

PRESCRIBED QUALIFYING UNDERTAKING

**THIS UNDERTAKING IS ENTERED INTO**

**THE DAY OF 20 BETWEEN**

- (1) [ ] of [ ] (“the Bank” or “Holding Company”)
- (2) FINANCIAL CONDUCT AUTHORITY whose registered office is at 25 The North Colonnade, Canary Wharf, London E14 5HS (“FCA”) and
- (3) [ ] of [ ] (“the Principal”)

**WHEREAS**

- (A) The Principal is regulated by FCA
- (B) The Principal is required to maintain financial resources to meet the provisions of Chapter 5 of the Interim Prudential Sourcebook as they apply to the Principal and FCA has agreed that the Financial Resources Requirement may in part be represented by one or more undertakings in the form hereof
- (C) The Principal has requested the Bank or Holding Company to give an undertaking to FCA for the purposes of the Principal’s Financial Resources Requirement which the Bank or Holding Company has agreed to do

**NOW THESE PRESENT WITNESS** and it is hereby agreed and declared as follows:

**1.** In this Undertaking:

“Business Day”

means a day on which the Bank or Holding Company is open for business;

“Excluded Liabilities”

means Liabilities which are expressed to be and in the opinion of the liquidator of the Principal, do, rank junior to the Subordinated Liabilities in such liquidation;

“Financial Resources Requirement”

means the amount of liquid capital which the Principal is, pursuant to the Rules, required to maintain at any particular time;

“Interim Prudential Sourcebook”

means the Interim Prudential Sourcebook for Investment Businesses made by the FCA;

“Liabilities”

means all present and future sums, liabilities and obligations payable or owing by the Principal (whether actual or contingent, jointly or severally or otherwise howsoever);

“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 of the Principal to the Bank or Holding Company in respect of repayment of any sums paid to the Principal under the terms of this Undertaking;

“the Rules”

means the Rules of FCA from time to time; the term

“liquid capital”

has the meaning ascribed to it in the Rules;

any reference to an enactment is a reference to it as already amended and includes a reference to any repealed enactment which it may re-enact, with or without amendments, and to any future re-enactment and/or amendment of it.

2. (a) In consideration of FCA agreeing to take this Undertaking into account for the purpose of determining compliance by the Principal with its Financial Resources Requirement the Bank or Holding Company with intent to bind its successors and assigns and any body corporate with which it may amalgamate or merge HEREBY UNDERTAKES with and to FCA and the Principal that at any time after the occurrence of any Event of Default specified in paragraph 5 hereof (“Event of Default”) and notwithstanding that any other Event of Default may have occurred prior thereto the Bank or Holding Company will on demand in writing made upon it by FCA accompanied by a certificate of FCA as referred to in paragraph 8 hereof (“the Certificate”) pay to the Principal the sum of £[ ] (“the Specified Amount”).  
  
(b) The Bank or Holding Company shall pay the Specified Amount to such account of the Principal as FCA may specify.
3. The liability of the Bank or Holding Company hereunder shall not be affected or discharged and the Bank or Holding Company shall not be released from its obligations hereunder by any act, omission, matter or thing whatsoever whereby, if the Bank or Holding Company was treated as a surety or guarantor for the Principal, its liability would or might have been so affected or discharged or it might have been so released.
4. FCA may without notification to or the consent of the Bank or Holding Company and without affecting or discharging the Bank’s or the Holding Company’s liability hereunder or releasing the Bank or Holding Company 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 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).

5. The following shall be Events of Default for the purposes hereof:
- (a) the Principal is deemed to be unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986;
  - (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 composition with, its creditors;
  - (c) an encumbrancer takes possession, or a receiver, administrator or similar officer is appointed, of all or any part of the undertaking or assets of the Principal;
  - (d) the Principal shall in the opinion of FCA be in breach of its Financial Resources Requirement and in the opinion of FCA shall not have remedied such breach within 5 Business Days after being required by FCA to restore the deficiency.
6. 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.
7. 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 Bank or Holding Company gives 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 FCA and the Bank or Holding Company 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 Rules, the date falling two Business Days after such day. Provided that no demand may be made upon the Bank or Holding Company hereunder later than midnight on the thirtieth Business Day after the Termination Date.
8. (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 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 FCA requires the Principal to remedy a breach of its Financial Resources Requirement as referred to in paragraph 5(d) hereof, it shall notify the Bank or Holding Company thereof as soon as reasonably practicable thereafter.

9. A demand shall be duly made upon the Bank or Holding Company hereunder if it is signed by a duly authorised signatory of FCA (accompanied by evidence reasonably satisfactory to the Bank or Holding Company of the signatory's authority) and is addressed to the Bank or Holding Company at its registered office [principal place of business in the UK] and posted by first class mail and (if it has not been received prior thereto) the Bank or Holding Company shall be taken to have received such demand forty-eight hours after it is posted.
10. (a) The rights of the Bank or Holding Company to repayment of any sums paid to the Principal under the terms of this Undertaking are subordinated to the Senior Liabilities and accordingly repayment of any such sums is conditional upon:
- (i) (if an order has not been made or an effective resolution passed for the winding up of the Principal) the Principal being in compliance with its Financial Resources Requirement prevailing at the time of payment by the Principal and no such payment which would otherwise fall due will fall so due except to the extent that, subject to sub-paragraph (b) below, the Principal could make such payment and still be in compliance with such Financial Resources Requirement immediately thereafter;
  - (ii) (if an order has been made or effective resolution passed for the winding up of the Principal) the Principal being solvent at the time of payment by the Principal and accordingly no such payment which would otherwise fall due for payment will fall due 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 for the purposes of this sub-paragraph there shall be disregarded obligations which are not payable or capable of being established or determined in the winding up of the Principal and the Excluded Liabilities.
- (b) No payment of the Subordinated Liabilities shall be made at any time pursuant to sub-paragraph (a)(i) above unless:
- (i) the Principal has given to FCA prior written notification that it proposes to make such payment; and
  - (ii) 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 FCA such information and auditor's certificate in relation to such proposed payment as FCA may require.
- (c) For the purposes of sub-paragraph (a)(ii) above a report given at any relevant time as to the solvency of the Principal by its liquidator, in form and substance acceptable to FCA, shall in the absence of proven error be treated and accepted by FCA, the Bank or Holding Company and the Principal as correct and sufficient evidence thereof.

(d) If the Bank or Holding Company shall receive from the Principal payment of any sum in respect of the Subordinated Liabilities when any of the terms and conditions referred to in sub-paragraphs (a) or (b) above is not satisfied the payment of such sum shall be void for all purposes and such sums shall be received by the Bank or Holding Company upon trust to return the same to the Principal and the Bank or Holding Company shall at any time thereafter be bound to return such sum to the Principal or, as the case may be, its liquidator (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 Bank or Holding Company for return of any sum under the foregoing provisions of this sub-paragraph (d) shall be in writing and shall be made by or on behalf of the Principal or, as the case may be, its liquidator.

- 11.** The Bank or Holding Company will not without the prior written consent of 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 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;
  - (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 Bank or Holding Company shall, upon obtaining security in breach of this undertaking, hold the same on trust for the Principal.
- 12.** The Bank or Holding Company acknowledges that FCA would seek to enforce any breach of the Undertaking of the Bank or Holding Company contained in Clause 2 hereof by seeking an order for specific performance thereof and the Bank or Holding Company acknowledges that an order for specific performance would be the remedy appropriate to be granted to FCA for such a breach.
- 13.** This Undertaking forms the entire Agreement as to the agreement of the Bank or Holding Company 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 FCA shall be void.

- 14.** This Undertaking is governed by English law [ and for the benefit of FCA solely the Bank or Holding Company irrevocably submits to the jurisdiction of the Courts of England and Wales, Scotland and Northern Ireland 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].
- (1) *To be executed by the Bank or Holding Company under seal—other parties to execute either under seal or under hand.*
- (2) *Words in brackets in 9 and 14 above are required only where either the Bank or Holding Company or the Principal (or both) are not incorporated in any part of the UK.*
- (3) *Where the Principal is not a company, the provisions of the Undertaking shall (in agreement with FCA) be amended as appropriate to reflect the legal status of the Principal.*