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THE RECOMMENDED FORM OF BAIL-IN CLAUSE AND USERS GUIDE

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- This Users Guide has been prepared for the Loan Market Association ("**LMA**") in connection with the recommended form of contractual recognition of bail-in clause (the "**LMA Bail-In Clause**"). Whilst every care has been taken in the preparation of this Users Guide and the LMA Bail-In Clause, no representation or warranty is given by the LMA or Clifford Chance LLP:
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 - as to the accuracy or completeness of the contents of this Users Guide.
- This Users Guide provides limited guidance only on the terms of the LMA Bail-In Clause and the requirements of Article 55 of EU Directive 2014/59 EU (the "**Article 55 Requirement**") and focuses on the practical impact of the Article 55 Requirement on the loan market. It is not intended to be a comprehensive analysis of the Article 55 Requirement. In particular, users of the LMA Bail-In Clause must satisfy themselves as to the regulatory and other implications of its use.
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INTRODUCTION AND SCOPE

- The purpose of this Users Guide is to provide an introduction to the relevance of the Article 55 Requirement to the loan markets and to assist users of the LMA Bail-In Clause. It is divided into three sections.
 - Section 1 contains an introduction to the Article 55 Requirement and its application to the loan markets
 - Section 2 contains guidance for users of the LMA Bail-In Clause
 - Section 3 sets out the LMA Bail-In Clause
- Users should note that the Article 55 Requirement is complex legislation and that its precise requirements are unclear. This Users Guide is only an introduction to the topic and, by necessity, simplifies and generalises. It is not designed to provide legal or other advice or to be a comprehensive guide to either the Article 55 Requirement itself or to compliance with the Article 55 Requirement. Users should seek specific legal advice in connection with any applicable requirement to comply with the Article 55 Requirement and use and/or modify the LMA Bail-In Clause in light of that advice.
- Users should note that the Article 55 Requirement is extremely wide-ranging and applies to some liabilities of a type which may seem tangential to the overriding legislative purpose of facilitating the successful resolution of a failing EEA financial institution by the regulatory authorities. Users should also be aware that the scope of the Article 55 Requirement is likely to cause institutions significant practical and commercial difficulties across all lines of their business, including syndicated lending. Whilst these issues are of critical importance to the loan market, and the LMA has been actively involved in appropriate representations to the authorities, they are beyond the scope of this Users Guide.
- Users should also note that this Users Guide does not as such address compliance with the Article 55 Requirement. As with any matter of regulatory compliance an institution should formulate and implement its approach to compliance with the Article 55 Requirement in conjunction with its advisers and the relevant regulator.

SECTION 1

ARTICLE 55 REQUIREMENT AND APPLICATION TO THE LOAN MARKETS

1.1 Overview

- (a) EU Directive 2014/59 (often referred to as the Bank Resolution and Recovery Directive or "**BRRD**") contains wide ranging recovery and resolution powers for EEA regulators to facilitate the rescue of a failing EEA financial institution. These became effective across most EU countries at the beginning of 2015. The powers include the ability for a regulator to write-down and/or convert into equity a failing institution's liabilities. As a matter of law a regulator's exercise of those write-down and conversion powers will be effective in respect of any liabilities under a document governed by the law of an EEA¹ country regardless of the terms of that document.
- (b) Article 55 of the BRRD addresses documents which are governed by the law of a non-EEA country. It requires EEA financial institutions² to include a special term in almost every document to which they are a party and which is governed by the law of a non-EEA country. Under that term the financial institution's counterparties acknowledge that the institution's obligations under that document are subject to an EEA regulator's exercise of those write-down and conversion powers. This is often referred to as the "**Article 55 Requirement**" and the term itself, a "**Bail-In Clause**".
- (c) The Article 55 Requirement will apply to a document if:
 - (i) the document is governed by the law of a non-EEA country;
 - (ii) the EEA financial institution has any potential liability under the document (whether contractual or non-contractual); and
 - (iii) either:
 - (A) that institution becomes a party to that document; or

¹ The EEA (or European Economic Area) consists of the member states of the European Union and Iceland, Liechtenstein and Norway.

² The precise scope of the entities subject to the Article 55 Requirement is beyond the scope of this Users Guide and is specified in Article 1 of the BRRD. In broad terms it applies to any EEA incorporated credit institution or investment firm and relevant affiliates. EEA branches of non-EEA incorporated institutions are not covered by the requirement.

This Users Guide assumes that the Article 55 Requirement applies to **EEA** financial institutions and to documents governed by the law of a non-**EEA** country.

- (B) that document is materially amended; or
- (C) new liabilities arise under that document,

on or after (in the case of most EEA member states) 1 January 2016.

- (d) The Article 55 Requirement will apply to loan market documentation governed by the law of a non-EEA country to which an EEA financial institution is party in any capacity. From the end of the Brexit transition period on 31 December 2020, the Article 55 Requirement became applicable to English law documentation (such as the English law LMA recommended form facility agreements) in the same way as it applies to documentation governed by the law of any other non-EEA country.
- (e) The form of Bail-In Clause must contain mandatory features specified in a regulatory technical standard issued by the European Banking Authority which will automatically have effect in national law.
- (f) The Article 55 Requirement does not apply in circumstances where it is legally or otherwise impracticable for financial institutions to comply with the Article 55 Requirement.³ In accordance with Article 55(6) of the BRRD, the European Banking Authority has adopted and published final draft technical standards defining the conditions under which it would be legally or otherwise impracticable for an institution to include a Bail-In Clause and the reasonable timeframe for such inclusion. These conditions are extremely narrow and would not apply in the context of typical loan market documentation⁴.
- (g) The Article 55 Requirement is not itself national law but is required to be implemented by EEA member states into their national law. Accordingly, there are 30 different implementing regimes across Europe and the details of the Article 55 Requirement applicable to any given financial institution will be a function of the national regime which is applicable to it. National regulators will be responsible for enforcement of the Article 55 Requirement.
- (h) As at the date of this User's Guide, all 30 EEA member states have enacted legislation implementing the Article 55 Requirement.
- (i) The remainder of this Section examines the Article 55 Requirement in more detail.

³ See Article 55(2) of BRRD.

⁴ The impracticability exceptions are looked at in more detail in paragraph 1.5 (*Conditions for impracticability of inclusion of Bail-In Clause*) below.

1.2 Introduction to the BRRD and the Article 55 Requirement

- (a) The BRRD establishes a framework for resolution of failing financial institutions and gives regulators a range of tools to do this, including statutory powers (effective throughout the EEA) to write-down and/or convert into equity a failing institution's liabilities. These are often referred to as "**Write-down and Conversion Powers**".
- (b) As a matter of law a regulator's exercise of those Write-down and Conversion Powers will be effective in respect of any liabilities under a document governed by the law of an EEA country regardless of the terms of that document.
- (c) The effectiveness of those powers is less certain in the case of an EEA financial institution's liabilities under a document governed by the law of a non-EEA country. The Article 55 Requirement is designed to support the effectiveness of an EEA regulator's exercise of Write-down and Conversion Powers in respect of those liabilities. It does this by obliging EEA financial institutions to include a Bail-In Clause in certain of those documents. The Bail-In Clause requires the EEA financial institution's counterparty(ies) to agree that the financial institution's liabilities under that document are subject to being written-off or converted into equity by the financial institution's regulator pursuant to the regulator's Write-down and Conversion Powers.
- (d) The rationale behind the Article 55 Requirement is that it is thought that the exercise of an EEA regulator's Write-down and Conversion Powers in respect of liabilities under a document governed by the laws of a non-EEA country will be less susceptible to challenge by the financial institution's counterparty(ies) under that law if that counterparty has expressly agreed to the potential exercise of those powers in the relevant document.

1.3 Circumstances in which the Article 55 Requirement applies

- (a) ***Governing law***
 - (i) The Article 55 Requirement applies only to a document governed by the law of a non-EEA country which, since the end of the Brexit transition period on 31 December 2020, includes the United Kingdom.
 - (ii) In the context of European based lending transactions the facility and intercreditor documentation (and secondary loan trading documentation) are likely to be governed by English law which is now the law of a non-EEA country. Where security is taken in non-EEA jurisdictions, security documents will also be governed by the law of a non-EEA country. Similarly, EEA financial institutions are active

participants in other loan markets (particularly those in the Asia Pacific region, the Middle East and Africa and North America) where it is likely that facility and intercreditor documentation (and, in some cases, secondary loan trading documentation) will also be governed by the law of a non-EEA country.

(b) ***Types of liability***

- (i) It is likely that most loan market documentation governed by the law of a non-EEA country will be subject to the Article 55 Requirement.
- (ii) This is because the Article 55 Requirement applies to any document governed by the law of a non-EEA country under which the relevant EEA financial institution may have a contractual or non-contractual liability.
- (iii) Although certain liabilities are excluded from the scope of the Article 55 Requirement, none of these exclusions are relevant to typical loan market documentation.⁵
- (iv) A financial institution's most obvious liabilities (and perhaps the most obviously relevant to resolving a financial institution) are its debt obligations incurred as issuer or borrower under debt securities or loan arrangements.
- (v) However, the Article 55 Requirement applies to any potential contractual or non-contractual liability. Crucially for syndicated lending documentation, obligations commonly undertaken by financial institutions as lenders or as administrative parties ⁶ in such documentation governed by the laws of a non-EEA country involve a potential liability which means that the Article 55 Requirement will apply to that documentation. Common examples include:
 - (A) lending commitments;
 - (B) indemnities typically given to the facility agent, security agent and issuing bank;

⁵ The exclusions principally relate to consumer and SME deposits, secured liabilities to the extent of the security provided by the financial institution, short term money market liabilities and some liabilities to employees and service providers.

⁶ For example, as facility agent, security agent or issuing bank.

- (C) requirements to share or turnover recoveries made from the borrower;
- (D) confidentiality duties;
- (E) requirement to obtain borrower consent / consultation prior to transfer;
- (F) restrictions on a creditor's actions typically found in intercreditor documentation;
- (G) administrative obligations, such as notifications of tax status or requirements to make other notifications or to supply or forward information; and
- (H) potential non-contractual liability under loan market documentation such as potential claims in negligence or misrepresentation.

(c) ***When the Article 55 Requirement will be triggered***

- (i) The Article 55 Requirement is not retrospective. It will apply if one of the below trigger events occurs on or after the date specified in the relevant national implementing legislation. In most cases this will be 1 January 2016.⁷
- (ii) The Article 55 Requirement will be triggered by any one of the following events:⁸
 - (A) *An EEA financial institution becomes a party to a document on or after 1 January 2016*
 - (1) Most obviously this will include any new documents entered into on or after 1 January 2016.
 - (2) In the loan market context it will also include loan transfers which complete on or after 1 January 2016 irrespective of the date of the underlying facility

⁷ The BRRD requires EEA member states to specify this date as no later than 1 January 2016. In most EEA member states 1 January 2016 will be the date from which the Article 55 Requirement will apply ***and this paragraph refers to 1 January 2016 for simplicity***. However users should note that the date of application may vary in some EEA member states. For example, the Article 55 Requirement has applied in Germany since 1 January 2015 but only since 1 September 2020 in respect of Iceland.

⁸ Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016.

agreement or the date of any applicable secondary debt trade. This means that a transferee lender which is an EEA financial institution will be required to include a Bail-In Clause in any facility agreement governed by the law of a non-EEA country into which it transfers on or after 1 January 2016. This is unlikely to be practicable in the majority of circumstances as existing facility agreements are very unlikely to already contain a Bail-In Clause.

(B) *Material amendment to a document to which an EEA financial institution is party on or after 1 January 2016 (irrespective of when the document was originally entered into)*

(1) "Material amendment" is widely defined as an amendment "affecting the substantive rights and obligations of a party" and it is important to note that the amendment does not have to affect the financial institution's liabilities under that document.

(2) Determining a "material amendment" for these purposes will ultimately be a question of fact and degree and users should therefore carefully consider the Article 55 Requirement as part of any amendment process involving documentation governed by the law of a non-EEA country.

(C) *New liabilities arise on or after 1 January 2016 under an existing document to which an EEA financial institution is party*

(1) This requirement targets a financial institution's liabilities which are not in place under an existing document but which come into existence under that document on or after 1 January 2016.

(2) In the loan market context this is most likely to apply on the establishment of lending obligations under an uncommitted facility (such as an accordion facility or incremental facility) if those lending obligations are put into place on or after 1 January 2016, even if, as is often the case, the potential future establishment of those obligations was envisaged (but not committed) in the

original form of the documentation entered into before 1 January 2016.

1.4 **Mandatory features of Bail-In Clause**

- (a) European regulations⁹ require any Bail-In Clause to include certain features which are summarised below.¹⁰
- (b) Each Bail-In Clause must contain the following features.
 - (i) A description of the Write-down and Conversion Powers set out in the applicable national implementing legislation.
 - (ii) Acknowledgement and acceptance by the financial institution's counterparty(ies) that:
 - (A) the financial institution's liabilities may be subject to the exercise of Write-down and Conversion Powers by the relevant regulator;
 - (B) the counterparty(ies) is/are bound by the effect of a regulator's application of those Write-down and Conversion Powers including:
 - (1) any reduction in the principal amount or outstanding amount due; and
 - (2) conversion of the relevant liability to equity;
 - (C) the terms of the relevant document may be varied as necessary to give effect to the exercise of those Write-down and Conversion Powers;
 - (D) equity may be issued to the financial institution's counterparty(ies) as a result of the exercise of Write-down and Conversion Powers; and
 - (E) the Bail-In Clause is exhaustive and supersedes any other term or agreement.

⁹ Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016.

¹⁰ Users should note that these required features mean that any form of Bail-In Clause is longer and more technical than might initially be expected.

1.5 **Conditions for impracticability of inclusion of Bail-In Clause**

The European Banking Authority has adopted and published its final draft technical standards defining the conditions under which it would be legally or otherwise impracticable for an institution to include a Bail-In Clause in a contract governing a relevant liability¹¹. These conditions are extremely narrow and would not apply to exclude the Article 55 Requirement in the context of syndicated loan transactions in any of the circumstances specified in paragraph 1.3 (Circumstances in which the Article 55 Requirement applies). The draft regulation sets out 5 conditions giving rise to the impracticability of including a Bail-In Clause as follows:

- (a) the inclusion of the Bail-In Clause would be in breach of the law or regulatory provision of the third country governing the liability;
- (b) the inclusion of the Bail-In Clause would be prohibited by an explicit and binding instruction from a third country authority;
- (c) the liability arises in the context of agreements based on international standards which are not negotiable;
- (d) the liability is governed by standard contractual terms that the institution or entity has to accept in order to be able to participate in or utilise the services of non-EU bodies; and
- (e) the liability is owed to a commercial or trade creditor for daily, non-critical operational functioning on standard terms.

Furthermore, in its Final Report, the European Banking Authority states that a refusal of a counterparty to be bound by a contractual bail-in recognition clause or to amend a pre-existing contract to include such a clause would not constitute a condition of impracticability and nor would the fact that a liability is contingent on a breach of contract.

1.6 **National implementation and enforcement**

- (a) The BRRD is a European Union Directive. This means that it does not have effect directly in EEA member states but instead requires those member states to enact national implementing legislation.

¹¹ This is contained in the European Banking Authority's Final Report dated 23 December 2020 which includes its draft regulatory technical standards on impracticability. The European Banking Authority states under "Next Steps" in the Final Report that it has been submitted to the European Commission for endorsement after which it will be published in the Official Journal of the European Union and will apply twenty days thereafter.

- (b) That means that the Article 55 Requirement has been implemented under 30 different national laws, the details of which vary to some extent, particularly if an individual EEA member state chooses to exceed the requirements of the BRRD.
- (c) Enforcement of the Article 55 Requirement will be the responsibility of the national regulator in each EEA state. This means that any flexibility shown or guidance given by the regulator in any given state will be available only to those financial institutions regulated by that regulator and will not be of more general application across Europe.
- (d) Consequences of breach of the Article 55 Requirement will also be a function of the relevant national implementing legislation.

1.7 Effect of the UK's withdrawal from the European Union

- (a) Following the UK's departure from the EU on 31 January 2020 and the end of the Brexit transition period on 31 December 2020, the Article 55 Requirement has, for EEA financial institutions, become applicable to English law documentation in the same way as for documentation governed by the law of any other non-EEA country because English law has thereby become a non-EEA law. Contracts governed by English law which contain in-scope liabilities of EU financial institutions (such as facility agreements, intercreditor agreements and security documents) and which are entered into or materially amended after 31 December 2020 will be within the scope of the Article 55 Requirement.
- (b) The UK has introduced a contractual recognition of bail-in requirement for UK financial institutions which mirrors the UK legislation which implemented the Article 55 Requirement but which also now applies to documents governed by the law of any EEA member state entered into or materially amended after the end of the Brexit transition period on 31 December 2020 as well as continuing to apply to documents governed by the law of any non-EEA country (other than the UK).¹²

¹² The UK Prudential Regulatory Authority has indicated that it will be using its transitional relief powers to delay until 31 March 2022 this requirement in respect of "phase 2 liabilities" contained in documentation governed by the law of an EEA member state. "Phase 2 liabilities" includes the types of liability that might typically be incurred under syndicated lending documentation by financial institutions as lenders or as administrative parties. The UK Financial Conduct Authority has given similar indications.

SECTION 2 GUIDANCE TO THE LMA BAIL-IN CLAUSE

2.1 Cooperation with LSTA

Users should refer to the statement entitled "*EU Bail-in rule - Publication of LMA and LSTA Contractual Recognition Clauses*" (available through the LMA website) for a discussion of the interaction between the original form of the LMA Bail-In Clause and the form of bail-in clause published by the Loan Syndications and Trading Association.

2.2 Compliance with mandatory features

- (a) As outlined in paragraph 1.4 (*Mandatory features of Bail-In Clause*) any Bail-In Clause is required to comply with the requirements set out in European regulations.
- (b) The LMA Bail-In Clause has been designed to accord with the requirements set out in those regulations.

2.3 Drafting basis

- (a) The LMA Bail-In Clause is designed as a starting point for users seeking to include a Bail-In Clause in documentation governed by the law of a non-EEA country in order to address the Article 55 Requirement.
- (b) The LMA Bail-In Clause is designed primarily for use in syndicated lending documentation and uses defined terms from the LMA's recommended forms of facility agreements. Because of the wide range of potential liabilities that may be assumed by EEA financial institutions in a loan market context it is drafted in wide terms and is expressed to apply to all liabilities.
- (c) The LMA Bail-In Clause is expressed to apply to all liabilities under the Finance Documents. This is to address potential liabilities under, for example, non-EEA law facility agreements, intercreditor agreements and security documents. The extent to which a Bail-In Clause in a facility agreement which is expressed to apply to all Finance Documents will meet the Article 55 Requirement for any individual Finance Document governed by the law of a non-EEA country should be considered on a transaction specific basis by users and their advisers.
- (d) The LMA Bail-In Clause is expressed to apply to all parties to which the Article 55 Requirement applies and is not confined to the Finance Parties. This is to allow for the possibility that the borrowing group under the relevant facility agreement might include an EEA financial institution.

- (e) The LMA Bail-In Clause does not follow the usual LMA "*plain English*" drafting approach and is not broken down into shorter sub-paragraphs in the manner of the LMA's recommended forms of facility documentation. This is in an attempt to make the LMA Bail-In Clause as similar in style and approach to clauses released by other trade associations.

2.4 Potential adaptation to other documents

Although designed primarily for use in facility agreements the LMA Bail-In Clause is designed to be easy to adapt for use in other documents.¹³ In particular:

- (a) it is not specifically tailored or restricted to the types of liabilities most likely to be undertaken by lenders and administrative parties in syndicated lending documentation; and
- (b) use of defined terms from the recommended forms of LMA facility agreement are marked with footnotes in the text to facilitate adaptation of the clause to other contexts.

2.5 EU Bail-In Legislation Schedule

- (a) The LMA Bail-In Clause envisages that EEA financial institutions from multiple jurisdictions may be party to the relevant document and that the parties to the relevant document may change over time. This is, of course, likely in the case of syndicated facility documentation. Accordingly it is assumed that the LMA Bail-In Clause will need to meet the requirements of every EEA jurisdiction.
- (b) To avoid the LMA Bail-In Clause becoming unwieldy, descriptions of the relevant national implementing legislation and Write-down and Conversion Powers are defined by reference to a separate freestanding document published by the LMA which is incorporated into the LMA Bail-In Clause by reference and which is available through the LMA's website. That document is referred to as the "**EU Bail-In Legislation Schedule**".
- (c) The EU Bail-In Legislation Schedule sets out jurisdiction specific definitions of "*Bail-In Legislation*" and "*Write-down and Conversion Powers*" for every EEA jurisdiction which has, as at the date of this User's Guide, enacted implementing legislation.¹⁴

¹³ See for example the bail-in clause in the LMA Confidentiality Letter (Seller).

¹⁴ As at the date of this User's Guide, all EEA members have enacted implementing legislation and these are all reflected in the current version of the EU Bail-In Legislation Schedule.

- (d) The LMA intends to update the EU Bail-In Legislation Schedule to reflect the enactment of relevant implementing legislation from time to time. The LMA Bail-In Clause references the EU Bail-In Legislation Schedule on a dynamic basis to ensure that the LMA Bail-In Clause will, at any time, operate to reference the then current version of the EU Bail-In Legislation Schedule.

2.6 **Future Bail-In Legislation in other jurisdictions (other than the UK)**

- (a) Legislation imposing a similar requirement to the Article 55 Requirement may be introduced in other states outside the EEA.
- (b) The details of any such legislation cannot be predicted with any accuracy but the LMA Bail-In Clause contains an optional provision which attempts to address any similar requirement for contractual recognition of bail-in which may be introduced in non-EEA jurisdictions (other than the UK which is dealt with separately in the LMA Bail-In Clause).
- (c) This optional provision is not part of the Article 55 Requirement and is not required for compliance with the Article 55 Requirement. There can, clearly, be no guarantee that it would satisfy the requirements of any future legislation in other jurisdictions which requires institutions from that jurisdiction to include contractual recognition of bail-in in documents.
- (d) However, its inclusion may go some way to addressing any such future requirements and might ameliorate any resulting practical difficulties. The extent to which it is helpful or appropriate to include this optional provision should be considered by institutions and their advisers.

2.7 **Effectiveness and incorporation of LMA Bail-In Clause under the relevant local law**

- (a) The LMA Bail-In Clause is, by its nature, designed for incorporation into documentation governed by the law of a non-EEA country. The LMA has not ascertained either:
 - (i) the manner of incorporation required by the relevant local law; or
 - (ii) the extent to which the LMA Bail-Clause will be effective under any such local law.
- (b) These matters (and their relevance for an EEA financial institution's compliance with the Article 55 Requirement) should be considered by users and their advisers.

2.8 UK withdrawal from the European Union

- (a) However, the UK's withdrawal from the European Union means that the status of the UK is no longer as "*an EEA Member Country which has implemented... Article 55 BRRD*".
- (b) The LMA Bail-In Clause continues to reference the requirements of the UK's contractual recognition of bail-in regime following the UK's withdrawal from the European Union in respect of the in scope liabilities of UK financial institutions entering into non-UK law agreements. This is because a relevant UK entity may be a party to a Finance Document governed by the law of an EEA member country or other third country (for example a security document) and therefore be required to include a Bail-In Clause in respect of such Finance Documents.¹⁵ In addition, the LMA Bail-In Clause has now been amended to reflect the fact that the UK is no longer an "*EEA Member Country which has implemented....Article 55 BRRD*".
- (c) Part 1 of Section 3 sets out the amended form of LMA Bail-In Clause in unmarked form.¹⁶ Part 2 of Section 3 shows in marked form the amendments referred to above and which took effect from the end of the Brexit transition period on 31 December 2020.

¹⁵ The UK Prudential Regulatory Authority has indicated that it will be using its transitional relief powers to delay until 31 March 2022 this requirement in respect of "phase 2 liabilities" contained in documentation governed by the law of an EEA member state. "Phase 2 liabilities" includes the types of liability that might typically be incurred under syndicated lending documentation by financial institutions as lenders or as administrative parties. The UK Financial Conduct Authority has given similar indications.

¹⁶ The amended form of LMA Bail-In Clause in Section 3 reflects the Bail-In Clause contained in the LMA Brexit Note entitled "*Documentary implications of the end of the Brexit transition period for LMA facility documentation – Consolidated and Updated Note*" dated 19 November 2020.

SECTION 3
RECOMMENDED FORM OF LMA BAIL-IN CLAUSE
PART 1 – UNMARKED FORM

LMA Bail-In Clause

"[] Contractual recognition of bail-in

Notwithstanding any other term of any Finance Document¹⁷ or any other agreement, arrangement or understanding between the Parties,¹⁸ each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:¹⁹

- (a) any Bail-In Action in relation to any such liability, including (without limitation):*
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;*
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and*
 - (iii) a cancellation of any such liability; and*
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability."*

¹⁷ The LMA Facility Agreements contain a definition of "**Finance Documents**" which encompasses all documents involved in the financing transaction. If the LMA Bail-In Clause is adapted for use in another document all references to "*Finance Document*" should be replaced with the appropriate defined term or description of the relevant documents.

¹⁸ The LMA Facility Agreements contain the following definition:

"Party" means a party to this Agreement

If the LMA Bail-In Clause is adapted for use in another document which does not contain such a defined term all references to "*Party*" or "*Parties*" should be replaced with the appropriate reference.

¹⁹ In the LMA Facility Agreements express "agreement" between the parties is provided by a general operative clause at the beginning of the facility agreement. If the LMA Bail-In Clause is adapted for use in another document which does not contain such a general operative clause it should be prefaced with "*It is agreed that*".

Definitions for LMA Bail-In Clause

"Article 55 BRRD" means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.²⁰

"Bail-In Action" means the exercise of any Write-down and Conversion Powers.

"Bail-In Legislation" means:

(a) *in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation²¹ as described in the EU Bail-In Legislation Schedule from time to time~~;~~²²;*

~~(b) in relation to the United Kingdom, the UK Bail-In Legislation~~;~~ and~~

~~(b)(c) in relation to any state other than such an EEA Member Country ~~and the United Kingdom~~²², any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation~~;~~²³~~

~~(c) in relation to the United Kingdom, the UK Bail In Legislation.²⁴~~

²⁰ LMA facility agreements contain the following interpretative provision:

[any reference to] a provision of law is a reference to that provision as amended or re-enacted

If the LMA Bail-In Clause is adapted for use in another document which does not contain such a provision this reference to Article 55 of Directive 2014/59/EU should be supplemented accordingly.

²¹ LMA Facility Agreements contain the following interpretative provision:

[any reference to] a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation

If the LMA Bail-In Clause is adapted for use in another document which does not contain such a provision all references to "regulation" should be considered and amended appropriately.

~~²² Insert if paragraph (c) of this definition is also included.~~

²³ Paragraph (c) of the definition of "Bail-In Legislation" is optional and is not required for compliance with the Article 55 Requirement or for compliance with the requirements of the UK's contractual recognition of bail-in regime which came into effect from the end of the Brexit transition period and which are outlined in paragraph 1.7 (Effect of the UK's withdrawal from the European Union) of this Users Guide. Users should refer to paragraph 2.6 (Future Bail-In Legislation in other jurisdictions) of this Users Guide in relation to optional paragraph (c).

~~²⁴ Paragraphs (b) and (c) of the definition of "Bail In Legislation" are optional and are not required for compliance with the Article 55 Requirement or for compliance with the requirements of the UK's contractual recognition of bail in regime which came into effect from the end of the Brexit transition period and which are outlined in paragraph 1.7 (Effect of the UK's withdrawal from the European Union) of this Users Guide.~~

"EEA Member Country" means any member state of the European Union, Iceland, Liechtenstein and Norway.

"EU Bail-In Legislation Schedule" means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

"Resolution Authority" means any body which has authority to exercise any Write-down and Conversion Powers.

"UK Bail-In Legislation" means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

"Write-down and Conversion Powers" means:

(a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule²⁵;

~~(b) in relation to any other applicable Bail-In Legislation [other than the UK Bail-In Legislation]²⁵;~~

~~(i)(b)~~ , any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to

~~Users should refer to paragraph 2.6 (Future Bail In Legislation in other jurisdictions) of this Users Guide in relation to optional paragraph (b).~~

~~²⁵—Insert if paragraph (c) of this definition is also included.~~

suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers²⁶; and

~~(ii)(c) in relation to any similar or analogous powers under that~~ other applicable Bail-In Legislation²⁶; and

~~(e)(i) in relation to the UK Bail-In Legislation~~ any powers under that ~~UK~~ Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers²⁷; and

(ii) any similar or analogous powers under that Bail-In Legislation.²⁷

²⁶ ~~Paragraphs (b) and (c) of the definition of "Write-down and Conversion Powers" are optional and are not required for compliance with the Article 55 Requirement or with the requirements of the UK's contractual recognition of bail-in regime which came into effect from the end of the Brexit transition period on 1 January 2021 and outlined in paragraph 1.7 (Effect of the UK's withdrawal from the European Union) of this Users Guide. They should be included only if paragraphs (b) and (c) of the definition of "Bail In Legislation" are included. Users should refer to paragraph 2.6 (Future Bail In Legislation in other jurisdictions) of this Users Guide in relation to this optional paragraph (b).~~

²⁷ Paragraph (c) of the definition of "Write-down and Conversion Powers" is optional and is not required for compliance with the Article 55 Requirement or with the requirements of the UK's contractual recognition of bail-in regime which came into effect from the end of the Brexit transition period on 1 January 2021 and outlined in paragraph 1.7 (Effect of the UK's withdrawal from the European Union) of this Users Guide. It should be included only if paragraph (c) of the definition of "Bail-In Legislation" is included. Users should refer to paragraph 2.6 (Future Bail-In Legislation in other jurisdictions) of this Users Guide in relation to this optional paragraph (c).

**PART 2 – MARKED TO SHOW AMENDMENTS MADE TO
LMA BAIL-IN CLAUSE WITH EFFECT FROM ~~1 JANUARY~~ 10 MARCH 2021²⁸**

LMA Bail-In Clause

"[] Contractual recognition of bail-in

Notwithstanding any other term of any Finance Document²⁹ or any other agreement, arrangement or understanding between the Parties,³⁰ each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:³¹

- (a) any Bail-In Action in relation to any such liability, including (without limitation):*
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;*
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and*
 - (iii) a cancellation of any such liability; and*
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability."*

~~²⁸ See paragraph 2.8 (UK withdrawal from the European Union) of this Users Guide.~~

²⁹ The LMA Facility Agreements contain a definition of "**Finance Documents**" which encompasses all documents involved in the financing transaction. If the LMA Bail-In Clause is adapted for use in another document all references to "*Finance Document*" should be replaced with the appropriate defined term or description of the relevant documents.

³⁰ The LMA Facility Agreements contain the following definition:

"Party" means a party to this Agreement

If the LMA Bail-In Clause is adapted for use in another document which does not contain such a defined term all references to "*Party*" or "*Parties*" should be replaced with the appropriate reference.

³¹ In the LMA Facility Agreements express "agreement" between the parties is provided by a general operative clause at the beginning of the facility agreement. If the LMA Bail-In Clause is adapted for use in another document which does not contain such a general operative clause it should be prefaced with "*It is agreed that*".

Definitions for LMA Bail-In Clause

*"Article 55 BRRD" means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.*³²

"Bail-In Action" means the exercise of any Write-down and Conversion Powers.

"Bail-In Legislation" means:

(a) *in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation*³³ *as described in the EU Bail-In Legislation Schedule from time to time*~~;~~

~~(b)~~ *in relation to the United Kingdom, the UK Bail-In Legislation*~~]; and~~

~~(b)~~(c) *in relation to any state other than such an EEA Member Country ~~and the United Kingdom~~³⁴, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation*~~.~~³⁵

~~(c)~~ *in relation to the United Kingdom, the UK Bail In Legislation*~~.~~³⁶

³² LMA facility agreements contain the following interpretative provision:

[any reference to] a provision of law is a reference to that provision as amended or re-enacted

If the LMA Bail-In Clause is adapted for use in another document which does not contain such a provision this reference to Article 55 of Directive 2014/59/EU should be supplemented accordingly.

³³ LMA Facility Agreements contain the following interpretative provision:

[any reference to] a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation

If the LMA Bail-In Clause is adapted for use in another document which does not contain such a provision all references to "regulation" should be considered and amended appropriately.

~~³⁴ Insert if paragraph (c) of this definition is also included.~~

³⁵ Paragraph (c) of the definition of "Bail-In Legislation" is optional and is not required for compliance with the Article 55 Requirement or for compliance with the requirements of the UK's contractual recognition of bail-in regime which came into effect from the end of the Brexit transition period and which are outlined in paragraph 1.7 (Effect of the UK's withdrawal from the European Union) of this Users Guide. Users should refer to paragraph 2.6 (Future Bail-In Legislation in other jurisdictions) of this Users Guide in relation to optional paragraph (c).

~~³⁶ Paragraphs (b) and (c) of the definition of "Bail In Legislation" are optional and are not required for compliance with the Article 55 Requirement or for compliance with the requirements of the UK's contractual recognition of bail in regime which came into effect from the end of the Brexit transition period and which are outlined in paragraph 1.7 (Effect of the UK's withdrawal from the European Union) of this Users Guide.~~

"EEA Member Country" means any member state of the European Union, Iceland, Liechtenstein and Norway.

"EU Bail-In Legislation Schedule" means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

"Resolution Authority" means any body which has authority to exercise any Write-down and Conversion Powers.

"UK Bail-In Legislation" means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

"Write-down and Conversion Powers" means:

(a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule³⁷;

~~(b) in relation to any other applicable Bail-In Legislation [other than the UK Bail-In Legislation]³⁷;~~

~~(i)(b)~~ , any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers³⁷; and

~~(ii)(c) in relation to any similar or analogous powers under that~~ other applicable Bail-In Legislation³⁸; and;

~~(i) (c) in relation to the UK Bail-In Legislation~~ any powers under that ~~UK~~ Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a

~~Users should refer to paragraph 2.6 (Future Bail-In Legislation in other jurisdictions) of this Users Guide in relation to optional paragraph (b).~~

³⁷~~Insert if paragraph (c) of this definition is also included.~~

³⁸~~Paragraphs (b) and (c)~~

bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that ~~UK~~ Bail-In Legislation that are related to or ancillary to any of those powers-; and

(ii) any similar or analogous powers under that Bail-In Legislation.]³⁹

~~of the definition of "Write-down and Conversion Powers" are optional and are not required for compliance with the Article 55 Requirement or with the requirements of the UK's contractual recognition of bail-in regime which came into effect from the end of the Brexit transition period on 1 January 2021 and outlined in paragraph 1.7 (Effect of the UK's withdrawal from the European Union) of this Users Guide. They should be included only if paragraphs (b) and (c) of the definition of "Bail-In Legislation" are included. Users should refer to paragraph 2.6 (Future Bail-In Legislation in other jurisdictions) of this Users Guide in relation to this optional paragraph (b).~~

³⁹ Paragraph (a) of the definition of "Write-down and Conversion Powers" is optional and is not required for compliance with the Article 55 Requirement or with the requirements of the UK's contractual recognition of bail-in regime which came into effect from the end of the Brexit transition period on 1 January 2021 and outlined in paragraph 1.7 (Effect of the UK's withdrawal from the European Union) of this Users Guide. It should be included only if paragraph (c) of the definition of "Bail-In Legislation" is included. Users should refer to paragraph 2.6 (Future Bail-In Legislation in other jurisdictions) of this Users Guide in relation to this optional paragraph (a).