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Policy and Business Practices

Discussion Draft #2

Commission on Banking Technique and Practice

Uniform Rules for Forfeiting – Discussion Draft #2

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1 **Article 1** ~~Article 1~~- Scope and Application of the Rules

2 The Uniform Rules for Forfaiting (URF) are rules that apply to a Forfaiting Transaction ~~on a~~
3 ~~Trade Date~~ when the ~~Forfaiting Agreement or Confirmation~~Parties expressly
4 ~~indicates~~indicate that ~~it~~their agreement is subject to these ~~Rules~~rules. They are binding on all
5 ~~parties~~Parties thereto except so far as ~~expressly~~ modified or excluded by ~~the~~ agreement.

6 **Article 2** ~~Article 2~~- Definitions

7 2.1 ~~2.1~~ For the purpose of these rules:

8 ~~Additional Recourse Event~~ means ~~any fact, event or circumstances which a~~
9 ~~Seller in a Forfaiting Agreement or a Confirmation expressly agrees may give rise~~
10 ~~to liability or recourse to it and which is additional to those provided in Article~~
11 ~~12.1 to 12.7.~~

12 **Availability Date** – means, ~~in either the Primary Market or the Secondary Market,~~ the
13 last day on which the Seller must deliver to the Buyer Satisfactory ~~Documentation in~~
14 ~~accordance with Articles 6 or 9~~Documents or satisfy any other Condition. In the Secondary
15 Market, if the Availability Date is described in a Forfaiting Confirmation as ‘immediately available’
16 or similar terms, that means the ~~date~~day falling 10 Business Days after the Trade Date.

17 **Business Day** - means a day on which ~~banks and financial institutions are generally~~
18 ~~open for the place of business of the type contemplated by the Forfaiting~~
19 ~~Transaction in the location where an act of each of the Parties and if a payment kind~~
20 ~~subject to these rules is involved in the principal centre to be performed is regularly open~~
21 for the ~~currency~~performance of ~~the Payment Claim~~such an act.

22 **Buyer** - means the ~~person~~Party buying the Payment Claim.

23 ~~Confirmation~~ means, ~~the Secondary Market document executed by the Seller~~
24 ~~and the Buyer reflecting the Secondary Sale Terms or as may be otherwise agreed~~
25 ~~by the Seller and the Buyer.~~

26 **Condition** – means, in the Primary Market a condition set out in the Forfaiting Agreement and, in
27 the Secondary Market, a condition set out in the Secondary Sale Terms and/or a Forfaiting
28 Confirmation; [the delivery of Satisfactory Documentation being, in both cases, a condition. ~~—~~.]

29 ~~Confirmation Date~~ means, ~~in the Secondary Market, the date on which the~~
30 ~~Seller receives the Confirmation duly executed by the Buyer.~~



31 **Credit Support Document** - means any document evidencing an obligation of a person other
32 than the Primary Obligor to make payment in respect of the Payment Claim ~~if~~.

33 ~~**Forfaiting Agreement** – means, the written agreement between~~ the Primary ~~Obligor fails to~~
34 ~~make payment or a~~ Forfeiter and the Initial Seller reflecting the terms of the Forfaiting
35 ~~Transaction.~~

36 ~~**Forfaiting Confirmation** – means the Secondary Market~~ document ~~issued~~ signed by the
37 ~~Primary Obligor supplementing or accompanying the Payment Claim. Seller and~~
38 ~~Buyer reflecting the Secondary Sale Terms or as may be otherwise agreed by the Seller and the~~
39 ~~Buyer.~~

40 **Forfaiting Transaction** - means the sale by the Seller and the purchase by the Buyer of the
41 Payment Claim on the terms of these ~~Rules~~ rules.

42 ~~**Forfaiting Agreement** – means, in the Primary Market, the written contractual~~
43 ~~obligation between the Primary Forfeiter and the Initial Seller reflecting the~~
44 ~~terms of the Forfaiting Transaction.~~

45 **Initial Seller** - means the Seller who first sells the Payment Claim to the Primary Forfeiter, which
46 could be a Primary Obligor when he creates the Payment Claim in favour of the Primary Forfeiter.

47 **Obligor** - means the Primary Obligor and/or any other obligor in respect of any Credit Support
48 Document.

49 **Parties** - means the parties to the Forfaiting Transaction (each a "Party").

50 **Payment Claim** - means all ~~the rights of a person~~ to receive ~~the legal valid binding and~~
51 ~~enforceable obligation to pay~~ payment from the Primary Obligor of a specified amount on a
52 specified date or dates or on demand ~~made on an Obligor.~~

53 **Points of Reserve** - means, in relation to the Forfaiting Transaction, those obligations of the
54 Seller that the Buyer has agreed may be satisfied as at the Reserve Date.

55 **Primary Forfeiter** - means the ~~person~~ Party who first purchased or otherwise acquired the
56 Payment Claim from the Initial Seller.

57 ~~**Primary Sale Terms Market** - means, in the Primary Market, the Forfaiting~~
58 ~~Agreement setting out all of the terms and conditions agreed in writing by the~~
59 ~~Parties on the Trade Date and the Required Documents specified as being~~
60 ~~deliverable by the Initial Seller in respect of the Forfaiting Transaction.~~



61 ~~Primary Market~~ means, in relation to a Forfaiting Transaction, a sale of a Payment
62 Claim by an Initial Seller to a Primary Forfeiter.

63 **Primary Obligor** - means the person or persons primarily responsible for payment of the
64 Payment Claim.

65 **Purchase Price** - means the amount (or the formulae for calculation of an amount) agreed
66 between the Seller and Buyer to be paid for a Payment Claim.

67 ~~Recourse Events~~ means each of the events set out in Article 12.

68 **Repurchase Terms** - means the terms on which the Seller ~~shall~~must repurchase any Payment
69 Claim from the Buyer if the Points of Reserve are not unconditionally or irrevocably satisfied by
70 the Seller ~~on or prior to~~by the Reserve Date.

71 **Required Documents** - means, in respect of the Forfaiting ~~Transaction Agreement or the~~
72 Forfaiting Confirmation:

73 ~~(a)~~ (a) the document or instrument evidencing the Payment Claim; together with any
74 document issued by the Primary Obligor supplementing or accompanying the Payment
75 Claim.;

76 ~~(b)~~ (b) any document or instrument which is, or should be, known by the Seller, as at
77 the Settlement Date, to be required to transfer ownership of the Payment Claim or to be
78 presented when enforcing or otherwise exercising rights to receive payment on the
79 relevant payment date in relation to the Payment Claim or the Credit Support
80 Documents;

81 ~~(c)~~ (c) any Credit Support Document;

82 ~~(d)~~ any Support Documentation;

83 ~~(d)~~ (e) any other document, specified in the Forfaiting Agreement or the
84 ~~confirmation~~Forfaiting Confirmation which may include documents relating to the
85 Underlying Transaction; and

86 ~~(e)~~ (f) any document ~~(whether identified specifically or described by type or~~
87 ~~nature)~~ which the Buyer is entitled to request pursuant to, in the case of a Forfaiting
88 Transaction in the Primary Market, Article 6.3 or, in the case of a Forfaiting Transaction
89 in the Secondary Market, Article 9 ~~or, if different, the terms of the Forfaiting~~
90 Agreement or Confirmation.4.

91 **Reserve Date** - means the date by which the Points of Reserve have to be satisfied by the Seller.



92 **Satisfactory ~~Documentation Documents~~** - means Required Documents that are satisfactory
93 in accordance with the ~~terms and Conditions of, in the case of a Forfaiting~~
94 ~~Transaction in the Primary Market, Forfaiting Agreement or~~ the Forfaiting ~~Agreement~~
95 ~~or, in the case of a Forfaiting Transaction in the Secondary Market,~~
96 ~~and Confirmation~~ as determined pursuant to Article 6 or Article 9 as applicable ~~or, if different,~~
97 ~~the terms of the Forfaiting Agreement or Confirmation.~~

98 **Secondary Market** - means ~~, in relation to a Forfaiting Transaction,~~ a sale of a Payment
99 Claim by a Primary Forfeiter or a subsequent Buyer to, in each case, another Buyer ~~.~~

100 **Secondary Sale Terms** - means, in the Secondary Market, all of the terms and conditions of the
101 Forfaiting Transaction agreed orally and/or by written exchanges between the Seller and the
102 Buyer on or before the Trade Date.

103 **Seller** - means the person ~~Party~~ selling the Payment Claim ~~and who may be a Primary~~
104 ~~obligor.~~

105 **Settlement Date** - means the ~~dateday~~ falling three (3) ~~business~~ Business Days after the date on
106 which the Buyer has determined that it has received Satisfactory Documents, or if relevant is
107 deemed to have received, Satisfactory ~~Documentation~~ Documents.

108 ~~Secondary Sale Terms~~ - means, ~~in the Secondary Market, all of the terms and~~
109 ~~conditions agreed orally by, and/or by written exchanges between the Seller and~~
110 ~~the Buyer in respect of the Forfaiting Transaction on or before the Trade Date~~
111 ~~and the Required Documents specified as being deliverable by the Seller in~~
112 ~~respect of the Forfaiting Transaction.~~

113 ~~Support Documentation~~ - means such documents relating to the Underlying
114 ~~Transaction as specified in the Forfaiting Agreement or Confirmation.~~

115 **Trade Date** - means:

116 (a) ~~(a)~~ - in relation to a Forfaiting Transaction taking place in the Primary Market, the
117 date on which the Primary Forfeiter and the Initial Seller ~~executes~~ sign the Forfaiting
118 Agreement ~~in respect of the Forfaiting Transaction~~; or

119 (b) ~~(b)~~ - in relation to a Forfaiting Transaction taking place in the Secondary Market, -the
120 date on which the Seller and Buyer agree ~~either orally or by written exchange,~~
121 Secondary Sale Terms.



122 **Under Reserve** – means, in either the Primary or the Secondary Market, any payment made or to
123 be made by the Buyer that is specified as being conditional upon Points of Reserve.

124 **Underlying Transaction** - means the transaction pursuant to which the Payment ~~claim~~Claim
125 arises.

126 ~~2.2~~ 2.2 Interpretations

127 Unless the context otherwise requires~~;~~:

128 (a) any reference to the singular number shall include the plural and vice versa~~;~~:

129 (b) ~~headings are for convenience only and shall not affect the interpretation of any Article~~³

130 i

131 (c) ~~all rules shall relate to the Primary Market and the Secondary Market except where~~
132 ~~expressly provide to the contrary.~~

133 [Add more interpretations]

134 Article 3 - Without recourse

135 ~~3.1~~ 3.1 On the relevant Settlement Date, the Seller ~~shall, subject to Article 3.2 in the case~~
136 ~~of a Seller who is the Primary Obligor, sell~~sells to the Buyer ~~and the Buyer buys from the~~
137 ~~Seller~~ the Payment Claim without recourse with the consequence that the Buyer shall have no
138 claim whatsoever against the Seller, any prior seller or the Primary Forfeiter for the non-payment
139 of any amount due in respect of the Payment Claim excepting, and subject always to, the
140 provisions of ~~Articles~~Article 12 ~~and 13~~ or, if different, the Forfeiting Agreement or the
141 ~~Forfeiting~~ Confirmation.

142 ~~3.2~~ 3.2 Nothing in these ~~Rules~~rules shall affect or reduce the obligations of a Seller who is a
143 Primary Obligor or any other Obligor in respect of ~~that~~ Payment Claim and ~~recourse~~rights
144 shall exist as against ~~such parties~~those persons as permitted under the terms of, ~~of~~ and the
145 law applicable to, ~~the~~ that Payment Claim.



146 ~~Article 4~~ ~~Article 4 – Creation of Forfaiting Transactions Agreements~~ in the Primary
147 Market

148 ~~4.1~~ ~~4.1~~ — In order to create a Forfaiting Transaction in the Primary Market there ~~shall~~must be an
149 agreement on the Trade Date between the Primary Forfeiter and the Initial Seller to sell the
150 Payment Claim. Such agreement shall be a ~~Forfaiting Agreement~~ if it is made subject to these
151 ~~Rules~~rules.

152 ~~4.2~~ ~~4.2~~ — ~~It~~ is recommended ~~that~~ a Forfaiting Agreement contain at a minimum:

153 ~~(a)~~ ~~(a)~~ — details of the Payment Claim including the amount and currency, the names of
154 the Primary Obligor and any other Obligors;

155 ~~(b)~~ ~~(b)~~ — ~~a list of~~ the Required Documents ~~to be delivered by, or on behalf of, the~~
156 ~~Initial Seller or Primary Obligor to the Primary Forfeiter~~ known at the date of
157 the Forfaiting Agreement ;

158 ~~(c)~~ ~~(d)~~ — the Availability Date;

159 ~~(d)~~ ~~(e)~~ — the Purchase Price; and

160 ~~(e)~~ ~~(f)~~ — the estimated Settlement Date if available.

161 ~~Article 5~~ ~~Article 5 –~~ Conditions in the Primary Market

162 ~~5.1~~ ~~5.1~~ — ~~Each Party must endeavour to satisfy in full all Conditions in accordance with the~~
163 ~~Forfaiting Agreement by the relevant Availability Date.~~

164 ~~5.2~~ If any Condition ~~forming part of the Forfaiting Agreement~~ remains unsatisfied ~~or any~~
165 ~~part of the Required Documents to be delivered~~ by the ~~Initial Seller to the Primary~~
166 ~~Forfeiter remains to be delivered on the~~ relevant Availability Date; the Parties may agree
167 to postpone that Availability Date to such date as the Parties ~~reasonably~~ determine as being the
168 date on which the Condition should be satisfied.

169 ~~5.2~~ — ~~If any Condition is not satisfied on or prior to an Availability Date and the Parties~~
170 ~~fail to agree a, or a further, revised Availability Date, the Forfaiting Transaction~~
171 ~~shall be cancelled at the option of the Party for whose benefit the Condition has~~
172 ~~been granted, such cancellation to take effect upon receipt of notice of~~
173 ~~cancellation by the other Party.~~



174 ~~5.3~~ The Parties shall use all reasonable endeavours to satisfy in full all Conditions in
175 accordance with the Forfeiting Agreement on or prior to the relevant Availability
176 Date.

177 ~~(a) Article 6~~.

178 **Article 6 - Satisfactory ~~Documentation~~Documents in the Primary Market**

179 ~~6.1~~ ~~6.1~~ Documentation shall be delivered to ~~The Initial Seller~~ must deliver the Required
180 Documents to the Primary Forfeiter no later than the relevant Availability Date.

181 ~~6.2~~ ~~6.2~~ The Primary Forfeiter ~~shall~~must review the Required Documents (or any clarification,
182 revision or addition to any previously delivered Required Documents) to determine whether they
183 constitute Satisfactory ~~Documentation~~Documents and in so doing may consider, without
184 limitation, whether or not:

185 ~~(a)~~ ~~(a)~~ it possesses ~~satisfactory~~ evidence as to the authenticity of the Required
186 Documents;

187 ~~(b)~~ ~~(b)~~ the ~~documents~~Required Documents delivered are in conformity with the
188 provisions of the Forfeiting Agreement; and

189 ~~(c)~~ ~~(c)~~ each of the Payment Claim ~~is a~~ and the obligations contained in any Credit
190 Support Document are legal, valid, binding and enforceable ~~obligation~~obligations of
191 the ~~Obligor~~relevant Obligor to pay the relevant amount ~~of the Payment Claim~~ in
192 full without set-off or counterclaim or any deduction or withholding for tax or otherwise
193 when due in the currency of the Payment Claim and ~~is~~are freely transferable in
194 accordance with the Required Documents.



195 ~~6.3~~ ~~6.3~~ — If the documents delivered are ~~unsatisfactory~~not Satisfactory Documents or additional
196 documents are required or considered to be necessary by the Primary Forfeiter, the Primary
197 Forfeiter ~~shall~~must notify the Initial Seller of such determination (providing ~~reasonable~~
198 of such determination and what the Primary Forfeiter requires further) and ~~the Parties shall~~
199 ~~use reasonable endeavours~~each Party must endeavour to clarify or agree any necessary
200 revisions or additions to the Required Documents.

201 ~~6.4~~ ~~6.4~~ — The Primary Forfeiter ~~shall~~must notify the Initial Seller ~~as soon as~~when it has
202 ~~determined that it has~~ received Satisfactory Documents. The Primary Forfeiter ~~shall~~must act
203 ~~reasonably in accordance with market practice~~ in its determination that the Required
204 Documents are satisfactory.

205 ~~6.5~~ — ~~The Primary Forfeiter may not claim that it has received unsatisfactory Required~~
206 ~~Documents after the relevant Settlement Date unless payment is made Under~~
207 ~~Reserve in which case the Primary Forfeiter may not claim that it has received~~
208 ~~unsatisfactory Required Documents after the relevant Reserve Date.~~

209 ~~Article 7~~ ~~Article 7 – Creation of Forfeiting Transactions~~Confirmations in the
210 Secondary Market

211 ~~7.1~~ ~~7.1~~ — In order to create a Forfeiting Transaction in the Secondary Market there ~~shall~~must be
212 an agreement ~~on the Trade Date~~ between a Primary Forfeiter or a subsequent Buyer to, in each
213 case, another Buyer ~~to sell the Payment Claim~~. Such agreement shall constitute the Secondary
214 Sale Terms if it is made subject to these ~~Rules~~rules.

215 ~~7.2~~ ~~7.2~~ — The Party which has agreed to prepare the Forfeiting Confirmation (or in the absence of
216 agreement the Seller) ~~shall~~must deliver to the other Party a duly ~~executed~~signed Forfeiting
217 Confirmation, within one ~~Business Day~~ of the Trade Date.

218 ~~7.3~~ ~~7.3~~ — The Forfeiting Confirmation ~~shall~~must set out the Secondary Sale Terms ~~and if the~~
219 ~~Secondary Sale Terms include a description of any kind as to the identity of the~~
220 ~~Primary Forfeiter or the type of institution of the Primary Forfeiter, the~~
221 ~~Confirmation shall confirm such details.~~

222 ~~7.4~~ ~~7.4~~ — The Party receiving the Forfeiting Confirmation must within two Business Days of receipt
223 either ~~execute~~

224 ~~(a)~~ ~~sign and deliver~~return it to the other Party ~~the Confirmation within two~~
225 ~~Business Days of the date on which it has received it or within the same~~
226 ~~period;~~ or



227 (b) notify the other Party of its disagreement with the terms of the Forfeiting Confirmation
228 including in such notification details of the points of disagreement.

229 and if the Party receiving the Forfeiting Confirmation fails to satisfy either of (a) or (b) then that
230 Party is deemed to have accepted the Forfeiting Confirmation as received by it.

231 7.5 If the Party receiving the Forfeiting Confirmation has notified details of the points of
232 disagreement and the Parties shall use reasonable endeavours each Party must
233 endeavour to agree a revised Forfeiting Confirmation. - If the Parties fail to agree a revised
234 Forfeiting Confirmation within two Business Days of the Buyer's notification, the Parties may take
235 such action as is available to them under applicable law.

236 Article 8 ~~Article 8~~ - Conditions in the Secondary Market

237 8.1 ~~8.1~~ Each Party must endeavour to satisfy in full all Conditions in accordance with the
238 Forfeiting Confirmation by the relevant Availability Date.

239 8.2 If any Condition remains unsatisfied ~~or any part of the Required Documents to be~~
240 ~~delivered by a Seller to a Buyer remains to be delivered~~ on the relevant Availability
241 Date, the Parties may agree to postpone that Availability Date to such date as the Parties
242 ~~reasonably~~ determine as being the date on which the Condition should be satisfied.

243 ~~8.2 If the Condition is not satisfied on or prior to an Availability Date and the Parties~~
244 ~~fail to agree a, or a further, revised Availability Date, the Forfeiting Transaction~~
245 ~~shall be cancelled at the option of the Party for whose benefit the Condition has~~
246 ~~been granted, such cancellation to take effect upon receipt of notice of~~
247 ~~cancellation by the other Party.~~

248 ~~8.3 The Parties shall use all reasonable endeavours to satisfy in full all Conditions in~~
249 ~~accordance with the Confirmation on or prior to the relevant Availability Date.~~

250 Article 9 ~~Article 9~~ - Satisfactory Documentation for Documents in the Secondary
251 Market

252 9.1 ~~9.1 Documentation shall be delivered~~ The Seller must deliver the Required Documents
253 to the Buyer by the Seller no later than the relevant Availability Date.

254 9.2 ~~9.2 From the date on which the~~ The Buyer receives must review the Required
255 Documents (including a clarification, revision or addition to any previously delivered Required
256 Documents), ~~the Buyer shall review the Required Documents (or any such~~



257 ~~clarification, revision or addition) to satisfy itself~~ when received, to determine whether
258 ~~or not:~~

259 ~~(a) (a) — that~~ the Required Documents are supported by satisfactory evidence as to its
260 authenticity ~~to the extent reasonable in the context of the Forfaiting~~
261 ~~Transaction;~~

262 ~~(b) (b) — that~~ the Required Documents are in accordance with the Forfaiting
263 Confirmation; and

264 ~~(c) (c) — that~~ each of the Payment Claim ~~is a~~ and the obligations contained in any Credit
265 Support Document are legal, valid, binding and enforceable ~~obligation~~ obligations of
266 the ~~Obligors~~ relevant Obligor to pay the relevant amount ~~of the Payment Claim~~ in
267 full without set-off or counterclaim or any deduction or withholding for tax or otherwise
268 when due in the currency of the Payment Claim and ~~is~~ are freely transferable in
269 accordance with the Required Documents ~~to the extent reasonable in the context~~
270 ~~of the Forfaiting Transaction.~~

271 9.3 ~~9.3~~ — The Buyer ~~shall use reasonable efforts to review the Required Documents~~
272 ~~as promptly as possible provided that the~~ Seller may at any time ~~serve a notice~~
273 ~~on~~ notify the Buyer requiring it to finish its review within a stated time which shall not be less
274 than five Business Days from the date of receipt of the notice.

275 9.4 ~~9.4~~ — If the ~~Required documents delivered are not Satisfactory~~ Documents ~~are~~
276 ~~unsatisfactory~~ or additional Documents are ~~reasonably~~ required or considered to be
277 ~~reasonably~~ necessary by the Buyer ~~in each case as permitted by Article 9.2~~, the Buyer
278 ~~shall~~ must notify the Seller of such determination (providing ~~reasonable~~ details of such
279 determination and what the Buyer requires further) and the Parties ~~shall use reasonable~~
280 ~~endeavours~~ must endeavour to clarify or agree any necessary revisions or additions to the
281 Required Documents. If no such notice is given by the Buyer by the end of the period specified in
282 any notice served by the Seller pursuant to Article 9.3, the Buyer shall be deemed to have
283 received Satisfactory ~~Documentation~~ Documents.

284 9.5 ~~9.5~~ — The Buyer ~~shall~~ must notify the Seller ~~as soon as~~ when it has ~~determined that it has~~
285 received Satisfactory ~~Documentation~~ Documents. The Buyer ~~shall~~ must act ~~reasonably~~ in
286 ~~accordance with market practice~~ in its determination that the Required Documents are
287 satisfactory.



288 Article 10 9.6 — Payment in the Primary and Secondary Markets

289 10.1 The Buyer ~~may not claim that it has received unsatisfactory Required Documents~~
290 ~~after the relevant~~ must pay the Purchase Price by crediting the Seller's account on the
291 Settlement Date ~~unless~~.

292 10.2 Payment must be made in the currency specified in the Forfaiting Agreement or Forfaiting
293 Confirmation without deduction or counter-claim.

294 10.3 Payment must be made in immediately available funds at the place stated in the Forfaiting
295 Agreement or Forfaiting Confirmation as the case may be, provided such Settlement Date is a
296 Business Day in that place. If the Settlement Date is not a Business Day, payment is made will be
297 due on the first banking day in that place following the Settlement Date.

298 Article 11 - Payment Under Reserve ~~in which case the Buyer may not claim that it~~
299 ~~has received unsatisfactory Required Documents after the relevant Reserve~~
300 ~~Date.~~

301 ~~Article 10 — Payment Under Reserve~~

302 11.1 ~~10.1~~ Notwithstanding Articles 6 or 9, if the Parties agree to include in or vary the Primary
303 Sale Terms ~~terms in the Forfaiting Agreement~~ or the Secondary Sale Terms so that payment by
304 the Buyer can be made Under Reserve, the Forfaiting Agreement or the Forfaiting Confirmation,
305 as the case may be, ~~shall~~ must specify or be varied to specify (a) the Points of Reserve, (b) the
306 date (the "Reserve Date") by which the Points of Reserve ~~shall~~ must be unconditionally satisfied
307 by the Seller and (c) the Repurchase Terms ~~and in~~ In the absence of any agreement between
308 the Parties in the Forfaiting Agreement or the Forfaiting Confirmation, ~~or~~ as the case may be, the
309 Repurchase Terms ~~shall~~ must use the original all-in discount rate for the remaining period
310 (utilising, save where otherwise agreed, in the case where a floating rate forms part of the
311 discount rate, the floating rate determined under the original sale terms).

312 ~~10.2~~ [Each Party must endeavour to satisfy the Points of Reserve by the relevant Reserve Date]

313 11.2 If the Seller fails to unconditionally satisfy the Points of Reserve ~~on or prior to~~ by the relevant
314 Reserve Date, and the Parties fail to agree an extension to such Reserve Date ~~on or prior to~~ by
315 the relevant Reserve Date, the Buyer shall be entitled to request that the Seller repurchase from
316 the Buyer the Payment Claim on the Repurchase Terms.

317 11.3 ~~10.3~~ Within five Business Days of receipt of the ~~Buyer's~~ Buyer's request in accordance with
318 Article ~~10.2, the Buyer~~ 11.2, the Seller must complete the repurchase from the Buyer of the
319 relevant Payment Claim on the Repurchase Terms and pay the relevant amount by crediting the
320 Buyer's account and otherwise complying with Article 10.



321 11.4 Within five Business Days of receipt of payment by the Buyer, the Buyer's shall ~~be obliged to~~
322 return to the Seller all Required Documents received from the Seller ~~(save for any Required~~
323 ~~Documents which the Seller and the Buyer had agreed should be passed to any~~
324 ~~third party) and shall do and must take~~ all things ~~(including but without limitation~~
325 ~~co-operating in recovering Required Documents so passed on) and execute actions~~
326 ~~and sign~~ all documents necessary to ensure that ~~title to ownership of~~ the Payment Claim ~~is and~~
327 ~~Required Documents are~~ re-transferred to the Seller.

328 ~~10.4~~ ~~Within two Business Days of receipt of the Required Documents required to be~~
329 ~~returned in accordance with Article 10.3, the Seller shall complete the~~
330 ~~repurchase from the Buyer of the relevant Payment Claim on the Repurchase~~
331 ~~Terms.~~

332 ~~Article 11~~ ~~Payment in the Primary and Secondary Markets~~

333 ~~11.1~~ ~~The Buyer shall pay the Purchase Price for value on the Settlement Date.~~

334 ~~11.3~~ ~~Payment shall be made in the currency specified in the Forfeiting Agreement or~~
335 ~~Confirmation without deduction or counter claim.~~

336 Article 12 ~~Article 12~~ ~~Liabilities of the Parties~~

337 12.1 ~~12.1~~ A Party ~~under a Forfeiting Agreement or Confirmation~~ Transaction shall be liable
338 to the other Party ~~under that Forfeiting Agreement or Confirmation~~ if any of the
339 following ~~Recourse Events~~ events occur:

340 (a) ~~(a)~~ it does not have the power to execute, deliver and perform its obligations under
341 the Forfeiting Agreement or the Forfeiting Confirmation or has failed to take such action
342 as is necessary to ensure proper execution, delivery or performance; or

343 (b) ~~(b)~~ its obligations in relation to the Forfeiting Agreement or under the Forfeiting
344 Confirmation do not constitute its legal, valid and binding obligations enforceable in
345 accordance with their terms; ~~or.~~



346 ~~(e) — it has not complied with and/or has breached any obligations binding on it~~
347 ~~under the Payment Claim or the Underlying Transaction;⁴ or~~

348 12.2 (d) — A Seller shall be liable to its Buyer if any of the following events occur:

349 (a) any event listed in Article 12.1; or

350 (b) it is actually aware of any event, circumstances or information relating to the
351 Payment Claim or the Underlying Transaction an encumbrance, set-off or
352 counterclaim, or other preferential right in favour of a third party which would materially
353 adversely affect the likelihood of payment of the Payment Claim on its due date
354 including, without limitation, an encumbrance, set-off or counterclaim, or
355 other preferential right in favour of a third party; or

356 (c) (e) — either the Payment Claim or the Credit Support Documents have not been
357 irrevocably and unconditionally transferred to the Buyer; or

358 (d) (f) — it is not, or will not be, on the relevant Settlement Date, the sole legal and
359 beneficial owner of the Payment Claim.

360 ~~12.2. Subject to Article 12.1 an Initial the above, a Seller who is not a Primary Obligor shall~~
361 ~~sell to the Primary Forfeiter without recourse to it.~~

362 ~~12. subject to Article 12.3.1 — Subject to Articles 12.1 and 12.3.2 a Seller who is a~~
363 ~~Primary Forfeiter or 12.4 shall sell to its Buyer without recourse to it provided that the Seller~~
364 ~~in the Forfeiting Confirmation has irrevocably and unconditionally delivered to the Buyer all~~
365 ~~Required Documents that constitute Satisfactory Documentation Documents.~~

366 12.3 An Initial Seller shall be liable to the Primary Forfeiter if any of the following events occur:

367 (a) any event listed in Article 12.3.1 or 12.2-; or

368 (b) [it has not complied with and/or has breached any obligations binding on it under the
369 Payment Claim or the Underlying Transaction; or]

370 (c) it is actually aware of any event, circumstances or information relating to the Payment
371 Claim or the Underlying Transaction which would materially adversely affect the
372 likelihood of payment of the Payment Claim on its due date.

⁴ This paragraph is crucial as it will provide recourse to a seller-exporter who has failed to perform under the terms of the Underlying Transaction i.e. this covers the “commercial risk” and it is on this basis that 12.3 has been deleted. Given this purpose the Group should consider if this wording is suitably strong and comprehensive.



373 Subject to the above, an Initial Seller who is not a Primary Obligor shall sell to the Primary
374 Forfeiter without recourse to it provided that the Initial Seller in the Forfeiting Agreement has
375 irrevocably and unconditionally delivered to the Primary Forfeiter all Required Documents (if
376 available) that constitute Satisfactory Documents.

377 12.4 The Primary Forfeiter shall be liable to its Buyer if any of the following ~~Recourse Events~~ events
378 occur:

379 (a) ~~(a)~~ any event listed in Article 12.1 or 12.2; or

380 (b) it has not taken all reasonable steps to verify the authenticity and binding nature of the
381 signatures of the Initial Seller and the Obligors on the Required Documents provided to
382 the Primary Forfeiter, or obtained satisfactory legal opinions in lieu thereof; or

383 (c) ~~(b)~~ it did not, at the time it purchased the Payment Claim, take all reasonable steps
384 to verify that the relevant Payment Claim is legal, valid, binding and enforceable against
385 the Primary Obligor and that the Payment Claim (or the benefit of it) is capable of being
386 freely transferred/assigned; or

387 (d) ~~(e)~~ it has not satisfactorily completed "Know Your Customer", and anti-
388 money laundering checks on the Initial Seller and checked that the Required
389 Documents reflect the relevant Underlying Transaction under the regulatory regime
390 to which the Primary Forfeiter is subject.

391 ~~12.4~~ Subject to ~~Article 12.4~~ the above, a Seller who is ~~not subject to Articles 12.2 to~~
392 ~~12.3 (inclusive)~~ a Primary Forfeiter shall sell to its Buyer without recourse to it: provided that
393 the ~~Seller~~ Primary Forfeiter in the ~~Forfeiting~~ Confirmation has irrevocably and unconditionally
394 delivered to the Buyer all Required Documents (if available) that constitute Satisfactory
395 ~~Documentation~~ Documents.

396 12.5 ~~12.8~~ The ~~Seller~~ Parties may agree to ~~Additional Recourse Events as set out in the~~
397 ~~Forfeiting Agreement~~ any additional fact, event or ~~Confirmation or as requested by the~~
398 ~~Buyer~~ circumstance for the purposes of any of the above articles in Article 12.

399 12.6 ~~12.9~~ A Seller is ~~normally~~ only liable to its immediate Buyer but may agree in a Forfeiting
400 Agreement or in a ~~Forfeiting~~ Confirmation that- it shall be liable to Buyers other than its
401 immediate Buyer in respect of all or any of the above agreed ~~Recourse Events~~ events either by
402 stating that liability for such recourse Events are for the benefit of such future Buyers or
403 by permitting assignment of the liability for such Recourse Events or by any other
404 legally effective means.

405 12.7 ~~12.10~~ In all cases, the ~~Recourse Events~~ relevant events set out above as between the Seller
406 and its Buyer shall survive execution of the Forfeiting Agreement or the ~~Forfeiting~~ Confirmation
407 and the Settlement Date.



408

409 ~~Article 13 – Effect of Recourse Events~~

410 ~~12.8~~ Nothing in any part of the rules shall change the liability of a Seller as set out in this Article 12.

411 ~~12.9~~ If ~~a Recourse Event~~ an event occurs so that a Party is liable to the other Party then the without
412 recourse provisions of ~~these~~ the rules shall no longer apply and the ~~Seller~~ Parties shall have such
413 liabilities ~~to the Buyer~~ as are determined under the relevant applicable law.

414 ~~Article 13~~ ~~Article 14~~ - Notices

415 ~~13.1~~ ~~14.1~~ Any notice, ~~document~~ or other communication, ~~including any Confirmation,~~
416 ~~(other than Secondary Sales Terms made orally)~~ delivered in respect of the Forfaiting Transaction
417 ~~shall~~ must be in writing and ~~shall~~ may be made by electronic means, fax or letter ~~(or if the~~
418 ~~Parties so agree) by e-mail~~ to the relevant ~~contact~~ numbers and addresses set out in the
419 Forfaiting Agreement or the ~~Forfaiting~~ Confirmation.

420 ~~13.2~~ ~~14.2~~ Any notice, ~~document or other~~ communication ~~or document sent~~, including any
421 ~~Forfaiting~~ Confirmation, shall be deemed to have been received:

422 ~~(a)~~ ~~(a)~~ if sent electronically, ~~as the parties may agree or, if not agreed~~ on the day
423 of transmission;

424 ~~(b)~~ ~~(b)~~ if sent by fax, with a confirmed receipt of transmission from the sending
425 machine, on the day on which transmitted; and

426 ~~(c)~~ ~~(c)~~ if sent by letter, ~~only if by hand~~ on actual delivery;

427 ~~provided that a~~ notice ~~or communication~~ given in accordance with the above but received on
428 a day which is not a Business Day or after normal business hours in the place of receipt shall be
429 deemed to have been received on the next Business Day.

430 ~~Article 14~~ ~~Article 15~~ - ~~Funding Compensation for Break funding~~

431 ~~14.1~~ ~~15.1~~ Unless specified in the Forfaiting Agreement or the ~~Forfaiting~~ Confirmation if the
432 Forfaiting Transaction is cancelled in accordance with the ~~Rules~~ rules, neither Party shall be
433 obliged to compensate the other Party for any costs or expenses incurred in unwinding, breaking
434 or redeploying any funding taken by the other Party in connection with the Forfaiting
435 Transaction.

436 ~~14.2~~ ~~15.2~~ Nothing contained in Article ~~15~~ 14.1 shall otherwise affect the rights of one Party to claim
437 against the other Party for any breach by the other Party of any term of the Forfaiting Agreement
438 or ~~Forfaiting~~ Confirmation.



439 ~~Article 16 – Force Majeure~~

440 ~~Article 17 – Knowledge of Parties~~

441 ~~It shall be assumed (unless a Party has, in respect of itself, specified in writing to~~
442 ~~the other to the contrary on or prior to the Trade Date) that each Party:~~

443 ~~(a) is fully aware of the legal, regulatory and commercial aspects of the~~
444 ~~Forfaiting Transaction they are entering into;~~

445 ~~(b) has obtained such information concerning the Forfaiting Transaction as it~~
446 ~~deems appropriate to make an informed decision to enter into the~~
447 ~~Forfaiting Transaction; and~~

448 ~~(c) is solely responsible for making its own independent appraisal and investigations~~
449 ~~of all risks arising under or in connection with the Forfaiting Transaction.~~

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