

**Enforceability of a netting agreement**

2. (1) The provisions of a netting agreement will be enforceable in accordance with their terms against the insolvent party and, where applicable, against a guarantor or other person providing security for the insolvent party and will not be stayed, avoided or otherwise limited by any action of the liquidator, by any other provision of law relating to bankruptcy, reorganisation, composition with creditors, receivership, or any other insolvency proceeding the insolvent party may be subject to or by any other provision of law that may be applicable to the insolvent party, subject to the conditions contained in the applicable netting agreement.

(2) The only obligation, if any, of a party to make payment or delivery under a netting agreement shall be equal to its net obligation to the other party as determined in accordance with the terms of the applicable netting agreement.

(3) The only right, if any, of a party to receive payment or delivery under a netting agreement 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 the liquidator to assume or repudiate individual contracts will not prevent the termination or acceleration of any payment or delivery obligations or entitlements under one or more qualified financial contracts entered into under a netting agreement, and will apply, if at all, only to the net amount due in respect of all of such qualified financial contracts in accordance with the terms of such netting agreement.

(5) The provisions of a netting agreement which provides for the offset of close-out values, market values, liquidation values or replacement values calculated in respect of accelerated or terminated payment or delivery obligations or entitlements under one or more qualified financial contracts entered into thereunder will not be affected by any applicable insolvency laws 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.

(6) The liquidator of an insolvent party may not avoid—

- (a) any transfer, substitution or exchange of cash, collateral or any other interests pursuant to a netting agreement from the insolvent party to the non-insolvent party; or
- (b) any payment or delivery obligation incurred by the insolvent party and owing to the non-insolvent party pursuant to a netting agreement;

on the grounds of it constituting a preference by the insolvent party to the non-insolvent party, unless there is clear and convincing evidence that the non-insolvent party made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the insolvent party was indebted or became indebted, on or after the date that such transfer was made or that such obligation was incurred.

(7) No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, administrative agency, liquidator or otherwise, shall limit or delay application of otherwise enforceable netting agreements in accordance with subsections (1), (2) and (3).