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Czech legal collateral opinion – Non Situs Version

The Futures & Options Association
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36-38 Botolph Lane
London EC3R 8DE

21 February 2013

Dear Sirs

FOA Collateral Opinion

You have asked us to give an opinion in respect of the laws of the Czech Republic ("**this jurisdiction**") in respect of the Security Interests given under Agreements in the forms specified in Annex 1 to this opinion letter (each an "**Agreement**") or under an Equivalent Agreement (as defined below).

Terms used in this opinion letter and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

We understand that your fundamental requirement is for the effectiveness of the Security Interest Provisions of the Agreement to be substantiated by a written and reasoned opinion. Our opinion on the validity of the Security Interest Provisions is given in paragraph 3 of this opinion letter.

References herein to "*this opinion*" are to the opinions given in paragraph 3.

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 Subject as provided at paragraph 1.2, this opinion is given in respect of Parties which are

1.1.1 Czech companies (in Czech: "*obchodní společnosti*") incorporated under the Czech Act No. 513/1991 Coll., commercial code, as amended (the "**Commercial Code**")[1] or non-Czech companies (other than a "Societas Europea" established pursuant to EU Regulation No. 2157/2001 on the Statute of a European company, as amended) incorporated or formed under the laws of another jurisdiction which are companies and which have a branch (in

[1] The new Czech Act No 90/2012 Coll., on companies and co-operatives, will replace the Commercial Code with effect from 1 January 2014.

Czech: "*organizační složka*") established in this jurisdiction in accordance with the Commercial Code.[2]

1.1.2 Czech banks within the meaning of the Czech Act No. 21/1992 Coll., on banks, as amended (the "**Act on Banks**") and non-Czech banks incorporated or formed under the laws of another jurisdiction which have a branch (in Czech: *"pobočka zahraniční banky"*) established in this jurisdiction in accordance with the Act on Banks, including a branch of a non-Czech bank, which has its registered office in another EEA member state and benefits from a single licence in accordance with EU law (the "**EEA Credit Institution**") and a branch of a non-Czech bank, which has its registered office in a state other than an EEA member state if the non-Czech bank was duly licensed by the Czech National Bank (the "**CNB**") and to the extent of such licence only. For the purposes of this opinion, the Czech banks exclude the CNB, which is regulated by the Czech Act 6/1992 Coll., on the Czech national bank, as amended, as well as Česká exportní banka, a.s., to the extent this bank is regulated by the Czech Act No. 58/1995 Coll., on insurance and financing of export with state support, as amended, and Českomoravská rozvojová banka, a.s. to the extent this bank is regulated by the Czech Act 47/2002 Coll., on support of business of small and medium enterprises, as amended,

insofar as each may act as a counterparty (a "**Counterparty**") providing Collateral (as defined in paragraph 1.3) to a member firm of the Futures and Options Association (each a "**Firm**") under an Agreement.

In this opinion, reference to "Czech company" or "non-Czech company" does not include the companies whose business is subject to special regulation. In respect of banks, for example, reference is made to "Czech bank" or "non-Czech bank". For certain other types of regulated companies please refer to the applicable Schedule as listed in paragraph 1.2.

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 applicable Schedule:

1.2.1 Securities Dealers (Schedule 1);

1.2.2 Insurance Providers (Schedule 2);

1.2.3 Individuals (Schedule 3);

1.2.4 Fund Entities (Schedule 4);

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[2] Under the law of this jurisdiction the general partnerships (in Czech: *"veřejné obchodní společnosti"*) incorporated under the Commercial Code have corporate legal personality and thus fall, and are addressed in this opinion letter, within the category of the Czech companies.

1.2.5 Public Entities (Schedule 5);

1.2.6 Pension Funds (Schedule 6); and

1.2.7 Building Savings Banks (Schedule 7).

insofar as each may act as a Counterparty to a Firm under an Agreement.

1.3 This opinion is given in respect of cash and account-held securities which are the subject of the Security Interest Provisions ("**Collateral**"). The amount and value of such Collateral may fluctuate from time to time on a day to day, and possibly intra-day basis.

1.4 This opinion relates only to laws of this jurisdiction as applied by the courts of this jurisdiction as at the date of this opinion and does not consider the impact of any laws (including insolvency laws) other than the laws of this jurisdiction, even where, under the laws of this jurisdiction, any foreign law falls to be applied. We express no opinion in this opinion letter on the laws of any other jurisdiction. Our opinion is based upon the express words of the Agreement as they would be interpreted under the laws of this jurisdiction, and takes no account of how such words would be interpreted under, or the effect of, the governing law of the Agreement.

1.5 We express no opinion as to any provisions of the Agreement other than those to which express reference is made in this opinion.

1.6 We do not express any opinion as to any matters of fact.

1.7 In this opinion letter:

1.7.1 "**Insolvency Proceedings**" means the following insolvency laws and procedures to which a Party would be subject in this jurisdiction:

(a) in relation to a Czech company or a branch of a non-Czech company, insolvency proceedings, including bankruptcy (in Czech:"*konkurs*") and reorganisation (in Czech:"*reorganizace*") under the Insolvency Act. Furthermore, the EU Insolvency Regulation has direct effect in this jurisdiction;

(b) in relation to a Czech bank, forced administration (in Czech: "*nucená správa*") under the Act on Banks. The Insolvency Act will not apply to a bank or a branch of a non-Czech bank for so long as the Czech bank or the branch of the non-Czech bank (other than the EEA Credit Institution) holds a licence under the Act on Banks. Following a withdrawal of the licence by the CNB, the Czech bank or the branch of the non-Czech bank (other than the EEA Credit Institution) might only be subject to bankruptcy under the Insolvency Act. Under the Insolvency Act, the CNB is given specific powers to file a petition for the decision on insolvency (in Czech: "*rozhodnutí o úpadku*") relating to a Czech bank or a branch of a non-Czech bank (other than an EEA

Credit Institution). Any insolvency proceedings with respect to an EEA Credit Institution will be carried out in accordance with the laws, regulations and procedures applicable in the state in which the bank has been licensed;

1.7.2 "**Security Interest**" means the security interest created pursuant to the Security Interest Provisions;

1.7.3 "**Equivalent Agreement**" means an agreement:

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

(b) which has broadly similar function to any of the Agreements listed in Annex 1;

(c) which contains the Core Provisions (with no amendments, or with Non-material Amendments); and

(d) which neither contains (nor is modified, amended, or superseded by) any other provision which may invalidate, adversely affect, modify, amend, supersede, conflict with, provide alternatives to, compromise or fetter the operation, implementation, enforceability and effectiveness of all or part of the Core Provisions (in each case, excepting Non-material Amendments);

References to the "**Agreement**" in this letter (other than specific cross references to clauses in such Agreement and references in the first paragraph of this letter) shall be deemed also to apply to an Equivalent Agreement;

1.7.4 A "**Non-material Amendment**" means an amendment having the effect of one of the amendments set out at Annex 3;

1.7.5 "**enforcement**" means, in the relation to the Security Interest, the act of:

(i) sale and application of proceeds of the sale of Collateral against monies owed, or

(ii) appropriation of the Collateral,

in either case in accordance with the Security Interest Provisions.

1.7.6 in other instances other than those referred to at 1.7.5 above, 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;

1.7.7 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;

1.7.8 any reference to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been amended or re-enacted on or before the date of this opinion letter;

1.7.9 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2; and

1.7.10 headings in this opinion letter are for ease of reference only and shall not affect its interpretation.

1.8 References to "Core Provisions" include Core Provisions that have been modified by Non-Material Amendments.

2. ASSUMPTIONS

We assume the following:

2.1 That the Agreements and Transactions are legally binding and enforceable against both Parties under their governing laws.

2.2 That the Security Interest Provisions are enforceable under the governing law of the Agreement to create a Security Interest.

2.3 That the Security Interest Provisions are effective under the law of the place where the Collateral is located to create an enforceable security interest.

2.4 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Agreement and Transactions; to perform its obligations under the Agreement and Transactions; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement and Transactions, including any steps required to be taken in respect of related party transactions, if applicable.

2.5 That each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the Agreement and Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the Agreement and Transactions in this jurisdiction.

2.6 That the Agreement and each Transaction have been properly executed by both Parties.

2.7 That, when entering into the Agreement, neither Party is insolvent and that neither Party will become insolvent as a result of the entering into the Agreement.

2.8 The 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.

2.9 That the Agreement accurately reflects the true intentions of each Party.

2.10 That no provisions of the Agreement, or a document of which the Agreement forms part, or any other arrangement between the Parties, invalidate the enforceability or effectiveness of the Security Interest Provisions or the Rehypothecation Clause under the governing law of the Agreement.

2.11 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement.

2.12 That all acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreement or any Transaction and the creation and perfection of the security interests thereunder pursuant to laws of any jurisdiction other than this jurisdiction have been duly fulfilled, performed and effected.

2.13 That there are no provisions of the laws of any jurisdiction (apart from this jurisdiction) which would be contravened by the execution or the delivery of the Agreement.

2.14 That each Party when creating the Security Interest over the Collateral pursuant to the Security Interest Provisions, will have full legal title to such Collateral at the time of such creation, free and clear of any lien, claim, charge or encumbrance or any other interest of the party creating the Security Interest or of any third person (other than a lien routinely imposed on all securities in a relevant clearance or settlement system).

2.15 That all Collateral subject to the Security Interest is capable of being charged with the Security Interest and all acts or things required by the laws of any jurisdiction other than this jurisdiction to be done to ensure the validity of each Security Interest over the Collateral pursuant to the Security Interest Provisions will have been effectively carried out.

2.16 That the Security Interests pursuant to the Security Interest Provisions is a security interest created over Collateral which remains the property of the Party that created such Security Interest.

2.17 That any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Interest Provisions shall at all relevant times be located outside this jurisdiction.

2.18 That any cash comprising the Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.

2.19 That the Agreement (including the Security Interest Provisions) is entered into and each Security Interest is created (i) prior to the commencement of any Insolvency Proceedings against either Party, and (ii) prior to any liquidation proceedings under the Commercial Code or any enforcement of judgment or other execution proceedings being commenced in respect of either Party and prior to any decision or another measure affecting the rights of third parties and being adopted or imposed by a court or an administrative authority with a view to maintaining or recovering the financial

situation of either Party or prohibiting certain trades or transfers of cash by either Party.

2.20 That neither the execution of the Agreement or any Transaction by the Parties nor the performance of the obligations of the Parties under the Agreement or such Transaction conflicts with or will conflict with any term of their constitutive documents.

2.21 That the Czech company has its "centre of main interest" in the Czech Republic and the branch of a non-Czech company constitutes an "establishment", in each case within the meaning of Regulation (EC) No. 1346/2000 on insolvency proceedings, as amended (the "**EU Insolvency Regulation**"), which applies in all EU member states other than Denmark.

2.22 That all acts, conditions or things, including, without limitation, reflection in the records of the Parties, any filing or registration, required to be fulfilled, performed or effected for the Security Interest Provisions to be effective under all applicable law(s) (other than the laws of this jurisdiction) have been, or will in good time be, duly fulfilled, performed and effected.

2.23 That no provision of the Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect. In our view, an alteration contemplated in the definition of "Equivalent Agreement" above would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in the definition of Equivalent Agreement would or would not constitute a material alteration of the Agreement.

3. OPINIONS

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 Valid Security Interest

3.1.1 Following the occurrence of an Event of Default, including as a result of the opening of any Insolvency Proceedings, the Non-Defaulting Party would be entitled to enforce the Security Interest in respect of the Collateral.

3.1.2 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 right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.

3.1.3 Following exercise of the Firm's rights under the Security Interest Provisions, the ranking of the Firm's rights to the proceeds of realisation of the Collateral in relation to the interests of the Counterparty and any other person would be a matter to be determined under the law of the place where the Collateral is situated.

3.2 **Further acts**

No further acts, conditions or things would be required by the law of this jurisdiction to be done, fulfilled or performed under the laws of this jurisdiction in order to enable the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.

4. QUALIFICATIONS

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

4.1 Our opinion is given to the extent that the Security Interest pursuant to the Security Interest Provisions qualifies as a "financial collateral arrangement" within the meaning of the Czech Act No. 408/2010 Coll., on financial collateral arrangements, as amended (the "**Financial Collateral Act**"), which implements the Directive 2002/47/EC on financial collateral arrangements, as amended (the "**Financial Collateral Directive**"), or within the meaning of equivalent foreign legal regulation.

4.2 The following are the main characteristics of a financial collateral arrangement under the Financial Collateral Act:

4.2.1 the Parties have to fall within one of the categories set out in Annex 4 (*Eligible Counterparties*)

4.2.2 the Financial Collateral Act provides that financial collateral arrangements serve to secure claims of financial nature and defines the claims of financial nature as claims from trades the subject matter[3] of which is cash, investment instruments emission allowances or commodities as well as rights and claims relating to such trades. The investment instruments are defined in the Act No. 256/2004 Coll., on the conduct of business on the capital market, as amended, (the "**Capital Market Act**"), which implements the Directive 2004/39/EC on markets in financial instruments (please refer to Annex 5 for the definition). The emission allowances are defined in the Czech Act No. 383/2012 Coll., on conditions for trading in allowances for greenhouse gases emissions (the "**Emission Trading Act**"), which implements the Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, as amended.[4] The commodities are defined in the EU

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[3] It is not entirely clear how the subject matter of a trade should be construed. One could argue that a derivative (contract) is the trade itself rather that the subject matter of a trade. Such argumentation would have to conclude, however, that the scope of the close-out netting pursuant to the Capital Market Act is limited to derivatives where the underlyings are cash, investment instruments (now without derivatives to avoid circularity), commodities or rights and claims relating to such trades. Such conclusion would be absurd if it were to disqualify all other derivatives (e.g., where the underlyings are interest rates or exchange rates) from the close-out netting protection. It appears to be a better view that the subject matter of a trade should be construed to include both the derivative (contract) and the underlyings.

[4] The Emission Trading Act defines emission allowance as a proprietary value corresponding to the right of an installation operator or aircraft operator to emit one tonne of carbon dioxide equivalent. Although the Emission Trading Act also defines the certified emission unit (CER) and the emission reduction unit (ERU) as well as the assigned amount unit (AAU), it is not entirely clear whether trades in those units would fall within the scope of the close-out netting pursuant to the Capital Market Act.

Regulation No. 1287/2006 implementing Directive 2004/39/EC on markets in financial instruments (the "**EU Commodities Regulation**")[5];

4.2.3 the financial collateral can comprise of, among other things, (a) a financial instrument, including an investment security, a unit in collective investment undertakings and or a money market instrument, [6] (b) independently transferrable rights otherwise connected to a financial instrument; (c) a right arising from an entry of a financial instrument into an evidence which allow the entitled person to dispose of the securities directly or indirectly at least in the same manner as an entitled holder, (d) money credited to an account; or (e) a claim for the repayment of money credited to an account,

provided that creation of the financial collateral arrangement and provision of the collateral has to be evidenced in writing or in manner which allows reproduction in unaltered form.

The Financial Collateral Act provides that, for a financial collateral arrangement to come into existence, the financial collateral must be handed-over to a financial collateral taker or credited to an account determined by the financial collateral taker or provided in another manner enabling the financial collateral taker or a person acting on its behalf to hold the financial collateral or otherwise dispose of it or, in the case of security financial collateral arrangements, the pledge must be registered in the relevant evidence in favour of the financial collateral taker. Consequently, such hand-over or credit or another provision or, as applicable, registration of the Collateral might be required by the laws of this jurisdiction to be done to ensure the validity of each Security Interest over the Collateral pursuant to the Security Interest Provisions to be effectively carried out.

We understand that the Transactions include futures, options, contracts for difference, spot or forward contracts of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof. Consequently, we are of the view that futures, options as well as spots and forwards will fall within the scope of the close-out netting pursuant to the Capital Market Act provided that the relevant future, option or forward qualify as an investment instrument within the meaning of the Capital Market Act (or rights and claims relating to the trade in the investment instrument).

To the extent any future, option or forward does not qualify as an investment instrument within the meaning of the Capital Market Act (or rights and claims relating to the investment instruments), such future, option as well as spot and forward might fall within the scope of the close-out netting pursuant to the Capital Market Act provided that (a) the relevant commodity or metal qualified as commodity within the

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5 The EU Commodities Regulation defines commodity as any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity.

6 For the definition of the investment securities, units in collective investment undertakings and money market instruments please see Annex 5.

meaning of the EU Commodities Regulation (or rights and claims relating to the trade in that commodity); (b) the relevant security or other underlying financial instrument itself qualified as an investment instrument within the meaning of the Capital Market Act; or (c) the relevant emission-related unit qualified as EAU or CER (and, arguably, ERU or AAU) within the meaning of the Emission Trading Act (or rights and claims relating to the trade in that relevant emission-related unit).

If obligations of the Parties arising in connection with a Transaction collateralised under the Security Interest Provisions did not qualify as corresponding to claims of financial nature within the meaning of the Financial Collateral Act, it is not entirely clear whether the Transaction would impair the enforceability of the Security Interest Provisions in relation to other Transactions collateralised under the Security Interest Provisions. Although we are of the view that that Transaction should not impair the enforceability of the Security Interest Provisions in relation to those other Transactions, no assurance can be given that the Czech courts would not adopt a different view since we are not aware of any case law on this point. Consequently, unless all the Transactions governed by the Agreement qualify as corresponding to claims of financial nature within the meaning of the Financial Collateral Act, the scope of the Transactions for the purposes of the Security Interest Provisions should be defined accordingly.

4.3 To the extent that the Security Interest pursuant to the Security Interest Provisions, does not qualify as a "financial collateral arrangement" within the meaning of the Financial Collateral Act or within the meaning of equivalent foreign legal regulation, it would likely be characterised as a "pledge" (in Czech: "*zástavní právo*") as a matter of the law of this jurisdiction. In such case, the Party would neither be entitled to enforce the Security Interest in respect of the Collateral nor borrow, lend, dispose or otherwise use for its own benefit any Collateral as envisaged in the Security Interest Provisions and the Rehypothecation Clause respectively.

4.4 Under the Czech Act No. 97/1963 Coll., on international private and procedural law, as amended (the "**IPPL Act**"), where (i) investment securities, units in collective investment undertakings or money market instruments securities, the ownership of which or other right *in rem* to which, is evidenced by an entry in an evidence; or (ii) rights arising from an entry of the securities into an evidence, which allow the entitled person to dispose with the investment securities, units in collective investment undertakings or money market instruments securities directly or indirectly at least in the same manner as an entitled holder, are provided as financial collateral, the law of the state in which the evidence is maintained shall govern:

4.4.1 the legal nature of the financial collateral and proprietary effects of the financial collateral arrangement;

4.4.2 the conditions for creation of the financial collateral arrangement, the conditions for the provision of the financial collateral and other conditions for the financial collateral arrangement to become effective with respect to third parties;

4.4.3 priorities of rights *in rem* to the financial collateral and conditions for good faith acquisition of the financial collateral from a non-owner; and

4.4.4 conditions and manner of the realisation of the financial collateral following the occurrence of an enforcement event (as defined in the Financial Collateral Act),

provided that the choice of another law as well as transmission and remission are expressly prohibited by the IPPL Act.

4.5 The Financial Collateral Act provides that the cash collateral can be provided in the form of:

4.5.1 a claim for repayment of cash credited to an account or a similar claim for repayment of cash. Czech courts would likely apply the Regulation (EC) 593/2008/EC on the law applicable to contractual obligations (the "**Rome I Regulation**") and conclude that the law governing the account agreement pursuant to which the account is maintained should govern the proprietary aspects of the Security Interest over the cash, including the creation of the Security Interest and the enforcement of the Security Interest.

4.5.2 cash credited to an account. As a matter of the law of this jurisdiction, the cash credited to a bank account tend to be considered as a claim of the holder of the account against the account bank for repayment of the balance standing to the credit of the account. However, if the courts of this jurisdiction considered the cash collateral to be the cash credited to an account, the proprietary aspects of the Security Interest could also be governed by the law of the country where the bank account is maintained or by the law of the country where the account bank has its registered office.

4.6 If, at any relevant times:

4.6.1 the cash expressed to be subject to a Security Interest pursuant to the Security Interest Provisions is held in an account that is maintained in this jurisdiction or with an account bank that has its registered office in this jurisdiction or the claim of the holder of the account against the account bank for repayment of the balance standing to the credit of the account is governed by the laws of this jurisdiction; or

4.6.2 the securities expressed to be subject to a Security Interest pursuant to the Security Interest Provisions comprise account-held securities held in an evidence, in which the ownership right or other right *in rem* are recorded, maintained in this jurisdiction,

the Collateral may be deemed located in this jurisdiction and consequently the proprietary aspects as set out in the qualifications in paragraphs 4.4 and 4.5 may be governed by the laws of this jurisdiction.

4.7 If the Event of Default results from insolvency proceedings being commenced pursuant to the Czech Act No. 182/2006 Coll., on insolvency and methods of its resolution, as amended (the "**Insolvency Act**"), the Insolvency Act provides that a financial collateral arrangement under the Financial Collateral Act or equivalent foreign legal regulation shall not be affected by the provisions of the Insolvency Act if the financial collateral arrangement has been entered into and come into existence (i.e. the collateral has been provided) prior to the commencement of the insolvency proceedings.[7]

Please note, however, that the provisions of the Insolvency Act regarding invalidity or ineffectiveness of undervalue and preferential transactions and fraudulent transactions as well as transactions made by the debtor in breach of restrictions resulting from the automatic stay upon the commencements of insolvency proceedings will apply to the Security Interest Provisions and may thus potentially affect the Security Interest Provisions by rendering them invalid or ineffective or by preventing, delaying or otherwise affecting the exercise of the rights of the Non-Defaulting Party.

4.8 Under the Insolvency Act, the Insolvency Representative may challenge as ineffective following legal acts, including any Security Interest:

4.8.1 any preferential transaction (i.e., a transaction resulting in a greater satisfaction of a creditor than that it would otherwise receive in bankruptcy, to the detriment of other creditors);

4.8.2 any transaction at undervalue (i.e., a transaction by which the debtor undertook to render performance without consideration or for consideration the usual price of which is substantially lower than the usual price of performance that the debtor undertook to render); or

4.8.3 any transaction defrauding creditors (i.e., a transaction by which the debtor intentionally curtailed satisfaction of a creditor provided that the intention was known to the other party or, given all the circumstances, must have been known to the other party).

The Insolvency Representative can challenge the preferential transactions and the transactions at undervalue entered into one year prior to the commencement of the Insolvency Proceedings (or, in respect of such transactions with connected parties, three years prior to the commencement of the Insolvency Proceedings). The Insolvency Representative can challenge transactions defrauding creditors undertaken five years prior to the commencement of the Insolvency Proceedings. For the preferential transactions and the transactions at undervalues, such challenge can only be successful if the debtor were either insolvent or became insolvent as the result of

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[7] This rule applies even if the financial collateral arrangement has been entered into and come into existence on the day of, but after, the commencement of the insolvency proceedings unless the Non-Defaulting Party was, or should and could have been, aware of the commencement of the insolvency proceedings. The fact that the commencement of the insolvency proceedings has been published in the insolvency register does not in itself mean the Non-Defaulting Party was, or should and could have been, aware of the commencement of the insolvency proceedings.

the transaction (the debtor's insolvency would be presumed in respect of the transactions with connected parties).

Based on the assumption in paragraph 2.8 in particular, we are of the view, however, that such challenge of the Security Interest Provisions by the Insolvency Representative would unlikely be successful on the basis of the above provisions of the Insolvency Act *per se* so long as the Security Interest Provisions qualify as a financial collateral arrangement within the meaning of the Financial Collateral Act (for its the main characteristics, see paragraph 4.2).

Please note, however, that (i) if the Defaulting Party were insolvent within the meaning of the Insolvency Act when providing the Collateral or became insolvent as a result of the provision of the Collateral; and (ii) the Insolvency Representative were successful in challenging the Security Interest on the basis of the above anti-avoidance rules, the Non-Defaulting Party would not be entitled to enforce the Security Interest in respect of the Collateral.

4.9 In respect of insolvency proceedings commenced pursuant to the Insolvency Act, it is not entirely clear which moment will be considered relevant for the purposes of protection of financial collateral arrangements contained in the Insolvency Act. While the Insolvency Act provides that the insolvency proceedings commence on the day when an insolvency petition is delivered to the competent court, it also provides that the effects of such commencement shall occur upon publication of the same in the insolvency register. We would argue that the latter moment should be relevant on the basis that such publication makes the insolvency proceedings effective vis-a-vis third parties. One leading commentary has, however, expressed a view that the former moment (i.e., delivery of the insolvency petition) shall be relevant.

4.10 If the Event of Default results from a forced administration being introduced in respect of a Czech bank pursuant to the Act on Banks, the Act on Banks provides that exercise of rights and performance obligations arising from a financial collateral arrangement pursuant to the Financial Collateral Act or equivalent foreign legal regulation shall not be affected by the provisions of the Act on Banks regulating introduction of such a forced administration if the financial collateral arrangement has been entered into and come into existence (i.e. the collateral has been provided) prior to the introduction of the forced administration in respect of the Czech bank.[8]

4.11 In any case, the Non-Defaulting Party would unlikely be entitled to enforce the Security Interest in respect of the Collateral provided after the commencement of any Insolvency Proceedings against the Defaulting Party (or the Collateral provided after any liquidation proceedings under the Commercial Code or any enforcement of judgment or other execution proceedings being commenced in respect of the Defaulting Party or after any decision or another measure affecting the rights of third

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[8] This rule applies even if the financial collateral arrangement has been entered into and come into existence on the day, but after, the introduction of the forced administration unless the Non-Defaulting Party was, or should and could have been, aware of the introduction of the forced administration.

parties and being adopted or imposed by a court or an administrative authority with a view to maintaining or recovering the financial situation of the Defaulting Party or prohibiting certain trades or transfers of cash by the Defaulting Party).[9]

4.12 Given the absence of available court decisions regarding the financial collateral arrangements, it is difficult to determine how the courts of this jurisdiction would construe and apply the relevant legal provisions and no assurance can be given that the courts of this jurisdiction would arrive at the same conclusions as these contained in this opinion.[10]

4.13 The Czech Act No. 40/1964 Coll., civil code, as amended (the "**Civil Code**")[11] provides for a general rule that any transaction is invalid if its contents or purpose contradicts or circumvents any law (i.e., not only the Civil Code) or if such transaction contravenes good morals. Since it is not entirely clear how the general rule applies to entities whose business is subject to special regulation, there is a risk that the Agreement or any Security Interest would be invalid if the Agreement or such Security Interest contradicted or circumvented such special regulation, including any prudential or conduct of business rules as well as any other regulatory rules or restrictions contained in such special regulation.

4.14 While we do not express any view as to whether both the execution of the Agreement or the creation of any Security Interest by a Czech bank or a branch of a non-Czech bank and the performance of the obligations of the Czech bank or the branch of a non-Czech bank under the Agreement or the exercise or enforcement of such Security Interest by the Czech bank or the branch of a non-Czech bank complies with or will comply with any prudential or conduct of business rules as well as any other regulatory rules or restrictions presently in force and applicable to the Czech bank or the branch of a non-Czech bank, we note that the Act on Banks expressly provides that Czech banks and branches of non-Czech banks (other than EEA Credit Institutions) may not enter into agreements on terms that are significantly

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[9] The Non-Defaulting Party would, however, be entitled to enforce the Security Interest in respect of the Collateral provided after the commencement of any Insolvency Proceedings against the Defaulting Party (or after any liquidation proceedings under the Commercial Code or any enforcement of judgment or other execution proceedings being commenced in respect of the Defaulting Party or after any decision or another measure affecting the rights of third parties and being adopted or imposed by a court or an administrative authority with a view to maintaining or recovering the financial situation of the Defaulting Party or prohibiting certain trades or transfers of cash by the Defaulting Party) if the Acceptable Margin has been transferred on the day of, but after, the commencement of the Insolvency Proceedings (or such liquidation proceedings or such enforcement of judgment or other execution proceedings or such decision or another measure) and the Non-Defaulting Party was not, or should and could not have been, aware of the commencement of the Insolvency Proceedings (or such liquidation proceedings or such enforcement of judgment or other execution proceedings or such decision or another measure). The fact that the commencement of the insolvency proceedings within the meaning of the Insolvency Act has been published in the insolvency register does not in itself mean the Non-Defaulting Party was, or should and could have been, aware of the commencement of the insolvency proceedings.

[10] The original Financial Collateral Directive was implemented into the law of this jurisdiction as of 28 September 2005. It has been changed a number of times since then. The Financial Collateral Act has only been in effect since 1 January 2011.

[11] The new Czech civil code No. 89/2012 Coll. will replace the Civil Code with effect from 1 January 2014.

disadvantageous to them (in particular agreements that bound them to an economically unjustifiable performance or a performance manifestly inadequate to the consideration provided) and that agreements entered in breach of this provision are void.

4.15 Where a Party is vested with a discretion or may determine a matter in its opinion, the laws of this jurisdiction may require that:

4.15.1 such discretion is granted in respect of a sufficiently clearly defined matter; and

4.15.2 such discretion is exercised reasonably or such opinion is based on reasonable grounds.

4.16 Any provision in the Agreement providing that any calculation or certification is to be conclusive and binding will not be effective if such calculation or certification is fraudulent and will not necessarily prevent judicial enquiry into the merits of any claim by any party thereto. The concept of prima facie evidence may not be recognised under laws of this jurisdiction.

4.17 Under the Civil Code, a creditor of one party may ask the court to declare that the party's legal act that curtails satisfaction of the creditor's enforceable claim is ineffective against the creditor if:

4.17.1 the act was made during the last three years;

4.17.2 the party made the act with the intention to curtail its creditors; and

4.17.3 the party's counterparty must have been aware of this intention.

4.18 Whilst we express no opinion as to whether any particular Security Interest could be declared ineffective on the basis that it meets the above conditions, we are not aware of any reason why the Security Interest Provisions itself should be found ineffective on that basis.

4.19 Where a Party is a Czech company or a non-Czech company and the centre of its main interests is in an EU member state other than this jurisdiction or Denmark, the EU Insolvency Regulation will apply. In such a case the courts of this jurisdiction have no jurisdiction to implement insolvency proceedings except in a case where the Party has an establishment (within the meaning in the EU Insolvency Regulation) in this jurisdiction, and then only to implement insolvency proceedings governed by laws of this jurisdiction in relation to the assets situated (or deemed under the EU Insolvency Regulation to be situated) in this jurisdiction.

4.20 The opinions expressed in this opinion letter are subject to the effects of any United Nations, European Union or Czech sanctions or other similar measures implemented or effective in this jurisdiction with respect to the Counterparty which is, or is controlled by or otherwise connected with, a person resident in, incorporated in or constituted under the laws of, or carrying on business in a country to which any such

sanctions or other similar measures apply, or is otherwise the target of any such sanctions or other similar measures.

4.21 If the effect of proceedings in a forum outside this jurisdiction is to extinguish claims or liabilities under the governing law of those claims or liabilities, the courts of this jurisdiction may recognise the extinction of those claims or liabilities.

4.22 We express no opinion as to any liability or any other matter relating to tax or similar duty.

4.23 The opinions expressed in paragraph 3 above are subject to general principles of laws of this jurisdiction, without limitation, including the following:

4.23.1 pursuant to the Commercial Code, damages shall be paid in money. Restitution into the original state will only be ordered to the plaintiff's application where this is both possible and customary;

4.23.2 under the Commercial Code, certain terms of an agreement may be left open for later determination provided, however, that such determination is not dependent solely on the discretion of one party. Accordingly, it may be difficult to enforce terms of the Agreement that attempt to vest one party with discretion over a determination of a matter that could be viewed as a term of the agreement. Accordingly, it is not clear whether court of this jurisdiction would enforce provisions providing that any calculation, determination or certification effected by a party to an agreement is to be conclusive and binding;

4.23.3 under the Civil Code, no one may agree to waive rights that may only arise in the future;

4.23.4 under the Commercial Code, no one may waive or limit the right to claim damages caused intentionally prior to the occurrence of the event that may cause the damages to arise;

4.23.5 a party to a contract may be able to avoid its obligations under a contract (and may have other remedies) where it has been induced to enter into that contract by a mistake as to a decisive circumstance relating to the contract, where the mistake was caused by, or known to, the other party or where the other party caused the mistake intentionally; and

4.23.6 concepts of clarity, materiality, reasonableness and good faith, as interpreted and applied by the courts of this jurisdiction.

4.24 A party whose interests conflict with the interests of another party may not represent the latter party as an attorney and the latter party may not validly waive its right to revoke a power of attorney which appoints the former party at any time.

4.25 The Czech Foreign Exchange Act (No. 219/1995 Coll., as amended) provides for a state of emergency in the foreign exchange economy. During the state of emergency, when the ability to make payments to foreign countries is immediately and seriously

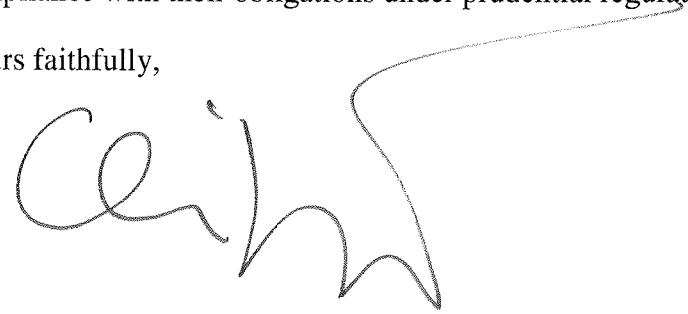
jeopardized, it is forbidden inter alia to make any payments from the Czech Republic abroad. However, the Government may declare a state of emergency only if (a) there is an unfavourable trend in the balance of payments; and (b) this trend immediately and seriously jeopardizes the ability to make payments to foreign countries or the internal currency balance of the Czech Republic. The state of emergency shall elapse no later than three months after the day on which it was announced in public media. As far as we are aware the state of emergency in foreign exchange economy has never been declared in the Czech Republic.

4.26 The Czech Crisis Management Act (No. 240/2000 Coll., as amended) provides for measures in states of emergency and other crisis situations. There are circumstances under that Act in which a Party may be obligated to contribute its tangible assets towards relief efforts.

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

This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options Association's opinions library (and whose terms of subscription give them access to this opinion). This opinion may not be relied upon by any other person unless we otherwise specifically agree with that person in writing, although we consent to it being shown to such Futures and Options Association members' affiliates (being members of such persons' groups, as defined by the UK Financial Services and Markets Act 2000) and to any competent authority supervising such member firms and their affiliates in connection with their compliance with their obligations under prudential regulation.

Yours faithfully,



SCHEDULE 1
Securities Dealers

Subject to the modifications and additions set out in this Schedule 1 (*Securities Dealers*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Securities Dealers. For the purposes of this Schedule 1 (*Securities Dealers*) "**Securities Dealers**" mean Czech securities dealers (in Czech: "*obchodníci s cennými papíry*") within the meaning of the Capital Market Act and non-Czech securities dealers incorporated or formed under the laws of another jurisdiction which have a branch (in Czech: "*organizační složka*") established in this jurisdiction in accordance with the Capital Market Act, including a branch of a non-Czech securities dealer, which has its registered office in another EEA member state and benefits from a single licence in accordance with EU law (the "**EEA Securities Dealer**") and a branch of a non-Czech securities dealer, which has its registered office in a state other than an EEA member state if the non-Czech securities dealer was duly licensed by the CNB and to the extent of such licence only.

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

1.1 The definition of "**Insolvency Proceedings**" in paragraph 1.7.1 is deemed deleted and replaced with the following:

> "*"**Insolvency Proceedings**" means the following insolvency laws and procedures to which a Party would be subject in this jurisdiction:*
>
> (a) *insolvency proceedings (including bankruptcy, but excluding reorganisation) under the Insolvency Act;*
>
> (b) *in relation to a Czech securities dealer (unlike a branch of a non-Czech securities dealer), forced administration (in Czech: "nucená správa") under the Capital Market Act in addition to the insolvency proceedings under (a) above.*[12]"

2. MODIFICATIONS TO ASSUMPTIONS

2.1 The assumption in paragraph 2.21 is deemed deleted and replaced with the following:

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[12] The Capital Market Act provides for a list of entities upon which forced administration can be imposed. The list, however, does not include branches of non-Czech securities dealers even though such branches are expressly listed among the entities that are subject to the supervision of the CNB in general. Consequently, we are of the view that it is not possible to impose forced administration upon a branch of a non-Czech securities dealer.

*"That the Czech Other Securities Dealer (as defined in Section 2.1) has its "centre of main interest" in the Czech Republic and the branch of a non-Czech Other Securities Dealer constitutes an "establishment", in each case within the meaning of Regulation (EC) No. 1346/2000 on insolvency proceedings, as amended (the "**EU Insolvency Regulation**"), which applies in all EU member states other than Denmark."*

3. ADDITIONAL QUALIFICATIONS

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

"The Insolvency Act applies to a Czech securities dealer even while the Czech securities dealer holds a licence under the Capital Market Act. Consequently, the insolvency proceedings may be commenced in respect of a Czech securities dealer regardless of whether or not its licence has been withdrawn by the CNB. The Capital Market Act provides that the forced administration will terminate, among other reasons, upon a decision on insolvency of the Czech securities dealer within the insolvency proceedings.

More importantly, the Capital Market Act provides that a client's assets do not form part of the insolvency estate of a Czech securities dealer pursuant to the Insolvency Act. If the decision on insolvency of the Czech securities dealer is issued, the Insolvency Representative will be required to return the assets to the clients without undue delay.

*As the EU Insolvency Regulation excludes from its scope only the Securities Dealers which provide services involving the holding of funds or securities for third parties, the EU Insolvency Regulation will likely apply to the Securities Dealers which do not provide such services. The insolvency regime of those Securities Dealers which do not hold funds or securities for third parties will therefore correspond to the insolvency regime of Czech companies. For the purposes of this Schedule 1 (Securities Dealers) it will be distinguished between the "**Securities Dealers Holding Funds for Third Parties**" and the "**Other Securities Dealers**" where applicable."*

4. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

4.1 The qualification in paragraph 4.10 is deemed deleted and replaced with the following:

"If the Event of Default results from a forced administration being introduced in respect of a Czech securities dealer pursuant to the Capital Market Act, the Capital Market Act provides that exercise of rights and performance of obligations arising from a financial collateral arrangement pursuant to the Financial Collateral Act or equivalent foreign legal regulation shall not be affected by the provisions of the Capital Market Act regulating introduction of such a forced administration if the financial collateral arrangement has been entered into and come into existence (i.e.

the collateral has been provided) prior to the introduction of the forced administration in respect of the Czech securities dealer.[13]"

4.2 The qualification in paragraph 4.14 is deemed deleted and replaced with the following:

"*While we do not express any view as to whether both the execution of the Agreement or the creation of any Security Interest by the Securities Dealer and the performance of the obligations of the Securities Dealer under the Agreement or the exercise and enforcement of such Security Interest by the Securities Dealer complies with or will comply with any prudential or conduct of business rules as well as any other regulatory rules or restrictions presently in force and applicable to the Securities Dealer, we note that the Capital Market Act provides that the Securities Dealers must provide investment services with professional care, consisting in a professional, honest and fair conduct in the best interests of clients in particular.*"

4.3 The qualification in paragraph 4.19 is deemed deleted and replaced with the following:

"*Where a Party is the Other Securities Dealer and the centre of its main interests is in an EU member state other than this jurisdiction or Denmark, the EU Insolvency Regulation will apply. In such a case the courts of this jurisdiction have no jurisdiction to implement insolvency proceedings except in a case where the Party has an establishment (within the meaning in the EU Insolvency Regulation) in this jurisdiction, and then only to implement insolvency proceedings governed by laws of this jurisdiction in relation to the assets situated (or deemed under the EU Insolvency Regulation to be situated) in this jurisdiction.*"

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[13] This rule applies even if the financial collateral arrangement has been entered into and come into existence on the day, but after, the introduction of the forced administration unless the Non-Defaulting Party was, or should and could have been, aware of the introduction of the forced administration.

SCHEDULE 2
Insurance Providers

Subject to the modifications and additions set out in this Schedule 2 (*Insurance Providers*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Insurance Providers. For the purposes of this Schedule 2 (*Insurance Providers*) "**Insurance Providers**" mean

(a) Czech insurance companies (in Czech: *"tuzemské pojišťovny"*) within the meaning of the Czech Act No. 277/2009 Coll., on insurance business, as amended (the "**Insurance Act**") and non-Czech insurance companies incorporated or formed under the laws of another jurisdiction which have a branch (in Czech: "*pobočka*") established in this jurisdiction in accordance with the Insurance Act, including a branch of a non-Czech insurance company, which has its registered office in other EEA member state and benefits from a single licence in accordance with EU law (the "**EEA Insurance Undertaking**") and a branch of a non-Czech insurance company, which has its registered office in a state other than an EEA member state if the non-Czech insurance company was duly licensed by the CNB and to the extent of such licence only. For the purposes of this opinion, the Czech insurance companies exclude Exportní a garanční pojišťovací společnost, a.s. to the extent this insurance company is regulated by the Czech Act No. 58/1995 Coll., on insurance and financing of export with state support, as amended;

(b) the General Health Insurance Company of the Czech Republic (in Czech: "*Všeobecná zdravotní pojišťovna*") ("**VZP**") established under the Czech Act No. 551/1991 Coll., on the General Health Insurance Company, as amended (the "**VZP Act**") and resort, trade union, enterprise and other health insurance companies (in Czech: "*resortní, odborové, podnikové a další zdravotní pojišťovny*") (the "**Health Insurance Companies**") within the meaning of the Czech Act No. 280/1992 Coll., on resort, trade union, enterprise and other health insurance companies, as amended (the "**Health Insurance Companies 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

1.1 The definition of "**Insolvency Proceedings**" in paragraph 1.7.1 is deemed deleted and replaced with the following:

"*"**Insolvency Proceedings**" means the following insolvency laws and procedures to which a Party would be subject in this jurisdiction:*

(a) *in relation to a Czech insurance company, forced administration (in Czech: "nucená správa") under the Insurance Act. The Insolvency Act will not apply to a Czech insurance company or a branch of a non-Czech insurance company for so long as the Czech insurance company or the branch of the non-Czech*

insurance company (other than the EEA Insurance Undertaking) holds a licence under the Insurance Act. Following a withdrawal of the licence by the CNB, the Czech insurance company or the branch of a non-Czech insurance company (other than the EEA Insurance Undertaking) might only be subject to bankruptcy under the Insolvency Act. The CNB is given specific powers to file a petition for the decision on insolvency relating to a Czech insurance company and a branch of a non-Czech insurance company (other than the EEA Insurance Undertaking). Any insolvency proceedings with respect to an EEA Insurance Undertaking will be carried out in accordance with the laws, regulations and procedures applicable in the state in which the insurance company has been licensed;

(b) *in relation to VZP, forced administration (in Czech: "nucená správa") under the VZP Act. VZP is expressly exempted from the effects of the Insolvency Act; and*

(c) *in relation to a Health Insurance Company, forced administration (in Czech: "nucená správa") under the Health Insurance Companies Act. The Insolvency Act will not apply to a Health Insurance Company for so long as a Health Insurance Company holds a licence under the Health Insurance Companies Act. Following a withdrawal of the licence by the Ministry of Health of the Czech Republic, the Health Insurance Company might only be subject to bankruptcy under the Insolvency Act."*

2. MODIFICATIONS TO ASSUMPTIONS

2.1 The assumption in paragraph 2.21 is deemed deleted.

3. ADDITIONAL QUALIFICATIONS

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

"The EU Insolvency Regulation excludes from its scope, among others, insurance undertakings. It is unclear whether the Health Insurance Companies qualify as insurance undertakings within the meaning of the EU Insolvency Regulation. We are of the view that the term "insurance undertaking" only refers to entities covered by the Directive 73/239/EEC (Non-Life Insurance Directive)[14], as amended, and the Directive 2002/83/EC (Life Insurance Directive), as amended. The Non-Life Insurance Directive does not apply to insurance forming part of a statutory system of social security. Consequently, the Health Insurance Companies (which provide public health insurance forming this jurisdiction's statutory system of social security) would unlikely qualify as insurance undertakings within the meaning of the EU Insolvency Regulation and thus, the EU Insolvency Regulation would likely cover the Health Insurance Companies. One could argue, however, that the Health Insurance

[14] The Directive 2009/138/EC (Solvency II) will replace the Non-Life Insurance Directive with effect from 1 January 2014.

Companies are not covered by the EU Insolvency Regulation since the Ministry of Health of the Czech Republic has powers of intervention similar to the powers the CNB has in respect of the Czech insurance companies, which are excluded from the scope of the EU Insolvency Regulation. Since no assurance can be given whether a Czech court would apply the EU Insolvency Regulation to the Health Insurance Companies, we do not further address application of the EU Insolvency Regulation to the Health Insurance Companies in this opinion."

4. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

4.1 The qualification in paragraph 4.10 is deemed deleted and replaced with the following:

"If the Event of Default results from a forced administration being introduced in respect of a Czech insurance company pursuant to the Insurance Act, the Insurance Act provides that exercise of rights and performance of obligations arising from a financial collateral arrangement pursuant to the Financial Collateral Act or equivalent foreign legal regulation shall not be affected by the provisions of the Insurance Act regulating introduction of such a forced administration if the financial collateral arrangement has been entered into and come into existence (i.e. the collateral has been provided) prior to the introduction of the forced administration in respect of the Czech insurance company. [15] Unlike the Insurance Act, the VZP Act and the Health Insurance Companies Act do not provide for specific protection of financial collateral arrangements in a forced administration introduced by the Ministry of Health of the Czech Republic in respect of the VZP and the Health Insurance Companies, respectively.

Moreover, it is unclear whether VZP or the Health Insurance Companies qualify as insurance undertakings within the meaning of the Financial Collateral Act. If VZP or the Health Insurance Companies were not eligible for a financial collateral arrangement on that basis, VZP or the Health Insurance Companies might only act as a financial collateral provider or a financial collateral taker so long as the Firm qualifies as a person listed in part 1 of Annex 4 (please refer to item (s) in conjunction with item (f) of that list in particular)."

4.2 The qualification in paragraph 4.14 is deemed deleted and replaced with the following:

"While we do not express any view as to whether both the execution of the Agreement or the creation of any Security Interest by the Insurance Provider and the performance of the obligations of the Insurance Providers under the Agreement or the exercise or enforcement of such Security Interest by the Insurance Providers complies with or will comply with any prudential or conduct of business rules as well as any

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[15] This rule applies even if the financial collateral arrangement has been entered into and come into existence on the day, but after, the introduction of the forced administration unless the Non-Defaulting Party was, or should and could have been, aware of the introduction of the forced administration.

other regulatory rules or restrictions presently in force and applicable to the Insurance Provider, we note that the Insurance Act, for example, provides that, when carrying on insurance business, insurance companies must act with professional care and in prudent manner, in particular the insurance companies must not carry on the insurance business in a manner that would be detrimental on the value of the property entrusted to it by third parties or in a manner that would endanger their stability and safety or stability and safety of related parties."

4.3 The qualification in paragraph 4.19 is deemed deleted.

SCHEDULE 3
Individuals

Subject to the modifications and additions set out in this Schedule 3 (*Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Individuals. For the purposes of this Schedule 3 (*Individuals*) "**Individuals**" mean individuals who are entrepreneurs (in Czech: *"podnikatelé"*) within the meaning of the Commercial Code with a place of business in this jurisdiction.

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

1.1 The definition of "**Insolvency Proceedings**" in paragraph 1.7.1 is deemed deleted and replaced with the following:

> *""**Insolvency Proceedings**" means the insolvency proceedings (including bankruptcy and reorganisation) under the Insolvency Act,[16] to which a Party would be subject in this jurisdiction."*

2. MODIFICATIONS TO ASSUMPTIONS

2.1 We assume that when entering into, and performing, the Agreement and Transactions, the Individual has acted within, and in connection with, its trade or other business activity.

2.2 The assumption in paragraph 2.21 is deemed and replaced with the following:

> *"That the Individual has its "centre of main interest" in the Czech Republic within the meaning of Regulation (EC) No. 1346/2000 on insolvency proceedings, as amended (the "**EU Insolvency Regulation**"), which applies in all EU member states other than Denmark."*

3. ADDITIONAL QUALIFICATIONS

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

> *"Under the Financial Collateral Act, an Individual may act as a financial collateral provider or a financial collateral taker so long as the Firm qualifies as a person listed in part 1 of Annex 4 (please refer to item (s) in conjunction with item (f) of that list in particular)."*

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[16] We note that leading Czech commentaries take the view that, although permitted, reorganisation is unlikely in relation to Individuals.

4. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

4.1 The qualifications in paragraph 4.10, 4.13 and 4.14 are deemed deleted.

4.2 The qualification in paragraph 4.19 is deemed deleted and replaced with the following:

"*Where the centre of the Individual's main interests is in an EU member state other than this jurisdiction or Denmark, the EU Insolvency Regulation will apply. In such a case the courts of this jurisdiction have no jurisdiction to implement insolvency proceedings except in a case where the Individual has an establishment (within the meaning in the EU Insolvency Regulation) in this jurisdiction, and then only to implement insolvency proceedings governed by laws of this jurisdiction in relation to the assets situated (or deemed under the EU Insolvency Regulation to be situated) in this jurisdiction.*"

SCHEDULE 4
Fund Entities

Subject to the modifications and additions set out in this Schedule 4 (*Fund Entities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Fund Entities. For the purposes of this Schedule 4 (*Fund Entities*) "**Fund Entities**" mean:

(a) Czech investment funds (in Czech: "*investiční fondy*") within the meaning of the Czech Act No. 189/2004 Coll., on collective investment, as amended (the "**Collective Investment Act**")[17]; and

(b) Czech investment companies (in Czech: "*investiční společnosti*") within the meaning of the Collective Investment Act.[18]

The Collective Investment Act also regulates Czech common funds (in Czech: "*podílové fondy*"). Since the common fund is not a legal entity, an investment company manages assets in the common fund in its own name and on the account of the unitholders.

Consequently, we understand that the Firm will enter into the Agreement and any Transaction with the Czech investment fund or the Czech investment company (whether acting on behalf of the holders of units in the Czech common fund or on behalf of a Czech investment fund or on its own behalf).

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

2.1 The definition of "**Insolvency Proceedings**" in paragraph 1.7.1 is deemed deleted and replaced with the following:

> ""***Insolvency Proceedings***" *means the following insolvency laws and procedures to which a Party would be subject in this jurisdiction:*
>
> (a) *insolvency proceedings (including bankruptcy and reorganisation)*[19] *under the Insolvency Act;*

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[17] A draft bill of a new Czech act on investment companies and investment funds is currently pending. If the draft bill were adopted, it could replace the Collective Investment Act with effect from 1 January 2014.

[18] The Czech investment companies correspond to "management companies" within the meaning of the Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and the "investment funds" correspond to "investment companies" within the meaning of the same.

[19] It is unclear whether a Fund Entity can be subject to reorganisation. Upon the declaration of insolvency of the Fund Entity the CNB should withdraw its licence and upon such withdrawal of the licence the Fund

(b) *forced administration (in Czech: "nucená správa") under the Collective Investment Act."*

2. MODIFICATIONS TO ASSUMPTIONS

2.2 The assumption in paragraph 2.21 is deemed deleted.

3. ADDITIONAL QUALIFICATIONS

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

"*The Insolvency Act applies to a Fund Entity even while the Fund Entity holds a licence under the Collective Investment Act. Consequently, the insolvency proceedings may be commenced in respect of a Fund Entity regardless of whether or not its licence has been withdrawn by the CNB. The Collective Investment Act provides that the forced administration will terminate, among other reasons, upon a declaration of bankruptcy of the Fund Entity within the insolvency proceedings.*

The Collective Investment Act refers to the provisions of the Capital Market Act providing that a client's assets do not form part of the insolvency estate of the Czech investment company pursuant to the Insolvency Act. If the decision on insolvency of the Czech investment company is issued, the Insolvency Representative is required to return the assets to the clients without undue delay.

The Collective Investment Act provides that the assets of a Czech common fund which is a standard fund within the meaning of the UCITS Directive cannot be used to provide loan, credit facility or gift or to secure a third party obligation or to fulfil an obligation not related to the management of such fund. "

4. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

4.1 The qualification in paragraph 4.10 is deemed deleted and replaced with the following:

"*If the Event of Default results from a forced administration being introduced in respect of a Fund Entity pursuant to the Collective Investment Act, the Collective Investment Act provides that exercise of rights and performance of obligations arising from a financial collateral arrangement pursuant to the Financial Collateral Act or equivalent foreign legal regulation shall not be affected by the provisions of the Collective Investment Act regulating introduction of such a forced administration if the financial collateral arrangement has been entered into and come into existence*

Entity should be liquidated. The Insolvency Act provides that an entity in liquidation cannot be subject to reorganisation.

(i.e. the collateral has been provided) prior to the introduction of the forced administration in respect of the Fund Entity.[20]"

4.2 The qualification in paragraph 4.14 is deemed deleted and replaced with the following:

"*While we do not express any view as to whether both the execution of the Agreement or the creation of any Security Interest by the Fund Entity and the performance of the obligations of the Fund Entity under the Agreement or the exercise and enforcement of such Security Interest by the Fund Entity complies with or will comply with any prudential or conduct of business rules as well as any other regulatory rules or restrictions presently in force and applicable to the Fund Entity, we note that the Collective Investment Act, for example, provides that Fund Entities must carry on the activities pursuant to the Collective Investment Act with professional care.*"

4.3 The qualification in paragraph 4.19 is deemed deleted.

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[20] This rule applies even if the financial collateral arrangement has been entered into and come into existence on the day, but after, the introduction of the forced administration unless the Non-Defaulting Party was, or should and could have been, aware of the introduction of the forced administration.

SCHEDULE 5
Public Entities

Subject to the modifications and additions set out in this Schedule 5 (*Public Entities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Public Entities. For the purposes of this Schedule 5 (*Public Entities*) "**Public Entities**" mean the Czech Republic (the "**State**") existing as a sovereign state from 1 January 1993 and the following regional self-governing units (the "**Regional Self-Governing Units**"):

(a) Czech municipalities (in Czech: "*obce*") within the meaning of the Czech Act No. 128/2000 Coll., on municipalities, as amended;

(b) Czech regional units (in Czech "*kraje*") within the meaning of the Czech Act No. 129/2000 Coll., on regional units; and

(c) The capital city of Prague (in Czech "*hlavní město Praha*") within the meaning of the Czech Act No. 131/2000 Coll., on the capital city of Prague, as amended.

In this opinion, the Public Entities exclude any state funds established by law or otherwise for any specific purpose (e.g., the State Transport Infrastructure Fund, the State Environmental Fund).

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

1.1 The definition of "**Insolvency Proceedings**" in paragraph 1.7.1 is deemed deleted and replaced with the following:

"*There are no bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Public Entity could be subject under the laws of this jurisdiction. The Public Entities are expressly exempted from the effects of the Insolvency Act. The State does not guarantee liabilities of the Regional Self-Governing Units unless it assumes such guarantee under a contract.*"

2. MODIFICATIONS TO ASSUMPTIONS

2.1 The assumption in paragraph 2.21 is deemed deleted.

3. ADDITIONAL QUALIFICATIONS

3.1 *"The Czech Act No. 219/2000 Coll., on the assets of the Czech Republic and its acting in legal relationships, as amended (the "**Act on the Assets of the Czech Republic**") provides that the State's claims cannot be pledged by way of a contract, unless stipulated otherwise in other laws.*

*The Act on the Assets of the Czech Republic prohibits the State from entering into pledge agreements and securities lending agreements as well as option agreements within the meaning of the Czech Act No. 591/1992 Coll., on securities, as amended (the "**Securities Act**") in respect of securities owned by the State."*

4. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

4.1 The qualifications in paragraphs 4.7 through 4.10 are deemed deleted.

4.2 The qualification in paragraph 4.14 is deemed and replaced with the following:

"*While we do not express any view as to whether both the execution of the Agreement or the creation of any Security Interest by the Public Entity and the performance of the obligations of the Public Entity under the Agreement or the exercise or enforcement of such Security Interest by the Public Entity complies with or will comply with any statutory or regulatory rules or restrictions presently in force and applicable to the Public Entity, we note that the Act on the Assets of the Czech Republic, for example, provides that the persons performing legal and other acts in respect of the property of the State must act with professional care.*"

4.3 The qualification in paragraph 4.19 is deemed deleted.

SCHEDULE 6
Pension Funds

Subject to the modifications and additions set out in this Schedule 6 (*Pension Funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Pension Funds. For the purposes of this Schedule 6 (*Pensions Funds*) "**Pension Funds**" mean Czech pension funds (in Czech: "*penzijní fondy*") within the meaning of the Czech Act No. 42/1994 Coll., on pension insurance with state contribution, as amended (the "**Pension Insurance Act**")[21].

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

1.1 The definition of "**Insolvency Proceedings**" in paragraph 1.7.1 is deemed deleted and replaced with the following:

"*"**Insolvency Proceedings**" means the insolvency proceedings (including bankruptcy and reorganisation)[22] under the Insolvency Act to which a Party would be subject in this jurisdiction.*"

2. MODIFICATIONS TO ASSUMPTIONS

The assumption in paragraph 2.21 is deemed deleted and replaced with the following:

"*That the Pension Fund has its "centre of main interest" in the Czech Republic within the meaning of Regulation (EC) No. 1346/2000 on insolvency proceedings, as amended (the "**EU Insolvency Regulation**"), which applies in all EU member states other than Denmark.*"

3. ADDITIONAL QUALIFICATIONS

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[21] As of 1 January 2013, the new Czech Act No. 426/2011 Coll., on pension savings and the new Czech Act No. 427/2011 Coll., on complementary pension insurance (the "**Complementary Pension Insurance Act**") have come into effect in their entirety. The Complementary Pension Insurance Act has introduced a pension company (in Czech: "*penzijní společnost*") as a new type of regulated entity, similar to the investment company (for more details on Czech investment companies please refer to Schedule 4 (*Fund Entities*)). The pension companies establish and manage rent funds (in Czech: "*důchodové fondy*"), participant funds (in Czech "*účastnické fondy*") and transformed pension funds (in Czech "*transformované penzijní fondy*") which, similarly as the Czech common funds, are not legal entities. As a result of the Complementary Pension Insurance Act, the Pension Funds ceased to exist in their current form and were either transformed into pension companies or dissolved. Upon such transformation assets and liabilities of the Pension Fund were set aside into the relevant transformed fund mentioned above. Please note that we do not express any opinion in respect of pension companies, rent funds, participant funds or transformed pension funds in this opinion letter.

[22] It is unclear whether a Pension Fund can be subject to reorganisation.

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

"*It is unclear whether the Insolvency Act applies to a Pension Fund even while the Pension Fund holds a licence under the Pension Insurance Act.*

The Insolvency Act lists the claims of participants in the pension insurance system among the claims ranking ahead of claims of other unsecured creditors of a Pension Fund.

The EU Insolvency Regulation does not exclude pension entities from its scope. Consequently, the EU Insolvency Regulation would likely cover the Pension Funds. However, no assurance can be given that the courts of this jurisdiction would adopt this view."

4. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

4.1 The qualification in paragraph 4.10 is deemed deleted.

4.2 The qualification in paragraph 4.14 is deemed deleted and replaced with the following:

"*While we do not express any view as to whether both the execution of the Agreement or the creation of any Security Interest by the Pension Fund and the performance of the obligations of the Pension Fund under the Agreement or the exercise or enforcement of such Security Interest by the Pension Fund complies with or will comply with any prudential or conduct of business rules as well as any other regulatory rules or restrictions presently in force and applicable to the Pension Fund, we note that the Pension Insurance Act, for example, provides that Pension Funds must administer the property with professional care and with the objective to ensure solid yield.*"

4.3 The qualification in paragraph 4.19 is deemed deleted and replaced with the following:

"*Where the centre of the Pension Fund's main interests is in an EU member state other than this jurisdiction or Denmark, the EU Insolvency Regulation will apply. In such a case the courts of this jurisdiction have no jurisdiction to implement insolvency proceedings except in a case where the Individual has an establishment (within the meaning in the EU Insolvency Regulation) in this jurisdiction, and then only to implement insolvency proceedings governed by laws of this jurisdiction in relation to the assets situated (or deemed under the EU Insolvency Regulation to be situated) in this jurisdiction.*"

SCHEDULE 7
Building Savings Banks

Subject to the modifications and additions set out in this Schedule 7 (*Building Savings Banks*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Building Savings Banks. For the purposes of this Schedule 7 (*Building Savings Banks*) "**Building Savings Banks**" mean Czech building savings banks (in Czech: "*stavební spořitelna*") within the meaning of Czech Act No. 96/1993 Coll., on building savings, as amended (the "**Building Savings Act**"). Since the Building Savings Bank is a Czech bank within the meaning of the Act on Banks,[23] the reference to a Czech bank in the opinion letter is deemed to include also a Building Savings Bank.

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

1.1 The definition of "**Insolvency Proceedings**" in paragraph 1.7.1 is deemed deleted and replaced with the following:

> "*"**Insolvency Proceedings**" means the forced administration (in Czech: "nucená správa") under the Act on Banks to which a Party would be subject in this jurisdiction. The Insolvency Act will not apply to a Building Savings Bank for so long as it holds a licence under the Act on Banks. Following a withdrawal of the licence by the CNB, the Building Savings Bank might only be subject to bankruptcy under the Insolvency Act. Under the Insolvency Act, the CNB is given specific powers to file a petition for the decision on insolvency (in Czech: "rozhodnutí o úpadku") relating to a Czech bank, i.e. also a Building Savings Bank.*"

2. MODIFICATIONS TO ASSUMPTIONS

2.1 The assumption in paragraph 2.21 is deemed deleted.

3. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

3.1 The qualification in paragraph 4.19 is deemed deleted.

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[23] As opposed to a regular Czech bank, the scope of licence of a Building Saving Bank is limited to the activities set out in the Building Savings Act.

ANNEX 1
FORM OF FOA AGREEMENTS

1. Professional Client Agreement (2007 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2007**")

2. Professional Client Agreement (2009 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2009**")

3. Professional Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2011**")

4. Retail Client Agreement (2007 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2007**")

5. Retail Client Agreement (2009 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2009**")

6. Retail Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2011**")

7. Eligible Counterparty Agreement (2007 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2007**")

8. Eligible Counterparty Agreement (2009 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2009**")

9. Eligible Counterparty Agreement (2011 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2011**")

For the avoidance of doubt none of the forms of the Agreements listed at this Annex 1 include or incorporate the Title Transfer Securities and Physical Collateral Annex to the Netting Modules published by the Futures and Options Association.

Where the form of any Agreement listed in this Annex 1 (as published by the Futures and Options Association) (the "**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).

Each of the Agreements listed in this Annex 1 may be deemed to include 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.

ANNEX 2
DEFINED TERMS RELATING TO THE AGREEMENTS

1. The "**Eligible Counterparty Agreements**" means each of the Eligible Counterparty Agreement 2007, the Eligible Counterparty Agreement 2009 and the Eligible Counterparty Agreement 2011 (each as listed and defined at Annex 1).

2. The "**Professional Client Agreements**" means each of the Professional Client Agreement 2007, the Professional Client Agreement 2009 and the Professional Client Agreement 2011 (each as listed and defined at Annex 1).

3. The "**Retail Client Agreements**" means each of the Retail Client Agreement 2007, the Retail Client Agreement 2009 and the Retail Client Agreement 2011 (each as listed and defined at Annex 1).

4. An "**Equivalent 2011 Agreement without Core Rehypothecation Clause**" means an Equivalent Agreement in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 but which does not contain the Rehypothecation Clause.

5. "**Core Provisions**" means:

   (a) with respect to all Equivalent Agreements, the Security Interest Provisions; and

   (b) with respect to Equivalent Agreements that are in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 (but not with respect to an Equivalent 2011 Agreement without Core Rehypothecation Clause), the Rehypothecation Clause.

6. "**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); and

   (d) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (a) to (c) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

7. "**Security Interest Provisions**" means:

   (a) the "**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***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

(b) the "**Power to Charge Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.10 (***Power to charge***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.10 (***Power to charge***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.10 (***Power to charge***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.12 (***Power to charge***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.12 (***Power to charge***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.12 (***Power to charge***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.10 (***Power to charge***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.10 (***Power to charge***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.10 (***Power to charge***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

(c) 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***); and

(x) in relation to an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

(d) the "**Power of Appropriation Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.12 (***Power of appropriation***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.12 (***Power of appropriation***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.12 (***Power of appropriation***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.14 (***Power of appropriation***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.14 (***Power of appropriation***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.14 (***Power of appropriation***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.13 (***Power of appropriation***)

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.13 (***Power of appropriation***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.12 (***Power of appropriation***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

(e) the "**Lien Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.13 (***General lien***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.13 (***General lien***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.14 (***General lien***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.15 (***General lien***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.15 (***General lien***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.16 (***General lien***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.12 (***General lien***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.12 (***General lien***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.14 (***General lien***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes); and

(f) the "**Client Money Additional Security Clause**", being:

(i) 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);

(ii) 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);

(iii) 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);

(iv) 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);

(v) 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);

(vi) 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);

(vii) 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);

(viii) 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);

(ix) 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); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes).

8. "**Two Way Clauses**" means each of the Futures and Options Association's Short-Form Two-Way Clauses 2007, the Short-Form Two-Way Clauses 2009, the Short-Form Two-Way Clauses 2011, the Long-Form Two-Way Clauses 2007, the Long-Form Two-Way Clauses 2009 and the Long-Form Two-Way Clauses 2011.

ANNEX 3
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") 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 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. 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), such change 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, such change may be expressed to apply to one only of the Parties.

4. 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.

5. 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.

6. 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.

7. 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).

8. Any change to the Agreement requiring the Non-defaulting Party when exercising its rights under the Security Interest Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.

9. Any change clarifying that the Non-defaulting Party must, or may not, notify the other party of its exercise of rights under the Security Interest Provisions or other provision.

ANNEX 4
ELIGIBLE COUNTERPARTIES

The Parties must be eligible for a financial collateral arrangement within the meaning of the Financial Collateral Act.

1. The Financial Collateral Act provides that the collateral taker and the collateral provider can only be:

   (a) a bank;

   (b) a credit union;

   (c) a person among whose key activities are:

      (i) providing mortgage, consumer or other credit;

      (ii) financial leasing;

      (iii) providing payment services;

      (iv) issuing electronic money;

      (v) performing securitisations;

      (vi) issuing guarantees or assuming obligations under which they will satisfy a creditor up to certain amount, if a particular third party does not fulfil a particular obligation or other conditions are not be met;

      (vii) foreign exchange;

      (viii) consulting with respect to a structure of capital, industry strategy and issues relating thereto, transformations of companies or transfers of businesses;

      (ix) management of assets of a client under a contract with the client based on a free discretion, if an investment instrument is a part of such assets; or

      (x) safekeeping and management of securities;

   (d) a person among whose key activities is dealing, on own account or on behalf of third parties, in:

      (i) payment instruments;

      (ii) money market instruments;

(iii) foreign exchange assets;

(iv) investment securities;

(v) options;

(vi) futures the value of which relates to a rate or a value of securities, currency rates, interest rate or interest yield, as well as to other derivatives, financial indices or financial quantitative measures giving the right to a cash settlement or a physical delivery of the underlying asset; or

(vii) financial contracts for differences;

(e) a central counterparty, settlement agent or clearing house within the meaning of the Czech Act No. 284/2009 Coll., on payment systems, as amended;

(f) a securities dealer;

(g) a regulated market operator;

(h) a central counterparty, settlement agent or clearing house within the meaning of the Capital Market Act;

(i) a legal person authorised to maintain register of investment instruments;

(j) an insurance company;

(k) a reinsurance company;

(l) an investment company;[24]

(m) an investment fund;[25]

(n) a pension fund;

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[24] The "investment companies" correspond to "management companies" within the meaning of the Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and the "investment funds" correspond to "investment companies" within the meaning of the same Directive.

(o) a legal person dealing on own account in investment instruments for the purposes of hedging of the trades with investment instruments (which are not financial instruments) and this activity is one of its key activities;

(p) a legal person dealing on own account in commodities or investment instruments (which are not financial instruments) and this activity is one of its key activities;

(q) a legal person which is a market maker within the meaning of the Capital Market Act;

(r) a rating agency;

(s) a foreign person providing similar activities as persons listed under items (a) through (r) above;

(t) a state or a member state of a federation;

(u) a regional self-governing unit;

(v) a public corporation or other legal person organised under a legal act which arranges for administration and payment of state or public debt or carries out an activity related thereto;

(w) a central bank of an EU member state or an EEA member state;

(x) a central bank of a state other than listed under item (w) above or the European Central Bank;

(y) the World Bank, the International Monetary Fund, the European Investment Bank or another institution of international law;

(z) a legal person with a special statute excluded from the application of the Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions, as amended.

2. If the other party (i.e., a financial collateral taker or a financial collateral provider, as the case may be) is a person listed under items (a) through (z) above, the following persons may act as financial collateral taker or financial collateral provider:

(a) a legal person;

(b) a foreign person other than a natural person;

(c) a natural person carrying on business if, given all the circumstances, it is clear that the financial collateral arrangement is being entered into in connection with its business activity.

3. Any other natural person may act as financial collateral provider if:

(a) the financial collateral taker is a bank authorised to provide investment services, a securities dealer or a foreign person with a similar activity as a bank or securities dealer authorised to provide investment services;

(b) given all the circumstances, it is clear that the financial collateral arrangement is being entered into in connection with the grant of a credit or loan to the financial collateral provider as a client for the purpose of realisation of a trade in an investment instrument, in which the financial collateral taker participates as the provider of the loan or credit;

(c) it has been expressly agreed that it is being entered into as a financial collateral arrangement;

(d) the financial collateral arrangement has been entered into in writing; and

(e) the financial collateral taker has, before the entry into the financial collateral arrangement, informed the financial collateral provider of the main characteristics of financial collateral arrangements and how they distinguish from the general regulation of pledges and transfer of things, rights or other assets in favour of a creditor.

ANNEX 5
INVESTMENT INSTRUMENTS

The Capital Market Act defines:

1. "investment instruments" as:

1.1 investment securities;

1.2 units in collective investment undertakings;

1.3 money market instruments;

1.4 options, futures, swaps, forwards and other instruments, the value of which relates to a rate or a value of securities, currency rates, interest rate or interest yield, as well as to other derivatives, financial indices or financial quantitative measures giving the right to a cash settlement or a physical delivery of the underlying asset;

1.5 instruments for the transfer of credit risk;

1.6 financial contracts for differences;

1.7 options, futures, swaps, forwards and other instruments, the value of which relates to commodities giving the right to a cash settlement or an option of a cash settlement to at least one of the parties provided that the exercise of the cash settlement option does not depend on payment default or other similar default;

1.8 options, futures, swaps, forwards and other instruments, the value of which relates to commodities giving the right to a physical delivery of the underlying commodity and which are traded on a European regulated market or on a multilateral trading facility operated by an entity with its seat in an EEA member state;

1.9 options, futures, swaps, forwards and other instruments, the value of which relates to commodities giving the right to a physical delivery of the underlying commodity, not listed in item 1.8, which are not intended for commercial purposes and have the characteristics of other derivative investment instruments (in particular those which are cleared and settled through a settlement system or are subject to margin calls);

1.10 options, futures, swaps, forwards and other instruments, the value of which relates to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics giving the right to a cash settlement or the option of a cash settlement to at least of one of the parties provided that the exercise of the cash settlement option does not depend on payment default or other similar default;

1.11 instruments, the value of which relates to assets, rights, obligations, indices or quantitative measures, not listed in item 1.10, which have the characteristics of other derivative investment instruments (in particular those, which are traded on a European regulated market or on a multilateral trading facility operated by an entity with its seat in an EEA member state, which are cleared and settled through a settlement system or are subject to margin calls).

2. "investment securities" as securities negotiable on the capital market, in particular:

2.1 shares (or equivalent securities representing a shareholding in a company or other entity);

2.2 bonds (or equivalent securities representing a right to repayment of an amount owed);

2.3 securities replacing the securities under item 2.1 or 2.2;

2.4 securities giving the right to acquire, or dispose of, the securities under item 2.1 or 2.2;

2.5 other securities giving the right to a cash settlement and the value of which is determined on the basis of the value of investment securities, exchange rates, interest rates, interest yields, commodities or other financial indices or other quantitative measures;

3. "collective investment units" as in particular:

3.1 shares in an investment fund;

3.2 units of a common fund (in Czech: *"podílový fond"*); and

4. "money-market instruments" as instruments which are normally dealt in the money market and whose value can be accurately determined at any time,

provided that one investment instrument can, according to its features, meet characterises of more of the above types of investment instruments. The Capital Market Act expressly provides that payment instruments do not fall within the definition of investment instruments.