FIA EUROPE - NETTING OPINIONS PROJECT
Legal opinion for netting agreement

FIA Europe
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12 March 2015

Dear Sirs,

FIA Europe netting opinion issued in relation to the FOA Netting Agreements, FOA Clearing Module and ISDA/FOA Clearing Addendum

You have asked us to give an opinion in respect of the laws of Croatia ("**this jurisdiction**") in respect of the enforceability and validity of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision contained in a FOA Netting Agreement or a Clearing Agreement.

We understand that your fundamental requirement is for the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision to be substantiated by a written and reasoned opinion. Our opinions on the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision is given in paragraph 3 of this opinion letter.

Further, this opinion letter covers the enforceability of the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provisions.

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 Subject as provided at paragraph 1.2, this opinion is given in respect of:

1.1.1 persons which are limited liability companies, joint stock companies, limited partnership (*komanditno društvo*) or general partnerships (*javno trgovačko društvo*) incorporated under the Croatian Companies Act (*in Croatian: "Zakon o trgovačkim društvima",* published in Croatian Official Gazette No. 111/93, as amended; hereinafter: the "**Companies Act**") (except Parties specifically identified below in provisions of paragraph 1.2., some of which may also be organised as limited liability companies or joint stock companies but to which additional regulations specifically mentioned in these subparagraphs and respective Schedules also apply), and branches of foreign corporations ("**Corporations**");

1.2 This opinion is also given in respect of Parties that are any of the following, subject to the terms of reference, definitions, modifications and additional assumptions and qualifications set out in the Schedule to this opinion applicable to that type of entity:

1.2.1 banks incorporated under Credit Institutions Act (*in Croatian: "Zakon o kreditnim institucijama",* published in Croatian Official Gazette No. 159/13,

19/15 as amended, hereinafter: the "**Credit Institutions Act**") and branches of foreign banks, excluding housing saving banks (Schedule 1);

1.2.2 Investment firms incorporated under the Capital Markets Act (in Croatian: *Zakon o tržištu kapitala*", published n Croatian Official Gazette No. 88/08, as amended; hereinafter: the "**Capital Markets Act")** and branches of foreign investment firms (Schedule 2);

1.2.3 Insurance companies incorporated under the Insurance Act (in Croatian: "*Zakon o osiguranju*", published in Croatian Official Gazette No. 151/05, as amended; hereinafter: the "**Insurance Act**") (Schedule 3);

1.2.4 Individuals acting as sole entrepreneurs under the Croatian Companies Act and craftsman under the Croatian Crafts Act (*in Croatian: "Zakon o obrtu",* published in Croatian Official Gazette No. 143/13, as amended: hereinafter: the "**Crafts Act**") (Schedule 4);

1.2.5 Investment Funds organised in accordance with the Alternative Investment Funds Act (in Croatian: "*Zakon o alternativnim investicjijskim fondovima*", published in Croatian Official Gazette No. 16/13; hereinafter: the "**Alternative Investment Funds Act**") and in accordance with Open Investment Funds with Public Offering Act (in Croatian: "*Zakon o otvorenim investicijskim fondovima s javnom ponudom*") (Schedule 5);

1.2.6 the Republic of Croatia (Schedule 6);

1.2.7 Public bodies, namely the Croatian National Bank ("HNB") and Croatian Bank for Restructuring and Development organized respectively in accordance with the National Bank Act (in Croatian: "*Zakon o hrvatskoj narodnoj banci*", published in Croatian Official Gazette No. 75/08, hereinafter: the "National Bank Act") and the Croatian Bank for Reconstruction and Development Act (in Croatian: "*Zakon o hrvatskoj banci za obnovu i razvitak*", published in Croatian Official Gazzete No. 138/06, as amended; hereinafter: the "Croatian Bank for Reconstruction and Development Act") (Schedule 7);

1.2.8 Pension entities organised under as Mandatory Pension Funds under the Act on Mandatory Pension Funds (in Croatian: "*Zakon o obveznim mirovinskim fondovima*", published in Croatian Official Gazette No. 19/14, as amended; hereinafter: the "**Act on Mandatory Pension Funds**") Voluntary Pension Funds under the Act on Voluntary Pension Funds (in Croatian: "*Zakon o dobrovoljnim mirovinskim fondovima*", published in Croatian Official Gazette No. 19/14, as amended; hereinafter: the "**Act on Voluntary Pension Funds**") and Pension Insurance Companies organised under the Act on Pension Insurance Companies (in Croatian: "*Zakon o mirovinskim osiguravajućim društvima*", published in Croatian Official Gazette No. 19/14, as amended; hereinafter: the "**Act on Pension Insurance Companies**") (Schedule 8); and

1.2.9 Housing saving banks incorporated under the Credit Institutions Act and Housing Savings and State Incentive of the Housing Savings (*Zakon o stambenoj štednji i državnom poticanju stambene štednje*, published in

Official Gazette Nos. 109/97, as amended, hereinafter the „**Housing Savings Act**" (Schedule 9).

1.3 This opinion is given in respect of the FOA Netting Agreement and the Clearing Agreement when the FOA Netting Agreement and the Clearing Agreement are expressed to be governed by English law.

1.4 This opinion covers all Transactions between the Parties, excluding the Transactions defined in paragraph (v) of Clause (A) of Annex 2.

1.5 This opinion is given in respect of only such of those Transactions which are capable, under their governing laws, of being terminated and liquidated in accordance with the FOA Netting Provision, the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision.

1.6 A person incorporated or organised in this jurisdiction may be a Party to a Clearing Agreement in the capacity of "Firm" (as defined in the FOA Clearing Module) or "Clearing Member" (as defined in the ISDA/FOA Clearing Addendum) or as "Client" (as defined in either of them). Where a person incorporated or organised in this jurisdiction is a Party to a Clearing Agreement as Firm, or as the case may be Clearing Member, our opinion relates only to persons incorporated or organised as banks or investment firms.

1.7 The opinions set out in paragraphs 3.10 and 3.11 are given only in relation to Margin which is located outside this jurisdiction.

1.8 In this opinion, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy.

1.9 A reference in this opinion to a Transaction is a reference, in relation to the FOA Netting Agreement to a Transaction (as defined therein) and, in relation to FOA Clearing Module and ISDA/FOA Clearing Addendum to a Client Transaction (as defined therein).

1.10 **Definitions**

Terms used in this opinion letter and not otherwise defined herein shall have the meanings ascribed to them in the FOA Netting Agreement or the Clearing Agreement, unless the context specifies otherwise. Where, in a FOA Netting Agreement or, as the case may be, a Clearing Agreement, a defined term has been changed but the changed term bears the same meaning as a term defined in a FOA Published Form Agreement or, as the case may be, the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum, or this opinion letter, this opinion letter may be read as if terms used herein were the terms as so changed.

1.10.1 **"Bankruptcy proceedings"** means formal bankruptcy proceedings initiated under provisions of Bankruptcy Act.

1.10.2 "**Croatian Financial Collateral Act**" means Croatian legislative act on financial collaterals passed by Croatian parliament on 6 July 2007, as amended, and published in NN 76/07, 59/12 ;

1.10.3 "**Financial Collateral Arrangements Directive**" means Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements ((OJ L 168, 27 June 2002, p. 43, as amended);

1.10.4 "**Insolvency Proceedings**" means the procedures listed in paragraph 3.1;

1.10.5 "**Insolvency Representative**" means a liquidator, administrator, receiver or analogous or equivalent official in this jurisdiction;

1.10.6 "**Liquidation**" means winding up of a legal person under Companies Law, or, as the case may be, another piece of legislation governing a type of entity as may be indicated in this Letter Opinion;

1.10.7 "**NN**" means "Narodne novine**",** Official gazette of the Republic of Croatia;

1.10.8 "**Pre-Bankruptcy Proceedings**" means proceedings under the Financial Operations' and Pre-Bankruptcy Settlement Act undertaken for reinstating liquidity and solvency of a debtor; and

1.10.9 A **re**ference to a "**paragraph" i**s to a paragraph of this opinion letter.

Annex 3 contains further **definitio**ns of terms relating to the FOA Netting Agreement and the Clearing Agreement.

2. ASSUMPTIONS

We assume:

2.1 That no provision of the FOA Netting Agreement or Clearing Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect, including by reason of a Mandatory CCP Provision. In our view, an alteration contemplated in Part 2 (*Non-material Amendments*) of Annex 4 hereto would not constitute a material alteration for this purpose unless the alteration has been set out by us in Section 5 of Annex 5. We express no view whether an alteration not contemplated in Part 2 (*Non-material Amendments*) of Annex 4 would or would not constitute a material alteration.

2.2 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions or, as the case may be the Firm/CCP Transactions and CM/CCP Transactions are legal, valid, binding and enforceable against both Parties under their governing laws.

2.3 That each Party has the capacity, power and authority under all applicable law(s) to enter into the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; to perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; and that each Party has taken all necessary steps to execute, deliver and perform the FOA Netting Agreement or, as the case may be, the Clearing Agreement.

2.4 That each Party has obtained, complied with the terms of and maintained all authorizations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the FOA Netting Agreement or, as the case may be, the Clearing Agreement in this jurisdiction.

2.5 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement is entered into prior to the commencement of any insolvency proceedings under the laws of any jurisdiction against either Party.

2.6 That no provision of the FOA Netting Agreement or, as the case may be, the Clearing Agreement, or a document of which the FOA Netting Agreement or, as the case may be, the Clearing Agreement forms part, or any other arrangement between the Parties, or any Mandatory CCP Provision, constitutes an Adverse Amendment.

2.7 The FOA Netting Agreement or, as the case may be, the Clearing Agreement has been entered into, and each of the Transactions referred to therein is carried out, by each of the parties thereto in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.

2.8 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement accurately reflects the true intentions of each Party.

2.9 That each Party, when transferring Margin pursuant to the Title Transfer Provisions has effectively transferred all right title and interest in the Margin according to the laws of the jurisdiction where the Margin is located. That any cash provided as Margin is not in a physical form.

3. OPINION

On the basis of the foregoing terms of reference and assumptions and subject to the qualifications set out in paragraph 4 below, we are of the following opinion.

3.1 Insolvency Proceedings

The only bankruptcy, composition, rehabilitation (e.g. liquidation, administration, receivership or voluntary arrangement) or other insolvency laws and procedures to which a Party would be subject in this jurisdiction are the following:

Liquidation Bankruptcy Proceedings and Pre-Bankruptcy Proceedings regulated by:

The Bankruptcy Act (NN 44/96, 161/98, 29/99, 129/00, 123/03, 197/03, 187/04, 82/06, 117/08, 116/10, 25/12, 133/12 and 45/13)
The Companies Act (NN 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13)
The Financial Collateral Act (NN 76/07, 59/12)
The Financial Operations' and Pre-Bankruptcy Settlement Act (NN 108/12, 144/12, 81/13, 112/13)

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, if supplemented or amended as set out in Section 4 of Annex 5.

3.2 **Recognition of choice of law**

3.2.1 The choice of English law to govern the FOA Netting Agreement or, as the case may be, the Clearing Agreement will be recognised in this jurisdiction even if neither Party is incorporated or established in England.

3.2.2 An Insolvency Representative or court in this jurisdiction would have regard to English law, as appropriate, as the governing law of the FOA Netting Agreement or, as the case may be, of the Clearing Agreement, in determining the contractual validity of the (i) FOA Netting Provision and the FOA Set-Off Provisions or, as the case may be, of the Clearing Module Netting Provision and/or the Addendum Netting Provision, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision, and (ii) the Title Transfer Provisions.

3.3 **Enforceability of FOA Netting Provision**

In relation to a FOA Netting Agreement and in relation to a Clearing Agreement where the Client is a Defaulting Party, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

(a) the Non-Defaulting Party would be entitled immediately to exercise its rights under the FOA Netting Provision; and

(b) the Non-Defaulting Party would be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of individual Transactions.

We are of this opinion because as stated in paragraph 3.2.1, the choice of English law to govern the FOA Netting Agreement will be recognised in this jurisdiction and, in consequence, following an Event of Default other than related to the Bankruptcy Proceedings, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if it is enforceable ender English law that governs the FOA Netting Agreement.

Following an Event of Default related to the Bankruptcy Proceedings, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if the FOA Netting Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive. Under the conflict of laws rules in this jurisdiction, a question whether the FOA Netting Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive is a question of English law that governs the FOA Netting Agreement. If the FOA Netting Agreement does not constitute a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive, following an Event of

Default related to the Bankruptcy Proceedings the FOA Netting Provision will not be enforceable in accordance with its terms, but an alternative statutory netting mechanism will apply instead (please refer to paragraph 4.1.1(c)(i) below).

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Non-Defaulting Party.

Amendments to the FOA Netting Provision specified in Section 1 of Annex 5 to this opinion are necessary in order for the opinions expressed in this paragraph 3.3 to apply.

It is also desirable, but not necessary, to make the amendments to the FOA Netting Provision specified in Section 2 of Annex 5. The amendment is desirable because Croatian Financial Collateral Act mandates that the evaluation and realisation of the financial collaterals should be made in such a manner. Failure to insert the desirable amendment will not, in our view, make the realisation unenforceable. However, if the evaluation and realisation is not done in such a way, it may open the possibility to the bankruptcy administrator or the counterparty to argue that this provision of Financial Collateral Act is mandatory hence try to annul any action done contrary to such provision. Thus, it is desirable to insert such a provision to put on notice the Parties that they should act with the described standard when evaluating and realising the financial collateral.

Furthermore, in addition to the highlighted words shown in Annex 4, it is necessary that the words shown as underlined in Section 3 of Annex 5 be treated as Core Provisions in order for the opinions expressed in this paragraph 3.3 to apply.

3.4 **Enforceability of the Clearing Module Netting Provision**

In relation to a Clearing Agreement which includes the Clearing Module Netting Provision, the Clearing Module Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following (i) a Firm Trigger Event or (ii) a CCP Default, the Parties would be entitled to receive or obliged to pay , in respect of each Cleared Transaction Set, only the net sum of the positive and negative mark-to-market values of the relevant individual Client Transactions that are terminated in accordance with the Clearing Agreement.

We are of this opinion because as stated in paragraph 3.2.1, the choice of English law to govern the Clearing Agreement will be recognised in this jurisdiction and, in consequence, following an Event of Default other than related to the Bankruptcy Proceedings, the Clearing Module Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if it is enforceable ender English law that governs the Clearing Agreement.

Following an Event of Default related to the Bankruptcy Proceedings, the Clearing Module Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive. Under the conflict of laws rules in this jurisdiction, a question whether the Clearing Agreement constitutes a financial

collateral arrangement in the meaning of the Financial Collateral Arrangements Directive is a question of English law that governs the Clearing Agreement. If the Clearing Agreement does not constitute a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive, following an Event of Default related to the Bankruptcy Proceedings the Clearing Module Netting Provision will not be enforceable in accordance with its terms, but an alternative statutory netting mechanism will apply instead (please refer to paragraph 4.1.1(c)(i) below).

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the operation of the Clearing Module Netting Provision.

Amendments to the Clearing Module Netting Provision specified in Section 1 of Annex 5 to this opinion are necessary in order for the opinions expressed in this paragraph 3.4 to apply.

It is also desirable, but not necessary, to make the amendments to the Clearing Module Netting Provisions specified in Section 2 of Annex 5. The amendment is desirable because Croatian Financial Collateral Act mandates that the evaluation and realisation of the financial collaterals should be made in such a manner. Failure to insert the desirable amendment will not, in our view, make the realisation unenforceable. However, if the evaluation and realisation is not done in such a way, it may open the possibility to the bankruptcy administrator or the counterparty to argue that this provision of Financial Collateral Act is mandatory hence try to annul any action done contrary to such provision. Thus, it is desirable to insert such a provision to put on notice the Parties that they should act with the described standard when evaluating and realising the financial collateral.

Furthermore, in addition to the highlighted words shown in Annex 4, it is necessary that the words shown as underlined in Section 3 of Annex 5 be treated as Core Provisions in order for the opinions expressed in this paragraph 3.4 to apply.

3.5 **Enforceability of the Addendum Netting Provision**

In relation to a Clearing Agreement which includes the Addendum Netting Provision, the Addendum Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following (i) a CM Trigger Event or (ii) a CCP Default, the Parties would be entitled to receive or obliged to pay, in respect of each Cleared Transaction Set, only the net sum of the positive and negative mark-to-market values of the individual Client Transactions that are terminated in accordance with the Clearing Agreement.

We are of this opinion because as stated in paragraph 3.2.1, the choice of English law to govern the Clearing Agreement will be recognised in this jurisdiction and, in consequence, following an Event of Default other than related to the Bankruptcy Proceedings, the Addendum Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if it is enforceable ender English law that governs the Clearing Agreement.

Following an Event of Default related to the Bankruptcy Proceedings, the Addendum Netting Provision will be immediately (and without fulfilment of any further

conditions) enforceable in accordance with its terms if the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive. Under the conflict of laws rules in this jurisdiction, a question whether the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive is a question of English law that governs the Clearing Agreement. If the Clearing Agreement does not constitute a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive, following an Event of Default related to the Bankruptcy Proceedings the Addendum Netting Provision will not be enforceable, but an alternative statutory netting mechanism will apply instead (please refer to paragraph 4.1.1(c)(i) below).

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the operation of the Addendum Netting Provision.

Amendments to the Addendum Netting Provision specified in Section 1 of Annex 5 are necessary in order for the opinions expressed in this paragraph 3.5 to apply.

It is also desirable, but not necessary, to make amendments to the Addendum Netting Provisions specified in Section 2 of Annex 5. The amendment is desirable because Croatian Financial Collateral Act mandates that the evaluation and realisation of the financial collaterals should be made in such a manner. Failure to insert the desirable amendment will not, in our view, make the realisation unenforceable. However, if the evaluation and realisation is not done in such a way, it may open the possibility to the bankruptcy administrator or the counterparty to argue that this provision of Financial Collateral Act is mandatory hence try to annul any action done contrary to such provision. Thus, it is desirable to insert such a provision to put on notice the Parties that they should act with the described standard when evaluating and realising the financial collateral.

Furthermore, in addition to the highlighted words shown in Annex 4, it is necessary that the words shown as underlined in Section 3 of Annex 5 be treated as Core Provisions in order for the opinions expressed in this paragraph 3.5 to apply.

3.6 **Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to FOA Netting Provision**

In relation to a Clearing Agreement, the opinions expressed at paragraph 3.3 above in relation to the FOA Netting Provision are not affected by the use of the FOA Clearing Module or the ISDA/FOA Clearing Addendum in conjunction with the FOA Netting Agreement. In a case where a Party, who would (but for the use of the FOA Clearing Module or the ISDA/FOA Clearing Agreement) be the Defaulting Party for the purposes of the FOA Netting Agreement, acts as Firm (as defined in the FOA Clearing Module) or Clearing Member (as defined in the ISDA/FOA Clearing Addendum), the question as to whether the FOA Netting Provision will, to the extent inconsistent with the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision, be superseded by the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision would be determined under the governing law of the Clearing Agreement.

3.7 Enforceability of the FOA Set-Off Provisions

3.7.1 In relation to a FOA Netting Agreement which includes the FOA Set-Off Provisions, the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms, so that following an Event of Default, the Non-Defaulting Party would be immediately entitled to exercise its rights under either or both of the FOA Set-Off Provisions, and in particular so that, upon the exercise of such rights:

(a) where the FOA Set-Off Provisions include the General Set-Off Clause:

(i) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party would be set off against the Liquidation Amount (where such Liquidation Amount is owed by the Defaulting Party); or

(ii) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party would be set off against the Liquidation Amount (where such Liquidation Amount is owed by the Non-Defaulting Party); or

(b) where the FOA Set-Off Provisions comprise the Margin Cash Set-Off Clause only, the value of any cash margin owed by the Firm to the Client would be set-off against the Liquidation Amount (where such Liquidation Amount is owed by the Client).

We are of this opinion because:

The FOA Netting Agreement which includes the FOA Set-Off Provisions is expressed to be governed by law of England and Wales. Since we are not of the view that the Netting Provisions would violate overriding mandatory provisions or that their application would be manifestly incompatible with public policy of Croatia, we conclude that following an Event of Default other than related to the Bankruptcy Proceedings they will be enforced in accordance with their terms if they are enforceable ender English law that governs the FOA Netting Agreement.

Following an Event of Default related to the Bankruptcy Proceedings, the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if the FOA Netting Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive. Under the conflict of laws rules in this jurisdiction, a question whether the FOA Netting Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive is a question of English law that governs the FOA Netting Agreement. If the FOA Netting Agreement does not constitute a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive, the Set-Off Provisions may not be enforceable following an Event of Default related to the Bankruptcy Proceedings.

Amendments to the General Set-Off Clause and the Margin Cash Set-Off Clause specified in Section 1 of Annex 5 are necessary in order for the opinions expressed in this paragraph 3.7.1 to apply.

It is also desirable, but not necessary, to make amendments to the General Set-Off Clause and the Margin Cash Set-Off Clause specified in Section 2 of Annex 5. The amendment is desirable because Croatian Financial Collateral Act mandates that the evaluation and realisation of the financial collaterals should be made in such a manner. Failure to insert the desirable amendment will not, in our view, make the realisation unenforceable. However, if the evaluation and realisation is not done in such a way, it may open the possibility to the bankruptcy administrator or the counterparty to argue that this provision of Financial Collateral Act is mandatory hence try to annul any action done contrary to such provision. Thus, it is desirable to insert such a provision to put on notice the Parties that they should act with the described standard when evaluating and realising the financial collateral.

Furthermore, in addition to the highlighted words shown in Annex 4, it is necessary that the words shown as underlined in Section 3 of Annex 5 be treated as Core Provisions in order for the opinions expressed in this paragraph 3.7.1 to apply

3.7.2 In relation to a Clearing Agreement which includes the FOA Set-Off Provisions and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision (and in which the FOA Set-Off Provisions are not Disapplied Set-Off Provisions), the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms, so that following an Event of Default in respect of the Client, the Firm or, as the case may be, the Clearing Member would (to the extent that set-off is not already covered by the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision) be immediately entitled to exercise its rights under either or both of the FOA Set-Off Provisions, and in particular so that, upon the exercise of such rights:

(a) where the FOA Set-Off Provisions include the General Set-Off Clause:

(i) the value of any cash balance owed by the Firm or, as the case may be, the Clearing Member to the Client would be set off against the Liquidation Amount (where such Liquidation Amount is owed by the Client); or

(ii) the value of any cash balance owed by the Client to the Firm or, as the case may be, the Clearing Member would be set off against the Liquidation Amount (where such Liquidation Amount is owed by the Firm or, as the case may be, the Clearing Member); or

(b) where the FOA Set-Off Provisions comprise the Margin Cash Set-Off Clause only, the value of any cash margin owed by the Firm or, as the case may be, the Clearing Member to the Client would be set-off

against the Liquidation Amount (where such Liquidation Amount is owed by the Client).

We are of this opinion because:

The Clearing Agreement which includes the FOA Set-Off Provisions is expressed to be governed by law of England and Wales. Since we are not of the view that the FOA Set-Off Provisions would violate overriding mandatory provisions or that their application would be manifestly incompatible with public policy of Croatia, we conclude that following an Event of Default other than related to the Bankruptcy Proceedings they will be enforced in accordance with their terms if they are enforceable ender English law that governs the Clearing Agreement.

Following an Event of Default related to the Bankruptcy Proceedings, the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive. Under the conflict of laws rules in this jurisdiction, a question whether the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive is a question of English law that governs the Clearing Agreement. If the Clearing Agreement does not constitute a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive, the Set-Off Provisions may not be enforceable following an Event of Default related to the Bankruptcy Proceedings.

Amendments to the General Set-Off Clause and the Margin Cash Set-Off Clause specified in Section 1 of Annex 5 are necessary in order for the opinions expressed in this paragraph 3.7.2 to apply.

It is also desirable, but not necessary, to make the following amendments to the General Set-Off Clause and the Margin Cash Set-Off Clause: specified in Section 2 of Annex 5. The amendment is desirable because Croatian Financial Collateral Act mandates that the evaluation and realisation of the financial collaterals should be made in such a manner. Failure to insert the desirable amendment will not, in our view, make the realisation unenforceable. However, if the evaluation and realisation is not done in such a way, it may open the possibility to the bankruptcy administrator or the counterparty to argue that this provision of Financial Collateral Act is mandatory hence try to annul any action done contrary to such provision. Thus, it is desirable to insert such a provision to put on notice the Parties that they should act with the described standard when evaluating and realising the financial collateral.

Furthermore, in addition to the highlighted words shown in Annex 4, it is necessary that the words shown as underlined in Section 3 of Annex 5 be treated as Core Provisions in order for the opinions expressed in this paragraph 3.7.2 to apply.

3.8 **Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision**

In relation to a Clearing Agreement which includes the Clearing Module Set-Off Provision (whether or not the FOA Set-Off Provisions are Disapplied Set-Off Provisions, insofar as constituting part of the Clearing Agreement), the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that the Firm would be immediately entitled to exercise its rights under the Clearing Module Set-Off Provision, and in particular, if there has been an Event of Default in respect of the Client or a CCP Default, so that the value of any cash balance owed by one Party to the other would be set off against any Available Termination Amount owed by the Party entitled to receive the cash balance, insofar as not already brought into account as part of the Relevant Collateral Value.

We are of this opinion because:

A Clearing Agreement which includes the Clearing Module Set-Off Provision is expressed to be governed by law of England and Wales. Since we are not of the view that the Clearing Module Set-Off Provision would violate overriding mandatory provisions or that their application would be manifestly incompatible with public policy of Croatia, we conclude that following an Event of Default other than related to the Bankruptcy Proceedings the Clearing Module Set-Off Provision will be enforced in accordance with its terms if it is enforceable ender English law that governs the Clearing Agreement.

Following an Event of Default related to the Bankruptcy Proceedings, the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive. Under the conflict of laws rules in this jurisdiction, a question whether the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive is a question of English law that governs the Clearing Agreement. If the Clearing Agreement does not constitute a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive, the Clearing Module Set-Off Provision may not be enforceable following an Event of Default related to the Bankruptcy Proceedings.

Amendments to the Clearing Module Set-Off Provision specified in Section 1 of Annex 5 are necessary in order for the opinions expressed in this paragraph 3.8 to apply.

It is also desirable, but not necessary, to make amendments to the Clearing Module Set-Off Provision specified in Section 2 of Annex 5. The amendment is desirable because Croatian Financial Collateral Act mandates that the evaluation and realisation of the financial collaterals should be made in such a manner. Failure to insert the desirable amendment will not, in our view, make the realisation unenforceable. However, if the evaluation and realisation is not done in such a way, it may open the possibility to the bankruptcy administrator or the counterparty to argue that this provision of Financial Collateral Act is mandatory hence try to annul any action done contrary to such provision. Thus, it is desirable to insert such a provision to put on notice the Parties that they should act with the described standard when evaluating and realising the financial collateral.

Furthermore, in addition to the highlighted words shown in Annex 4, it is necessary that the words shown as underlined in Section 3 of Annex 5 be treated as Core Provisions in order for the opinions expressed in this paragraph 3.8 to apply.

3.9 **Set-Off under a Clearing Agreement with an Addendum Set-Off Provision**

In relation to a Clearing Agreement which includes the Addendum Set-Off Provision, the Addendum Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that following a CM Trigger Event or a CCP Default:

(a) in the case of a CM Trigger Event, the Client; or

(b) in the case of a CCP Default, either Party,

would be immediately entitled to exercise its rights under the Addendum Set-Off Provision, and in particular so that, upon the exercise of such rights, in the case of a CM Trigger Event, any Available Termination Amount would be reduced by its set-off against any cash balance which constitutes a termination amount payable by (or to) the Party which is owed (or owes) the Available Termination Amount, insofar as not already brought into account as part of the Relevant Collateral Value.

We are of this opinion because:

A Clearing Agreement which includes the Addendum Set-Off Provision is expressed to be governed by law of England and Wales. Since we are not of the view that the Addendum Set-Off Provision would violate overriding mandatory provisions or that their application would be manifestly incompatible with public policy of Croatia, we conclude that following an Event of Default other than related to the Bankruptcy Proceedings the Addendum Set-Off Provision will be enforced in accordance with its terms if it is enforceable ender English law that governs the Clearing Agreement.

Following an Event of Default related to the Bankruptcy Proceedings, the Addendum Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive. Under the conflict of laws rules in this jurisdiction, a question whether the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive is a question of English law that governs the Clearing Agreement. If the Clearing Agreement does not constitute a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive, the Addendum Set-Off Provision may not be enforceable following an Event of Default related to the Bankruptcy Proceedings.

Amendments to the Addendum Set-Off Provision specified in Section 1 of Annex 5 are necessary in order for the opinions expressed in this paragraph 3.9 to apply.

It is also desirable, but not necessary, to make amendments to the Addendum Set-Off Provision specified in Section 2 of Annex 5. The amendment is desirable because Croatian Financial Collateral Act mandates that the evaluation and realisation of the

financial collaterals should be made in such a manner. Failure to insert the desirable amendment will not, in our view, make the realisation unenforceable. However, if the evaluation and realisation is not done in such a way, it may open the possibility to the bankruptcy administrator or the counterparty to argue that this provision of Financial Collateral Act is mandatory hence try to annul any action done contrary to such provision. Thus, it is desirable to insert such a provision to put on notice the Parties that they should act with the described standard when evaluating and realising the financial collateral.

Furthermore, in addition to the highlighted words shown in Annex 4, it is necessary that the words shown as underlined in Section 3 of Annex 5 be treated as Core Provisions [in order for the opinions expressed in this paragraph 3.9 to apply

3.10 **Enforceability of the Title Transfer Provisions**

3.10.1 In relation to a FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions where the Client is a Defaulting Party, following the specification or deemed occurrence of a Liquidation Date, the Non-Defaulting Party would be immediately (and without fulfilment of any further condition) entitled to exercise its rights under the Title Transfer Provisions, so that the Default Margin Amount (as calculated pursuant to the terms of the Title Transfer Provisions) would be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision.

3.10.2 In relation to a Clearing Agreement which includes the Title Transfer Provisions, and in the case of a Firm Trigger Event, a CM Trigger Event, or a CCP Default, the value of the Transferred Margin would be taken into account as part of the Relevant Collateral Value.

3.10.3 The questions in relation to the FOA Netting Agreement (with Title Transfer Provisions) or a Clearing Agreement which includes the Title Transfer Provisions, (x) whether Transfers of Margin would be characterised as outright transfers of title or creating a security or other interest, and (y) whether Margin Transferred may be used without restriction, would, under the conflicts of laws rules of this jurisdiction, be determined by reference to the governing law of the FOA Netting Agreement (with Title Transfer Provisions) and a Clearing Agreement which includes the Title Transfer Provisions, and/or by reference to the governing law of the place where the Margin is located.

We are of this opinion because: under Croatian Financial Collateral Act, where financial instruments are in the form of book entry securities, exclusively the law of the country where the register i.e. account with the authorized institution is situated, in which those financial instruments are registered, shall apply to the financial collateral agreements in respect of the legal nature and proprietary effects, procedural requests and forms for conclusion and realisation of the financial collateral agreements, as well as in matters concerning the impact of potentially existing rights of third parties over those financial instruments. While there is no specific provision regarding cash margins, in our view, they would be subject to party autonomy regarding choice of law for contracts (Article 3 of the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual

obligations (Rome I Regulation)) and general rules that the *rights in rem* are governed by the law where the thing (margin) is located (Article 18 of the Croatian Law on Resolution of Conflict of Laws with Regulation of Other Countries in Certain Relationships (Conflict of Laws Act).

If the FOA Netting Agreement (with Title Transfer Provisions) or Clearing Agreement which includes the Title Transfer Provisions, as the case may be, do not constitute a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive, the Title Transfer Provisions may not be enforceable following an Event of Default related to the Bankruptcy Proceedings, but an alternative statutory netting mechanism will apply instead (please refer to paragraph 4.1.1(c)(i) below).

Amendments to the Title Transfer Provisions specified in Section 1 of Annex 5 are necessary in order for the opinions expressed in this paragraph 3.10 to apply.

It is also desirable, but not necessary, to make amendments to the Title Transfer Provisions specified in Section 2 of Annex 5. The amendment is desirable because Croatian Financial Collateral Act mandates that the evaluation and realisation of the financial collaterals should be made in such a manner. Failure to insert the desirable amendment will not, in our view, make the realisation unenforceable. However, if the evaluation and realisation is not done in such a way, it may open the possibility to the bankruptcy administrator or the counterparty to argue that this provision of Financial Collateral Act is mandatory hence try to annul any action done contrary to such provision. Thus, it is desirable to insert such a provision to put on notice the Parties that they should act with the described standard when evaluating and realising the financial collateral.

Furthermore, in addition to the highlighted words shown in Annex 4, it is necessary that the words shown as underlined in Section 3 of Annex 5 be treated as Core Provisions in order for the opinions expressed in this paragraph 3.10 to apply.

In case the Transactions do not constitute financial collateral arrangements, please see qualification 4.2.2. In particular, any termination clause might not be enforceable under Croatian law, because the Bankruptcy Act provides that the close-out netting (and calculation of a close-out net sum) shall take effect on the second dealing day after the day the bankruptcy proceeding has commenced, the parties may not mutually change the enforcement of the Bankruptcy Act. For that reason, opinions under 3.10.1; 3.10.2; and 3.10.3 may not be applicable to Transactions not constituting financial collateral arrangements. Kindly note general limitations to application of this opinion to agreements not constituting financial collateral arrangements set out in qualifications section.

3.11 **Use of security interest margin not detrimental to Title Transfer Provisions**

In relation:

3.11.1 to a FOA Netting Agreement (with Title Transfer Provisions) and to a Clearing Agreement which includes the Title Transfer Provisions and the Non-Cash Security Interest Provisions (used with or without the Rehypothecation Clause) and/or the Client Money Additional Security Clause - whether the

Default Margin Amount (as calculated pursuant to the terms of the Title Transfer Provisions) would be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision; and

3.11.2 to the Clearing Agreement which includes the Title Transfer Provisions - whether the value of the Transferred Margin would be taken into account as part of the Relevant Collateral Value,

would be determined by reference to the governing law of the FOA Netting Agreement (with Title Transfer Provisions) and a Clearing Agreement which includes the Title Transfer Provisions, or by reference to the governing law of the place where the collateral is located. Further, our opinion at paragraph 3.10.3 remains true in relation to such a FOA Netting Agreement or Clearing Agreement.

3.12 Single Agreement

Under the laws of this jurisdiction it is not necessary but it is desirable that the Transactions and the FOA Netting Agreement or, as the case may be, the Clearing Agreement are part of a single agreement in order for the termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision to be enforceable. In our view, the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and Transactions are part of a single agreement.

3.13 Automatic Termination

3.13.1 It is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provision to ensure the effectiveness of netting under the FOA Netting Agreement in the event of bankruptcy, liquidation, or other similar circumstances for the following reasons. In case the Transaction cannot be considered Financial Collateral Arrangement, Croatian Bankruptcy Act applies. In case of application of Bankruptcy Act, after the institution of the bankruptcy proceeding against any Croatian counterparty which is subject to the Bankruptcy Act, and provided a master agreement is in place between the bankrupt entity and the non-defaulting party, it can be argued that the value for the calculation of the close-out/net amount is to be calculated based on their value on the second business day after the institution of the bankruptcy proceedings. Since the Bankruptcy Act is part of the mandatory provisions under local law/"ordre public", this means that the application of this provision is compulsory by it and cannot be amended by the parties to a contract, at least not as long as the termination happens upon bankruptcy.

3.13.2 It is not problematic for the effectiveness of netting that, under the Clearing Module Netting Provision and the Addendum Netting Provision, termination and liquidation of Client Transactions does not occur automatically upon the opening of Insolvency Proceedings in relation to a Firm, or as the case may be Clearing Member, incorporated or organised in this jurisdiction.

3.14 **Multibranch Parties**

We do not consider that the use of the FOA Netting Agreement or, as the case may be, the Clearing Agreement by a Party with branches in a number of different jurisdictions, including some where netting may not be enforceable would jeopardise the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision or the Title Transfer Provisions insofar as the laws of this jurisdiction are concerned

3.15 **Insolvency of Foreign Parties**

Where a Party is incorporated or formed under the laws of another jurisdiction and an Event of Default or a Firm Trigger Event or, as the case may be, a CM Trigger Event occurs in respect of such Party (a "**Foreign Defaulting Party**") the Foreign Defaulting Party can be subject to Insolvency Proceedings in this jurisdiction if the centre of its business activity is in this jurisdiction, or, under certain conditions, if in this jurisdiction it has a business unit without legal personality (such as a branch) or if it owns assets in this jurisdiction.

3.16 **Special legal provisions for market contracts**

There are no special provisions of law which would affect the opinions given in this paragraph 3 which would apply to a Transaction between two Parties as a result of the fact that such Transaction was entered into on, or is back-to-back with a Transaction entered into on an exchange (in this or another jurisdiction), or is cleared at, or is back-to-back with a transaction to be cleared by a central counterparty.

4. **QUALIFICATIONS**

The opinions in this opinion letter are subject to the following qualifications.

4.1 **General qualifications**

4.1.1 With respect to opinions given in paragraphs 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10 and 3.11, following an Event of Default related to the Bankruptcy, the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provisions, these provisions will be enforceable in accordance with their terms if the FOA Netting Agreement or the Clearing Agreement, as the case may be, is being characterised as financial collateral arrangements within the meaning of the Financial Collateral Arrangements Directive.

(a) Under the Croatian conflict laws, English law is the law to be applied to determine whether or not an arrangement constitutes a financial collateral arrangement. While it seems to us that arrangements under Transactions would constitute financial collateral, an appropriate English law opinion should be obtained to this point.

(b) This qualification is made because Croatian Financial Collateral Act (based on the Financial Collateral Arrangements Directive) provides

for protection of financial collateral arrangements in case of Bankruptcy Proceedings, while equal protection is not provided to other instruments. As a consequence, if the FOA Netting Agreement or the Clearing Agreement, as the case may be, is not characterised as financial collateral arrangement and the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provisions do not relate to financial collateral, general provisions of Croatian Bankruptcy Act may apply, in which case the opinions given in paragraphs 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9 , 3.10 and 3.11 are subject to general rules on bankruptcy in the Republic of Croatia, which affords limited protection to the Parties. In particular, under Article 111 of the Croatian Bankruptcy Act if a term or a deadline was stipulated for financial services that have a market or an exchange value and such term or deadline occurs after institution of bankruptcy proceeding, then counterparty would not have the right to request fulfilment of the transaction but only a claim for non-performance. The claim for non-performance shall be determined by the difference between the agreed price and that market or exchange price which on the second business day after the institution of bankruptcy proceedings applies at the place of performance for contracts entered into with the stipulated time of fulfilment. The other party may assert such claim only as a creditor in bankruptcy proceedings. Consequently, in case under English law that governs the FOA Netting Agreement and the Clearing Agreement these agreements are not characterised as financial collateral arrangement, the netting/set-off will not work if the term expires after institution of the Bankruptcy Proceedings.

(c) The basic legal problem lies within the fact that both laws (i.e. Financial Collateral Act and Bankruptcy Act) aim at regulating the same legal issue (close-out netting in the Bankruptcy Proceedings), but appear to do so in different ways. Such inconsistency opens a window for several possible interpretations. Since there is no existing court practice in this jurisdiction to address this matter, the described situation causes certain level of legal uncertainty about the clear enforceability of close-out netting in bankruptcy of Croatian entities.

(i) Since the Bankruptcy Act is part of the overriding mandatory provisions under local law/"ordre public", this means that the application of this provision is compulsory by it and cannot be amended by the parties to a contract, at least not as long as the termination happens upon bankruptcy. In consequence, in our opinion there is a risk that even if the FOA Netting Agreement or the Clearing Agreement, as the case may be, constitute a financial collateral arrangement, Article 111 of the Croatian Bankruptcy Act (described in sub-paragraph (a) above) will apply. In such a case, a termination clause under which a Non-Defaulting Party can decide on the early termination date might not be enforceable under Croatian law. Based on Article 111 of

the Bankruptcy Act, the Non-Defaulting Party will have a right to claim for non-performance of the transactions (and not the right to request for the fulfilment of such transactions) from the Defaulting Party (the bankrupt entity) in respect of the financial services that have a market or an exchange price and are covered by the master agreement (such as the Transactions entered into under the FOA Netting Agreement or the Clearing Agreement, as the case may be), but only as a regular creditor in bankruptcy. Such a claim should be calculated as a net amount of all outstanding Transactions. The claim for non-performance shall be calculated based on "...a market price or an exchange price that is valid on the second business day after the day a bankruptcy proceeding has commenced..." and that "...such price is valid for the contract with the stipulated ("agreed") time of fulfilment at the place of (their) fulfilment.".

(ii) It should be mentioned here that, while the intention of the law is for the claim to be calculated as a net amount, this is not entirely clear from the wording of the law. It is highly likely that one grammatical error occurred at the time Bankruptcy Act was published in Official Gazette. The Bankruptcy Act has been mostly „copied" from German Insolvency Code. The provision of the German original text that was literally copied/enacted was:"If individual contracts regarding financial transaction are combined in a master agreement for which it has been agreed it may be terminated for breach of contract in its entirety, then all such individual contracts shall constitute a single contract providing for reciprocal obligation with the meaning of §§ 103, 104." The Croatian „translation"contains an error – the words „in its entirety" were translated into „by consent", what does not make any sense in practice. We believe the intention of the Croatian Parliament was to follow the original German text. However, given the actual wording, requires termination in case of default "by consent", it is unclear how the courts would interpret this in practice, and whether the calculation would indeed be made as net amount of all outstanding transactions.

(iii) On the other hand, Article 8 of the Financial Collateral Law states that the fulfilment of obligations arising out of the financial collateral agreement, including the premature (early) termination of obligations (acceleration) with regard to netting ("calculation") shall take effect in accordance with the terms provided in such agreement (in this case in the FOA Netting Agreement or the Clearing Agreement, as the case may be), notwithstanding the commencement of the Bankruptcy Proceedings, the Liquidation proceedings or the reorganisation measures (which could reasonably be interpreted to include pre-bankruptcy measures) in respect of the collateral provider or collateral taker.

In our view, provisions of the Financial Collateral Act should take precedence over the contrary provisions of Bankruptcy Act and Article 111 should not apply to the FOA Netting Agreement or the Clearing Agreement, as the case may be, if these agreement are characterised as a financial collateral arrangement.

(d) Notwithstanding the above, it should be pointed out that there have been opinions (ISDA, letter to Ministry of Economy dated 24 June 2011) that even in case of financial collateral arrangements it is not entirely clear whether or not the provisions of Bankruptcy Act such as the cited one should nevertheless apply. While in our view, this should not be the case since the Financial Collateral Act generally provide that obligations arising from the financial collateral agreement, including the early termination of obligations or netting shall be fulfilled according to that agreement notwithstanding the initiation of the Bankruptcy or Liquidation proceedings or reorganisation measures against the financial collateral provider or financial collateral taker, the fact that ISDA suggests that there is some degree of uncertainty should be taken into account when entering into agreements or Transactions. The fact that ISDA obtained opinions from Croatian lawyers that suggests lack of clarity with respect to this issue suggests that views different to ours cannot be excluded. Since there have been no substantive legislative changes since ISDA's letter, we must conclude that uncertainty still persists, notwithstanding our view that provisions of Financial Collateral Act should prevail over the inconsistent provisions of Bankruptcy Act.

(e) The applicable laws do not prescribe how the set off and netting are to be treated in the event of the Pre-Bankruptcy Proceedings and hence the competent authorities have a large margin of discretion how to treat them in such event. Given the (i) lack of express regulation; (ii) the fact that the Pre-Bankruptcy Proceedings have existed only for two years and (iii) fact that the Pre-Bankruptcy Proceedings cannot be instigated over financial institutions, credit unions, credit institutions or investment firms, investment funds' management firms, insurance and reinsurance companies, leasing companies (as entities that are most likely to enter into the FOA Netting Agreement or the Clearing Agreement, as the case may be, and the Transactions), there is no clarity as to how the FOA Netting Agreement or the Clearing Agreement, as the case may be, and the Transactions would be treated in case of the Pre-Bankruptcy Proceedings of entities that may be subject to such proceedings (such as Corporations). While provisions of Financial Collateral Act generally provide that obligations arising from the financial collateral agreement, including the early termination of obligations or netting shall be fulfilled according to that agreement notwithstanding the initiation of the Bankruptcy or Liquidation proceedings or reorganisation measures against the financial collateral provider or financial collateral taker, it is not expressly provided that this would also be the case in so called "Pre-Bankruptcy Proceedings" scenario. While in our view the Pre-Bankruptcy Proceedings should

be treated as "reorganisation measures" and should not hence be applicable to obligations under financial collateral, we mention it because pre-bankruptcy proceedings have been subject to many controversial applications in practice. Hence, while in our view if the Pre-Bankruptcy Proceedings are opened, the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provisions shall still be enforceable in accordance with their terms provided that the FOA Netting Agreement or the Clearing Agreement is considered under English law to be a financial collateral arrangement, it cannot be excluded that the relevant authorities take opposite approach.

4.1.2 Where an obligation has been entered into (including under a Transaction or a transfer of Margin under the Title Transfer Provisions) after the commencement of Insolvency Proceedings in relation to a Party, any amount which is due in respect of such an obligation may not be capable of inclusion in the netting under the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, or a set-off under the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision, but this is unlikely to impair the effectiveness of the netting under the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, or a set-off under the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision in respect of amounts due in respect of Transactions entered into before the commencement of such Insolvency Proceedings. This is because Financial Collateral Act provides that financial collateral agreement or some provisions thereof shall not be voidable or invalid on the sole basis that the agreement was concluded or entered into force, or the financial instruments or cash were delivered or acquired: (a) in a prescribed period prior to the submission of the proposal for initiation of the bankruptcy or liquidation proceedings or undertaking reorganisation measures against the financial collateral provider or financial collateral taker; or (b)on the day of the commencement of the bankruptcy or liquidation proceedings or reorganisation measures. However, where a specific financial obligation has arisen (e.g. by virtue of entering into an agreement such as FOA Netting Agreement or Clearing Agreement) or financial instruments or cash have been delivered or acquired on the day of commencement of the Insolvency Proceedings, but after the moment of adoption of the relevant decision on commencement of such proceedings, that obligation i.e. the agreement shall be legally enforceable and binding if the financial collateral taker can prove that he was not aware, nor should have been aware, of the initiation or commencement of the Insolvency Proceedings. These rules shall apply to, and, as the case may be, limit the enforceability of the FOA Netting Provision, FOA Set-Off Provision, Clearing Module Set-Off Provision, Addendum Set-Off Provision, the Title Transfer Provisions even in cases where they are a part of a financial collateral arrangement.

4.1.3 If the obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or, as the case may be, the Title Transfer Provisions

are not "mutual" between the Parties they may not be eligible for inclusion in a netting or set-off pursuant to the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision. For these purposes, under the laws of this jurisdiction, obligations would not be regarded as "mutual" if the Parties are not each personally and solely liable as regards obligations owing by it and solely entitled to the benefit of obligations owed to it.

4.1.4 The opinions expressed herein apply to Corporations and individuals acting as sole entrepreneurs under the Croatian Companies Act and craftsman under the Croatian Crafts Act only when they enter into agreements with (i) public sector bodies of Member States of the European Union charged with the management of public debt or which are authorised to hold business accounts or (ii) Central banks of Member States of the European Union, European Central Bank, International Monetary Fund, European Investment Bank, Bank for International Settlements (BIS), International Bank for Reconstruction and Development, International Finance Corporation, Inter-American Development Bank, Asian Development Bank, African Development Bank, Council of the European Fund for Reallocation, Nordic Investment Bank, Caribbean Development Bank, European Bank for Reconstruction and Development, European Investment Fund and Inter-American Investment Corporation; (iii) Financial institutions such, i.e., credit institutions, investment firms, financial institutions (legal persons, with the exception of credit institutions, whose exclusive or core activity is acquisition of equity stakes, i.e. performing of one or more basic financial services), insurance undertakings and undertakings for collective investments in transferable securities, or (iv) Central counterparties, settlement agents and clearing houses. This is because the Corporations and individuals acting as sole entrepreneurs under the Croatian Companies Act and craftsman under the Croatian Crafts Act may enter into financial collateral arrangements only with entities listed under (i) – (iv) of this qualification. This qualification is relevant notwithstanding the qualification regarding applicable law in 4.1.1.(a) because capacity of the parties is subject to the law of the state of nationality incorporation. Under Croatian law, natural persons may enter into financial collateral arrangements if they enter into such arrangements with entities listed in this paragraph 4.1.4.

4.1.5 With respect to branches of foreign corporations (paragraph 1.1.1.), credit institutions (paragraph 1.2.1) and foreign investment firms (paragraph 1.2.1), please note that under Croatian law branches are not legal persons. Hence, rights and obligations acquired by a branch are in essence rights and obligations of the founder of such branch. The Croatian Financial Collateral Act (Art. 3), as a principal source of law for this letter opinion does not mention branches of foreign entities as parties to financial collateral agreements, although it expressly mentions various types of parties (central bank, credit institutions, financial institutions, insurance companies, investment companies, etc). From this and from the lack of administrative or court practice to the contrary we conclude that Croatian located branches of a Party incorporated in other jurisdiction would not be entitled to enter into and

assume directly rights and obligations under the agreements. Even if the Croatian located branch enters into an agreement, according to express rules provided by the Companies Act and the Credit Institutions Act, the rights and obligations under them would be assumed by the foreign Party founder of the Croatian located branch. Therefore, if the law of incorporation of the foreign Party acting through Croatian branch allows for the foreign Party to acquire rights and obligations directly through acts of Croatian branch, in case of agreements entered into by a Croatian branch of the foreign Party, the rights and obligations would be assumed by the foreign Party. In certain limited cases Croatian bankruptcy proceedings could be opened over a Party which has a Croatian located branch or a Party which has assets located in Croatia.

4.1.6 Under Croatian Financial Collateral Act, the evaluation and realisation of financial collaterals, i.e. determination of the appropriate financial obligations, must be carried out with higher attention, according to rules and practices of the profession (due professional care), taking into account the financial market situation. Croatian bankruptcy administrator may try to annul any transaction in which the evaluation and realisation of collateral has not been done in such a manner. There is no definition of rules and practices of the profession. Due professional care, according to legal theory[1], cannot be defined in advance by way of generalisation as it depends on various factors (factual circumstances, type of contract, rules of a particular profession, current business customs, etc.) and is to be determined on a case-to-case basis.

4.1.7 Croatian Financial Collateral Act defines netting as calculation of present or future payments, calculation of obligations for delivery or calculation of rights arising from one or more financial agreements on a specified transaction. Consequently, since netting can pertain one or more financial agreements, it is not necessary for the Transactions and the FOA Netting Agreement or, as the case may be, the Clearing Agreement to be a part of a single agreement. It may be desirable to have them as a part of a single agreement, as in case it becomes necessary to evidence in a bankruptcy proceedings in Croatia against a Party that Transactions and agreement were entered into, we find that such evidencing would be facilitated if all the Transactions and agreements would be considered as part of the same agreement. While it seems to us that they would form a single agreement, this is (per Croatian law) a matter to be determined by English law that governs the FOA Netting Agreement or the Clearing Agreement, as the case may be (and not Croatian law).

4.1.8 Under Croatian law, provisions of agreements prepared by one party that create manifest inequality between rights and obligations of the other party are null and void. While this is a rule of Croatian obligations act that does not necessarily apply to contracts governed by foreign law, it cannot be excluded that bankruptcy administrator or court invokes these provisions in cases where the agreement in question lacks balance, e.g., in case of one-way early termination clauses (FOA Clearing Module). In such case, the bankruptcy administrator might try to annul the netting or set off stating that it was done

[1] e.g., dr Mladen Pavlović, Due care of participants when fulfilling obligations in 51(3) Collection of Papers of Split Law Faculty, year 2014.

on the basis of an unfair clause. We do not find it likely that a competent court or tribunal would find the provisions of the FOA Netting Agreement and the Clearing Agreement to create manifest inequality.

4.1.9 Please note that under general rules of Croatian law set off must be declared to the other party. While this requirement may not necessarily apply in case of set off being governed by foreign law which does not require declaration, we cannot exclude that the defaulting party or bankruptcy administrator might try to annul the set off that was not declared and notified to the other (defaulting) party claiming that such set off never actually occurred. In case where the claim against which the set off is asserted is governed by English law, and assuming that English law does not require declaration of set off, we find that risk of a Croatian court holding that the declaration of set off was necessary to be very low.

4.1.10 Under Croatian Law, any financial collateral constituting cash must be in a certain amount which corresponds to the financial obligation secured by the financial collateral arrangement. While this requirement may not necessarily apply in case of financial collateral arrangements being governed by foreign law, we cannot exclude that the defaulting party or bankruptcy administrator might try to annul the arrangement (including arrangements for the purposes of the opinions 3.7, 3.8 and 3.9) claiming that such cash does not constitute financial collateral and hence would not enjoy the protections of Financial Collateral Act but rather general provisions of bankruptcy laws.

4.1.11 Rights of a party under agreements and Transactions may not be enforceable in Croatia if Croatian court recognises a foreign judgement or arbitral award which prohibits the effects of netting, set-off or title transfer provisions.

4.1.12 This opinion covers only agreements and Transactions only to the extent they relate to financial instruments as defined in Section C of Annex I (List of Services and Activities and Financial Instruments) of the Directive 2004/39/EC of the European Parliament and the Council).

4.1.13 Under Croatian law, it is not entirely clear what is the relationship between concepts of "set off" and "netting". Since the definition of "netting" under Croatian Financial Collateral Law suggests that netting may involve set-off, it cannot be excluded that the restrictions regarding set-off mentioned in this opinion may be extended to netting, in particular if netting is done by ways of set-off.

4.1.14 In certain cases set off and netting of amounts related to securities issued or listed in Croatia may not be allowed. Payments and collections in foreign currency which arise from forms of payment such as set-off may not be allowed if they relate to purchase and sale of securities listed or issued in the Republic of Croatia, irrespective of their denomination in kuna or in foreign exchange, except securities issued in the Republic of Croatia which are listed abroad.

4.2 **Insolvency related qualifications**

4.2.1 Some entities such as leasing companies (incorporated under the Croatian Leasing Act) cannot be subject to Pre-Bankruptcy Proceedings under the Financial Operations' and Pre-bankruptcy Settlement Act. The fact that a company may not be subject to pre-solvency settlement proceedings does not mean that other opinions cannot be applied to such entities.

4.2.2 In case of Insolvency Proceedings, irrespective of the choice of English law, as the law governing the agreement and the Transaction, the Croatian Bankruptcy act is mandatory and applicable to the bankruptcy of any debtor having principal place of business in Croatia. This rule applies regardless whether the assets of the bankruptcy debtor are located in Croatia or abroad (always subject to the conflict of law rules of the jurisdiction where assets may be located, as they may provide for different conflict of law rules). According to the Article 5 and 301 of the Bankruptcy act the courts of Croatia have exclusive jurisdiction for the bankruptcy of Croatian entities. In case a Transaction does not constitute financial collateral arrangement the following rules apply in case of bankruptcy:

- If a contract provides that the supply of goods that have a market or an exchange price is to be performed at a fixed time or within a fixed period of time, and if such time or the expiration of such period occurs after the institution of bankruptcy proceeding, then in lieu of performance only a claim for non-performance of fixed transactions may be asserted by the non-bankrupt counterparty.
- If a term or a deadline was stipulated for financial services that have a market or an exchange price, and such term or deadline occurs after the institution of bankruptcy proceeding, then in lieu of performance only a claim for non-performance may be asserted by the other counterparty.
- The term "financial services" includes (i) delivery of precious metals, (ii) delivery of securities or similar rights, unless it is intended to acquire an interest in another company for purposes of creating a permanent connection to such company; (iii) monetary payments performed in a foreign currency or any currency unit; (iv)monetary payments the amount of which is determined directly or indirectly, by the currency rate of a foreign currency or a currency unit or the interest rate applied to a claim or the price of other goods or services; options and other rights for delivery or monetary payments pursuant (i) to (iv).
- If financial services are combined in a master agreement for which it has been agreed that it may be terminated for breach of contract only by consent, then all such individual transactions shall constitute a single agreement providing for reciprocal obligations.
- The claim for non-performance shall be determined by the difference between the agreed price and that market or exchange price which on the second business day after the institution of the bankruptcy proceedings prevails at the place of performance for contract entered into with the stipulated time. The other party may assert such claim only as a creditor in bankruptcy proceedings.

The main consequence of these rules is a termination clause might not be enforceable under Croatian law, because the Bankruptcy Act provides that the

close-out netting (and calculation of a close-out net sum) shall take effect on the second dealing day after the day the bankruptcy proceeding has commenced, the parties may not mutually change the enforcement of the Bankruptcy Act.

4.2.3 The commercial court of this jurisdiction will have exclusive jurisdiction in bankruptcy of the Party that has registered seat outside this jurisdiction while the principal place of business in this jurisdiction.

4.2.4 Opinions expressed herein do not apply to any case in which the agreements and/or the Transactions (entered into before opening of an Insolvency Proceedings) constitute legal acts or omissions which:

(a) Hinder proportional satisfaction of insolvency creditors;
(b) Put one of the insolvency creditors in a more favourable position;

and which actions or omissions were undertaken in circumstances in which provisions of the Croatian Bankruptcy Act allow for avoidance of such agreements and/or Transactions. The fact that netting and set off provisions put one of the creditors in a more favourable position is not of itself sufficient for application of avoidance provisions: however, if the right to netting or set off has been agreed upon in circumstances specifically described in the law (and below), they could potentially be challenged under the avoidance provisions. The acts that can be challenged under these provisions are acts in which the bankrupt counterparty takes part, by act or omission. In our view, if a right to set off or netting was acquired before described circumstances took place, exercising such rights by a creditor cannot be challenged by way of avoidance provisions.

The avoidance provisions do apply even in context of financial collateral, because Financial Collateral Act in Article 11 expressly provides subsidiary application of provisions of other legislation (such as Bankruptcy Act) on contestation of the debtor's legal actions and regulating invalidating or declaring null and void legal transactions and other legal actions to financial collateral agreements and to the rights acquired on the basis thereof

Any act, including execution of documents, netting or set off, may constitute such acts or omissions.

Such acts may be contested as follows:

- Legal action by which a non-bankrupt party acquires security or settlement from the bankrupt party that the non-bankrupt Party was not authorized to claim in that certain manner or in that certain time, can be contested:
    - if the action was taken in the last month prior to the bankruptcy petition or afterwards, or
    - if the action was taken during third or second month prior to the bankruptcy petition and the other party was insolvent at that time, or

- if the action was taken during third or second month prior to the bankruptcy petition, and the the non-bankrupty Party was aware, at the time the action was taken, that this action harms bankruptcy creditors.

- Legal action that directly harms bankruptcy creditors can be contested:
  - if the action was taken during last three months prior to the bankruptcy petition, if the bankrupt party was insolvent at that time and non-bankrupt party was aware of bankrupt party's insolvency at the time the action was taken, or
  - if the action was taken after bankruptcy petition regarding the bankrupt party, and the non-bankrupt party was aware or had to be aware of the bankrupt party's insolvency or bankruptcy petition at the time the action was taken
- Legal action taken during last 10 years prior to the bankruptcy petition or afterwards, with the intention to harm creditors, can be contested if the non-bankrupt party was, at the time the action was taken, aware of bankrupt party's intentions, which is presumed if the non-bankrupt party knew that the bankrupt party is close to being insolvent and if non-bankrupt party knew that this action harms bankrupt party's creditors.
- Debtor's legal action, if undertaken without consideration or with minor consideration, can be contested, unless it is taken at least 4 years prior to the bankruptcy petition**.**

Legal action is presumed to take place when its legal effects take place.By way of an example, a Transaction may be contested if the following conditions are fulfilled:

- an agreement regarding a Transaction was concluded within three months prior to the bankruptcy petition;
- the bankrupt party was insolvent at the time of the conclusion of the agreement (i.e., notwithstanding that the formal bankruptcy proceedings have not been initiated yet);
- the non-bankrupt party was aware of insolvency of the bankrupt party.

These rules shall not apply where the conditions for application of Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (which excludes insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, or to collective investment undertakings), in particular its Article 13, where the person who benefited from an act detrimental to all the creditors provides proof that:

- the said act is subject to the law of a Member State other than that of the State of the opening of proceedings, and

- that law does not allow any means of challenging that act in the relevant case.

4.3 **Qualifications related to governing law**

4.3.1 The extent to which an insolvency representative or court in Croatia would have regard to English law is subject to provisions of Rome I Regulation and, unless contrary to the Rome I Regulation, provisions of Conflict of Laws Act. In particular:

(a) Rome I Regulation and Croatian Law on Resolution of Conflict of Laws with Regulation of Other Countries in Certain Relationships allow for choice of law regarding contractual obligations only. Thus, the choice of law does not affect the governing law regarding extra-contractual aspects of the FOA Netting Agreements or the Clearing Agreement, as the case may be, and Transactions, such as capacity of the parties or rights *in rem* over the collateral.

(b) The choice of English law does not restrict (i) the application of the overriding mandatory provisions of the law of the forum, or (ii) (if all elements of the FOA Netting Agreements or the Clearing Agreement, as the case may be, and Transactions are located in Croatia), the application of provisions of Croatian law which cannot be derogate from by agreement.

(c) The effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful.

(d) In relation to the manner of performance and the steps to be taken in the event of defective performance, regard shall be had to the law of the country in which performance takes place.

(e) The application of a provision of the governing law may be refused if such application is manifestly incompatible with the public policy (ordre public) of the forum.

While the provisions of the agreements as written (including netting, set-off and title transfer) do not seem to be contrary to overriding mandatory provisions or to violate public policy, if and to extent their application (by virtue of statutory or common law rules not written in the agreements but forming part of governing law) may lead to a result that would be incompatible with such overriding mandatory provisions or public policy, the application of the governing law might be refused. By way of an example, if governing law, notwithstanding what is written in the agreements, would lead to the application of concepts fundamentally contrary to Croatian legal system, such as punitive damages, which concept are not written in agreements but arise from general provisions of applicable law, in the same token as the punitive damages are not written in agreements but stem from applicable law, Croatian courts would refuse application of such concepts.

4.3.2 Where financial instruments are in the form of book entry securities, exclusively the law of the country where the register i.e. account with the authorized institution is situated, in which those financial instruments are registered, shall apply to the financial collateral agreements in respect of the

legal nature and proprietary effects, procedural requests and forms for conclusion and realisation of the financial collateral agreements, as well as in matters concerning the impact of potentially existing rights of third parties over those financial instruments. The broad wording of this provision leaves it open to Croatian courts, if seized with the issue, expand the domain of that law on expense of law chosen by the parties, and hence limit the effect of English law. Thus, choice of English law as governing may be of limited effectiveness in cases where England is not the country where the register i.e. account with the authorized institution is situated, in which cases the law of that country could apply.

4.4 Qualifications related to Enforceability of Netting Provision

4.4.1 Under Croatian law:

(i) if the financial collateral is at disposition of the financial collateral taker; and

(ii) at the same time the preconditions are fulfilled for realisation of the financial collateral,

early termination of obligations shall be possible in case of financial collateral agreement under which the financial instruments are transferred if the obligation of the financial collateral taker to deliver the substitute financial instrument still exists or is still valid..

Hence, if these conditions are not fulfilled, and if early termination is required for rights of a non defaulting party (such as netting provisions) to be effective, enforceability of such rights of non-defaulting party (including FOA Netting Provisions, Clearing Module Netting Provision and Addendum Netting Provision) might be jeopardised.

4.5 Qualifications related to legal environment

4.5.1 Any enforcement in Croatia of rights, obligations or authorities of a Party, including also against any Croatian person, would be subject to interpretation of applicable laws and regulations by competent Croatian authorities at relevant times. While we are of the view that the extent to which Croatian legislation should apply to financial collateral arrangements over foreign instruments is likely to be very limited, given that the Croatian Financial Collateral Act is a novel instrument rather unfamiliar to Croatian judges and authorities and, in addition, drafted as a rather imperfect implementation of EU financial collateral legislation, it cannot be excluded that Croatian insolvency representatives and courts may, in case of doubt as to the governing law and applicable legislation, seek to expand application of Croatian legislation (including Bankruptcy act) to agreements and Transactions therefore granting a more limited protection to the Parties then what would be available under the financial collateral regime. While we consider that this deficiency of Croatian judiciary system would be ultimately cured by multi-instance scrutiny of judicial decisions and preliminary reference referrals to European Court of Justice, risk is noteworthy given the

fact that (i) Croatian courts are very slow and (ii) Croatia most recently joined the European Union and thus the references to preliminary ruling to the European Court of Justice are a novelty in Croatian law.

4.5.2 We express no opinion with respect to any law other than the laws of Croatia. In particular we express no opinion on English law with respect to the FOA Netting Agreement and the Clearing Agreement and Transactions.

4.5.3 This opinion does not cover any procedural steps a party may be required to undertake in Croatia bankruptcy, pre-bankruptcy or other proceedings. Hence, a separate opinion should be sought in such cases in order to clarify whether a party should inform, notify, file or in any other way act regarding the set off or netting should such proceedings with respect to a counterparty be opened in Croatia.

4.5.4 This opinion reflects the Croatian laws relevant to the FOA Netting Agreement and the Clearing Agreement and Transactions and to the Parties thereto at the date of its issue. We express no opinion and take no responsibility for any subsequent changes of the laws or court or administrative practices in Croatia that could in any way affect the FOA Netting Agreement and the Clearing Agreement and Transactions or the respective rights and obligations of the Parties under them.

4.6 **Qualifications related to Insolvency of Foreign Parties**

4.6.1 Bankruptcy proceedings and its effects will be determined in accordance with the laws of the country where the bankruptcy proceedings have been opened.

4.7 **Application of qualifications in certain circumstances**

4.7.1 Qualifications under 4.1.3, 4.1.4, 4.1.5, 4.1.6, 4.1.7, 4.1.8, 4.1.9, 4.1.10, 4.1.11, 4.1.12, 4.1.13, 4.1.14, 4.3, 4.4 and 4.5 shall apply to non-insolvency related situations as well as insolvency-related situations that do not constitute the Bankruptcy Proceedings or Pre-Bankruptcy Proceedings.

4.7.2 In case of Bankruptcy Proceedings, all qualifications listed in this Letter Opinion should be taken into account. Given the lack of clarity with respect to the Pre-Bankruptcy Proceedings, all the qualifications should be observed in case of Pre-Bankruptcy Proceedings as well, including the ones related to bankruptcy. The reason lies in the possibility for the courts, absent specific provision relating to Pre-bankruptcy, to apply by analogy rules applicable to Bankruptcy in case of Pre-bankruptcy as well.

4.8 **New Bankruptcy Act**

4.8.1 As this Opinion has been drafted, Croatian Parliament was in the process of adopting a new Bankruptcy Act. The new Bankruptcy Act shall cover both Bankruptcy Proceedings and Pre-Bankruptcy Proceedings. Once the Bankruptcy Act is promulgated as law, this opinion may need to be revised.

There are no other material issues relevant to the issues addressed in this opinion which we wish to draw to your attention.

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This opinion may not, without our prior written consent, be relied upon for any other purpose or be disclosed to or relied upon by any other person save that it may be disclosed without such consent to:

a) 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;

b) the officers, employees, auditors and professional advisers of any addressee or any subscribing member; and

c) any competent authority supervising a subscribing member in connection with their compliance with their obligations under prudential regulation

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.

We accept responsibility to FIA Europe and the subscribing members in relation to the matters opined on in this opinion. However, the provision of this opinion is not to be taken as implying that we assume any other duty or liability to the subscribing members. The provision of this opinion does not create or give rise to any client relationship between this firm and the subscribing members.

Yours faithfully,

Žurić i partneri

SCHEDULE 1
Banks

Subject to the modifications and additions set out in this Schedule 1 (Banks), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are banks. For the purposes of this Schedule 1 (Banks), "**Bank**" means credit institution so defined as legal entities which business activity includes deposit keeping and keeping of exchangeable means of natural and legal entities and issuance of loans subject to the Credit Institutions Act.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.10.4 is deemed deleted and replaced with the following:

""Insolvency Proceedings" means the procedures listed in section 2.1 of Schedule 1 “Banks".

2. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

2.1 Insolvency Proceedings: Banks

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a bank could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

Special administration under the Credit Institutions Act (NN 159/13)
Regular and mandatory liquidation under the Credit Institutions Act (NN 159/13) and the Companies Act (NN 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13)
Bankruptcy proceedings under the Credit Institutions Act (NN 159/13) and the Bankruptcy Act (NN 44/96, 161/98, 29/99, 129/00, 123/03, 197/03, 187/04, 82/06, 117/08, 116/10, 25/12, 133/12 and 45/13)
Resolution under Resolution of Credit Institutions and Investment Firms Act (NN 19/05).

Certain aspects related to insolvency proceedings are regulated by the Financial Collateral Act (NN 76/07, 59/12) and Settlement Finality in Payment and Financial Instruments Settlement Systems Act (NN 59/12).

We confirm that the events specified in the Insolvency Event of Default Clause adequately refer to all Insolvency Proceedings if supplemented as set out in Section 4 of Annex 5 (For the purpose of Schedule 1 Banks).

2.2 The following shall be added to Opinion 3.3, 3.4, 3.5, 3.7, 3.8, 3.9

"Under the Credit Institutions Act, in the course of the implementation of reorganisation measures or the opening of winding-up or bankruptcy proceedings concerning a credit institution established in the Republic of Croatia or another Member State, set-off and netting agreements shall be governed by the law which governs such agreements.

2.3 The following shall be deleted from Opinion 3.7

Following an Event of Default related to the Bankruptcy Proceedings, the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if the FOA Netting Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive. Under the conflict of laws rules in this jurisdiction, a question whether the FOA Netting Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive is a question of English law that governs the FOA Netting Agreement. If the FOA Netting Agreement does not constitute a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive, the Set-Off Provisions may not be enforceable following an Event of Default related to the Bankruptcy Proceedings.

2.4 The following shall be deleted from Opinion 3.8

Following an Event of Default related to the Bankruptcy Proceedings, the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive. Under the conflict of laws rules in this jurisdiction, a question whether the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive is a question of English law that governs the Clearing Agreement. If the Clearing Agreement does not constitute a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive, the Set-Off Provisions may not be enforceable following an Event of Default related to the Bankruptcy Proceedings.

2.5 The following shall be deleted from Opinion 3.8

Following an Event of Default related to the Bankruptcy Proceedings, the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive. Under the conflict of laws rules in this jurisdiction, a question whether the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive is a question of English law that governs the Clearing Agreement. If the Clearing Agreement does not constitute a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive, the Clearing Module Set-Off Provision may not be enforceable following an Event of Default related to the Bankruptcy Proceedings.

Following an Event of Default related to the Bankruptcy Proceedings, the Addendum Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive. Under the conflict of laws rules in this jurisdiction, a question whether the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive is a question of English law that governs the Clearing Agreement. If the Clearing Agreement does not constitute a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive, the Addendum Set-Off Provision may not be enforceable following an Event of Default related to the Bankruptcy Proceedings.

2.6 Last sentence of opinion 3.15 shall be replaced by the following:

"Winding-up or bankruptcy proceedings against a credit institution of another Member State shall be carried out in accordance with the regulations applicable in its home Member State, unless otherwise provided for in the Credit Institutions Act. Competent authorities of the Republic of Croatia may initiate winding-up or bankruptcy proceedings over a branch of a foreign credit institution from a country that is not an EU Member State. In addition, Croatian Credit Institutions Act provides certain other conflict of law rules for specific aspects that may be governed by law other than the law of the home state. In addition, the legal effects of a reorganisation measure or the opening of winding-up or bankruptcy proceedings on: 1) employment contracts and relationships shall be governed solely by the law of the home Member State applicable to the employment contract; 2) a contract conferring the right to make use of or acquire immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated, which law shall also determine whether property is movable or immovable; and 3) rights in respect of immovable property, a ship or an aircraft subject to registration in a public register shall be governed solely by the law of the Member State under the authority of which the register is kept.. There other rules that lead to application of law of a state that is not a home Member State where assets to which such rules shall apply are related to that other state.

3. ADDITIONAL QUALIFICATIONS

The opinions in this opinion letter are subject to the following additional qualifications.

3.1 With respect to governing law relevant for the opinions 3.3, 3.4, 3.5, 3.7, 3.8, 3.9, first, it is unclear what the relationship between the governing law provision of Financial Collateral Act and the governing law provision of Credit Institutions Act is. In our view, provisions of Financial Collateral Act should prevail as *lex specialis* and rules of immediate application. If governing law provisions of Credit Institutions Act should nevertheless be held applicable, the situation would be as follows. Under Credit Institutions Act, during reorganisation measure or opening of liquidation or

bankruptcy proceedings over a credit institution from the Republic of Croatia or other Member State, law governing set-off and netting agreement shall be the "law which governs such agreements". It is not clear which law is "law which governs such agreements". When interpreting these provision it is possible to reach two conclusions – the first conclusion would be that the law that applies to these (netting) agreements is (any) bankruptcy law (any bankruptcy law that is relevant in respect of an individual bankruptcy entity) and the second conclusion would be that the law that applies to netting agreements shall be the contractual law as agreed between the parties ("*lex contractus*").If first interpretation (which we consider to be a less likely interpretation) is adopted, law governing set off or netting covered in opinions 3.3, 3.4, 3.5, 3.7, 3.8, 3.9 would be the bankruptcy law relevant to the bankrupt entity. If second interpretation is adopted (which seems to follow from reading of Article 25 of the Directive 2001/24 on the reorganisation and winding up of credit institutions), law governing set off or netting covered in opinions 3.3, 3.4, 3.5, 3.7, 3.8, 3.9 would be the *lex contractus*, i.e., English law. In case the first interpretation is adopted, that would make opinions 3.3, 3.4, 3.5, 3.7, 3.8, 3.9 dependent on the bankruptcy law of the bankrupt entity. Following an Event of Default related to the Bankruptcy Proceedings of a Croatian credit institution, application of Croatian bankruptcy law could lead to conclusions described in Qualification 4.1.1(c) of this opinion. If the second interpretation is adopted, the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provision will be enforceable in accordance with their terms if they are enforceable under English law that governs the FOA Netting Agreement and the Clearing Agreement.

3.2 Under Article 349 of the Credit Institutions Act, the adoption of reorganisation measures or the opening of winding-up or bankruptcy proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution established in the Republic of Croatia or another Member State, where such a set-off is permitted by the law applicable to the credit institution's claim. This provision makes set off dependent on the law applicable to the credit institution's claim (which would likely be the law governing the underlying contract giving rise to the claim of the credit institution). In our view, this should not be relevant in the context of financial collateral arrangements, since Article 8 of the Financial Collateral Act expressly provides that fulfilment of obligations under the financial collateral arrangements (including netting) shall be carried out regardless of bankruptcy or winding up proceedings, thus not making it dependent on the law applicable to the credit institution's claim. However, we cannot exclude opposite interpretation of insolvency administrators and/or judges, in which case the validity of set off and netting could depend on the law governing the claim of the credit institution (and not be determined merely on the basis of Article 8 of the Financial Collateral Act).

3.3 Where winding-up or bankruptcy proceedings have been opened against a credit institution which has its registered office in the Republic of Croatia, the law of the Republic of Croatia relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole shall not apply where the beneficiary of these acts furnishes proof that:

- the act detrimental to the creditors as a whole is subject to the law of a Member State other than the Republic of Croatia; and

- that law does not allow any means of challenging that act in the case in point.

3.4 On 27 February 2015 Croatia implemented the Bank Recovery and Resolution Directive (2014/59/EC – "BRRD Directive") via two separate statutes: through Amendments to the Credit Institutions Act and through newly enacted Resolution of Credit Institutions and Investment Firms Act ("Resolution Act"). The Resolution Act contains a number of provisions which may have an impact on enforcement of the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provision. The authorities charged with carrying out resolution are Croatian National Bank and State Agency for Deposit Insurance and Bank Rehabilitation ("DAB"). The volume and the novelty of these instruments, lack of practice and wide array of powers granted to Croatian National Bank and DAB makes it difficult to predict all the ways they could affect the agreements. The legislation does provide certain protections to the agreements, as well as impose some restrictions as to how powers granted under the agreements may be exercised. From that point of view, the following should be taken into account when concluding the agreements with Croatian banks.

3.4.1 When applying the resolution tools (the sale of business tool; the bridge institution tool; the asset separation tool; the bail-in tool) the provisions of financial collateral legislation relating to the following shall not be applicable:

(a) enforcement of financial collateral;

(b) right to use financial collateral

(c) recognition of security by transfer of instruments of financial collateral; and

(d) early termination.

3.4.2 DAB shall exercise the write-down and conversion powers in relation to a liability arising from a derivative only upon or after netting the derivatives, and is authorised to do so on the day when decision on opening of the resolution proceedings. Where a derivative liability has been excluded from the application of the bail-in tool, DAB shall not be obliged to terminate or close out the derivative contract. Where derivative transactions are subject to a netting agreement, DAB or an independent valuer shall determine as part of the valuation the liability arising from those transactions on a net basis in accordance with the terms of the agreement. DAB shall determine the value of liabilities arising from derivatives in accordance with the following:

(a) appropriate methodologies for determining the value of classes of derivatives, including transactions that are subject to netting agreements;

(b) principles for establishing the relevant point in time at which the value of a derivative position should be established; and

(c) appropriate methodologies for comparing the destruction in value that would arise from the close out and bail-in of derivatives with the amount of losses that would be borne by derivatives in a bail-in.

3.4.3 The Resolution Act provides for a possibility that a credit institution be subject to a number of crisis prevention measures or crisis management measures. The Resolution Act provides that such measures, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, under a contract entered into by the credit institution, be deemed to be an enforcement event within the meaning of rules regulating financial collateral or as insolvency proceedings within the meaning of Bankruptcy Act, provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed. In addition, a crisis prevention measure or crisis management measure shall not, per se, be deemed to be an enforcement event or insolvency proceedings under a contract entered into by:

(a) a subsidiary, the obligations under which are guaranteed or otherwise supported by the parent undertaking or by any group entity; or

(b) any entity of a group which includes cross-default provisions.

Provided that obligations under the contract are performed in predominant part, including payment and delivery obligations, and provision of collateral, a crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, make it possible for anyone to:

(a) exercise any termination, suspension, modification, netting or set-off rights, including in relation to a contract entered into by:

(i) a subsidiary, the obligations under which are guaranteed or otherwise supported by a group entity;

(ii) any group entity which includes cross-default provisions;

(b) obtain possession, exercise control or enforce any security over any property of the institution or any group entity in relation to a contract which includes cross-default provisions;

(c) affect any contractual rights of the institution or any group entity in relation to a contract which includes cross-default provisions.

A suspension or restriction by DAB under Resolution Act, *i.e.*,

(a) decision on suspension of any payment or delivery obligations pursuant to any contract to which an institution under resolution is a party (Article 90 Resolution Act, implementing Article 69 BRRD Directive);

(b) restrict the enforcement of security interests in relation to any asset of an institution under resolution (Article 91 Resolution Act, implementing Article 70 BRRD Directive);

(c) temporarily suspend termination rights of any party to a contract with an institution under resolution (Article 92 Resolution Act, implementing Article 71 BRRD Directive);

shall not constitute non-performance of a contractual obligation.

Consequently, a crisis prevention measure or crisis management measure may disapply a right to terminate the Agreement or Transactions which is exercisable by virtue of the existence or making of the measure. However, rights to terminate based on the existence or occurrence of other circumstances should not be affected. Furthermore, a crisis prevention measure or crisis management measure may temporarily suspend a right to terminate the Agreement or Transactions which is exercisable in such circumstances. Any such suspension must end no later than midnight at the end of the first business day following the day stated in the operating part of the decision on suspension.

The described rules are considered overriding mandatory provisions for the purposes of Rome I Regulation.

In accordance with Article 101(7) of the Resolution Act, described rules are applicable also in cases where competent authority of a third country finds that institution with sit in such third country meets criteria for resolution, in which case DAB or HNB shall have authorities to apply these rules as well.

3.4.4 HNB and DAB are empowered to:

(a) exercise the resolution powers in relation to the following:

(i) assets of a third-country institution or parent undertaking that are located in the Republic of Croatia or governed by the law of the Republic of Croatia;

(ii) rights or liabilities of a third-country institution that are booked by the Union branch in the Republic of Croatia or governed by the law of Republic of Croatia, or where claims in relation to such rights and liabilities are enforceable in Republic of Croatia;

(b) perfect, including to require another person to take action to perfect, a transfer of shares or other instruments of ownership in a subsidiary established in Republic of Croatia;

(c) exercise the suspension or restriction powers in relation to the rights of any party to a contract with third-country institution or a parent undertaking subject to recognised third-country resolution proceedings that:

(i) has Union subsidiaries established in, or Union branches located in and regarded as significant by, two or more Member States; or

(ii) has assets, rights or liabilities located in two or more Member States or are governed by the law of those Member States.

where such powers are necessary in order to enforce third-country resolution proceedings; and

(d) render unenforceable any right to terminate, liquidate or accelerate contracts, or affect the contractual rights, third-country institution or a parent undertaking subject to recognised third-country resolution proceedings that:

(i) has Union subsidiaries established in, or Union branches located in and regarded as significant by, two or more Member States; or

(ii) has assets, rights or liabilities located in two or more Member States or are governed by the law of those Member States

and other group entities, where such a right arises from resolution action taken in respect of the third-country institution, parent undertaking of such entities or other group entities, whether by the third-country resolution authority itself or otherwise pursuant to legal or regulatory requirements as to resolution arrangements in that country, provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

3.4.5 During resolution proceedings, DAB shall have the right to:

(a) provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred; for that purpose, right to set off shall not be considered to be a liability or an encumbrance;

(b) remove rights to acquire further shares or other instruments of ownership;

(c) require the relevant authority to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments;

(d) provide for the recipient to be treated as if it were the institution under resolution for the purposes of any rights or obligations of, or actions taken by, the institution under resolution, including (subject to rules on sale of business tool and bridge institution tool), any rights or obligations relating to participation in a market infrastructure;

(e) require the institution under resolution or the recipient to provide the other with information and assistance; and

(f) cancel or modify the terms of a contract to which the institution under resolution is a party or substitute a recipient as a party.

Title transfer financial collateral arrangements and set-off and netting arrangements are in general protected from ancillary powers of DAB, as the Resolution Act prevents the transfer of some, but not all, partial modification or termination of the rights and liabilities that are protected under a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement between the institution under resolution and another person provided that the parties to the arrangement are entitled to set-off or net those rights and liabilities. However, where necessary in order to ensure availability of the covered deposits DAB may:

(a) transfer covered deposits which are part of any of these arrangements without transferring other assets, rights or liabilities that are part of the same arrangement; and

(b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

SCHEDULE 2
Investment firms

Subject to the modifications and additions set out in this Schedule 2 (Investment Firms), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are investment firms and branches of foreign investment firms. For the purposes of this Schedule 2 (Investment Firms), "**Investment Firm**" means a legal entity that performs as its regular activity one or more investment services to third parties or investment activities on professional basis incorporated in accordance with the Capital Markets Act.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.10.4 is deemed deleted and replaced with the following:

""Insolvency Proceedings" means the procedures listed in section 2.1 of Schedule 2 "Investment Firms".

2. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

2.1 **Insolvency Proceedings: Investment Firms**

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an investment firm could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are liquidation, bankruptcy, resolution and pre-bankruptcy settlement, regulated as follows:

The Capital Markets Act (NN 88/08, 146/08, 74/09, 54/13, 159/13)
The Bankruptcy Act (NN 44/96, 161/98, 29/99, 129/00, 123/03, 197/03, 187/04, 82/06, 117/08, 116/10, 25/12, 133/12 and 45/13)
The Companies Act (NN 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13)
The Financial Collateral Act (NN 76/07, 59/12)
Settlement Finality in Payment and Financial Instruments Settlement Systems Act (NN 59/12)
Resolution of Credit Institutions and Investment Firms Act (NN 19/05).
We confirm that the events specified in the Insolvency Event of Default Clause adequately refer to all Insolvency Proceedings.

3. **ADDITIONAL QUALIFICATIONS**

3.1 On 27 February 2015 Croatia implemented the Bank Recovery and Resolution Directive (2014/59/EC – "BRRD Directive") via two separate statutes: through Amendments to the Credit Institutions Act and through newly enacted Resolution of Credit Institutions and Investment Firms Act ("Resolution Act"). The Resolution Act contains a number of provisions which may have an impact on enforcement of the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provision. The authorities charged with carrying out resolution are DAB and Croatian Agency for Supervision of Financial Services ("HANFA"). The volume and the novelty of these instruments, lack of practice and wide array of powers granted to HANFA makes it difficult to predict all the ways they could affect the agreements. The legislation does provide certain protections to the agreements, as well as impose some restrictions as to how powers granted under the agreements may be exercised. From that point of view, the following should be taken into account when concluding the agreements with Croatian investment firms.

3.1.1 When applying the resolution tools (the sale of business tool; the bridge institution tool; the asset separation tool; the bail-in tool) the provisions of financial collateral legislation relating to the following shall not be applicable:

(a) enforcement of financial collateral;

(b) right to use financial collateral

(c) recognition of security by transfer of instruments of financial collateral; and

(d) early termination.

3.1.2 DAB shall exercise the write-down and conversion powers in relation to a liability arising from a derivative only upon or after netting the derivatives, and is authorised to do so on the day when decision on opening of the resolution proceedings. Where a derivative liability has been excluded from the application of the bail-in tool, DAB shall not be obliged to terminate or close out the derivative contract. Where derivative transactions are subject to a netting agreement, DAB or an independent valuer shall determine as part of the valuation the liability arising from those transactions on a net basis in accordance with the terms of the agreement. DAB shall determine the value of liabilities arising from derivatives in accordance with the following:

(a) appropriate methodologies for determining the value of classes of derivatives, including transactions that are subject to netting agreements;

(b) principles for establishing the relevant point in time at which the value of a derivative position should be established; and

(c) appropriate methodologies for comparing the destruction in value that would arise from the close out and bail-in of derivatives with the amount of losses that would be borne by derivatives in a bail-in.

3.1.3 The Resolution Act provides for a possibility that an investment firm be subject to a number of crisis prevention measures or crisis management measures. The Resolution Act provides that such measures, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, under a contract entered into by the investment firm, be deemed to be an enforcement event within the meaning of rules regulating financial collateral or as insolvency proceedings within the meaning of Bankruptcy Act, provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed. In addition, a crisis prevention measure or crisis management measure shall not, per se, be deemed to be an enforcement event or insolvency proceedings under a contract entered into by:

(a) a subsidiary, the obligations under which are guaranteed or otherwise supported by the parent undertaking or by any group entity; or

(b) any entity of a group which includes cross-default provisions.

Provided that obligations under the contract are performed in predominant part, including payment and delivery obligations, and provision of collateral, a crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, make it possible for anyone to:

(a) exercise any termination, suspension, modification, netting or set-off rights, including in relation to a contract entered into by:

(i) a subsidiary, the obligations under which are guaranteed or otherwise supported by a group entity;

(ii) any group entity which includes cross-default provisions;

(b) obtain possession, exercise control or enforce any security over any property of the institution or any group entity in relation to a contract which includes cross-default provisions;

(c) affect any contractual rights of the investment firm or any group entity in relation to a contract which includes cross-default provisions.

A suspension or restriction by DAB under Resolution Act, *i.e.*,

(d) decision on suspension of any payment or delivery obligations pursuant to any contract to which an investment firm under resolution is a party (Article 90 Resolution Act, implementing Article 69 BRRD Directive);

(e) restrict the enforcement of security interests in relation to any asset of an investment firm under resolution (Article 91 Resolution Act, implementing Article 70 BRRD Directive);

(f) temporarily suspend termination rights of any party to a contract with an investment firm under resolution (Article 92 Resolution Act, implementing Article 71 BRRD Directive);

shall not constitute non-performance of a contractual obligation.

Consequently, a crisis prevention measure or crisis management measure may disapply a right to terminate the Agreement or Transactions which is exercisable by virtue of the existence or making of the measure. However, rights to terminate based on the existence or occurrence of other circumstances should not be affected. Furthermore, a crisis prevention measure or crisis management measure may temporarily suspend a right to terminate the Agreement or Transactions which is exercisable in such circumstances. Any such suspension must end no later than midnight at the end of the first business day following the day stated in the operating part of the decision on suspension.

The described rules are considered overriding mandatory provisions for the purposes of Rome I Regulation.

In accordance with Article 101(7) of the Resolution Act, described rules are applicable also in cases where competent authority of a third country finds that institution with sit in such third country meets criteria for resolution, in which case DAB or HNB shall have authorities to apply these rules as well.

3.1.4 HANFA and DAB are empowered to:

(a) exercise the resolution powers in relation to the following:

(i) assets of a third-country institution or parent undertaking that are located in the Republic of Croatia or governed by the law of the Republic of Croatia;

(ii) rights or liabilities of a third-country institution that are booked by the Union branch in the Republic of Croatia or governed by the law of Republic of Croatia, or where claims in relation to such rights and liabilities are enforceable in Republic of Croatia;

(b) perfect, including to require another person to take action to perfect, a transfer of shares or other instruments of ownership in a subsidiary established in Republic of Croatia;

(c) exercise the suspension or restriction powers in relation to the rights of any party to a contract with third-country institution or a parent undertaking subject to recognised third-country resolution proceedings that:

(i) has Union subsidiaries established in, or Union branches located in and regarded as significant by, two or more Member States; or

(ii) has assets, rights or liabilities located in two or more Member States or are governed by the law of those Member States.

where such powers are necessary in order to enforce third-country resolution proceedings; and

(d) render unenforceable any right to terminate, liquidate or accelerate contracts, or affect the contractual rights, third-country institution or a parent undertaking subject to recognised third-country resolution proceedings that:

(i) has Union subsidiaries established in, or Union branches located in and regarded as significant by, two or more Member States; or

(ii) has assets, rights or liabilities located in two or more Member States or are governed by the law of those Member States

and other group entities, where such a right arises from resolution action taken in respect of the third-country institution, parent undertaking of such entities or other group entities, whether by the third-country resolution authority itself or otherwise pursuant to legal or regulatory requirements as to resolution arrangements in that country, provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

3.1.5 During resolution proceedings, DAB shall have the right to:

(a) provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred; for that purpose, right to set off shall not be considered to be a liability or an encumbrance;

(b) remove rights to acquire further shares or other instruments of ownership;

(c) require the relevant authority to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments;

(d) provide for the recipient to be treated as if it were the institution under resolution for the purposes of any rights or obligations of, or actions taken by, the institution under resolution, including (subject to rules on sale of business tool and bridge institution tool), any rights or obligations relating to participation in a market infrastructure;

(e) require the institution under resolution or the recipient to provide the other with information and assistance; and

(f) cancel or modify the terms of a contract to which the institution under resolution is a party or substitute a recipient as a party.

Title transfer financial collateral arrangements and set-off and netting arrangements are in general protected from ancillary powers of DAB, as the Resolution Act prevents the transfer of some, but not all, partial modification or termination of the rights and liabilities that are protected under a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement between the institution under resolution and another person provided that the parties to the arrangement are entitled to set-off or net those rights and liabilities. However, where necessary in order to ensure availability of the covered deposits DAB may:

(a) transfer covered deposits which are part of any of these arrangements without transferring other assets, rights or liabilities that are part of the same arrangement; and

(b) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

The described rules of Resolution Act apply only to such investment firms that have share capital of at least HRK 6,000,000.00.

SCHEDULE 3
Insurance companies

Subject to the modifications and additions set out in this Schedule 3 (Insurance companies), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are insurance companies. For the purposes of this Schedule 3 (Insurance companies), "**Insurance Companies**" means legal entities incorporated for the purpose of providing insurance activities which include insurance of life and non-life insurance and reinsurance activities and have obtained approval from competent regulator for performance of such activities in accordance with the Insurance Act.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.10.4 is deemed deleted and replaced with the following:

""Insolvency Proceedings" means the procedures listed in section 2.1 of Schedule 3 (Insurance companies).

2. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

2.1 Insolvency Proceedings: Insurance companies

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an insurance company could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

Voluntary and Mandatory Liquidation under the Insurance Act (NN 151/05, 87/08, 82/09, 54/13, 94/14) and the Companies Act (NN 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13)
Bankruptcy under the Insurance Act (NN 151/05, 87/08, 82/09, 54/13, 94/14) and the Bankruptcy Act (NN 44/96, 161/98, 29/99, 129/00, 123/03, 197/03, 187/04, 82/06, 117/08, 116/10, 25/12, 133/12 and 45/13)
Some aspects are of insolvency are regulated by the Financial Collateral Act (NN 76/07, 59/12)

We confirm that the events specified in the Insolvency Event of Default Clause adequately refer to all Insolvency Proceedings if supplemented as set out in Section 4 of Annex 5 (For the purpose of Schedule 3 Insurance companies).

SCHEDULE 4
Individuals

Subject to the modifications and additions set out in this Schedule 4 (Individuals), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which Individuals acting as sole entrepreneurs under the Croatian Companies Act and craftsman under the Croatian Crafts Act (*in Croatian: "Zakon o obrtu",* published in Croatian Official Gazette No. 49/03, as amended: hereinafter: the "**Crafts Act**").

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.10.4 is deemed deleted and replaced with the following:

""Insolvency Proceedings" means the procedures listed in section 2.1 of Schedule 4 "Individuals".

2. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

2.1 Insolvency Proceedings: Individuals

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a individual could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are bankruptcy and pre-bankruptcy proceedings regulated by:

The Bankruptcy Act (NN 44/96, 161/98, 29/99, 129/00, 123/03, 197/03, 187/04, 82/06, 117/08, 116/10, 25/12, 133/12 and 45/13)
The Companies Act (NN 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13)
The Financial Collateral Act (NN 76/07, 59/12)
The Financial Operations' and Pre-Bankruptcy Settlement Act (NN 108/12, 144/12, 81/13, 112/13)
Crafts Act

We confirm that the events specified in the Insolvency Event of Default Clause adequately refer to all Insolvency Proceedings.

3. ADDITIONAL QUALIFICATIONS

The opinions in this opinion letter are subject to the following additional qualifications.

3.1 With respect to opinion in Section 2.1 ("Insolvency Proceedings: Individuals") please note the following. While individual operating as businesses may be subject to

bankruptcy proceedings, it is often the case that their business ceases in some other way (by deregistration or by operation of law in certain circumstances). It is unclear what would be the faith of the FOA Netting Agreement or the Clearing Agreement, as the case may be, and Transactions in such other case. The Crafts Act does specify that the individual is liable with its all assets for the obligations arising out of operation of their business, which would suggest that the enforcement of rights under the financial collateral arrangements could be possible even after closure of the business. However, given that the current regime of liability of individuals for their craft is very recent, it is not clear how these provisions would be applied in practice. It is unlikely that the right to effectuate close-out netting would be negatively affected. In addition, Consumer Bankruptcy Act is in the process of being adopted into the law. It is unclear at this stage how that act may affect opinions given in this Letter opinion when they relate to Individuals.

SCHEDULE 5
Investment funds

Subject to the modifications and additions set out in this Schedule 5 (Investment funds), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are investment funds. For the purposes of this Schedule 5 (Investment funds), "Investment fund" means alternative investment funds organised in accordance with the Alternative Investment Funds Act (in Croatian: "*Zakon o alternativnim investicjijskim fondovima*", published in Croatian Official Gazette No. 16/13; hereinafter: the "Alternative Investment Funds Act") and UCITS investment funds organised in accordance with Open Investment Funds with Public Offering Act (in Croatian: "*Zakon o otvorenim investicijskim fondovima s javnom ponudom*")

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.10.4 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 2.1

2. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

2.1 Insolvency Proceedings: Investment funds

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a an investment fund could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

With respect to UCITS funds, liquidation under the Open Investment Funds with Public Offering Act (NN 16/13, 143/14);
With respect to alternative investment funds, liquidation under the Alternative Investment Funds Act (NN 16/13, 143/14);

Certain aspects related to insolvency proceedings may be regulated by:

- the Credit Institutions Act (NN 159/13)
- The Bankruptcy Act (NN 44/96, 161/98, 29/99, 129/00, 123/03, 197/03, 187/04, 82/06, 117/08, 116/10, 25/12, 133/12 and 45/13)
- the Companies Act (NN 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13)
- The Financial Collateral Act (NN 76/07, 59/12)
- Settlement Finality in Payment and Financial Instruments Settlement Systems Act (NN 59/12).

We confirm that the events specified in the Insolvency Event of Default Clause adequately refer to all Insolvency Proceedings.

3. ADDITIONAL QUALIFICATIONS

The opinions in this opinion letter are subject to the following additional qualifications.

3.1 Any setting-off of claims of the fund manager against the Open Investment Fund or Alternative Investment Fund's assets, are null under Croatian law. Thus, if set off would contain such claims, the set off would be null and hence unenforceable and ineffective. To the extent that netting would include setting off claims, the same rule would apply to set off.

3.2 While Open Investment Funds Act and Alternative Investment Funds Act do not provide for bankruptcy of investment funds, it cannot be excluded that courts could construe possibility of carrying out bankruptcy over investment funds on the basis of general bankruptcy regulation, in particular over funds with separate legal personality.

SCHEDULE 6
Sovereign

Subject to the modifications and additions set out in this Schedule 6 (Sovereign), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Party which is Republic of Croatia. For the purposes of this Schedule 6 (Sovereign), "**Sovereign**" means the Republic of Croatia.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.10.4 is deemed deleted and replaced with 2.1 of this Schedule 6 (Sovereign).

2. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

2.1 Insolvency Proceedings: Sovereign

Under Article 3 of the Bankruptcy act, bankruptcy may not be carried over the Republic of Croatia. However, Sovereign would be subject to rules of public international and, as the case may be, European Law regarding the sovereign default. In such cases often there are international negotiations which end in a partial debt cancellations or debt restructuring. The creditors may pursue remedies through diplomatic protection of their government, or through instances provided by investment protection treaties.

We confirm that the events specified in the Insolvency Event of Default Clause adequately refer to all Insolvency Proceedings if supplemented as set out in Section 4 of Annex 5 (For the purpose of Schedule 6 Sovereign).

3. ADDITIONAL QUALIFICATIONS

The opinions in this opinion letter are subject to the following additional qualifications.

3.1 Given that Republic of Croatia may not be subject to bankruptcy proceedings, the opinions that relate to bankruptcy of the Republic of Croatia are at this point inapplicable, in particular, any insolvency event of default provisions that give rise to event of default in case of bankruptcy of the Republic of Croatia. From that point of view, and subject to other Assumptions and Qualifications, the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provision will be enforceable in accordance with their terms if they are enforceable under English law that governs the FOA

Netting Agreement and the Clearing Agreement. However, while for the sake of clarity the relevant provisions could be deleted so that any reference to insolvency is removed, in our view it is preferable to keep these provisions intact in case the legislation on bankruptcy of Republic of Croatia changes. However, the fact that provisions related to insolvency such as event of default in case of insolvency may not be invoked should be noted by users of this opinion.

SCHEDULE 7
Croatian National Bank and Croatian Bank for Reconstruction and Development

Subject to the modifications and additions set out in this Schedule 7 (**Croatian National Bank and Croatian Bank for Reconstruction and Development**), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Croatian National Bank and Croatian Bank for Reconstruction and Development. For the purposes of this Schedule 7 (Croatian National Bank and the Croatian Bank for Reconstruction and Development), the "**Croatian National Bank**" means the central bank of Croatia organised in accordance with the Croatian National Bank Act and the "**Croatian Bank for Reconstruction and Development**" means the development and export bank of the Republic of Croatia, organised in accordance with the Croatian Bank for Reconstruction and Development Act.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.10.4 is deemed deleted and replaced with section 2.1 of this Schedule 7 (Croatian National Bank and Croatian Bank for Reconstruction and Development).

2. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

2.1 Insolvency Proceedings: Croatian National Bank and the Croatian Bank for Reconstruction and Development

Even though that is not expressly provided by the Croatian National Bank Act, in our view the Croatian National Bank may not be subject to bankruptcy, liquidation composition, rehabilitation or other insolvency or reorganisation procedures. This is opined because the Republic of Croatia guarantees for liabilities of the Croatian National Bank and the Croatian Bank for Reconstruction and Development pursuant to the statutory guarantee provided by the Croatian National Bank Act and the Croatian Bank for Reconstruction and Development Act.

We confirm that the events specified in the Insolvency Event of Default Clause adequately refer to all Insolvency Proceedings if supplemented as set out in Section 4 of Annex 5 (For the purpose of Schedule 7 Croatian National Bank and Croatian Bank for Reconstruction and Development).

3. ADDITIONAL QUALIFICATIONS

The opinions in this opinion letter are subject to the following additional qualifications.

3.1 Given that **Croatian National Bank and Croatian Bank for Reconstruction and Development** may not be subject to bankruptcy proceedings, the opinions that relate to bankruptcy of **Croatian National Bank and Croatian Bank for Reconstruction and Development** at this point inapplicable, in particular, any insolvency event of default provisions that give rise to event of default in case of bankruptcy of **Croatian National Bank and Croatian Bank for Reconstruction and Development**. From that point of view, and subject to other Assumptions and Qualifications, the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provision will be enforceable in accordance with their terms if they are enforceable under English law that governs the FOA Netting Agreement and the Clearing Agreement. However, while for the sake of clarity the relevant provisions could be deleted so that any reference to insolvency is removed, in our view it is preferable to keep these provisions intact in case the legislation on bankruptcy of Croatian National Bank and Croatian Bank for Reconstruction and Development changes. However, the fact that provisions related to insolvency such as event of default in case of insolvency may not be invoked should be noted by users of this opinion.

SCHEDULE 8
Pension Funds and Pension Insurance Companies

Subject to the modifications and additions set out in this Schedule 8 (**Pension Funds and Pension Insurance Companies**), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Pension Funds and Pension Insurance Companies. For the purposes of this Schedule 8 (Pension Funds and Pension Insurance Companies), The **"Pension Fund"** means a fund organised as a voluntary pension fund or mandatory pension fund in accordance with the Act on Mandatory Pension Funds or Act on Voluntary Pension Funds. The "**Pension Insurance Company**" means a joint stock company offering pension programs and paying pensions, set up and operating under the Act on Pension Insurance Companies.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.10.4 is deemed deleted and replaced with 2.1 of this Schedule 8 (Pension Funds and Pension Insurance Companies).

2. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

2.1 Insolvency Proceedings: Croatian National Bank and the Croatian Bank for Reconstruction and Development

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a pension fund or pension insurance company could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

The Mandatory Pension Funds Act (NN 19/14) (only with respect to Mandatory Pension Funds)
The Act on Pension Insurance Companies (NN 22/14) (only with respect to Pension Insurance Companies)
Liquidation and bankruptcy under the Act on Voluntary Pension Funds (NN 19/14), The Bankruptcy Act (NN 44/96, 161/98, 29/99, 129/00, 123/03, 197/03, 187/04, 82/06, 117/08, 116/10, 25/12, 133/12 and 45/13) , The Companies Act (NN 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13) (only with respect to Voluntary Pension Funds)
The Financial Collateral Act (NN 76/07, 59/12)

Insolvency Proceedings cannot be initiated against the Republic of Croatia (Sovereign), funds that are financed from the state budget, pension funds, funds for disabled, Croatian Health Institute and municipalities.

We confirm that the events specified in the Insolvency Event of Default Clause adequately refer to all Insolvency Proceedings if supplemented as set out in Section 4 of Annex 5 (For the purpose of Schedule 8 Pension Funds and Pension Insurance Companies).

3. ADDITIONAL QUALIFICATIONS

The opinions in this opinion letter are subject to the following additional qualifications.

3.1 Given that pension funds may not be subject to bankruptcy proceedings, the opinions that relate to bankruptcy of the pension funds are at this point inapplicable, in particular, any insolvency event of default provisions that give rise to event of default in case of bankruptcy of pension funds. From that point of view, and subject to other Assumptions and Qualifications, the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provision will be enforceable in accordance with their terms if they are enforceable under English law that governs the FOA Netting Agreement and the Clearing Agreement. However, while for the sake of clarity the relevant provisions could be deleted so that any reference to insolvency is removed, in our view it is preferable to keep these provisions intact in case the legislation on bankruptcy of pension funds changes. However, the fact that provisions related to insolvency such as event of default in case of insolvency may not be invoked should be noted by users of this opinion.

SCHEDULE 9
Housing Saving Banks

Subject to the modifications and additions set out in this Schedule 9 (Housing Saving Banks), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Housing Saving Banks. For the purposes of this Schedule 9 (Housing Saving Banks), "Housing Saving Banks" means legal entities which business activity includes organised collection of deposits for solving housing needs of the depositors by extending loans granted with financial support of the State on the territory of the Republic of Croatia in accordance with Housing Savings Act and Credit Institutions Act.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.10.4 is deemed deleted and replaced with the following:

""Insolvency Proceedings" means the procedures listed in section 2.1 of Schedule 9 “Housing Saving Banks ".

2. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

2.1 Insolvency Proceedings: Housing savings banks

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a housing savings bank could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

Special administration under the Credit Institutions Act (NN 159/13)
Regular and mandatory liquidation under the Credit Institutions Act (NN 159/13) and Companies Act (NN 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13)
Bankruptcy proceedings under the Credit Institutions Act (NN 159/13) and the Bankruptcy Act (NN 44/96, 161/98, 29/99, 129/00, 123/03, 197/03, 187/04, 82/06, 117/08, 116/10, 25/12, 133/12 and 45/13)
Resolution under Resolution of Credit Institutions and Investment Firms Act (NN 19/05).

Certain aspects related to insolvency proceedings are regulated by the Financial Collateral Act (NN 76/07, 59/12) and Settlement Finality in Payment and Financial Instruments Settlement Systems Act (NN 59/12)., Housing Savings Act.

We confirm that the events specified in the Insolvency Event of Default Clause adequately refer to all Insolvency Proceedings if supplemented as set out in Section 4 of Annex 5 (For the purpose of Schedule 9 Housing Saving Banks).

2.2 The following shall be added to Opinion 3.3, 3.4, 3.5, 3.7, 3.8, 3.9

"Under the Credit Institutions Act, in the course of the implementation of reorganisation measures or the opening of winding-up or bankruptcy proceedings concerning a credit institution established in the Republic of Croatia or another Member State, set-off and netting agreements shall be governed by the law which governs such agreements.

2.3 The following shall be deleted from Opinion 3.7

Following an Event of Default related to the Bankruptcy, the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if the FOA Netting Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive. Under the conflict of laws rules in this jurisdiction, a question whether the FOA Netting Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive is a question of English law that governs the FOA Netting Agreement. If the FOA Netting Agreement does not constitute a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive, the Set-Off Provisions may not be enforceable following an Event of Default related to the Bankruptcy.

2.4 The following shall be deleted from Opinion 3.8

Following an Event of Default related to the Bankruptcy Proceedings, the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive. Under the conflict of laws rules in this jurisdiction, a question whether the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive is a question of English law that governs the Clearing Agreement. If the Clearing Agreement does not constitute a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive, the Set-Off Provisions may not be enforceable following an Event of Default related to the Bankruptcy.

2.5 The following shall be deleted from Opinion 3.8

Following an Event of Default related to the Bankruptcy, the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive. Under the conflict of laws rules in this jurisdiction, a question whether the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive is a question of English law that governs the Clearing Agreement. If the Clearing Agreement does not constitute a financial collateral arrangement in the meaning of the

Financial Collateral Arrangements Directive, the Clearing Module Set-Off Provision may not be enforceable following an Event of Default related to the Bankruptcy.

Following an Event of Default related to the Bankruptcy Proceedings, the Addendum Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms if the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive. Under the conflict of laws rules in this jurisdiction, a question whether the Clearing Agreement constitutes a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive is a question of English law that governs the Clearing Agreement. If the Clearing Agreement does not constitute a financial collateral arrangement in the meaning of the Financial Collateral Arrangements Directive, the Addendum Set-Off Provision may not be enforceable following an Event of Default related to the Bankruptcy Proceedings.

2.6 Last sentence of opinion 3.15 shall be replaced by the following:

"Winding-up or bankruptcy proceedings against a credit institution of another Member State shall be carried out in accordance with the regulations applicable in its home Member State, unless otherwise provided for in the Credit Institutions Act. Competent authorities of the Republic of Croatia may initiate winding-up or bankruptcy proceedings over a branch of a foreign credit institution from a country that is not an EU Member State. In addition, Croatian Credit Institutions Act provides certain other conflict of law rules for specific aspects that may be governed by law other than the law of the home state. In addition, the legal effects of a reorganisation measure or the opening of winding-up or bankruptcy proceedings on: 1) employment contracts and relationships shall be governed solely by the law of the home Member State applicable to the employment contract; 2) a contract conferring the right to make use of or acquire immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated, which law shall also determine whether property is movable or immovable; and 3) rights in respect of immovable property, a ship or an aircraft subject to registration in a public register shall be governed solely by the law of the Member State under the authority of which the register is kept.. There other rules that lead to application of law of a state that is not a home Member State where assets to which such rules shall apply are related to that other state.

3. ADDITIONAL QUALIFICATIONS

The opinions in this opinion letter are subject to the following additional qualifications.

3.1 With respect to governing law relevant for the opinions 3.3, 3.4, 3.5, 3.7, 3.8, 3.9, first, it is unclear what the relationship between the governing law provision of Financial Collateral Act and the governing law provision of Credit Institutions Act is. In our view, provisions of Financial Collateral Act should prevail as *lex specialis* and rules

of immediate application. If governing law provisions of Credit Institutions Act should nevertheless be held applicable, the situation would be as follows. Under Credit Institutions Act, during reorganisation measure or opening of liquidation or bankruptcy proceedings over a credit institution from the Republic of Croatia or other Member State, law governing set-off and netting agreement shall be the "law which governs such agreements". It is not clear which law is "law which governs such agreements". When interpreting these provision it is possible to reach two conclusions – the first conclusion would be that the law that applies to these (netting) agreements is (any) bankruptcy law (any bankruptcy law that is relevant in respect of an individual bankruptcy entity) and the second conclusion would be that the law that applies to netting agreements shall be the contractual law as agreed between the parties ("*lex contractus*").If first interpretation (which we consider to be a less likely interpretation) is adopted, law governing set off or netting covered in opinions 3.3, 3.4, 3.5, 3.7, 3.8, 3.9 would be the bankruptcy law relevant to the bankrupt entity. If second interpretation is adopted (which seems to follow from reading of Article 25 of the Directive 2001/24 on the reorganisation and winding up of credit institutions), law governing set off or netting covered in opinions 3.3, 3.4, 3.5, 3.7, 3.8, 3.9 would be the *lex contractus*, i.e., English law. In case the first interpretation is adopted, that would make opinions 3.3, 3.4, 3.5, 3.7, 3.8, 3.9 dependent on the bankruptcy law of the bankrupt entity. Following an Event of Default related to the Bankruptcy Proceedings of a Croatian credit institution, application of Croatian bankruptcy law could lead to conclusions described in Qualification 4.1.1(c) of this opinion. If the second interpretation is adopted, the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provision will be enforceable in accordance with their terms if they are enforceable under English law that governs the FOA Netting Agreement and the Clearing Agreement.

3.2 Under Article 349 of the Credit Institutions Act, the adoption of reorganisation measures or the opening of winding-up or bankruptcy proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution established in the Republic of Croatia or another Member State, where such a set-off is permitted by the law applicable to the credit institution's claim. This provision makes set off dependent on the law applicable to the credit institution's claim (which would likely be the law governing the underlying contract giving rise to the claim of the credit institution). In our view, this should not be relevant in the context of financial collateral arrangements, since Article 8 of the Financial Collateral Act expressly provides that fulfilment of obligations under the financial collateral arrangements (including netting) shall be carried out regardless of bankruptcy or winding up proceedings, thus not making it dependent on the law applicable to the credit institution's claim. However, we cannot exclude opposite interpretation of insolvency administrators and/or judges, in which case the validity of set off and netting could depend on the law governing the claim of the credit institution (and not be determined merely on the basis of Article 8 of the Financial Collateral Act).

3.3 Where winding-up or bankruptcy proceedings have been opened against a credit institution which has its registered office in the Republic of Croatia, the law of the Republic of Croatia relating to the voidness, voidability or unenforceability of legal

acts detrimental to the creditors as a whole shall not apply where the beneficiary of these acts furnishes proof that:

- the act detrimental to the creditors as a whole is subject to the law of a Member State other than the Republic of Croatia; and

- that law does not allow any means of challenging that act in the case in point.

3.4 On 27 February 2015 Croatia implemented the Bank Recovery and Resolution Directive (2014/59/EC – "BRRD Directive") via two separate statutes: through Amendments to the Credit Institutions Act and through newly enacted Resolution of Credit Institutions and Investment Firms Act ("Resolution Act"). The Resolution Act contains a number of provisions which may have an impact on enforcement of the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provision. The authorities charged with carrying out resolution are Croatian National Bank and State Agency for Deposit Insurance and Bank Rehabilitation ("DAB"). The volume and the novelty of these instruments, lack of practice and wide array of powers granted to Croatian National Bank and DAB makes it difficult to predict all the ways they could affect the agreements. The legislation does provide certain protections to the agreements, as well as impose some restrictions as to how powers granted under the agreements may be exercised. From that point of view, the following should be taken into account when concluding the agreements with Croatian saving banks.

3.4.1 When applying the resolution tools (the sale of business tool; the bridge institution tool; the asset separation tool; the bail-in tool) the provisions of financial collateral legislation relating to the following shall not be applicable:

(a) enforcement of financial collateral;

(b) right to use financial collateral

(c) recognition of security by transfer of instruments of financial collateral; and

(d) early termination.

3.4.2 DAB shall exercise the write-down and conversion powers in relation to a liability arising from a derivative only upon or after netting the derivatives, and is authorised to do so on the day when decision on opening of the resolution proceedings. Where a derivative liability has been excluded from the application of the bail-in tool, DAB shall not be obliged to terminate or close out the derivative contract. Where derivative transactions are subject to a netting agreement, DAB or an independent valuer shall determine as part of the valuation the liability arising from those transactions on a net basis in accordance with the terms of the agreement. DAB shall determine the value of liabilities arising from derivatives in accordance with the following:

(a) appropriate methodologies for determining the value of classes of derivatives, including transactions that are subject to netting agreements;

(b) principles for establishing the relevant point in time at which the value of a derivative position should be established; and

(c) appropriate methodologies for comparing the destruction in value that would arise from the close out and bail-in of derivatives with the amount of losses that would be borne by derivatives in a bail-in.

3.4.3 The Resolution Act provides for a possibility that a credit institution be subject to a number of crisis prevention measures or crisis management measures. The Resolution Act provides that such measures, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, under a contract entered into by the credit institution, be deemed to be an enforcement event within the meaning of rules regulating financial collateral or as insolvency proceedings within the meaning of Bankruptcy Act, provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed. In addition, a crisis prevention measure or crisis management measure shall not, per se, be deemed to be an enforcement event or insolvency proceedings under a contract entered into by:

(a) a subsidiary, the obligations under which are guaranteed or otherwise supported by the parent undertaking or by any group entity; or

(b) any entity of a group which includes cross-default provisions.

Provided that obligations under the contract are performed in predominant part, including payment and delivery obligations, and provision of collateral, a crisis prevention measure or a crisis management measure, including the occurrence of any event directly linked to the application of such a measure, shall not, per se, make it possible for anyone to:

(c) exercise any termination, suspension, modification, netting or set-off rights, including in relation to a contract entered into by:

(i) a subsidiary, the obligations under which are guaranteed or otherwise supported by a group entity;

(ii) any group entity which includes cross-default provisions;

(d) obtain possession, exercise control or enforce any security over any property of the institution or any group entity in relation to a contract which includes cross-default provisions;

(e) affect any contractual rights of the institution or any group entity in relation to a contract which includes cross-default provisions.

A suspension or restriction by DAB under Resolution Act, *i.e.*,

(f) decision on suspension of any payment or delivery obligations pursuant to any contract to which an institution under resolution is a party (Article 90 Resolution Act, implementing Article 69 BRRD Directive);

(g) restrict the enforcement of security interests in relation to any asset of an institution under resolution (Article 91 Resolution Act, implementing Article 70 BRRD Directive);

(h) temporarily suspend termination rights of any party to a contract with an institution under resolution (Article 92 Resolution Act, implementing Article 71 BRRD Directive);

shall not constitute non-performance of a contractual obligation.

Consequently, a crisis prevention measure or crisis management measure may disapply a right to terminate the Agreement or Transactions which is exercisable by virtue of the existence or making of the measure. However, rights to terminate based on the existence or occurrence of other circumstances should not be affected. Furthermore, a crisis prevention measure or crisis management measure may temporarily suspend a right to terminate the Agreement or Transactions which is exercisable in such circumstances. Any such suspension must end no later than midnight at the end of the first business day following the day stated in the operating part of the decision on suspension.

The described rules are considered overriding mandatory provisions for the purposes of Rome I Regulation.

In accordance with Article 101(7) of the Resolution Act, described rules are applicable also in cases where competent authority of a third country finds that institution with sit in such third country meets criteria for resolution, in which case DAB or HNB shall have authorities to apply these rules as well.

3.4.4 HNB and DAB are empowered to:

(a) exercise the resolution powers in relation to the following:

(i) assets of a third-country institution or parent undertaking that are located in the Republic of Croatia or governed by the law of the Republic of Croatia;

(ii) rights or liabilities of a third-country institution that are booked by the Union branch in the Republic of Croatia or governed by the law of Republic of Croatia, or where claims in relation to such rights and liabilities are enforceable in Republic of Croatia;

(b) perfect, including to require another person to take action to perfect, a transfer of shares or other instruments of ownership in a subsidiary established in Republic of Croatia;

(c) exercise the suspension or restriction powers in relation to the rights of any party to a contract with third-country institution or a parent undertaking subject to recognised third-country resolution proceedings that:

(i) has Union subsidiaries established in, or Union branches located in and regarded as significant by, two or more Member States; or

(ii) has assets, rights or liabilities located in two or more Member States or are governed by the law of those Member States.

where such powers are necessary in order to enforce third-country resolution proceedings; and

(d) render unenforceable any right to terminate, liquidate or accelerate contracts, or affect the contractual rights, third-country institution or a parent undertaking subject to recognised third-country resolution proceedings that:

(i) has Union subsidiaries established in, or Union branches located in and regarded as significant by, two or more Member States; or

(ii) has assets, rights or liabilities located in two or more Member States or are governed by the law of those Member States

and other group entities, where such a right arises from resolution action taken in respect of the third-country institution, parent undertaking of such entities or other group entities, whether by the third-country resolution authority itself or otherwise pursuant to legal or regulatory requirements as to resolution arrangements in that country, provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.

3.4.5 During resolution proceedings, DAB shall have the right to:

(a) provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred; for that purpose, right to set off shall not be considered to be a liability or an encumbrance;

(b) remove rights to acquire further shares or other instruments of ownership;

(c) require the relevant authority to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments;

(d) provide for the recipient to be treated as if it were the institution under resolution for the purposes of any rights or obligations of, or actions

taken by, the institution under resolution, including (subject to rules on sale of business tool and bridge institution tool), any rights or obligations relating to participation in a market infrastructure;

(e) require the institution under resolution or the recipient to provide the other with information and assistance; and

(f) cancel or modify the terms of a contract to which the institution under resolution is a party or substitute a recipient as a party.

Title transfer financial collateral arrangements and set-off and netting arrangements are in general protected from ancillary powers of DAB, as the Resolution Act prevents the transfer of some, but not all, partial modification or termination of the rights and liabilities that are protected under a title transfer financial collateral arrangement, a set-off arrangement or a netting arrangement between the institution under resolution and another person provided that the parties to the arrangement are entitled to set-off or net those rights and liabilities. However, where necessary in order to ensure availability of the covered deposits DAB may:

(g) transfer covered deposits which are part of any of these arrangements without transferring other assets, rights or liabilities that are part of the same arrangement; and

(h) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

ANNEX 1
FORMS OF FOA NETTING AGREEMENTS

1. Master Netting Agreement - One-Way (1997 version) (the "**One-Way Master Netting Agreement 1997**")

2. Master Netting Agreement - Two-Way (1997 version) (the "**Two-Way Master Netting Agreement 1997**")

3. Default, Netting and Termination Module (One-Way Netting) (2007 version) (the "**Long-Form One-Way Clauses 2007**")

4. Short Form Default, Netting and Termination Module (One-Way Netting) (2007 version) (the "**Short-Form One-Way Clauses 2007**")

5. Short Form Default, Netting and Termination Module (One-Way Netting) (2009 version) (the "**Short-Form One-Way Clauses 2009**")

6. Short Form Default, Netting and Termination Module (One-Way Netting) (2011 version) (the "**Short-Form One-Way Clauses 2011**")

7. Default, Netting and Termination Module (Two-Way Netting) (2007 version) (the "**Long-Form Two-Way Clauses 2007**")

8. Default, Netting and Termination Module (Two-Way Netting) (2009 version) (the "**Long-Form Two-Way Clauses 2009**")

9. Default, Netting and Termination Module (Two-Way Netting) (2011 version) (the "**Long-Form Two-Way Clauses 2011**")

10. Short Form Default, Netting and Termination Module (Two-Way Netting) (2007 version) (the "**Short-Form Two-Way Clauses 2007**")

11. Short Form Default, Netting and Termination Module (Two-Way Netting) (2009 version) (the "**Short-Form Two-Way Clauses 2009**")

12. Short Form Default, Netting and Termination Module (Two-Way Netting) (2011 version) (the "**Short-Form Two-Way Clauses 2011**")

13. Professional Client Agreement (2007 Version), including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2007**")

14. Professional Client Agreement (2009 Version), including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2009**")

15. Professional Client Agreement (2011 Version) including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2011**")

16. Professional Client Agreement (2007 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral

Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2007**")

17. Professional Client Agreement (2009 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2009**")

18. Professional Client Agreement (2011 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2011**")

19. Retail Client Agreement (2007 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2007**")

20. Retail Client Agreement (2009 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2009**")

21. Retail Client Agreement (2011 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2011**")

22. Retail Client Agreement (2007 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2007**")

23. Retail Client Agreement (2009 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2009**")

24. Retail Client Agreement (2011 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2011**")

25. Eligible Counterparty Agreement (2007 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2007**")

26. Eligible Counterparty Agreement (2009 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2009**")

27. Eligible Counterparty Agreement (2011 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2011**")

28. Eligible Counterparty Agreement (2007 Version) excluding Module G (***Margin***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2007**")

29. Eligible Counterparty Agreement (2009 Version) excluding Module G (***Margin***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2009**")

30. Eligible Counterparty Agreement (2011 Version) excluding Module G (***Margin***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2011**")

Where a FOA Published Form Agreement expressly contemplates the election of certain variables and alternatives, the Agreements listed above shall be deemed to include any such document in respect of which the parties have made such expressly contemplated elections (and have made any deletions required by such elections, where such deletions are expressly contemplated in the event of such election by the applicable FOA Published Form Agreement), provided that any election made does not constitute an Adverse Amendment.

Each of the Agreements listed at items 13 to 30 of this Annex 1 may be deemed to include FOA Netting Agreements identical to the relevant FOA Published Form Agreement, save for the substitution of Two Way Clauses in place of the equivalent terms in the FOA Published Form Agreement, in which case references to the Insolvency Events of Default and FOA Netting Provision in respect of such FOA Netting Agreements shall mean the Insolvency Events of Default and FOA Netting Provision in relation to the Two Way Clauses.

ANNEX 2
LIST OF TRANSACTIONS

The following groups of Transactions may be entered into under the FOA Netting Agreements or Clearing Agreements:

(A) (Futures and options and other transactions) Transactions as defined in the FOA Netting Agreements or Clearing Agreements:

(i) a contract made on an exchange or pursuant to the rules of an exchange;

(ii) a contract subject to the rules of an exchange; or

(iii) a contract which would (but in terms of maturity only) be a contract made on, or subject to the rules of, an exchange and which, at the appropriate time, is to be submitted for clearing as a contract made on, or subject to the rules of, an exchange,

in any of cases (i), (ii) and (iii) being a future, option, contract for difference, spot or forward contract of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof; or

(iv) a transaction which is back-to-back with any transaction within paragraph (i), (ii) or (iii) of this definition, or

(v) any other Transaction which the parties agree to be a Transaction;

(B) (fixed income securities) Transactions relating to a fixed income security or under which delivery of a fixed income security is contemplated upon its formation;

(C) (equities) Transactions relating to an equity or under which delivery of an equity is contemplated upon its formation;

(D) (commodities) Transactions relating to, or under the terms of which delivery is contemplated, of any base metal, precious metal or agricultural product.

(E) (OTC derivatives) Transactions which fall within paragraphs (4) to (10) of Section C of Annex 1 to Directive 2004/39/EC[2], including (but not limited to) interest rate swaps, credit default swaps, derivatives on foreign exchange, and equity derivatives, provided that, where the Transaction is subject to the Terms of a Clearing Agreement, the Transaction (or a transaction which is back-to-back with the Transaction) is eligible to be cleared by a central counterparty.

[2] Non-EU counsel should discuss with Clifford Chance if clarification is needed.

ANNEX 3
DEFINITIONS RELATING TO THE AGREEMENTS

"**Addendum Inconsistency Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the ISDA/FOA Clearing Addendum) Clause 1(b) (i) of the ISDA/FOA Clearing Addendum.

"**Addendum Netting Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the ISDA/FOA Clearing Addendum):

(a) Clause 8(b) (*Clearing Member Events*), 8(c) (CCP Default) and 8(d) (*Hierarchy of Events*) of the ISDA/FOA Clearing Addendum; or

(b) any modified version of such clauses provided that it includes at least those parts of paragraph 6 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

together with the defined terms required properly to construe such Clauses.

"**Addendum Set-Off Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the ISDA/FOA Clearing Addendum):

(a) Clause 8(e) (*Set-Off*) of the ISDA/FOA Clearing Addendum, where constituted as part of a Clearing Agreement; or

(b) any modified version of such clause provided that it includes at least those parts of paragraph 8 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

together with the defined terms required properly to construe such Clause.

"**Adverse Amendments**" means (a) any amendment to a Core Provision and/or (b) any other provision in an agreement that may invalidate, adversely affect, modify, amend, supersede, conflict or be inconsistent with, provide an alternative to, override, compromise or fetter the operation, implementation, enforceability or effectiveness of a Core Provision (in each case in (a) and (b) above, excepting any Non-material Amendment).

"**Clearing Agreement**" means an agreement:

(a) on the terms of the FOA Netting Agreement when used (i) in conjunction with the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum, or (ii) in conjunction with a Clearing Module Netting Provision and/or an Addendum Netting Provision and with or without a Clearing Module Set-Off Provision and/or an Addendum Set-Off Provision;

(b) which is governed by the law of England and Wales; and

(c) which contains an Addendum Inconsistency Provision, a Clearing Module Inconsistency Provision, or another provision with equivalent effect to either of them.

"**Clearing Module Inconsistency Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the FOA Clearing Module) Clause 1.2.1 of the FOA Clearing Module.

"**Clearing Module Netting Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the FOA Clearing Module):

(a) Clause 5.2 (*Firm Events*), 5.3 (*CCP Default*) and 5.4 (*Hierarchy of Events*) of the FOA Clearing Module; or

(b) any modified version of such clauses provided that it includes at least those parts of paragraph 6 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

together with the defined terms required properly to construe such Clauses.

"**Clearing Module Set-Off Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the FOA Clearing Module):

(a) Clause 5.5 (*Set-Off*) of the FOA Clearing Module; or

(b) any modified version of such clause provided that it includes at least those parts of paragraph 7 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

together with the defined terms required properly to construe such Clause.

"**Client**" means, in relation to a FOA Netting Agreement or a Clearing Agreement, the Firm's or, as the case may be, Clearing Member's counterparty under the relevant FOA Netting Agreement or Clearing Agreement.

"**Client Money Additional Security Clause**" means:

(a) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);

(b) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(c) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(d) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 7.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);

(e) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(f) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(g) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 6.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);

(h) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 6.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(i) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 6.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement); or

(j) any modified version of such clauses provided that it includes at least those parts of paragraph 3 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

"**Core Provision**" means those parts of the clauses or provisions specified below in relation to a paragraph of this opinion letter (and/or any equivalent paragraph in any Schedule to this opinion letter), which are highlighted in Annex 4:

(a) for the purposes of paragraph 3.3 (Enforceability of FOA Netting Provision) and 3.6 (Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to FOA Netting Provision), the Insolvency Events of Default Clause and the FOA Netting Provision;

(b) for the purposes of paragraph 3.4 (Enforceability of the Clearing Module Netting Provision), the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value";

(c) for the purposes of paragraph 3.5 (Enforceability of the Addendum Netting Provision), the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value";

(d) for the purposes of paragraph 3.7 (Enforceability of the FOA Set-Off Provisions), the Insolvency Events of Default Clause, the FOA Netting Provision and either or both of the General Set-off Clause and the Margin Cash Set-off Clause;

(e) for the purposes of paragraph 3.8 (Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision), the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Available Termination Amount", "Disapplied Set-Off Provisions", "Firm/CCP Transaction Value" and "Relevant Collateral Value", the Clearing Module Set-Off Provision and the FOA Set-Off Provisions;

(f) for the purposes of paragraph 3.9 (Set-Off under a Clearing Agreement with Addendum Set-Off Provision), the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "Available Termination Amount", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Addendum Set-Off Provision; and

(g) for the purposes of paragraph 3.10.1 and 3.10.2, (i) in relation to a FOA Netting Agreement, the Insolvency Events of Default Clause, the FOA Netting Provision and the Title Transfer Provisions; and (ii) in relation to a Clearing Agreement, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value" or, as the case may be, the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Title Transfer Provisions;

in each case, incorporated into a FOA Netting Agreement or a Clearing Agreement together with any defined terms required properly to construe such provisions, in such a way as to preserve the essential sense and effect of the highlighted parts.

References to "**Core Provisions**" include Core Provisions that have been modified by Non material Amendments and necessary amendments set out in Section 1 of Annex 5.

"**Defaulting Party**" includes, in relation to the One-Way Versions, the Party in respect of which an Event of Default entitles the Non-Defaulting Party to exercise rights under the FOA Netting Provision.

"**Eligible Counterparty Agreements**" means each of the Eligible Counterparty (with Security Provisions) Agreement 2007, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2007, the Eligible Counterparty (with Security Provisions) Agreement 2009, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2009, the Eligible Counterparty (with Security Provisions) Agreement 2011 or the Eligible Counterparty (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1).

"**Firm**" means, in relation to a FOA Netting Agreement or a Clearing Agreement which includes a FOA Clearing Module, the Party providing the services under the relevant FOA Netting Agreement or Clearing Agreement which includes a FOA Clearing Module.

"**FOA Clearing Module**" means the FOA Client Cleared Derivatives Module as first published on 9 October 2013 or any subsequent published version up to the date of this opinion letter.

"**FOA Netting Agreement**" means an agreement:

(a) on the terms of the forms specified in Annex 1 to this opinion letter or which has broadly similar function to any of them, when not used in conjunction with the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum and/or a Clearing Module Netting Provision and/or an Addendum Netting Provision;

(b) which is governed by the law of England and Wales; and

(c) which contains the Insolvency Events of Default Clause and the FOA Netting Provision, with or without the FOA Set-Off Provisions, and with or without the Title Transfer Provisions, with no Adverse Amendments.

"**FOA Netting Agreements (with Title Transfer Provisions)**" means each of the Professional Client (with Title Transfer Provisions) Agreement 2007, the Professional Client (with Title Transfer Provisions) Agreement 2009, the Professional Client (with Title Transfer

Provisions) Agreement 2011, the Retail Client (with Title Transfer Provisions) Agreement 2007, the Retail Client (with Title Transfer Provisions) Agreement 2009, the Retail Client (with Title Transfer Provisions) Agreement 2011, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2007, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2009 and the Eligible Counterparty (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1) or a FOA Netting Agreement which has broadly similar function to any of the foregoing.

"**FOA Netting Provision**" means (in each case subject to any selections or amendments required or permitted to be made on the face of the document in the relevant form referred to in Annex 1):

(a) in relation to the terms of the Long Form One-Way Clauses 2007 and the Long Form Two-Way Clauses, Clause 2.2 (***Liquidation Date***), Clause 2.4 (***Calculation of Liquidation Amount***) and Clause 2.5 (***Payer***);

(b) in relation to the terms of the Short Form One-Way Clauses and the Short Form Two-Way Clauses, Clause 2.1 (***Liquidation Date***), Clause 2.3 (***Calculation of Liquidation Amount***) and Clause 2.4 (***Payer***);

(c) in relation to the terms of the Master Netting Agreements, Clause 4.2, Clause 4.4 and Clause 4.5;

(d) in relation to the terms of the Eligible Counterparty Agreements, Clause 10.1 (***Liquidation Date***), Clause 10.3 (***Calculation of Liquidation Amount***) and Clause 10.4 (***Payer***);

(e) in relation to the terms of the Retail Client Agreements, Clause 11.2 (***Liquidation Date***), Clause 11.4 (***Calculation of Liquidation Amount***) and Clause 11.5 (***Payer***);

(f) in relation to the terms of the Professional Client Agreements, Clause 11.2 (***Liquidation Date***), Clause 11.4 (***Calculation of Liquidation Amount***) and Clause 11.5 (***Payer***); or

(g) any modified version of such clauses provided that it includes at least those parts of paragraph 1 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

"**FOA Published Form Agreement**" means a document listed at Annex 1 in the form published by FIA Europe on its website as at the date of this opinion.

"**FOA Set-Off Provisions**" means:

(a) the "**General Set-off Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2007 and Professional Client Agreement (with Security Provisions) 2009, clause 15.11 (***Set-off***);

(ii) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2011, clause 15.13 (***Set-off***);

(iii) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2007 and the Retail Client Agreement (with Security Provisions) 2009, clause 15.12 (***Set-off***);

(iv) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2011, clause 15.13 (***Set-off***);

(v) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2007 and the Eligible Counterparty Agreement (with Security Provisions) 2009, clause 14.8 (***Set-off***);

(vi) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2011, clause 14.10 (***Set-off***);

(vii) in the case of the Agreements in the form of One-Way Master Netting Agreement (1997 version), clause 5 (***Set-Off***);

(viii) in the case of the Agreements in the form of Two-Way Master Netting Agreement (1997 version), clause 5 (***Set-Off***); or

(ix) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and/or

(b) the "**Margin Cash Set-off Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2007 and the Professional Client Agreement (with Security Provisions) 2009, clause 8.5 (***Set-off on default***);

(ii) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2011, clause 8.4 (***Set-off upon default or termination***);

(iii) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2007 and the Retail Client Agreement (with Security Provisions) 2009, clause 8.7 (***Set-off on default***),

(iv) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2011, clause 8.6 (***Set-off upon default or termination***);

(v) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2007 and the Eligible Counterparty Agreement (with Security Provisions) 2009, clause 7.5 (***Set-off on default***);

(vi) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2011, clause 7.4 (***Set-off upon default or termination***); or

(vii) any modified version of such clauses provided that it includes at least those parts of paragraph 3 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

"**Insolvency Events of Default Clause**" means (in each case subject to any selections or amendments required or permitted to be made on the face of the document in the relevant form referred to in Annex 1):

(i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1 (b) and (c) (inclusive);

(ii) in relation to the terms of the Short Form One-Way Clauses and Short Form Two-Way Clauses, Clauses 1.1 (b) and (c) (inclusive);

(iii) in relation to the terms of the Master Netting Agreements, Clause 4.1 (ii) and (iii) (inclusive);

(iv) in relation to the terms of the Eligible Counterparty Agreements, Clause 9.1 (b)and (c) (inclusive);

(v) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1(b) and (c) (inclusive); or

(vi) any modified version of such clauses provided that it includes at least those parts of paragraph 4(a) of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

"**ISDA/FOA Clearing Addendum**" means the ISDA/FOA Client Cleared OTC Derivatives Addendum as first published on 11 June 2013, or any subsequent published versions up to the date of this opinion letter.

"**Long Form Two-Way Clauses**" means each of the Long-Form Two-Way Clauses 2007, the Long-Form Two-Way Clauses 2009 and the Long-Form Two-Way Clauses 2011 (each as listed and defined at Annex 1).

"**Margin**" means any cash collateral provided to a Party and any cash or non-cash collateral comprising Acceptable Margin provided to a Party pursuant to the Title Transfer Provisions which (in either case) has been credited to an account provided by the Party which is the transferee.

"**Master Netting Agreements**" means each of the One-Way Master Netting Agreement 1997 and the Two-Way Master Netting Agreement 1997 (each as listed and defined at Annex 1).

"**Non-Cash Security Interest Provisions**" means:

(a) the "**Non-Cash Security Interest Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.6 (***Security interest***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.6 (***Security interest***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.7 (***Security interest***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.8 (***Security interest***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.8 (***Security interest***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.9 (***Security interest***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.6 (***Security interest***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.6 (***Security interest***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.7 (***Security interest***); or

(x) any modified version of such clauses provided that it includes at least those parts of paragraph 1 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow; and

(b) the "**Power of Sale Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.11 (***Power of sale***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.11 (***Power of sale***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.11 (***Power of sale***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.13 (***Power of sale***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.13 (***Power of sale***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.13 (***Power of sale***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.11 (***Power of sale***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.11 (***Power of sale***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.11 (***Power of sale***); or

(x) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

"**Non-Defaulting Party**" includes, in relation to the One-Way Versions, the Party entitled to exercise rights under the FOA Netting Provision and, in relation to the FOA Set-Off Provisions, the Party entitled to exercise rights under the FOA Set-Off Provisions.

"**Non-material Amendment**" means an amendment having the effect of one of the amendments set out at Annex 4.

"**One-Way Versions**" means the Long Form One-Way Clauses 2007, the Short Form One-Way Clauses, the One-Way Master Netting Agreement 1997, and the FOA Netting Provision as published in the Retail Client Agreements and the Professional Client Agreements in each case in the form of a FOA Published Form Agreement.

"**Party**" means a party to a FOA Netting Agreement or a Clearing Agreement.

"**Professional Client Agreements**" means each of the Professional Client (with Security Provisions) Agreement 2007, the Professional Client (with Title Transfer Provisions) Agreement 2007, the Professional Client (with Security Provisions) Agreement 2009, the Professional Client (with Title Transfer Provisions) Agreement 2009, the Professional Client (with Security Provisions) Agreement 2011 or the Professional Client (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1).

"**Rehypothecation Clause**" means:

(a) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.13 (***Rehypothecation***);

(b) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.15 (***Rehypothecation***);

(c) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.13 (***Rehypothecation***); or

any modified version of such clauses provided that it includes at least those parts of paragraph 4 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

"**Retail Client Agreements**" means each of the Retail Client (with Security Provisions) Agreement 2007, the Retail Client (with Title Transfer Provisions) Agreement 2007, the Retail Client (with Security Provisions) Agreement 2009, the Retail Client (with Title Transfer Provisions) Agreement 2009, the Retail Client (with Security Provisions) Agreement 2011 or the Retail Client (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1).

"**Short Form One Way-Clauses**" means each of the Short-Form One-Way Clauses 2007, the Short-Form One-Way Clauses 2009 and the Short-Form One-Way Clauses 2011 (each as listed and defined at Annex 1).

"**Short Form Two Way-Clauses**" means each of the Short-Form Two-Way Clauses 2007, the Short-Form Two-Way Clauses 2009 and the Short-Form Two-Way Clauses 2011 (each as listed and defined at Annex 1).

"**Title Transfer Provisions**" means (in each case subject to any selections or amendments required or permitted to be made on the face of the document in the relevant form referred to in Annex 1):

(a) clauses 5 and 7.2 of the Title Transfer and Physical Collateral Annex to the Netting Module (2007 or 2011 Version); or

(b) any modified version of such clauses provided that it includes at least those parts of paragraph 5 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

"**Two Way Clauses**" means each of the Long-Form Two Way Clauses and the Short-Form Two Way Clauses.

ANNEX 4

PART 1
CORE PROVISIONS

For the purposes of the definition of Core Provisions in Annex 3, the wording highlighted in yellow below shall constitute the relevant Core Provision**:**

1. **FOA Netting Provision:**

a) "**Liquidation date:** Subject to the following sub-clause, at any time following the occurrence of an Event of Default in relation to a party, then the other party (the "**Non-Defaulting Party**") may, by notice to the party in default (the "**Defaulting Party**"), specify a date (the "**Liquidation Date**") for the termination and liquidation of Netting Transactions in accordance with this clause.

b) **Calculation of Liquidation Amount:** Upon the occurrence of a Liquidation Date:

i. neither party shall be obliged to make any further payments or deliveries under any Netting Transactions which would, but for this clause, have fallen due for performance on or after the Liquidation Date and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Liquidation Amount;

ii. the Non-Defaulting Party shall as soon as reasonably practicable determine (discounting if appropriate), in respect of each Netting Transaction referred to in paragraph (i), the total cost, loss or, as the case may be, gain, in each case expressed in the Base Currency specified by the Non-Defaulting Party as such in the Individually Agreed Terms Schedule as a result of the termination, pursuant to this Agreement, of each payment or delivery which would otherwise have been required to be made under such Netting Transaction; and

iii. the Non-Defaulting Party shall treat each such cost or loss to it as a positive amount and each such gain by it as a negative amount and aggregate all such amounts to produce a single, net positive or negative amount, denominated in the Non-Defaulting Party's Base Currency (the "**Liquidation Amount**").

c) **Payer:** If the Liquidation Amount is a positive amount, the Defaulting Party shall pay it to the Non-Defaulting Party and if it is a negative amount, the Non-Defaulting Party shall pay it to the Defaulting Party. The Non-Defaulting Party shall notify the Defaulting Party of the Liquidation Amount, and by which Party it is payable, immediately after the calculation of such amount."

2. **General Set-Off Clause:**

"**Set-off:** Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) owed by you to us against any amount (whether actual

or contingent, present or future) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained."

3. **Margin Cash Set-Off Clause:**

"**Set-off upon default or termination:** If there is an Event of Default or this Agreement terminates, we may set off the balance of cash margin owed by us to you against your Obligations (as reasonably valued by us) as they become due and payable to us and we shall be obliged to pay to you (or entitled to claim from you, as appropriate) only the net balance after all Obligations have been taken into account. [The net amount, if any, payable between us following such set-off, shall take into account the Liquidation Amount payable under the Netting Module of this Agreement.]"

4. **Insolvency Events of Default Clause:**

"The following shall constitute Events of Default:

i. a party commences a voluntary case or other procedure seeking or proposing liquidation, reorganisation, moratorium, or other similar relief with respect to itself or to its debts under any bankruptcy, insolvency, regulatory, or similar law or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian, examiner or other similar official (each a "**Custodian**") of it or any substantial part of its assets, or takes any corporate action to authorise any of the foregoing;

ii. an involuntary case or other procedure is commenced against a party seeking or proposing liquidation, reorganisation, or moratorium, or other similar relief with respect to it or its debts under any bankruptcy, insolvency, regulatory, or similar law or seeking the appointment of a Custodian of it or any substantial part of its assets."

5. **Title Transfer Provisions:**

a) **Default:** If a Liquidation Date is specified or deemed to occur as a result of an Event of Default, the Default Margin Amount as at that date will be deemed to be [a gain (if we are the Non-Defaulting Party) or a cost (if you are the Non-Defaulting Party)] [a gain by us] for the purposes of calculating the Liquidation Amount. For this purpose, "**Default Margin Amount**" means the amount, calculated in the Base Currency of the aggregate value as at the relevant Liquidation Date (as determined by us) of the Transferred Margin.

b) **Clean title:** Each party agrees that all right, title and interest in and to any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest which it Transfers to the other party shall vest in the recipient free and clear of any security interest, lien, claims, charges, encumbrance or other restriction. Notwithstanding the use of terms such as "Margin" which are used to reflect terminology used in the market for such transactions, nothing in these provisions is intended to create or does create in favour of either party a

mortgage, charge, lien, pledge, encumbrance or other security interest in any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest Transferred hereunder."

6. **Clearing Module Netting Provision / Addendum Netting Provision:**

a) [Firm Trigger Event/CM Trigger Event]

Upon the occurrence of a [Firm Trigger Event/CM Trigger Event], the Client Transactions in the relevant Cleared Transaction Set will, except to the extent otherwise stated in the [Core Provisions of the] relevant Rule Set, be dealt with as set out below:

(a) each Client Transaction in the relevant Cleared Transaction Set will automatically terminate [upon the occurrence of a Firm Trigger Event] [at the same time as the related CM/CCP Transaction is terminated or Transferred] and, following such termination, no further payments or deliveries in respect of such Client Transaction [as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.22 Section 8(b)(ii)];

(b) the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or the relevant part thereof;

(c) the applicable Cleared Set Termination Amount will be determined by Client on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the date on which the [Firm/CM] Trigger Event occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the day on which the relevant Client Transactions [had all been/were] terminated (in either case, provided that, if [Firm/Clearing Member] gives notice to Client requiring it to determine such amount and Client does not do so within two Business Days of such notice being effectively delivered, [Firm/Clearing Member] may determine the applicable Cleared Set Termination Amount) and, in either case, will be an amount equal to the sum, but without duplication, of (A) the Aggregate Transaction Value, (B) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a

positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (C) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (D) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[or any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributed] [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included [Clauses 5.2.2(c)(4) to 5.2.2(c)(C)] [Sections 8(b)(ii)(3)(A) to 8(b)(ii)(3)(C)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]);

(d) if a Cleared Set Termination Amount is a positive number, it will be due from [Firm/Clearing Member] to Client and if a Cleared Set Termination Amount is a negative number, the absolute value of the Cleared Set Termination Amount will be due from Client to [Firm/Clearing Member], and in each case will be payable in accordance with this [Module/Addendum].

b) CCP Default

Upon the occurrence of a CCP Default, the Client Transactions in the relevant Cleared Transaction Set will, except to the extent otherwise stated in the [Core Provisions of the relevant] Rule Set, be dealt with as set out below*:*

1. each Client Transaction in the relevant Cleared Transaction Set will automatically terminate at the same time as the related [Firm/CM]/CCP Transaction and following such termination no further payments or deliveries in respect of such Client Transaction[as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.3 Section 8(c)];

2. the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or relevant part thereof;

3. the applicable Cleared Set Termination Amount will be determined by [Firm/Clearing Member] on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the date on which the CCP Default

occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the day on which the relevant Client Transactions had all been terminated and, in either case, will be an amount equal to the sum, but without duplication, of (1) the Aggregate Transaction Value, (2) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (3) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (4) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[and any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included in [Clauses 5.3.3(1) to 5.3.3(3)] [Sections 8(c)(iii)(1) to 8(c)(iii)(3)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing member]);

4. if a Cleared Set Termination Amount is a positive number, it will be due from [Firm/Clearing Member] to Client and if a Cleared Set Termination Amount is a negative number, the absolute value of the Cleared Set Termination Amount will be due from Client to [Firm/Clearing Member], and in each case will be payable, in accordance with this [Module/Addendum].

c) Hierarchy of Events

[If Client Transactions are capable of being terminated pursuant to more than one [Clause/Section], then the [clause/section] in respect of which a party first exercises any right to terminate Client Transactions (or, the [clause/section] pursuant to which Client Transactions are otherwise terminated, if earlier) will prevail for the purposes of the relevant Client Transactions.]

Or

[If Client Transactions are capable of being terminated pursuant to more than one [Clause/Section], then the [clause/section] in respect of which a party first exercises any right to terminate Client Transactions (or, the [clause/section]

pursuant to which Client Transactions are otherwise terminated, if earlier) will prevail for the purposes of the relevant Client Transactions.]

Or

[If Client Transactions are capable of being terminated pursuant to more than one [Clause/Section], then the [clause/section] in respect of which a party first exercises any right to terminate Client Transactions (or, the clause pursuant to which Client Transactions are otherwise terminated, if earlier) will prevail for the purposes of the relevant Client Transactions.]

d) Definitions

"**Aggregate Transaction Value**" means, in respect of the termination of Client Transactions of a Cleared Transaction Set, an amount (which may be positive or negative or zero) equal to the aggregate of the [Firm/CM]/CCP Transaction Values for all Client Transactions in the relevant Cleared Transaction Set or, if there is just one [Firm/CM]/CCP Transaction Value in respect of all such Client Transactions, an amount (which may be positive or negative or zero) equal to such [Firm/CM]/CCP Transaction Value.

"**[Firm/CM]/CCP Transaction Value**" means, in respect of a terminated Client Transaction or a group of terminated Client Transactions, an amount equal to the value that is determined in respect of or otherwise ascribed to the related [Firm/CM]/CCP Transaction or group of related [Firm/CM]/CCP Transactions in accordance with the relevant Rule Set following a [Firm/CM] Trigger Event or CCP Default (to the extent such Rule Set contemplates such a value in the relevant circumstance). If the value determined in respect of or otherwise ascribed to the related [Firm/CM]/CCP Transaction(s) under the relevant Rule Set reflects a positive value for [Firm/Clearing Member] vis-à-vis the Agreed CCP, the value determined in respect of such terminated Client Transaction(s) will reflect a positive value for Client vis-à-vis [Firm/Clearing Member] (and will constitute a positive amount for any determination under this [Module/Addendum]) and, if the value determined in respect of the related terminated [Firm/CCP]/CCP Transaction(s), under the relevant Rule Set reflects a positive value for the relevant Agreed CCP vis-à-vis [Firm/Clearing Member], the value determined in respect of [or otherwise ascribed to] such terminated Client Transaction(s) will reflect a positive value for [Firm/Clearing Member] vis-à-vis Client (and will constitute a negative amount for any determination under this [Module/Addendum]). The value determined in respect of or otherwise ascribed to the related [Firm/CM]/CCP Transaction(s) under the relevant Rule Set may be equal to zero.

"**Relevant Collateral Value**" means, in respect of the termination of Client Transactions in a Cleared Transaction Set, the value (without applying any "haircut" but otherwise as determined in accordance with the [Agreement/Collateral Agreement]) of all collateral that*:*

(a) is attributable to such Client Transactions;

(b) has been transferred by one party to the other in accordance with the [Agreement/Collateral Agreement or pursuant to Section 10(b)] and has not been returned at the time of such termination or otherwise applied or reduced in accordance with the terms of the [Agreement/relevant Collateral Agreement]; and

(c) is not beneficially owned by, or subject to any encumbrances or any other interest of, the transferring party or of any third person.

The Relevant Collateral Value will constitute a positive amount if the relevant collateral has been transferred by Client to [Firm/Clearing Member] and it or equivalent collateral has not been returned at the time of termination or otherwise applied or reduced in accordance with the terms of the [Agreement/Collateral Agreement] and a negative amount if the relevant collateral has been transferred by [Firm/Clearing Member] to Client and it or equivalent collateral has not been returned at the time of termination or otherwise applied or reduced in accordance with the terms of the [Agreement/Collateral Agreement].

7. **Clearing Module Set-Off Provision**

Firm may at any time and without notice to Client, set-off any Available Termination Amount against any amount (whether actual or contingent, present or future) owed by Firm to Client under the Clearing Agreement or otherwise. For these purposes, Firm may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained.

This Clause shall apply to the exclusion of all Disapplied Set-off Provisions in so far as they relate to Client Transactions; provided that, nothing in this Clause shall prejudice or affect such Disapplied Set-off Provisions in so far as they relate to transactions other than Client Transactions under the Agreement.

8. **Addendum Set-Off Provision**

(i) Any Available Termination Amount will, at the option of (A) Client, in the case of an Available Termination Amount due in respect of a CM Trigger Event and without prior notice to Clearing Member, be reduced by its set-off against any other termination amount payable by Clearing Member to Client under the Clearing Agreement at such time ("**CM Other Amounts**"), or (B) either party, in the case of an Available Termination Amount due in respect of a CCP Default, and without prior notice to the other party, be reduced by its set-off against any other termination amount payable by or to X (where "**X**" means, in the case of Section 8(i)(A), Client or, in the case of Section 8(i)(B), the party electing to set off) under the Clearing Agreement at such time ("**EP Other Amounts**" and together with CM Other Amounts, "**Other Amounts**"), provided that in the case of Section 8(i)(A) or Section 8(i)(B), at the time at which X elects to set off, where Clearing Member is X, a CM Trigger Event has not occurred and is not continuing or, where Client is X, an event of default, termination event or other similar event, howsoever described, in respect of Client in the Agreement, has not occurred and is not continuing. To the extent that any Other Amounts are so set off, those Other Amounts will be

discharged promptly and in all respects. X will give notice to the other party promptly after effecting any set-off under Section 8(i)(A) or Section 8(i)(B).

(ii) For the purposes of this Section 8(ii):

(A) all or part of the Available Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other amount is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency;

(B) if any Other Amounts are unascertained, X may in good faith estimate such Other Amounts and set off in respect of the estimate, subject to the relevant party accounting to the other when such Other Amounts are ascertained; and

(C) a "termination amount" may, for the avoidance of doubt, be another Cleared Set Termination Amount or another termination amount due under the Agreement including, in either case, any such amount that has previously been reduced in part by set-off pursuant to this Section 8(e).

(iii) Nothing in this Section 8(e) will be effective to create a charge or other security interest. This Section 8(e) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which Client or Clearing Member is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise), provided that, notwithstanding anything to the contrary in the Clearing Agreement or any related Collateral Agreement, no party may exercise any rights of set-off in respect of Excluded Termination Amounts.

PART 2
NON-MATERIAL AMENDMENTS

1. Any change to the numbering or order of a provision or provisions or the drafting style thereof (e.g., addressing the other party as "you", "Counterparty", "Party A/Party B", using synonyms, changing the order of the words) provided in each case that the plain English sense and legal effect both of each such provision and of the agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.

2. Any change to a provision or provisions for the purposes of correct cross-referencing or by defining certain key terms (e.g., party, exchange, currency, defaulting party or non-defaulting party) and using these terms in large caps throughout the agreement provided in each case that the plain English sense and legal effect both of each such provision and of the agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.

3. A change which provides that the agreement applies to existing Transactions outstanding between the parties on the date the agreement takes effect.

4. Any change to the scope of the agreement clarifying that certain transactions (e.g., OTC derivatives governed by an ISDA Master Agreement) shall not be transactions or contracts for purposes of the agreement.

5. An addition to the list of events that constitute an Event of Default (e.g. without limitation, the failure to deliver securities or other assets, a force majeure, cross default or downgrading event the death or incapacity of a Party or its general partner any default under a specified transaction or a specified master agreement), where such addition may or may not be coupled with a grace period or the serving of a written notice on the Defaulting Party by the Non-Defaulting Party, and such addition may be expressed to apply to one only of the Parties.

6. Any change to an Insolvency Event of Default (i) introducing a grace period for the filing of a petition for bankruptcy proceedings (of e.g. 15 or 30 days), (ii) modifying or deleting any such grace period, (iii) requiring that the filing of the petition is not frivolous, vexatious or otherwise unwarranted or (iv) that the non-defaulting party has reasonable grounds to conclude that the performance by the defaulting party of its obligations under the agreement, Transactions, or both, is endangered.

7. Any change to an Insolvency Event of Default more particularly describing (i) the relevant procedures that would or would not constitute such event of default or termination event (ii) the relevant officers the appointment of which would or would not constitute such Insolvency Event of Default.

8. Any change to an Insolvency Event of Default extending its scope to events occurring with respect to the credit support provider, an affiliate, a custodian or trustee of a Party.

9. Any change to an Insolvency Event of Default replacing such event of default with a provision aligned to Section 5(a)(vii) of the 1992 or 2002 ISDA Master Agreement (or relevant part thereof).

10. In the case of any agreement incorporating the Two-Way Clauses, any change to the Insolvency Events of Default which has the effect of providing that when one or several specified events (which would constitute Insolvency Events of Default) occur in relation to one specified Party, such event shall not constitute an Event of Default under the agreement.

11. Any change to the agreement requiring the Non-Defaulting Party when exercising its rights under the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.

12. Any change modifying the currency of Liquidation Amount, Available Termination Amount, Cleared Set Termination Amount or of any amount relevant to the FOA Set-

Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions.

13. Any change to the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision clarifying that (i) any account subject to set-off must be owned by the same party or (ii) the Non-Defaulting Party must, or may, notify the other party of its exercise of rights under such provision or other provision.

14. Any change to the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision (a) clarifying (i) at which time set-off may be exercised by a Party (with or without limitation), (ii) the amounts that may be set-off (with or without limitation, whether in relation to the agreement(s) under which such amounts arise or to the parties from which they are due), (iii) the use of currency conversion in case of cross-currency set-off, (iv) the application or disapplication of any grace period to set-off; or (b) allowing the combination of a Party's accounts.

15. Any change to the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision adding or taking from the amounts to be taken into account for the calculation of the Liquidation Amount.

16. Any addition to any of the Core Provisions that leaves both the plain English sense and legal effect of such provision unchanged.

17. Any change converting the Core Provisions of the FOA Netting Provision to a 'one-way' form in the style of the One-Way Master Netting Agreement 1997 (in which only the default of one Party is contemplated).

18. Including multiple forms of netting provision in respect of Client Transactions, in any of the following combinations:

    - more than one ISDA/FOA Clearing Addendum or Addendum Netting Provision
    - more than one FOA Clearing Module or Clearing Module Netting Provision
    - one or more ISDA/FOA Clearing Addendum or Addendum Netting Provision and one or more FOA Clearing Module or Clearing Module Netting Provision

    provided that the agreement specifies unambiguously that only one such netting provision shall apply in respect of any given Client Transaction.

19. Including the Title Transfer Provisions together with provisions which create a security interest over cash and/or non-cash margin, provided that the agreement unambiguously specifies the circumstances in which the security interest or the Title Transfer provisions apply in respect of any given item of margin so that it is not possible for both the security interest and the Title Transfer Provisions to apply simultaneously to the same item of margin.

20. Adding to the definition of "Firm Trigger Event" or, as the case may be, "CM Trigger Event" (or defined terms equivalent thereto) any further events of default in relation to the Firm or, as the case may be, the Clearing Member, including those in the definition of Events of Default appearing in a FOA Published Form Agreement (including as modified in accordance with paragraph 5 above).

21. Any change to the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision providing that any applicable Cleared Set Termination Amount will be determined by the Firm or, as the case may be, the Clearing Member in any event (even in the case of a Firm Trigger Event or, as the case may be, a CM Trigger Event).

22. Any change to the FOA Netting Provision providing that any applicable Liquidation Amount will be determined by the Defaulting Party.

23. Any addition to the Clearing Module Netting Provision or the Addendum Netting Provision providing that, if any Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin has been ported to another clearing member of the Agreed CCP Service following a Firm Trigger Event or CM Trigger Event, the Party in charge of the calculation of the Cleared Set Termination Amount can ascribe an appropriately reduced value (including zero) to the Client Transaction and related margin or collateral corresponding to the Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin so ported.

PART 3
SECURITY INTEREST PROVISIONS

1. **Security Interest Clause:**

"As a continuing security for the performance of the Secured Obligations under or pursuant to this Agreement, you grant to us, with full title guarantee, a first fixed security interest in all non-cash margin now or in the future provided by you to us or to our order or under our direction or control or that of a Market or otherwise standing to the credit of your account under this Agreement or otherwise held by us or our Associates or our nominees on your behalf."

2. **Power of Sale Clause:**

"If an Event of Default occurs, we may exercise the power to sell all or any part of the margin. The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to any exercise by us of our rights to consolidate mortgages or our power of sale. We shall be entitled to apply the proceeds of sale or other disposal in paying the costs of such sale or other disposal and in or towards satisfaction of the Secured Obligations."

3. **Client Money Additional Security Clause**

"As a continuing security for the payment and discharge of the Secured Obligations you grant to us, with full title guarantee, a first fixed security interest in all your money that we may cease to treat as client money in accordance with the Client Money Rules. You agree that we shall be entitled to apply that money in or towards satisfaction of all or any part of the Secured Obligations which are due and payable to us but unpaid."

4. **Rehypothecation Clause**

"You agree and authorise us to borrow, lend, appropriate, dispose of or otherwise use for our own purposes, from time to time, all non-cash margin accepted by us from you and, to the extent that we do, we both acknowledge that the relevant non-cash margin will be transferred to a proprietary account belonging to us (or to any other account selected by us from time to time) by way of absolute transfer and such margin will become the absolute property of ours (or that of our transferee) free from any security interest under this Agreement and from any equity, right, title or interest of yours. Upon any such rehypothecation by us you will have a right against us for the delivery of property, cash, or securities of an identical type, nominal value, description and amount to the rehypothecated non-cash margin, which, upon being delivered back to you, will become subject to the provisions of this Agreement. We agree to credit to you, as soon as reasonably practicable following receipt by us, and as applicable, a sum of money or property equivalent to (and in the same currency as) the type and amount of income (including interest, dividends or other distributions whatsoever with respect to the non-cash margin) that would be received by you in respect of such non-cash margin assuming that such non-cash margin was not rehypothecated by us and was retained by you on the date on which such income was paid.".

ANNEX 5
NECESSARY OR DESIRABLE AMENDMENTS

1. Necessary amendments

(a) For the purposes of paragraph 3.3 to 3.14 and 3.16:

"*This Agreement creates financial collateral arrangements between the parties in the meaning of the Financial Collateral Arrangements Directive."*

(b) For the purposes of paragraph 3.7, 3.8 and 3.9, the following shall be added to the General Set-Off Clause, Margin Cash Set-Off Clause, Clearing Module Set-Off Provision and Addendum Set-Off Provision:

"The Set-Off shall be effective upon it being declared by a party declaring Set-Off to the party against which the Set Off is declared."

2. Desirable amendments

(a) For the purposes of paragraph 3.3 to 3.14 and 3.16

The following shall be added to FOA Netting Provision, General Set-Off Clause, Margin Cash Set off Clause, Clearing Module Netting Provision/ Addendum Netting Provision, Clearing Module Set-Off Provision and Addendum Set-Off Provision:

"The evaluation and realisation of financial collaterals, i.e. determination of the appropriate financial obligations, must be carried out with higher attention, according to the rules and uses of the profession (due professional care), taking into account the financial market situation."

(b) For the purposes of paragraph 3.10:

The following should be added to the Title Transfer Provision:

"and the Default Margin Amount (as calculated pursuant to the terms of the Title Transfer Provisions) would be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision."

The amendment is desirable in order to maintain consistency with the paragraph 3.10 of this Letter Opinion.

3. Additional wording to be treated as part of the Core Provisions

4. Additional events for the purposes of paragraph 3.1:

iii Filing for pre-bankruptcy settlement, as well as loss, failure to renew or revocation of licence, approval or other act necessary for conducting business that the party is conducting as its core business, as well as permanent prohibition to conduct such business, be it by the regulator, courts or tribunals.

5. Alterations which constitute material alterations:

None.

For the purpose of **SCHEDULE 1 Banks**

1. Necessary amendments

None.

2. Desirable amendments

None.

3. Additional wording to be treated as part of the Core Provisions

None.

4. Additional events for the purposes of paragraph 2.1:

Following wording to be added to *Insolvency Events of Default Clause:*

v. In any event, commencement of special administration under the Credit Institutions Act, regular and mandatory administration under the Credit Institutions Act and Companies Act or bankruptcy proceedings under the Credit Institutions Act and the Bankruptcy act shall constitute an Event of Default,

5. Alterations which constitute material alterations:

None.

For the purpose of **SCHEDULE 4 Insurance companies**

1. Necessary amendments

None.

2. Desirable amendments

None.

3. Additional wording to be treated as part of the Core Provisions

None.

4. Additional events for the purposes of paragraph 2.1:

Following wording to be added to *Insolvency Events of Default Clause:*

v. In any event, commencement of Voluntary and Mandatory Liquidation under the Insurance Act and the Companies Act or bankruptcy proceedings under the Insurance Act and the Bankruptcy act shall constitute an Event of Default,

5. Alterations which constitute material alterations:

None.

For the purpose of **SCHEDULE 6 Sovereign**

1. Necessary amendments

None.

2. Desirable amendments

None.

3. Additional wording to be treated as part of the Core Provisions

None.

4. Additional events for the purposes of paragraph 2.1:

Following wording to be added to *Insolvency Events of Default Clause:*

"change in legislation allowing Sovereign to be subject to Bankruptcy or Winding—Up proceedings or initiating any legal action resulting from non-payment of Sovereign's debt"

For the purpose of **SCHEDULE 7 Croatian National Bank and Croatian Bank for Reconstruction and Development**

1. Necessary amendments

None.

2. Desirable amendments

None.

3. Additional wording to be treated as part of the Core Provisions

None.

4. Additional events for the purposes of paragraph 2.1:

Following wording to be added to *Insolvency Events of Default Clause:*

"change in legislation or practice allowing Croatian National Bank or Croatian Bank for Reconstruction and Development to be subject to Bankruptcy or Winding—Up proceedings, or initiating any legal action resulting from at non-payment of Croatian National Bank or Croatian Bank for Reconstruction and Development's debt"

For the purpose of **SCHEDULE 8 Pension Funds and Pension Insurance Companies**

1. Necessary amendments

   None.

2. Desirable amendments

   None.

3. Additional wording to be treated as part of the Core Provisions

   None.

4. Additional events for the purposes of paragraph 2.1:

   "change in legislation or practice allowing Pension Funds to be subject to Bankruptcy or Winding—Up, or initiating any legal action resulting from at non-payment of Pension Fund's debt"

For the purpose of **SCHEDULE 9** *Housing Savings Banks*

1. Necessary amendments

   None

2. Desirable amendments

   None

3. Additional wording to be treated as part of the Core Provisions

   None

4. Additional events for the purposes of paragraph 3.1:

   Following wording to be added to *Insolvency Events of Default Clause:*

   v. In any event, commencement of special administration under the Credit Institutions Act, regular and mandatory administration under the Credit Institutions Act and Companies Act or bankruptcy proceedings under the Credit Institutions Act and the Bankruptcy act shall constitute an Event of Default,