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### Statement on the Government's Asset Protection Scheme

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## Statement on the Government's Asset Protection Scheme

### Introduction

On 19 January the Government set out a comprehensive plan to remove the remaining obstacles to increased bank lending and restore confidence to financial markets. The Government is today announcing the implementation of its Asset Protection Scheme (the "**Scheme**").

This statement briefly summarises the Scheme, the terms of which are attached to this statement.

### Overview of the Scheme

Under the Scheme, in return for a fee, the Treasury will provide to each participating institution protection against credit losses incurred on one or more portfolios of defined assets to the extent that credit losses exceed a "first loss" amount to be borne by the institution. The Scheme aims to target those assets where there is the greatest amount of uncertainty about their future performance.

The Treasury protection will cover 90 per cent. of the credit losses which exceed this "first loss" amount, with each participating institution retaining a further residual exposure of 10 per cent. of any credit losses exceeding this amount. Both the "first loss" amount and the residual exposure provide an appropriate incentive for participating institutions to endeavour to keep losses to a minimum on those assets included in the Scheme.

### Eligible Institutions

Protection under the Scheme is offered, in the first instance, to those UK incorporated authorised deposit-takers (including UK subsidiaries of foreign institutions) with more than £25 billion of eligible assets. Affiliated entities of those deposit-takers will also be considered by the Treasury for participation under the Scheme.

The Treasury will consider extending the Scheme more widely to other UK incorporated authorised deposit-takers (including UK subsidiaries of foreign institutions).

Eligible institutions are entitled to request to participate in the Scheme until 31 March 2009.

Each applicant to the Scheme is required to satisfy the Treasury that:

- it is adequately capitalised and funded or has a realistic plan for accessing adequate capital and funding;
- it has a sustainable business model and delivery plan;
- its funding profile, sources and mix are broad-based and sustainable; and
- its senior management team is credible, with demonstrable ability to deliver its business model and delivery plan.

Each applicant's participation in the Scheme will also be conditional upon the applicant committing to agreements to increase lending to credit-worthy borrowers in a commercial manner. They will report to Government on a monthly basis on delivering on the commitments. The Government will report annually on their delivery.

Participation in the Scheme will also be conditional upon the applicant giving the Treasury and its advisors access to information required to assess the risk in relation to that applicant's assets, and its satisfaction of the eligibility criteria for protection under the Scheme.

Applicants will be required to:

- comply with a remuneration policy consistent with the Financial Services Authority's code of practice on remuneration policies; and
- meet the highest international standards of public disclosure in relation to the applicants assets.

Finalised Scheme Rules will be published by the Treasury in due course. Each applicant wishing to participate in the Scheme is required to accede to the Scheme pursuant to an accession agreement to be entered into with the Treasury (in a form to be agreed between that applicant and the Treasury).

## **Eligible Assets**

The following categories of assets are eligible for inclusion in the Scheme:

- corporate and leveraged loans;
- commercial and residential property loans;
- structured credit assets, including residential mortgage-backed securities (RMBS), commercial mortgage-backed securities (CMBS), collateralised loan obligations (CLO) and collateralised debt obligations (CDO); and

- participations in respect of the above,

in each case, held by the covered entities as at 31 December 2008 and thereafter. Inclusion of additional classes of assets within the Scheme is subject to determination by the Treasury and its advisers in conjunction with the participating bank on a case-by-case basis.

Assets proposed for inclusion in the Scheme will be subject to appropriate investigation by the Treasury and its advisers in order to assess their satisfaction of the asset eligibility criteria and the expected future performance of the asset. Applicants are required to give the Treasury and its advisers open access to all information required by them for this purpose.

### **Assessment of “First Loss” Amount and Fee**

In setting the terms under which protection will be offered, the Treasury and its advisers will take into account their estimation of the performance of the assets of the institution to be included in the Scheme.

Pricing of the Scheme will be structured having regard to international practice so as to provide appropriate incentives to participating institutions to meet their commitments agreed with the Treasury to support lending to creditworthy borrowers and to ensure appropriate protection for taxpayers. The pricing will also ensure that the Treasury benefits from a share of any upside returns.

The fee may be satisfied by the issue of capital instruments by the institution. These may include a range of alternative capital instruments, but are not expected to include ordinary voting shares at the outset. The Treasury is open to proposals for other forms of fee, including cash.

### **Assessment of Loss under the Scheme**

Once the first loss amount has been exceeded, the Treasury will cover 90% of the loss based on the outstanding principal amount of the asset at the date on which a credit event (failure to pay, bankruptcy or other applicable event) occurs or, if lower, the amount covered under the Scheme in respect of the asset. After this first loss amount has been exceeded, participants will receive interest on the amount due from Treasury at a rate equal to the Treasury’s cost of funding until that payment is settled. The Scheme therefore protects the banks against accounting impairments which would otherwise have accrued. Recoveries will be offset against losses (other than the 10% vertical slice of recoveries retained by the participant).

### **Duration of the Scheme**

The duration of the coverage will be not less than five years and will be consistent with the tenor of the assets. Participating institutions may terminate their participation in the Scheme at any time in whole or in part with the prior consent of the Treasury.

## **Asset Management Requirements for Scheme Participants**

Assets included in the Scheme will continue to be managed by the relevant participating institution in accordance with its ordinary business practices and remain on their balance sheets. To protect taxpayers' interests, participants will be subject to a number of conditions and Treasury controls over the management of protected assets. These requirements are expected to include:

- managing protected assets according to agreed principles and guidelines;
- requiring participating institutions to set up effective operating structures to manage and report on protected assets in a regular, transparent, and comprehensive fashion;
- implementation of monitoring and reporting systems which allow verification of asset performance and facilitate determination of payouts;
- requiring participants to agree remuneration policies with the Treasury that align the interests of employees involved in managing assets backed by the Scheme with those of taxpayers;
- right for the Treasury to appoint an independent asset manager in prescribed circumstances; and
- policies regarding the management of conflicts of interest.

## **Implementation and Regulatory approvals**

Implementation of the Asset Protection Scheme will be subject to further due diligence by the Treasury and its advisers, documentation and satisfaction of applicable conditions (including the application criteria and asset eligibility criteria of the Scheme), conditions precedent to accession to the Scheme, including applicable regulatory, state aid and shareholder approvals.

## Appendix

### Asset Protection Scheme Term Sheet

#### Part I. Scheme Participation

1. Scheme participants
  - (1) UK incorporated authorised deposit-taker (including UK subsidiary of foreign institution) with more than £25 billion of assets satisfying the Asset Eligibility Criteria (as defined in paragraph 11) (the “**Bank**”); or
  - (2) an affiliate of the Bank (including a holding company thereof) that has been approved by Her Majesty’s Treasury (“**HMT**”) as eligible for inclusion under the Scheme,  
(the Bank or, as the case may be, such affiliate, the “**Participant**”).  
HMT may consider extending the Scheme to other UK incorporated authorised deposit-takers (including UK subsidiaries of foreign institutions not covered by (1) or (2) above) based on advice of the Bank of England and the Financial Services Authority (the “**FSA**”) and based on HMT’s best judgment of how important the deposit-taker concerned is to financial market stability and the overall economy and the most effective possible use of public resources.
2. Application period  
A Participant shall be entitled, until (and including) 31 March 2009 (or such later date as may be determined by HMT in its sole discretion), to request to participate in the Scheme.
3. Application Criteria; Lending Condition  
In order to participate in the Scheme each Participant must satisfy HMT that it meets the criteria for eligibility for protection under the Scheme (the “**Application Criteria**”), namely that the Participant and its group:
  - is adequately capitalised and funded or has a realistic plan for accessing adequate capital and funding;
  - has a sustainable business model and delivery plan;
  - has a broad-based and sustainable funding profile, sources and mix; and
  - has a credible senior management team, with demonstrable ability to deliver its business model and delivery plan.Each Participant’s participation in the Scheme is also conditional upon:
  - (1) the relevant Participant making a verifiable commitment to advance new credit to

- (2) creditworthy borrowers in a commercial manner (the “**Lending Condition**”); and the relevant Participant giving HMT and its advisers (or, as applicable, procuring that HMT and advisers are given) open access to all information (including full disclosure of the Balance Sheet (as defined in paragraph 11)) as may be required by HMT and its advisers to assess the probability and expected quantum of future loss in relation to the relevant assets and the satisfaction of the Application Criteria.

4. Accession to the Scheme by the Participants Each Participant wishing to participate in the Scheme is required to accede to the Scheme Rules (as defined in paragraph 6) pursuant to an accession agreement to be entered into with HMT (in a form to be agreed between that Participant and HMT) (the “**Accession Agreement**”). The Accession Agreement will specify, *inter alia*, each of the details set out in the Schedule to this term sheet in respect of that Participant. The relevant accession date with respect to a Participant shall be the “**Participant Accession Date**”.
5. Conditions precedent to the Participant’s accession to the Scheme To include the following in respect of each Participant:
- evidence satisfactory to HMT that the Participant and its group (i) satisfy the Application Criteria (including the delivery of its business model and delivery plan) and (ii) have committed to the applicable Lending Condition;
  - executed Scheme documents, including the relevant Accession Agreement and documents relating to issue of capital instruments pursuant to the fee arrangements referred to in paragraph 23, each in a form satisfactory to HMT;
  - European Commission state aid clearance in respect of the Scheme;
  - other applicable regulatory approvals or waivers (including any approvals required in connection with the issue of capital instruments pursuant to the fee arrangements referred to in paragraph 23);
  - all relevant opinions (which may include legal, regulatory capital, tax and accounting opinions) issued to the Participant (and disclosed to HMT) by the Participant’s relevant professional advisers;
  - board resolutions (including specified signatories acceptable to HMT) and requisite shareholder

resolutions approving the entry into the Scheme and execution of associated documentation, including the applicable Accession Agreement and any capital instruments to be issued as part of the fee arrangements referred to in paragraph 23 (in the case of shareholder resolutions, save to the extent that a derogation from the applicable Listing Rule has been obtained from the UKLA);

- documentation for implementation, administration and monitoring compliance with the applicable Remuneration Policy (as defined in paragraph 27), as specified in the applicable Accession Agreement;
- evidence that the asset management structure required by the Asset Management Requirements (as defined in paragraph 26) has been or will be implemented as specified in the applicable Accession Agreement;
- completion of due diligence satisfactory to HMT in relation to the relevant Covered Assets (as defined in paragraph 10) and in relation to the Balance Sheet (as defined in paragraph 11); and
- such further conditions as may be specified in the relevant Accession Agreement.

6. Anticipated commencement date of Scheme

The date of publication of the finalised rules of the Scheme (the “**Scheme Rules**”) by HMT shall be the “**Scheme Commencement Date**”.

This term sheet is not legally binding and no obligation or liability on HMT or any Participant arises except to the extent that it is expressly undertaken by such party, whether in the Scheme Rules, the relevant Accession Agreement or otherwise.

## **Part 2. Scheme structure and parameters**

7. Availability of Scheme within Participant’s group; nature of the Scheme

Subject as provided below in this paragraph 7, it is envisaged that the Scheme will comprise one protection scheme (which will be structured as a financial guarantee as defined in IAS 39 and recorded as such in the consolidated accounts of the Participant’s group).

The Scheme is intended to cover assets satisfying the Asset Eligibility Criteria (as defined in paragraph 11) Owned (as defined in paragraph 11) by the Participant and one or more of its affiliates approved by HMT in light of HMT’s assessment of (i) the impact on financial market stability and the overall economy and (ii) the most effective possible use of public resources (such affiliates together with the relevant Participant and any transferee of the



Covered Assets referred to in paragraph 28, the “**Covered Entities**”). The Participant may enter into appropriate risk transfer arrangements with the Covered Entities.

To the extent that the Covered Assets cannot be reclassified so that they are no longer required to be fair valued, HMT may consider a request by a Participant to split the Scheme into two transactions for, respectively:

- (1) Covered Assets not being fair valued through the consolidated profit and loss account of that Participant’s group (the relevant protection being structured as a financial guarantee as defined in IAS 39); and
- (2) Covered Assets being fair valued through the consolidated profit and loss account of that Participant’s group (the relevant protection being structured as a derivative as defined in IAS 39).

HMT will seek to implement the Scheme in respect of each Participant in a manner which is efficient and effective for regulatory capital purposes and, in this regard, HMT intends to work closely with the relevant Participant and the FSA.

8. Term

The term of the protection under the Scheme will be consistent with the tenor of the relevant Covered Assets. The Scheme will terminate on the date specified in the applicable Accession Agreement or, as the case may be, on the date of termination of that Participant’s participation in the Scheme in accordance with paragraph 9 (the “**Termination Date**”).

9. Early termination

A Participant may terminate its participation in the Scheme at any time in whole or in part with the prior consent of HMT. It is envisaged that a termination amount will be payable in connection with any early termination in accordance with paragraph 23.

10. Covered Assets;  
Covered Assets Pool

The following assets may be included within the Scheme:

- corporate and leveraged loans;
- commercial and residential property loans;
- structured credit assets (including residential mortgage-backed securities (RMBS), commercial mortgage-backed securities (CMBS), collateralised loan obligations (CLO) and collateralised debt obligations (CDO));
- participations in respect of the above; and
- such other assets or exposures as HMT may consent to being included in the Scheme,

in each case, provided each asset or exposure satisfies the Asset Eligibility Criteria. Assets which meet such Asset Eligibility Criteria and are included within the Scheme constitute the “**Covered Assets**”.

Each asset or exposure to be included in a pool of Covered Assets (the “**Covered Assets Pool**”) must be identified upon entry into the Scheme in a schedule to the Accession Agreement (the “**Covered Assets Schedule**”). The Covered Assets Schedule may be amended as a result of the post-accession confirmation process pursuant to paragraph 25.

The Covered Assets may include unfunded commitments and revolving facilities that satisfy the Asset Eligibility Criteria provided that the commitment to fund was in effect at all times from (and including) 31 December 2008 to (and including) the date of utilisation. Certain refinancings and roll overs of assets or exposures will be eligible for inclusion on a basis to be agreed with HMT.

The Covered Assets may not include synthetic positions or long positions arising without Ownership (as defined in paragraph 11) nor do they include short positions, hedges or other credit mitigants, unless HMT specifically consents to the inclusion of such assets.

When considering whether to consent to the inclusion within the Scheme of assets or exposures which would otherwise be excluded, HMT is likely to have regard, among other things, to whether the inclusion of such assets or exposures is likely to be consistent with the Scheme’s objectives. The provisions of this term sheet may have to be amended to accommodate any such assets or exposures which are so included.

## 11. Asset Eligibility Criteria

The “**Asset Eligibility Criteria**” are that the relevant asset or exposure:

- must have been an asset or exposure:
  - (i) Owned (as defined in this paragraph 11) by the Participant, an affiliate of the Participant or any Relevant Entity (as defined in this paragraph 11) from (and including) 31 December 2008 to (and including) the Scheme Commencement Date (subject to any Permitted Arrangement, as defined in this paragraph 11),
  - (ii) Owned by a Covered Entity on the Scheme Commencement Date (subject to any

Permitted Arrangement), and  
 (iii) which was included in the audited consolidated balance sheet of the Participant's group or the audited balance sheet of a Relevant Entity (each, a "**Balance Sheet**") from (and including) 31 December 2008 to (and including) the Scheme Commencement Date;

- must not be an equity or equity-linked asset, save that convertible and exchangeable instruments on standard terms may be included with the consent of HMT;
- must have fixed or determinable payments and a defined final maturity or an imputed maturity date;
- must not have as an obligor the Participant or a person that, directly or indirectly, is in control of, is controlled by or is under common control with the Participant (and, for this purpose, SPV issuers of asset-backed securities will not be deemed to be so affiliated solely as a result of any economic interest in such issuer); and
- must be denominated in euro, US dollars or sterling or such other currency as may be agreed by HMT,

provided that HMT may at any time waive one or more of such criteria on a case by case basis. When considering whether to waive such criteria with respect to a specific asset or exposure, HMT is likely to have regard, among other things, to whether the inclusion of such asset or exposure within the Scheme is likely to be consistent with the Scheme's objectives. The provisions of this term sheet may have to be amended to the extent such criteria are waived.

In this paragraph 11:

"**Ownership**" of an asset means (i) legal and beneficial ownership of that asset or (ii) other significant economic exposure to that asset acceptable to HMT and "**Owned**" shall be construed accordingly.

"**Permitted Arrangement**" means a pledge or other security interest or a repo, stock loan or other title transfer arrangement in respect of an asset where:

- (i) the relevant Covered Entity (or, as the case may be, affiliate of the Participant) continues to retain sufficient economic exposure to the relevant asset, and
- (ii) such arrangement allows the relevant

Covered Entity (or, as the case may be, affiliate of the Participant) to obtain Ownership of the asset (or an equivalent asset) at any time (including, for example, by substituting other eligible collateral), provided that HMT may agree to vary the conditions referred to in (i) and/or (ii) above on a case by case basis.

“**Relevant Entity**” means an entity which became a member of a Participant’s group before the Scheme Commencement Date but which was not part of that Participant’s group as at 31 December 2008.

12. Quantum of Covered Assets  
The amount of each Participant’s Covered Assets Pool (the “**Covered Assets Pool Amount**”) will be set out in the relevant Accession Agreement, being an amount equal to the aggregate of the outstanding principal balance (or, as the case may be, the amount of the applicable commitment) (the “**Covered Amount**”) of each Covered Asset in the relevant Covered Assets Pool as at 31 December 2008, as specified in the Covered Assets Schedule.
13. First loss retention by Participant  
Payments will be made under the Scheme in respect of Losses (as defined in paragraph 16) on Covered Assets only to the extent that the aggregate amount of such Losses (as reduced by any Recoveries received by the Participant in accordance with paragraph 17) exceeds the sterling amount specified as the first loss amount in the Accession Agreement for that Participant (the “**First Loss Amount**”).
14. Loss allocation  
HMT will cover 90% of the Losses arising in respect of the Covered Assets Pool which exceed the First Loss Amount applicable to that Participant. The remaining 10% of those Losses will be borne by the relevant Covered Entity (the “**Residual Amount**”).
15. Triggers  
A Covered Asset will be treated as defaulted upon the occurrence with respect to it of any of the following (each, a “**Trigger**”):
- (1) failure to pay amounts due (whether principal, interest or otherwise), subject to grace period and provision for cure;
  - (2) bankruptcy; or
  - (3) such other event or circumstance (including certain restructurings) as HMT may agree shall be a Trigger in respect of a specific Covered Asset or a Covered Assets Pool (as specified in the relevant Accession Agreement).
- A Trigger may have occurred in respect of a

Covered Asset before the Scheme Commencement Date.

Triggers do not include (i) unrealised mark-to-market losses, (ii) accounting provisions or accounting write-downs, or (iii) disposals of Covered Assets.

16. Calculation of Losses on Covered Assets

Losses will be determined in respect of each Participant by reference to the following principles:

- Following the occurrence of a Trigger in respect of a Covered Asset, a loss (the “**Loss**”) will arise equal to the lesser of the outstanding principal balance of that Covered Asset as at the date on which the Trigger occurred and the Covered Amount (but excluding any interest capitalised after 31 December 2008).
- All Covered Assets in respect of which a Trigger has occurred (regardless of whether the Trigger occurs before the First Loss Amount is exceeded) will be triggered assets for the purposes of the Scheme (the “**Triggered Assets**”).
- Losses will be adjusted to exclude losses arising from a failure by the Participant to manage (or procure the management of) the Covered Assets in accordance with the Asset Management Requirements.

17. Allocation of Recoveries

All amounts paid or other recoveries made with respect to the Triggered Assets (whether in respect of principal or interest), net of the direct costs and expenses of any such amounts and recoveries (such net amount, the “**Recoveries**”), will be applied in respect of each quarter (each, a “**Calculation Period**”) on the following basis:

- (1) whenever the First Loss Amount is not exceeded, Recoveries will be for the account of the relevant Participant and, accordingly, will be deducted from the aggregate amount of Losses for the purpose of determining whether the First Loss Amount has been exceeded;
- (2) whenever the First Loss Amount is exceeded, Recoveries will be applied as follows:
  - (a) 90% of Recoveries will be applied in (i) firstly, discharging amounts (whether or not then due) that would otherwise have been payable by HMT under the Scheme in respect of then Triggered Assets and (ii) secondly, reimbursing HMT for payments made under the Scheme, including interest thereon (from the date

of the relevant payment by HMT to the date of reimbursement) at the Reference Rate (as defined in paragraph 21); and

- (b) 10% of Recoveries will be for the account of the relevant Participant; and
- (3) whenever Recoveries exceed the amount then required (on a 90/10 basis) to discharge the amounts referred to in paragraphs 17(2)(a)(i) and 17(2)(a)(ii) above, the whole of the excess will be for the account of the relevant Participant and, accordingly, will be deemed to reduce the aggregate amount of Losses (as reduced by any Recoveries received by the Participant in accordance with this paragraph 17) below the First Loss Amount by an amount corresponding to the excess, with the effect that subsequent Losses will be for the account of the Participant and subsequent Recoveries will be applied in accordance with paragraph 17(1) above until the First Loss Amount is once again exceeded.

18. Treatment of non-sterling denominated Covered Assets

HMT and the Participant will together develop a hedging strategy in respect of the Covered Assets.

Losses will be converted into sterling at the spot rate on the date of the relevant Trigger. Recoveries in respect of Triggered Assets will be converted into sterling at the spot rate on the date the relevant Recoveries are received.

19. Quarterly Statement

Each Participant shall provide HMT with a quarterly statement setting out the aggregate amount of all Losses and Recoveries in respect of the Triggered Assets (within a period to be agreed) after the end of each Calculation Period (a “**Quarterly Statement**”).

The form of a Quarterly Statement will be set out in the Scheme Rules.

### Part 3. Settlement of Losses

20. Scheme Ledger

A separate ledger account (each, a “**Scheme Ledger**”) shall be maintained by or on behalf of each Participant of the amounts payable by HMT to that Participant in respect of Losses referable to Triggered Assets. Whenever the First Loss Amount is exceeded, the balance of the relevant Scheme Ledger shall be:

- increased as of the date of the applicable Trigger by an amount equal to 90% of each Loss;
- reduced by an amount equal to 90% of each Recovery as of the date that Recovery is received in accordance with paragraph 17(2)(a)(i);
- reduced by the amount of each payment made by HMT pursuant to paragraph 21;
- increased by the interest credited pursuant to paragraph 21; and
- adjusted as otherwise required to give effect to the Scheme documentation.

If the relevant Scheme Ledger reduces to zero, subsequent Recoveries shall be applied in accordance with paragraph 17(2)(a)(ii) in reimbursing HMT for payments it has made under the Scheme (including interest thereon) and, thereafter, pursuant to paragraphs 17(3) and 17(1). Each Scheme Ledger shall be maintained in sterling. The balance of a Scheme Ledger shall not reduce below zero.

21. Timing and frequency of payments in respect of Losses by HMT; Reference Rate

HMT shall settle amounts due under the Scheme in respect of Losses (as reduced by Recoveries) in accordance with timing to be specified in or pursuant to the Scheme documentation until the balance of the relevant Scheme Ledger is reduced to zero, provided that HMT may (at its sole discretion) resolve to make such payments on earlier dates. HMT shall make such payments only to the extent the balance of the relevant Scheme Ledger is more than zero. Each such payment shall reduce the balance of the relevant Scheme Ledger. HMT's liability under the Scheme shall not exceed the balance from time to time of the relevant Scheme Ledger.

Any positive balance on the relevant Scheme Ledger shall accrue interest daily at a rate determined by HMT to correspond to HMT's cost of funds (the "**Reference Rate**"). The Reference Rate is expected to be reset by HMT, and accrued interest is expected to be credited to the relevant Scheme Ledger, on a quarterly basis.

Each payment by HMT shall be made in sterling.

22. Conditions precedent to payment by HMT under the Scheme

To include the following:

- the balance of the relevant Participant's Scheme Ledger is more than zero;
- each of the repeating representations and warranties are true, accurate and not misleading on the date of the relevant payment;
- no Event of Default has occurred and is

- continuing on the date of the relevant payment;
- HMT has received a duly delivered and completed Quarterly Statement; and
- delivery of such other documents as may be specified in the applicable Accession Agreement.

#### **Part 4. Fees and costs**

23. Fees to be paid by each Participant

The relevant Accession Agreement will specify the fee (and the form of such fee) payable by the relevant Participant to HMT (the “**Fee**”). The Fee will include an amount calculated to be the applicable Participant’s pro rata share of the costs incurred or to be incurred by HMT in establishing the Scheme.

Upon early termination by a Participant pursuant to paragraph 9, a termination amount will be payable as agreed by HMT and the relevant Participant at the relevant time, taking into account the Fee paid (or payable) by the relevant Participant.

24. Cost of the Scheme

Each Participant shall bear its own costs and expenses in connection with its accession to, and participation in, the Scheme.

Each Participant shall bear an appropriate proportion of the ongoing costs and expenses of administering the Scheme incurred by or on behalf of HMT (including any costs and expenses of (i) the assignment, transfer or delegation of its monitoring, administration or enforcement rights pursuant to paragraph 31, or (ii) the appointment of an independent manager by HMT pursuant to paragraph 26). HMT will invoice the relevant Participant quarterly in respect of these costs. If, following a period of consultation, the parties are unable to resolve any disagreement as to the amount of any such costs, HMT’s position will prevail.

#### **Part 5. Scheme operation**

25. Post-accession confirmation process; removal of assets from Covered Assets Pool

An updated Covered Assets Schedule must be prepared by the Participant within a specified period following the relevant Participant Accession Date reflecting any necessary adjustments to the Covered Assets Pool Amount or to the composition of the Covered Assets Pool (due to any asset not meeting the Asset Eligibility Criteria or not being within an eligible asset class (as described in paragraph 10) or any Covered Amount or other material details of any asset having been incorrectly stated).

The Scheme will not cover Losses in respect of any asset removed from the initial Covered Assets Schedule pursuant to the post-accession confirmation process.



If assets are removed from the initial Covered Assets Schedule as a result of the post-accession confirmation process, the Participant may include substitute assets in its updated Covered Assets Schedule, provided that (i) each such substitute asset satisfies the Asset Eligibility Criteria and (ii) the aggregate of the Covered Amount of each of the substitute assets as at 31 December 2008 does not exceed the aggregate of the Covered Amount of each of the removed assets as at 31 December 2008.

HMT may object to the updated Covered Assets Schedule within a specified period following the receipt thereof. In the case of any disagreement as to the final composition of the updated Covered Assets Schedule, if there is no resolution within a specified period following the relevant Participant Accession Date, the relevant Covered Assets Schedule shall be amended consistent with HMT's position.

Following the completion of the post-accession confirmation process, substitutions of Covered Assets or additions of assets to the Covered Asset Pool are not permitted.

## 26. Management of assets

Each Participant will continue to manage, or procure that the relevant Covered Entities manage, the Covered Assets (including any Triggered Assets) in accordance with its ordinary business practices, and will in addition be required to comply with the general and asset pool specific asset management requirements prescribed by HMT and specified in the applicable Accession Agreement (the "**Asset Management Requirements**"). The Asset Management Requirements will include:

- reporting requirements, including for purposes of facilitating Loss quantification, to provide financial, risk and performance data in respect of the Covered Asset Pool and to monitor compliance with the Scheme (including the applicable Remuneration Policy and the applicable Asset Management Requirements), such reporting to be undertaken in a format and manner prescribed by, or agreed with, HMT;
- a requirement to adopt oversight and control procedures with respect to the management of the Covered Assets Pool, including notice and/or approval requirements for (i) transactions with related parties (or otherwise on terms that are not arm's length), (ii)

transactions (including disposals) affecting or involving the Covered Assets with a value in excess of, or resulting in aggregate Losses in excess of, thresholds specified in the relevant Accession Agreement or (iii) transactions which adversely affect the credit quality of a Covered Asset (the “**Restricted Transactions**”).

- increased reporting requirements, and oversight and control procedures for Restricted Transactions;
- requirements in relation to organisational structure, staffing, resourcing, systems and controls required for implementation, administration and monitoring compliance with the Scheme, the applicable Remuneration Policy and the other Asset Management Requirements, in each case, on terms no less favourable than those accorded to the group’s assets which are outside the Scheme, and including audit/verification requirements prescribed by HMT;
- a requirement to provide HMT and its agents access to all books, records and other relevant information within that Participant’s control and relating to that Participant’s group’s Covered Assets and its participation in the Scheme;
- a requirement to mitigate its Loss, including in respect of the implementation of any restructuring, compromise or other dealing in respect of a Covered Asset, realisation of security/collateral, the application of netting and set-off rights, and claiming on hedges, guarantees and/or indemnities and any other risk mitigants;
- negative pledge in respect of assets contained in the Covered Assets Pool (subject to any Permitted Arrangements up to the date of delivery of a Quarterly Statement in respect of the relevant asset);
- right for HMT to appoint an independent manager to manage or supervise the management of some or all of the Covered Assets in prescribed circumstances, including if aggregate Losses exceed the applicable threshold specified in the relevant Accession Agreement; and
- requirements relating to the monitoring and management of conflicts of interest and

- potential conflicts of interest.
27. Remuneration Each Participant will be required to adopt a remuneration policy within the parameters, or which otherwise meets the requirements, specified in the relevant Accession Agreement (the “**Remuneration Policy**”). It is envisaged that the Remuneration Policy will include a performance based remuneration policy applicable to those involved in implementing, administering and monitoring compliance with the terms of the Scheme and the applicable Asset Management Requirements.
28. Covenants of each Participant in respect of its Covered Assets To include the following (subject to any applicable materiality and/or other thresholds or remedy periods specified in the Scheme Rules or, as the case may be, the applicable Accession Agreement):
- by the first anniversary of the relevant Accession Agreement, transfer of Ownership of certain of the Covered Assets to a group company or companies agreed with HMT (or, where such transfer is not feasible or where the relevant Participant demonstrates to the satisfaction of HMT that the burden of such transfer would outweigh the benefits of such transfer, such other arrangement with respect to the relevant Covered Assets as may be agreed with HMT);
  - each Covered Asset is Owned by a Covered Entity (subject to any Permitted Arrangement) and the Covered Assets are included in the Balance Sheet;
  - provision of such financial and other information within the control or possession of a Covered Entity as HMT may from time to time reasonably request;
  - compliance with applicable laws and compliance with and performance of its obligations under the Scheme, the relevant Accession Agreement and any other document relating to its participation in the Scheme (including compliance by each Participant and the relevant Covered Entities with the applicable Remuneration Policy, the applicable Asset Management Requirements and the best practice disclosure requirements referred to in paragraph 34);
  - keep separate and appropriate books and records in relation to the Covered Assets and permit representatives of HMT access to its books and records relating to the Covered

Assets;

- no credit hedging in respect of the Residual Amount without HMT's prior consent;
- give notice to HMT of (i) any Event of Default (as defined in paragraph 30) or potential Event of Default, (ii) any material litigation, investigation or proceeding affecting any Covered Entity, (iii) any other development or event that has or could reasonably be expected to have a material adverse effect on the Covered Entities or rights and remedies of HMT under the Scheme; and
- such other covenants as may be specified with respect to a Participant in the relevant Accession Agreement.

29. Representations and warranties of each Participant

To include the following (those marked with asterisk to be given by the Participant in respect of itself and each other relevant Covered Entity), subject to any applicable materiality and/or other thresholds or remedy periods specified in the Scheme Rules or, as the case may be, the applicable Accession Agreement:

- customary corporate representations (\*);
- ownership of all Covered Entities;
- power and authority to enter into the Scheme as a Participant or a Covered Entity (\*);
- no conflict (\*);
- accuracy of information provided (\*);
- financial statements, including no material change (\*);
- no guarantees, indemnities, borrowings or defaults which would be material in the context of the Scheme (\*);
- intellectual property, information technology (\*);
- insurance (\*);
- insolvency (\*);
- regulatory, competition (\*);
- litigation (\*);
- pensions (\*); and
- such other representations and warranties as may be specified with respect to a Participant in the relevant Accession Agreement.

30. Events of Default

The following events will constitute an event of default (each, an “**Event of Default**”) with respect to a Participant (subject to any applicable materiality and/or other thresholds or remedy periods specified in the Scheme Rules or, as the case may be, the applicable Accession Agreement):

- failure to apply Recoveries in accordance with

- the requirements specified in paragraph 17;
- any repeating representation or warranty is untrue, inaccurate or misleading in any respect;
- failure by the relevant member(s) of the Participant's group to observe or perform any covenant, agreement or undertaking in relation to the Scheme (including in respect of the applicable Asset Management Requirements and the applicable Remuneration Policy);
- repudiation and rescission;
- unlawfulness or invalidity of a Participant's obligations under Scheme; and
- such other events or circumstances as may be specified with respect to a Participant in the relevant Accession Agreement.

## **Part 6. Other matters**

### **31. Assignment; Transfer**

HMT will be entitled to assign, transfer or otherwise delegate at any time during the term of the Scheme and on such terms as it considers appropriate:

- (1) some or all of its monitoring, administration and enforcement rights under the Scheme to a regulatory authority, government department, non-departmental government body, a body exercising functions on behalf of the Crown, a body corporate established by HMT or any third party provider; and/or
- (2) some or all of the risk associated with the protection under the Scheme, subject to parameters to be agreed at the relevant time between HMT and the Participant, and having regard to the effect of any such transfer on the regulatory capital position of the Covered Entities.

No Participant is entitled to assign, transfer or otherwise delegate any of its rights or obligations under or in connection with the Scheme without the prior written consent of HMT, except (i) as provided for in paragraph 7, and (ii) (in the case of any delegation of its obligations under or in connection with the Scheme) in respect of ordinary course of business arrangements for the relevant class of asset or intra-group arrangements.

### **32. Confidentiality**

Scheme documentation will provide for suitable confidentiality provisions in relation to the disclosure of information by the Covered Entities, taking into account the applicable legal, regulatory and contractual restrictions.

HMT will enter into suitable confidentiality undertakings with each Participant with regard to confidential information provided to HMT in order

to monitor, administer and enforce the terms of the Scheme. Such undertakings will provide appropriate disclosure carve-outs to enable HMT to:

- fulfil its reporting obligations, including to Parliament, Parliamentary committees and the European Commission;
- comply with legal obligations to which it is subject; and
- liaise with the other Tripartite Authorities on the implementation, administration and monitoring of the Scheme.

33. Announcements;  
publicity

Save as required by applicable law or regulations (including in connection with listing securities), no announcements will be made by any Participant, its agents or advisers in relation to the Scheme or a Participant's participation in the Scheme without the prior written consent of HMT.

HMT will publish and lay before Parliament the material documentation in relation to the Scheme (including the Scheme Rules and the Accession Agreements).

34. Best practice disclosure  
in relation to  
Participant's assets

(1) Requirement to comply with the highest international standards of public disclosure in relation to the Participant's Covered Assets Pool as well as the Participant's assets which are outside the Scheme, as set out in the final form of the public disclosure requirements established by the FSA and HMT in relation to the Scheme following the end of the consultation period referred to in the FSA's consultation paper dated on or around 26 February 2009.

(2) Requirement to provide sufficient and appropriate information on a regular basis to enable HMT and its advisers to monitor:

- compliance with the terms of the Scheme;
- the performance of the Covered Assets; and
- any transaction or event that has or might have a material impact on the Scheme or the rights and remedies of HMT under the Scheme.

(3) HMT verification requirements in relation to the public disclosure referred to in paragraph 34(1):

- full audit/verification for annual results of the Covered Assets Pool;
- review opinion to be provided for half-yearly results of the Covered Assets

Pool; and

- no opinion to be provided for interim management statements, in line with current practice.

35. Dispute resolution

Any disputes in relation to the Scheme will be determined in accordance with an agreed, expedited process and any determinations in relation to the Scheme (including in relation to Losses and/or Recoveries) will be conclusively determined by an independent third party.

36. Governing law

English law.

## SCHEDULE

### Details to be specified in respect of a Participant in the relevant Accession Agreement

The Accession Agreement to be entered into between each Participant and HMT will include the following details in respect of that Participant:

- Covered Entities;
- Covered Assets Schedule;
- term of the protection provided to the Participant under the Scheme;
- First Loss Amount;
- Covered Assets Pool Amount (calculated in accordance with paragraph 12), denominated in sterling;
- any additional Triggers applicable to that Participant;
- the quarterly payment dates applicable to that Participant;
- details of the Fee payable by the Participant to HMT;
- the Asset Management Requirements;
- details of the Remuneration Policy to be adopted;
- any representations, warranties, covenants, events of default and/or conditions precedent specific to that Participant and any applicable materiality and/or threshold qualifications or remedy periods for specific representations, warranties and/or covenants; and
- any necessary variation to the Scheme Rules in respect of that Participant.

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### Notes for Editors

Non-media enquiries should be addressed to the Treasury Correspondence and Enquiry Unit on 020 7270 4558 or by e-mail to [public.enquiries@hm-treasury.gov.uk](mailto:public.enquiries@hm-treasury.gov.uk)

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