

## CONDITIONS FOR HAM ACCOUNT HOLDERS

### TITLE I GENERAL PROVISIONS

#### Article 1 – Definitions

1. For the purposes of these ‘Conditions for HAM account holders’ (hereinafter referred to as ‘HAM Conditions’), the following terms have the meanings as assigned to them in Article 1 of Part A of the Conditions for TARGET2-NL:

- **‘branch’;**
- **‘business day’;**
- **‘business identifier code (BIC)’;**
- **‘capacity opinion’;**
- **‘central banks (CBs)’;**
- **‘connected CB’;**
- **‘Contingency Solution’;**
- **‘credit institution’;**
- **‘deposit facility’;**
- **‘deposit facility rate’;**
- **‘DNB’;**
- **‘Eurosystem CB’;**
- **‘ICM broadcast message’;**
- **‘information and control module (ICM)’;**
- **‘insolvency proceedings’;**
- **‘non-settled payment order’;**
- **‘PM account’;**
- **‘Settlement Finality Directive’;**
- **‘single shared platform (SSP)’;**
- **‘SSP-providing CBs’;**
- **‘static data collection form’;**
- **‘TARGET2’;**
- **‘TARGET2 component system’;**
- **‘TARGET2 network service provider’;**
- **‘TARGET2-NL’;**

2. For the purposes of these ‘HAM Conditions’, the following terms have the meanings assigned to them:

- ‘**credit transfer order**’ means an instruction by a payer to make funds available to a payee by means of a book entry on a HAM account;
- ‘**entry disposition**’ means a payment processing phase during which HAM-NL attempts to settle a payment order which has been accepted pursuant to Article 9, by means of specific procedures, as described in Article 11;
- ‘**event of default**’ means any impending or existing event with regard to a HAM account holder, the occurrence of which may threaten the performance by a HAM account holder of its obligations under these HAM Conditions or any other rules applying to the relationship between that participant and DNB or any other CB, including:
  - (a) where the HAM account holder no longer meets the access criteria laid down in Article 4 of Part A of the Conditions for TARGET2-NL or the requirements laid down in Article 8(1)(a)(i) of Part A of the Conditions for TARGET2-NL;
  - (b) the opening of insolvency proceedings in relation to the HAM account holder;
  - (c) the submission of an application relating to the proceedings referred to under (b);
  - (d) the issue by the HAM account holder of a written declaration of its inability to pay all or any part of its debts or to meet its obligations arising in relation to intraday credit granted to him in accordance with Part A of the Conditions for TARGET2-NL;
  - (e) the entry of the HAM account holder into a voluntary general agreement or arrangement with its creditors;
  - (f) where the HAM account holder is, or is deemed by its CB to be, insolvent or unable to pay its debts;
  - (g) where the HAM account holder’s credit balance on its HAM account or all or a substantial part of the HAM account holder’s assets are subject to a freezing order, attachment, seizure or any other procedure that is intended to protect the public interest or the rights of the HAM account holder’s creditors;
  - (h) where participation of the HAM account holder in another TARGET2 component system and/or in an ancillary system has been suspended or terminated;
  - (i) where any material representation or pre-contractual statement made by the HAM account holder or which is implied to have been made by the HAM account holder under the applicable law is incorrect or untrue; or

- (j) the assignment of all or a substantial part of the HAM account holder's assets;
- **'HAM account'** means an account in HAM-NL held by entities which comply with the access criteria of Article 4;
  - **'HAM account holder'** means the holder of a HAM account;
  - **'HAM module'** means an SSP module in which HAM accounts can be held;
  - **'HAM-NL'** means DNB's real-time gross settlement system 'HAM-NL';
  - **'liquidity transfer order'** means a payment order, the main purpose of which is to transfer liquidity between different accounts of the same HAM account holder;
  - **'payee'** means a HAM account holder whose HAM account will be credited as a result of a payment order being settled;
  - **'payer'** means a HAM account holder whose HAM account will be debited as a result of a payment order being settled;
  - **'payment order'** means a credit transfer order or a liquidity transfer order;
  - **'PM account holder'** means the holder of a PM account;
  - **'suspension'** means the temporary freezing of the rights and obligations of a HAM account holder for a period of time to be determined by DNB;

## **Article 2 – Applicability; Hierarchy; Appendices**

1. The HAM Conditions apply to all legal relationships between DNB and the HAM account holder arising from or connected with the holding by the HAM account holder of a HAM account in HAM-NL. The rules on the processing of payment orders (Title III) refer to all payment orders submitted or payments received by any HAM account holder.
2. The HAM Conditions and the General Terms and Conditions constitute a unity, so that the rules and procedures as set out therein also apply to the legal relationships as referred to in Paragraph 1.
3. In the event of any conflict or inconsistency between the content of the HAM Conditions and the content of the General Terms and Conditions, the content of these HAM Conditions shall prevail.

4. The following Appendices form an integral part of these HAM Conditions:

Appendix I: Terms of reference for capacity and country opinions

Appendix II: Business continuity and contingency procedures

Appendix III: Operating schedule

Appendix IV: Fee schedule and invoicing

Appendix V: Procedural rules for HAM account holders

In the event of any conflict or inconsistency between the content of any appendix and the content of any other provision in these HAM Conditions, the latter shall prevail.

### **Article 3 – Applicability of provisions of Part A of the Conditions for TARGET2-NL**

The following provisions of Part A of the Conditions for TARGET2-NL apply to HAM account holders, provided that (a) instead of ‘participant’ or ‘direct participant’ is to be read ‘HAM account holder’, (b) instead of ‘PM account’ is to be read ‘HAM account’, and (c) instead of ‘Part A of the Conditions for TARGET2-NL’ is to be read ‘HAM Conditions’:

- Article 3(1), (3), (4) and (5) (*General description of TARGET2*);
- Article 10 (*Obligations of DNB and the participants*), provided that instead of ‘Title IV’ is to be read ‘Title III’;
- Article 11 (*Cooperation and information exchange*), except for Paragraph 8;
- Article 31 (*Business continuity and contingency procedures*) provided that instead of ‘Appendix IV of Part A’ is to be read ‘Appendix II to the HAM Conditions’;
- Article 32 (*Security requirements*);
- Article 35 (*Liability regime*), provided that Paragraph 2 of that article is to be read as: ‘DNB shall be liable to its HAM account holders for direct damage, *i.e.* the amount of the transaction in question and/or the loss of interest thereon, provided that the HAM account holder proves that a shortcoming in the execution of a payment order or a shortcoming in the performance of any other obligation of DNB vis-à-vis the HAM account holder, is DNB’s fault or is imputable to it pursuant to law, agreement or generally accepted opinion. DNB shall not be liable for any consequential losses’;
- Article 42 (*Confidentiality*);
- Article 43 (*Data protection, prevention of money laundering, administrative or restrictive measures and related issues*);
- Article 44 (*Notices*);
- Article 46 (*Amendment procedure*);
- Article 47 (*Third party rights*);
- Article 48 (*Governing law, jurisdiction and place of performance*);
- Article 49 (*Severability*).

## **TITEL II**

### **ACCESS CRITERIA AND APPLICATION PROCEDURE**

#### **Article 4 – Access criteria for HAM account holders**

1. The following types of entities are eligible to hold a HAM account:
  - (a) credit institutions established in the Union or EEA, including when they act through a branch established in the Union or EEA;
  - (b) credit institutions established outside the EEA, provided that they act through a branch established in the Union or EEA.
2. DNB may, at its discretion, also allow the following types of entities to hold a HAM account:
  - (a) electronic money institutions within the meaning of Article 1:1 of the Financial Supervision Act (*Wet op het financieel toezicht*);
  - (b) other entities than those mentioned in Paragraph 1 under (a) and (b) and in this Paragraph under (a), which are subject to minimum reserve requirements<sup>1</sup>.

#### **Article 5 – Application procedure**

1. In order to be eligible to hold a HAM account, applicants shall comply with the requirements referred to in Article 8(1) and 8(2) of Part A of the Conditions for TARGET2-NL, provided that:
  - where in those provisions a reference is made to ‘Appendix I’, this is to be read as ‘Appendix V’, and
  - where in those provisions a reference is made to ‘entities referred to in Article 4(1)(b)’, this is to be read as ‘entities established outside the EEA’,
2. The provisions of Article 8(3), (4) and (5) of Part A of the Conditions for TARGET2-NL are applicable to the application, provided that where in those provisions a reference is made to ‘access criteria as referred to in Article 4’, this is to be read as ‘access criteria for HAM account holders as referred to in Article 4 of these HAM Conditions’.

#### **Article 6 – TARGET2 directory**

1. The TARGET2 directory is the database of BICs used for the routing of payment orders addressed:
  - (a) to HAM account holders and to TARGET2 participants and their branches with multi-addressee access;
  - (b) to indirect TARGET2 participants, including those with multi-addressee access; and
  - (c) to addressable BIC holders in TARGET2.

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<sup>1</sup> See with regard to minimum reserve requirements Annex I of the Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (recast).

The directory shall be updated weekly.

2. The HAM account holder shall, as part of the registration procedure, indicate whether its BICs must be included in the TARGET2 directory.
3. HAM account holders may only use the TARGET2 directory within their own organisation.
4. Entities specified in Paragraphs 1(b) and 1(c) shall only use their BIC in relation to one direct TARGET2 participant.

**TITEL III**  
**MANAGEMENT OF HAM ACCOUNTS AND**  
**PROCESSING OF PAYMENT ORDERS**

**Article 7 – Opening and management of HAM accounts**

1. DNB shall open and operate at least one HAM account for each participant that complies with the access criteria of Article 4 and with the requirements of Article 5.
2. HAM accounts shall either be remunerated at zero per cent or the deposit facility rate, whichever is lower, unless they are used to hold required minimum reserves. In such a case, the calculation and payment of remuneration of holdings of minimum reserves shall be governed by Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank<sup>2</sup> and Regulation ECB/2003/9 of 12 September 2003 on the application of minimum reserves<sup>3</sup>.
3. In addition to the settlement of payment orders within the HAM module, a HAM account may also be used to settle payment orders to the credit of PM accounts in TARGET2-NL and in other TARGET2 component systems, according to the rules laid down in these HAM Conditions.
4. HAM account holders that have their own SWIFT connections may use the ICM to obtain information on their liquidity position. DNB shall provide a daily statement of accounts to the HAM account holder that has opted for such service.

**Article 8 – Types of payment orders**

HAM account holders may give the following payment orders:

- (a) credit transfer orders; and
- (b) liquidity transfer orders.

**Article 9 – Acceptance and rejection of payment orders**

1. Payment orders submitted by HAM account holders are deemed accepted by DNB if:
  - (a) the payment orders comply with the guidelines as adopted by DNB and set out in Appendix V;
  - (b) the payment messages comply with the rules established by the TARGET2 network service provider;
  - (c) the payment messages comply with the formatting rules and the conditions applicable to HAM-NL and pass the double-entry check described in Appendix V; and
  - (d) in cases where a payer or a payee has been suspended, the suspended participant's CB's explicit consent has been obtained.

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<sup>2</sup> OJ L 318, 27.11.1998, p. 1.

<sup>3</sup> OJ L 250, 2.10.2003, p. 10.

2. DNB shall immediately reject any payment order that does not fulfil the conditions laid down in Paragraph 1. DNB shall inform the HAM account holders of any rejection of a payment order, as specified in Appendix V.
3. The SSP determines the timestamp for the processing of payment orders on the basis of the time when it receives and accepts the payment order.

#### **Article 10 – Payment orders submitted in advance**

1. Payment orders may be submitted up to five business days before the specified settlement date (warehoused payment orders).
2. Warehoused payment orders shall be accepted and entered into the entry disposition on the date specified by the HAM account holder at the start of daytime processing, as referred to in Appendix III. They shall be placed in front of payment orders of the same priority.

#### **Article 11 – Settlement of payment orders in the entry disposition**

1. Accepted payment orders shall be settled immediately or at the latest by the end of the business day on which they were accepted, provided that sufficient funds are available on the payer's HAM account.
2. Funding may be provided by:
  - (a) the available liquidity on the HAM account; or
  - (b) incoming payments from other HAM account holders or of TARGET2 participants.
3. Payment orders shall be settled in accordance with the 'FIFO' principle.
4. Further details on the settlement of payment orders in the entry disposition are contained in Appendix V.

#### **Article 12 – Entry of payment orders into the system and their irrevocability**

1. For the purposes of the first sentence of Article 3(1) of the Settlement Finality Directive and Article 212b of the Bankruptcy Act, payment orders relating to HAM accounts are deemed entered into HAM-NL at the moment that the relevant HAM account is debited.
2. Payment orders relating to HAM accounts may be revoked until they are entered into HAM-NL in accordance with Paragraph 1. Payment orders that are included in an algorithm, as referred to in Appendix V, may not be revoked during the period that the algorithm is running.



**TITEL IV**  
**THE INFORMATION AND CONTROLE MODULE**

**Article 13 – Use of the ICM**

1. The ICM:
  - (a) allows HAM account holders to access information relating to their accounts and to manage liquidity; and
  - (b) may be used to initiate liquidity transfer orders.
2. Further technical details relating to the ICM are contained in Appendix V.

**TITEL V**  
**EVIDENCE**

**Article 14 – Evidence**

1. Unless otherwise provided in these HAM Conditions, all payment and payment processing-related messages in relation to HAM-NL, such as confirmations of debits or credits, or statement messages, between DNB and HAM account holders shall be made through the TARGET2 network service provider or through one of the alternatives as referred to in Appendix V.
2. Electronic or written records of the messages retained by DNB or by the TARGET2 network service provider shall be accepted as a means of evidence of the payments processed through DNB. The saved or printed version of the original message of the TARGET2 network service provider shall be accepted as a means of evidence, regardless of the form of the original message.
3. If a HAM account holder makes use of a TARGET2 network service provider and HAM account holder's connection to the TARGET2 network service provider fails, the HAM account holder shall use the alternative means of transmission of messages laid down in Appendix V. In such cases, the saved or printed version of the message produced by DNB shall have the same evidential value as the original message, regardless of its form.
4. DNB shall keep complete records of payment orders submitted and payments received by HAM account holders for a period of seven years from the time at which such payment orders are submitted and payments are received, provided that such complete records shall cover a minimum of five years for any participant in TARGET2 that is subject to continuous vigilance pursuant to restrictive measures adopted by the Council of the European Union or Member States or more if required by specific regulations.
5. DNB's own books and records (whether kept on paper, microfilm, microfiche, by electronic or magnetic recording, in any other mechanically reproducible form or otherwise) shall be accepted as a means of evidence of any obligations of the HAM account holders and of any facts and events that the parties rely on.

**TITEL VI**  
**TERMINATION OF THE ACCESS TO HAM-NL**  
**AND CLOSURE OF ACCOUNTS**

**Article 15 - Duration and ordinary termination**

1. Without prejudice to Article 16, the permission by DNB to hold a HAM account is for an indefinite period of time.
2. A HAM account holder may terminate the use of his HAM account at any time giving 14 business days' notice thereof, unless it agrees a shorter notice period with DNB.
3. DNB may terminate the permission to hold a HAM account in HAM-NL at any time giving three months' notice thereof, unless it agrees a different notice period with that HAM account holder.
4. On termination of the permission to hold a HAM account, the confidentiality duties laid down in Article 42 of Part A of the Conditions for TARGET2-NL remain in force for a period of five years starting on the date of termination.
5. On termination of the permission to hold a HAM account, the HAM accounts of the HAM account holder concerned shall be closed in accordance with Article 17.

**Article 16 – Suspension and extraordinary termination**

1. The permission to hold a HAM account shall be immediately terminated without prior notice or suspended if one of the following events of default occurs:
  - (a) the opening of insolvency proceedings with regard to the HAM account holder; and/or
  - (b) the case that the HAM account holder no longer meets the access criteria laid down in Article 4.
2. DNB may terminate or suspend the permission to hold a HAM account without prior notice if:
  - (a) one or more events of default (other than those referred to in Paragraph 1) occur;
  - (b) the HAM account holder is in material breach of these HAM Conditions;
  - (c) the HAM account holder fails to carry out any material obligation to DNB;
  - (d) the HAM account holder is excluded from, or otherwise ceases to be a member of, a HAM-NL CUG;
  - (e) and/or any other HAM account holder-related event occurs which, in DNB's assessment, would threaten the overall stability, soundness and safety of HAM-NL or of the SSP, or which would jeopardise DNB's performance of its tasks as described in the Bank Act 1998 and the Statute of the European System of Central Banks and of the European Central Bank;
  - (f) an NCB suspends or terminates the participant's access to intraday credit pursuant to Article 30(1).

3. In exercising its discretion under Paragraph 2, DNB shall take into account, inter alia, the seriousness of the event of default or events mentioned in Paragraphs (2) under (a) to (e).
4.
  - (a) In the event that DNB suspends or terminates the permission to hold a HAM account under Paragraph 1 or 2, DNB shall immediately inform that HAM account holder, other CBs and its other HAM account holders, as well as its PM-account holders, of such suspension or termination by means of an ICM broadcast message.
  - (b) In the event that DNB is informed by another CB of a suspension or termination of the permission to hold an account in the HAM module, or a suspension or termination of a PM account holder's participation in the payments module of a TARGET2 component system, DNB shall immediately inform its HAM account holders, as well as its PM account holders, of such suspension or termination by means of an ICM broadcast message.
  - (c) Once such an ICM broadcast message has been received by the HAM account holders, the latter shall be deemed informed of the termination/suspension of the relevant account holder's permission to hold an account. The participants shall bear any losses arising from the submission of a payment order to HAM account holders and PM account holders whose permission to hold a HAM account or a PM account, respectively, has been suspended or terminated, if such payment order was entered into HAM-NL after receipt of the ICM broadcast message.
5. Upon termination of the permission to hold a HAM account, HAM-NL shall not accept any new payment orders from the HAM account holder. Payment orders in the queue and warehoused payment orders shall not be settled, while new payment orders in favour of such participant shall be returned.
6. If the HAM account holder's permission to hold a HAM account is suspended, all its incoming payments and outgoing payment orders shall be stored and only entered into the entry disposition after they have been explicitly accepted by the suspended HAM account holder's CB.

#### **Article 17 – Closure of HAM accounts**

1. HAM account holders may close their HAM accounts at any time provided they give DNB 14 business days' notice thereof.
2. On termination of permission to hold a HAM account, pursuant to either Article 15 or 16, DNB shall close the HAM accounts of the HAM account holder concerned, after having:
  - (a) settled or returned any queued payment orders; and
  - (b) made use of its rights of pledge and set-off under Article 18.

**TITEL VII**  
**FINAL PROVISIONS**

**Article 18 – DNB’s rights of pledge and set-off**

1. Pursuant to the General Terms and Conditions the existing and future balances on the participant's HAM accounts have, amongst others, all been pledged to DNB as security against any and all claims which DNB on whatever grounds has or will have on the participant. Insofar as necessary, the statement of agreement with the General Terms and Conditions, amongst others, as signed by the participant shall be taken as a deed of pledge between the participant and DNB.
2. DNB shall have the right referred to in Paragraph 1 even if its claims are only contingent or not yet due.
3. Notwithstanding the commencement of any insolvency proceedings in respect of a HAM account holder and notwithstanding any assignment, judicial or other attachment or other disposition of or in respect of the HAM account holder’s rights, all obligations of the HAM account holder shall, on the occurrence of an event of default, be automatically and immediately accelerated, without prior notice and without the need for any prior approval of any authority, so as to be immediately due. In addition, the mutual obligations of the HAM account holder and DNB shall automatically be set off against each other, and the party owing the higher amount shall pay to the other the difference.
4. DNB shall promptly give the HAM account holder notice of any set-off pursuant to Paragraph 3 after such set-off has taken place.
5. DNB may without prior notice debit any HAM account or PM account, held by a HAM account holder, by any amount which the participant owes DNB resulting from the legal relationship between the HAM account holder and DNB.

**Article 19 – Contractual relationship with TARGET2 network service provider**

1. If the HAM account holder makes use of a TARGET2 network service provider, then for the purposes of these HAM Conditions, the TARGET2 network service provider is deemed to be SWIFT.
2. Except in the case that the HAM account holder is entitled to use – on the basis of an agreement between the HAM account holder and a co-manager – the co-manager’s SWIFT connection for the exchange of messages, the HAM account holder shall enter into a separate agreement with SWIFT regarding the services to be provided by SWIFT in relation to the HAM account holder’s use of HAM-NL. The legal relationship between a HAM account holder and SWIFT shall be exclusively governed by SWIFT’s terms and conditions.
3. The HAM account holder that uses its own connection with SWIFT shall participate in a HAM-NL CUG, as specified by the SSP-providing CBs acting as the SWIFT service

administrator for the SSP. Admission and exclusion of a HAM account holder to or from a HAM-NL CUG shall take effect once communicated to SWIFT by the SWIFT service administrator.

4. The services to be provided by SWIFT shall not form part of the services to be performed by DNB in respect of HAM-NL.
5. DNB shall not be liable for any acts, errors or omissions of SWIFT (including its directors, staff and subcontractors) as provider of SWIFT services, or for any acts, errors or omissions of network providers selected by HAM account holders to gain access to the SWIFT network.
6. DNB shall not be liable for any acts, errors or omissions of the co-manager, as provider of services to the HAM account holder aimed at providing the HAM account holder with access – via the co-manager – to the SWIFT network.

#### **Article 20 – Entry into force and binding nature**

These HAM Conditions become effective from 17 November 2019.

## Appendix I

### TERMS OF REFERENCE FOR CAPACITY AND COUNTRY OPINIONS

#### PART I

##### Terms of reference for capacity opinions for HAM account holders

[Insert name of CB]

[address]

##### Participation in the payments system ‘HAM-NL’

[location], [date]

Dear Sir or Madam,

We have been asked to provide this Opinion as [in-house or external] legal advisers to [specify name of Participant or branch of Participant] in respect of issues arising under the laws of [jurisdiction in which the Participant is established; hereinafter the ‘jurisdiction’] in connection with the participation of [specify name of Participant] (hereinafter the ‘Participant’) in the payments system HAM-NL.

This Opinion is confined to the laws of [jurisdiction] as they exist as on the date of this Opinion. We have made no investigation of the laws of any other jurisdiction as a basis for this Opinion, and do not express or imply any opinion in this regard. Each of the statements and opinions presented below applies with equal accuracy and validity under the laws of [jurisdiction], whether or not the Participant acts through its head office or one or more branches established inside or outside of [jurisdiction] in submitting payment orders and receiving payments.

#### I. DOCUMENTS EXAMINED

For the purposes of this Opinion, we have examined:

- (1) a certified copy of the [specify relevant constitutional document(s)] of the Participant such as is/are in effect on the date hereof;
- (2) [if applicable] an extract from the [specify relevant company register] and [if applicable] [register of banks or analogous register];
- (3) [to the extent applicable] a copy of the Participant’s licence or other proof of authorisation to provide banking, investment, funds transfer or other financial services in [jurisdiction];

- (4) [if applicable] a copy of a resolution adopted by the board of directors or the relevant governing body of the Participant on [insert date], [insert year], evidencing the Participant's agreement to adhere to the System Documents, as defined below; and
- (5) [specify all powers of attorney and other documents constituting or evidencing the requisite power of the person or persons signing the relevant System Documents (as defined below) on behalf of the Participant];

and all other documents relating to the Participant's constitution, powers, and authorisations necessary or appropriate for the provision of this Opinion (hereinafter the 'Participant Documents').

For the purposes of this Opinion, we have also examined:

- (1) the [insert reference to the conditions applicable to the participation to HAM-NL dated [insert date] (hereinafter the 'Rules'); and
- (2) [...].

The Rules and the [...] shall be referred to hereinafter as the 'System Documents' (and collectively with the Participant Documents as the 'Documents').

## **II. ASSUMPTIONS**

For the purposes of this Opinion we have assumed in relation to the Documents that:

- (1) the System Documents with which we have been provided are originals or true copies;
- (2) the terms of the System Documents and the rights and obligations created by them are valid and legally binding under the laws of [insert reference to the Member State of the System] by which they are expressed to be governed, and the choice of the laws of [insert reference to the Member State of the System] to govern the System Documents is recognised by the laws of [insert reference to the Member State of the System];
- (3) the Participant Documents are within the capacity and power of and have been validly authorised, adopted or executed and, where necessary, delivered by the relevant parties; and
- (4) the Participant Documents are binding on the parties to which they are addressed, and there has been no breach of any of their terms.

## **III. OPINIONS REGARDING THE PARTICIPANT**

- A. The Participant is a corporation duly established and registered or otherwise duly incorporated or organised under the laws of [jurisdiction].
- B. The Participant has all the requisite corporate powers to execute and perform the rights and obligations under the System Documents to which it is party.
- C. The adoption or execution and the performance by the Participant of the rights and obligations under the System Documents to which the Participant is party will not in any



way breach any provision of the laws or regulations of [jurisdiction] applicable to the Participant or the Participant Documents.

- D. No additional authorisations, approvals, consents, filings, registrations, notarisations or other certifications of or with any court or governmental, judicial or public authority that is competent in [jurisdiction] are required by the Participant in connection with the adoption, validity of enforceability of any of the System Documents or the execution or performance of the rights and obligations thereunder.
- E. The Participant has taken all necessary corporate action and other steps necessary under the laws of [jurisdiction] to ensure that its obligations under the System Documents are legal, valid and binding

This Opinion is stated as of its date and is addressed solely to [insert name of CB] and the [Participant]. No other persons may rely on this Opinion, and the contents of this Opinion may not be disclosed to persons other than its intended recipients and their legal counsel without our prior written consent, with the exception of the European Central Bank and the national central banks of the European System of Central Banks [and [the national central bank/relevant regulatory authorities] of [jurisdiction]].

Yours faithfully,

[signature]

**PART II****Terms of reference for country opinions for non-EEA participants in HAM-NL**

[Insert name of CB]

[address]

**Participants in the payments system ‘HAM-NL’**

[location], [date]

Dear Sir or Madam,

We have been asked as [external] legal advisers to [specify name of Participant or branch of Participant] (the ‘Participant’) in respect of issues arising under the laws of [jurisdiction in which the Participant is established; hereinafter the ‘jurisdiction’] to provide this Opinion under the laws of [jurisdiction] in connection with the participation of the Participant in the payments system HAM-NL (hereinafter the ‘System’). References herein to the laws of [jurisdiction] include all applicable regulations of [jurisdiction]. We express an opinion herein under the law of [jurisdiction], with particular regard to the Participant established outside [insert reference to the Member State of the System] in relation to rights and obligations arising from participation in the System, as presented in the System Documents defined below.

This Opinion is confined to the laws of [jurisdiction] as they exist on the date of this Opinion. We have made no investigation of the laws of any other jurisdiction as a basis for this Opinion, and do not express or imply any opinion in this regard. We have assumed that there is nothing in the laws of another jurisdiction which affects this Opinion.

**1. DOCUMENTS EXAMINED**

For the purposes of this Opinion, we have examined the documents listed below and such other documents as we have deemed necessary or appropriate:

- (1) the [insert reference to the conditions applicable to the participation in HAM-NL dated [insert date] (hereinafter the ‘Rules’); and
- (2) any other document governing the System and/or the relationship between the Participant and other participants in the System, and between the participants in the System and DNB.

The Rules and the [...] shall be referred to hereinafter as the ‘System Documents’.

## **2. ASSUMPTIONS**

For the purposes of this Opinion we have assumed in relation to the System Documents that:

- (1) the System Documents are within the capacity and power of and have been validly authorised, adopted or executed and, where necessary, delivered by the relevant parties;
- (2) the terms of the System Documents and the rights and obligations created by them are valid and legally binding under the laws of [insert reference to the Member State of the System], by which they are expressed to be governed, and the choice of the laws of [insert reference to the Member State of the System] to govern the System Documents is recognised by the laws of [insert reference to the Member State of the System];
- (3) the participants in the System through which any payment orders are sent or payments are received, or through which any rights or obligations under the System Documents are executed or performed, are licensed to provide funds transfer services, in all relevant jurisdictions; and
- (4) the documents submitted to us in copy or as specimens conform to the originals.

## **3. OPINION**

Based on and subject to the foregoing, and subject in each case to the points set out below, we are of the opinion that:

### **3.1 Country-specific legal aspects [to the extent applicable]**

The following characteristics of the legislation of [jurisdiction] are consistent with and in no way set aside the obligations of the Participant arising out of the System Documents: [list of country-specific legal aspects].

### **3.2 General insolvency issues**

#### **3.2.a Types of insolvency proceedings**

The only types of insolvency proceedings (including composition or rehabilitation) which, for the purpose of this Opinion, shall include all proceedings in respect of the Participant's assets or any branch it may have in [jurisdiction] to which the Participant may become subject in [jurisdiction], are the following: [list proceedings in original language and English translation] (together collectively referred to as 'Insolvency Proceedings').

In addition to Insolvency Proceedings, the Participant, any of its assets, or any branch it may have in [jurisdiction] may become subject in [jurisdiction] to [list any applicable moratorium, receivership, or any other proceedings as a result of which payments to and/or from the Participant may be suspended, or limitations can be imposed in relation to such payments, or similar proceedings, including crisis prevention and crisis management measures

equivalent to those defined in Directive 2014/59/EU, in original language and English translation] (hereinafter collectively referred to as ‘Proceedings’).

### 3.2.b Insolvency treaties

[jurisdiction] or certain political subdivisions within [jurisdiction], as specified, is/are party to the following insolvency treaties: [specify, if applicable which have or may have an impact on this Opinion].

### 3.3 Enforceability of System Documents

Subject to the points set out below, all provisions of the System Documents will be binding and enforceable in accordance with their terms under the laws of [jurisdiction], in particular in the event of the opening of any Insolvency Proceedings or Proceedings with respect to the Participant.

In particular, we are of the opinion that:

#### 3.3.a Processing of payment orders

The provisions on processing of payment orders [list of sections] of the Rules are valid and enforceable. In particular, all payment orders processed pursuant to such sections will be valid, binding and will be enforceable under the laws of [jurisdiction]. The provision of the Rules which specifies the precise point in time at which payment orders submitted by the Participant to the System become enforceable and irrevocable ([add section of the Rules]) is valid, binding and enforceable under the laws of [jurisdiction].

#### 3.3.b Authority of DNB to perform its functions

The opening of Insolvency Proceedings or Proceedings in respect of the Participant will not affect the authority and powers of DNB arising out of the System Documents. [Specify [to the extent applicable] that: the same opinion is also applicable in respect of any other entity which provides the Participants with services directly and necessarily required for participating in the System (e.g. TARGET2 network service provider)].

#### 3.3.c Remedies in the event of default

[Where applicable to the Participant, the provisions contained in [list of sections] of the Rules regarding accelerated performance of claims which have not yet matured, the set-off of claims for using the deposits of the Participant, the enforcement of a pledge, suspension and termination of participation, claims for default interest, and termination of agreements and transactions ([insert other relevant clauses of the Rules or the System Documents]) are valid and enforceable under the laws of [jurisdiction].]

### 3.3.d Suspension and termination

Where applicable to the Participant, the provisions contained in [list of sections] of the Rules (in respect of suspension and termination of the Participant's participation in the System on the opening of Insolvency Proceedings or Proceedings or other events of default, as defined in the System Documents, or if the Participant represents any kind of systemic risk or has serious operational problems) are valid and enforceable under the laws of [jurisdiction].

### 3.3.e Penalty regime

Where applicable to the Participant, the provisions contained in [list of sections] of the Rules in respect of penalties imposed on a Participant which is unable to reimburse intraday credit or overnight credit, where applicable, on time are valid and enforceable under the laws of [jurisdiction].

### 3.3.f Assignment of rights and obligations

The rights and obligations of the Participant cannot be assigned, altered or otherwise transferred by the Participant to third parties without the prior written consent of DNB.

### 3.3.g Choice of governing law and jurisdiction

The provisions contained in [list of sections] of the Rules, and in particular in respect of the governing law, the resolution of a dispute, competent courts, and service of process are valid and enforceable under the laws of [jurisdiction].

## 3.4 Voidable preferences

We are of the opinion that no obligation arising out of the System Documents, the performance thereof, or compliance therewith prior to the opening of any Insolvency Proceedings or Proceedings in respect of the Participant may be set aside in any such proceedings as a preference, voidable transaction or otherwise under the laws of [jurisdiction].

In particular, and without limitation to the foregoing, we express this opinion in respect of any payment orders submitted by any participant in the System. In particular, we are of the opinion that the provisions of [list of sections] of the Rules establishing the enforceability and irrevocability of payment orders will be valid and enforceable and that a payment order submitted by any participant and processed pursuant to [list of sections] of the Rules may not be set aside in any Insolvency Proceedings or Proceedings as a preference, voidable transaction or otherwise under the laws of [jurisdiction].

### 3.5 Attachment

If a creditor of the Participant seeks an attachment order (including any freezing order, order for seizure or any other public or private law procedure that is intended to protect the public interest or the rights of the Participant's creditors) – hereinafter referred to as an 'Attachment' – under the laws of [jurisdiction] from a court or governmental, judicial or public authority that is competent in [jurisdiction], we are of the opinion that [insert the analysis and discussion].

### 3.6 Collateral [if applicable]

#### 3.6.a. Assignment of rights or deposit of assets for collateral purposes, pledge and/or repo

Assignments for collateral purposes will be valid and enforceable under the laws of [jurisdiction]. Specifically, the creation and enforcement of a pledge or repo under the [insert reference to the relevant arrangement with the CB] will be valid and enforceable under the laws of [jurisdiction].

#### 3.6.b. Priority of assignees', pledgees' or repo purchasers' interest over that of other claimants

In the event of Insolvency Proceedings or Proceedings in respect of the Participant, the rights or assets assigned for collateral purposes, or pledged by the Participant in favour of DNB or other participants in the System, will rank in priority of payment above the claims of all other creditors of the Participant and will not be subject to priority or preferential creditors.

#### 3.6.c. Enforcing title to security

Even in the event of Insolvency Proceedings or Proceedings in respect of the Participant, other participants in the System and DNB as [assignees, pledgees or repo purchasers as applicable] will still be free to enforce and collect the Participant's rights or assets through the action of DNB pursuant to the Rules.

#### 3.6.d. Form and registration requirements

There are no form requirements for the assignment for collateral purposes of, or the creation and enforcement of a pledge or repo over the Participant's rights or assets and it is not necessary for the [assignment for collateral purposes, pledge or repo, as applicable], or any particulars of such [assignment, pledge or repo, as applicable,] to be registered or filed with any court or governmental, judicial or public authority that is competent in [jurisdiction].

3.7. Branches [to the extent applicable]

3.7.a Opinion applies to action through branches

Each of the statements and opinions presented above with regard to the Participant applies with equal accuracy and validity under the laws of [jurisdiction] in situations where the Participant acts through its one or more of its branches established outside [jurisdiction].

3.7.b Conformity with law

Neither the execution and performance of the rights and obligations under the System Documents nor the submission, transmission or receipt of payment orders by a branch of the Participant will in any respect breach the laws of [jurisdiction].

3.7.c Required authorisations

Neither the execution and performance of the rights and obligations under the System Documents nor the submission, transmission or receipt of payment orders by a branch of a Participant will require any additional authorisations, approvals, consents, filings, registrations, notarisations or other certifications of or with any court or governmental, judicial or public authority that is competent in [jurisdiction].

This Opinion is stated as of its date and is addressed solely to DNB and the [Participant]. No other persons may rely on this Opinion, and the contents of this Opinion may not be disclosed to persons other than its intended recipients and their legal counsel without our prior written consent, with the exception of the European Central Bank and the national central banks of the European System of Central Banks [and [the national central bank/relevant regulatory authorities] of [jurisdiction]].

Yours faithfully,

[signature]

**Appendix II****BUSINESS CONTINUITY AND CONTINGENCY PROCEDURES****1. General provisions**

- (a) In this Appendix ‘participant’ shall be read as ‘HAM account holder’.
- (b) This Appendix sets out the arrangements between DNB and participants, if one or more components of the SSP or the telecommunications network fail or are affected by an abnormal external event, or if the failure affects any participant.
- (c) All references to specific times in this Appendix are to the local time at the seat of the ECB, i.e. Central European Time (CET<sup>4</sup>).

**2. Measures of business continuity and contingency processing**

- (a) In the event that an abnormal external event occurs and/or there is a failure of the SSP or the telecommunications network which affects the normal operation of HAM-NL, DNB shall be entitled to adopt business continuity and contingency processing measures.
- (b) The following main business continuity and contingency processing measures shall be available in HAM-NL:
  - (i) relocating the operation of the SSP to an alternative site;
  - (ii) changing the SSP’s operating hours.
- (c) In relation to business continuity and contingency processing measures, DNB shall have full discretion regarding whether and which measures are adopted to settle payment orders.

**3. Incident communication**

- (a) Information about the failure of the SSP and/or an abnormal external event shall be communicated to participants through the domestic communication channels, the ICM and T2IS. In particular, communications to participants shall include the following information:
  - (i) a description of the event;
  - (ii) the anticipated delay in processing (if known);
  - (iii) information on the measures already taken; and
  - (iv) the advice to participants.
- (b) In addition, DNB may notify participants of any other existing or anticipated event which has the potential to affect the normal operation of HAM-NL.

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<sup>4</sup> CET takes into account the change to Central European Summer Time.



**4. Relocation the operation of the SSP to an alternative site**

- (a) In the event that any of the events referred to in Paragraph 2(a) occurs, the operation of the SSP may be relocated to an alternative site, either within the same region or in another region.
- (b) In the event that the operation of the SSP is relocated to another region, the participants shall use best efforts to reconcile their positions up to the point of the failure or the occurrence of the abnormal external event and provide to DNB all relevant information in this respect.

**5. Change of operating hours**

- (a) The daytime processing of HAM-NL may be extended or the opening time of a new business day may be delayed. During any extended operating time of HAM-NL, payment orders shall be processed in accordance with the Conditions for HAM account holders, subject to the modifications contained in this Appendix.
- (b) Daytime processing may be extended and the closing time thereby delayed if an SSP failure has occurred during the day but has been resolved before 18.00. Such a closing time delay shall in normal circumstances not exceed two hours and shall be announced as early as possible to participants. If such a delay is announced before 16.50, the minimum period of one hour between the cut-off time for customer and interbank payment orders shall remain in place. Once such a delay is announced it may not be withdrawn.
- (c) The closing time shall be delayed in cases where an SSP failure has occurred before 18:00 and has not been resolved by 18.00. DNB shall immediately communicate the delay of closing time to participants.
- (d) Upon recovery of the SSP, the following steps shall take place:
  - (i) DNB shall seek to settle all queued payments within one hour; this time is reduced to 30 minutes in the event that the SSP failure occurs at 17.30 or later (in cases where the SSP failure was ongoing at 18.00).
  - (ii) Participants' final balances shall be established within one hour; this time shall be reduced to 30 minutes in the event that the SSP failure occurs at 17.30 or later, in cases where the SSP failure was ongoing at 18.00.
  - (iii) At the cut-off time for interbank payments, the end-of-day processing..

**6. Failures linked to participants**

- (a) In the event that a participant has a problem that prevents it from settling payments in HAM-NL it shall be its responsibility to resolve the problem. In particular, a participant may use in-house solutions or the ICM functionality, i.e. backup liquidity redistribution payments and backup contingency payments.
- (b) If a participant decides to use the ICM functionality for making backup liquidity redistribution payments, DNB shall, if the participant so requests, open this functionality via the ICM. If the participant so requests, DNB shall transmit an ICM broadcast message to

inform other participants about the participant's use of backup liquidity redistribution payments. The participant shall be responsible for sending such backup liquidity redistribution payments exclusively to other participants with which it has bilaterally agreed on the use of such payments and for any further steps in relation to such payments.

- (c) If the measures referred to in Subparagraph (a) are exhausted or if they are inefficient, the participant may request support from DNB.

## **7. Other provisions**

- (a) In the event that certain data are unavailable because one of the events referred to in Paragraph 2(a) has occurred, DNB is entitled to start or continue processing payment orders and/or operate HAM-NL on the basis of the last available data, as determined by DNB. If so requested by DNB, participants shall resubmit their FileAct/Interact messages or take any other action deemed appropriate by DNB.
- (b) In the event of a failure of DNB, some or all of its technical functions in relation to HAM-NL may be performed by other Eurosystem CBs or the operational team of the SSP.
- (c) DNB may require that the participants participate in regular or ad hoc testing of business continuity and contingency processing measures, training or any other preventive arrangements, as deemed necessary by DNB. Any costs incurred by the participants as a result of such testing or other arrangements shall be borne solely by the participants.

**Appendix III****OPERATING SCHEDULE**

1. HAM-NL is open on all days, except Saturdays, Sundays, New Year's Day, Good Friday and Easter Monday (according to the calendar applicable at the seat of the ECB), 1 May, Christmas Day and 26 December.
2. The reference time for the system is the local time at the seat of the ECB, i.e. CET.
3. The current business day is opened during the evening of the previous business day and operates to the following schedule:

<b>Time</b>	<b>Description</b>
07.00 – 18.00	Daytime processing
17.00	Cut-off time for customer payments
18.00	Cut-off time for interbank payments (i.e. payments other than customer payments)
18.00 – 18.45 *	End-of-day processing
18.15 *	General cut-off time for the use of deposit facility
(Shortly after) 18.30 **	Data for the update of accounting systems are available to CBs

\* Ends 15 minutes later on the last day of the Eurosystem reserve maintenance period.

\*\* Starts 15 minutes later on the last day of the Eurosystem reserve maintenance period.

4. The ICM is available for liquidity transfers from 19.30 \*\* until 18.00 the next day, except during the technical maintenance period from 22.00 until 01.00.
5. The operating hours may be changed in the event that business continuity measures are adopted in accordance with Paragraph 5 of Appendix II.

## **Appendix IV**

### **FEE SCHEDULE AND INVOICING**

#### **FEE SCHEDULE**

##### **1. Fees for HAM account holders**

The monthly fee for the processing of payment orders in HAM-NL for HAM account holders shall be EUR 150 per HAM account plus a flat fee per transaction (debit entry) of EUR 0.80.

#### **INVOICING**

##### **2. Invoicing rules HAM account holders**

The HAM account holder shall receive the invoice for the previous month specifying the fees to be paid, no later than on the ninth business day of the following month. Payment shall be made at the latest on the 14th business day of that month to the account specified by DNB and shall be debited from that HAM account holder's HAM account.

**Appendix V****PROCEDURAL RULES FOR HAM ACCOUNT HOLDERS**

In addition to the Conditions for HAM account holders, the following rules apply to the processing of payment orders:

**1. Technical requirements applying to infrastructure, network and formats**

- (1) HAM-NL uses SWIFT services for message exchange. In view of this, the HAM account holder must either:
  - (a) have its own connection to SWIFT's Secure IP Network, or
  - (b) use a SWIFT connection as meant under (a) belonging to a co-manager, on the basis of an agreement made for the purpose between the HAM account holder and the co-manager.

In the case described under (b), the HAM account holder remains responsible for the acts, errors or omissions of the co-manager.

Every HAM account is identified by an 8 or 11 digit SWIFT BIC. Also, every HAM account holder will have to undergo a series of tests demonstrating its technical and operational competence before being allowed to participate in HAM-NL.

- (2) Delivery of payment orders and payment messaging within HAM-NL shall make use of SWIFTNet FIN V-Shape services. A dedicated SWIFT Closed User Group (CUG) shall be set up for the purpose. Payment orders within this HAM CUG shall be addressed to the BIC of the receiving HAM account holder.
- (3) For information and control services, the following SWIFTNet services may be used:
  - (a) SWIFTNet InterAct
  - (b) SWIFTNet FileAct
  - (c) SWIFTNet Browse.
- (4) Messaging between HAM account holders shall be secured exclusively by SWIFT's Public Key Infrastructure (PKI). Information on the PKI service is available in the documentation provided by SWIFT.
- (5) The 'bilateral relation management' service provided by SWIFT's Relationship Management Application (RMA) shall only be used with the central destination BIC of the SSP and not for payment messages between HAM account holders.

## 2. Types of payment messages

- (1) The following SWIFTNet FIN/SWIFT system message types are processed:

Message type	Use	Description
MT 202 (simplified)	Mandatory	Bank-to-bank payment
MT 900	Optional	Confirmation of debit
MT 910	Optional	Confirmation of credit
MT 940/950	Optional	(Customer) statement message

- (2) HAM account holders shall comply with the SWIFT message structure and field specifications as defined in the SWIFT documentation and subject to the restrictions applying to TARGET2 as described in chapter 14.1.2.2 of the User Detailed Functional Specifications (UDFS), Book 2.
- (3) The field content shall be validated at the HAM-NL level in accordance with UDFS requirements. HAM account holders may agree on specific rules regarding the field content among themselves. However, no specific checks are performed in HAM-NL as regards compliance by HAM account holders with such rules.

## 3. Double-entry check

- (1) Every payment order shall pass a double-entry check, the aim of which is to reject payment orders that have been submitted more than once by mistake.
- (2) The following fields of the SWIFT message types shall be checked:

Details	Part of SWIFT message	Field
Sender	Basic header	LT Address
Transaction Reference Number	Text block	:20
Value date	Text block	:32

- (3) If all the fields described under (2) in relation to a newly submitted payment order are identical to those in relation to a payment order that has already been accepted, the newly submitted order shall be returned.

## 4. Use of the ICM

- (1) If the HAM account holder has its own SWIFT connection, the provisions enumerated below under (2)–(7) shall apply.
- (2) The ICM may be used for obtaining information and managing liquidity. SWIFT's Secure IP Network (SIPN) shall be the underlying technical communications network for information exchange and running control measures.

- (3) Except for warehoused payment orders and static data information, only data relating to the current business day shall be available via the ICM. The screens shall be offered in English only. In principle, information shall be provided in 'pull' mode, *i.e.* HAM account holders have to ask to be provided with information.
- (4) The following modes shall be made available for using the ICM:
  - (a) application-to-application ('A2A') mode  
In A2A information and messages are transferred between the HAM and the HAM account holder's internal application. The HAM account holder must therefore ensure that an appropriate application is available for the exchange of XML messages (requests and responses) with the ICM via a standardised interface. Further details are contained in the ICM User Handbook and in Book 4 of the UDFS.
  - (b) user-to-application ('U2A') mode  
U2A permits direct communication between HAM account holders and the ICM. Information is displayed in a browser running on a PC system (SWIFT Alliance WebStation). For U2A access through the SWIFT Alliance WebStation, the IT infrastructure must be able to support cookies and JavaScript. Further details are described in the ICM User Handbook.
- (5) Every HAM account holder shall have at least one SWIFT Alliance WebStation available for access to the ICM through U2A.
- (6) ICM access rights shall be granted by using SWIFT's 'Role Based Access Control'. The SWIFT service called 'Non Repudiation of Emission' (NRE) which HAM account holders may use, enables the recipient of an XML message to prove that the message was not modified.
- (7) A HAM account holder that is unable to submit payment orders on account of technical problems, may use the ICM to generate preformatted backup liquidity redistribution and backup contingency payments. DNB shall open this functionality at the request of the HAM account holder.

## **5. The UDFS and the ICM User Handbook**

The USFS and the ICM User Handbook as they currently read or will come to read in future, are published in English on the ECB website and include further details and examples illustrating the above rules.