

INSOLVENCY REGULATIONS 2015

*In this Annex, underlining indicates new text and strikethrough indicates deleted text, unless otherwise indicated.

PART 7: FINANCIAL MARKETS AND NETTING

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Chapter 2 – Netting

276. Netting Provisions to take effect in accordance with their terms

- (1) The provisions of a netting agreement will be enforceable in accordance with their terms, including against an insolvent party, and, where applicable, against a guarantor or other person providing security for a party (including a guarantor or other person that is insolvent) and will not be stayed, avoided or otherwise limited by—
 - (a) the appointment of, or any application for the appointment of, or notice relating to the appointment of, an Office-holder or any action of an Office-holder;
 - (b) any other provision of law, excluding sections 60 to 62 of the Bank Recovery and Resolution Regulations 2017, relating to administration, liquidation, bankruptcy, reorganisation, composition with creditors, receivership, conservatorship or any other Insolvency Proceedings an insolvent party may be subject to; or
 - (c) any other provision of law that may be applicable to an insolvent party,
 subject to the conditions contained in the applicable netting agreement.
- (2) After commencement of Insolvency Proceedings in relation to a party, the only obligation, if any, of either party to make payment or delivery under or pursuant to a netting agreement or under or pursuant to any qualified financial contract or contract or transaction to which that netting agreement applies shall be equal to its net obligation to the other party as determined in accordance with the terms of the applicable netting agreement.
- (3) After commencement of Insolvency Proceedings in relation to a party, the only right, if any, of either party to receive payment or delivery under or pursuant to a netting agreement or under or pursuant to any qualified financial contract or contract or transaction to which that netting agreement applies shall be equal to its net entitlement with respect to the other party as determined in accordance with the terms of the applicable netting agreement.
- (4) Any powers of an Office-holder to assume or repudiate individual contracts or transactions will not prevent the termination, liquidation, acceleration and/or conversion of all payment or delivery obligations or entitlements, and all obligations or entitlements relating to the making of payments or deliveries under one or more qualified financial contracts entered into under or in connection with a netting agreement, and will apply, if at all, only to the net amount or net entitlement due in respect of all such qualified financial contracts in accordance with the terms of such netting agreement.
- (5) The provisions of a netting agreement which provide for the determination of a net balance of the close-out values, market values, liquidation values, replacement values or other relevant values calculated in respect of accelerated and/or terminated payment or delivery obligations or entitlements or accelerated and/or terminated obligations or entitlements relating to the making of payments or deliveries in either case, under one or more qualified financial contracts entered into thereunder or to which such netting agreement applies (including a payment or delivery in respect

of a contract or transaction required to be entered into under or pursuant to such provisions) will not be affected by any applicable insolvency laws, excluding sections 60 and 62 of the Bank Recovery and Resolution Regulations 2017, limiting the exercise of rights to set off, offset or net out obligations, payment amounts or termination values owed between an insolvent party and another party.

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278. Pre-emption and confirmation of disapplication of certain provisions of these Regulations to netting agreements

- (1) Subject to sections 60 to 62 of the Bank Recovery and Resolution Regulations 2017, ~~n~~o stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a Court, administrative agency, Office-holder or otherwise, shall limit or delay application of otherwise enforceable netting agreements and transactions entered into thereunder or pursuant thereto or to which an otherwise enforceable netting agreement applies.

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