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18 September 2014

Dear Sirs

### Confirmation of EUREX Clearing AG/Prudential Regulation/CCP interim opinion

You have asked us to confirm that the EUREX Clearing AG/Prudential Regulation/CCP interim opinion dated 12 December 2013 (the "**Opinion**") we provided to you remains valid notwithstanding changes to the Clearing Conditions (as defined in paragraph 1.11 (b) of the Opinion) and the authorisation of the Clearing House under EMIR. The statements made in this letter are dated as of 10 July 2014 and relate only to German law as applied by the German courts as of 10 July 2014.

1. Terms of reference

- (a) Defined terms used in this letter that are not otherwise defined herein have the meaning given to such terms in the Opinion.
- (b) For purposes of providing the Opinion we have only reviewed the Clearing Conditions dated 18 November 2013. For purposes hereof, we have reviewed the Clearing Conditions of the Clearing House dated 7 July 2014 (the "**Revised Conditions**") as available at [https://www.eurexchange.com/blob/exchange-de/3752-137078/238384/62/data/clearing\\_conditions\\_de\\_ab\\_2014\\_07\\_07.pdf](https://www.eurexchange.com/blob/exchange-de/3752-137078/238384/62/data/clearing_conditions_de_ab_2014_07_07.pdf).
- (c) We will update the Opinion if we are specifically instructed to do so by the FIA Europe (the "**FIA-E**") but we do not assume an obligation to inform the FIA-E or any of its members of developments that might affect the matters opined on in the Opinion.

(d) We do not advise on tax, accounting or regulatory laws.

2. Confirmation of certain opinions

On the terms of reference and subject to the assumptions and qualifications set out in the Opinion, in our view there have not been any material changes in the status of the Clearing House, in any of the rules of the Clearing House or in relevant legislation, or rules or guidance of relevant regulatory bodies or similar authorities, in Germany since the date of the Opinion which would have the result that the wording of the Opinion would require significant amendment if it were issued as at today's date. For purposes hereof, "**significant amendment**" means an amendment that has the effect of requiring us to change our opinions on the enforceability of close-out netting upon the opening of Insolvency Proceedings over the assets of the Clearing House (paragraph 3.6.2 of the Opinion), set-off (paragraph 3.7 of the Opinion), Provisional Insolvency Measures (paragraph 3.8 of the Opinion), Regulatory Proceedings (paragraph 3.9 of the Opinion), netting of positions held in different accounts in general (paragraph 3.10.1 of the Opinion), cross-product netting and set-off (paragraph 3.11 of the Opinion), the treatment of collateral (paragraphs 3.12 and 3.13 of the Opinion) or Members' Assessment Liabilities (paragraph 3.14 of the Opinion).

However, if the Opinion were issued as at today's date paragraph 3.10.2 of the Opinion would need to be deleted and paragraph 3.10.1 of the Opinion would become paragraph 3.10.

Further, we would like to draw your attention to the following:

- (a) The Clearing House was authorised by BaFin as a CCP under EMIR on 10 April 2014.<sup>1</sup> The measures BaFin is empowered to take in respect of the Clearing House as a result of its authorisation under preferential treatment of certain measures that a CCP authorised under EMIR may take under Article 48 EMIR in an insolvency have already been taken in account for purposes of the Opinion.
- (b) Several rule changes have been made since the Opinion was issued on the basis of the Clearing Conditions (as of 18 November 2013).

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<sup>1</sup> See [http://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Meldung/2014/meldung\\_140410\\_emir\\_erlaubnis\\_eurex\\_en.html](http://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Meldung/2014/meldung_140410_emir_erlaubnis_eurex_en.html) and [http://www.esma.europa.eu/system/files/ccps\\_authorised\\_under\\_emir.pdf](http://www.esma.europa.eu/system/files/ccps_authorised_under_emir.pdf). We have made no investigation as to the information provided by BaFin and EMSA in respect of the authorisation of the Clearing House, in particular as to the scope of and any conditions to the authorisation.

Revised Condition 1.3.1 has been amended compared to the Clearing Conditions in respect of set-off of obligations under separate standard agreements but we are of the view that these amendments do not require us to modify our opinions given in respect of set-off as the amendments clarify certain aspects of the set-off rights under the Revised Conditions but do not affect the substantive rules governing such set-off.

- (c) Revised Condition 9.3, in particular the definition of "Failure to Pay Event" contains amendments compared to the Clearing Conditions. However, we do not consider these amendments to require revisions to our opinions given that the details of what constitutes a Failure to Pay Event have been amended but this does not result in a change of the statutory framework for close-out netting following the default of the Clearing House.
- (d) In its circular No 086/2014 (available at <https://www.eurexclearing.com/clearing-en/resources/circulars/995712/>) the Clearing House has announced that it will remove its transaction-specific termination right and modify the calculation of difference claims. We do not consider that the Opinion will require significant amendment when these changes are implemented.

### 3. Reliance

Clifford Chance Deutschland LLP hereby consents to members of FIA Europe (other than associate members) and their affiliates which have subscribed to FIA Europe's opinions library and whose terms of subscription give them access to this opinion, (as evidenced by the records maintained by FIA Europe and each a "**subscribing member**") relying on the Opinion. This Opinion may not, without our prior written consent, be relied upon by or be disclosed to any other person save that it may be disclosed without such consent to:

- (a) the officers, employees, auditors and professional advisers of any addressee or any subscribing member;
- (b) any person to whom disclosure is required to be made by applicable law or court order or pursuant to the rules or regulations of any supervisory or regulatory body or in connection with any judicial proceedings; and
- (c) any competent authority supervising a subscribing member or its affiliates

on the basis that (i) such disclosure is made solely to enable any such person to be informed that an opinion has been given and to be made aware of its terms but not for

the purposes of reliance, and (ii) we do not assume any duty or liability to any person to whom such disclosure is made and in preparing this opinion we have not had regard to the interests of any such person.

This Opinion was prepared by Clifford Chance Deutschland LLP on the basis of instructions from FIA Europe in the context of the netting requirements of the Basel III capital rules in the EU and US and Clifford Chance Deutschland LLP has not taken instructions from, and this Opinion does not take account of the specific circumstances of, any subscribing member. In preparing this Opinion, Clifford Chance Deutschland LLP had no regard to any other purpose to which this Opinion may be put by any subscribing member.

By permitting subscribing members to rely on this Opinion as stated above, Clifford Chance Deutschland LLP accepts responsibility to such subscribing members for the matters specifically opined upon in this Opinion in the context stated in the preceding paragraph, but Clifford Chance Deutschland LLP does not have or assume any client relationship in connection therewith or assume any wider duty to any subscribing member or their affiliates. This Opinion has not been prepared in connection with, and is not intended for use in, any specific transaction.

Furthermore this Opinion is given on the basis that any limitation on the liability of any other adviser to FIA Europe or any subscribing member, whether or not we are aware of that limitation, will not adversely affect our position in any circumstances.

Yours faithfully,



Dr. Marc Benzler

**CLIFFORD CHANCE DEUTSCHLAND LLP**