FINANCIAL MARKETS LAW COMMITTEE

ROLE, USE AND MEANING OF *PARI PASSU* CLAUSES IN SOVEREIGN DEBT OBLIGATIONS AS A MATTER OF ENGLISH LAW

MEMORANDUM

In March 2005 the Financial Markets Law Committee ("FMLC") published (by "the FMLC 2005 Paper") an analysis of the role, use and meaning of *pari passu* clauses in sovereign debt obligations as a matter of English law.

On June 16 2014 the United States Supreme Court denied petitions for writs of certiorari in the case of *Argentina v NML Capital Ltd, et al*. In the court below, the United States Court of Appeals, Second Circuit, had offered an interpretation of a *pari passu* clause in the sovereign debt context.

The FMLC has concluded that the views expressed in the FMLC 2005 Paper hold good today in English law. The views are not changed by the decision of the US Court of Appeals or by the argument or analysis recorded in that decision. The FMLC is grateful to the Sovereign Debt Scoping Forum for their comments and recommendations which were instrumental in assisting the Committee to reach this conclusion.

The FMLC notes in addition that the English Courts would also likely take a different approach to the grant of remedies to the approach taken by the US Court of Appeals in the Argentina case, and in particular would likely regard the remedy of specific performance as unsuitable.