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GMSLAs governed by Australian law and AMSLAs

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Part A **Introduction and summary**

1 Introduction

1.1 Instructions

We refer to our legal opinion to the International Securities Lending Association dated as of 31 March 2018 ("**ISLA Opinion**") in respect of, amongst other things, the enforceability of close-out netting against an Australian Party[1] under the GMSLA (as defined in paragraphs 1.1 and 1.7 of the ISLA Opinion).

You have asked us to consider whether our conclusions in the ISLA Opinion with respect to a GMSLA with an Australian Party would apply where the GMSLA is governed by Australian law.

We also refer to each of the 4 April 1997, the December 2002 and the November 2003 versions of the Australian Master Securities Lending Agreement in the form published by the Australian Securities Lending Association Limited (each such version, an "**AMSLA**") governed by New South Wales law. You have asked us to consider the enforceability of close-out netting under an AMSLA.

We also refer in this memorandum to our memorandum dated 23 August 2018 entitled "Close-out netting: Summary of Australian Netting Legislation and Insolvency Proceedings" ("**Netting Summary**"), which summarises the relevant sections of the Netting Act.

1.2 Scope

In this memorandum, we advise on the laws of New South Wales, Victoria, Queensland, Western Australia, the Australian Capital Territory and the Commonwealth of Australia (each, an "**Australian Jurisdiction**").

This memorandum relates only to the laws of the Australian Jurisdictions and is given on the basis that it will be construed in accordance with the laws of New South Wales. We express no opinion about the laws of any jurisdiction other than the Australian Jurisdictions, commercial, accounting, financial, prudential or factual matters. However, the Netting Act and other statutes mentioned in the ISLA Opinion are Acts of the Commonwealth Parliament applying throughout Australia.

Each part of this memorandum is subject to the rest of this memorandum, including the assumptions and qualifications.

1.3 Summary of conclusions

(a) **GMSLA**

The conclusions in our ISLA Opinion relating to the enforceability of the Netting Provisions (as defined in paragraph 2 of Part B below) of the GMSLA on the *external administration* of an Australian Party would apply where the GMSLA is governed by Australian law. Those conclusions rely on section 14(2) of the Netting Act, which applies subject to the specified stay provisions and provided that neither section 14(4) nor section 14(5) of the Netting Act applies. The application of section 14(2) of the Netting Act to a GMSLA that is governed by Australian law is described in paragraph 3 of Part B of this memorandum.

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[1] This memorandum does not consider a GMSLA or an AMSLA to which the Reserve Bank of Australia is a party.

In addition, prior to the *external administration* of the Australian Party, section 14(1) of the *Netting Act* is available to validate close-out netting against an Australian Party where the GMSLA is governed by Australian law. Section 14(1) of the Netting Act also applies subject to the specified stay provisions and provided that neither section 14(4) nor section 14(5) of the Netting Act applies. The application of section 14(1) of the Netting Act to a GMSLA that is governed by Australian law is described in paragraph 5 of Part B of this memorandum.

(b) **AMSLA**

On the *external administration* of the Australian Party, section 14(2) of the *Netting Act* is available to validate close-out netting against an Australian Party where the AMSLA is governed by Australian law. Section 14(2) of the Netting Act also applies subject to the specified stay provisions and provided that neither section 14(4) nor section 14(5) of the Netting Act applies. The application of section 14(2) of the Netting Act to an AMSLA that is governed by Australian law is described in paragraph 2 of Part B of this memorandum.

Prior to the *external administration* of the Australian Party, section 14(1) of the *Netting Act* is available to validate close-out netting against an Australian Party where the AMSLA is governed by Australian law. Section 14(1) of the Netting Act also applies subject to the specified stay provisions and provided that neither section 14(4) nor section 14(5) of the Netting Act applies. The application of section 14(1) of the Netting Act to an AMSLA that is governed by Australian law is described in paragraph 3 of Part B of this memorandum.

1.4 Definitions

Capitalised terms used but not defined in this memorandum have the meaning given to them in the ISLA Opinion, as the context requires, and italicised terms used but not defined in this memorandum have the meaning given in our Netting Summary, except where the context requires otherwise.

Part B **GMSLA netting opinion**

1 Netting Summary

In Parts B and D of this memorandum, we refer to the *Payment Systems and Netting Act 1998* (Cth) (**"Netting Act**"). The relevant sections of the Netting Act are summarised in our Netting Summary.

2 *Close-out netting contract*

As noted in Part III of Appendix 2 of our ISLA Opinion, the central provisions of each GMSLA which provide for close-out netting following an Event of Default are contained in:

(a) clause 10 (Set-off etc), and, in particular, sub-clauses 10.2 to 10.5 of the GMSLA 2000;

(b) clause 10 (Set-off etc), and, in particular, sub-clauses 10.2 to 10.6 of the GMSLA 2000 as amended by the ISLA 2009 Protocol; and

(c) clause 11 (Consequences of an Event of Default), and, in particular, clauses 11.2 to 11.6 of the GMSLA 2009 and the GMSLA 2010,

excluding the Cross-Agreement Set-Off Provisions (such provisions, the "**Netting Provisions**").

The definition of "*close-out netting contract*" in the Netting Act is considered in paragraph 1.1 of Part B of our Netting Summary.

We conclude in our ISLA Opinion that, in our view, each GMSLA is a "*close-out netting contract*" for the purposes of the Netting Act. This is because the Netting Provisions contain the elements necessary for the GMSLA to be a "*close-out netting contract*" under the Netting Act, as discussed in Part III of Appendix 2 to our ISLA Opinion.[2] In our view, this conclusion applies equally where the GMSLA is governed by Australian law.

3 Close-out netting on the *external administration* of an Australian Party and the insolvency regime applicable to an Australian Party

We confirm that the conclusions in our ISLA Opinion relating to the enforceability of the Netting Provisions of each GMSLA on the *external administration* of an Australian Party would apply where the GMSLA is governed by Australian law.

Section 14(2) of the Netting Act, which deals with the protection of close-out netting rights in circumstances where a person who is, or has been, a party to a *close-out netting contract* goes into *external administration*, is considered in detail in Part B of our Netting Summary. As noted in paragraph 1.11 of Part B of the Netting Summary, section 14(2) applies only if either:

- Australian law governs the *close-out netting contract*; or
- Australian law governs the *external administration*.

We assume for the purposes of this memorandum that the GMSLA is governed by Australian law.

As considered in paragraph 1 of Part C of our Netting Summary,[3] the Insolvency Proceedings to which an Australian Party may be subject under Australian Law fall within the definition of "*external administration*" in the Netting Act.

Section 14(2)(c) of the Netting Act provides that where a person who is, or has been, a party to a *close-out netting contract* goes into *external administration*:

(a) obligations under a *close-out netting contract* may be terminated;

(b) termination values may be calculated; and

(c) a net amount become payable,

in accordance with the *close-out netting contract*.[4]

Section 14(3) of the Netting Act provides that, relevantly, section 14(2) of the Netting Act applies subject to:

(i) any specified stay provision which is applicable to the GMSLA, as considered in paragraph 1.8 of Part B of our Netting Summary;[5] and

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[2] See paragraph 17 of Appendix 2 of our ISLA Opinion in particular.

[3] This is also considered in paragraph 3.1 of our ISLA Opinion.

[4] The effect of section 14(2), including 14(2)(d) to (g), is considered further in paragraph 1.3 of Part B of our Netting Summary. Please also refer to Schedule 1 and paragraphs 35 to 37 of Appendix 2 to the ISLA Opinion in relation to section 14.2(d), paragraphs 57 and 58 of Appendix 2 of the ISLA Opinion in relation to section 14(2)(e) and paragraph 54 of Appendix 1 of the ICMA Opinion in relation to section 14(2)(g).

[5] Please also refer to paragraphs 1 and 3.4–3.5 of Schedule 1 and paragraphs 44–45 and 49–52 of Appendix 2 to the ISLA Opinion.

(ii) sections 14(4) and 14(5) of the Netting Act, as considered in paragraphs 1.4 and 1.5 of Part B of our Netting Summary.[6]

4 Act of Insolvency

We refer to paragraph 3.1 (Insolvency proceedings and *external administration*) of our ISLA Opinion which confirms that, subject to the following, all of the proceedings to which an Australian Party that is registered or taken to be registered as a company under the Corporations Act may be subject should be adequately covered by the definition of Act of Insolvency in the GMSLA. Those insolvency proceedings are summarised in paragraph 1.3 of Part C of, and paragraph 1 of Schedule 1 to, our Netting Summary and paragraph 3.1 of the ISLA Opinion. The following proceedings would only trigger an Act of Insolvency where the relevant assets or part of the business are a "material part of" the property of that party for the purposes of the definition of Act of Insolvency in the GMSLA:

(a) statutory management of the Australian business assets and liabilities of a foreign *ADI*, foreign general insurer or eligible foreign life insurance company;

(b) judicial management of part of the business of a *life company* or the Australian business assets and liabilities of an eligible foreign life insurance company; and

(c) the appointment of a receiver to realise secured assets of an Australian Party.

5 Close-out netting under a *close-out netting contract* governed by Australian law

Section 14(1) of the Netting Act contains an alternative statutory validation of close-out netting rights which is not dependent on a party to the contract being in *external administration*. In other words, if section 14(2) cannot apply because there is no *external administration*, then section 14(1) may still apply to validate the Netting Provisions provided its conditions are met.

The effect of section 14(1)(c) of the Netting Act is that, in respect of a *close-out netting contract*:

- obligations under a *close-out netting contract* may be terminated;
- termination values may be calculated; and
- a net amount become payable,

in accordance with the *close-out netting contract*.[7]

The requirements of section 14(1) of the Netting Act may be summarised for present purposes as follows:

(a) Australian law must govern the GMSLA. As noted in paragraph 3 of Part B above, we assume for the purposes of this memorandum that the GMSLA is governed by Australian law;

(b) the GMSLA must be entered into in circumstances that are within "Commonwealth constitutional reach" (as defined in the Netting Act). Please see paragraph 1.10 of Part B of our Netting Summary with respect to the circumstances which satisfy the requirement for a *close-out netting*

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6 Sections 14(4) and 14(5) of the *Netting Act* are also considered in paragraphs 29–34 of Appendix 2 of our ISLA Opinion.

7 The effect of section 14(1) of the *Netting Act*, including section 14(1)(d) to (e), is considered further in paragraph 1.2 of Part B of our Netting Summary.

contract being within the Commonwealth constitutional reach. In summary, these include that a "constitutional corporation" (as defined in the Netting Act) is a party to the contract;[8] and

(c) the GMSLA must be a "*close-out netting contract*". As considered in paragraph 2 above, we consider that each GMSLA is a *close-out netting contract* for the purposes of the Netting Act.

Sections 14(1)(d) and (e) of the Netting Act are intended to clarify that netting will not be affected by the interests of third parties in the obligations being netted.[9]

Section 14(3) of the Netting Act provides that, relevantly, section 14(1) of the Netting Act applies subject to:

(i) any specified stay provision which is applicable to the GMSLA, as considered in paragraph 1.8 of Part B of our Netting Summary;[10] and

(ii) sections 14(4) or 14(5) of the Netting Act, as considered in paragraphs 1.4 and 1.5 of Part B of our Netting Summary.[11]

Part C **AMSLA netting opinion**

1 *Close-out netting contract*

The central provisions of the AMSLA which provide for close-out netting following an Event of Default are contained in clause 8 (Set-off etc), and, in particular, clause 8.2 (Netting following occurrence of Event of Default) (such provisions, the "**AMSLA Netting Provisions**").

We consider that the AMSLA is a "close-out netting contract" for the purposes of the Netting Act. This is because clause 1.3 of the AMSLA provides that the AMSLA and each Confirmation of a Transaction forms a single agreement between the parties and clause 8 of the AMSLA provides that, on the occurrence of an Event of Default described in clause 12:

(a) each party's obligations under the AMSLA are accelerated so as to require performance on the "Performance Date" (clause 8.2) and in effect replaced by an obligation on the part of one party to pay an amount to the other party. We consider that this effects a termination of existing obligations of the parties (as required by paragraph (a)(i) of the definition of "close-out netting contract" in the Netting Act) in respect of the Transactions, despite the fact that the wording could indicate that the original obligations of the parties under the Transactions are amended (by accelerating the Performance Date) rather than terminated. This is because, in our view, a termination of the obligations under the Transactions must take place, as the original obligations of the parties to deliver Equivalent Securities and pay or deliver Equivalent Collateral on certain dates are discharged without being performed;[12]

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[8] A constitutional corporation is defined as a "foreign corporation" or a "trading or financial corporation formed within the limits of the Commonwealth".

[9] Sections 14(1)(d) to (e) of the *Netting Act* are considered further in paragraph 1.2 of Part B of our Netting Summary.

[10] Please see footnote 5 above. We note that the references in the paragraphs referred to in footnote 5 are equally applicable to section 14(1) of the *Netting Act*.

[11] Please see footnote 6 above. We note that the references in the paragraphs referred to in footnote 6 are equally applicable to section 14(1) of the *Netting Act*.

[12] This conclusion is supported by the decision of the Federal Court of Australia in Australia in *Lindholm, Re; Opes Prime Stockbroking Ltd (admin apptd) (recs and mgrs apptd)* [2008] FCA 1425 (17 September 2008), which is considered in paragraph 1.1 of Part B of

(b) a "Relevant Value" is to be determined in respect of each terminated payment or delivery obligation, which constitutes the calculation of the termination values of the terminated obligations (as required by paragraph (a)(ii) of the definition of "close-out netting contract" in the Netting Act); and

(c) the "Relevant Value" of each terminated obligation owed by one party is set-off against the "Relevant Value" of each terminated obligation owed by the other party and only the balance is payable by one party to the other, which constitutes the netting of the termination values of the terminated obligations (as required by paragraph (a)(iii) of the definition of "*close-out netting contract*" in the Netting Act).

2 Close-out netting on the *external administration* of an Australian Party and the insolvency regime applicable to an Australian Party

We confirm that our conclusions in paragraph 3 above relating to the enforceability of the Netting Provisions of each GMSLA on the *external administration* of an Australian Party would apply equally to the AMSLA and the AMSLA Netting Provisions.

As considered in paragraph 4 above, section 14(2) of the Netting Act, which deals with the protection of close-out netting rights in circumstances where a person who is, or has been, a party to a *close-out netting contract* goes into *external administration*, is considered in detail in Part B of our Netting Summary. As noted in paragraph 1.11 of Part B of the Netting Summary, section 14(2) applies if Australian law governs the *close-out netting contract*. We note that the AMSLA is governed by the laws of New South Wales.[13]

As considered in paragraph 1 of Part C of our Netting Summary, the Insolvency Proceedings to which an Australian Party may be subject under Australian Law fall within the definition of "*external administration*" in the Netting Act.

Section 14(2)(c) of the Netting Act provides that where a person who is, or has been, a party to a *close-out netting contract* goes into *external administration*:

(a) obligations under a *close-out netting contract* may be terminated;

(b) termination values may be calculated; and

(c) a net amount become payable,

in accordance with the *close-out netting contract*.[14]

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our Netting Summary, in which the court affirmed the applicability of the Netting Act to the close-out netting provisions of securities lending agreements based on documents similar to the Agreement. In that decision (at paragraph 41), the judge concluded that "the delivery obligation has been "terminated", in the sense that the obligation has come to an end as required by para (a)(i) of s 5 of the Netting Act. I appreciate that the word "terminate" is a troublesome word and can bear different meanings dependent upon the context. When the inquiry is whether a contractual obligation terminates in this context, however, it can only bear the meaning I have ascribed to the word—namely, the meaning that the obligation has come to an end by being accelerated and liquidated (ie converted into a money debt)."

[13] Clause 27.1 of the AMSLA.

[14] The effect of section 14(2), including sections 14(2)(d) to (g), is considered further in paragraph 1.3 of Part B of our Netting Summary. Please also refer to Schedule 1 and paragraphs 35 to 37 of Appendix 2 to the ISLA Opinion in relation to section 14.2(d), paragraphs 57 and 58 of Appendix 2 of the ISLA Opinion in relation to section 14(2)(e) and paragraph 54 of Appendix 1 of the ICMA Opinion in relation to section 14(2)(g).

Section 14(3) of the Netting Act provides that, relevantly, section 14(2) of the Netting Act applies subject to:

(i) any specified stay provision which is applicable to the AMSLA, as considered in paragraph 1.8 of Part B of our Netting Summary;[15] and

(ii) sections 14(4) or 14(5) of the Netting Act, as considered in paragraphs 1.4 and 1.5 of Part B of our Netting Summary.[16]

3 Close-out netting under a *close-out netting contract* governed by Australian law

We confirm that our conclusions in paragraph 3 above relating to the enforceability of the Netting Provisions of each GMSLA against an Australian Party would apply equally to the AMSLA and the AMSLA Netting Provisions.

As considered in paragraph 5 above, section 14(1) of the Netting Act contains an alternative statutory validation of close-out netting rights which is not dependent on a party to the contract being in *external administration*.

The effect of section 14(1)(c) of the Netting Act is that, in respect of a *close-out netting contract*:

- obligations may be terminated;
- termination values may be calculated; and
- a net amount become payable,

in accordance with the *close-out netting contract*.[17]

The requirements of section 14(1) of the Netting Act may be summarised for present purposes as follows:

(a) Australian law must govern the AMSLA;

(b) the AMSLA must be entered into in circumstances that are within "Commonwealth constitutional reach" (as defined in the Netting Act). Please see paragraph 1.10 of Part B of our Netting Summary with respect to the circumstances which satisfy the requirement for a *close-out netting contract* being within the Commonwealth constitutional reach. In summary, these include that a "constitutional corporation" (as defined in the Netting Act) is a party to the contract;[18] and

(c) the AMSLA must be a "*close-out netting contract*". As considered in paragraph 1 above, we consider that the AMSLA is a *close-out netting contract* for the purposes of the Netting Act.

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[15] Please see footnote 5 above.

[16] Please see footnote 6 above.

[17] The effect of section 14(1) of the *Netting Act*, including section 14(1)(d) to (e), is considered further in paragraph 1.2 of Part B of our Netting Summary.

[18] A constitutional corporation is defined as a "foreign corporation" or a "trading or financial corporation formed within the limits of the Commonwealth".

Sections 14(1)(d) and (e) of the Netting Act are intended to clarify that netting will not be affected by the interests of third parties in the obligations being netted.[19]

Section 14(3) of the Netting Act provides that, relevantly, section 14(1) of the Netting Act applies subject to:

(i) any specified stay provision which is applicable to the GMSLA, as considered in paragraph 1.8 of Part B of our Netting Summary;[20] and

(ii) sections 14(4) or 14(5) of the Netting Act, as considered in paragraphs 1.4 and 1.5 of Part B of our Netting Summary.[21]

4 Agency Transactions

In the case of an Agency Transaction, the Netting Provisions will apply so that the netting is effected only between the mutual obligations of the relevant Principal and the corresponding Borrower. This is because clause 14.4(b) of the AMSLA provides that all the provisions of the AMSLA shall apply separately as between the Borrower and each Principal for whom the Agent has entered into an Agency Transaction. As discussed in paragraph 1.6 of Part B of the Netting Summary, without this wording Transactions entered into with a counterparty by a party on its own behalf or on behalf of a Principal under the one "*close-out netting contract*" could be netted against each other.

5 Transfer of title and Collateral

The general principles for the characterisation of absolute transfers of securities and other property under securities lending arrangements in the Australian Jurisdictions were clarified by the Federal Court of Australia in *Beconwood Securities v Australia and New Zealand Banking Group*.[22] While, in that case, the court was considering the terms of a securities lending agreement adapted from the AMSLA and governed by Australian law and not the AMSLA, we consider the principles stated by the court to be equally applicable in the context of the AMSLA. In referring to the securities lending agreement before it, the court stated:

> "The character of the SLA must be determined from its language, particularly of its operative parts. If those provisions are clear, they must be given effect, unless there are provisions which alter that effect.[23]
>
> …
>
> What this means is that the character of a transaction is to be determined by reference to its legal nature, not to its economic effect.[24]
>
> …

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19 Sections 14(1)(d) to (e) of the *Netting Act* are considered further in paragraph 1.2 of Part B of our Netting Summary.

20 Please see footnote 5 above. We note that the references in the paragraphs referred to in footnote 5 are equally applicable to section 14(1) of the *Netting Act*.

21 Please see footnote 6 above. We note that the references in the paragraphs referred to in footnote 6 are equally applicable to section 14(1) of the *Netting Act*.

22 (2008) 246 ALR 361; [2008] FCA 594.

23 (2008) 246 ALR 361 at 370 (paragraph 41).

24 (2008) 246 ALR 361 at 371 (paragraph 42).

> In light of the foregoing, the argument that the SLA can be characterised as a mortgage is simply unsustainable. It breaks down at many points. First of all, by the express terms of the SLA, unencumbered title in both lent securities and collateral passes on delivery. Secondly, when the transaction comes to an end there is no obligation to hand back in specie the securities initially lent. Nor is there an obligation to return the collateral actually provided. The obligation falling on the Borrower is to deliver the same number and type of securities. The same is true and as regards the collateral. Third, there are the netting and set-off provisions that come into effect on default. This is the means by which the parties mitigate credit risk, converting redelivery obligations into payment obligations. The provisions are particularly important because they confirm that the parties did not intend there to be any equitable property rights retained over lent securities or collateral following their delivery, for if such rights existed, they could not simply be converted by contract to monetary obligations."[25]

We set out the application of those principles to the AMSLA below.

First, under clause 4.1 of the AMSLA, each party is required to:

> "execute and deliver all necessary documents and give all necessary instructions to procure that all right, title and interest in:
>
> (a) any Securities borrowed pursuant to clause 2;
>
> (b) any Equivalent Securities redelivered pursuant to clause 7;
>
> (c) any Collateral delivered pursuant to clause 6;
>
> (d) any Equivalent Collateral redelivered pursuant to clauses 6 or 7,
>
> shall pass from one Party to the other, [on delivery or redelivery of the same in accordance with this AMSLA,][26] free from all liens, charges, equities and encumbrances, on delivery or redelivery of the same in accordance with this AMSLA…"

Secondly, clause 1.4(b) of the 2002 and 2003 AMSLA states that:[27]

> "Notwithstanding the use of expressions such as "borrow", "lend", "Collateral", "Margin", "redeliver" etc., which are used to reflect terminology used in the market for transactions of the kind provided for in this AMSLA, all right, title and interest in and to Securities "borrowed" or "lent" and "Collateral" which one Party Transfers to the other in accordance with this AMSLA ("**title**") shall pass from one Party to the other free and clear of any liens, claims, charges or encumbrances or any other interest of the Transferring Party or of any third party (other than a lien routinely imposed on all securities in a relevant clearance system), the Party obtaining such title being obliged to redeliver Equivalent

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25 (2008) 246 ALR 361 at 373 (paragraph 50).

26 Clause 4.1 of the 1997 AMSLA.

27 Clause 1.4(b) of the 1997 AMSLA states that:

"Notwithstanding the use of expressions such as "borrow", "lend", "Collateral", "Margin", "redeliver" etc., which are used to reflect terminology used in the market for transactions of the kind provided for in this AMSLA, title to Securities "borrowed" or "lent" and "Collateral" provided in accordance with this AMSLA shall pass from one Party to another as provided for in this AMSLA, the Party obtaining such title being obliged to redeliver Equivalent Securities or Equivalent Collateral, as the case may be."

> Securities or Equivalent Collateral, as the case may be. Each Transfer under this AMSLA will be made so as to constitute or result in a valid and legally effective transfer of the Transferring Party's legal and beneficial title to the recipient."

Thirdly, under clause 8.2 of the AMSLA, the Netting Provisions of the AMSLA are enlivened by the occurrence of an Event of Default and operate to convert delivery obligations into monetary obligations.

In our opinion, the terms of the AMSLA provide that unencumbered title to both Securities and Collateral passes on delivery and there is no obligation on the transferee to hand back in specie the Securities or the Collateral. Rather, the transferee is obliged to deliver Equivalent Securities or Equivalent Collateral, as the case may be. In addition, following the reasoning of the court in the *Beconwood* decision, the operation of the Netting Provisions upon the occurrence of an Event of Default suggests that the parties did not intend for any equitable property rights to be retained over Securities or Collateral following their delivery.

It follows that, in our opinion, Transactions entered into under the AMSLA will take effect as an absolute transfer of title in the Securities from the Lender to the Borrower, provided all necessary requirements in connection with the transfer of the Securities under all applicable laws are complied with, and the Borrower will have only a contractual obligation to transfer Equivalent Securities upon termination of the Transaction. Assuming that the conduct of the parties and other surrounding circumstances are not inconsistent with the terms of the AMSLA, a court in the Australian Jurisdictions would not attempt to recharacterise the arrangements.

Similarly, in our opinion, the transfer of cash and securities by way of Collateral pursuant to the AMSLA would be recognised by a court in the Australian Jurisdictions as an absolute transfer of title in the assets transferred provided all necessary requirements in connection with the transfer of such assets under all applicable laws are complied with, with an obligation on the transferee to repay Cash Collateral or deliver Equivalent Collateral as appropriate. Assuming that the conduct of the parties and other surrounding circumstances are not inconsistent with the terms of the AMSLA, a court in the Australian Jurisdictions would not seek to upset or recharacterise transfers made pursuant to that AMSLA.

Part D **Assumptions and qualifications**

1 Assumptions and qualifications

This memorandum should be read in conjunction with ISLA Opinion[28] and our Netting Summary, and is subject to the assumptions and qualifications set out in our ISLA Opinion (which should be taken to also apply with respect to the AMSLA) and our Netting Summary. This memorandum does not purport to update our ISLA Opinion or our Netting Summary, including to the extent it brings down the conclusions in our ISLA Opinion, and our opinion on the application of our ISLA Opinion is given as of the date of the Netting Summary.

[28] As if references to English law were to Australian law, where appropriate.

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This memorandum does not purport to be an analysis of all issues which could arise in entering the GMSLA. For example, it does not deal with matters related to power and authority, use of power for a property purpose, general enforceability of contracts or corporate authorisations.

For the purposes of this memorandum, we also assume that any *external administration* of a party to the GMSLA commences after 1 June 2016.

This memorandum is strictly limited to the matters stated in it and does not apply by implication to other matters.

2 Benefit

This memorandum is addressed to you personally and may not, without our prior written consent, be:

(a) relied on by another person;

(b) disclosed, except to members of AFMA, subscribers to the AFMA Guide to Australian OTC Transactions and persons who in the ordinary course of your or their business have access to your or their papers and records. Such disclosure is only made on the basis that such persons will make no further disclosure; or

(c) filed with a government or other agency or quoted or referred to in a public document.

This memorandum is given in respect of the laws of the Australian Jurisdictions which are in force at 9.00am local time on the date of this memorandum and we are not obliged to update it.

Yours faithfully