To: International Capital Market Association (***ICMA***)
Securities Lending and Repo Committee (***SLRC***) Capital Adequacy Directive Working Group

~~As of~~ 31~~st~~ March, ~~2009~~2010

Dear Sirs

Global Master Repurchase Agreement
Global Master Securities Lending Agreement ~~**(May 2000 version) (*"GMSLA 2000"*)**~~
~~**Global Master Securities Lending Agreement (May 2000 version) as amended by the ISLA 2009 Securities Lending Set-Off Protocol *("GMSLA 2000 as amended")***~~
~~**Draft Global Master Securities Lending Agreement (2009 Version – draft dated 24 December 2008) *("GMSLA 2009")***~~
Overseas Securities Lender's Agreement (October 1994 version) ~~**(*"OSLA 1994"*)**~~
Overseas Securities Lender's Agreement (December 1995 version) ~~**(*"OSLA 1995"*)**~~

Master Gilt Edged Stock Lending Agreement (1996 versions) ~~**(*"GESLA"*)**~~

CORE OPINION

This opinion consists of a Core Opinion and Appendices 1 to 2.

A. SCOPE

We have been instructed to give our opinion as to the validity under the laws of Malta of:

(i) the 1995 version of the PSA/ISMA Global Master Repurchase Agreement ("**GMRA 1995**") and the 2000 version of the TBMA/ISMA Global Master Repurchase Agreement ("**GMRA 2000**") (the GMRA 1995 and the GMRA 2000 together the "**GMRA**") and the annexes listed in Appendix 1, Part I to this opinion, comprising the Core Opinion and Appendix 1 only; and

(ii)

a.

i. the May 2000 version of the Global Master Securities Lending Agreement (“**GMSLA 2000**”);

ii. the May 2000 version of the Global Master Securities Lending Agreement (as amended by the ISLA 2009 Securities Lending Set-Off Protocol) (“**GMSLA 2000 as amended by the ISLA 2009 Protocol**”);

iii. the July 2009 version of the Global Master Securities Lending Agreement (“**GMSLA 2009**”);,

iv. the January 2010 version of the Global Master Securities Lending Agreement (“**GMSLA 2010**”),

~~(ii) the OSLA 1994, the OSLA 1995, the GESLA,~~ the GMSLA 2000, the GMSLA 2000 (as amended by the ISLA 2009 ~~Securities Lending Set-off~~ Protocol) ~~and the GMSLA 2009 (the GMSLA 2000, the GMSLA 2000 as amended and the GMSLA 2009~~ , the GMSLA 2009, the GMSLA 2010 (together the ~~GMSLA) comprising~~ ~~the Core Opinion and Appendix 2 only.~~“**GMSLA**”),

b. the October 1994 version of the Overseas Securities Lender’s Agreement and the October 1994 version of the Overseas Securities Lender’s Agreement as amended by the ISLA 2009 Securities Lending Set-Off Protocol (together “**OSLA 1994**”);

c. the December 1995 version of the Overseas Securities Lender’s Agreement and the December 1995 version of the Overseas Securities Lender’s Agreement as amended by the ISLA 2009 Securities Lending Set-Off Protocol (together “**OSLA 1995**”);

d. the 1996 versions of the Master Gilt Edged Stock Lending Agreement and 1996 versions of the Master Gilt Edged Stock Lending Agreement as amended by the ISLA 2009 Securities Lending Set-Off Protocol (together the “**GESLA**”),

the GMSLA, OSLA 1994, OSLA 1995 and GESLA together are the “**Securities Lending Agreements**” comprising the Core Opinion and Appendix 2 only.

The GMRA, the GMSLA, the OSLA 1994, the OSLA 1995 and the GESLA are together referred to as the “**Agreements**”, and each an “**Agreement**”.

Subject to our assumption in paragraph (k) below, ~~(i)~~ the term GMRA 2000 and the substance of our opinion in relation to the GMRA 2000 shall apply to both the GMRA 2000 and the GMRA 1995 as amended by entry by the parties into the amendment agreement (the ***Amendment Agreement***) in the form published by ICMA and Securities Industry and Financial Markets Association (***SIFMA***)~~; (ii) the term GMSLA 2009 and the substance of our opinion in relation to the GMSLA 2009 shall apply to both the GMSLA 2009 and the GMSLA 2000 (as amended by entry by the parties into the ISLA 2009 Securities Lending Set-Off Protocol)~~.

Terms defined in an Agreement have the same meaning in this opinion in relation to that Agreement.

This opinion is given in respect of parties, which are;

(a) companies (including investment companies with variable share capital (SICAVs), whether constituted as multi-fund or multi-class investment companies, and whether constituted as public limited companies or private limited companies) established under the Companies Act (Chapter 386 of the Laws of Malta) (the "**Companies Act**");

(b) banks licensed under the Banking Act (Chapter 371 of the Laws of Malta) (the "**Banking Act**");

(c) securities dealers licensed under the Investment Services Act (Chapter 370 of the Laws of Malta) (the "**Investment Services Act**"); and

(d) the Central Bank of Malta set up by the Central Bank of Malta Act (Chapter 204 of the Laws of Malta) (the "**CBM Act**"),

in each case incorporated, organised, established or formed under the laws of Malta and branches established or located in Malta of entities of the type referred in (a) to (c) above which are not established under the Companies Act but are incorporated, organised, established or formed outside Malta (each a "**Malta Party**" and together the "**Malta Parties**").

For the purposes of this opinion, we have not analysed other entities (besides the Malta Parties) which are subject to special insolvency regimes and in particular we have not analysed insurance undertakings, even if such insurance undertakings are organised as companies. Nor have we analysed the insolvency of collective investment schemes which are not organised as SICAVs under the Companies Act.

Other than in relation to the CBM, we have not analysed any specific issues raised when entities are Government-owned or Government-sponsored.

This opinion is confined to matters of Maltese law as at the date of this opinion and we express no opinion with regard to any system of law other than the laws of Malta. No opinion is being given on taxation matters and this opinion is not being delivered to you in connection with any specific transaction.

In the case of collateral consisting of securities or other financial instruments which are situated in Malta, we recommend that you obtain specific advice on a case by case basis in connection with the requirements and formalities relating to their transfer.

B. ASSUMPTIONS

We have assumed that:

(a) save as provided in paragraph ~~7~~8 below, each party is able lawfully to enter into and has all requisite capacity and power to execute, deliver and perform its obligations under the

Agreement and each party has taken all necessary steps to execute, deliver and perform the Agreement and all transactions entered into under the Agreement;

(b) neither Party is prohibited or restricted by applicable regulatory laws or regulations from entering into Agreement or transactions thereunder;

(c) the Agreement has been duly authorised, executed and delivered by each party in accordance with all applicable laws;

(d) other than by the annexes listed in Appendix 1, Part I of the GMRA, the Cross-Product Master Agreement (February 2000 and June 2003 versions) (the "**CPMA**") the latter in the forms published by SIFMA ~~(the "**CPMA**")~~, the Agency Annex and Addendum for Pooled Principal Agency Loans to each of the GMSLA 2009 and GMSLA 2010 or as stated in this opinion, none of the terms of the Agreement has been varied, waived or discharged in any material respects and transactions have been entered into as specified in the Agreement;

(e) the Agreement is legal, valid, binding and enforceable under English law;

(f) the Agreement has been entered into for bona fide commercial reasons and at arm's length by each of the Parties;

(g) the Agreement and all transactions entered into under the Agreement are entered into prior to the formal commencement of insolvency proceedings against either party;

(h) at the time at which a transaction is entered into under the Agreement, neither party has actual notice of the insolvency of the other party;

(i) the requirements of the law governing the transfer of Securities, Margin, Collateral, Equivalent Securities, Equivalent Margin, Equivalent Margin Securities and Equivalent Collateral are complied with;

(j) to the extent that any Agreement makes reference to any foreign law or to any foreign regulation or rule set out in any document (other than the Agreements), that such foreign law, regulation or rule does not contain any provision which runs counter to the public policy of Malta;

~~(k)~~

(k) ~~(i)~~ where the parties to a GMRA 1995 have subsequently executed an Amendment Agreement, the effect of such Amendment Agreement will be to amend the terms of GMRA 1995 to conform the GMRA 1995 to GMRA 2000; and

~~(ii) where the parties to a GMSLA 2000 have subsequently executed an ISLA 2009 Securities Lending Set-off Protocol, the effect of such ISLA 2009 Securities Lending Set-off Protocol will be to~~

~~amend the terms of the GMSLA 2000 to conform GMSLA 2000 to GMSLA 2009;~~

(l) where the parties have entered into a CPMA, we repeat our assumptions in (a)-(k) above in relation to such CPMA and, in addition, have assumed, without further investigation, that such CPMA constitutes a valid and binding agreement between the parties under all applicable laws (including, for the avoidance of doubt, under Maltese law)~~.~~;and

(m) the reference in the first paragraph of the ISLA 2009 Securities Lending Set-Off Protocol to '1995 Master Gilt Edged Stock Lending Agreement' refers to the Master Gilt Edged Stock Lending Agreement 1996 and April 1996 versions, in this opinion defined above as GESLA

Subject to the above and the qualifications set out below, we are of the opinion that under the laws of Malta:

C. OPINION

1. Insolvency Proceedings

1.1 The only bankruptcy, composition, rehabilitation (e.g. administration, receivership or voluntary arrangement) or other insolvency proceedings to which a Malta Party (other than the Central Bank of Malta, as to which, please see paragraph ~~7.6~~8.8 below) would be subject in Malta are the following:

(i) Dissolution and consequential winding-up in terms of Article 214 *et seq.* of the Companies Act. This can either take the form of a Winding-up by the Court or a Voluntary Winding-Up;

(ii) Company Recovery Procedure in terms of Article 329B *et seq.* of the Companies Act;

(iii) Company ~~Reconstructions~~Reconstruction in terms of Article 327 *et seq.* of the Companies Act;

(the above are together called the "**Insolvency Proceedings**").

1.2 We confirm that all of the Insolvency Proceedings would be adequately covered by the definition of Act of Insolvency in the Agreements. Reference is however made to the provisions of Clause ~~8.15~~9.15 of this opinion.

2. Validity Of The Agreement

2.1 For the GMRA please refer to Appendix 1, Part II.~~ For the GMSLA, the OSLA 1994, OSLA 1995 and the GESLA, please refer to Appendix 2, Part II.~~

2.2 For the Securities Lending Agreements, please refer to Appendix 2, Part II.

3. Netting Provisions

3.1 For the GMRA, please refer to Appendix 1, ~~Part III. For the GMSLA, the OSLA 1994, the OSLA 1995 and the GESLA, please refer to Appendix 2,~~ Part III.

3.2 For the Securities Lending Agreements please refer to Appendix 2, Part III.

4. GMRA Annexes, Core Provisions of the GMRA~~, Transactions Entered into as Agent Pursuant to the GMRA and Transactions Entered into as Agent Pursuant to the GMSLA 2009~~

4.1 Please refer to Appendix 1, Parts IV - VI.

5. Transactions Entered into as Agent

~~4.1~~ 5.1 For the GMRA~~,~~ please refer to Appendix 1, ~~Parts IV – VI.~~Part IV.

~~4.2~~ 5.2 For the ~~GMSLA 2009,~~Securities Lending Agreements (excluding the OSLA 1994), please refer to Appendix 2, Part III paragraph ~~1.3.~~1.3 and, in the case of the GMSLA 2009 and the GMSLA 2010 only, paragraph 1.6.

6. ~~5.~~ Location of Securities

6.1 ~~5.1~~ Under Maltese private international law rules, the general rule is that any issue arising in relation to book entry securities collateral (whether collateral is by way of the creation of a security interest or by means of title transfer) with respect to:

(i) the legal nature and proprietary effects of the collateral;

(ii) the requirements for perfecting such collateral and the provision of the collateral;

(iii) whether a person's title to or interest in such book entry securities collateral is overridden by or subordinated to a competing title or interest, or a good faith acquisition has occurred; and

(iv) the steps required for the realisation of book entry securities collateral following the occurrence of an enforcement event,

is governed by the law of the country in which the relevant account is maintained (disregarding any rule of such country under which reference will be made to the law of another country).

On the basis of the above, to the extent that the laws of the country in which the relevant account is maintained are followed, the substance of our opinion on the Agreement would not

be affected if Purchased Securities, Loaned Securities, Margin Securities, or Collateral or Margin comprising of Securities, are held outside Malta.

7. ~~6.~~ CPMA

7.1 ~~6.1~~ Entry by the parties into a CPMA will not affect the substance of our opinion on the provisions of the Agreement and their effect under Maltese law, nor will it affect the substance of our opinion on the validity of the Agreement as a whole under Maltese law.

Provided however that in relation to the June 2003 version of the CPMA (the "**CPMA 2**"):

(i) Party A Affiliates should be specifically identified as such in the Schedule to the CPMA 2. In addition, each of the Party A Affiliates must execute CPMA 2 or alternatively the Party A Affiliates must designate Party A as their agent and have Party A execute CPMA 2 and the Schedule on its own behalf and again as agent for each of the Party A Affiliates; and

(ii) no opinion is being given in relation to any of the amendments of the provisions of the Agreement made by Annex 1 – Pledge of Receivables / Cross-Collaterization.

8. ~~7.~~ The Central Bank of Malta

8.1 ~~7.1~~ Although in our assumptions to this opinion, we have assumed that each party is able lawfully to enter into and has all requisite capacity and power to enter into the Agreements, we have herein made a brief analysis on the powers of the Central Bank of Malta (the "**CBM**") to enter into repurchase agreements, reverse repurchase agreements, buy/sell back transactions and securities lending agreements.

8.2 ~~7.2~~ The CBM is established by Article 3 of the CBM Act. The CBM is a body corporate established by law, has a distinct legal personality and forms an integral part of the European System of Central Banks as established under the Treaty of Rome establishing the European Community, as subsequently amended (the "**Treaty**"). In accordance with the Treaty and the Protocol on the Statute of the European System of Central Banks and of the European Central Bank annexed to the Treaty (the "**Statute**"), the primary objective of the CBM is to maintain price stability.

8.3 ~~7.3~~ Article 17 of the CBM Act lays down the principal business and powers of the CBM. Article 17 provides in particular that in accordance with the Treaty and the Statute, in order to achieve its objectives and to carry out its tasks, the operations of the CBM include the power "*to enter into repurchase and reverse repurchase agreements.*"

8.4 ~~7.4~~ The CBM Act does not specifically authorise the entry into of buy/sell back transactions or securities lending agreements, but we note the following general powers of the CBM:

Art. 17(2): "*In managing and maintaining the reserve assets, the Bank may, in accordance with the guidelines and instructions of the European Central Bank, carry out any transactions that it deems suitable, and in particular it may:*

…

(b) carry out any type of financial transaction with domestic or foreign institutions or with international organisations, including borrowing and lending operations."

Art. 17(5): "*Subject to any other provisions of this Act, the Bank may generally conduct business as a bank, and do all things as are incidental to or consequential upon the exercise of its powers or the discharge of its duties under this Act.*"

~~7.5~~8.5 In light of the above considerations, we are of the view that the CBM Act does not contain any provision which makes it unlawful, or *ultra vires* the law, for the CBM to enter into the Agreements or the transactions contemplated thereunder. The only caveat is that all such transactions as contemplated by the Agreements must be entered into in accordance with the Treaty, the Statute, the guidelines and instructions of the European Central Bank and also that such transactions can only be entered into to enable the CBM to achieve its objectives and to carry out its tasks as laid down by law.

8.6 ~~7.6~~ It must be noted that in terms of Article 17(6) of the CBM Act, the CBM enjoys a special privilege (under Maltese law special privileges grant priority rights to creditors) over any funds held in its accounts, as well as any securities, precious metals or any other assets belonging to its debtors and deposited with it, as well as any other funds or other assets pledged in its favour by its debtors or by third parties to guarantee the obligations of its debtors. The CBM may, subsequent to prior notification to the debtor, apply any such funds or assets in satisfaction of the debts due to it without the necessity of any authorisation or sanction by any court or other authority, and may also, for such purpose, dispose of any such assets so held by it or pledged in its favour and apply the proceeds from such disposal directly to satisfy its claims.

8.7 ~~7.6~~ The CBM Act also provides that the CBM and its directors, officers or servants thereof, and any other person appointed to perform a function under the CBM Act, or under any rules or regulations made thereunder, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any functions under the CBM Act, or any rules or regulations aforesaid, unless the act or omission is shown to have been done or omitted to be done in bad faith. The said exemption from liability also applies to the CBM and to any of its directors, officers or servants thereof and to any other person appointed by the CBM, in the performance or purported performance of any function assigned to the CBM or to any director, officer, servant or other person under any other law.[1] In our view, this is a wide exclusion of liability clause and it arguably derogates from the general principle developed by Maltese Courts which states that in relation to body corporates set up by law, one must distinguish

[1] See Central Bank of Malta Act (Art. 15).

between commercial acts ~~or~~and acts of state. Acts of state enjoy sovereign immunity, whereas commercial acts do not; the provision in the CBM Act makes no such distinction.

On the basis of the above, we believe that on the assumption that the CBM has performed an act of state in good faith, a Maltese Court would neither grant damages in an action against the CBM nor enforce a judgment or abitral award which awards damages against the CBM. It is unclear however whether such an exclusion of liability would also apply in the event that the CBM has performed a commercial act. In any case, we believe that this exclusion of liability clause is not intended to affect in any manner the validity or enforceability of any set-off or close-out netting provision to which the CBM is a party.

8.8 ~~7.6~~ Maltese law does not provide for any insolvency regime applicable to the CBM. For the sake of completeness, the provisions of the Credit Institutions Winding-Up Regulations (as defined below) do not apply to the CBM.

8.9 ~~7.6~~ For the avoidance of doubt, in any dealings with the CBM, all the advice granted in this document should be read in conjunction with this paragraph ~~7~~8 and shall be subject to all the qualifications set out herein.

9. ~~8.~~ Other Matters

9.1 ~~8.1~~ On the assumption that under English law the unenforceability or illegality of a provision of the Agreement would not undermine the efficacy of the remainder of the Agreement generally or of the GMRA Netting Provisions and the Securities Lending Agreement Netting Provisions ~~in particular,~~ (as defined in Appendix 1, Part III and Appendix 2, Part III respectively) in particular, the unenforceability or illegality of any provision of the Agreement would not undermine the efficacy of the remainder of the Agreement generally or of the GMRA Netting Provisions and the Securities Lending Agreement Netting Provisions in particular under Maltese law.

9.2 ~~8.2~~ The Agreement may be used by any party with any other party wherever either is incorporated, formed or established. However, this opinion relates only to Malta Parties.

9.3 ~~8.3~~ The GMRA Netting Provisions and the Securities Lending Agreement Netting Provisions would be enforceable in all Insolvency Proceedings (which term for the avoidance of doubt also includes all proceedings which under Maltese law may be classified as non-liquidation insolvency, such as the Company Recovery Procedure).

9.4 ~~8.4~~ There is no necessity for the set-off effected under the GMRA Netting Provisions and the Securities Lending Agreement Netting Provisions to be reflected in the records of the parties for it to be effective and no other action is required including, without limitation, any filing or registration, for the set-off to be effective.

9.5 ~~8.5~~ Under the laws of Malta it is necessary for the efficacy of the GMRA Netting Provisions and the Securities Lending Agreement Netting Provisions that all transactions should be treated

as a single agreement. All transactions entered into by the parties under the Agreement would be treated as part of a single agreement.

9.6 ~~8.6~~ The use of the Agreement with branches of a party in a number of jurisdictions, including one where the legal basis for set-off is not clear, would not jeopardise the validity of the GMRA Netting Provisions and the Securities Lending Agreement Netting Provisions in respect of a Malta Party.

Reference is however made to the provisions of Clauses ~~8.10, 8.11~~9.10, 9.11 and ~~8.12~~9.12 of this opinion.

9.7 ~~8.7~~ The GMRA Netting Provisions and the Securities Lending Agreement Netting Provisions would be enforceable in Malta notwithstanding that actions may be taken by insolvency officials in other jurisdictions.

9.8 ~~8.8~~ We have no reason to believe that the Agreement would be unenforceable because of the law of any other jurisdiction.

9.9 ~~8.9~~ With the exception of an Event of Default which is the presentation of a petition for winding-up or any analogous proceeding, or the appointment of a liquidator or any analogous officer of the Defaulting Party, the close-out and set-off provisions of the GMRA Netting Provisions and the Netting Provisions are at the option of the non-defaulting party. We do not consider that the GMRA Netting Provisions and the Securities Lending Agreement Netting Provisions would be more likely to be upheld if their operation were automatic. The discretion and flexibility given to the non-defaulting party under the GMRA Netting Provisions and the Securities Lending Agreement Netting Provisions do not affect the validity of the close out and set-off provisions of the GMRA Netting Provisions and the Securities Lending Agreement Netting Provisions.

The Set-Off and Netting on Insolvency Act (Chapter 459 of the Laws of Malta) (the "**Set-Off Act**"), in its definition of a close-out netting provision, refers to the occurrence of a specified event, and makes no distinction between whether notice needs to be sent to the other party or otherwise. Accordingly, in terms of the wording of the law, no notice of an event of default is required to enforce a close-out netting provision. In any case, if an event of default or termination event occurs and no default notice is required to be sent, it is, from a practical perspective, advisable for the non-defaulting party not to act in a manner which conflicts with such early termination.

~~8.10~~9.10 As of 1st May, 2004, the date when Malta became a full member of the European Union, one must also take into consideration the overriding provisions of Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings (the "**Insolvency Regulation**"). The Insolvency Regulation has had a significant effect on Maltese insolvency laws, in so far as private international laws relating to insolvency are concerned. The Insolvency Regulation provides in substance that the courts with jurisdiction to open insolvency proceedings are those of the Member State (as defined in the Insolvency Regulation) where the debtor has his "centre of main interests". Denmark (pursuant to recital

33 of the Insolvency Regulation) is not participating in the adoption of the Insolvency Regulation and is therefore neither bound by it nor subject to its application. The Insolvency Regulation limits the instances when secondary proceedings in another Member State can be opened. In addition, the Insolvency Regulation provides that, unless otherwise stated, the law of the Member State of the opening of the proceedings should be applicable (*lex concursus*) to a series of issues as outlined in the Insolvency Regulation. Therefore, in virtue of the "centre of main interests" rule, the fact that a company is incorporated or governed by the laws of Malta does not mean that Maltese insolvency laws would automatically apply, since Malta may not be the centre of main interests of such a company. In addition, the centre of main interests may change from time to time and all this has a bearing on the applicable conflict of laws rule.

It must be noted that the Insolvency Regulation does not apply to insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, or to collective investment undertakings. For the sake of good order, we also confirm that it does not apply to the Central Bank of Malta.

One of the exceptions to the general rule of the *lex concursus* which is relevant to this opinion is set out in Article 6 of the Insolvency Regulation which reads as follows:

"*1. The opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.*

2. Paragraph 1 shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m)."

A reading of Article 6 of the Insolvency Regulation raises legal doubts as to whether close-out netting is fully included within the parameters of Article 6 of the Insolvency Regulation or otherwise. We are aware of the arguments in European legal circles that the process of close-out netting involves elements in addition to set-off, such as early termination and acceleration of claims, and therefore the doubt as to whether the early termination mechanisms and the acceleration of claims are covered or otherwise by the exception to set-off in the Insolvency Regulation. We are also aware of the argument that set-off and netting are two distinct legal concepts and that the lack of protection for netting in the Insolvency Regulation indicates that the latter did not intend to protect close-out netting.

Although this lack of clarity may raise doubts as to the applicable conflict of laws rule relating to close-out netting, it would appear that the provisions of the Insolvency Regulation do not adversely affect the validity of close-out netting under Maltese law. If Maltese law is applicable, and subject to what is otherwise stated in this opinion, then close-out netting is valid, whereas if Maltese conflict of laws rules defer to the law applicable to the insolvent debtor's claim, then it is the law of the debtor's claim which must determine whether such close-out netting is valid or otherwise.

~~8.11~~9.11 The reorganisation and winding-up of credit institutions is governed by the Credit Institutions (Reorganisation and Winding Up) Regulations, 2004 (the "**Credit Institutions Winding-Up Regulations**") issued under the Banking Act which regulations transpose the provisions of Directive 2001/24/EC of the European Parliament and of the Council of 4th April, 2001 on the reorganisation and winding-up of credit institutions (the "**Credit Institutions Winding-Up Directive**"). The Credit Institutions Winding-Up Regulations apply to member states of the European Union and to countries within the European Economic Area ("**EEA**"), namely Norway, Iceland and Liechtenstein (the EEA states together with the member states of the European Union, the "**Applicable States**")

The Credit Institutions Winding-Up Regulations broadly provide that it is the home Applicable State of a credit institution which will have exclusive jurisdiction to open winding-up proceedings and reorganisation measures in relation to the credit institution (and their branches set up in host Applicable States). All the winding-up proceedings will be governed by the insolvency law of the home Applicable State (the *lex concursus*), subject to specified exceptions. In contrast to the provisions of the Insolvency Regulation, it is not possible for Applicable States where the credit institution has a branch to open any local secondary insolvency proceedings in relation to the insolvent credit institution.

The Credit Institutions Winding-Up Regulations also apply to credit institutions not having a head office within an Applicable State, where such institution has branches in at least two Applicable States. The said regulations imply that each such branch would be treated individually, although there must be co-operation between the respective authorities of each Applicable State where a branch is located.

Regulation 25(1) of the Credit Institutions Winding-Up Regulations provides that "*the adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the rights of creditors to demand the set-off of their claims against the claims of the Maltese credit institution where such a set-off is permitted by the law of the Member State or EEA State which is applicable to the claim of the Maltese credit institution.*" Regulation 25(2) however does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

Regulation 26 of the Credit Institutions Winding-Up Regulations, in its turn, provides that the enforcement of proprietary rights in instruments or other rights in such instruments the existence or transfer of which presupposes their recording in a register, an account or a centralised deposit system held or located in an Applicable State, shall be governed by the law of the Applicable State where the register, account or centralised deposit system in which those rights are recorded is held or located.

Regulation 27 of the said regulations provides that: "*Pursuant to the provisions of the Set-Off and Netting on Insolvency Act, netting agreements shall be governed by the law of the contract which governs such agreements.*" The reference in Regulation 27 to the provisions of the Set-Off Act adds nothing to this clause, since in fact the Set-Off Act contains no such conflict of laws rule. However, this does not detract anything from the conflict of laws rule that netting agreements are to be governed by the law of the contract which governs such agreements.

Although the Credit Institutions Winding-Up Regulations do not contain a definition of 'netting agreements', we believe that the Agreements should fall within the meaning of a 'netting agreement' under Regulation 27. Effectively, therefore, the practical effect of Regulation 27 is that, on an Insolvency Proceeding of a Maltese bank, under Maltese conflict of laws rules, the validity and enforceability of the Agreements (including the provisions on close out netting on insolvency) will be governed by the governing law of the Agreement.

In addition, Regulation 28 provides that "*repurchase agreements shall be governed solely by the law of the contract which governs such agreements*." This rule is without prejudice to Regulation 26 which broadly sets out that the enforcement of proprietary rights in book-entry instruments is to be governed by the law of the Applicable State where such book-entry system is located.

We believe that the Agreements fall within the meaning of 'a netting agreement' under Regulation 27 and that in addition the GMRA also falls within the meaning of a 'repurchase agreement' under Regulation 28. Effectively therefore the practical effect of this is that, on an Insolvency Proceeding of a Maltese bank, under Maltese conflict of laws rules, the validity and enforceability of the Agreements (including the provisions on close-out netting on insolvency) will be governed by the governing law of the Agreement, and in our view the said governing law would apply without regard to the effect of any mandatory insolvency rules of Malta.

~~8.12~~9.12 The views set out in this opinion are in all cases subject to the overriding provisions of the Insolvency Regulation and the Credit Institutions Winding-Up Regulations, where applicable. Accordingly, by virtue of the Insolvency Regulation or the Credit Institutions Winding-Up Regulations: (a) the insolvency proceedings of a branch in Malta of a company established outside Malta may not be carried out in Malta, and/or (b) the applicable conflict of laws rule to determine the reorganisation or winding-up of a branch in Malta may point to the laws of another jurisdiction, and/or (c) the applicable conflict of laws rule may point to the laws of another jurisdiction in so far as the insolvency measures, termination provisions, set-off and netting provisions are concerned.

~~8.13~~9.13 The basic company law rule as set out in Article 303 of the Companies Act is that there is a six month period before the effective date of the dissolution of the company whereby practically any transaction can be deemed to be a fraudulent preference against its creditors if it constitutes a "transaction at an undervalue" or if a "preference" is given.

A company enters into a transaction at an undervalue if:

(i) the company makes a gift or otherwise enters into a transaction on terms that provide for the company to receive no consideration; or

(ii) the company enters into a transaction for a consideration the value of which, in money or money's worth, is significantly less than the value in money or money's worth of the consideration provided by the company.

A company gives a preference to a person if:

(i) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and

(ii) the company does anything or suffers anything to be done which, in either case, has the effect of putting that person into a position which, in the event of the company going into insolvency winding-up, will be better than the position he would had been had that act or omission not occurred.

The only exception to this so-called fraudulent preference rule is where the other party proves that it did not know and did not have reason to believe that the company was likely to be dissolved by reason of insolvency. The Set-Off Act provides that Article 303 is only applicable in relation to a close-out netting provision where there is fraud on the part of the party to the agreement not being the insolvent party. Effectively, therefore, the Set-Off Act has laid down an additional test which needs to be satisfied before a close-out netting provision can be declared void on the basis of the six month fraudulent preference rule. In addition, the Financial Collateral Regulations (as defined below) also broadly provide that a financial collateral arrangement and the provision of financial collateral thereunder cannot be declared invalid or reversed on the sole basis that it has come into existence or has been provided:

(i) on the day of the commencement of winding-up proceedings or reorganisation measures, but prior to the order making that commencement; or

(ii) within the six month suspect period.

In the case of credit institutions in respect of which the Malta Financial Services Authority (the "**MFSA**") has appointed a controller to assume control under the Banking Act, the provisions of the Controlled Companies (Procedure for Liquidation) Act, 1995 (~~Chap.~~Chapter 383 of the Laws of Malta) (the "**Controlled Companies Act**") are also relevant[2]. The Controlled Companies Act makes the provisions of Article 485 of the Commercial Code (~~Chap.~~Chapter 13 of the Laws of Malta) applicable to such credit institutions. In substance, Article 485 lays down that:

(i) every act transferring property, whether corporeal or incorporeal, and every obligation incurred or other act made by the bankrupt under a gratuitous title (a term which broadly speaking means without consideration) for the purpose of defrauding his creditors is null and void as regards the body of creditors, of whatever kind they may be, even though the interested parties be in good faith; and

(ii) every act of the same kind and every obligation, act or payment made or incurred under an onerous title (a term which broadly speaking means against consideration) can be annulled if there was also fraud on the part of the interested party. Any such acquisition, obligation, act or payment shall be deemed to be fraudulent as regards the

[2] The Controlled Companies Act makes provision for the liquidation and the distribution of assets belonging to controlled banks.

interested party, if it is proved that such party knew of the bankruptcy or of the existence of circumstances giving rise to a declaration of bankruptcy.

In addition, in terms of the Controlled Companies Act, where any act has been made or omitted to be made by a so-called 'controlled asset' (being either a credit institution or asset/s thereof which have been placed under 'control' pursuant to the Banking Act) or by the owner, director or manager of such 'controlled asset' which results in the "fraudulent deprivation of the rights of the creditors of such a controlled asset", the Controller appointed pursuant to the Banking Act is entitled "*to ignore the act so made or to deem the act as having been made despite the omission to make such act*"[2][3].

There is also another general rule found in the Civil Code (Chapter 16 of the Laws of Malta) (the "**Civil Code**") which is applicable across the board. This rule, called the *actio pauliana*, basically establishes that it is competent to any creditor to impeach any act made by the debtor in fraud of his claims.

8.149.14 In terms of Article 4(2)(m) of the Insolvency Regulation and Regulation 11(2)(1) of the Credit Institutions Winding-Up Regulations, rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors (such as those discussed in relation to Article 303 of the Companies Act above) are governed by the law of the Member State (as defined in the Insolvency Regulation) of the opening of the proceedings. However, Article 13 of the Insolvency Regulation lays down that where the person who benefited from an act detrimental to all the creditors (the "**Detrimental Act**") provides proof that:

(i) the Detrimental Act is subject to the law of a Member State other than that of the state of the opening of the proceedings; and

(ii) that law does not allow any means of challenging the Detrimental Act in the relevant case,

then the laws on claw backs in the Member State of the opening of the proceedings will not apply. The same rule finds reflection in Regulation 31 of the Credit Institutions Winding-Up Regulations.

Effectively therefore, since the Agreements are governed by English law, the Maltese rules set out in Article 303 of the Companies Act may not always be applicable.

8.159.15 The Companies Act (Investment Companies with Variable Share Capital) Regulations (L.N. 241 of 2006) govern multi-fund companies in Malta. A multi-fund company is an investment company with variable share capital (SICAV) which elects to have the assets and liabilities of each sub-fund comprised in that company treated for all intents and purposes of law as a patrimony separate from the assets and liabilities of the other sub-funds of such

[2][3] Art. 5(5) of the Controlled Companies (Procedure for Liquidation) Act, 1995 (~~Chap.~~Chapter 383 of the Laws of Malta).

company. The multi-fund company is obliged to keep assets and liabilities of each sub-fund segregated from the other.

The regulations (Regulation 9(2)) provide that save for such proportions of the liabilities of a multi-fund company which by virtue of the memorandum of association of the company or by virtue of the terms of issue of the shares constituting a sub-fund are, or are to be attributable to, one or more sub-funds in the proportion established therein, the liabilities incurred in respect of each sub-fund shall be paid out of the assets forming part of its patrimony and the creditors in respect thereof shall have no claim or right of action against the other assets of the company.

In addition, the regulations also lay down that:

(a) proceedings in relation to the multi-fund company must respect the legal status of each sub-fund as a patrimony separate from the assets and liabilities of each other sub-fund of the company; and

(b) proceedings under the Companies Act relating to insolvency proceedings of a company shall apply *mutatis mutandis* to the sub-fund as though it were a distinct legal entity and with such modifications as are necessary to accommodate the fact that the sub-fund is not a company; and any proceedings in relation to one sub-fund shall not have any effect on the assets of any other sub-fund of the company or of the company itself.

Individual sub-funds do not have separate legal personality *per se* and therefore they need to enter into contracts through the legal personality of their multi-fund company, for instance **XYZ SICAV Limited in respect of 123 Sub-Fund**. If a Party proposes to enter into the Agreement with more than one sub-fund, then the said Party should enter into separate Agreements with each and every sub-fund.

Moreover, for clarity's sake, one might wish to consider adding the following clause in each Agreement in relation to the definition of "Act of Insolvency" whenever the Maltese counter-party is a multi-fund company:

"*For the avoidance of doubt, the above provisions shall apply mutatis mutandis to the sub-fund as though it were a distinct legal entity and with such modifications as are necessary to accommodate the fact that the sub-fund is not a company.*"

D. QUALIFICATIONS

This opinion is subject to the qualifications outlined below:

1.1 the enforceability of the rights and remedies provided for in the Agreements is limited by and subject to:

(i) except as herein provided, insolvency, bankruptcy, moratorium and other similar laws affecting the enforceability of creditors' rights generally;

(ii) the pleas of set-off and counter-claim; and

(iii) the plea of prescription;

1.2 save in circumstances where it is required to exercise jurisdiction under the EC Regulation 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the "**European Judgments Regulation**"), where a foreign court has a concurrent jurisdiction, the courts of Malta have a discretion to declare a defendant non-suited or to stay proceedings in Malta on the ground that if the action were to continue in Malta it would be vexatious, oppressive or unjust to the defendant;

1.3 money judgements awarded by the courts of Malta, as well as any precautionary and executive warrants, are denominated in the lawful currency for the time being of Malta. In cases involving a foreign currency, the established principle is that the courts of Malta order that payment be made in the currency which is legal tender in Malta and that the rate of exchange be that obtaining at the time when the obligation was due and not that obtaining at the time of delivery of the judgment. There have been instances however where the courts of Malta have ordered that payment be made using the rate of exchange obtaining at the time of the delivery of the judgement;

1.4 exchange control limitations have been abolished in Malta[~~3~~4] and Maltese persons may enter into foreign currency transactions without limitation. The only requirement in this regard is that statistical data relating to certain foreign currency transactions has been submitted by Maltese credit institutions on the appropriate forms to the Central Bank of Malta pursuant to the External Transactions Act, 1972 (Chapter 233 of the Laws of Malta). Failure to so notify will not impinge on the ability of the non-Maltese counterparty to claim payment and will have no impact on the validity of the underlying transaction. In the event however that for any reason a party needs to prove / claim in a Maltese liquidation, the solvent party's claim must be expressed in Euro and the general rule is that the rate of exchange will be the rate applicable at the point in time when the underlying obligation was due.

1.5 the waiver by any of the Parties of certain procedural rights and remedies in the Agreements may not be valid due to the fact that all procedural laws are treated as rules of public policy;

1.6 as a general rule, under the Civil Code, interest can only be charged up to 8% per annum. In addition, the compounding of interest is not enforceable in Malta unless the obligation to pay interest is due for a period of more than one year and certain procedures prescribed in the Civil Code are followed. However, in virtue of the Interest Rate (~~Financial Transactions) Order, 2005~~Exemption) Regulations, 2009 (Legal Notice ~~323~~142 of ~~2005~~2009), issued under the Civil Code, a number of transactions were liberalised. In particular, where the interest rate or the compounding of interest rates arises in relation to debts and other obligations from so-called

[~~3~~4] There are two exceptions to this rule relating to (i) exceptional circumstances, namely a sudden crisis in Malta's balance of payments or serious difficulties for the stability of the financial system; and (ii) powers under the National Interest (Enabling Powers) Act (~~Cap.~~Chapter 365 of the Laws of Malta);

"financial transactions" and where one of the parties is a "designated entity", the said limitations have been completely liberalised. The definition of "financial transaction" includes amongst others: contracts for differences, derivative contracts including options, forwards, swaps, foreign currency exchange contracts and similar agreements, securities lending transactions, sale and buy back agreements, repurchase and reverse repurchase agreements and similar agreements, as well as any pledges, hypothecs and other charges and any other collateral agreements, whether by way of title transfer or otherwise, which are entered into for the purpose or in connection with any of the foregoing transactions. The definition of "designated entity" includes amongst others a credit institution as defined in Article ~~1(1)~~4 of Directive ~~2000/12~~2006/48/EC ~~and~~, an investment firm as defined in Article ~~1(2)~~4 of Council Directive ~~93/22/EC~~2004/39/EC and a collective investment scheme which is authorised or otherwise exempt in terms of the Investment Services Act, 1994, (Cap. 370 of the Laws of Malta). Accordingly, on the assumption that one of the Parties qualifies as a "designated entity" under the said Order, and in virtue of the fact that, in our view, the Agreements would qualify as "financial transactions", no limitation arises under Maltese law in connection with interest rates or the compounding thereof. This exemption will not however apply when one or more of the parties to the financial transaction is a natural person;

1.7 under our Civil Code, mandate is of its nature revocable; furthermore, mandate is terminated by virtue of a declaration of bankruptcy of either the mandator or the mandatary. This rule applies in relation to any agency agreement, and without prejudice to the generality of the foregoing, even in connection with the appointment of a process agent. However, in terms of Article 3(3) of the Set-Off Act, any authority or mandate in a contract to implement any close-out netting provision is not revoked by the declaration of bankruptcy or insolvency of any party to the contract;

1.8 the law of Malta requires that a debtor acknowledges or be judicially notified of any assignment of a right for the assignment to be effective in barring the application of certain legal effects relative to the assignor (e.g. set-off); consequently, should any interest in any Agreement be transferred, it is advised that judicial notification of the transfer be effected or an acknowledgement in writing of the transfer sought from the debtor. This acknowledgement need not take any specific form so long as it is clear that the debtor is acknowledging the assignment of any right under such Agreement;

1.9 agreements relating to pre-liquidated damages or to interest payable in a default scenario may be re-characterised by the courts of Malta as other agreements (such as an agreement on interest or as a penalty clause), which would then be subject to certain limitations or discretions applicable to the re-characterised transaction; with reference to penalties and by way of elucidation, the courts of Malta have a discretion to abate the penalty, particularly in case of part-performance by the debtor so as to ensure that the penalty faithfully reflects the loss suffered by the non-defaulting party;

1.10 the Financial Collateral Regulations (as defined below) provide that a collateral taker must ensure that any action taken pursuant to a financial collateral arrangement, including any realisation or valuation of the financial collateral, be conducted in a commercially reasonable manner and in good faith so as to ensure fair treatment to the collateral provider. In the event

that a Court determines that this was not the case, the collateral taker or provider, as the case may be, would have a further obligation to settle the difference to the counter-party in order to achieve a commercially reasonable realisation or valuation;

1.11 the Financial Collateral Regulations (as defined below) provide that where on the day of, but after the moment of the commencement of winding-up proceedings or reorganisation measures: (a) a financial collateral arrangement has come into existence; or (b) a relevant financial obligation has come into existence; or (c) financial collateral has been provided, the same will be enforceable and binding on third parties if the collateral taker can prove that he was not aware, nor ought to have been aware, of the commencement of such proceedings or measures;

1.12 a judgement at law amounts to a novation of the debt and so, to the extent, if at all, that any provision in any Agreement purports to contractually regulate post-judgement relations, such provision may not be effective if the judgement so provides. It must be added that this is a very technical point on which there is no consensus amongst legal circles;

1.13 no opinion is expressed by us to the extent that any Agreement or a transaction under it is or gives rise to either: (a) a "transfer order" or netting effected through payments or securities settlement systems or action taken under the rules of a designated system, or (b) constitutes "collateral security" provided in relation to the participant's operations within such systems, in each case as defined in the Central Bank of Malta Directive No. 2 (the "Settlement Finality Directive") issued under the CBM Act, which transposes the provisions of Directive 98/26/EC on settlement finality in payment and securities settlement systems.

The purpose of the Settlement Finality Directive is to preserve the validity of certain instructions (transfer orders) and to enable collateral security to be realised in priority to the application of certain insolvency laws.

A "transfer order" is, broadly, any instruction by a participant to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a credit institution, settlement agent or the CBM, or any instruction which results in the assumption or discharge of a payment obligation, or any instruction by a participant to transfer the title to, or interest in, a security or securities by means of a book entry on a register, or otherwise.

"Collateral security" means, broadly, all realisable assets provided under a pledge (including money provided under a pledge), a repurchase or similar agreement, or otherwise, for the purpose of securing rights and obligations potentially arising in connection with a system; ~~and~~

1.14 The competent authorities under applicable regulatory laws, such as the Banking Act, the Investment Services Act, the Controlled Companies Act and other such legislation, have very wide general powers vested in them by law. It must be brought to your attention that these regulatory powers are drafted in such a wide manner as to enable such regulatory authorities to take action which could run counter to some of the views expressed in this opinion. To our knowledge, however, to date such powers have not been exercised in such manner; and

1.15 as from 1 January 2008, the euro (€) replaced the Maltese Lira (LM) as Malta~~'~~'s currency. On the said date, euro banknotes and coins became legal tender in Malta.

There are no other material issues relevant to the issues raised by this opinion which we wish to draw to your attention.

The Core Opinion and Appendices 1 and 2 only are given for the sole benefit of ICMA and its members ~~and associate members~~ (including branches of those members ~~and associate members~~ or, where the member ~~or associate member~~ is itself a branch, the head office) excluding associate members.

The Core Opinion and Appendix 2 only are given for the sole benefit of the SLRC ~~and~~ subscribers who ~~subscribe~~have a current subscription to the ~~B~~SLRC securities lending opinions ~~list~~extranet service (including branches and subsidiaries of those subscribers or, where the subscriber is itself a branch or subsidiary, the head office or parent company or any subsidiary of such parent company, as applicable).

The Core Opinion and Appendices 1 to 2 may not be relied upon by any other person without our prior written consent. Without limiting the foregoing, you may provide a copy of this opinion to any competent regulatory authority including the UK Financial Services Authority and the German Bundesanstalt für Finanzdienstleistungsaufsicht; however this opinion is not addressed to such regulatory authority and may not be relied upon by them.

Yours faithfully,

~~Dr. Conrad Portanier~~
Dr. Stephen Attard
Ganado & Associates, Advocates

Encl.

APPENDIX 1

GMRA

PART I

List of annexes to the GMRA

GMRA 1995	GMRA 2000
• Buy/Sell Back annex • Agency annex • Bills of exchange annex • EMU annex • Equities annex • Gilts annex • Net paying securities annex • Italian annex • Japanese Securities annex	• Buy/Sell Back annex • Agency annex • Bills of exchange annex • Equities annex • Gilts annex • Italian annex • Japanese Securities annex • Canadian annex

Part II

Validity of the GMRA

1 The GMRA will be legal, valid, binding and enforceable under the laws of Malta and will take effect in accordance with its terms.

2 The choice of English laws to govern the Agreements would be recognised and given effect to as a valid choice of law in any action in the courts of Malta in accordance with and subject to the provisions of Regulation 593/2008/EC of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) of 17 June 2008 ("**Rome I Regulation**"). The Rome I Regulation applies to contracts concluded after 17 December 2009. It should be noted, however, that:

(a) in terms of the said Regulation there are certain instances where other laws may prevail irrespective of the choice of governing law (including in the case of overriding mandatory provisions or the public policy of the forum). In particular (i) where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties does not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement; and (ii) where all other elements relevant to the situation at the time of choice are located in one or more Member States of the European Communities, the parties' choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement;

(b) in certain instances the Rome I Regulation also imposes limits on the autonomy of the will of the parties to select the applicable law in contract.

The conflict of laws as it applies in the area of so-called 'assignment of claims' is a complex area of the law. Article 14 of the Rome I Regulation deals with some aspects of the matter as follows: (a) rights between an assignor and an assignee are governed by the law governing the contract of assignment; and (b) rights and obligations of the debtor are governed by the law governing the contract creating the claim to be assigned. It should also be noted that the concept of assignment in Article 14 of the Rome I Regulation includes outright transfers of claims, transfers of claims by way of security and pledges or other security rights over claims (see Article 14(3)).

The issues currently not covered by Article 14 of the Rome I Regulation relate to so-called '*third parties*' (meaning persons other than the assignor, the assignee and the debtor) and are the following issues: (i) the effectiveness of an assignment or subrogation of a claim against third parties; and (ii) the priority of the assigned or subrogated claim over a right of another person. In addition, it is not clear to what extent, if at all, Article 14 of the Rome I Regulation applies to shares in companies and other transferable securities.

~~2 A court in Malta would uphold the choice of English law provided that neither the terms of such GMRA nor any provision of that law applicable thereto are found to be contrary to the public policy of Malta. Subject to the issues brought to your attention in this opinion, there are no other issues of public policy of Malta which impinge on the validity of the choice~~

~~of English law in the GMRA.~~[4]We express no opinion as to the choice of English law to govern contractual obligations falling outside the scope of the Rome I Regulation.[5]

Furthermore, insolvency issues of a party organised in Malta will be governed by Maltese law, as the *lex fori*. So, subject to what is stated below, Maltese insolvency law will be relevant to this analysis.

A court in Malta would uphold the submission by the parties to the English courts.

The Maltese courts may be required to decline jurisdiction, in relation to matters falling within the scope of the European Judgments Regulation, where the courts of another Member State as defined in the European Judgments Regulation are first seized of the matter or have exclusive or mandatory jurisdiction. In matters not falling within the scope of the European Judgments Regulation, the jurisdiction of the courts of Malta is not however excluded by the fact that a foreign court is seized with the same cause of action or with a cause connected with it.

Saving the overriding provisions of the European Judgments Regulation, in the case of an exclusive jurisdiction clause referring to a foreign jurisdiction, the courts of Malta have reserved the right and discretion to exercise a residual jurisdiction in cases where it would be just and expedient to hear the cause of action in Malta; such cases arise typically where, for instance, evidence is more readily available in Malta.

A judgement awarded by a competent court outside Malta would be recognised as a valid judgement and enforceable in the courts of Malta without re-examination of the merits of any matters treated in that judgement, subject to the following:

(i) in the case of a judgement falling within the scope of the European Judgments Regulation, recognition and enforcement thereof would be subject to the provisions contained in the European Judgements Regulation;[5]6

(ii) in the case of a judgement not falling within the scope of the European Judgements Regulation, recognition and enforcement thereof would be subject to the applicable law of Malta imposing judgement registration or confirmation in Malta, provided that the

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[4] ~~Malta is not a signatory to the 1980 Convention to the Law Applicable to Contractual Obligations (the Rome Convention). It has to be pointed out however that on the 17th June 2008 the Regulation of the European Parliament and of the Council number 593/2008/EC on the law applicable to contractual obligations (Rome I) was adopted and that, in terms of article 29 thereof, the provisions of this~~[5] The Rome I Regulation ~~will apply in Malta as from the 17th December 2009.~~states in Article 1 that it does not apply to matters such as revenue, costume or administrative matters, legal capacity, obligations arising out of family relationships, matrimonial property regimes, negotiable instruments, arbitration agreements and choice of court, certain matters of company law (creation of companies, internal organisation or winding up, and personal liability of officers, members and auditors), agent binding principal, trusts, obligations arising out of dealing prior to the conclusion of a contract and insurance contracts relating to sickness related to work or accidents at work.

[5]6 Malta also has a reciprocal enforcement agreement with the United Kingdom but this operates in relation to money judgements only. Judgements are registered, by application, with the Court of Appeal in accordance with and subject to the terms of the British Judgements (Reciprocal Enforcement) Act (~~Cap.~~Chapter 52 of the Laws of Malta).

judgement: (a) does not contain dispositions contrary to public policy and (b) cannot be set aside on any of the grounds for re-trial as contemplated in the law of Malta on civil procedure.

3 Without limiting paragraph 1 above, Transactions entered into under the GMRA (whether a Repurchase Transaction or a Buy/Sell Back Transaction) will take effect as a transfer of absolute title in the Purchased Securities from the Seller to the Buyer, and the Buyer will have only a contractual obligation to transfer Equivalent Securities on the Repurchase Date. Subject to what is stated below, a court in Malta would not recharacterise the arrangements and would honour the terms of the GMRA.

The provisions of the Financial Collateral Arrangements Regulations, 2004 (Legal Notice 177 of 2004 as amended) (the "**Financial Collateral Regulations**"), which transpose the provisions of Directive 2002/47/EC on financial collateral arrangements, have eliminated the risk of re-characterisation of the GMRA as a 'secured loan', or similar arrangement, for financial collateral arrangements falling within its scope, in that the Financial Collateral Regulations provide that an arrangement such as the GMRA is valid and enforceable in accordance with its terms and the Financial Collateral Regulations.

The Financial Collateral Regulations are limited to those instances where *inter alia* both the collateral taker and the collateral provider are:

(a) a public authority,[~~6~~7] including:

(i) public sector bodies of Member States charged with or intervening in the management of public debt; and

(ii) public sector bodies of Member States authorised to hold accounts for customers;

(b) a central bank[~~7~~8], the European Central Bank, the Bank for International Settlements, a multilateral development bank, the International Monetary Fund and the European Investment Bank;

(c) a credit institution as defined in Article 1(1) of Directive 2000/12/EC, including the institutions listed in article 2 (3) of that Directive;

(d) an investment firm as defined in Article 1 (2) of Council Directive 93/22/EC of 10 May 1993 on investment services in the securities field;

(e) a financial institution as defined in Article 1(5) of Directive 2000/12/EC;

[~~6~~7] A "public authority" does not include a company or partnership whose obligations are by law guaranteed by the Government, except for those falling within the meaning of paragraphs (b) to (i) of this paragraph.

[~~7~~8] In our view this includes the Central Bank of Malta.

(f) an insurance undertaking as defined in Article 1(a) of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and a life assurance undertaking as defined in Article 1(a) of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance;

(g) an undertaking for collective investment in transferable securities (UCITS) as defined in Article 1 (2) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

(h) a management company as defined in Article 1a(2) of Directive 85/611/EEC as amended by Directive 2001/107/EC;

(i) any other collective investment scheme which is licensed or recognised in terms of the Investment Services Act or otherwise licensed or authorised by a competent authority in a recognised jurisdiction;

(j) a central counterparty, settlement agent or clearing house and a person, other than a natural person, who acts in a trust or representative capacity on behalf of any one or more persons that includes any bondholders or holders of other forms of securitised debt or any institution as defined in paragraphs (a) to (i) above; or

(k) a person other than a natural person, including unincorporated firms and partnerships, provided that the other party is an entity as defined in paragraphs (a) to (j) above.

It must also be brought to your attention that the applicability of the Financial Collateral Regulations is subject to the following three conditions:

(a) the financial collateral arrangement must relate to financial collateral consisting of cash (defined as money credited to an account or similar claims for the repayment of money, including money market deposits) or instruments and not to other assets;

(b) the financial collateral has been provided (i.e. it has been delivered, transferred or is in any other manner in the possession or under the control of the collateral taker) and can be evidenced in writing; the evidencing of the provision of financial collateral must allow for the identification of the financial collateral to which it applies, but for this purpose it is sufficient to prove that the book entry securities collateral has been credited to, or forms a credit in, the relevant account and that the cash collateral has been credited to, or forms a credit in, a designated account; and

(c) the financial collateral arrangement itself can be evidenced in writing or in a legally equivalent manner.

The definition of 'instrument' for the purposes of the Financial Collateral Regulations is as follows:

(1) Transferable Securities

Those classes of securities which are negotiable on the capital market and include:

(a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depository receipts in respect of shares;

(b) bonds or other forms of securitised debt, including depository receipts in respect of such securities;

(c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

(2) Money Market Instruments

Those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.

(3) Units in collective investment schemes.

(4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash.

(5) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event).

(6) Options, futures, swaps, and any other derivative contracts relating to commodities, that can be physically settled provided that they are traded on a regulated market and/or a multilateral trading facility.

(7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled, are not for commercial purposes, are not in article 6 of this Schedule, and, which have the characteristics of other derivative instruments, having regard to whether, inter alia, they are cleared and settled throughout recognized clearing houses or are subject to regular margin calls.

(8) Derivative instruments for the transfer of credit risk.

(9) Rights under a contract for differences or under any other contract the purpose or intended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price for property of any description or in an index or other factor designated for that purpose in the contract.

(10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Schedule, which have the characteristics of other derivative instruments, having regard to whether, inter alia, they are traded on a regulated market or a multilateral trading facility, are cleared and settled through recognized clearing houses or are subject to regular margin calls.

(11) Certificates or other instruments which confer property rights in respect of any instrument falling within the Schedule.

(12) Foreign exchange acquired or held for investment purposes.

As far as formalities are concerned, the creation, validity, perfection, enforceability or admissibility in evidence of a financial collateral arrangement or the provision of financial collateral under a financial collateral arrangement will not be dependent on the performance of any formal act. The only relevant exception to this rule is the requirement for the recording on the issuer's register of the transfer of title in the case of registered instruments.

It must be pointed out to you as a matter of caution that Malta has limited the obligations which may be secured by a financial collateral arrangement to obligations which give right to: (a) cash settlement and/or (b) delivery of financial instruments / securities. Accordingly, there is a doubt at law whether the Financial Collateral Regulations apply when the underlying obligation being secured relates to physically-settled bullion and other commodities transactions. However, by virtue of the Set-Off Act, insolvency close-out netting applies in Malta across the board, irrespective of the underlying nature of the transactions or obligations.

Subject to the satisfaction of all the conditions set out above, the GMRA stands to benefit from the favourable provisions set out in the Financial Collateral Regulations and we are of the opinion that the GMRA will be treated as a *sui generis* contract enforceable in accordance with its terms and the provisions of the Financial Collateral Regulations.

The effect of the Financial Collateral Regulations on financial collateral arrangements entered into before the Financial Collateral Regulations came into force on the 1st May, 2004 is not clear.

Reference is also made to paragraph 6 of Part II of Appendix 1 below in relation to Transactions which do not fall within the ambit of the Financial Collateral Regulations.

4 Similarly, the transfer of Cash Margin and Margin Securities by way of margin pursuant to paragraph 4 of the GMRA would be recognised by a court in Malta as a transfer of absolute title in the assets transferred with an obligation on the transferee to repay Cash Margin or deliver Equivalent Margin Securities, as appropriate. A court in Malta would not upset or recharacterise transfers made pursuant to paragraph 4 of the GMRA.

The Financial Collateral Regulations provide that where a financial collateral arrangement contains an obligation to provide financial collateral or additional financial collateral in order to take account of changes in the value of the financial collateral or in the amount of the relevant financial obligations, or where such arrangement contains a right to withdraw financial collateral on providing, by way of substitution or exchange, financial collateral of substantially the same value, the provision of financial collateral, additional financial collateral or substitute or replacement financial collateral under such an obligation or right shall not be declared invalid or void or be reversed on the sole basis that:

(a) such provision was made on the day of the commencement of winding-up proceedings or reorganisation measures, but prior to the order making that commencement or in a prior prescribed period; and/or

(b) the relevant financial obligations were incurred prior to the date of the provision of the financial collateral, additional financial collateral or substitute or replacement financial collateral.

Reference is also made to paragraph 6 of Part II of Appendix 1 below in relation to Transactions which do not fall within the ambit of the Financial Collateral Regulations.

5 A court in Malta would uphold the alternative margin methods provided for in paragraphs 4(i), (j) and (k) of the GMRA.

6 Insofar as the GMRA is concerned, the position at law for ~~financial collateral arrangements~~repurchase agreements which do not fall within the parameters of the Financial Collateral Regulations is that as outlined above, saving for the following differences:

(a) we are still of the view that the risk of recharacterisation as a secured loan is very low. A number of laws have, over the past few years, made explicit reference to repurchase agreements, thereby pointing to a specific 'usage of trade' which, in terms of article 3 of the Commercial Code, prevails over civil law, saving where issues of public policy are concerned. These laws include the following:

(i) the Central Bank of Malta Act;

(ii) the Central Bank of Malta Directive No. 2, issued under the Central Bank of Malta Act, which transposes the provisions of Directive 98/26/EC on settlement finality in payment and securities settlement systems;

(iii) the Financial Collateral Regulations, which transpose the provisions of Directive 2002/47/EC on financial collateral arrangements;

(iv) the Credit Institutions Winding Up Regulations, which transpose the provisions of Directive 2001/24/EC on the reorganisation and winding-up of credit institutions.

Furthermore, the GMRA contains the essential elements for it to be classified under Maltese civil laws:

(i) partly as a sale when the securities are sold and bought initially (Articles 1346 and 1347 of the Civil Code); and

(ii) partly as a promise of sale agreement relating to the bilateral obligation for the purchase and delivery of equivalent securities either on demand or at a determinate future date (Articles 1357 to 1360 of the Civil Code).

The fact that the repurchase involves the sale of "equivalent" securities is in line with Maltese law which recognizes in Article 983(1) of the Civil Code that things determinable according to species can be the object of a sale.

However, in those instances which fall outside the scope of the Financial Collateral Regulations, the Courts in Malta will give importance to the real intention of the parties before entering into the GMRA;

(b) in particular we draw your attention to paragraph 4 on 'Margin Maintenance'. Whereas a sale should be validly concluded upon the initial transfer, Paragraph 4 of the GMRA could raise some doubts whether this limb of the transaction is actually a sale. If one party has transferred securities to the other, then the other party becomes the full owner thereof and there is usually no further juridical relationship between the two parties except in so far as relates to any warranties. However, the obligation under paragraph 4 to make margin maintenance adjustments by additional payments or the provision of other securities throughout the duration of a particular transaction could imply that (i) the securities had not actually been sold but were rather pledged as security for the money lent and that (ii) their values were adjusted so that during the term of the "loan" the parties would be in the same position irrespective of any market fluctuations in the value of the securities.

Having said that, there is a counter-argument to the effect that the adjustment is being made so that the re-sale and re-purchase of the securities would be at a fair price bearing in mind the value of those securities. Thus, the adjustments would be linked with the future promise of sale rather than the sale, both agreements together constituting a *sui generis* arrangement which is recognised elsewhere in the laws of Malta. It is our view that there are very strong grounds to argue that the taking of margin is indeed enforceable as a matter of Maltese law;

(c) in the unlikely event of a re-characterisation by the Maltese courts of the repo transaction as a loan secured by a pledge over the securities, the adverse consequences are that not all the procedural requirements for the constitution and perfection of a valid pledge would have been satisfied. Accordingly, the "intended" pledge could be disregarded with the consequence that the other party will end up being an unsecured creditor;

~~(d) for a promise of sale agreement to be recognized as such, a clear obligation to buy and sell must be entered into by both parties. In the circumstances, both counter-parties should sign Annex II to the GMRA, and in order to remove any doubts of interpretation under Maltese law, there should be a clause to the effect that two separately signed versions (including fax copies) of the same Annex II shall be deemed to constitute one document for all intents and purposes;~~

~~(e) in the case of a transaction terminable on demand, Annex II to the GMRA should state that the transaction is valid for a determinate period (which period is to be indicated clearly in Annex II) with the right of either party to demand termination / performance at any time prior to expiration of the said period. This is necessary since under Maltese law, in the absence of a period of validity of a promise of sale agreement, the said promise of sale agreement will be deemed to be valid for a period of three months only; and~~

(d) ~~(f)~~ it should be noted that, in so far as the repurchase obligations in repurchase agreements and buy/sell back agreements are concerned, particular formalities, such as the sending of a judicial intimation to perform the contract, apply for the preservation of rights and their enforcement when they arise from a contract which is characterised as a promise of sale. The formalities arise in terms of article 1357(2) of the Civil Code and failure to observe them within the strict time limits stated in the Civil Code will result in the loss, under Maltese Law, of the remedy of specific performance and possibly also the lapse of the right to damages for non-performance. On the assumption that a remedy is sought in Malta, these rules are of a procedural nature and consequently Maltese law as the law of the forum would override the choice of law in the GMRA limitedly to these formalities.

Part III

GMRA Netting Provisions

1 The central provisions of the GMRA which provide for set-off following an Event of Default are contained in (i) paragraph 10 (Event of Default), and in particular sub-paragraphs (b) to (d) of GMRA 1995 and sub-paragraphs (b) to (f) of GMRA 2000, together the "**GMRA Netting Provisions**".

~~In terms of Maltese private international law rules, Maltese law would respect the governing law clause of the GMRA. However, insolvency issues of a party organised in Malta will~~Insolvency issues of a party organised in Malta will as a general rule be governed by Maltese law, as the *lex fori*. So, subject to what is otherwise stated in this opinion, Maltese insolvency law will be relevant to this analysis.

The Set-off Act was enacted in 2003 and came into force with effect from the 1st June, 2003. The said Act provides that close-out netting provisions, such as that contained in the GMRA, are valid and enforceable under Maltese law, whether such close-out netting takes place before or after bankruptcy provided that such mutual debts, mutual credits or mutual dealings have arisen or occurred before the bankruptcy of one of the parties.

The exceptions to this general rule are:

(a) any close-out netting agreement entered into at a time at which the other party knew or ought to have known that an application for the dissolution and winding-up of the company by reason of the insolvency was pending, or that the company has taken formal steps under any applicable law to bring about its dissolution and winding-up by reason of insolvency; and

(b) fraud or any similar ground.

The netting of termination values to determine a single lump-sum termination amount can only take into account mutual debts, mutual credits or mutual dealings which have arisen or occurred before the insolvency of the counterparty. This involves two elements: (i) the debts, credits and dealings must have arisen or occurred before the insolvency of the other party, and (ii) the element of mutuality. In terms of the Set-Off Act, set-off and netting can only take place in respect of mutual claims. Accordingly, each Party to the GMRA must be personally liable for its obligations under the GMRA and each Transaction and must in addition be the sole beneficial holder of any rights it has under the GMRA and each Transaction.

2 If an Event of Default has occurred, either because of an Act of Insolvency in respect of a ~~party incorporated, established or formed in or with a branch in~~ Malta Party or following any other default by that party, the GMRA Netting Provisions would, subject to paragraph 3 below, be effective and the effect of those provisions would be that one party would be under a single obligation to pay a net amount in the Base Currency to the other party. For the avoidance of doubt, if following such netting, it results that there are any sums due by the insolvent Malta Party to the Non-defaulting Party, the latter would have to rank for the payment of such amount together with the other unsecured and unsubordinated creditors in the insolvency of the Malta Party, unless such a claim is otherwise secured.

3 In the case of an Agency Transaction entered into (i) with respect to the GMRA 1995, as specified in Annex IV thereto; (ii) with respect to the GMRA 2000, as specified in the Agency Annex thereto, the GMRA Netting Provisions will apply so that the netting is effected between the principal and the other party. The GMRA Netting Provisions will be effective as between the Agent in its capacity as agent for each Principal and the other party and will create an

obligation on the part of the other party and the Principal to pay a single net amount in the Base Currency in respect of all Transactions entered into under the Agreement between the other party and the Agent acting as agent for that Principal in isolation from other transactions between the other party and the Agent.

Although as a general rule under Maltese law, a mandate is terminated on the declaration of insolvency of either the mandator or mandatary, our opinion above is based on the fact that in terms of the Set-Off Act, any authority or mandate in a contract to implement any close-out netting provision is not revoked by the declaration of insolvency of any other party to the contract.

It is to be noted that a contract of mandate is of its nature revocable. Accordingly, the Agent can be changed or dismissed at any time by the Principal.

Reference is also made to the qualification set out in paragraph D 1.7 of this opinion.

4 Where agreed to in the GMRA, in terms of Article 4(b) of the Set-Off Act, the conversion of any cash payment obligation into the Base Currency would be valid under the laws of Malta and such a provision is not inconsistent with the public policy of Malta.

5 The GMRA Netting Provisions would be upheld notwithstanding that the Default Market Value may be calculated as late as (i) close of business on the second dealing day in the appropriate market after the day of the relevant Event of Default under GMRA ~~1995,~~1995; or (ii) with respect to the GMRA 2000, as late as close of business on the fifth dealing day in the appropriate market after the day of the relevant Event of Default (or the date on which the non-Defaulting Party became aware of the Event of Default) or, in certain circumstances, at some time thereafter.

Part IV

GMRA Annexes

1 The use by the parties of any of the annexes to the GMRA specified in Appendix 1 to this opinion will not affect the substance of our opinion on the provisions of the GMRA and their effect under Maltese law, nor will it affect the substance of our opinion on the validity of the GMRA as a whole under Maltese law.

Part V

Core Provisions of the GMRA

1 (a) We have been asked to identify any provisions of the GMRA that we regard as so essential to the GMRA that a material alteration thereof could affect the conclusions reached in this opinion (each such provision a "**Core Provision**" and together the "**Core Provisions**").

(b) We have also been asked to confirm that any modification to any provision of the GMRA that is not a Core Provision (each such provision a "**Modifiable Provision**" and together the "**Modifiable Provisions**") would not affect the conclusions reached in this opinion.

(c) We have also been asked to confirm that the conclusions reached in this opinion would not change as a result of the inclusion of additional provisions ("**Additional Provisions**") in a schedule provided by an annex to the GMRA. For the purposes of this paragraph 1(c) and paragraph 2, we assume that none of the Additional Provisions included would have the effect of modifying or affecting the operation or implementation of any Core Provision.

(d) We have also been asked to confirm that the alterations set forth in Appendix 1, Part VII to this opinion (the "**Amendments to Core Provisions**") to Core Provisions, as identified below, of the GMRA 1995 and the GMRA 2000 would not change the conclusions reached in this opinion.

2 We believe that the following provisions contained in the GMRA are Core Provisions:

(i) Paragraph 1;

(ii) Paragraph 2(a) and any other definitions relevant to the other Core Provisions;

(iii) Paragraph 3;

(iv) Paragraph 6 (a), (e) and (f);

(v) Paragraph 10;

(vi) Paragraph 13; &

(vii) Paragraph 17 – First sub-paragraph, more specifically the Governing Law Clause.

(viii) Paragraphs 1, 2 & 5(a) & (b) of Annex IV (Agency Annex) of the GMRA 1995; paragraphs 1(b), 2(a), 4(a) & (b) of the Agency Annex of the GMRA 2000; and paragraphs 2, 3 & 4 of the Addendum to Agency Annex for multiple principal transactions of the GMRA 2000.

4 We believe that modifications to any Modifiable Provisions would not affect the conclusions reached in this opinion in relation to the GMRA so long as any such modification would not have the effect of modifying or affecting the operation or implementation of any Core Provision.

5 We believe that the conclusions reached in this opinion in relation to the GMRA would not change because of the inclusion of Additional Provisions in a Schedule provided by an annex to the GMRA subject to the assumption in paragraph 1(c).

6 We believe that the Amendments to Core Provisions or any similar alteration to a Core Provision, as identified above, of the GMRA would not change the conclusions reached in this opinion (for the avoidance of doubt we give no opinion as to the validity or enforceability of the items referred to in Appendix 1, Part VII and assume that none of the Amendments to Core Provisions invalidates or adversely affects the binding effect of any Core Provision).

Provided that the Set-Off Act, in its definition of a close-out netting provision, refers to the occurrence of a specified event, and makes no distinction between whether notice is sent to the other party or otherwise. Accordingly, in terms of the wording of the law, no default notice is required to enforce a close-out netting provision. Nevertheless, in Paragraph 10, we caution against the elimination of the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party when the Event of Default or termination is not an event objectively verifiable by the parties. In any case, if an event of default or termination event occurs and no default notice is required to be sent, it is, from a practical perspective, advisable for the non-defaulting party not to act in a manner which conflicts with such early termination.

Part VI

Transactions entered into as agent pursuant to the GMRA

1 A court in Malta would uphold the provisions of the Agency Annex in accordance with their terms.

Provided that a contract of mandate is of its nature revocable. Accordingly, the Agent can be changed or dismissed at any time by the Principal.

Part VII

Amendments to Core Provisions of the GMRA 1995

General Remark: Pursuant to the assumption of the legal opinions on the enforceability of the GMRA prepared for ICMA modifications made by the Annexes (i.e., Buy/Sell Back Annex, Agency Annex, Bills of Exchange Annex, EMU Annex, Equities Annex, Gilts Annex, Net Paying Securities Annex, Italian Annex and Japanese Securities Annex) in the form published by ICMA[8][9] are covered by the opinions.

Paragraph 1(a)
any amendment to expand the applicability of the GMRA to transactions that have been effected before the date of the GMRA, irrespective of whether they have been entered into under a prior master agreement that has been superseded by the GMRA or not;
any amendment to expand the applicability of the GMRA to transactions in which one party agrees to sell to the other equities, U.S. Treasury Instruments or Net Paying Securities;
Paragraph 2
Definition of "Act of Insolvency": any change to cover additional cases under Paragraph 2(a);
Definition of "Act of Insolvency": any modification to Paragraph 2(a) more specifically describing the terms "trustee", "administrator" or "analogous officer" used in sub-clause (iii) or (v), e.g., adding any such officer;
Definition of "Act of Insolvency": any modification to Paragraph 2(a) more specifically describing a proceeding intended to be covered by the term "analogous proceeding" used in sub-clause (iv) or (vi), e.g., adding any such proceeding;

[8][9] Other than the Gilts Annex (published by the Bank of England) and the Japanese Securities Annex (published by the Japanese Securities Dealers Association).

Definition of “Act of Insolvency”: any change to Paragraph 2(a)(iv) deleting the third parenthetical in the sixth and seventh line;
Definition of “Act of Insolvency”: any change to Paragraph 2(a)(iv) broadening the scope of the third parenthetical in the sixth and seventh line, e.g., by more specifically describing a proceeding intended to be covered by the term “analogous proceeding” or by adding any such proceeding;
Definition of “Act of Insolvency”: any change to Paragraph 2(a)(iv) providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Act of Insolvency;
Definition of “Act of Insolvency”: any modification of the 30 day period contained in sub-clauses (iv) of Paragraph 2(a);
Definition of “Act of Insolvency”: any change to Paragraph 2(a)(iv) inserting the words “provided that this definition shall not apply to any proceedings which are of a frivolous or vexatious nature” after the word “filing”;
Definition of “Act of Insolvency”: any change to Paragraph 2(a)(iv) requiring that the presentation or filing of the petition must be made in good faith or a commercially reasonable manner;
Definition of “Equivalent Securities”: any change to Paragraph 2(o) broadening the scope of such definition to cover a conversion, subdivision or consolidation of Purchased Securities;
Definition of “equivalent to”: any change to Paragraph 2(p) pursuant to which Securities will be equivalent to other Securities notwithstanding that those Securities have been re-denominated in Euro or the nominal value of the Securities has changed in connection with such re-denomination;
Paragraph 3(c)
(no amendments)

Paragraph 6(a)
any amendment modifying the enumeration of book entry systems (e.g., adding the book entry system of the Federal Reserve Bank of New York) in the second sentence under (ii);
any change providing that transfers pursuant to Paragraph 6(a) are to be effected in compliance with a particular Act (e.g., the U.S. Uniform Commercial Code) or the applicable provisions of a specified jurisdiction (which shall be deemed to include any method of transfer mutually agreed between the Seller and the Buyer) or the applicable requirements and procedures of a specified securities clearance system;
Paragraph 6(e)
(no amendments)
Paragraph 6(f)
(no amendments)
Paragraph 10(a) (other than Paragraph 10(a)(iv))
any modification adding further events that constitute an Event of Default as defined in Paragraph 10(a) (e.g., without limitation, the failure to deliver Purchased Securities or Equivalent Securities on the applicable date, a force majeure, cross default or downgrading event, the death or incapacity of a party or its general partner, any Default under a Specified Transaction), such change may or may not be coupled with a grace period or the serving of a Default Note on the Defaulting Party by the non-Defaulting Party;
any change broadening the scope of Paragraph 10(a)(i) to the effect that the failure by any party, whether Buyer or Seller, to make any payment under the GMRA constitute an Event of Default, such change may or may not be coupled with a grace period;

any deletion of, addition to or modification of the scope of the enumerated Events of Default contained in Paragraph 10(a)(vii);
the stipulation of a grace period or the modification of the grace period with respect to the Events of Default in Paragraph 10(a).
In an Agreement entered into between a Party subject to the insolvency laws of [country] (the "[country] Party") and a Party not subject to the insolvency laws of [country] (the "Non-[country] Party"), any change to paragraph 10(a) that applies only with respect to the Non-[country] Party, such changes may or may not be coupled with other changes of Paragraph 10(a);
Paragraph 10(a)(iv)
any change providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Event of Default;
any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required in the cases mentioned in the parenthetical, irrespective of whether this change applies to all or only one or more of such cases; such changes may or may not be coupled with other changes of Paragraph 10(a)(iv) or the definition “Act of Insolvency”;
any change eliminating the requirement that the non-Defaulting Party serves a Default Notice on the Defaulting Party, irrespective of whether this change applies to all or only one or more certain cases of an Act of Insolvency; such changes may or may not be coupled with other changes of Paragraph 10(a)(iv) or the definition “Act of Insolvency”;
any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required only if the relevant petition is presented or filed in a court or before an agency, or the relevant receiver, administrator, liquidator, trustee or analogous officer has been appointed by a court or agency in the jurisdiction where the Defaulting Party is incorporated, irrespective of whether this change applies to all or only one or more of the proceedings or officers specified in Paragraph 2(a)(iv) or (v); such changes may or may not by coupled with a change in Paragraph 2(a)(iv) or (v);

any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is not required, if the Defaulting Party is governed by a legal system that does not permit termination to take place after certain cases of an Act of Insolvency have occurred;
any change to the effect that certain events are treated in the same way as an Act of Insolvency or as an Act of Insolvency, for which no Default Notice is required;
In an Agreement entered into between a Party subject to the insolvency laws of [country] (the "[country] Party") and a Party not subject to the insolvency laws of [country] (the "Non-[country] Party"), any change to paragraph 10(a)[(iv)] that applies only with respect to the Non-[country] Party, such changes may or may not be coupled with other changes of Paragraph 10(a)[(iv)];
Paragraph 10(b)
(no amendments)
Paragraph 10(c)
any change providing that the payment of an amount that is due as a result of the calculation described in Paragraph 10(c)(ii) may be set-off against certain other obligations;
any change providing for a separate netting of Transactions that, under applicable law, cannot be netted against one another in performing the calculations contemplated by Paragraph 10(c)(ii);
any amendment providing that the payment by the Non-Defaulting Party of an amount that is due as a result the calculation described in Paragraph 10(c)(ii) shall be subject to the Defaulting Party having satisfied all of its obligations (under the GMRA or otherwise) to the Non-Defaulting Party; these amendments may or may not include payments to, or obligations of, Affiliates of one party or of both parties;
any amendment to Paragraph 10(c) clarifying that the amount due as a result of the calculation described in Paragraph 10(c)(ii) represents a genuine pre-estimate of all losses and damages and/or that such amount is not a penalty;

Paragraph 10(e)
any deletion of, addition to or modification of Paragraph 10(e);
Paragraph 10(f)
any deletion of, addition to or modification of Paragraph 10(f);
Paragraph 10(g)
any deletion of Paragraph 10(g), or any modification to such provision e.g., establishing an obligation of the Defaulting Party to indemnify the other party against additional losses, damages, expenses etc.;
Paragraph 10(h)
any deletion of Paragraph 10(h) or any modification of such provision to the effect that either party can claim any sum, or certain components, of consequential loss or damage in the event of a failure by the other party to perform any of its obligations under this GMRA;
[Paragraph 13]
any amendment to expand the applicability of the GMRA to transactions that have been effected before the date of the GMRA, irrespective of whether they have been entered into under a prior master agreement, that has been superseded by the GMRA, or not;

any amendment to add at the end of Paragraph 13 after the word “hereunder” and before the “.” the following: “, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted, and (iii) that each party shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transaction hereunder.”
[Paragraph 15]
any amendment to the first sentence providing that a particular existing agreement survives;
any amendment to the second sentence clarifying that each paragraph of an Annex to the GMRA shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph:
any amendment to the second sentence (i) clarifying that each paragraph to an Annex of the GMRA shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph and (ii) stipulating that the parties shall endeavour to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close a possible to that of the invalid, illegal or unenforceable provision.
any amendment to the second sentence to the effect that circumstances such as an illegality, invalidity or unenforceability of a provision of the GMRA or any of the Annexes thereto shall not affect its remaining provisions except to the extent necessary to delete the illegal, invalid or unenforceable provision, unless the deletion of such provision substantially impairs the benefits of the remaining portions of the GMRA; provided that, without limitation, the deletion of Paragraph 1, 2(a), 3, 6, 10 or 13 and any provisions of the Annexes, which correspond to such Paragraphs, would substantially impair the benefits of the remaining portions of the GMRA;
Paragraph 16(a)
(no amendments)

Paragraph 17
any change providing that all terms and phrases which are used in the GMRA and which are expressly defined by reference to statutory provisions of a specified jurisdiction shall be governed by and/or construed in accordance with the laws of such jurisdiction (and without regard to its choice of law principles);
any change to the effect that the courts of England have exclusive jurisdiction, such changes may or may not provide that the exclusiveness of the courts of England apply to one party only and that the other party retains its right to take proceedings in the courts of any other country of competent jurisdiction;
in an Agreement entered into between a party incorporated, organised or resident in England (the "English Party") and a party which is not an English Party (the "Non-English Party"), any change to the effect that (i) the fourth sub-paragraph of Paragraph 17 applies to the English Party only and, with respect to the Non-English Party, the courts of England have exclusive jurisdiction, (ii) the English Party may in its absolute discretion take proceedings in the courts of any other country which may have jurisdiction, (iii) the Non-English Party irrevocably waives any objections to the jurisdiction of any court referred to in (i) and (ii) and irrevocably agrees that a judgement or order of any of such courts in connection with the GMRA or any Transaction is conclusive and binding on it and may enforced against it in the courts of any other jurisdiction;

Amendments to Core Provisions
of the GMRA 2000

General Remark: Pursuant to the assumption of the legal opinions on the enforceability of the GMRA prepared for ICMA modifications made by the Annexes (i.e., Buy/Sell Back Annex, Agency Annex, Bills of Exchange Annex, Equities Annex, Gilts Annex, Italian Annex, Canadian Annex and Japanese Securities Annex) in the form published by ICMA[9][10] are covered by the opinions.

Paragraph 1(a)
any amendment to expand the applicability of the GMRA to transactions that have been effected before the date of the GMRA, irrespective of whether they have been entered into under a prior master agreement that has been superseded by the GMRA or not;
any amendment to expand the applicability of the GMRA to transactions in which one party agrees to sell to the other equities, U.S. Treasury Instruments or Net Paying Securities;
Paragraph 2
Definition of "Act of Insolvency": any change to cover additional cases under Paragraph 2(a);
Definition of "Act of Insolvency": any modification to Paragraph 2(a) more specifically describing the terms "trustee", "administrator" or "analogous officer" used in sub-clause (iii) or (v), e.g., adding any such officer;
Definition of "Act of Insolvency": any modification to Paragraph 2(a) more specifically describing a proceeding intended to be covered by the term "analogous proceeding" used in sub-clause (iv) or (vi), e.g., adding any such proceeding;
Definition of "Act of Insolvency": any change to Paragraph 2(a)(iv) deleting the third parenthetical in the seventh and eighth line;

[9][10] Other than the Gilts Annex (published by the Bank of England) and the Japanese Securities Annex (published by the Japanese Securities Dealers Association).

Definition of “Act of Insolvency”: any change to Paragraph 2(a)(iv) broadening the scope of the third parenthetical in the seventh and eighth line, e.g., by more specifically describing a proceeding intended to be covered by the term “analogous proceeding” or by adding any such proceeding;
Definition of “Act of Insolvency”: any change to Paragraph 2(a)(iv) providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Act of Insolvency;
Definition of “Act of Insolvency”: any modification of the 30 day period contained in sub-clauses (iv) of Paragraph 2(a);
Definition of “Act of Insolvency”: any change to Paragraph 2(a)(iv) inserting the words “provided that this definition shall not apply to any proceedings which are of a frivolous or vexatious nature” after the word “filing”;
Definition of “Act of Insolvency”: any change to Paragraph 2(a)(iv) requiring that the presentation or filing of the petition must be made in good faith or a commercially reasonable manner;
Definition of “Equivalent Securities”: any change to Paragraph 2(s) broadening the scope of such definition to cover a conversion, subdivision or consolidation of Purchased Securities;
Definition of “equivalent to”: any change to Paragraph 2(t) pursuant to which Securities will be equivalent to other Securities notwithstanding that those Securities have been re-denominated in Euro or the nominal value of the Securities has changed in connection with such re-denomination;
Paragraph 3(c)
(no amendments)

Paragraph 6(a)
any amendment modifying the enumeration of book entry systems (e.g., adding the book entry system of the Federal Reserve Bank of New York) in the second sentence under (ii);
any change providing that transfers pursuant to Paragraph 6(a) are to be effected in compliance with a particular Act (e.g., the U.S. Uniform Commercial Code) or the applicable provisions of a specified jurisdiction (which shall be deemed to include any method of transfer mutually agreed between the Seller and the Buyer) or the applicable requirements and procedures of a specified securities clearance system;
Paragraph 6(e)
(no amendments)
Paragraph 6(f)
(no amendments)
Paragraph 10(a) (other than Paragraph 10(a)(vi))
any modification adding further events that constitute an Event of Default as defined in Paragraph 10(a) (e.g., without limitation, the failure to deliver Purchased Securities or Equivalent Securities on the applicable date, a force majeure, cross default or downgrading event, the death or incapacity of a party or its general partner, any Default under a Specified Transaction), such change may or may not be coupled with a grace period or the serving of a Default Note on the Defaulting Party by the non-Defaulting Party;

any change broadening the scope of Paragraph 10(a)(i) to the effect that the failure by any party, whether Buyer or Seller, to make any payment under the GMRA constitute an Event of Default, such change may or may not be coupled with a grace period;
any deletion of, addition to or modification of the scope of the enumerated Events of Default contained in Paragraph 10(a)(ix);
the stipulation of a grace period or the modification of the grace period with respect to the Events of Default in Paragraph 10(a).
In an Agreement entered into between a Party subject to the insolvency laws of [country] (the "[country] Party") and a Party not subject to the insolvency laws of [country] (the "Non-[country] Party"), any change to paragraph 10(a) that applies only with respect to the Non-[country] Party, such changes may or may not be coupled with other changes of Paragraph 10(a);
Paragraph 10(a)(vi)
any change providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Event of Default;
any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required in the cases mentioned in the parenthetical, irrespective of whether this change applies to all or only one or more of such cases; such changes may or may not be coupled with other changes of Paragraph 10(a)(vi) or the definition “Act of Insolvency”;
any change eliminating the requirement that the non-Defaulting Party serves a Default Notice on the Defaulting Party, irrespective of whether this change applies to all or only one or more certain cases of an Act of Insolvency; such changes may or may not be coupled with other changes of Paragraph 10(a)(vi) or the definition “Act of Insolvency”;

any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required only if the relevant petition is presented or filed in a court or before an agency, or the relevant receiver, administrator, liquidator, trustee or analogous officer has been appointed by a court or agency in the jurisdiction where the Defaulting Party is incorporated, irrespective of whether this change applies to all or only one or more of the proceedings or officers specified in Paragraph 2(a)(vi) or (vii); such changes may or may not by coupled with a change in Paragraph 2(a)(vi) or (vii);
any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is not required, if the Defaulting Party is governed by a legal system that does not permit termination to take place after certain cases of an Act of Insolvency have occurred;
any change to the effect that certain events are treated in the same way as an Act of Insolvency or as an Act of Insolvency, for which no Default Notice is required;
In an Agreement entered into between a Party subject to the insolvency laws of [country] (the "[country] Party") and a Party not subject to the insolvency laws of [country] (the "Non-[country] Party"), any change to paragraph 10(a)[(vi)] that applies only with respect to the Non-[country] Party, such changes may or may not be coupled with other changes of Paragraph 10(a)[(vi)];
Paragraph 10(b)
(no amendments)
Paragraph 10(c)
any change providing that the payment of an amount that is due as a result of the calculation described in Paragraph 10(c)(ii) may be set-off against certain other obligations;
any change providing for a separate netting of Transactions that, under applicable law, cannot be netted against one another in performing the calculations contemplated by Paragraph 10(c)(ii);

any amendment providing that the payment by the Non-Defaulting Party of an amount that is due as a result the calculation described in Paragraph 10(c)(ii) shall be subject to the Defaulting Party having satisfied all of its obligations (under the GMRA or otherwise) to the Non-Defaulting Party; these amendments may or may not include payments to, or obligations of, Affiliates of one party or of both parties;
any amendment to Paragraph 10(c) clarifying that the amount due as a result of the calculation described in Paragraph 10(c)(ii) represents a genuine pre-estimate of all losses and damages and/or that such amount is not a penalty;
Paragraph 10(e)
any deletion of, addition to or modification of Paragraph 10(e);
Paragraph 10(h)
any deletion of, addition to or modification of Paragraph 10(h);
Paragraph 10(i)
any deletion of Paragraph 10(i), or any modification to such provision e.g., establishing an obligation of the Defaulting Party to indemnify the other party against additional losses, damages, expenses etc.;
Paragraph 10(j)
any deletion of Paragraph 10(j) or any modification of such provision to the effect that either party can claim any sum, or certain components, of consequential loss or damage in the event of a failure by the other party to perform any of its obligations under this Agreement;

[Paragraph 13]
any amendment to expand the applicability of the Agreement to transactions that have been effected before the date of the Agreement, irrespective of whether they have been entered into under a prior master agreement, that has been superseded by the Agreement, or not;
any amendment to add at the end of Paragraph 13 after the word "hereunder" and before the "." the following: ", and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted, and (iii) that each party shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transaction hereunder."
[Paragraph 15]
any amendment to the first sentence providing that a particular existing agreement survives;
any amendment to the second sentence clarifying that each paragraph of an Annex to the Agreement shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph:
any amendment to the second sentence (i) clarifying that each paragraph to an Annex of the Agreement shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph and (ii) stipulating that the parties shall endeavour to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close a possible to that of the invalid, illegal or unenforceable provision.

any amendment to the second sentence to the effect that circumstances such as an illegality, invalidity or unenforceability of a provision of the Agreement or any of the Annexes thereto shall not affect its remaining provisions except to the extent necessary to delete the illegal, invalid or unenforceable provision, unless the deletion of such provision substantially impairs the benefits of the remaining portions of the Agreement; provided that, without limitation, the deletion of Paragraph 1, 2(a), 3, 6, 10 or 13 and any provisions of the Annexes, which correspond to such Paragraphs, would substantially impair the benefits of the remaining portions of the Agreement;
Paragraph 16(a)
(no amendments)
Paragraph 17
any change providing that all terms and phrases which are used in the Agreement and which are expressly defined by reference to statutory provisions of a specified jurisdiction shall be governed by and/or construed in accordance with the laws of such jurisdiction (and without regard to its choice of law principles);
any change to the effect that the courts of England have exclusive jurisdiction, such changes may or may not provide that the exclusiveness of the courts of England apply to one party only and that the other party retains its right to take proceedings in the courts of any other country of competent jurisdiction;
in an Agreement entered into between a party incorporated, organised or resident in England (the "English Party") and a party which is not an English Party (the "Non-English Party"), any change to the effect that (i) the fourth sub-paragraph of Paragraph 17 applies to the English Party only and, with respect to the Non-English Party, the courts of England have exclusive jurisdiction, (ii) the English Party may in its absolute discretion take proceedings in the courts of any other country which may have jurisdiction, (iii) the Non-English Party irrevocably waives any objections to the jurisdiction of any court referred to in (i) and (ii) and irrevocably agrees that a judgement or order of any of such courts in connection with the Agreement or any Transaction is conclusive and binding on it and may enforced against it in the courts of any other jurisdiction;

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Input:	
Document 1 ID	file://H:/Banking & Finance/GMRA and Securities Lending Opinions/Combined GMRA & SLA Opinions/2009 Update/ICMA/2009 Opinions Core Opinion + Appendix 1.doc
Description	2009 Opinions Core Opinion + Appendix 1
Document 2 ID	file://H:/Banking & Finance/GMRA and Securities Lending Opinions/Combined GMRA & SLA Opinions/2010 Update/Opinion/2010.03.31 Core + Appendix 1 - Execution Version.doc
Description	2010.03.31 Core + Appendix 1 - Execution Version
Rendering set	standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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