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MP159 ‘Credit Cover Review’

Annex A

Legal text – version 1.0

About this document

This document contains the redlined changes to the SEC that would be required to deliver this Modification Proposal.

Section A ‘Definitions and Interpretation’

These changes have been redlined against Section A version 23.0.

Add the below definition as follows:

<u>Credit Assessment Agency</u>	<u>means the Credit Assessment Agency named in the table at Section J3.14 (Party’s Unsecured Credit Factor Percentage).</u>
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Amend the below definitions as follows:

Credit Assessment Score	means, in respect of a Party, a credit assessment score in respect of that Party procured from one of the Credit Assessment Agencies <u>companies named in Section J3.8 (Party’s Unsecured Credit Factor).</u>
Credit Cover Requirement	has the meaning given to that expression in Section J3.24 (Amount Calculation of Credit Support to be Provided Cover Requirement).
Credit Cover <u>Minimum Threshold</u>	means, in respect of each Regulatory Year, £2,000, multiplied by the Consumer Prices Index for the October preceding the start of that Regulatory Year, divided by the Consumer Prices Index for October 2014. The relevant amount will be rounded to the nearest pound.
Credit Support	means one or more of a Bank Guarantee, Cash Deposit and/or Letter of Credit procured by a User pursuant to Section J3 (Credit Cover <u>Requirement</u>).
Maximum Credit Value	has the meaning given to that expression in Section J3.83B (Party’s Maximum Credit Value).
Unsecured Credit Factor <u>Percentage</u>	has the meaning given to that expression in Section J3.104 (Party’s Unsecured Credit Factor <u>Percentage</u>).
Unsecured Credit Limit	has the meaning given to that expression in Section J3.73A (Party’s Unsecured Credit Limit).
Value at Risk	has the meaning given to that expression in Section J3.63 (Party’s Value at Risk).

Section J 'Charges'

These changes have been redlined against Section J version 9.0.

Amend Section J3 as follows:

J3. CREDIT COVER REQUIREMENT

Obligation to Provide Credit Support

J3.1 Each Party shall ~~procure that one or more of the following forms of~~provide Credit Support ~~is delivered to the DCC in one or more of the following forms, and thereafter maintained, such that the aggregate value of such Credit Support is equal to or greater than that Party's Credit Cover Requirement (as notified by the DCC to the Party from time to time):~~

- (a) a Bank Guarantee;
- (b) a Letter of Credit; and/or
- (c) a Cash Deposit.

J3.2 For clarity, a Parent Company Guarantee does not constitute Credit Support. However, provision of a Parent Company Guarantee alters a Party's Credit Cover Requirement calculation (see Section J3.15).

Amount of Credit Support to be Provided~~Calculation of Credit Cover Requirement~~

J3.3 Each Party shall provide and maintain Credit Support with an aggregate value equal to or greater than that Party's Credit Cover Requirement.

~~J3.2~~J3.4 The DCC shall calculate each Party's "Credit Cover Requirement" from time to time (and at least once a ~~month~~week) as follows:

- (a) the Party's Value at Risk ~~(see Section J3.6);~~ minus
- (b) the Party's Unsecured Credit Limit ~~(see Section J3.7).~~

provided that, where a Party's Credit Cover Requirement would otherwise be equal to or less than the Credit Cover Minimum Threshold, the Party's Credit Cover Requirement shall be deemed to be zero.

J3.5 Except where the Party's Credit Cover Requirement is zero (or deemed to be zero ~~as described in Section J3.4~~), the DCC shall notify each Party of the Credit Cover Requirement calculated in respect of that Party (and of the Value at Risk, Maximum Credit Value, Unsecured Credit Factor Percentage, and Unsecured Credit Limit used in that calculation).

Party's Value at Risk

~~J3.3~~J3.6 Each Party's "Value at Risk" shall be calculated as 115% of the Charges (inclusive of VAT, but excluding any and all annual Explicit Charges) set out in the most recently produced Invoice for that Party at the time of the calculation~~the sum of:~~

- ~~(a) — the Charges (inclusive of VAT) set out in Invoices addressed to, but not yet paid by, the Party; plus~~
- ~~(b) — the Charges (inclusive of VAT) that the DCC reasonably estimates are likely to be incurred by the Party in the period until the next Invoice for that Party is due to be produced by the DCC.~~

Party's Unsecured Credit Limit

~~J3.3A~~J3.7 Each Party's "Unsecured Credit Limit" is equal to:

- (a) the Party's Maximum Credit Value (see Section J3.8); multiplied by
- (b) the Party's Unsecured Credit Factor Percentage (see Section J3.10).

Party's Maximum Credit Value

J3.8 Each Party's "Maximum Credit Value" is the amount recommended by ~~one of the C~~credit Assessment ~~Agency~~companies identified in Section J3.8 as the maximum amount a creditor should have outstanding to the Party at any one time ~~(subject to~~subject to Section ~~J3.16~~J3.9(d)~~)).~~

~~J3.3B~~J3.9 However, where a Party has provided a Parent Company Guarantee ~~To the extent that a, the Party's Maximum Credit Value~~Unsecured Credit Factor is shall be based on the creditworthiness of the Party's guarantor (see Section J3.15) ~~determined by reference to its guarantor's Recognised Credit Rating or Credit Assessment Score (as described in Sections J3.6 or J3.7), then the guarantor's Maximum Credit Value (rather than the Party's) shall be used to calculate the Party's Unsecured Credit Limit.~~

Party's Unsecured Credit Factor Percentage

J3.10 Each Party's "Unsecured Credit Factor Percentage" shall be determined in accordance with Section ~~J3.11~~J3.5, ~~J3.12, J3.13~~J3.6 or ~~J3.14~~J3.7 (as applicable);

~~J3.11~~ ~~provided that, where~~If a Party has failed to pay the Charges set out in an Invoice by the Due Date on ~~three~~3 or more occasions during the 12 months preceding the date on which the Unsecured Credit Factor Percentage is being determined, then the Party's Unsecured Credit Factor Percentage shall always be zero ~~(and none of Sections J3.12, J3.13 and J3.14 shall apply).~~

~~J3.4~~J3.12 If where a Party has provided a Parent Company Guarantee, ~~the Party's Unsecured Credit Factor Percentage shall be based on the creditworthiness of the Party's guarantor (see Section J3.16).~~

~~J3.5~~J3.13 ~~Unless Section J3.12 applies, Where if~~ a Party has one or more Recognised Credit Ratings, the Party's Unsecured Credit Factor Percentage shall be determined as set out in the table below~~on the basis of that Recognised Credit Rating from time to time as follows~~ (based, where the Party has more than one ~~such~~ rating, on the lowest ~~str~~ of the ratings):

DBRS		Moody's		Fitch		Standard and Poor's		Unsecured Credit Factor (%)
Long-Term	Short-Term	Long-Term	Short-Term	Long-Term	Short-Term	Long-Term	Short-Term	
AAA	R-1 H	Aaa	P-1	AAA	F1+	AAA	A-1+	50
AA (high)	R-1 H	Aa1	P-1	AA+	F1+	AA+	A-1+	50
AA	R-1 M	Aa2	P-1	AA	F1+	AA	A-1+	50
AA (low)	R-1 M	Aa2	P-1	AA-	F1+	AA-	A-1+	50
A (high)	R-1 L	A1	P-1	A+	F1	A+	A-1	20
A	R-1 L	A2	P-1	A	F1	A	A-1	20
A (low)	R-1 L	A3	P-2	A-	F2	A-	A-2	20
BBB (high)	R-2 H	Baa1	P-2	BBB+	F2	BBB+	A-2	10
BBB	R-2 M	Baa2	P-3	BBB	F3	BBB	A-3	9.5
BBB (low)	R-2 L	Baa3	P-3	BBB-	F3	BBB-	A-3	9
BBB (high)	-	Ba1	-	BB+	-	BB+	-	8.5
BBB	-	Ba2	-	BB	-	BB	-	8
BBB (low)	-	Ba3	-	BB-	-	BB-	-	7.5

~~J3.6 — Where a Party's obligations are guaranteed by a Parent Company Guarantee, and where the provider of that Parent Company Guarantee has a Recognised Credit Rating, the Party's Unsecured Credit Factor shall be determined in accordance with Section J3.5; save that:~~

- ~~(a) — Section J3.5 shall apply on the basis of the Recognised Credit Rating of the guarantor under the Parent Company Guarantee (rather than of the Party); and~~
- ~~(b) — where the Parent Company Guarantee is capped at an amount lower than the Party's Value at Risk, then the Party's Unsecured Credit Factor shall be the weighted average of the amounts determined under Sections J3.6(a) and either (as applicable) J3.5 or J3.7(a) (such average to be weighted by reference to the Parent Company Guarantee cap and the amount by which the Party's Value at Risk exceeds such cap).~~

~~J3.7 — To the extent that neither Section J3.5 nor J3.6 applies to a Party, the Party's Unsecured Credit Factor shall be determined:~~

- ~~(a) — where a Party's obligations are not guaranteed by a Parent Company Guarantee, on the basis of the Party's Credit Assessment Score;~~
- ~~(b) — where a Party's obligations are guaranteed by a Parent Company Guarantee and that guarantee is capped at an amount higher than the Party's Value at Risk, on the basis of the guarantor's Credit Assessment Score; or~~
- ~~(c) — where a Party's obligations are guaranteed by a Parent Company Guarantee and that guarantee is capped at an amount lower than the Party's Value at Risk, on the basis of the~~

weighted average of the Party's Credit Assessment Score and the guarantor's Credit Assessment Score (weighted by reference to the Parent Company Guarantee cap and the amount by which the Party's Value at Risk exceeds such cap).

~~J3.8~~J3.14 Unless Section J3.12 applies, if a Party does not have one or more Recognised Credit Ratings, the Party's Unsecured Credit Factor Percentage shall be determined in accordance with the following table. For the purposes of Section J3.7, (being the Party's (and/or its guarantor's) "Credit Assessment Score") (and therefore its Unsecured Credit Factor) shall be determined in accordance with the table set out below. In accordance with Section J3.3B, a Party's Maximum Credit Value is also determined by reference to the assessment of one of the credit assessment companies referred to below. Each Party shall be entitled to choose which of the listed credit assessment companies, and which of the listed products, is used for the purposes of establishing its Credit Assessment Score and Maximum Credit Value:-

Check It (ICG) Credit Score Report	Dun & Bradstreet / N2 Check Comprehensive Report	Equifax	Experian Bronze, Silver or Gold Report	Graydons Level 1, Level 2, or Level 3 Report	Unsecured Credit Factor (%)
95-100	5A1/	A+	95-100	1A	10
90-94	5A2/4A1	A-/A-	90-94	1B/2A	9.5
80-89	5A3/4A2/3A1	B+	80-89	1C/2B/3A	9
70-79	4A3/3A2/2A1	B-/B-	70-79	2C/3B/4A	8.5
60-69	3A3/2A2/1A1	C+	60-69	3C/4B/5A	8
50-59	2A3/1A2/A1	C-/C-	50-59	4C/5B/6A	7.5
40-49	1A3/A2/B1	D+	40-49	5C/6B/7A	6.5
30-39	A3/B2/C1	D-/D-	30-39	6C/7B/8A	5
20-29	B3/C2/D1	E+	20-29	8B	3.5
10-19	C3/D2/E1	E-/E-	10-19	8C	1.5
Below 10	D3/Below E1/lower	Below E-	Below 10	Below 8C	0

Parent Company Guarantees

J3.15 Where a Party's obligations are guaranteed by a Parent Company Guarantee, then the Party's Credit Cover Requirement shall be calculated based on the creditworthiness of the Party's guarantor as follows:

(a) (subject to Section J3.15(b)) the Party's Unsecured Credit Limit shall be determined using:

- (i) the guarantor's Maximum Credit Value – being the amount recommended by the Credit Assessment Agency as the maximum amount a creditor should have outstanding to the guarantor; and
- (ii) (subject to Section J3.11) the guarantor's Unsecured Credit Factor Percentage – determined under Section J3.13 (if the guarantor has one or more Recognised Credit Ratings) or under Section J3.14 based on the guarantor's Credit Assessment Score (if the guarantor does not have one or more Recognised Credit Ratings); or

~~(b) if the Parent Company Guarantee is capped at an amount lower than the Party's Value at Risk, then the Party's Credit Cover Requirement shall be the weighted average of the amount calculated under Section J3.15(a) (based on the creditworthiness of the guarantor) and the amount calculated without regard to the creditworthiness of the guarantor (using the Party's own Maximum Credit Value and Unsecured Credit Factor Percentage); such average to be weighted by reference to the Parent Company Guarantee cap and the amount by which the Party's Value at Risk exceeds such cap.~~

Credit Assessment Reports

~~J3.9~~J3.16 The following shall apply in respect of each Party's Maximum Credit Value and (where relevant in accordance with Section ~~J3.14~~ J3.7 applies in respect of a Party) Credit Assessment Score:

- ~~(a) subject to Section J3.9(e), the cost of obtaining the Maximum Credit Value and (where applicable) the Credit Assessment Score in respect of a Party (and/or its guarantor) shall be met by the Party;~~
- ~~(b)(a) subject to Section J3.9(e), a revised Maximum Credit Value and (where applicable) the Credit Assessment Score in respect of a Party (and/or its guarantor) shall be obtained at least monthly as often as the Party reasonably requires and at least once every 12 months;~~
- ~~(c) where Section J3.7 applies and no valid Credit Assessment Score exists in respect of a Party (or its guarantor), the Party's Unsecured Credit Factor shall be deemed to be zero;~~
- ~~(b) where no valid Maximum Credit Value exists in respect of a Party (or its guarantor), the Party's Maximum Credit Value shall be deemed to be zero; and and~~
- ~~(d)(c) where Section J3.14 applies and no valid Credit Assessment Score exists in respect of a Party (or its guarantor), the Party's Unsecured Credit Factor Percentage shall be deemed to be zero.~~
- ~~(e) where a Party's Value at Risk is equal to or less than the Credit Cover Threshold, the DCC shall not obtain a Maximum Credit Value or Credit Assessment Score in respect of that Party (and Sections J3.9(a) and J3.9(b) shall not apply).~~

Increase or Decrease in Credit Cover Requirement

J3.17 On notifying a Party of its Credit Cover Requirement pursuant to Section ~~J3.4~~J3.2, the DCC shall also specify the value of the Credit Support provided to the DCC ~~by on behalf of~~ the Party at that time.

~~J3.10~~J3.18 Where the value of the Credit Support is less than the Party's Credit Cover Requirement ~~(by more than the lower of either 10% of the Party's Credit Cover Requirement or £1,000), then~~ the Party shall, within two Working Days after receipt of such notification, ~~procure ensure~~ that additional Credit Support is provided to the DCC ~~on the Party's behalf~~ so that the aggregate value of all such Credit Support is equal to or greater than the Party's Credit Cover Requirement.

~~J3.14~~J3.19 Where the value of the Credit Support exceeds the Party's Credit Cover Requirement ~~(by more than the lower of either 10% of the Party's Credit Cover Requirement or £1,000), then~~ ~~The~~ DCC shall, within five Working Days after a request from a Party to do so, return that Party's Credit Support (or any part of it) to that Party; provided that the DCC shall never be

obliged to return Credit Support to the extent that such return would reduce the aggregate value of the Party's Credit Support below the Party Credit Cover Requirement.

~~J3.12~~J3.20 Additions and reductions in Credit Support pursuant to Section ~~J3.18~~J3.40 and ~~J3.19~~J3.41 may (without limitation) be achieved by amending the terms of existing Credit Support or exchanging Credit Support.

~~J3.13~~J3.21 For ~~clarity~~the avoidance of doubt, ~~if~~where a Bank Guarantee, Letter of Credit or Parent Company Guarantee provided on behalf of a Party ceases to satisfy the requirements of the definitions of Bank Guarantee, Letter of Credit or Parent Company Guarantee (respectively), then the value of such Credit Support or of the Party's Unsecured Credit Factor Percentage (as applicable) shall be calculated as if no such document had been provided (and the DCC shall return such document to the Party (or as directed by the Party) within 5 Working Days after a request to do so).

Breach of Credit Cover Obligations

~~J3.14~~J3.22 Where a Party fails to ~~provide~~procure that Credit Support (or additional Credit Support) ~~is provided~~ to the DCC ~~on the Party's behalf~~ in accordance with this Section J3, then the DCC shall, on the Working Day immediately following such failure, issue a notice to that Party:

- (a) setting out the ~~eat~~ value of the Credit Support shortfall fact; and
- (b) referring to the matters set out in Section M8.1(d) (Events of Default).

Disputes

~~J3.15~~J3.23 Where a Party disputes the amount of Credit Support requested ~~by the DCC under of it pursuant to~~ this Section J3, that Party shall nevertheless ~~provide~~procure that the requested such amount of Credit Support ~~is provided to~~ to the DCC, pending resolution of ~~the such~~ dispute. In the case of such a dispute:

- (a) ~~the such~~ Party and the DCC shall each in good faith negotiate to resolve the dispute amicably and as soon as reasonably practicable after it arises;
- (b) the DCC shall provide all such evidence in support of its position as the disputing Party may reasonably request, and the DCC shall provide such evidence within 5 Working Days after such request;
- (c) no earlier than 1 Working Day after receipt from the DCC of the information requested under Section ~~J3.23(b)~~J3.15(b) (or, ~~if~~where the DCC does not comply with such request, on the expiry of the period referred to in that Section), the disputing Party may refer the dispute to the Panel, in which case ~~each of~~ the DCC and the disputing Party shall ~~each~~ be entitled to provide written submissions in support of its position;
- (d) where a dispute is referred to the Panel in accordance with Section ~~J3.23(c)~~J3.15(c), the Panel shall convene a meeting and determine the dispute within 10 Working Days of the reference being made (~~and to which meeting~~ representatives of the disputing Party and the DCC may be invited to the meeting in accordance with Section C (Governance)); and
- (e) the disputing Party and the DCC shall each give effect to any determination of the Panel pursuant to this Section J3.15, which shall be final and binding for the purposes of this Code.

Use of Credit Support

~~J3.16~~J3.24 Where a Party fails to pay the Charges set out in an Invoice addressed to that Party by the Due Date ~~for that Invoice~~, and where the DCC has issued a notice to that Party ~~underpursuant to~~ Section J2.1 (Notification of Payment Failure), the DCC shall (in addition to any other remedies available to it) ~~within five on the~~ Working Days following ~~the Due Dates~~ service of such notice:

- (a) claim an amount equal to the unpaid Charges plus interest (or, if lower, as much as is available to be claimed) under any Bank Guarantee or Letter of Credit provided on behalf of that Party;
- (b) remove an amount equal to the unpaid Charges plus interest accruing under Section J2 (or, if lower, as much as is available to be removed) from any Cash Deposit account; or
- (c) undertake a combination of the above in respect of a total amount equal to the unpaid Charges plus interest (or, if lower, as much as is available to be claimed or removed).

~~J3.17~~J3.25 The DCC shall notify the Party as soon as reasonably practicable after the DCC takes any action pursuant to Section ~~J3.24~~J3.16.

~~J3.18~~J3.26 The DCC shall only exercise its rights in respect of a Party's Credit Support in accordance with Section ~~J3.24~~J3.16.

~~J3.19~~J3.27 Any amount received by the DCC pursuant to the exercise of its rights in respect of a Party's Credit Support shall discharge the Party's payment obligations to the extent of the amount so received, and reduce the value of the Credit Support to the same extent.

Cash Deposit

~~J3.20~~J3.28 Interest that accrues on the funds deposited in a Cash Deposit account shall be added to and form part of such deposit.

~~J3.21~~J3.29 It is agreed that all right, title and interest in and to the Cash Deposit vests in the DCC absolutely free and clear of any liens, claims, charges, encumbrances or other security interests (but without prejudice to the DCC's obligation to return an equivalent amount of money to the Party subject to and in accordance with Section ~~J3.19~~J3.11).

Letters of Credit and Bank Guarantees

~~J3.22~~J3.30 Where a Party has procured that Credit Support is delivered to the DCC in the form of a Letter of Credit or Bank Guarantee, and where that Letter of Credit or Bank Guarantee has 20 Working Days or less left until it expires, the DCC shall give notice of that fact to the Party (which notice must refer to the matters set out in Section ~~J3.31~~J3.23).

~~J3.23~~J3.31 Where the DCC has given notice to a Party pursuant to Section ~~J3.30~~J3.22, and where the Party has not (within 10 Working Days after such notice) ~~provided~~procured that replacement Credit Support of equivalent value ~~is provided~~ to the DCC (to take effect on or before expiry of the current Letter of Credit or Bank Guarantee), then the DCC shall:

- (a) prior to the expiry of the Letter of Credit or Bank Guarantee, claim the entire undrawn value of the Letter of Credit or Bank Guarantee; and
- (b) hold any amount so claimed as if it had been paid to the DCC as a Cash Deposit.

