

3.7 APPROVED FORM OF UNDERTAKING

THIS UNDERTAKING is entered into the [] day of [] 20[] BETWEEN:

- (1) [] of [] ("the Covenantor");
- (2) THE FINANCIAL CONDUCT AUTHORITY LIMITED ("the FCA") whose registered office is 25 The North Colonnade, Canary Wharf, London, E14 5HS; and
- (3) [] of [] ("the Principal") [and [] of [], [] of [], and [] of []] the individual partners of the Principal as such partners and as individuals **] +].

WHEREAS:

- (A) The Principal is authorised to carry on one or more regulated activities in the United Kingdom (as defined under the Financial Services and Markets Act 2000) by the FCA.
- (B) The Principal is required pursuant to the Financial Rules to maintain a Financial Resources Requirement (and the FCA has agreed that such Financial Resources Requirement may in part be represented by one or more undertakings in the form hereof to the extent that any undertaking(s) will not exceed the excess of 30% of the Principal's Base Requirement over the value of any Approved Bank Bond.
- (C) The Principal has requested the Covenantor to give an undertaking to the FCA for the purposes of the Principal's Financial Resources Requirement which the Covenantor has agreed to do.

NOW IT IS HEREBY AGREED AND DECLARED as follows:

1. Definitions

In this Undertaking:

"Base Requirement" has the meaning given in the Financial Rules;

"Business Day" means a day on which The International Stock Exchange of the United Kingdom Limited is open for business;

"Excluded Liabilities" means Liabilities which are expressed to be and in the opinion of the Insolvency Officer of the Principal [or, where relevant, the Insolvency Officer of a Partner**], do, rank junior to the Subordinated Liabilities in the insolvency of the Principal;

"Financial Resources" has the meaning given in the Financial Rules;

"Financial Resources Requirement" has the meaning given in the Financial Rules;

"the Financial Rules" means the rules in IPRU(INV) 3 of the *Handbook*;

"Insolvency" means and includes liquidation, winding up, bankruptcy and sequestration, administration, rehabilitation and dissolution (whichever term may apply to the Principal) or the equivalent in any other jurisdiction to which the Principal may be subject;

"Insolvency Officer" means and includes any person duly appointed to administer and distribute assets of the Principal in the course of the Principal's insolvency;

"Liabilities" means all present and future sums, liabilities and obligations payable or owing by the Principal [or any Partner**] (whether actual or contingent, jointly or severally or otherwise howsoever); [**"Partner"** means an individual partner of the Principal**];

"Senior Liabilities" means all Liabilities except all Liabilities in respect of any sums paid to the Principal under the terms of this Undertaking and Excluded Liabilities;

"Subordinated Liabilities" means all Liabilities to the Covenantor in respect of repayment of any sums paid to the Principal under the terms of this Undertaking. Any reference to any rules of the FCA is a reference to them as already amended and includes a reference to any revoked rules which may be remade with or without amendments, and to any future rules and/or amendments of them.

2. In consideration of the FCA agreeing to take this Undertaking into account for the purpose of determining compliance by the Principal with its Financial Resources Requirement the Covenantor with intent to bind its successors and assigns and any body corporate with which it may amalgamate or merge HEREBY UNDERTAKES with and to the FCA and the Principal that at any time after the occurrence of any Event of Default specified in paragraph 6 hereof ("Event of Default") and notwithstanding that any other Event of Default may have occurred prior thereto the Covenantor will on demand in writing made upon it by the FCA accompanied by a certificate of the FCA as referred to in paragraph 9 hereof ("the Certificate") pay to the Principal or as the case may be the FCA (as determined in accordance with paragraph 3 below) the sum of £[] ("the Specified Amount").
3. In the case of an Event of Default falling within any of sub-paragraphs (1)(a), (1)(b) or (1)(c) of paragraph 6 below the sum to be paid pursuant to paragraph 2 above shall be paid to the FCA to be used at its discretion for any lawful purpose of the FCA , and in the case of an Event of Default falling within sub-paragraph (1)(d) of paragraph 6 below the sum to be paid pursuant to paragraph 2 above shall be paid to the Principal.
4. The liability of the Covenantor hereunder shall not be affected or discharged and the Covenantor shall not be released from its obligations hereunder by any act, omission, matter or thing whatsoever whereby, if the Covenantor was treated as a surety, guarantor or cautioner for the Principal, its liability would or might have been so affected or discharged or it might have been so released.
5. the FCA may without notification to or the consent of the Covenantor and without affecting or discharging the Covenantor's liability hereunder or releasing the Covenantor from its obligations hereunder from time to time waive or omit or fail to exercise or delay exercising its rights hereunder in respect of any Event of Default and any such waiver, omission, failure or delay shall not prejudice or affect the FCA 's rights hereunder in respect of that Event of Default (except in the case of a waiver) or any other or further Event of Default (whether or not of the same kind).
6. (1) The following shall be Events of Default for the purposes hereof:
 - (a) the Principal is deemed to be insolvent (as determined in accordance with sub-paragraph (2) below);
 - (b) the Principal is unable or admits its inability to pay its debts as they fall due or makes a general assignment for the benefit of, or a compensation with, its creditors;

- (c) an encumbrancer takes possession or a receiver, judicial factor, or similar officer is appointed over all or any part of the undertaking or assets of the Principal;
- (d) the Principal shall in the bona fide opinion of the FCA have failed to maintain an excess of Financial Resources over its Financial Resources Requirement and in the bona fide opinion of the FCA shall not have remedied the same within seven days after being required by the FCA to restore the deficiency.

[(2) The Principal is deemed to become insolvent:

- (a) on the making of a winding-up order against it; or
- (b) on the passing of a resolution for a voluntary winding up in a case in which no statutory declaration has been made under Section 89 of the Insolvency Act 1986 or Article 534 of the Companies (Northern Ireland) Order 1986; or
- (c) on the holding of a creditors meeting summoned under Section 95 of that Act or Article 54 of that Order; or
- (d) on the appointment of an administrator for it under Section 9 of that Act; or
- (e) the occurrence of an event corresponding as nearly as may be to any of those mentioned in sub-paragraphs (a) to (d) above in any other jurisdiction to which the Principal may be subject.*]

[(2) The Principal is deemed to become insolvent:

- (a) in England and Wales on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under Section 420 of that Act; or
- (b) in Scotland, on the making of an award of sequestration on the estate of the partnership; or
- (c) in Northern Ireland, on the making of an adjudication of bankruptcy against any one of the partners; or
- (d) elsewhere on the occurrence of an event corresponding as nearly as may be to any of those mentioned above in this sub-paragraph.**]

[(2) The Principal is deemed to become insolvent if:

- (a) in England and Wales, a bankruptcy order is made against him; or in Scotland, an award of sequestration is made on his estate; or
- (b) in Scotland, and award of sequestration is made on his estate; or
- (c) in Northern Ireland, an adjudication of bankruptcy is made against him; or
- (d) elsewhere than in the United Kingdom, there occurs in relation to him any event corresponding to those mentioned above in this paragraph. *
* *]

7. This Undertaking shall be a continuing undertaking and shall apply irrespective of, and shall not be affected or discharged by, any matter relating to the compliance at any time by the Principal with its Financial Resources Requirement and in particular (but without limitation) the fact (if such be the case) that the Principal at any time complies or is able to comply with the Financial Resources Requirement without making use of this Undertaking or taking the same into account for the purposes of its Financial Resources Requirement.
8. This Undertaking shall apply in relation to any Event of Default occurring at or before the close of business on the earliest (if any) to occur of the following dates ("the Termination Date"):
 - (a) if the Covenantor gives the FCA not less than six months' written notice of its desire to terminate this Undertaking with effect from the date (being a date falling on or after the second anniversary of the date hereof) specified therein, such specified date;
 - (b) if the FCA and the Covenantor agree in writing to terminate this Undertaking with effect from the date specified in such agreement, such specified date; and
 - (c) if this Undertaking shall cease with effect from any day to be eligible to represent (in whole or in part) the Financial Resources Requirement to be maintained by the Principal pursuant to the Financial Rules, the date falling two business days after such day:

provided that no demand may be made upon the Covenantor hereunder later than midnight on the thirtieth business day after the Termination Date.

9.
 - (a) In any demand proceedings or otherwise under this Undertaking the occurrence of any Event of Default shall be conclusively proved by a certificate signed by a duly authorised signatory of the FCA which shall specify the Event of Default which has occurred and to which the certificate relates and shall give brief particulars thereof.
 - (b) If the FCA requires the Principal to remedy a breach of its Financial Resources Requirement as referred to in paragraph 6(1)(d) hereof, it shall notify the Covenantor thereof as soon as reasonably practicable thereafter.
10. A demand shall be duly made upon the Covenantor hereunder if it is signed by a duly authorised signatory of the FCA (accompanied by evidence reasonably satisfactory to the Covenantor of the signatory's authority) and is addressed to the Covenantor at its registered office [principal place of business in the United Kingdom] and posted by first-class mail and (if it has not been received prior thereto) the Covenantor shall be taken to have received such demand forty-eight hours after it is posted.
11. (1) The rights of the Covenantor to repayment of any sums paid to the Principal or, as the case may be, reimbursement by the Principal of any sums paid to the FCA under the terms of this Undertaking are subordinated to the Senior Liabilities and accordingly repayment of any such sums is conditional upon:
 - (a) (if an order has not been made or an effective resolution passed for the insolvency of the Principal) the Principal being in compliance with its Financial Resources Requirement prevailing at the time of payment by the Principal, and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that, subject to sub-paragraph (2) below, the Principal could make such payment and still be in compliance with such Financial Resources Requirement immediately thereafter;
 - (b) (if an order has been made or effective resolution passed for the insolvency of the Principal) [or if the Principal shall be

dissolved**] the Principal being solvent at the time of payment by the Principal, and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that the Principal could make such payment and still be solvent immediately thereafter. For the purposes of this sub-paragraph, the Principal shall be solvent if it is able to pay its debts in full and in determining whether the Principal is solvent there shall be disregarded obligations which are not payable or capable of being established or determined in the insolvency of the Principal and the Excluded Liabilities.

- (2) No payment of the Subordinated Liabilities shall be made at any time pursuant to sub-paragraph (1)(a) above unless:
 - (a) the Principal has given to the FCA prior written notification that it proposes to make such payment; and
 - (b) the FCA has notified the Principal in writing that it consents to such proposed payment.

The Principal shall give or procure that there are given to the FCA such information and auditor's certificate in relation to such proposed payment as the FCA may require.

- (3) For the purposes of sub-paragraph (1)(b) above a report given at any relevant time as to the solvency of the Principal by its Insolvency Officer, in form and substance acceptable to the FCA, shall in the absence of proven error be treated and accepted by the FCA, the Covenantor and the Principal as correct and sufficient evidence thereof.
- (4) If the Covenantor shall receive from the Principal [or any Partner**] payment of any sum in respect of the Subordinated Liabilities when any of the terms and conditions referred to in sub-paragraphs (1) or (2) above is not satisfied the payment of such sum shall be void for all purposes and [such sums shall be received by the Covenantor upon trust to return the same to the Principal+++] [the Covenantor shall at any time thereafter be bound to return such sum to the Principal or, as the case may be, its Insolvency Officer+] (and any sums so returned shall then be treated for the purposes of the Principal's obligations hereunder as if they had not been paid by the Principal and its original payment shall be deemed not to have discharged any of the obligations of the Principal hereunder). A request to the Covenantor for return of any sum under the foregoing provisions of this sub-paragraph (4) shall be in writing and shall be made by or on behalf of the Principal or, as the case may be, its Insolvency Officer.

12. The Covenantor will not without the prior written consent of the FCA :

- (i) assign or purport to assign to any person the whole or any part of the Subordinated Liabilities;
- (ii) purport to retain or set off at any time any amount payable by it to the Principal [or any Partner* *] against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Undertaking; amend any document evidencing or providing for the Subordinated Liabilities;
- (iii) amend any document evidencing or providing for the Subordinated Liabilities;

- (iv) attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Undertaking;
 - (v) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part thereof to the Senior Liabilities might be terminated, impaired or adversely affected;
 - (vi) take any security from any person for all or any part of the Subordinated Liabilities, and the Covenantor shall, upon obtaining security in breach of this Undertaking, hold the same [on trust for+++][as agent of and for the benefit of+] the Principal.
13. The Covenantor acknowledges that the FCA would seek to enforce any breach of the undertaking of the Covenantor contained in Clause 2 hereof by seeking an order for specific performance thereof and the Covenantor acknowledges that an order for specific performance would be the remedy appropriate to be granted to the FCA for such a breach.
14. This Undertaking forms the entire agreement as to the agreement of the Covenantor to provide an undertaking in relation to the Principal's Financial Resources Requirement. If there are any other terms relating thereto existing at the date hereof and not comprised in this Undertaking such terms shall be of no further force and effect. No variation of or amendment to this Undertaking shall be of any effect unless it is in writing subscribed by all the parties hereto. Any amendment to this Undertaking made or purported to be made without the consent of the FCA shall be void.
- [15. This Undertaking shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Principal by the retirement of the present partners or [either] [any] of them or the assumption of new partners or by a change of name it being provided that:
- (a) A retired partner shall continue to be liable for the payment of all sums due hereunder and implementation of all other obligations herein contained until such time as the Bank and the remaining partner[s] shall agree in writing to release a retired partner from such obligations; and
 - (b) In the event of a new partner being assumed as a partner of the Principal the other partners shall procure that said assumed partner shall become bound to the Covenantor as a party to these presents and shall execute such addendum hereto as the Covenantor and the FCA may consider necessary. **] +]
- [16. The Principal and the Partners hereby acknowledge to the Covenantor and the FCA that subject to the foregoing provisions of the Agreement they will be jointly and severally liable to the Covenantor for any sum paid by the Covenantor hereunder and that irrespective of whether such sum was paid by the Covenantor to the Principal or to the FCA . **] +]
17. This Undertaking is governed by [English law+++++] [the law of Scotland+] [Northern Irish law+++++] [, and for the benefit of the FCA solely the Covenantor irrevocably submits to the jurisdiction of the [English Courts+++++] [Court of Session, Scotland+] [Northern Irish Courts+++++] and appoints [] as agent for receipt of service of process in such courts. Such jurisdiction shall be non-exclusive except to the extent that such non-exclusivity prejudices the submission to such jurisdiction].

Notes:

- (1) To be executed by the Covenantor under seal - other parties to execute either under seal or under hand.
- (2) Words in brackets throughout this document marked with a single asterisk are for use where the Principal is a corporation, those marked with a double asterisk are for use where the Principal is a partnership, and those marked with a triple asterisk where the Principal is an individual.
- (3) Words in brackets marked with a single cross are for use where the agreement is governed by Scottish law, with two crosses where the agreement is governed by either Scottish or Northern Irish law, three crosses where it is governed by either English or Northern Irish law, four crosses where it is governed by Northern Irish law and five crosses where it is governed by English law. Thus, for instance, words marked ++* * would be for use where the Borrower is a partnership and the agreement is governed by either Scottish or Northern Irish law.
- (4) Words in brackets in paragraph 17 above only required where either the Covenantor or the Principal (or both) are not incorporated in any part of the United Kingdom.