Annex together with the relevant Master Agreement would be construed as a Master Agreement under the Netting Act.

b. The Enforceability of the Set-off Provisions of the ~~Japanese Annex~~ JP Annexes when the Loan and Set-off Method is used

Party A would be able to net or set-off the outstanding transactions under the relevant ISDA Master Agreement against the value of Collateral transferred under the ~~Japanese~~ JP Annex. As mentioned above, if the Netting Act applies to a certain circumstance, the enforceability of close-out netting of transactions is confirmed.

Regarding the question of whether or not the requirement of the Master Agreement under the Netting Act is satisfied, we are of the view that the ~~Japanese~~ relevant JP Annex together with the relevant Master Agreement would also be construed as one agreement, as in case of the NY Law-Japanese Party Annex or English Law-Japanese Party Annex together with the relevant ISDA Master Agreement. Although ~~the Japanese~~ each JP Annex does not "form part of" the relevant ISDA Master Agreement, it is executed "in relation" thereto, and ~~the Japanese~~ each JP Annex together with the relevant Master Agreement as a whole can be taken as providing for netting or set-off and the basic terms and conditions of the transactions to be netted thereby, and, thus, should at least be treated in the same way as if it was documented in one agreement.

In addition to the Netting Act, or even where the Netting Act does not apply, netting and/or set-off of the transactions that may be documented under a Master Agreement and the value of Collateral transferred in connection therewith would likely be enforceable based on the provisions of Article 58 of the new JBA which became effective on January 1, 2005. Article 58 of the JBA provides for termination of certain types of transactions satisfying the criteria stated therein, and recognizes the enforceability of close-out netting of such

transactions (for details, please refer to our opinion on the close-out netting provisions of the ISDA Master Agreements dated ~~7~~ 30 December ~~2015~~ 2016 (the "**Netting Opinion**").

Although Article 58 of the JBA does not specifically refer to collateral transactions, transfers of collateral, both securities and cash under the Loan and Set-off Method, relating to transactions having the characteristics described in such article would be treated as if forming part of such transactions.[~~78~~106] With respect to securities transferred in the form of a loan, such transfers can also be considered as transactions satisfying the criteria provided in such article, because securities lending transactions satisfy such criteria. (Please note that, in our view, collateral transferred in the form of a pledge would not be eligible for protection under Article 58 of the JBA, although, as far as we are aware, there is no precedent in this regard.)

Even where neither the Netting Act nor the JBA is applicable, such netting or set-off would still be enforceable under the general right of set-off given to creditors. Japanese law broadly recognizes the enforceability of set-off effected by creditors in the event of insolvency of the debtor. For a detailed discussion on this, please refer to our Netting Opinion.

For the reasons stated above, Part A would be able to net or set-off the outstanding transactions under the relevant Master Agreement against the value of Collateral transferred under ~~the Japanese~~ each JP Annex when the Loan and Set-off Method is used.

F. Outside Securities

Would the analysis for question E above change if the securities lent were Outside Securities?

Our analysis for question E above will remain the same where the securities lent are Outside Securities.

G. NY Law Pledge over Japanese Securities/cash in a Japanese Account

Would it be possible to create a pledge governed by NY law over Japanese Securities or cash in a Japanese Account? Would the Japanese courts recognize a pledge under NY law over book-entry JGBs held in an account at an Outside Securities Intermediary if such pledge is valid under NY law?

Summary

It is theoretically possible to create a pledge governed by NY law over JGBs and Equity Shares; however as a matter of Japanese law, the creation and perfection of such pledge will be governed by Japanese law regardless of the governing law clause of the relevant security document. It is possible to create a pledge governed by NY law over Corporate Bonds in the case where the governing law of the pledged Corporate Bonds is specified or determined to be NY law. The validity of the creation and perfection of such pledge will be determined based on NY law.

As a matter of Japanese law, the creation and perfection of a pledge over a claim for the return of deposited cash in a Japanese Account shall be governed by NY law where the deposit agreement is specified or determined to be governed by NY law. Regardless of the location of the Outside Securities Intermediary who acts as custodian of such book-entry JGBs, under the laws of Japan, it is theoretically possible to create a pledge governed by NY law over book-entry JGBs held in an account at a Outside Securities Intermediary; however as a matter of Japanese law, such pledge

[~~78~~106] See Hideki Ogawa of the Ministry of Justice, *Ichimon Ittou – Atarashii Hasan-hou* at pages 102-103.

will be governed by Japanese law regardless of the governing law clause of the relevant security document.

We express no opinion as to the legal characteristics of the rights and interests acquired by the pledgee when the laws other than Japanese law are applicable. It may be possible that such rights and interests could be construed as a security interest under any such foreign law, e.g. the Uniform Commercial Code (the "**UCC**").

1. The Possibility of Creating a Pledge Governed by NY law over Japanese Securities

a. The governing law of the creation and perfection of the pledge under Japanese law

According to the 1978 Supreme Court Precedent, under the Conflict of Laws, creation and perfection of a pledge (i) over a claim will be governed by the governing law of the pledged claim and that (ii) over a tangible object such as chattels or realty will be governed by the laws of the location of the pledged object according to Paragraph 1, Article 13 thereof.

b. The possibility of the creation of a pledge governed by NY law over book-entry JGBs and Corporate Bonds

Among Japanese Securities, JGBs and Corporate Bonds (including electronic commercial paper) held through a securities book-entry system (i.e. the system for JGBs is operated by the Bank of Japan and the system for Corporate Bonds is operated by Japan Securities Depository Center, Inc. "**JASDEC**") in Japan are construed as a claim against the issuer since the claim is uncertificated. Therefore, a pledge over book-entry JGBs and Corporate Bonds will be governed by the law governing JGBs and the relevant Corporate Bonds.

The law governing JGBs would be Japanese law because the issuer is the Japanese government and the location of performance and registration is in Japan.

The law governing book-entry Corporate Bonds would be the governing law specified in the terms and conditions thereof, because, relating to the issuing of Corporate Bonds, there is no provision in the Conflict of Laws which overrides the general principle stated in Article 7; therefore, such provision will apply to this case. When the governing law is not explicitly specified, the governing law of any Corporate Bonds should be determined by determining the implied governing law, by considering various factors, and if it cannot be determined, the laws of the location of placement will apply by the application of Article 8 of the Conflict of Laws.

In summary, it is possible to create a pledge governed by NY law over JGBs; however, under the Japanese conflict of laws rules, the creation and perfection of such pledge will always be governed by Japanese law. It is, however, possible to create a pledge governed by NY law over Corporate Bonds if the governing law of the pledged bonds is specified or determined to be NY law[~~79~~107]. The validity of the creation and perfection of such pledge will be determined based on NY law.

c. The possibility of the creation of a pledge over book-entry Equity Shares

Equity Shares held through a securities book-entry system (which is operated by JASDEC) in Japan are construed as intangible assets, since the Equity Shares are uncertificated. The 1978 Supreme Court Precedent, as mentioned above, indicates that the creation and perfection of a pledge over a claim (not being a tangible object) is to be governed by the

[~~79~~107] Please note that the object Corporate Bonds should be recorded in the "pledge ledger" (*shichiken ran*) of the proprietary account of the Collateral Taker with JASDEC, if held directly, or with the custodian, if held indirectly (please see Part 1. 5(c)), in order to enforce its pledge or claim the pledge under the Insolvency proceedings.

governing law giving rise to the claims. The 1978 Supreme Court Precedent did not refer to uncertificated shares directly and there is no other precedent relating to governing law for the creation and perfection of pledge over uncertificated shares, however the 1978 Supreme Court Precedent also states that objects of "pledges over rights" (*kenri shichi*) are property rights (*zaisan ken*) themselves and not tangible, so it is impossible to seek where the objects are located; in addition, the pledges over rights will control the objects, i.e. the rights, and directly affect their status, and the 1978 Supreme Court Precedent concludes as mentioned. Thus, we believe that under the Conflict of Laws, the creation and perfection of a pledge over the uncertificated shares shall be governed by the law governing such shares, i.e. incorporation law of company issuing the shares, and in regards to Equity Shares, the Corporations issue Equity Shares pursuant to the Companies Act. Therefore, a pledge over Equity Shares will be governed by the Japanese law.

In summary, it is, hypothetically, possible to create a pledge governed by NY law over Equity Shares, however, as a matter of Japanese law the creation and perfection of such pledge will be governed by Japanese law regardless of the governing law clause of the relevant security document.

2. The Possibility of Creating a Pledge Governed by NY law over cash in a Japanese Account

a. Characteristics of a pledge over a claim

Under Japanese law, a pledge over an account is construed to be a pledge over a claim for the return of the cash deposited in such account, because, at the time the funds are deposited in the pledged account, the ownership as well as the possession of cash is transferred to such bank and an account holder obtains a claim for the return of such cash. The collateral provider cannot grant a pledge over an asset if the ownership interest in the asset is transferred to the collateral taker. One requirement for a valid pledge under Japanese is, therefore, that the collateral provider retains the ownership interest in the pledged asset.

b. Possibility of creating a pledge governed by NY law over a claim

Under Japanese law, it is possible to create a pledge over a claim (*saiken shichi*). As is referred to in Part 1, the 1978 Supreme Court Precedent indicates that (i) the creation and perfection of a pledge over a claim (not a tangible object) shall be governed by the governing law of the pledged claim, (ii) where the governing law of the relevant deposit agreement is not explicitly specified by the parties thereto, it will be deemed to be the governing law implicitly agreed by the parties, according to Article 7 of the Conflicts of Laws and (iii) the governing law of the relevant deposit agreement will be determined by considering the following factors: domicile of the depositor, denomination of the deposit, place where the agreement is executed, whether the agreement is a "stereotyped" ordinary transaction or not and whether the branch needs to be licensed to conduct banking business or not.

Therefore, as a matter of Japanese law, the creation and perfection of the pledge over a claim for the return of the deposited cash in a Japanese Account shall be governed by NY law in the case where the pledged deposit agreement is specified or determined to be governed by NY law.

3. The Possibility of Creating a Pledge Governed by NY law over JGBs Held Through an Outside Securities Intermediary

As mentioned above, a pledge over book-entry JGBs will be governed by the law governing the JGBs and book-entry JGBs are always governed by Japanese law. Therefore, regardless of the location of the Outside Securities Intermediaries being the custodian of such book-entry JGBs, as a matter of Japanese law, Japanese law would govern the creation and perfection of a pledge over JGBs. As a consequence, although it is possible to create a pledge governed by NY law over JGBs held in an account at an Outside Securities Intermediary, as a matter of Japanese law, Japanese law would always apply to the creation and perfection of such pledge regardless of the governing law clause of the relevant security document. We express no opinion as to the legal characteristics of the rights and interests acquired by the pledgee under a law other than Japanese law. It may be possible that such rights and interests could be construed as a security interest under such foreign law, e.g. the UCC.

H. Enforceability of the Pledge Method in or in the absence of Insolvency Proceeding

If parties were to elect the pledge method to collateralize Japanese Securities or cash in a Japanese Account, would ~~either of~~ the 1994 NY Annex ~~or the Japanese~~ , VM NY Annex, 1995 JP Annex or 2008 JP Annex be enforceable, namely, would the pledge thereunder be enforceable in a timely manner whether or not the relevant Event of Default relates to the Insolvency Proceedings? Could a valid pledge be created and perfected over a demand deposit account, namely a checking account (touza yokin kouza) or ordinary account (futsuu yokin kouza), under Japanese law?

Summary

If an Event of Default does not relate to an Insolvency Proceeding or it simply relates to Bankruptcy Proceedings, the pledge over Japanese Securities or cash in a Japanese Account would be enforceable in a timely manner under Japanese law.

If an Event of Default relates to Corporate Reorganization Proceedings, such pledge would be stayed and would not be enforceable in a timely manner. Once the commencement of the corporate reorganization proceeding is declared by the court, pledgees will only be able to receive dividends as a "reorganization secured creditor" (*kousei tanpo kensha*) under Japanese law.

If an Event of Default relates to Civil Rehabilitation Proceedings or Special Liquidation Proceedings, such pledge would be enforceable, but the enforcement would be delayed if court auction proceedings are chosen by Party A instead of private sale, and the Japanese courts order the auction proceedings to be discontinued. A valid pledge could be created and perfected over a claim for the return of cash deposited in a demand account, but if Party B increases the amount of deposited cash after Party B becomes subject to Insolvency Proceedings such addition might be avoidable or revocable under Japanese law.

1. Enforceability of a Pledge over Japanese Securities or cash in a Japanese Account

a. Where the relevant Event of Default does not relate to the Insolvency Proceeding

Where the secured claims arise from commercial transactions (*shou koui*), an agreement (*ryuushichi keiyaku*) whereby the pledgor gives the pledgee the right to acquire the ownership of ~~the~~ collateral or liquidate ~~the~~ collateral through private sale, whether or not it is tangible or intangible, is not prohibited under Japanese law[~~80~~ 108], and there is no restriction on the pledgee liquidating Japanese Securities or cash collateral deposited in a

[~~80~~108] Article 515 of the Commercial Code (*shou hou*) (Act No. 48 of 1899, as amended). Whether Party A and/or Party B is a Covered Entity (as defined in Part 1) is not a criteria for determining the validity of the "*ryuushichi*" agreement.

Japanese Account (in this question H, together with the Japanese Securities, the "**Collateral**") and applying the proceeds from the liquidation to the pledgee's claim. Therefore the pledge over Japanese Securities or cash in a Japanese Account would be enforceable in a timely manner.

In the case where the secured claims do not arise from commercial transactions (*shou koui*), such "*ryuushichi*" agreement would be invalid pursuant to Article 349 of the Civil Code. However, by obtaining the consent of the pledgor after the occurrence of the Event of Default, the pledgee may acquire the ownership of ~~the~~ Collateral or liquidate ~~the~~ Collateral through private sale.

The above analysis applies equally to the case of a pledge over Japanese Securities (including Equity Shares) and that over cash collateral held in a Japanese Account.

Therefore, so long as the Event of Default does not relate to Insolvency Proceedings, a pledge over Japanese Securities or cash collateral held in Japanese Account would be enforceable in a timely manner under Japanese law.

b. Where the relevant Event of Default relates to the Insolvency Proceeding

(1) Bankruptcy Proceedings

In the case of proceedings under the JBA, the pledgee's right to liquidate the Collateral would not be subject to any stay or freeze or otherwise be affected by such proceedings. Therefore, a pledge over Japanese Securities or cash in a Japanese Account would be enforceable in a timely manner (see our response to question 16 in Part 1).

(2) Corporate Reorganization Proceedings

In the case of proceedings under the CRA, once the commencement of the corporate reorganization proceeding is declared by the court, the right to liquidate ~~the~~ Collateral would be subject to provisions which prohibit pledgees from enforcing ~~the~~ Collateral and limit a pledgee's remedy to receiving dividends as a "reorganization secured creditor" (*kousei tanpo kensha*) (Paragraph 1, Article 50 of the CRA).

Other provisions of the CRA which may affect the enforcement of the pledge are as follows:

(a) Stay order (*chuushi meirei*) (Paragraph 1, Article 24):

Where an application for the commencement of a Corporate Reorganization Proceeding is made, and it deems it necessary for the continuance of the debtor's business, the court may issue a stay order to suspend any existing proceeding for compulsory execution (including that for official auction sale to enforce a security interest) instituted by a creditor.

(b) Order to cancel proceedings for compulsory civil execution (Paragraph 5, Article 24):

After a stay order (see (a) above) is issued, where the court deems it especially necessary for the debtor in order to continue its business, upon request of the debtor or the administrator(s) (*hozen kanrinin*), if any appointed, and provided the debtor posts security, the court may order

cancellation of such proceeding for compulsory execution which have been suspended by the stay order, and such proceeding is thereby cancelled.

(c) Comprehensive prohibition order (*houkatsu teki kinshi meirei*) (Article 25):

Where an application for the commencement of a Corporate Reorganization Proceeding is made, and if it deems it necessary to achieve the purpose of the reorganization proceeding, the court may, in addition to individual stay orders referred to in (a) above, order a moratorium on all present and future proceedings for compulsory execution (including those for official auction sale to enforce security interests) against all creditors.

(3) Civil Rehabilitation Proceedings

In the case of proceedings under the CIRA, in principle, the pledgee may enforce ~~the~~ Collateral. However, the Japanese courts may order a discontinuance of court auction proceedings to enforce a pledge existing over the assets of the debtor (but not a private sale) under Article 31, and if they do, the enforcement of the pledge will be delayed (although not prohibited).

(4) Special Liquidation Proceedings

With respect to proceedings under the Special Liquidation (*tokubetsu seisan*) sections of the Company Law, as in the case of the Civil Rehabilitation Proceedings, the pledgee may enforce ~~the~~ Collateral generally, but the Japanese Courts may order a discontinuance of court auction proceedings (but not a private sale), which would delay the enforcement of the pledge.

c. Conclusion

If an Event of Default does not relate to Insolvency Proceedings or it relates to Bankruptcy Proceedings, a pledge over Japanese Securities or cash in a Japanese Account would be enforceable in a timely manner under Japanese law.

Where an Event of Default relates to Corporate Reorganization Proceedings, such pledge will be stayed and will not be enforceable in a timely manner once the court accepts the application for the commencement of a Corporate Reorganization Proceeding. After the official commencement of the Corporate Reorganization Proceeding, pledgees may only be able to receive dividends as a “Reorganization Secured Creditor” under Japanese law.

Where an Event of Default relates to Civil Rehabilitation Proceedings or Special Liquidation Proceedings, such pledge would be enforceable, but the enforcement could be delayed if court auction proceedings are chosen instead of a private sale, and the Japanese Courts order a discontinuance of auction proceedings.

2. Enforceability of a pledge over a demand deposit account under Japanese law

a. Creation

For the following reasons, a pledge may be created and perfected over a claim for the return of deposited cash in a demand deposit account under Japanese law. Since with checking accounts and ordinary account, unlike a fixed-term deposit account (*teiki yokin kouza*), transfers or withdrawals from the deposited cash by the account holder are not limited, it is not completely clear whether a valid pledge can be created over those types of deposits.

Factors Required for Creation of a Pledge over an Asset

Under Japanese law, in order to create a valid pledge, the relevant asset must be identifiable and specific, and exclusive of claims or interventions from third parties. In the case of demand deposit accounts, these requirements may be satisfied by arrangements between the pledgor and the pledgee if the deposit is maintained with the pledgee. The "identifiability" or "specificity" requirements are cleared by the fact that the asset is identifiable and specifiable by account numbers and holder's names. Further, the claim of the depositor with respect to one deposit account should be regarded as one claim notwithstanding the fact that the balance of the deposited cash may change.

The "exclusiveness" requirement will be satisfied if the arrangements between the parties are such that no third party will be able to intervene in or claim against the deposit; i.e. the pledgee has full control over the deposit.

Even if the balance of the deposited amount fluctuates as a result of the pledgee permitting specific withdrawals upon request of the pledgor, or in accordance with the relevant security document or otherwise, in our view, such requirements are satisfied by the total control of the pledgee over the deposit and if withdrawals from and credits to the deposit are made under total control of the pledgee.

Therefore, an enforceable pledge can be created over a claim for the return of cash deposited in a demand deposit account under Japanese law. However, please refer to footnote 45 for other issues in this regard.

b. Perfection

As mentioned above, the 1978 Supreme Court Precedent indicates that paragraph 1, Article 364 of the Civil Code (the provision providing for perfection of a pledge over a claim) will apply to perfection of a pledge over a claim under a deposit agreement. Therefore, the perfection of a pledge over a claim is satisfied when a date certified notice by the pledgor is delivered or when a date certified consent by the obligor of the pledged claim (i.e. the bank) is obtained.

Once the perfection is effective, the perfection continues to be effective, because as aforesaid, the pledged claim should be treated as one claim regardless of any fluctuation in the amount of a claim.

c. Right to Revoke Fraudulent Acts and Right of Avoidance

Where Party B is insolvent (including the period during which it is substantially insolvent but no formal action to show its insolvency or to file a petition to commence Insolvency Proceedings has been taken), any act intentionally conducted by Party B and which is prejudicial to the benefit of the general creditors thereof may be avoided or revoked as a preference under the relevant statutory provisions.

Therefore, if Party B increases the amount of cash deposited during the period that Party B is insolvent that may be construed as a preference which would be avoidable or revocable. Although there is no precedent on point, we believe that the amount revocable or avoidable would be the substantive increase in the amount (i.e. if Party B increases the account by ten (10) billion yen and decreases the account by eight (8) billion yen at the same time, two (2) billion yen would be avoidable or revocable.).

d. Public policy

A pledge under the relevant Credit Support Document over the claim for return of the cash deposited in a demand deposit account would not be invalidated for violation of public policy if, under the relevant Credit Support Document, the pledgor is not obliged to deposit excessive or unreasonable amounts of cash.

e. Conclusion

A valid pledge could be created and perfected over a claim for the return of cash deposited in a demand deposit account, but any increase by Party B in the amount of deposited cash during the period that Party B is insolvent might be avoidable or revocable under Japanese Law.

I. Difference in Governing Law between Master Agreement and Credit Support Document

Is there any requirement under Japanese law that the Master Agreement and the relevant Credit Support Document be governed by the same set of laws?

There is no requirement under Japanese law that the Master Agreement and the relevant Credit Support Document be governed by the same set of laws.

We are not aware of any law, regulation or guideline that refers to the governing law of the "Master Agreements" under the Netting Act. As we discussed in E. above, in our view, ~~the Japanese~~ each JP Annex and the relevant Master Agreement together would be construed as a "Master Agreement" under the Netting Act, or at least be treated as a "Master Agreement" despite the fact that they are structured as separate documents and irrespective of the difference in the governing laws.

Apart from the considerations on the Netting Act, there are no provisions under the laws of Japan that require that any agreement and the relevant credit support agreement (such as guaranty and security agreement) should be governed by the same set of laws.

J. Effect of Foreign Insolvency Proceedings where Party B's Home Jurisdiction is other than Japan

*In the case that (i) the jurisdiction (the "**Home Jurisdiction**") of Party B's organization or place of center of management is outside of Japan, (ii) a proceeding (the "**Proceeding in Home Jurisdiction**") similar to one of the Insolvency Proceeding has been commenced in relation to Collateral Provider in the Home Jurisdiction, and (iii) the Home Jurisdiction takes a universality approach regarding such proceeding, whether or not the Collateral Provider is eligible to file for one of the Insolvency Proceeding in Japan, would the Japanese courts apply the laws of Home Jurisdiction in deciding the enforceability of the Loan and Set-off Method or the pledge over Japanese Securities or cash in a Japanese Account?*

Summary

Whether or not the Proceeding in the Home Jurisdiction is recognized under the Recognition and Assistance Act (as defined below) of Japan, the Japanese Courts[~~81~~109] would not apply the laws of the Home Jurisdiction in deciding the enforceability of the Loan and Set-off Method or the pledge over Japanese Securities or cash in a Japanese Account. However, if the Proceeding in the Home Jurisdiction is recognized under the Recognition and Assistance Act, and if the Proceedings in the Home Jurisdiction impose a stay over or do not allow such enforcement, private sale, set-off or netting, (i) with respect to the pledge, enforcement proceedings might be suspended; and (ii) with

[~~81~~109] The Tokyo District Court (the only competent court regarding the Recognition and Assistance Act).

respect to both the pledge and the set-off or netting, although there is no precedent, we think that it is possible that the Japanese courts might order the Collateral Taker to return the amount obtained through private sale or the amount set-off or netted, as the case may be, to the debtor or a recognized trustee. Since recognition of the Foreign Insolvency Proceeding[82][110] would not affect the interpretation of the governing law, the enforceability of set-off or close-out netting will be determined according to the relevant governing law.

1. Recognition of Proceedings in the Home Jurisdiction

In the case where the Proceeding in the Home Jurisdiction is recognized by the Japanese Courts under the Act on Recognition of and Assistance for Foreign Insolvency Proceedings (*gaikoku tousan shori tetsuzuki no shounin enjo ni kansuru houritsu*) (Act No. 129 of 2000, as amended) (the "**Recognition and Assistance Act**"), the Japanese Courts may assist the Proceeding in the Home Jurisdiction according to the Recognition and Assistance Act, although they will not apply the laws thereof (because the application of the Recognition and Assistance Act will not affect the choice of law). Please note that there is no published precedent yet in regard to the Recognition and Assistance Act. The Japanese Court will recognize the Proceeding in the Home Jurisdiction according to Articles 21 and paragraph 1, Article 57 thereof:

a. Article 21

A Court must dismiss a petition for recognition of a Foreign Insolvency Proceeding in the following cases :

(i) if the advance amount of the costs for the recognition and assistance proceeding have not been paid;

(ii) if it is clear that the Foreign Insolvency Proceeding will not have an effect on the assets of the debtor which are located within Japan;

(iii) if the assistance measures in respect of that Foreign Insolvency Proceeding are against public order and public policy of Japan;

(iv) if it is clear that it is not necessary to grant recognition measures in respect of that Foreign Insolvency Proceeding;

(v) if the foreign trustee, etc.[83][111] violates article 17(3) in respect of that Foreign Insolvency Proceeding; provided that this does not apply if that violation is of a minor degree; or

(vi) if it is clear that the petition was made based on an unfair purpose, or the petition was not made in good faith.

b. Article 57, Section 1.

The Court must dismiss a petition for recognition of Foreign Insolvency Proceedings when it has become clear that there is a pending Domestic Insolvency Proceeding[84][112] with respect to the same debtor or that such proceeding is filed before the Court rules in respect of such petition, except where all of the following requirements are fulfilled:

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[82][110] It means a proceeding petitioned for in a foreign country that corresponds to a bankruptcy proceeding, civil rehabilitation proceeding, corporate reorganization proceeding or special liquidation proceeding.

[83][111] It means a person, other than the debtor, with the right to manage and dispose of the assets of the debtor in a Foreign Insolvency Proceeding.

[84][112] It means a Bankruptcy Proceeding, Civil Rehabilitation Proceeding, Corporate Reorganization Proceeding or Special Liquidation Proceeding petitioned for in Japan.

(i) The Foreign Insolvency Proceeding is a Foreign Main Proceeding[85][113].

(ii) The court finds that it is in the general interests of the creditors to take assistance measures in respect of the Foreign Insolvency Proceeding.

(iii) There is no likelihood that the interests of creditors in Japan will be unreasonably prejudiced if the Court grants assistance measures in respect of the Foreign Insolvency Proceeding.

Therefore, if the Proceedings in the Home Jurisdiction satisfy the above requirements, they will be recognized and can be assisted by the Japanese Courts under the Recognition and Assistance of Act.

2. Where Proceedings in the Home Jurisdiction are Recognized

a. Pledge Method

Subject to the Recognition and Assistance Act, the Japanese Courts may assist Proceedings in the Home Jurisdiction by suspending or canceling other proceedings (Articles 25, 27 and 28), regulating the debtor from performing its obligations or disposing of its assets (Articles 26 and 31), and appointing a recognition trustee (Article 32).

Articles providing suspension of enforcement proceedings apply to proceedings to enforce a pledge. But such articles do not apply when no proceeding is required to enforce the pledge. However, when a foreclosure proceeding is not required for the enforcement of the pledge, articles regulating performance or disposal of the assets of and by the debtor may apply, because it is possible that the Japanese Courts would evaluate that private sale as enforcement which is substantially identical to performance or disposal of the assets of and by the debtor. Where such provisions are held applicable, the Collateral Taker is required to repay the amount applied from proceeds obtained through such private sale to the debtor or a recognition trustee if the Proceeding in Home Jurisdiction does not allow such private sale.

b. Lending and Set-off Method

Articles providing suspension of foreclosure proceedings would not apply to set-off or close-out netting, because there are no proceedings to be suspended with regard thereto.

However, articles regulating the performance or disposal of the assets of and by the debtor may apply to set-off or netting, because, although set-off or close-out netting will be done solely by the creditor or automatically, it is possible that the Japanese courts would regard that set-off or close-out netting as substantially identical to performance of or disposal of the assets by the debtor. When such provisions are applicable, the Collateral Taker is required to return the amount netted or set-off under the relevant Master Agreement and the Credit Support Documents to the debtor or a recognition trustee if the Proceeding in Home Jurisdiction does not allow such netting on set-off.

Since recognition of the Foreign Insolvency Proceeding would not affect the interpretation of the governing law, in respect of the commencement of insolvency proceedings, the

[85][113] It means a Foreign Insolvency Proceeding petitioned for in a country where the debtor has its principal place of business if the debtor is engaged in business; a Foreign Insolvency Proceeding petitioned for in a country where the debtor has its residence if the debtor is an individual who is not engaged in business or who does not have a place of business; or a Foreign Insolvency Proceeding petitioned for in a country where the debtor has its principal establishment if the debtor is a juridical person or an association or foundation (Article 2, item 3).

enforceability of set-off or close-out netting will be determined according to the relevant governing law.

c. Conclusion

Where Proceedings in the Home Jurisdiction are recognized, proceedings to enforce a pledge may be suspended if the Proceeding in Home Jurisdiction does not allow such enforcement; and with respect to both pledges and set-off or netting, it is possible that the Japanese Courts might order the Collateral Taker to return the amount obtained through private sale or the amount set-off or netted to the debtor or a recognition trustee if the Proceedings in Home Jurisdiction do not allow such netting or set-off.

3. Where Proceedings in the Home Jurisdiction are not Recognized

Because of the deletion of the provisions regarding the territoriality principle in Japanese Insolvency Acts, Foreign Insolvency Proceedings adopting a universality approach may be given effect in Japan as long as they are recognized under the Recognition and Assistance Act. Since the Home Jurisdiction takes a universality approach regarding such proceedings similar to one of the Insolvency Proceedings, even where the Proceeding in the Home Jurisdiction is not recognized under the Recognition and Assistance Act, such proceeding might be honored in Japan. However, there is no provision of the relevant laws which allows or obligates the Japanese Courts to cooperate with such incomplete proceeding and therefore the Japanese Court will not apply the laws of the Home Jurisdiction in deciding the enforceability of the Loan and Set-off Method or the pledge over a Japanese Securities or cash in a Japanese Account. Instead they will apply Japanese law on such occasions.

4. Conclusion

Whether or not the Proceedings in the Home Jurisdiction are recognized under the Recognition and Assistance Act, the Japanese Court would not apply the laws of Home Jurisdiction in deciding the enforceability of the lending and set-off method or the pledge over Japanese Securities or cash in a Japanese Account.

However, where the Proceedings in the Home Jurisdiction are recognized and if the Proceedings in the Home Jurisdiction imposes a stay over or does not allow such enforcement, private sale, set-off or netting, (i) with respect to the pledge, the enforcement proceeding might be suspended; and (ii) with respect to both the pledge and the set-off or netting, although there is no precedent, we think that it is possible that the Japanese courts might order the Collateral Taker to return the amount obtained through private sale or the amount set-off or netted, as the case may be, to the debtor or a recognition trustee. Since recognition of the Foreign Insolvency Proceeding would not affect the interpretation of the governing law, the enforceability of set-off or close-out netting will be determined according to the relevant governing law.

K. Enforceability of the IM JP Annex as amended and supplemented by the Provisions set out in the Trust Addendum

Please opine on the enforceability under the laws of Japan of the IM JP Annex as amended and supplemented by the provisions set out in the Trust Addendum.

We are of the view that the IM JP Annex as amended and supplemented by the provisions set out in the Trust Addendum would be enforceable in accordance with its terms and constitutes legal, valid, binding and enforceable obligations of the Collateral Provider.

Part 4 - ISDA CLOSE-OUT AMOUNT PROTOCOL

The ISDA Close-out Amount Protocol (the "**2009 Protocol**") was published on 27 February 2009, and the 1992 ISDA Master Agreement (Multicurrency – Cross Border) will be amended to replace Market Quotation and (subject to the parties' elections) Loss with Close-out Amount by adherence of the 2009 Protocol.

Assuming that the changes intended by the 2009 Protocol are effective as a matter of governing law of the Covered Master Agreement (as defined in the 2009 Protocol) and the relevant Credit Support Document, we confirm that the changes made by the 2009 Protocol (including, without limitation, Annexes 10, 11 and 12) are not material to, and do not affect the conclusions in this memorandum.

Part 5 - ISDA 2014 COLLATERAL AGREEMENT NEGATIVE INTEREST PROTOCOL

The ISDA 2014 Collateral Agreement Negative Interest Protocol (the "**2014 Protocol**") was published on 12 May 2014, and collateral agreements published by ISDA will be amended such that if an interest amount for an interest period is negative the party pledging cash collateral pays the absolute value of that interest amount to the collateral receiver for that interest period by adherence of the 2014 Protocol.

An agreement on payment of interest is not an essential element of a loan for consumption (*shouhi taishaku*) or deposit for consumption (*shouhi kitaku*) under Japanese law. Therefore, assuming that the amendments intended by the Protocol are effective as a matter of governing law of the relevant Credit Support Document, we confirm that the amendments made by the 2014 Protocol are not material to, and do not affect the conclusions reached in this memorandum.

This memorandum is limited to the laws and regulations of Japan currently in effect.

This memorandum is addressed to ISDA and may be used only by ISDA and its members.

Yours faithfully,

Gaikokuho Kyodo-Jigyo Horitsu Jimusho Linklaters