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FIA EUROPE - NETTING OPINIONS PROJECT
Pro forma legal opinion for netting agreement

FIA Europe
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07 November 2014

Dear Sirs,

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

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

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 Subject as provided at paragraph 1.2, this opinion is given in respect of persons which are ordinary companies incorporated under the Companies Law, as well as branches in Romania of foreign ordinary companies (the "**Ordinary Corporates**").

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 Schedules to this opinion applicable to that type of entity:

1.2.1 banks incorporated in this jurisdiction and regulated pursuant to the Banking Law and to the relevant secondary legislation issued by the National Bank of Romania (the "**NBR**") (Schedule 1) (the "**Banks**")

1.2.2 branches in this jurisdiction of foreign banks (subject to the specific considerations set out in their respect in Schedule 1);

1.2.3 Investment firms incorporated in this jurisdiction and regulated pursuant to the Capital Market Law and to the relevant secondary legislation issued by the Financial Supervision Authority (the "**FSA**") and, before 30 April 2013, by the National Securities Commission (the "**NSC**") (Schedule 2) ("**Investment Firms**");

1.2.4 Insurance companies incorporated in this jurisdiction and regulated pursuant to the Insurance Companies Law and to the relevant secondary legislation issued by the FSA and, before 30 April 2013, by the Insurance Supervision Commission (the "**ISC**") (Schedule 3), including branches of foreign insurance companies ("**Insurance Companies**");

1.2.5 Collective investment undertakings established or incorporated in this jurisdiction and regulated pursuant to the Investment Funds Act and to the relevant secondary legislation issued by the FSA and, before 30 April 2013, by the NSC (Schedule 4) (the "**Investment Funds**");

1.2.6 Statutory corporations established or incorporated in this jurisdiction and operating pursuant to the State Owned Entities Law, the GO No. 15/1993 and other specific legislation (Schedule 5) (the "**Statutory Corporations**");

1.2.7 State owned entities established or incorporated in this jurisdiction and operating pursuant to the State Owned Entities Law, the GEO No. 30/1997 and other specific legislation (Schedule 6) (the "**State Owned Entities**");

1.2.8 Non-banking financial institutions incorporated in this jurisdiction and regulated pursuant to the NFI Law and to the relevant secondary legislation issued by the NBR (Schedule 7) (the "**NFIs**");

1.2.9 Pension funds established in this jurisdiction either as privately managed pension funds, regulated pursuant to the PMPF Law and the relevant secondary legislation issued by the FSA and, before 30 April 2013, by the Private Pension System Supervision Commission (the "**PPSSC**") ("**PMPFs**"), or as optional pension funds, regulated pursuant to the OPF Law and the relevant secondary legislation issued by the FSA and, before 30 April 2013, by the PPSSC ("**OPFs**") (Schedule 8) (together, the "**Pension Funds**");

1.2.10 Romanian Ministry of Public Finance (Schedule 9) (the "**MPF**");

1.2.11 National Bank of Romania (Schedule 10); and

1.2.12 Individuals subject to the provisions of the Civil Code (Schedule 11) (the "**Individuals**").

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

1.4 This opinion covers all types of Transactions, provided that, upon opening of Insolvency Proceedings, such Transactions fall in one of the following categories to which the netting regulated by the Insolvency Law applies: (i) contracts on operations with financial derivative instruments; (ii) repo and reverse repo contracts; (iii) buy-sellback and sell-buyback contracts; or (iv) contracts on securities lending carried out on regulated and assimilated markets and over the counter, as such terms are defined in paragraph 4.5.2 herein below.

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

1.6 A person incorporated or organised in this jurisdiction may be a Party to a Clearing Agreement in the capacity of "Firm" (as defined in the FOA Clearing Module) or "Clearing Member" (as defined in the ISDA/FOA Clearing Addendum) or as "Client" (as defined in either of them). Where a person incorporated or organised in this jurisdiction is a Party to a Clearing Agreement as Firm, or as the case may be Clearing Member, our opinion relates only to persons incorporated or organised as Banks or Investment Firms. This opinion does not cover persons incorporated or organised in this jurisdiction that are CCPs or CCPs that have in this jurisdiction an establishment in the sense of Council Regulation no. 1346/2000 on insolvency proceedings.

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

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

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

1.10 For the purpose of issuing this opinion we have reviewed only the documents referred to in Annex 1 (*Forms of FOA Netting Agreements*) to this opinion, the FOA Clearing Module and the ISDA/FOA Clearing Addendum.

1.11 This opinion letter and the opinions given in it are governed by Romanian law and relate only to Romanian law as applied by the Romanian courts as of the date of this opinion letter (up to and including the Official Gazette of Romania Part I, No. 812 of 6 November 2014). All non-contractual obligations and any other matters arising out of or in connection with this opinion letter are governed by Romanian law. We express no opinion in this opinion letter on the laws of any other jurisdiction.

1.12 We express no opinion as to any liability to tax which may arise or be suffered as a result of or in connection with the use of the FOA Netting Agreements and of the Clearing Agreements.

1.13 The opinions given in this opinion letter are given on the basis of our understanding of the terms of the FOA Netting Agreements and of the Clearing Agreements and the assumptions set out in paragraph 2 and are subject to the reservations set out in paragraph 4 to this Opinion. The opinions given in this opinion letter are strictly limited to the matters stated in paragraph 3 and do not extend to any other matters.

1.14 Schedules 1 to 11 and Annexes 1 to 5 hereof are integral part of this opinion letter and must be read together with this opinion letter.

1.15 **Definitions**

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

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

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

1.15.3 A reference to a "**paragraph**" is to a paragraph of this opinion letter.

Annex 3 contains further definitions of terms relating to the FOA Netting Agreement and the Clearing Agreement.

2. ASSUMPTIONS

We assume:

2.1 That no provision of the FOA Netting Agreement or Clearing Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been

altered in any material respect, including by reason of a Mandatory CCP Provision. In our view, an alteration contemplated in Part 2 (*Non-material Amendments*) of Annex 4 hereto would not constitute a material alteration for this purpose unless the alteration has been set out by us in Section 5 of Annex 5. We express no view whether an alteration not contemplated in Part 2 (*Non-material Amendments*) of Annex 4 would or would not constitute a material alteration.

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

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

2.4 That there has been no error ("*eroare*"), induced error ("*dol*"), violence/duress ("*violență*"), taking advantage of the ignorance of the counterparty ("*leziune*"), bribery or other undue influence on the part of or against any of the Parties to the FOA Netting Agreements or to the Clearing Agreements which have their habitual residence in Romania, in the sense of Rome 1, as such circumstances are contemplated in the Civil Code.

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

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

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

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

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

2.10 That no Transaction entered into under the FOA Netting Agreements or under the Clearing Agreements are carried out on a Romanian regulated market or subject to the rules of such regulated market.

2.11 That all collateral provided by any Party in relation to a FOA Netting Agreement or a Clearing Agreement is represented only by cash or securities, in respect of which title is evidenced by entries in a register or account. Claims, in the sense of the Financial Collateral Arrangements Directive EC/2002/47, shall not be provided as collateral by the Parties to the FOA Netting Agreements or to the Clearing Agreements.

2.12 That each Party, when transferring Margin pursuant to the Title Transfer Provisions has effectively transferred all right title and interest in the Margin according to the laws of the jurisdiction where the Margin is located.

3. OPINION

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

3.1 Insolvency Proceedings

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

(a) The **general proceeding** representing the proceeding whereby a certain debtor (i.e. referred to as a professional and including Ordinary Corporates), enters after an observation period into:

(i) **judicial reorganisation** (*reorganizare judiciara*) representing the proceeding applying to an insolvent entity for the purpose of satisfying the claims of its creditors against it in accordance with a programme for payment of receivables; and/ or

(ii) **bankruptcy** (aiming to the winding-up of the insolvent debtor) (*faliment*) representing the collective and equalitarian insolvency proceeding applying to an insolvent entity for the purpose of liquidating its assets in order to cover its debts.

(b) The **simplified proceeding** representing the proceeding whereby a debtor of a certain nature (i.e. individual professionals registered in with the trade registry, except for liberal professions, family undertakings and the members of family undertakings, ordinary companies/professionals that either do not have any assets in their patrimony or cannot locate their constitutive documents or

accounting documentation or their administrator cannot be located, their headquarters does not exist or does not correspond with the registration in the trade registry or legal entities which were subject to voluntary dissolution or liquidation prior to the start of Insolvency Proceedings, debtors requesting in the request for insolvency their intention to enter bankruptcy, any person carrying out professional activities without registration or without due registration), enters directly into the bankruptcy proceeding at the same time as the opening of the insolvency proceeding, or after an observation period.

Under the Insolvency Law, the term "insolvency" proceedings refers to the entire collective proceeding, while the term "judicial reorganisation" refers to that part of the insolvency proceeding aiming to reorganise the insolvent debtor with the aim of ensuring its financial recovery and the satisfaction of its creditors' claims and the term "bankruptcy" proceeding designates that part of the insolvency proceeding aiming to liquidate the assets of the debtor in order to cover its debts.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings without the need for further additions.

3.2 **Recognition of choice of law**

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

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

3.3 **Enforceability of FOA Netting Provision**

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

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

(b) the Non-Defaulting Party would be entitled to receive or obliged to pay only the net sum of the Liquidation Amount, determined as per the FOA Netting Agreements.

We are of this opinion because:

3.3.1 Non-insolvency scenarios

Romanian laws do not regulate netting of a general manner outside Insolvency Proceedings; however, nor does Romanian law prohibit netting outside Insolvency Proceedings. Therefore, following an Event of Default which is not an Insolvency Proceeding under Romanian law, the effects of the FOA Netting Provisions from the FOA Netting Agreement and from the Clearing Agreements should be upheld under Romanian law based on (i) the recognition of the choice of English law in the FOA Netting Agreements, as stated in paragraph 3.2 (*Recognition of choice of law*) above and (ii) on the principle of the binding force of an agreement that was made in compliance with the law (*pacta sunt servanda*).

In light of the above, netting in the sense of the FOA Netting Provisions should occur, subject to our considerations in paragraphs 4.3 and 4.4 below, based on the general Romanian legislation on termination of agreements and set-off of mutual debts between parties:

(a) Termination will occur based on the Civil Code provisions, automatically or based on a prior notice by the Non-Defaulting Party (as contemplated in the FOA Netting Agreements); and

(b) Set-off may occur either as (i) legal set-off (which requires that the receivables are mutual, certain, liquid and due and that they have as object the payment of an amount of money or the delivery of goods), which operates as an effect of the law, without further parties' consent, or (ii) contractual (which generally operates based on the parties' agreement when the legal conditions for legal set-off are not met).

However, this argument was not, to the best of our knowledge, tested before a Romanian court with respect to transactions similar to Transactions and we are not currently in a position to clearly confirm the enforceability of the FOA Netting Provisions.

3.3.2 Insolvency scenarios

In Romania, the Insolvency Law sets forth the general legal framework on Insolvency Proceedings. Subject to the various considerations and implications outlined at paragraph 4.5 below, close-out netting when Insolvency Proceedings are opened against a Party in Romania falls under the Insolvency Law.

We note that the Insolvency Law recognises the key terms of close-out netting, including:

(a) termination of a qualified financial contract[1] and/or acceleration of any payment or performance of an obligation or exercise of a right arising out of one or several qualified financial contracts, based on a netting agreement[2];

(b) calculation or valuation of a set-off, market, liquidation or replacement amount of any obligation terminated or accelerated pursuant to the provisions of point (a) above;

(c) conversion into a single currency of any amount calculated pursuant to point (b) above; and

(d) set-off resulting into a net amount, of any amounts calculated pursuant to the provisions of point (b), after conversion has been made pursuant to point (c).

The FOA Netting Provisions (described in Annex 4, Part 1 paragraph 1 hereto) include all the four key terms of close-out netting set out in the Insolvency Law; therefore, for the purposes of paragraph 3.3, the FOA Netting Provisions qualify as "netting agreements" in accordance with the Insolvency Law.

Bilateral netting is regulated in the Insolvency Law as excepted from cherry picking powers of insolvency officials and voidability of transactions entered into during certain suspect periods, by way of certain key provisions stating among others:

(a) any transfer, performance of an obligation, exercise of a right, deed or fact realised on the basis of qualified financial contracts, as well as any bilateral netting agreement, are valid, may be carried out and/or opposed to the insolvent counterparty or insolvent guarantor of a counterparty according to its terms and are recognised as basis for registration of the creditors' claim within the Insolvency Proceedings;

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1 The Insolvency Law defines "qualified financial contracts" as being (i) any contract having as object operations with financial derivative instruments; (ii) any repo and reverse repo agreement; (iii) any buy-sellback and sell-buyback agreement; and (iv) any agreement having as object securities lending operations, carried out on regulated markets or over-the-counter.

2 The Insolvency Law defines "netting agreements" as being (i) any master netting agreement (any arrangement or provision in a qualified financial contract between two parties that establishes a netting of payments or the performance of obligations or exercise of present or future rights resulting from or in connection with one or more qualified financial contracts); (ii) any master-master netting agreement (any master netting agreement between two parties establishing the netting between one or more master netting agreements); (iii) any guarantee or security arrangement subsequent to or in connection with one or more master netting agreements.

(b) the only obligation (respectively right, as the case may be) of a party to a qualified financial contract as a result of the application of close-out netting is to pay (respectively receive) a net debt to (from) its counterparty;

(c) subject to the proven fraudulent intention of the insolvent debtor, no liquidator or, as the case may be, no court may preclude, request the annulment or decide to terminate financial derivative transactions, including the performance of a netting agreement in connection therewith, effected based on a qualified financial contract;

(d) no attribution conferred by the Insolvency Law to a body (i.e. court of law, syndic judge or an insolvency representative) that enforces the insolvency proceedings will prevent the termination of a qualified financial contract and/or the acceleration of payment obligations or of other obligations or of the exercise of a right on the basis of one or several qualified financial contracts entered into based on a netting agreement, such attributions being confined to the net amount resulting from the application of the netting agreement;

(e) the general provisions of the Insolvency Law rendering null and void contractual clauses that terminate or accelerate obligations on grounds of entering into Insolvency Proceedings are disapplied expressly with respect to qualified financial contracts and bilateral netting based on a qualified financial contract or a netting agreement.

Further, subject to paragraphs 4.3, 4.4 and 4.5 of this opinion letter, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Non-Defaulting Party.

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this paragraph 3.3 to apply.

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

In relation to a Clearing Agreement which includes the Clearing Module Netting Provision, subject to our considerations in paragraph 4.5.6 below, the Clearing Module Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following a CCP Default, the Parties would be entitled to receive or obliged to pay, in respect of each Cleared Transaction Set, only the net sum of the Cleared Set Transaction Amount, determined in accordance with the Clearing Agreement.

We are of this opinion for the reasons detailed in paragraph 3.3 above. Please note that, subject to our considerations in paragraph 4.5.6 below, the Clearing Module Netting Provisions include the key elements of close-out netting set out in the

Insolvency Law (described in sub-paragraph 3.3.2 above); therefore, for the purposes of paragraph 3.4 and subject to our considerations under paragraph 4.5.6 below, the Clearing Module Netting Provisions qualify as a "netting agreement" in accordance with the Insolvency Law.

Further, subject to paragraphs 4.3, 4.4 and 4.5 of this opinion letter, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the operation of the Clearing Module Netting Provision in the case of a CCP Default.

No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this paragraph 3.4 to apply.

3.5 **Enforceability of the Addendum Netting Provision**

In relation to a Clearing Agreement which includes the Addendum Netting Provision, subject to our considerations in paragraph 4.5.6 below, the Addendum Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following a CCP Default, the Parties would be entitled to receive or obliged to pay, in respect of each Cleared Transaction Set, only the net sum of the Cleared Set Transaction Amount, determined in accordance with the Clearing Agreement.

We are of this opinion for the reasons detailed in paragraph 3.3 above. Please note that, subject to our considerations in paragraph 4.5.6 below, the Addendum Netting Provisions include the key elements of close-out netting set out in the Insolvency Law (described in sub-paragraph 3.3.2 above); therefore, for the purposes of paragraph 3.4 and subject to our considerations under paragraph 4.5.6 below, the Addendum Netting Provisions qualify as a "netting agreement" in accordance with the Insolvency Law.

Further, subject to paragraphs 4.3, 4.4 and 4.5 of this opinion letter, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the operation of the Addendum Netting Provision.

No amendments to the Addendum Netting Provision are necessary in order for the opinions expressed in this paragraph 3.5 to apply.

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

In relation to a Clearing Agreement, the opinions expressed at paragraph 3.3 above in relation to the FOA Netting Provision are not affected by the use of the FOA Clearing Module or the ISDA/FOA Clearing Addendum in conjunction with the FOA Netting Agreement, insofar as the opinions expressed at paragraph 3.3 above refer to circumstances where the Client is a Defaulting Party and to Transactions which are not included in a Cleared Transactions Set.

3.7 Enforceability of the FOA Set-Off Provisions

3.7.1 In relation to a FOA Netting Agreement which includes the FOA Set-Off Provisions, subject to our considerations under paragraphs 4.3 and 4.6 below, the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms, so that following an Event of Default, the Non-Defaulting Party would be immediately entitled to exercise its rights under either or both of the FOA Set-Off Provisions, and in particular so that, upon the exercise of such rights:

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

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

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

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

We are of this opinion because:

(i) outside Insolvency Proceedings, set-off is generally recognised under Romanian law, as detailed under paragraph 3.3.1(b) above; and

(ii) during Insolvency Proceedings opened in Romania under Romanian law, notwithstanding that set-off is limited to legal set-off under the Insolvency Law (as detailed in paragraph 4.6 below), in respect of claims which are governed by the law of another EU Member State set-off will generally be recognised in Insolvency Proceedings if such set-off is permitted by the law applicable to the insolvent debtor's claim, based on article 6 of EUIR.

No amendments to the General Set-Off Clause and the Margin Cash Set-Off Clause are necessary in order for the opinions expressed in this paragraph 3.7.1 to apply.

3.7.2 In relation to a Clearing Agreement which includes the FOA Set-Off Provisions and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision (and in which the FOA Set-Off Provisions are not

Disapplied Set-Off Provisions), subject to our considerations under paragraphs 4.3 and 4.6 below, the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms, so that following an Event of Default in respect of the Client, the Firm or, as the case may be, the Clearing Member would (to the extent that set-off is not already covered by the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision) be immediately entitled to exercise its rights under either or both of the FOA Set-Off Provisions, and in particular so that, upon the exercise of such rights:

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

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

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

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

We are of this opinion because:

(i) outside Insolvency Proceedings, set-off is generally recognised under Romanian law, as detailed under paragraph 3.3.1(b) above; and

(ii) during Insolvency Proceedings opened in Romania under Romanian law, notwithstanding that set-off is limited to legal set-off under the Insolvency Law (as detailed in paragraph 4.6 below), in respect of claims which are governed by the law of another EU Member State set-off will generally be recognised in Insolvency Proceedings if such set-off is permitted by the law applicable to the insolvent debtor's claim, based on article 6 of EUIR.

No amendments to the General Set-Off Clause and the Margin Cash Set-Off Clause are necessary in order for the opinions expressed in this paragraph 3.7.2 to apply.

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

In relation to a Clearing Agreement which includes the Clearing Module Set-Off Provision (whether or not the FOA Set-Off Provisions are Disapplied Set-Off Provisions, insofar as constituting part of the Clearing Agreement), to which an Ordinary Corporate is a Party, subject to our considerations under paragraphs 4.3 and 4.6 below, the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that the Firm would be immediately entitled to exercise its rights under the Clearing Module Set-Off Provision, and in particular, if there has been an Event of Default in respect of the Client or a CCP Default, so that the value of any cash balance owed by one Party to the other would be set off against any Available Termination Amount owed by the Party entitled to receive the cash balance, insofar as not already brought into account as part of the Relevant Collateral Value or as any other cash amount owed by any Party to the other.

We are of this opinion for the reasons specified under paragraph 3.7.1 above.

No amendments to the Clearing Module Set-Off Provision are necessary in order for the opinions expressed in this paragraph 3.8 to apply.

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

In relation to a Clearing Agreement which includes the Addendum Set-Off Provision, to which an Ordinary Corporate is a Party, subject to our considerations under paragraphs 4.3 and 4.6 below, the Addendum Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that following a CM Trigger Event or a CCP Default:

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

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

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

We are of this opinion for the reasons specified under paragraph 3.7.1 above.

No amendments to the Addendum Set-Off Provision are necessary in order for the opinions expressed in this paragraph 3.9 to apply.

3.10 **Enforceability of the Title Transfer Provisions**

3.10.1 In relation to the FOA Netting Agreement (with Title Transfer Provisions) or a Clearing Agreement which includes the Title Transfer Provisions, (x) the characterisation of Transfers of Margin as outright transfers of title or creating a security or other interest and (y) the possibility to use the Margin Transferred without restriction would, under the conflicts of laws rules of this jurisdiction, be determined under the law chosen by the parties to apply to the FOA Netting Agreement (with Title Transfer Provisions) and/or a Clearing Agreement which includes the Title Transfer Provisions, subject to our considerations under paragraph 4.2 and 4.8 and the remainder of this paragraph 3.10.

3.10.2 In relation to a FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions where the Client is a Defaulting Party, following the specification or deemed occurrence of a Liquidation Date, the Non-Defaulting Party would not be entitled to exercise its rights under the Title Transfer Provisions.

3.10.3 In relation to a Clearing Agreement which includes the Title Transfer Provisions, and in the case of a Firm Trigger Event, a CM Trigger Event, or a CCP Default, the value of the Transferred Margin would not be taken into account as part of the Relevant Collateral Value.

We express the opinions in paragraphs 3.10.2 and 3.10.3 for the following reasons:

(a) Under Romanian law, the capacity of Ordinary Corporates to enter into financial collateral arrangements such as the Title Transfer Provisions is subject to Romanian law; and

(b) Outside the provisions of the Financial Collateral Ordinance, there is no concept of "title transfer collateral agreement" under Romanian law. As Ordinary Corporates are not Qualifying Entities under the Financial Collateral Ordinance, the Title Transfer Provisions entered into by an Ordinary Corporate would not be recognised under Romanian law and, instead, the collateral provided under the Title Transfer provisions would be qualified either (i) as mortgage (i.e. a movable security interest over the Margin), provided that it meets all the requirements regulated under the Civil Code to this end, or (ii) as an outright transfer agreement in respect of the Margin (rather than collateral aiming to secure Transactions), which, depending on whether a more specific qualification of the Title Transfer Provisions is made (e.g. sale, donation, repurchase of securities), would be subject to the specific formal requirements applicable to such form of transfer.

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

In relation:

3.11.1 to a FOA Netting Agreement (with Title Transfer Provisions) and to a Clearing Agreement which includes the Title Transfer Provisions and the Non-Cash Security Interest Provisions (used with or without the Rehypothecation Clause) and/or the Client Money Additional Security Clause - whether the Default Margin Amount (as calculated pursuant to the terms of the Title Transfer Provisions) would be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision; and

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

would be determined by reference to the governing law of the FOA Netting Agreement (with Title Transfer Provisions) and a Clearing Agreement which includes the Title Transfer Provisions, subject to our considerations under paragraphs 4.2 and 4.8 and the considerations in sub-paragraphs (a) and (b) of paragraph 3.10.

3.12 **Single Agreement**

Under the laws of this jurisdiction it is necessary that the Transactions and the FOA Netting Agreement or, as the case may be, the Clearing Agreement are part of a single agreement in order for the termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision to be enforceable.

3.13 **Automatic Termination**

It is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provision to ensure the effectiveness of netting under the FOA Netting Agreement in the event of bankruptcy, liquidation, or other similar circumstances, as the Insolvency Law recognises the key effects of netting under qualified financial contracts, as detailed in paragraph 3.3.2 above, including the termination and liquidation of Transactions upon commencement of Insolvency Proceedings, while in the case of liquidation and similar non-insolvency circumstances, subject to our considerations in paragraph 4.3 below, netting should be enforceable as per the understanding of the parties, as explained in paragraph 3.3.1 above.

3.14 **Multibranch Parties**

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

Transfer Provisions insofar as the laws of this jurisdiction are concerned, subject to our considerations under paragraph 4.8 below.

3.15 **Insolvency of Foreign Parties**

Where a Party is incorporated or formed under the laws of another jurisdiction and an Event of Default or a Firm Trigger Event or, as the case may be, a CM Trigger Event occurs in respect of such Party (a "**Foreign Defaulting Party**"), the Foreign Defaulting Party can, in certain circumstances, be subject to Insolvency Proceedings in this jurisdiction.

3.16 **Special legal provisions for market contracts**

There are no special provisions of the laws of this jurisdiction which would affect the opinions given in this paragraph 3 which would apply to a Transaction between two Parties as a result of the fact that such Transaction was entered into on, or is back-to-back with a Transaction entered into on an exchange (in this or another jurisdiction), or is cleared at, or is back-to-back with a transaction to be cleared by a central counterparty, subject to our considerations in paragraph 4.10 below.

4. QUALIFICATIONS

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

4.1 General qualifications

4.1.1 Although we are not aware of any circumstances that would cause a court of competent jurisdiction in Romania to arrive at a substantially different interpretation, little or no authoritative interpretation exists with respect to the legislation on which the opinion expressed hereof is based, including with respect to the recently enacted Insolvency Law (which entered into force as of 28 June 2014). Accordingly, there can be no assurance that determinations hereafter reached by the courts of competent jurisdiction in Romania will concur with the opinions expressed in paragraph 3 of this opinion letter.

4.1.2 The Romanian Civil Code entered into force in Romania as of 1 October 2011. The Romanian Civil Code regulates a number of new legal concepts and institutions, such as "hardship" (in Romanian: *impreviziune*), "harm" (in Romanian: *leziune*) and "secondary elements of a contract" (in Romanian: *elemente secundare ale contractului*). Should any of these new concepts become incident upon the FOA Netting Agreements and/or the Clearing Agreements, the new Romanian Civil Code gives the competent Romanian courts powers to change, complete, adapt or render void the respective agreement.

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

are not "mutual" between the Parties they may not be eligible for inclusion in a netting or set-off pursuant to the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision. For these purposes, under the laws of this jurisdiction, obligations would be regarded as "mutual" between the Parties, if each Party is personally and solely liable for its own account as regards obligations owing by it to the other Party and is sole beneficial owner of obligations owed to it by the other Party and the source of the reciprocal and interdependent obligations of the parties resides in the same agreement (*negotium*).

4.1.4 The Civil Code defines "standard clauses" as being the clauses previously established by one of the parties to be utilized generally and repeatedly and which are included in the contract without being negotiated with the other party. Further, the Civil Code provides that certain standard non-usual clauses of the types detailed below will not be effective unless negotiated and expressly accepted in writing by the counterparty. Such standard non-usual clauses are those which (A) provide in favour of their proposer (i) the limitation of liability, (ii) the right to unilaterally terminate (in Romanian: *denuntare unilaterala*) the contract or (iii) the right to suspend performing its obligations, or (B) provide to the detriment of the counterparty (i) the forfeiture of rights (in Romanian: *decadere din drepturi*), (ii) the forfeiture of the benefit of a timeline (in Romanian: *decaderea din beneficiul termenului*), (iii) the limitation of the right to raise defences (in Romanian: *dreptul de a opune exceptii*), (iv) the limitation of the right to contract with third parties, (v) the tacit renewal of the agreement, (vi) the applicable law, (vii) the submission to arbitration (in Romanian: *clauzele compromisorii*) or clauses derogating from the rules of court jurisdiction. Given the large liberty of appreciation of the courts under the Civil Code and the fact that the actual negotiation of the FOA Netting Agreements and of the Clearing Agreements is a matter of fact, should any Party successfully prove that there are clauses in the agreements to which it is a Party of the types listed above which it did not negotiate and that such non-usual clauses are standard, a Romanian court may hold such clauses ineffective.

4.1.5 Under Romanian law, the parties to an agreement must reach an understanding in respect of the key elements of the agreement, pursuant to negotiations between them, for the valid conclusion of the agreement. If the Mandatory CCP Provisions, which, in accordance with Clause 1.2 of the FOA Clearing Module and, respectively, in accordance with Clause 1(b) of the ISDA/FOA Clearing Addendum, prevail over the terms of the Clearing Agreements negotiated between the Client and the Firm/Clearing Member, are not specifically included in the relevant annexes to the Clearing Agreements or otherwise made available to the Client, so that the Client can express its consent in relation to these provisions, the Client incorporated in this jurisdiction (which is not a party to the relationship between the Firm/Clearing

Member and the CCP) would be able to challenge the applicability against itself of the prevailing Mandatory CCP Provisions, in accordance with Article 10(2) of Rome 1, on grounds that it did not properly consent to such terms.

4.1.6 Our opinions in paragraph 3 are qualified in cases where both Parties have defaulted. If, at the time a Party proposes to exercise its rights under the FOA Netting Provision, an FOA Set-Off Provision, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision or the Title Transfer Provisions, an Insolvency Proceeding has been initiated in relation to that Party, additional considerations will apply which may affect the opinions given in paragraph 3 in respect of those provisions. Likewise, in relation to a Clearing Agreement, if at the time a Firm Trigger Event or Clearing Member Trigger Event has occurred in relation to a Party acting as Firm, or as the case may be Clearing Member, an Insolvency Proceeding has been initiated in relation to the Party acting as Client, additional considerations will apply which may affect the opinions given in paragraph 3 in respect of the Clearing Module Netting Provision and the Addendum Netting Provision. We have not addressed, in this opinion letter, circumstances of Insolvency Proceedings applying to a Party at the time that it is seeking to exercise rights under those provisions and accordingly, our opinions may not apply in such cases.

4.2 Choice of law

4.2.1 The designation in the FOA Netting Agreements and the Clearing Agreements of the English law as the governing law of the FOA Netting Agreements and of the Clearing Agreements would be recognised and applied in an action brought before a court of competent jurisdiction in Romania only: (a) to the extent specifically pleaded and proved; and (b) if such laws are not considered by the Romanian court to be procedural in nature, fiscal or penal laws; and (c) if such laws did not become applicable through fraudulent means and are not inconsistent with or contrary to Public Order or overriding mandatory provisions of Romanian law (or overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, insofar as those overriding mandatory provisions render the performance of the contract unlawful) or, where all other elements relevant to the situation at the time that the FOA Netting Agreements and/or the Clearing Agreements were entered into are located in one or more Member States of the EU, the provisions of EU law, where appropriate as implemented in Romania, which cannot be derogated from by agreement.

4.2.2 The Romanian Civil Code defines Public Order as including the fundamental principles of Romanian law or of European Union law and the fundamental human rights. We are not aware of any principle of Public Order which is contradicted by the FOA Netting Agreements or by the Clearing Agreements, although it should be noted that it is not possible to express a precise and definitive view of the exact scope of Public Order at any particular time.

4.2.3 If all other elements relevant to the situation at the time that the FOA Netting Agreements and/or the Clearing Agreements were entered into are located in a country other than England, the choice of English law as the governing law of the FOA Netting Agreements and/or the Clearing Agreements shall not prejudice the application by a Romanian court of provisions of the law of that other country which cannot be derogated from by agreement.

4.2.4 Notwithstanding the above, please note that the law governing the transfer of ownership depends on the type of Margin and its location, consequently additional actions required to transfer the ownership title may differ depending on the applicable law. We set out below the relevant general conflict rules applicable to Margin:

(a) *Dematerialised securities*. There are two possible scenarios, depending on whether the FOA Netting Agreements and/or the Clearing Agreements including Title Transfer Provisions qualify under the Financial Collateral Ordinance or not:

(i) FOA Netting Agreements and/or the Clearing Agreements not qualifying under the Financial Collateral Ordinance: According to the Romanian Civil Code, as far as nominative securities are concerned, their transmission is subject to the law of their issuer (*lex societatis*).

(ii) FOA Netting Agreements and/or the Clearing Agreements qualifying under Financial Collateral Ordinance: Pursuant to Article 13 of the Financial Collateral Ordinance, the laws of the place where the book-entry system is maintained shall govern the legal nature, proprietary effects and perfection requirements of book entry securities collateral and the requirements for validly entering into a financial collateral arrangement relating to book entry securities collateral (*lex libri siti*).

(b) In respect of immobilised securities our determinations at (b) above apply mutatis mutandis.

(c) *Cash*. On the basis of article 14 of the Rome 1, the assignment of a claim for the payment of money against the bank with which the account is held, as well as the effects of such assignment are governed by the law governing such claim (i.e. the law governing the account relationship between the bank and the payee).

Consequently, if pursuant to the above rules the relevant cash or securities would be deemed located in Romania, then English law would still govern the contractual aspects of the FOA Netting Agreements and/or the Clearing Agreements, but the *in rem* aspects (i.e. the transfer) would be governed by Romanian law.

4.3 Close-out netting in a non-insolvency context

Certain entities may be subject to special proceedings, different from Insolvency Proceedings, which entail the possibility for the relevant authority applying such proceeding to challenge certain acts entered into by the subject of the special proceeding. For example:

4.3.1 Liquidation (*lichidare*)

We have not identified any special restrictions in case of liquidation (*lichidare*) of a Romanian company performed outside insolvency proceedings.

Liquidation of a Romanian company outside insolvency proceedings may be performed on the basis of the provisions in this respect set forth in the Companies Law, such as in case the company is dissolved (for instance in case the lifetime for which the company was intended to operate according to the provisions set forth in this respect in the company's constitutive documents expired), in case it is impossible to achieve the purpose for which the company was created (as set forth in the company's constitutive documents), if the nullity of the company has been pronounced or if the liquidation is decided by the shareholders' assembly.

The liquidation proceedings are conducted by a liquidator appointed by the shareholders or the trade registry, as the case may be, who will be in charge with running the company's business during the liquidation process, collection of receivables from the company's debtors and payments of company's creditors.

Unlike in the case of Insolvency Proceedings, the liquidation procedure regulated by the Companies Law does not include provisions on netting. Liquidators have the power to enforce and terminate transactions in which the company undergoing liquidation is involved. No provisions on voidable preference, staying of individual proceedings and suspect periods are provided. Therefore, the liquidator should not be able to exercise actions detrimental to the FOA Netting Agreements and/or to the Clearing Agreements other than the ones normally available e.g. nullity on grounds of lack of capacity and/or authority, fraud etc.

On the contrary, in case of liquidation performed on the basis of the Companies Law, the creditors of the company are entitled to file action against the liquidator in order to recover the overdue debts of the company. In case the assets of the company are insufficient to cover its debts, the liquidation commenced on the basis of the provisions of the Companies Law does not restrict the commencement of insolvency proceedings based on the relevant insolvency laws.

4.3.2 Dissolution (*dizolvare*)

According to the Companies Law, a company is dissolved, among others, in case the lifetime for which the company was intended to operate according to the provisions set forth in this respect in the company's constitutive documents expired, in case it is impossible to achieve the purpose for which the company was created (as set forth in the company's constitutive documents), in case the nullity of the company has been pronounced or if the liquidation is decided by the shareholders' assembly.

As a principle, under Romanian corporate law, the dissolution of a company is followed by its liquidation (as detailed under (a) above). However, the liquidation procedure can be skipped if:

(a) shareholders agree with the distribution and liquidation of the company's assets;

(b) there are no unpaid creditors or there is an agreement between shareholders and creditors as regards the settlement of the company's debts; and

(c) there is unanimous consent of all shareholders as regards the distribution of the assets remaining after payment of creditors.

In this scenario, as there would be no unpaid creditors (or there is an agreement with the creditors on the settlement of debts) the dissolution is directly followed by de-registration from the Trade Registry.

4.3.3 Moratorium (*concordat preventiv*)

The Insolvency Law regulates a contractual standstill mechanism for a company in distress to reorganise its activity outside the insolvency proceedings, with limited involvement from the part of the court. The Insolvency Law exempts specifically from the rules on moratorium qualified financial contracts and transactions concluded under them, as well as close-out netting in connection with qualified financial contracts or master netting agreements.

4.3.4 Attachment (*poprire*)

In respect of the FOA Netting Provisions, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision, please note that under Romanian law set-off is not an exception to the effects of attachment (in Romanian: *poprire*) of a counterparty's rights. Under the Civil Code, set-off may not take place if by doing so it prejudices the rights achieved by a third. To this end, the Civil Code provides that a debtor that,

after attachment has been instituted, also becomes the creditor of its counterparty, cannot invoke set-off to the prejudice of the third party instituting the attachment.

Nevertheless, as opposed to the above general rule, in the limited case of Qualifying Entities (as defined in the Financial Collateral Ordinance; please see paragraph 4.7(b) for a description of the range of eligible counterparties under the Financial Collateral Ordinance), the Financial Collateral Ordinance provides that close-out netting takes effect in accordance with the terms of the financial collateral arrangement, regardless of any assignment, attachment, levy, or other seizure measure, judicial or of a different nature, as well as any other form of transfer of the respective rights.

4.4 Issues (other than close-out netting) in a non-insolvency context

4.4.1 Force majeure

Force majeure (*forta majora*) is defined in the Romanian Civil Code as any external event, unpredictable, absolutely invincible and which cannot be overcome. In this respect, Article 1351 of the Civil Code states that no damages may be granted if the failure to perform an obligation is due to force majeure. Additionally, the Civil Code also defines the unforeseeable event (*caz fortuit*) as being an event that may not be foreseen nor overcome by the party which would have been be liable if that event would have not arisen. Its legal effect is the same with that of force majeure. Furthermore, according to the Civil Code, if the performance of a material contractual obligation becomes totally and irreversibly impossible as a result of a fortuitous event (including force majeure, an unforeseeable event or other events assimilated thereto), the contract is terminated by law as of the moment when force majeure or the unforeseeable event arose. If such impossibility to perform is only temporary, the creditor of that obligation is entitled to either suspend the performance of its own obligations or to request the termination of the contract. Nonetheless, if the object of the relevant obligation consists of fungible assets, a debtor may not invoke a fortuitous impossibility to perform.

4.4.2 Exchange controls

There are no exchange control restrictions currently. However, please bear in mind that in the context of the liberalisation of operations in deposit accounts opened by non-residents with credit institutions in Romania and denominated in domestic currency, the NBR has reserved the right under the FX Regulation to activate certain safeguard measures, if massive short term foreign currency inflows exercise significant pressures on the foreign exchange market and significantly affect the central bank's monetary and foreign exchange policies, with significant impact on internal liquidity and material deterioration of the payments balance). The safeguard measures may consist of applying a fee on transactions made on the foreign exchange market, temporarily withholding in

an account with the NBR incoming/outgoing RON/foreign currency amounts of residents/non-residents resulted from foreign exchange transactions, increasing minimum reserve requirements, etc. Nevertheless, the enforcement of such measures should be notified to the European Commission (and stopped, if so requested by the same) and it would apply without discrimination and not against a particular transaction or entity. Also, such measure cannot extend beyond six months.

4.4.3 Default interest

Our opinions in paragraphs 3.3, 3.4 and 3.5 are given under the qualification that the Romanian court may reduce a contractual penalty (such as default interest) if (i) the principal obligation was partly executed and profited to the creditor or (ii) the penalty is manifestly excessive compared with the prejudice that the parties could have foreseen as at the date of entering into the agreement. Any clause to the contrary is deemed unwritten by force of law.

4.4.4 Hardship

It is not clear what view the Romanian courts will take on "hardship" in connection to Transactions under the FOA Netting Agreements and/or the Clearing Agreements considering, *inter alia*, the scarce and contradictory practice on hardship and that, as at the date of this opinion letter, Romanian courts have little or no experience regarding derivative transactions. Civil Code hardship will normally apply to all contracts entered into by a Romanian party, which could thus become interested to invoke hardship under the Romanian Civil Code to limit payments due to its counterparty.

4.4.5 Paulian action

Under articles 1.562-1.565 of the Civil Code, a creditor may ask a court to declare unenforceable against him transactions entered into by a debtor where a number of conditions are cumulatively met (i) the purpose of that transaction is to defraud the creditor's rights against the debtor; (ii) by that transaction the debtor creates or increases a state of insolvency ("state of insolvency" under the Civil Code means that the value of the total assets of the debtor that may be pursued by creditors is inferior to the total value of debts); (iii) in respect of transactions where both parties have mutual obligations, the other party to that transaction is aware that by entering into that transaction the debtor creates or increases a state of insolvency for itself; (iv) the claim of the creditor invoking the paulian action must be certain (i.e. not arguable from legal point of view) as at the date when action is introduced before court; and (v) limitation periods (generally one year from the moment the challenging creditor knew or should have known about the existence of the challenged transaction) did not expire. Such challenge, if successful, would profit to all other creditors that joined the action in court.

If the paulian action was approved by court, the challenged transaction will be unenforceable against the challenging creditor(s). The debtor's counterparty to the challenged transaction may keep payments and/or deliveries made by the debtor under the transaction to the extent it agrees to pay damages to the challenging creditors. We believe that such challenge would not be a risk for Transactions insofar as the Firm is not aware and could have not been aware as at the date the Transaction is entered into or a payment is received thereunder that, by entering into that Transaction or making that payment, the Client creates or increases for itself a state of insolvency.

4.5 Close-out netting in an insolvency context

4.5.1 Fraud

The protection granted by the Insolvency Law in respect of the effects of the FOA Netting Provisions, Clearing Module Netting Provisions and Addendum Netting Provisions might not be available in the case of acts and contracts where the Parties attempt to defraud the interests of creditors or to delay or hide the insolvency of the debtor, entered into two years prior to the opening of the Insolvency Proceedings.

The Insolvency Law provides, as mentioned in paragraph 3.3.2(c) above, that, except for proving the fraudulent intent of the insolvent debtor, the insolvency official cannot prevent, request the annulment of, or decide the termination of only financial derivatives operations, including the performance of a netting agreement based on a qualified financial contract, thus seeming to exclude repo transactions, securities lending and buy/sellback transactions from the protection against the powers of the Insolvency Representative.

4.5.2 Transactions protected under the Insolvency Law

When regulating close-out netting and its effects, the Insolvency Law refers to the netting of qualified financial contracts the subject of which are (i) transactions with financial derivative instruments, (ii) repo and reverse repo agreements, (iii) buy-sellback and sell-buyback contracts and (iv) securities lending arrangements. Therefore, in order to benefit from the recognition of netting provided by the Insolvency Law, the Transactions made under the FOA Netting Agreements and/or the Clearing Agreements should fall within the concept of one of the four categories mentioned above.

The Insolvency Law does not provide the exact meaning of any of the above four categories of operations which may benefit from the netting-protective provisions of the law. The risk is that due to the absence of such definitions in the Insolvency Law, the insolvency representative could ignore the calculation of the Liquidation Amount or of the Cleared Set Termination Amount made by the relevant Party according to the FOA Netting Agreements or to the Clearing Agreements and recalculate such amount by including only the

Transactions which, in its view, would qualify under one of the four categories mentioned above. In addition, please note that in case of Transactions not falling under one of the concepts regulated by the Insolvency Law, insolvency-related termination clauses would be considered null and void and, as a result, netting would not be recognized in relation to such Transactions and a Liquidation Amount or Cleared Set Termination Amount obtained by netting also such Transactions might not be accepted or might be recalculated by the Insolvency Representative.

Nonetheless, we note that an (untested) argument against such interpretation by the Insolvency Representative is that such transactions are defined by other laws applicable in Romania, that we describe below.

(a) Concept of financial derivative transactions

Financial derivative instruments are defined, under the Capital Market Law, in strict observance of the provisions of the Markets in Financial Instruments Directive 2004/39/EC, as:

(i) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates, yields, or other derivative instruments, financial indices or financial measures, which may be settled physically or in cash;

(ii) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);

(iii) Options, futures, swaps and other derivative contracts relating to commodities and which may be physically settled, provided that they are traded on a regulated market and/or on an alternative trading system;

(iv) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, which can be physically settled, not otherwise mentioned under item (iii) above and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;

(v) Derivative instruments for the transfer of credit risk;

(vi) Financial contracts for differences; and

(vii) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics, which must be settled in cash or which may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned herein, which have the characteristics of other derivative financial instruments, having regard, inter alia, to whether they are traded on a regulated market or on an alternative trading system and are cleared and settled through a recognised clearing house or are subject to regular margin calls.

Regulation 575/2013 expressly recognises the following types of financial derivative instruments:

(i) interest rate agreements:

(A) single-currency interest rate swaps;

(B) basis-swaps;

(C) forward rate agreements;

(D) interest-rate futures;

(E) interest-rate options purchased; and

(F) other contracts of similar nature;

(ii) agreements on foreign exchange rate and gold:

(A) cross-currency interest-rate swaps;

(B) forward foreign-exchange contracts;

(C) currency futures;

(D) currency options purchased;

(E) other contracts of a similar nature;

(F) contracts of a nature similar to those listed under items (i) to (v) concerning gold;

(iii) agreements of a nature similar to those referred to under points (i) items (A) to (E) and (ii) items (A) to (D) on other reference elements or indexes. This includes as a minimum all instruments specified in points 4 to 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC not otherwise included in point (i) or (ii) above. The above mentioned provisions of Directive 2004/39/EC were transposed into Romanian national regulations by means of the NSC Regulation no. 31/2006, and therefore such latter agreements include at least the instruments listed under points (d)[3], (e) subpoints (1) to (3)[4], (g)[5] and (h)[6] of Article 2 point 1 and not included under points (i) and (ii) above[7].

Our view is that credit derivatives and equity derivatives would fall under the definition of financial derivative transactions as provided under the relevant regulations applicable in Romania.

(b) Concept of repo transactions

The Civil Code defines the repurchase agreement as the agreement whereby the buyer buys securities or financial instruments from seller against immediate payment and undertakes, at the same time, to re-sell

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[3] I.e. options, futures, swaps, forward interest rate agreements, and any other derivative agreements on securities, currencies, interest rates, yields, or other derivative instruments, financial indices or indicators, which may be settled directly or in cash.

[4] I.e. financial derivative instruments on commodities, as follows: (1) options, future agreements, swaps, forward agreements on interest rate and any other derivative agreements on commodities which have to be settled in cash or can be settled in cash upon a party's request (other than in case of non-payment or other termination event); (2) options, futures, swaps, and any other derivative agreements on commodities and which may be directly settled, provided that they are dealt on a regulated market and/ or within an alternative dealing system; (3) options, futures, swaps, forward agreements and any other derivative agreements on commodities and which may be directly settled, not included under point (2) above and not made for commercial purposes, which have the characteristics of other financial derivatives instruments, taking into consideration, among others, whether they are settled set-off through a recognized settlement house or regularly subject to margin calls.

[5] I.e. financial agreements on differences.

[6] I.e. options, future agreements, swaps, forward interest rate agreements and any other derivatives on weather variations, climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices, financial statistics and measures not otherwise mentioned, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or a multilateral trading facility, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

[7] For the purpose of the Capital Markets Law, the NSC Regulation no. 31/ 2006 also deems risk transfer financial derivative as financial derivatives instruments.

equivalent securities or financial instruments to the seller against a determined amount of money at maturity.

(c) Concept of securities lending

Securities lending is defined in the regulations implementing MiFID[x] in Romania as an agreement based on which the creditor loans to the debtor securities for clearing purposes and/or for maintaining market maker positions. The debtor has the obligation to return to the creditor the same type of securities at the end of a period of time determined in the agreement between the parties.

4.5.3 Currency of the Insolvency Proceedings

The Insolvency Law includes provisions of general application stating that the claims expressed in hard currency shall be registered within the insolvency proceeding at their value in Romanian lei at the exchange rate of the NBR valid for the date the Insolvency Proceeding is commenced. Therefore, although this does not prevent the calculation of the Liquidation Amount or of the Cleared Set Termination Amount in another currency than Romanian lei, the corresponding claim shall be registered and discharged in Romanian lei equivalent.

As a rule with very few exceptions, pursuant to the Insolvency Law no further costs may be added to claims arising before or after the opening of the insolvency proceedings. The Non-Defaulting Party is thus likely to bear the foreign exchange risk related to the conversion of the Liquidation Amount or the Cleared Set Termination Amount into Romanian currency.

4.5.4 Transactions under the same agreement

In order for close-out netting to be effective, the Romanian insolvency laws require that all Transactions are netted on the basis of the same master netting agreement. Our view is that Section 1.2 of the Master Netting Agreement itemised at number 1 of Annex 1 and the equivalent clauses of the other FOA Netting Agreements listed in Annex 1 hereof are essential in this respect. Furthermore, we recommend that each Transaction specifies that it is being made on the grounds of, and covered by, the respective agreement executed between the relevant parties.

The netting limited to Transactions cleared through the same Agreed CCP Service, separate from other Transactions between the same parties (i.e. Client and Firm/CM) cleared through other Agreed CCP Services, should not change

[x] MiFID refers to Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EEC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

the qualification of the Clearing Agreements as a single master agreement, to the extent Client entities are concerned (considering that, in the relation with the Client, the Firm/CM would compute a single amount, irrespective of the number of netting sets in which its Transactions with the same Client are divided, based on the Clearing Module Set-Off Provisions or Addendum Set-Off Provisions). For similar reasons, this should not be a concern when the Party in Insolvency Proceedings is the Firm/CM with headquarters in this jurisdiction, either.

Furthermore, we note that the scope of the Romanian Insolvency Law with respect to netting is broad with respect to the extent of netting, i.e. *"netting includes the occurrence, in relation to one or more qualified financial contracts (...), the termination of a qualified financial contract and/or the acceleration of any payment or performance of an obligation or exercise of a right under one or several qualified financial contracts based on a netting agreement"*. This provision may be interpreted extensively, in a sense that as long as there is a netting agreement (such as a Clearing Agreement)—which may be a netting agreement or a master netting agreement, in accordance with the Insolvency Law—in place, establishing expressly the transactions subject to netting and that there can be one or several transaction netting sets, such as the provisions of the Clearing Agreements, the netting of transactions included in several Client Transaction Sets should be permitted under the Romanian Insolvency Law. However, this interpretation has not yet been tested into practice in Romania and therefore we are not in a position to clearly confirm it.

4.5.5 Transactions entered into after the Insolvency Proceedings have commenced

According to the Insolvency Law, all the acts, operations and payments performed by the debtor after the opening of an Insolvency Proceeding shall be considered null and void, except for those that:

(a) meet the following requirements: (i) are made during the observation period (i.e. the period starting from the entry into the Insolvency Proceedings and either one of the date of confirmation of the restructuring plan or the date of entry into bankruptcy), (2) are current activities, (3) the payments are made to the creditors which are known and are carried out in the regular course of business and (4) they are supervised or conducted by the insolvency official; or

(b) are authorised by the Insolvency Representative (if the insolvent debtor's administration rights were withdrawn).

Therefore, in order to be considered for netting purposes, a Transaction entered into after the initiation of the insolvency proceedings must meet the above requirements to qualify as a valid Transaction. The invalidation of post-insolvency Transactions for lack of observance of the rules mentioned in this

paragraph should not affect, though, pre-insolvency Transactions (which may be challenged, nonetheless, as detailed in paragraph 4.5.1 above).

According to the Financial Collateral Ordinance, where a financial collateral arrangement (as defined in paragraph 4.7(a) below) is entered into, or a secured financial obligation takes effect, or a financial collateral was provided on the day the winding-up proceedings or reorganisation measures have commenced, but after their commencement, such financial collateral arrangement shall produce its effects and shall be enforceable against third parties if the beneficiary of the financial collateral can prove that it was not aware and could not have been aware of the commencement of the respective proceeding.

4.5.6 Close-out netting provisions of the Clearing Agreements

Both the Clearing Module Netting Provision and the Addendum Netting Provision make reference to the Rule Set of the relevant CCP when discussing the computation of the Aggregate Transaction Value, which is used for the computation of the Cleared Set Termination Value. It is not clear, based on the current drafting of the Clearing Module Netting Provision and of the Addendum Netting Provision, (i) whether the Firm/CCP Transaction Value or, as relevant, the CM/CCP Transaction Value is computed in order to represent a set-off or market or liquidation or replacement value of the respective Client Transactions or has another purpose and (ii) whether the amounts of the various Firm/CCP Transaction Values and, respectively, CM/CCP Transaction Values are converted in a single currency before the computation of the Aggregate Transaction Values, not only before payment of the Cleared Set Transactions Values, as provided in the Clearing Module Netting Provision and in the Addendum Netting Provision, respectively.

If, however, pursuant to the relevant Rule Sets, the Firm/CCP Transaction Value or, as relevant, the CM/CCP Transaction Value represent a set-off, market, liquidation or replacement value and, respectively, if the amounts of the Firm/CCP Transaction Values or, as relevant, the CM/CCP Transaction Values are converted in a single currency before computation of the Aggregate Transaction Value, there would be no concern with respect to the qualification of the respective close-out netting provisions as "netting agreements" in accordance with the Insolvency Law.

4.6 Considerations on set-off in the context of the FOA Netting Agreements and of the Clearing Agreements

According to our understanding, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision aim to set off amounts owed between the Parties, including amounts which are not covered by the FOA Netting Agreements or by the Clearing Agreements, respectively. Such set-off might not operate under the Insolvency Law, which refers only to the netting of amounts

resulting from Transactions based on a netting provision (i.e. such as the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision), unless such set-off would meet the Romanian legal requirements for legal set-off (i.e. which operates automatically in case of claims which are (cumulatively) (i) certain (i.e. their existence must not be arguable from legal point of view), (ii) liquid (precisely determined as to the amount they refer to), (iii) due, and (iv) referring to moneys or other fungible assets).

4.7 Financial Collateral Ordinance

Under Romanian law (please refer to paragraph 4.2 of the opinion letter in this respect), outside the scope of the Financial Collateral Ordinance, there is no concept of "title transfer collateral agreement". Therefore, the Title Transfer Provisions are not enforceable unless the FOA Netting Agreement (with Title Transfer Provisions) or the Clearing Agreement with Title Transfer Provisions qualify under the Financial Collateral Ordinance.

Romania has implemented the European Financial Collateral Directive[9] by enacting the Financial Collateral Ordinance. In addition to the general requirements of capacity, authority, consent validly expressed, legal object and valid consideration (applicable to any agreement under the Romanian law), a collateral arrangement must meet several requirements to be included within the scope of the Financial Collateral Ordinance, i.e.:

(a) Financial collateral arrangement

The agreement between the parties must be an arrangement whether or not covered by a master agreement or general terms and conditions, which may be either:

(i) a Title Transfer Financial Collateral Arrangement, under which a collateral provider transfers full ownership of, or full entitlement to (where entitlement refers to Credit Claims as object of the financial collateral), financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of relevant financial obligations; or

(ii) a Security Financial Collateral Arrangement under which a collateral provider provides financial collateral by way of security in favour of, or to, a collateral taker, and where the full or qualified ownership of, or full entitlement to, the financial collateral remains with the collateral provider when the security right is established.

[9] Financial Collateral Directive refers to Directive 2002/47/EC of the European Parliament and the Council of 6 June 2002 on financial collateral arrangements.

(b) Parties

Both the collateral provider and the collateral taker must be an entity falling within one of the categories specified below (a "**Qualifying Entity**"):

(i) a public authority (excluding publicly guaranteed undertakings unless they fall under points (ii) to (iv) below) including (1) public sector bodies of Romania and other EU Member States charged with or intervening in the management of public debt (e.g. MPF), and (2) public sector bodies of Romania and other EU Member States authorised to hold accounts for customers;

(ii) a central bank (i.e. the NBR) or an international financial institution, such as the European Central Bank, the Bank for International Settlements, a multilateral development bank, the International Monetary Fund and the European Investment Bank;

(iii) a financial institution subject to prudential supervision including credit institutions (i.e. Banks), a financial services investment company or a brokerage company (i.e. Investment Firms), a financial institution (including non-banking financial institutions registered in the Special Registry maintained by the NBR in accordance with the NFI Law, i.e. NFIs), an insurance company (i.e. Insurance Companies), an insurance-reinsurance company or a reinsurance company, an insurance intermediary, an undertaking for collective investment in transferable securities (i.e. UCITS) (by contrast, closed-ended investment undertakings do not fall under the scope of application of the Financial Collateral Ordinance), an investment management company;

(iv) a central counterparty, settlement agent or clearing house and a person, other than a natural person, who acts on behalf or on the account of any one or more persons that includes any bondholders or holders of other forms of securitised debt or any institution as defined in points (i) to (iv) above.

Please note that, with respect to non-banking financial institutions registered in the Special Registry maintained by the NBR, their inclusion in the range of Qualifying Entities is made based on the general reference to "financial institutions" in the Financial Collateral Ordinance and on the definition of "financial institutions" in Regulation 575/2013, which extends the concept of "financial institutions" to entities that carry out, inter alia, crediting activities. However, this interpretation has not been tested in practice in Romania.

Please note that under the Financial Collateral Directive the EU Member States could opt out financial collateral arrangements entered between one of the

Qualifying Entities mentioned above and an entity that does not fit into one of the above categories. When issuing the Financial Collateral Ordinance, the Romanian regulator chose to opt out such non-financial institutions. Hence, a Collateral Agreement entered into between a Qualifying Entity and an entity that is not a Qualifying Entity (e.g. such as an Ordinary Corporate) would not fall under the provisions of the Financial Collateral Ordinance.

(c) Evidence

The financial collateral arrangement must be evidenced in Writing. "**Writing**" includes a written document, an electronic or other type of recording assimilated to Writing.

(d) Provision of financial collateral to the collateral taker

The Financial Collateral Ordinance applies to financial collateral once it has been Provided and if that Provision can be evidenced in Writing. The evidencing of the Provision of financial collateral must allow for the identification of the financial collateral to which it applies. For this purpose, it is sufficient to prove that:

(i) in respect of book entry securities: the book entry securities collateral has been credited to, or forms a credit in, the relevant account; and

(ii) in respect of cash: the cash collateral has been credited to, or forms a credit in, a designated account.

The "**Provision**" of financial collateral may be made, under the Financial Collateral Ordinance, through the delivery, transfer, holding, registration or any other means that enable the collateral taker or the person acting on its behalf to hold or obtain the control over the financial collateral. Any right of substitution or to withdraw excess financial collateral in favour of the collateral provider or rights to cash in revenues corresponding to the Credit Claims do not prejudice the financial collateral having been Provided to the collateral taker as mentioned above.

(e) Object of the financial collateral

The financial collateral to be Provided must consist of Cash, Financial Instruments or Credit Claims

For the purposes of Financial Collateral Ordinance:

(i) Cash means money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits or sums that fall due as a result of the enforcement of a close-out netting provision.

(ii) Financial Instruments means shares in companies and other securities equivalent to shares in companies and bonds and other forms of debt instruments if these are negotiable on the capital market, and any other securities which are normally dealt in and which give the right to acquire any such shares, bonds or other securities by subscription, purchase or exchange or which give rise to a cash settlement (excluding instruments of payment), including units in collective investment undertakings, money market instruments and claims relating to or rights in or in respect of any of the foregoing. However, the Financial Collateral Ordinance does not apply where the Financial Instruments Provided are (i) shares issued by the collateral provider, (ii) shares held by the collateral provider in its affiliates or (ii) shares in undertakings whose exclusive purpose is to own means of production that are essential for the collateral provider's business or to own real property.

(f) The secured obligations

The secured obligations must give a right to cash settlement and/or delivery of financial instruments and their performance must be secured by a Financial Collateral Arrangement.

Where the FOA Netting Agreement (with Title Transfer Provisions) or the Clearing Agreement with Title Transfer Provisions do not qualify under the Financial Collateral Ordinance, two possible views that may be taken by a Romanian court of law:

(a) under the Romanian Civil Code, agreements are interpreted according to the internal will of the parties, and not necessarily according to the express terms of the agreement. Due to the complexity of the FOA Netting Agreements (with Title Transfer Provisions) and/or the Clearing Agreements (with Title Transfer Provisions) and to the fact that the Romanian courts are unfamiliar with the types of transactions made under the FOA Netting Agreements (with Title Transfer Provisions) and/or the Clearing Agreements (with Title Transfer Provisions), there is hence the possibility for a court to hold that the internal will of the parties is to secure the transferor's obligations under the FOA Netting Agreements and/or the Clearing Agreements with the collateral provided under the Title Transfer Provisions and therefore view the Title

Transfer Provisions as creating a security interest and not an outright transfer of title.

(b) another possible scenario is that based on (i) the legal principle *pacta sunt servanda* and (ii) the fact that the Title Transfer Provisions specifically provide that all right, title and interest in and to any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest passes from transferor to transferee and the Title Transfer Provisions do not intend to, and do not create in favour of either party a security interest, the Title Transfer Provisions would be viewed as an outright transfer agreement, rather than a collateral agreement aiming to secure transactions under the FOA Netting Agreements and/or the Clearing Agreements. Consequently, the risk that the Title Transfer Provisions are re-characterised into some form of title transfer arrangement (e.g. sale, donation, repurchase of securities agreement or other form of non-security outright transfer agreement, etc.) would be very high under these circumstances. Furthermore, if the minimum conditions for the transaction into which such a title transfer is re-characterised are not met (such as a fair and serious price in case of a sale agreement), the respective agreement may be further considered as null and void.

In conclusion, our view is that the re-characterisation risk would be eliminated if the FOA Netting Agreement (with Title Transfer Provisions) or the Clearing Agreement with Title Transfer Provisions is always entered into between Qualifying Entities and all the other requirements specified above for the FOA Netting Agreement (with Title Transfer Provisions) and the Clearing Agreement with Title Transfer Provisions to fall under the Financial Collateral Ordinance are satisfied.

4.8 **Multibranch Parties**

The determinations reached within paragraph 3.3 above apply where Insolvency Proceedings are opened with respect to the relevant Counterparty under the Romanian insolvency laws. In all other cases, legal advice should be sought with respect to the laws of the relevant non-Romanian jurisdictions concerned.

The Council Regulation (EC) No. 1346/2000 on insolvency proceedings (**EUIR**) became directly applicable in Romania as of 1 January 2007, as an effect of Romania becoming a member of the EU. While the EUIR regulates conflict of law situations where the jurisdictions involved in cross-border insolvency proceedings are those of the EU Member States, the Insolvency Law refers to situations where non-EU jurisdictions are involved. While the EUIR excludes from its scope of application, inter alia, banks and other credit institutions, financial institutions and investment firms (collectively the "**Excepted Entities**"), the Insolvency Law contains special provisions dedicated to these entities.

Since under the EUIR and the Insolvency Law insolvency proceedings may be opened simultaneously in Romania and in various other jurisdictions in respect of an Ordinary Corporate with assets located in such jurisdictions, subject as follows in this paragraph 4.8 there can be insolvency proceedings in Romania with respect to the insolvent party (the "**Insolvent Party**"):

(a) where the Insolvent Party is a Romanian company and has one or several Offices (i.e. which must be Establishments within the meaning of the EUIR and of the Insolvency Law, respectively) in other jurisdictions; or

(b) where the Insolvent Party is a foreign company and has one or several Designated Offices (i.e. which must be Establishments within the meaning of the EUIR and of the Insolvency Law, respectively) in Romania;

whether or not the relevant authorities in any other jurisdiction than Romania have initiated proceedings in respect of the Insolvent Party, except where:

(a) the Insolvent Party is an entity subject to the Insolvency Law or the EUIR and not an Excepted Entity, and

(b) it is alleged and proved that the centre of main interests ("**COMI**") of the Insolvent Party is not in Romania and the Insolvent Party has no Establishment in Romania,

in which case Romanian courts will have no jurisdiction in respect of insolvency proceedings in relation to the Insolvent Party.

Subject to the requirements above regarding the jurisdiction of Romanian insolvency authorities being satisfied, our view is that an Insolvency Representative should, subject as follows below, include assets and obligations arising from all Transactions governed by the FOA Netting Agreement or by the Clearing Agreements (regardless of the Office from which they were entered into) in the calculation of amounts owed to and from the Insolvent Party and should uphold the close-out netting provisions of the FOA Netting Agreement and of the Clearing Agreements. However, where the Insolvent Party is an entity subject to the EUIR and not an Excepted Entity and if:

(a) the COMI of the Insolvent Party is in Romania, the COMI of the Non-Insolvent Party is in another EU Member State, and there are territorial insolvency (secondary) proceedings in respect of the Insolvent Party in that other EU Member State; or

(b) both the COMI of the Insolvent Party and the COMI of its counterparty (the "**Non-Insolvent Party**") are not in Romania, but in another EU Member State;

then the authorities in Romania would defer to the proceedings in the EU jurisdiction where the claims of the Insolvent Party are situated (i.e. the jurisdiction where the COMI of the non-Insolvent Party is situated). This is due to the fact that, under the

EUIR, if territorial proceedings are opened in an EU Member State, such proceedings will take effect only with respect to the assets of the insolvent debtor that are located in that EU Member State as, according to the EUIR, "the Member State in which assets are situated" means, in respect of assets taking the form of claims, the "Member State within the territory of which the third party required to meet them (i.e. debtor of such claims or, in other words, the non-Insolvent Party under the FOA Netting Agreement or the Clearing Agreement, our explanation) has its centre of main interests".

Furthermore, the opening of insolvency proceedings shall not affect the rights "*in rem*" of creditors or third parties in respect of assets belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings. Thus, the holder of the right "*in rem*" retains all his rights in respect of such asset (e.g. may exercise the right to separate the security from the insolvent estate and, where necessary, to realize the asset individually to satisfy the claim). Therefore, where there is a right "*in rem*" affecting an asset located outside the state where the proceedings were opened, the right is immune from the effects of EU Member State proceedings except for actions for voidness, voidability or unenforceability (of legal acts detrimental to all the creditors).

Where (i) the Insolvent Party has its main headquarters[10] in Romania and there are secondary insolvency proceedings opened in non-EU jurisdictions and recognised in Romania or (ii) where the main insolvency procedure of the Insolvent Party is opened in a non-EU jurisdiction and there are secondary insolvency proceedings opened in Romania, in accordance with the Insolvency Law, the Insolvency Representatives (both Romanian and foreign) will be entitled to challenge in Romania the acts and operations of the Insolvent Party only with the observance of the provisions of Romanian law. As the netting of Transactions under the FOA Netting Agreement and/or the Clearing Agreements are protected under the Insolvency Law, we are of a view that, to the extent that claims under Transactions may be located in Romania (i.e. under the Insolvency Law, claims are deemed located in the jurisdiction where their debtor has its centre of main interests), the Firm/CM will be able to rely on the Insolvency Law protecting netting.

4.9 **Single agreement**

If, notwithstanding the choice of English law as the law governing the FOA Netting Agreements and the Clearing Agreements, Romanian law were to apply to these agreements, please note that it is very difficult to argue in a non-insolvency context that, according to Romanian law, the FOA Netting Agreements or the Clearing Agreements, the particular terms applicable to each Transaction, the Schedules and all amendments to any of them form a single agreement.

[10] Under the Insolvency Law, the "main headquarters" of a company will be deemed to be located where the center of the main management, supervision and administration of the statutory activity of the company is located, as such center may be determined by third parties, even if the resolutions of the relevant corporate bodies are adopted pursuant to instructions received from stakeholders located in other jurisdictions.

However, considering that: (i) the FOA Netting Agreements and the Clearing Agreements substantially provide that the same agreements, the particular terms applicable to each Transaction, and all amendments to any of them shall together constitute a single agreement between the Parties; (ii) the Parties acknowledge that all Transactions entered into on or after the date of the FOA Netting Agreements and/or the Clearing Agreements are entered into in reliance upon the fact that the FOA Netting Agreements and/or the Clearing Agreements and all such terms constitute a single agreement between the Parties; and (iii) the Civil Code specifically regulates the concept of "master agreement" as the agreement by means of which the parties agree to negotiate, conclude and maintain contractual relations, with specific elements (especially the term, volume and, if the case may be, the price of the transactions) to be determined by means of subsequent conventions, a Romanian court will have to consider all transactions as being part of the same agreement (i.e. each Transaction representing the *causa finalis* for all the other Transactions). Therefore, under Romanian laws the effects of the interdependence principle should be similar to those of the single agreement doctrine.

4.10 **Market regulations**

Netting as regulated under the Insolvency Law may not be applicable with respect to those Transactions carried out in Romania without the observance of the relevant market rules and regulations, where such are applicable, and therefore our opinions in paragraph 3 may not be applicable.

4.11 **Sanctions**

If any Party to the FOA Netting Agreements or to the Clearing Agreements is controlled by a person or is itself incorporated in the laws of a country which is subject of United Nations, European Union or Romanian sanctions, the obligations of the Romanian counterparty to such Party may be unenforceable or void.

4.12 **ublic Order**

The new Romanian Civil Code defines Public Order as including the fundamental principles of Romanian law or of European Union law and the fundamental human rights. We are not aware of any principle of Public Order which is contradicted by the FOA Netting Agreements or by the Clearing Agreements, although it should be noted that it is not possible to express a precise and definitive view of the exact scope of Public Order at any particular time.

4.13 **Enforceability of claims**

4.13.1 A party to a contract may be able to avoid its obligations under that contract (and may have other remedies) where it has been induced to enter into that contract by a misrepresentation or violence/duress or by taking advantage of its ignorance (harm).

4.13.2 The enforceability of the FOA Netting Agreements and/or of the Clearing Agreements and/or Transactions may be affected by the principle that rights must be exercised in good faith and in a reasonable manner.

4.13.3 Where any party to the FOA Netting Agreements and/or to the Clearing Agreements is vested with a discretion or may determine a matter in its opinion, Romanian law requires that such discretion cannot be abused.

4.14 Further reservations

4.14.1 Any provision of the FOA Netting Agreements and/or of the Clearing Agreements which constitutes, or purports to constitute, a restriction on the exercise of any statutory power by any party to the FOA Netting Agreements and/or to the Clearing Agreements or any other person may be ineffective.

4.14.2 At the moment, physical settlement in relation to derivative transactions where the underlying assets consists in securities listed on a Romanian regulated market is impaired by the fact that the transfer of the ownership right with respect to equity securities (i.e. limited to exchange-traded shares, rights and fund units) has to be linked on exchange, in accordance with the rules applicable to turnaround transactions, i.e. (a) such transactions involve a back-to-back trade (i.e. one leg of the trade is performed on-exchange and the other leg of the trade is performed OTC); (b) both legs of the trade must be settled on the same day by the RoClear system; (c) the two legs of the trade must be settled by the same custodian; (d) the volume of equity traded OTC may not exceed the on-exchange traded volume. Full OTC trading (and consequently settlement of OTC) is possible in Romania only in respect of (a) international financial instruments listed on at least one regulated market and (b) Romanian fixed income securities (including Government bonds listed on the Romanian exchanges).

4.14.3 The trading in commodities derivatives may require additional licensing in case of particular types of commodities which under the relevant derivative agreement would have to be physically delivered in Romania (e.g. energy, oil, gas, coal).

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

(b) any person to whom disclosure is required to be made by applicable law or court order or pursuant to the rules or regulations of any supervisory or regulatory body or in connection with any judicial proceedings; and

(c) any competent authority supervising a subscribing member or its affiliates

on the basis that (i) such disclosure is made solely to enable any such person to be informed that an opinion has been given and to be made aware of its terms but not for the purposes of reliance, and (ii) we do not assume any duty or liability to any person to whom such disclosure is made and in preparing this opinion we have not had regard to the interests of any such person.

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

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

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

Yours faithfully,

Clifford Chance Badea SCA

Romania/Prudential Regulation/FOA Documentation/Netting/Class 3

SCHEDULE 1BANKS

Subject to the modifications and additions set out in this Schedule 1 (*Banks*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are organised as Banks or are branches in Romania of foreign banks.

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 OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), the opinions expressed in paragraph 3 of our opinion letter will be amended as follows:

1.1 Paragraph 3.1 is deemed deleted and replaced with the following:

"3.1 Insolvency Proceedings: Banks

*The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Bank could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are bankruptcy (*faliment*) proceedings, as such regulated entities would typically undergo bankruptcy directly, with the aim to liquidate their assets, if the special administrative proceedings (e.g. special administration, special supervision or stabilisations measures, as applicable) carried out by the NBR prove unsuccessful. The bankruptcy of Banks is governed by special provisions in the Insolvency Law adding to the general framework on Insolvency Proceedings from the Insolvency Law.*

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, without the need for any additions."

1.2 A new sub-paragraph 3.3.3 is added with the following content:

"3.3.3 Law applicable to netting agreements

The Insolvency Law establishes that, in the course of Insolvency Proceedings opened under Romanian law, netting agreements will only be governed by the law of the contract which governs the netting agreement. Therefore, the FOA Netting Agreements and the Clearing Agreements to which a Bank in Insolvency Proceedings in Romania is a party would be subject to English law in the course of the Insolvency Proceedings opened in Romania against the respective Bank."

1.3 Paragraph 3.4 is deemed deleted and replaced with the following:

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

In relation to a Clearing Agreement which includes the Clearing Module Netting Provision, to which a Bank is a party, the Clearing Module Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following (i) a Firm Trigger Event or (ii) a CCP Default, the Parties would be entitled to receive or obliged to pay, in respect of each Cleared Transaction Set, only the net sum of the Cleared Set Transaction Amount, determined in accordance with the Clearing Agreement.

We are of this opinion for the reasons details under paragraph 3.3 above. Please note that, subject to our considerations in paragraph 4.5.6 below, the Clearing Module Netting Provisions include the key elements of close-out netting set out in the Insolvency Law (described in sub-paragraph 3.3.2 above); therefore, for the purposes of paragraph 3.4 and subject to our considerations under paragraph 4.5.6 below, the Clearing Module Netting Provisions qualify as a "netting agreement" in accordance with the Insolvency Law.

Further, subject to paragraphs 4.3, 4.4 and 4.5 of this opinion letter, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the operation of the Clearing Module Netting Provision.

No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this paragraph 3.4 to apply."

1.4 Paragraph 3.5 is deemed deleted and replaced with the following:

*"3.5 **Enforceability of the Addendum Netting Provision***

In relation to a Clearing Agreement which includes the Addendum Netting Provision, to which a Bank is a party, the Addendum Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following (i) a CM Trigger Event or (ii) a CCP Default, the Parties would be entitled to receive or obliged to pay, in respect of each Cleared Transaction Set, only the net sum of the Cleared Set Termination Amount, determined in accordance with the Clearing Agreement.

We are of this opinion for the reasons details under paragraph 3.3 above. Please note that, subject to our considerations in paragraph 4.5.6 below, the Addendum Netting Provisions include the key elements of close-out netting set out in the Insolvency Law (described in sub-paragraph 3.3.2 above); therefore, for the purposes of paragraph 3.4 and subject to our considerations under paragraph 4.5.6 below, the Addendum Netting Provisions qualify as a "netting agreement" in accordance with the Insolvency Law.

Further, subject to paragraphs 4.3, 4.4 and 4.5 of this opinion letter, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the operation of the Addendum Netting Provision.

No amendments to the Addendum Netting Provision are necessary in order for the opinions expressed in this paragraph 3.5 to apply."

1.5 Paragraph 3.6 is amended by adding the following paragraph:

"*In a case where a Party, who would (but for the use of the FOA Clearing Module or the ISDA/FOA Clearing Agreement) be the Defaulting Party for the purposes of the FOA Netting Agreement, acts as Firm (as defined in the FOA Clearing Module) or Clearing Member (as defined in the ISDA/FOA Clearing Addendum), the question as to whether the FOA Netting Provision will, to the extent inconsistent with the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision, be superseded by the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision would be determined under the governing law of the Clearing Agreement.*"

1.6 Paragraph 3.7 is amended by replacement of each of sub-paragraphs 3.7.1(ii) and 3.7.2(ii), respectively, with the following:

> "*(ii) during Insolvency Proceedings opened in Romania under Romanian law, notwithstanding that set-off is limited to legal set-off under the Insolvency Law (as detailed in paragraph 4.6 below), set-off will be recognised in such Insolvency Proceedings, based on the provisions of the Insolvency Law implementing article 23 of the Directive 2001/24/EC on the reorganisation and winding-up of credit institutions, where such set-off is permitted by the law applicable to the credit institution's claim."*

1.7 Paragraph 3.8 is deemed deleted and replaced with the following:

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

In relation to a Clearing Agreement which includes the Clearing Module Set-Off Provision (whether or not the FOA Set-Off Provisions are Disapplied Set-Off Provisions, insofar as constituting part of the Clearing Agreement) , to which a Bank is a Party, subject to our considerations under paragraphs 4.3 and 4.6 below, the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that the Firm would be immediately entitled to exercise its rights under the Clearing Module Set-Off Provision, and, in particular, if there has been an Event of Default in respect of the Client or a CCP Default, so that the value of any cash balance owed by one Party to the other would be set off against any Available Termination Amount owed by the Party entitled to receive the cash balance, insofar as not already brought into account

as part of the Relevant Collateral Value or as any other cash amount owed by one Party to the other.

We are of this opinion for the reasons detailed under 3.7.1(i) and 3.7.1(ii) above.

No amendments to the Clearing Module Set-Off Provision are necessary in order for the opinions expressed in this paragraph 3.8 to apply."

1.8 Paragraph 3.9 is deemed deleted and replaced with the following:

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

In relation to a Clearing Agreement which includes the Addendum Set-Off Provision, to which a Bank is a Party, subject to our considerations under paragraphs 4.3 and 4.6 below, the Addendum Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that following a CM Trigger Event or a CCP Default:

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

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

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

We are of this opinion for the reasons detailed under 3.7.1(i) and 3.7.1(ii) above.

No amendments to the Addendum Set-Off Provision are necessary in order for the opinions expressed in this paragraph 3.9 to apply."

1.9 Paragraph 3.10 is deemed deleted and replaced with the following:

"3.10 Enforceability of the Title Transfer Provisions

3.10.1 In relation to the FOA Netting Agreement (with Title Transfer Provisions) or a Clearing Agreement which includes the Title Transfer Provisions, (x) the characterisation of Transfers of Margin as outright transfers of title or creating a security or other interest and (y) the possibility to use the Margin Transferred without restriction would, under the conflicts of laws rules of this jurisdiction, be determined under the law chosen by the parties to apply to the FOA Netting Agreement (with Title Transfer Provisions) and/or a Clearing Agreement which includes the Title Transfer Provisions, subject to our considerations under paragraphs 4.2 and 4.8 (with respect to the law

applicable to the exercise of ownership rights over financial instruments and, respectively, to contractual set-off and netting agreements).

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

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

We are of this opinion because Banks are Qualifying Entities under the Financial Collateral Ordinance and, therefore, provided that all the requirements specified under paragraph 4.7 (Financial Collateral Ordinance) below are met, a Romanian court would recognise the Title Transfer Provisions with all their effects in accordance with their terms.

No amendments to the Title Transfer Provisions are necessary in order for the opinions expressed in this paragraph 3.10 to apply."

1.10 The final part of paragraph 3.11 is deemed deleted and replaced with the following:

"(...) would be determined by reference to the governing law of the FOA Netting Agreement (with Title Transfer Provisions) and a Clearing Agreement which includes the Title Transfer Provisions, subject to our considerations under paragraphs 4.2 and 4.8."

1.11 The following paragraph 3.13.2 is added after the current paragraph 3.13 (which is renumbered as 3.13.1):

"3.13.2 It is not problematic for the effectiveness of netting that, under the Clearing Module Netting Provision and the Addendum Netting Provision, termination and liquidation of Client Transactions does not occur automatically upon the opening of Insolvency Proceedings in relation to a Firm, or as the case may be Clearing Member, incorporated or organised in this jurisdiction, as the Insolvency Law recognises the key effects of netting under qualified financial contracts, as detailed in paragraph 3.3.2 above, including the termination and liquidation of Transactions upon commencement of Insolvency Proceedings."

1.12 The following paragraph is added after the current paragraph 3.15 (which is renumbered as 3.15.1):

"*3.15.2 Notwithstanding the above, in the case of Foreign Defaulting Parties which are Banks incorporated or formed in the European Economic Area there can be no separate Insolvency Proceedings in this jurisdiction in relation to the Foreign Defaulting Party and the authorities in this jurisdiction would defer to the proceedings in the Foreign Defaulting Party's home jurisdiction.*"

2. MODIFICATIONS TO QUALIFICATIONS

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

2.1 Paragraph 4.2 is amended by adding a new sub-paragraph 4.2.4, as follows:

"*4.2.4 Notwithstanding the above, the Insolvency Law establishes that, by exception from the rule that the effects of the opening of Insolvency Proceedings against a Bank are governed by Romanian law, the law applicable to certain agreements entered into by the Bank is determined as follows:*

(a) the exercise of the ownership right and of other rights over financial instruments whose existence or transmission is subject to registration in a registry, an account or a centralised depositary system, held or located in an EU Member State, will be governed by the law of that EU Member State;

(b) repo agreements and agreements documenting transactions on a regulated market are governed by the law applicable to the respective agreements, subject to point (a) above;

(c) contractual set-off and netting agreements are governed by the law applicable to those agreements."

2.2 The following section is added to paragraph 4.3 (*Closeout netting in a non-insolvency context*) which shall be renumbered accordingly:

"*(a) Special proceedings applicable to Banks*

Under the Banking Law, the NBR may undertake certain special supervision (supraveghere speciala) measures in case a Bank infringes the prudential rules set by the NBR. During the special supervision proceeding, the NBR appoints a special commission made up of NBR experts which, among other attributions, has the ability to limit and/or suspend certain banking activities and operations for a certain period of time and to enforce any other measures deemed necessary to remedy the relevant Bank's financial standing.

Also, after a certain amount of time or in case of certain events indicating the respective Bank's failure to recover, the NBR may institute a procedure of special

administration (administrare speciala). In such a case, the NBR appoints a special administrator. The prerogatives of the special administrator designated by the NBR include, inter alia, the filing of claims for the annulment of fraudulent acts, previously entered into by the Bank including those contracts where the obligations undertaken by the Bank are disproportionate with respect to the other party's undertaking.

According to the Banking Law, the NBR may decide to withdraw the banking authorisation of a Bank in certain circumstances, if it notices serious breach of banking laws and regulations by or serious financial difficulties of the respective Bank and the recovery measures instituted upon the Bank (special supervision and special administration) have not been effective.

In the events where the special administration may be instituted and/or the voting rights of the controlling shareholders of the Bank have been suspended, and, in any of such situations, there is a threat to the financial stability of the Bank, the NBR may institute one of the following stabilisation measures:

(i) the total or partial transfer of that Bank's assets and liabilities to one or more eligible institutions (as determined by the Banking Law) followed by the withdrawal of the banking authorisation with the consequences described above;

(ii) the involvement of the Banking System Deposits Guarantee Fund as director and, if the voting rights of the controlling shareholders of the Bank have been suspended, as shareholder of that Bank;

(iii) the transfer of that Bank 's assets and liabilities to a bridge-bank (i.e. a special type of Bank set up solely for the purposes of such a transfer), followed by the withdrawal of the banking authorisation and liquidation (lichidare) of that Bank.

In the case of special administration and of stabilisation measures established against a Bank, the Banking Law provides that the transfer of assets and liabilities of that Bank to a viable bank will not be considered a cause for termination of the assigned agreements, therefore the termination of Transactions for an Event of Default against a Bank consisting in such measures appears to be restricted.

In the case of implementation of a special proceeding with transfer of assets, the Banking Law requires that (i) all the rights and liabilities which fall under the scope of a netting agreement (acord de compensare) are either transferred or maintained with the Bank in the case of transfer of netting agreements and (ii) that the rights and liabilities under the guarantee agreements related to the transactions under the netting agreement follow the transferred assets

The special proceedings analysed in this paragraph are not applicable to Romanian branches of foreign banks."

2.3 Paragraph 4.8 is deemed deleted and replaced with the following:

"***4.8 Multibranch Parties***

The determinations reached within paragraph 3.3 above apply where Insolvency Proceedings are opened with respect to the relevant Counterparty under the Romanian insolvency laws. In all other cases, legal advice should be sought with respect to the laws of the relevant non-Romanian jurisdictions concerned.

The Council Regulation (EC) No. 1346/2000 on insolvency proceedings (EUIR) became directly applicable in Romania as of 1 January 2007, as an effect of Romania becoming a member of the European Union. While the EUIR regulates conflict of law situations where the jurisdictions involved in cross-border insolvency proceedings are those of the European Union Member States, the Insolvency Law refers to the situation where non-EU jurisdictions are involved. While the EUIR excludes from its scope of application, inter alia, Banks, the Insolvency Law contains special provisions applicable to Banks, implementing the Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions.

Under the Romanian law, no separate insolvency proceedings are possible in relation to the branch offices of a Bank.

(a) *Credit institutions authorised in Romania with branches abroad*

Based on the provisions of the Insolvency Law, our view is that whenever a Romanian Bank becomes bankrupt, the Romanian law does not admit any bankruptcy proceedings on such Bank (including its Designated Offices abroad) other than those conducted by Romanian relevant authorities according to the Romanian law, regardless whether that bank has branches established abroad, whether in a EU member state or a non-EU jurisdiction. We express such view based on the following:

(i) *as a matter of principle, the Insolvency Law establishes that the proceedings set forth therein shall fall within the exclusive jurisdiction of the tribunal that includes within its territorial range the headquarters of the relevant Romanian bankrupt Bank;*

(ii) *the Insolvency Law states that the above-mentioned tribunal shall be the only authority empowered to rule the enforcement of a bankruptcy proceeding on a Romanian bank, including its branches located in other EU Member States, and such proceeding shall be governed by the Romanian law (which shall regulate, inter alia, the assets subject to the proceeding of the insolvent bank);*

(iii) *the Insolvency Law states that the opening of bankruptcy proceedings with respect to a Bank authorised in Romania and its branches located in other EU Member States is governed by Romanian law as regards the regime and application of the bankruptcy procedures;*

(iv) *the Romanian legal doctrine has so far agreed on the exclusive jurisdiction of Romanian courts applying Romanian law to rule on insolvency matters related to Romanian companies having their seat of business in Romania. The seat of business determined pursuant the provisions of the Romanian Civil Code represents "the place where the head office as the main seat of administration and management of activity is located". Therefore, the commencement of Romanian insolvency proceedings against the headquarters would take effect on foreign branches, subject to recognition by foreign courts of the initial judgment (exequatur proceedings in the host country).*

(b) *Credit institutions authorised in another EU Member State with branches in Romania*

In line with the Directive No. 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (the "WUD(B)"), as a matter of principle, the Insolvency Law provides that:

(i) *the authorities in the home EU Member State (i.e. the Member State where the bank was authorised) would be the only authorities entitled to rule on insolvency proceedings (reorganisation and liquidation) against banks authorised under their jurisdiction, branches and offices abroad included;*

(ii) *the law governing the regime and application of the insolvency procedure will be the law of the home EU Member State.*

Consequently, in the event of insolvency proceedings opened with respect to a credit institution authorised in an EU Member State but with a Designated Office in Romania, such proceedings would be conducted in respect of the Romanian office by the insolvency authorities from the foreign credit institution's home EU member state, and in accordance with the laws of such home state, which shall apply to all its assets, including those located in Romania.

(c) *Credit institutions authorised in a non-EU state with branches in Romania*

It should be noted that unlike the WUD(B)—which expressly contemplates the possibility of opening in the relevant EU Member States of proceedings in

respect of branches of a non-EU bank which are located on the territory of those EU Member States—the Insolvency Law does not seem to include specific provisions as regards the cross-border insolvency of Romanian branches of a non-EU bank, apart from the obligation of the NBR to inform the EU Member States hosting branches of the non-EU bank of the commencement of the proceedings as soon as it becomes aware of such. In this particular situation, the principle set forth in the Romanian Civil Code should be applied in the sense that the law of the parent company (as law of the "organic statute of the company") is to govern, among others, its dissolution and liquidation.

Nevertheless, in respect of (a) and (b) above, please note that there are exceptions from the principle that proceedings would be subject to the law of the home Member State. These exceptions are the following: (i) the exercise of the ownership right and of other rights over financial instruments whose existence or transmission is subject to registration in a registry, an account or a centralised depositary system, held or located in an EU Member State, will be governed by the law of that EU Member State; (ii) repo agreements and agreements documenting transactions on a regulated market are governed by the law applicable to the respective agreements, subject to point (i) above; (iii) contractual set-off and netting agreements are governed by the law applicable to those agreements.

Therefore, if the only law applicable to the netting would be the governing law of the agreement, if the governing law of the claim allows netting, the reorganisation or winding up governed by a different law should not impair netting. Nevertheless, in respect of (b) above this position should also be checked under the law of the relevant EU Member State, since the WUD(B) is not of direct application in the EU Member States, and different Member States may have implemented it differently than Romania.

In respect of (c) above, the validity and effectiveness of netting depend on the law that governs the insolvency of the relevant non-Romanian credit institution, counterparty to the Agreement."

Romania/Prudential Regulation/FOA Documentation/Netting/Class 3

SCHEDULE 2
INVESTMENT FIRMS

Subject to the modifications and additions set out in this Schedule 2 (*Investment Firms*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are organised as Investment Firms.

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 OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), the opinions expressed in paragraph 3 of our opinion letter will be amended as follows:

1.1 Paragraph 3.1 is deemed deleted and replaced with the following:

"3.1 Insolvency Proceedings: Investment Firms

*The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Investment Firm could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are bankruptcy (*faliment*) proceedings, as such regulated entities would typically undergo bankruptcy directly, with the aim to liquidate their assets, if any applicable administrative proceedings prove unsuccessful. Pursuant to the Capital Market Law (which sets out that the provisions of the insolvency legislation applicable to Banks shall apply mutatis mutandis to "the authorised entities under special administration, the authorisation of which has been revoked by the FSA, to the extent of their compatibility", thus including Investment Firms), the bankruptcy of Investment Firms is governed by the Insolvency Law including the special proceedings applicable to credit institutions (subject to our considerations in paragraph 4.2.4 regarding the fact that the applicability in respect of Investment Firms of the special provisions of Insolvency Law dedicated to Banks is untested in practice).*

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, without the need for any additions."

1.2 A new sub-paragraph 3.3.3 is added with the following content:

"3.3.3 Law applicable to netting agreements

The Insolvency Law establishes that, in the course of Insolvency Proceedings opened under Romanian law against credit institutions, netting agreements

will only be governed by the law of the contract which governs the netting agreement, such provisions being applicable in respect of Investment Firms under reference made in the Capital Market Law, subject to our considerations under paragraph 4.2.4 regarding the fact that the applicability in respect of Investment Firms of the special provisions of Insolvency Law dedicated to Banks is untested in practice. Therefore, the FOA Netting Agreements and the Clearing Agreements to which an Investment Firm in Insolvency Proceedings in Romania is a party would be subject to English law in the course of the Insolvency Proceedings opened in Romania against the respective Investment Firm."

1.3 Paragraph 3.4 is deemed deleted and replaced with the following:

"3.4 Enforceability of the Clearing Module Netting Provision

In relation to a Clearing Agreement which includes the Clearing Module Netting Provision, to which an Investment Firm is a party, the Clearing Module Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following (i) a Firm Trigger Event or (ii) a CCP Default, the Parties would be entitled to receive or obliged to pay, in respect of each Cleared Transaction Set, only the net sum of the Cleared Set Transaction Amount, determined in accordance with the Clearing Agreement.

We are of this opinion for the reasons detailed under paragraph 3.3 above. Please note that, subject to our considerations in paragraph 4.5.6 below, the Clearing Module Netting Provisions include the key elements of close-out netting set out in the Insolvency Law (described in sub-paragraph 3.3.2 above); therefore, for the purposes of paragraph 3.4 and subject to our considerations under paragraph 4.5.6 below, the Clearing Module Netting Provisions qualify as a "netting agreement" in accordance with the Insolvency Law.

Further, subject to paragraphs 4.3, 4.4 and 4.5 of this opinion letter, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the operation of the Clearing Module Netting Provision.

No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this paragraph 3.4 to apply."

1.4 Paragraph 3.5 is deemed deleted and replaced with the following:

"3.5 Enforceability of the Addendum Netting Provision

In relation to a Clearing Agreement which includes the Addendum Netting Provision, to which an Investment Firm is a party, the Addendum Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following (i) a CM Trigger Event or (ii) a CCP

Default, the Parties would be entitled to receive or obliged to pay, in respect of each Cleared Transaction Set, only the net sum of the Cleared Set Termination Amount, determined in accordance with the Clearing Agreement.

We are of this opinion for the reasons detailed under paragraph 3.3 above. Please note that, subject to our considerations in paragraph 4.5.6 below, the Addendum Netting Provisions include the key elements of close-out netting set out in the Insolvency Law (described in sub-paragraph 3.3.2 above); therefore, for the purposes of paragraph 3.4 and subject to our considerations under paragraph 4.5.6 below, the Addendum Netting Provisions qualify as a "netting agreement" in accordance with the Insolvency Law.

Further, subject to paragraphs 4.3, 4.4 and 4.5 of this opinion letter, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the operation of the Addendum Netting Provision.

No amendments to the Addendum Netting Provision are necessary in order for the opinions expressed in this paragraph 3.5 to apply."

1.5 Paragraph 3.6 is amended by adding the following paragraph:

"*In a case where a Party, who would (but for the use of the FOA Clearing Module or the ISDA/FOA Clearing Agreement) be the Defaulting Party for the purposes of the FOA Netting Agreement, acts as Firm (as defined in the FOA Clearing Module) or Clearing Member (as defined in the ISDA/FOA Clearing Addendum), the question as to whether the FOA Netting Provision will, to the extent inconsistent with the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision, be superseded by the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision would be determined under the governing law of the Clearing Agreement.*"

1.6 Paragraph 3.7 is amended by replacement of each of sub-paragraphs 3.7.1(ii) and 3.7.2(ii), respectively, with the following:

"*(ii) during Insolvency Proceedings opened in Romania under Romanian law, notwithstanding that set-off is limited to legal set-off under the Insolvency Law (as detailed in paragraph 4.6 below), set-off will be recognised in such Insolvency Proceedings, based on the provisions of the Insolvency Law implementing article 23 of the Directive 2001/24/EC on the reorganisation and winding-up of credit institutions, where such set-off is permitted by the law applicable to the credit institution's claim, such provisions being applicable to Investment Firms by reference in the Capital Market Law, subject to our considerations in paragraph 4.2.4 regarding the fact that the applicability in respect of Investment Firms of the*

special provisions of Insolvency Law dedicated to Banks is untested in practice."

1.7 Paragraph 3.8 is deemed deleted and replaced with the following:

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

In relation to a Clearing Agreement which includes the Clearing Module Set-Off Provision (whether or not the FOA Set-Off Provisions are Disapplied Set-Off Provisions, insofar as constituting part of the Clearing Agreement), to which an Investment Firm is a Party, subject to our considerations under paragraphs 4.3 and 4.6 below, the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that the Firm would be immediately entitled to exercise its rights under the Clearing Module Set-Off Provision, and, in particular, if there has been an Event of Default in respect of the Client or a CCP Default, so that the value of any cash balance owed by one Party to the other would be set off against any Available Termination Amount owed by the Party entitled to receive the cash balance, insofar as not already brought into account as part of the Relevant Collateral Value or as any other cash amount owed by one Party to the other.

We are of this opinion for the reasons detailed in paragraphs 3.7.1(i) and 3.7.1(ii) above.

No amendments to the Clearing Module Set-Off Provision are necessary in order for the opinions expressed in this paragraph 3.8 to apply."

1.8 Paragraph 3.9 is deemed deleted and replaced with the following:

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

In relation to a Clearing Agreement which includes the Addendum Set-Off Provision, to which an Investment Firm is a Party, subject to our considerations under paragraphs 4.3 and 4.6 below, the Addendum Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that following a CM Trigger Event or a CCP Default:

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

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

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

already brought into account as part of the Relevant Collateral Value or as any other cash amount owed by one Party to the other.

We are of this opinion for the reasons detailed in paragraphs 3.7.1(i) and 3.7.1(ii) above.

No amendments to the Addendum Set-Off Provision are necessary in order for the opinions expressed in this paragraph 3.9 to apply."

1.9 Paragraph 3.10 is deemed deleted and replaced with the following:

"3.10 Enforceability of the Title Transfer Provisions

3.10.1 In relation to the FOA Netting Agreement (with Title Transfer Provisions) or a Clearing Agreement which includes the Title Transfer Provisions, (x) the characterisation of Transfers of Margin as outright transfers of title or creating a security or other interest and (y) the possibility to use the Margin Transferred without restriction would, under the conflicts of laws rules of this jurisdiction, be determined under the law chosen by the parties to apply to the FOA Netting Agreement (with Title Transfer Provisions) and/or a Clearing Agreement which includes the Title Transfer Provisions, subject to our considerations under paragraphs 4.2 and 4.8 (with respect to the law applicable to the exercise of ownership rights over financial instruments and, respectively, to contractual set-off and netting agreements).

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

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

We are of this opinion because Investment Firms are Qualifying Entities under the Financial Collateral Ordinance and, therefore, provided that all the requirements specified under paragraph 4.7 (Financial Collateral Ordinance) below are met, a Romanian court would recognise the Title Transfer Provisions with all their effects in accordance with their terms.

No amendments to the Title Transfer Provisions are necessary in order for the opinions expressed in this paragraph 3.10 to apply."

1.10 The final part of paragraph 3.11 is deemed deleted and replaced with the following:

"(...) would be determined by reference to the governing law of the FOA Netting Agreement (with Title Transfer Provisions) and a Clearing Agreement which includes the Title Transfer Provisions, subject to our considerations under paragraphs 4.2 and 4.8."

1.11 The following paragraph 3.13.2 is added after the current paragraph 3.13 (which is renumbered as 3.13.1):

"3.13.2 It is not problematic for the effectiveness of netting that, under the Clearing Module Netting Provision and the Addendum Netting Provision, termination and liquidation of Client Transactions does not occur automatically upon the opening of Insolvency Proceedings in relation to a Firm, or as the case may be Clearing Member, incorporated or organised in this jurisdiction, as the Insolvency Law recognises the key effects of netting under qualified financial contracts, as detailed in paragraph 3.3.2 above, including the termination and liquidation of Transactions upon commencement of Insolvency Proceedings."

2. MODIFICATIONS TO QUALIFICATIONS

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

2.1 Paragraph 4.2 is amended by adding a new sub-paragraph 4.2.4, as follows:

"4.2.4 Notwithstanding the above, the Insolvency Law establishes that, by exception from the rule that the effects of the opening of Insolvency Proceedings against a credit institution are governed by Romanian law, the law applicable to certain agreements entered into by the credit institution is determined as follows, and such provisions are applicable to Investment Firms as well, based on the reference in the Capital Market Law detailed in paragraph 3.1 above:

(a) the exercise of the ownership right and of other rights over financial instruments whose existence or transmission is subject to registration in a registry, an account or a centralised depositary system, held or located in an EU Member State, will be governed by the law of that EU Member State;

(b) repo agreements and agreements documenting transactions on a regulated market are governed by the law applicable to the respective agreements, subject to point (a) above;

(c) contractual set-off and netting agreements are governed by the law applicable to those agreements.

Please note that, nonetheless, the applicability in respect of Investment Firms of the special provisions of the Insolvency Law dedicated to Banks, as such is construed based on the reference in the Capital Market Law detailed in paragraph 3.1 above, is untested in practice."

2.2 The following section is added to paragraph 4.3 (*Closeout netting in a non-insolvency context*) which shall be renumbered accordingly:

"(a) Investment Firms

According to the Capital Market Law, under certain circumstances the FSA may institute a special administration (administrare speciala) procedure against an entity licensed by it. In case no improvement results in the financial standing of that entity, it may undergo bankruptcy. This is not applicable with respect to Romanian branches of foreign investment firms.

In respect of supervised entities, including Investment Firms, their license may be withdrawn by their respective regulators, which may seriously question their ability to perform their obligations under the Transactions."

2.3 Paragraph 4.8 is deemed deleted and replaced with the following:

"4.8 Multibranch Parties

The determinations reached within paragraph 3.3 above apply where Insolvency Proceedings are opened with respect to the relevant Counterparty under the Romanian insolvency laws. In all other cases, legal advice should be sought with respect to the laws of the relevant non-Romanian jurisdictions concerned.

The Council Regulation (EC) No. 1346/2000 on insolvency proceedings (EUIR) became directly applicable in Romania as of 1 January 2007, as an effect of Romania becoming a member of the European Union. While the EUIR regulates conflict of law situations where the jurisdictions involved in cross-border insolvency proceedings are those of the European Union Member States, the Insolvency Law refers to the situation where non-EU jurisdictions are involved. While the EUIR excludes from its scope of application, inter alia, Investment Firms, the Insolvency Law contains special provisions applicable to Banks, including the conflict norms implementing the Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (the "WUD(B)"). The provisions of the Insolvency Law applicable to Banks should also apply to "the authorised entities under special administration, the authorisation of which has been revoked by the FSA, to the extent of their compatibility", as provided by the Capital Market Law. Consequently, we interpret that, generally, that FSA-supervised entities subject to the Capital Market Law, such as Investment Firms, would be subject to both the substantial norms applicable to credit institutions and to the conflict norms applicable to credit institutions which implement WUD(B). However, as also detailed

in paragraph 4.2.4 above, this interpretation has not been tested in practice in Romania.

Under the Romanian law, no separate insolvency proceedings are possible in relation to the branch offices of an Investment Firm.

(a) *Investment Firms authorised in Romania with branches abroad*

Based on the provisions of the Insolvency Law, our view is that whenever a Romanian investment firm becomes bankrupt, the Romanian law does not admit any bankruptcy proceedings on such bank (including its Designated Offices abroad) other than those conducted by Romanian relevant authorities according to the Romanian law, regardless whether that investment firm has branches established abroad, whether in a EU member state or a non-EU jurisdiction. We express such view based on the following:

(i) *as a matter of principle, the Insolvency Law establishes that the proceedings set forth therein shall fall within the exclusive jurisdiction of the tribunal that includes within its territorial range the headquarters of the relevant Romanian bankrupt Bank (which should also apply to Investment Firms);*

(ii) *the Insolvency Law states that the above-mentioned tribunal shall be the only authority empowered to rule the enforcement of a bankruptcy proceeding on a Romanian bank, including its branches located in other EU Member States, and such proceeding shall be governed by the Romanian law (which shall regulate, inter alia, the assets subject to the proceeding of the insolvent bank) (which should also apply to Investment Firms);*

(iii) *the Insolvency Law states that the opening of bankruptcy proceedings with respect to a bank authorised in Romania and its branches located in other EU Member States is governed by Romanian law as regards the regime and application of the bankruptcy procedures (which should also apply to Investment Firms);*

(iv) *the Romanian legal doctrine has so far agreed on the exclusive jurisdiction of Romanian courts applying Romanian law to rule on insolvency matters related to Romanian companies having their seat of business in Romania. The seat of business determined pursuant the provisions of the Romanian Civil Code represents "the place where the head office as the main seat of administration and management of activity is located". Therefore, the commencement of Romanian insolvency proceedings against the headquarters would take effect on*

foreign branches, subject to recognition by foreign courts of the initial judgment (exequatur proceedings in the host country).

(b) *Investment Firms authorised in another EU Member State with branches in Romania*

In line with the WUD(B), which is applicable to Investment Firms by reference made in the Capital Market Law, as a matter of principle, the Insolvency Law provides that:

(i) *the authorities in the home EU Member State (i.e. the Member State where the bank was authorised) would be the only authorities entitled to rule on insolvency proceedings (reorganisation and liquidation) against banks authorised under their jurisdiction, branches and offices abroad included;*

(ii) *the law governing the regime and application of the insolvency procedure will be the law of the home EU Member State.*

Consequently, based on the provisions of the Capital Market Law, in the event of insolvency proceedings opened with respect to an investment firm authorised in an EU Member State but with a Designated Office in Romania, such proceedings would be conducted in respect of the Romanian office by the insolvency authorities from the foreign investment firm's home EU member state, and in accordance with the laws of such home state, which shall apply to all its assets, including those located in Romania.

(c) *Investment Firms authorised in a non-EU state with branches in Romania*

It should be noted that unlike the WUD(B)—which expressly contemplates the possibility of opening in the relevant EU Member States of proceedings in respect of branches of a non-EU bank which are located on the territory of those EU Member States—the Insolvency Law does not seem to include specific provisions as regards the cross-border insolvency of Romanian branches of a non-EU bank, apart from the obligation of the NBR to inform the EU Member States hosting branches of the non-EU bank of the commencement of the proceedings as soon as it becomes aware of such. In this particular situation, the principle set forth in the Romanian Civil Code should be applied in the sense that the law of the parent company (as law of the "organic statute of the company") is to govern, among others, its dissolution and liquidation.

Nevertheless, in respect of (a) and (b) above, please note that there are exceptions from the principle that proceedings would be subject to the law of the home Member State. These exceptions are the following: (i) the exercise of the ownership right and of other rights over financial instruments whose existence or transmission is subject to registration in a registry, an account or a centralised depositary system, held or located in an EU Member State, will be governed by the law of that EU Member State; (ii) repo agreements and agreements documenting transactions on a regulated market are governed by the law applicable to the respective agreements, subject to point (i) above; (iii) contractual set-off and netting agreements are governed by the law applicable to those agreements.

Therefore, if the only law applicable to the netting would be the governing law of the agreement, if the governing law of the claim allows netting, the reorganisation or winding up governed by a different law should not impair netting. Nevertheless, in respect of (b) above this position should also be checked under the law of the relevant EU Member State, since the WUD(B) is not of direct application in the EU Member States, and different Member States may have implemented it differently than Romania.

In respect of (c) above, the validity and effectiveness of netting depend on the law that governs the insolvency of the relevant non-Romanian investment firm, counterparty to the Agreement."

Romania/Prudential Regulation/FOA Documentation/Netting/Class 3

SCHEDULE 3
INSURANCE COMPANIES

Subject to the modifications and additions set out in this Schedule 3 (*Insurance Companies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are organised as Insurance Companies.

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

1. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), the opinions expressed in paragraph 3 of our opinion letter will be amended as follows:

1.1 Paragraph 3.1 is deemed deleted and replaced with the following:

"*3.1* ***Insolvency Proceedings: Insurance Companies***

*The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Insurance Company could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are bankruptcy (*faliment*) proceedings, as such regulated entities would typically undergo bankruptcy directly, with the aim to liquidate their assets, if the applicable administrative proceedings (i.e. financial rehabilitation) prove unsuccessful. The bankruptcy of Insurance Companies is governed by special provisions in the Insolvency Law adding to the general framework on Insolvency Proceedings from the Insolvency Law.*

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, without the need for any additions."

1.2 Except as otherwise provided in this Schedule, the opinions expressed in paragraph 3 will be amended to read "*Insurance Companies*" instead of "*Ordinary Corporates*".

1.3 Paragraph 3.7 is amended by replacement of each of sub-paragraphs 3.7.1(ii) and 3.7.2(ii), respectively, with the following:

> "*(ii) during Insolvency Proceedings opened in Romania under Romanian law, notwithstanding that set-off is limited to legal set-off under the Insolvency Law (as detailed in paragraph 4.6 below), set-off will be recognised in such Insolvency Proceedings, based on the provisions of the Insolvency Law implementing article 22 of the Directive 2001/17/EC on the*

reorganisation and winding-up of insurance undertakings, where such set-off is permitted by the law applicable to the insurance undertaking's claim."

1.4 Paragraph 3.10 is deemed deleted and replaced with the following:

"3.10 Enforceability of the Title Transfer Provisions

3.10.1 In relation to the FOA Netting Agreement (with Title Transfer Provisions) or a Clearing Agreement which includes the Title Transfer Provisions, (x) the characterisation of Transfers of Margin as outright transfers of title or creating a security or other interest and (y) the possibility to use the Margin Transferred without restriction would, under the conflicts of laws rules of this jurisdiction, be determined under the law chosen by the parties to apply to the FOA Netting Agreement (with Title Transfer Provisions) and/or a Clearing Agreement which includes the Title Transfer Provisions, subject to our considerations under paragraphs 4.2 and 4.8 (with respect to the law applicable to contractual set-off and to netting agreements).

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

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

We are of this opinion because Insurance Companies are Qualifying Entities under the Financial Collateral Ordinance and, therefore, provided that all the requirements specified under paragraph 4.7 (Financial Collateral Ordinance) below are met, a Romanian court would recognise the Title Transfer Provisions with all their effects in accordance with their terms.

No amendments to the Title Transfer Provisions are necessary in order for the opinions expressed in this paragraph 3.10 to apply."

1.5 The final part of paragraph 3.11 is deemed deleted and replaced with the following:

"(...) would be determined by reference to the governing law of the FOA Netting Agreement (with Title Transfer Provisions) and a Clearing Agreement which includes

the Title Transfer Provisions, subject to our considerations under paragraphs 4.2 and 4.8."

1.6 The following paragraph is added after the current paragraph 3.15 (which is renumbered as 3.15.1):

"*3.15.2 Notwithstanding the above, in the case of Foreign Defaulting Parties which are Insurance Companies incorporated or formed in the European Economic Area there can be no separate Insolvency Proceedings in this jurisdiction in relation to the Foreign Defaulting Party and the authorities in this jurisdiction would defer to the proceedings in the Foreign Defaulting Party's home jurisdiction."*

2. MODIFICATIONS TO QUALIFICATIONS

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

2.1 Paragraph 4.2 is amended by adding a new sub-paragraph 4.2.4, as follows:

"*4.2.4 Notwithstanding the above, the Insolvency Law establishes that, by exception from the rule that the effects of the opening of Insolvency Proceedings against an Insurance Company are governed by Romanian law, the law applicable to contractual set-off and to netting agreements will be the law applicable to those agreements."*

2.2 The following section is added to paragraph 4.3 (*Closeout netting in a non-insolvency context*) which shall be renumbered accordingly:

"*(a) Insurance Companies*

Under the Insolvency Law, the FSA may, under certain circumstances, institute a financial rehabilitation (redresare financiara) procedure against an Insurance Company, either according to a plan of financial rehabilitation or through the appointment of a special administrator, with the purpose to redress its activity. The commencement of this procedure may result in the prohibition of certain investments. Should the procedure fail to rehabilitate the financial status of the Insurance Company, the Insurance Company may enter into the bankruptcy procedure with the aim to liquidate its assets and redistribute the proceedings among its creditors.

In respect of supervised entities, including Insurance Companies, their license may be withdrawn by their respective regulators, which may seriously question their ability to perform their obligations under the Transactions."

2.3 Paragraph 4.8 (*Multibranch Parties*) is deemed deleted and replaced with the following:

Romania/Prudential Regulation/FOA Documentation/Netting/Class 3

*"4.8 **Multibranch Parties***

The determinations reached within paragraph 3.3 above apply where Insolvency Proceedings are opened with respect to the relevant Counterparty under the Romanian insolvency laws. In all other cases, legal advice should be sought with respect to the laws of the relevant non-Romanian jurisdictions concerned.

The Council Regulation (EC) No. 1346/2000 on insolvency proceedings (EUIR) became directly applicable in Romania as of 1 January 2007, as an effect of Romania becoming a member of the European Union. While the EUIR regulates conflict of law situations where the jurisdictions involved in cross-border insolvency proceedings are those of the European Union member states, the Insolvency Law refers to the situation where non-EU jurisdictions are involved. While the EUIR excludes from its scope of application, inter alia, Insurance Companies, the Insolvency Law contains special provisions applicable to Insurance Companies implementing the provisions of Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings.

(a) *Insurance companies authorised in Romania with branches abroad*

Based on the provisions of the Insolvency Law, whenever a Romanian Insurance Company undergoes bankruptcy proceedings, the Romanian law does not admit any bankruptcy proceedings on such Insurance Company (including its Offices abroad) other than those conducted by Romanian relevant authorities according to the Romanian law, including with respect to the branches of the Insurance Company established abroad, whether in a EU member state or a non-EU jurisdiction.

(b) *Insurance Companies authorised in another EU member state with branches in Romania*

In line with the Directive No. 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding up of insurance undertakings (the "WUD(I)"), as a matter of principle, the Insolvency Law provides that the authorities in the home EU Member State (i.e. the Member State where the Insurance Company was authorised) would be the only authorities entitled to rule upon insolvency proceedings (financial rehabilitation and bankruptcy) against Insurance Companies authorised under their jurisdiction, branches and offices abroad included, according to the law of that jurisdiction.

The Insolvency Law provides an exception from the rule that the entry into an insolvency proceeding is subject to Romanian law or to the law of the home Member

State of the Insurance Company, as applicable, i.e. contractual set-off and netting agreements will be submitted to the law of the contracts. If the only law applicable to contractual set-off and netting were the governing law of the agreement, then, if the governing law of the claim allows contractual set-off and netting, the reorganisation or winding up governed by a different law should not impair netting. Nevertheless, in respect of point (b) above, this position should also be checked under the law of the relevant EU Member State.

(c) *Insurance companies authorised in a non-EU state with branches in Romania*

The Insolvency Law states that where an Insurance Company having its main headquarters outside the EU has established branch offices in at least two EU Member States, each such branch shall benefit of an "independent treatment" with respect to the application of the Insolvency Law. This may lead to the interpretation that separate proceedings are possible under the Romanian law with respect to the assets of such branch office."

SCHEDULE 4
INVESTMENT FUNDS

Subject to the modifications and additions set out in this Schedule 4 (*Investment Funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Investment Funds.

The Romanian laws regulate the following types of Investment Funds:

(a) undertakings in collective investment in transferrable securities (the "**UCITS**") set up, based on the authorisation of the FSA, either as funds without legal personality or as corporate entities, as follows:

(i) open-end investment funds ("**OIF**") that have no legal personality, are created based on a civil society contract and are managed by an investment management company;

(ii) open-end investment companies ("**OIC**") organised as joint stock companies, Romanian legal entities;

(b) closed-end investment undertakings (the "**Non-UCITS**" or "**CIU**"). The Capital Market Law provides for two categories of **Non-UCITS**:

(i) Non-UCITS that collect funds privately or from the general public.

Under the NSC Regulation no. 15/2004, Non-UCITS collecting funds privately or from the general public may adopt various investment policies, which are specifically regulated by the FSA (based on the FSA Regulation no. 15/2004 and in various other regulations issued by NSC or, after 30 April 2014, by the FSA), i.e.: Non-UCITS with a permissive investment policy; Non-UCITS with a diversified investment policy, Non-UCITS with a restrictive investment policy, Non-UCITS with a moderated investment policy, guaranteed Non-UCITS, Non-UCITS specialised in investments in shares, Non-UCITS specialised in investments in bonds, Non-UCITS specialised in monetary investments, Non-UCITS specialised in investments in mortgage instruments.

The FSA regulates several types of Non-UCITS that collect funds exclusively and privately from qualified investors, including, inter alia, Non-UCITS specialised in investments in financial derivatives (i.e. able to invest up to 75% of their assets in financial derivatives) and Non-UCITS specialised in investments in UCITS units. Other types of Non-UCITS may be set up under FSA's regulations.

Non-UCITS must be registered with the FSA and may be established as one of the following type of entities:

(A) closed-end investment funds ("**CIF**") are set up on the basis of a civil partnership contract and, as opposed to OIFs, are bound to redeem their participative titles only at certain time intervals or at certain dates, according to the aforementioned civil society contract. An investment management company is appointed to manage the CIFs' assets.

(B) closed-end investment companies ("**CIC**") are set up as joint stock companies, on the basis of a constitutive act and issue a limited number of nominative shares that are traded on a regulated market. An investment management company manages the CIC's assets or such management may be ensured by the CIC itself.

(ii) Non-UCITS that collect funds privately from maximum 500 investors and are self managed.

These must establish their own investment policy, business conduct and transparency rules through their constitutive documents.

(c) money market funds, established either as UCITS or Non-UCITS utilising in their name the title "*fond monetar*" or "*fond de piata monetara*" ("**Money Market Funds**")

Depending on the duration of their weighted average maturity and weighted average life, Money Market Funds fall under the following categories:

(i) short-term money market fund, having extremely short weighted average maturity and weighted average life; or

(ii) money market fund, having longer weighted average maturity and weighted average life.

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 OPINIONS

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

1.1 Paragraph 3.1 is deemed deleted and replaced with the following

"3.1 Insolvency Proceedings: Investment Funds

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

3.1.1 In case of Non-UCITS which are not under the FSA's regulation and supervision and are organised as corporate entities: -

(a) *The **general proceeding** representing the proceeding whereby a certain debtor (i.e. referred to as a professional), enters after an observation period into:*

(i) ***judicial reorganisation** (reorganizare judiciara) representing the proceeding applying to an insolvent entity for the purpose of satisfying the claims of its creditors against it in accordance with a programme for payment of receivables; and/ or*

(ii) ***bankruptcy** (aiming to the winding-up of the insolvent debtor) (faliment) representing the collective and equalitarian insolvency proceeding applying to an insolvent entity for the purpose of liquidating its assets in order to cover its debts.*

(b) *The **simplified proceeding** representing the proceeding whereby a debtor of a certain nature (i.e. individual professionals registered in with the trade registry, except for liberal professions, family undertakings and the members of family undertakings, ordinary companies/professionals that either do not have any assets in their patrimony or cannot locate their constitutive documents or accounting documentation or their administrator cannot be located, their headquarters does not exist or does not correspond with the registration in the trade registry or legal entities which were subject to voluntary dissolution or liquidation prior to the start of Insolvency Proceedings, debtors requesting in the preliminary request for insolvency their intention to enter bankruptcy, any person carrying out professional activities without registration or without due registration), enters directly into the bankruptcy proceeding at the same time as the opening of the insolvency proceeding, or after an observation period.*

Under the Insolvency Law, the term "insolvency" proceedings refers to the entire collective proceeding, while the term "judicial reorganisation" refers to that part of the insolvency proceeding aiming to reorganise the insolvent debtor with the aim of ensuring its financial recovery and the satisfaction of its creditors' claims and the term "bankruptcy" proceeding designates that part of the insolvency proceeding aiming to liquidate the assets of the debtor in order to cover its debts.

*3.1.2 In case of Investment Funds regulated by the FSA, which are organised as companies, such as OICs - **bankruptcy** (faliment) proceedings, as such regulated entities would typically undergo bankruptcy directly, with the aim to liquidate their assets, if any applicable administrative proceedings prove unsuccessful. Pursuant to the Capital Market Law (which sets out that the provisions of the insolvency legislation applicable to credit institutions shall apply mutatis mutandis to "the authorised entities under special administration, the authorisation of which has been revoked by the FSA, to the extent of their compatibility", thus including Investment Funds organised as UCITS), the bankruptcy of corporate UCITS is governed by the Insolvency Law including the special proceedings applicable to credit institutions (subject to our considerations in paragraph 4.2.4 on the applicability in respect of Investment Funds organised as companies and subject to the supervision of the FSA of the special provisions of the Insolvency Law dedicated to Banks is untested in practice).*

3.1.3 Investment Funds organised as civil partnerships (i.e. not having legal personality), such as OIFs and CIFs, are not subject to insolvency laws or generally to Insolvency Proceedings.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, without the need for any additions."

1.2 The first part of paragraph 3.3.1 shall be deemed deleted and replaced with the following:

"In respect of Parties which are Investment Funds that are not organised as corporate entities (i.e. OIF(s) and CIF(s)), although the confirmation of the effects of close-out netting, expressly provided by the Insolvency Law, would not apply to the case of such Parties, our view is that the effects of the FOA Netting Provisions should be upheld under the Romanian law based on the principle of the binding force of an agreement that was made in compliance with the law (pacta sunt servanda). In these circumstances, netting in the sense of the FOA Netting Provisions should occur, subject to our considerations in paragraphs 4.3 and 4.4 below, based on the general Romanian legislation on termination of agreements and set-off of mutual debts between parties: (...)"

1.3 Except as otherwise provided in this Schedule, the opinions expressed in paragraph 3 will be amended to read "*Investment Funds*" instead of "*Ordinary Corporates*".

1.4 Paragraph 3.10 shall be amended as follows:

1.4.1 A new paragraph 3.10.1 shall be included with the following content:

"3.10.1 Non-UCITS

The opinions expressed in this paragraph 3.10.1 will refer only to Non-UCITS."

1.4.2 The opinions expressed in paragraphs 3.10.1, 3.10.2 and 3.10.3 shall be renumbered as (a), (b) and (c), respectively, and any reference to 3.10.1, 3.10.2 and 3.10.3 in this opinion shall be deemed made to the respective equivalent as per this section.

1.4.3 Reasoning expressed in paragraphs 3.10(a) and 3.10(b) shall be included in the new paragraph 3.10.1, renumbered as 3.10.1(A) and 3.10.1(B), respectively.

1.4.4 A new paragraph 3.10.2 shall be added with the following content:

"3.10.2 UCITS

(a) *In relation to the FOA Netting Agreement (with Title Transfer Provisions) or a Clearing Agreement which includes the Title Transfer Provisions, (x) the characterisation of Transfers of Margin as outright transfers of title or creating a security or other interest and (y) the possibility to use the Margin Transferred without restriction would, under the conflicts of laws rules of this jurisdiction, be determined under the law chosen by the parties to apply to the FOA Netting Agreement (with Title Transfer Provisions) and/or a Clearing Agreement which includes the Title Transfer Provisions, subject to our considerations under paragraphs 4.2 and 4.8 (with respect to the law applicable to the exercise of ownership rights over financial instruments and, respectively, to contractual set-off and netting agreements).*

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

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

We are of this opinion because Investment Funds organised as UCITS are Qualifying Entities under the Financial Collateral Ordinance and, therefore, provided that all the requirements specified under paragraph 4.7 (Financial Collateral Ordinance) below are met, a Romanian court would recognise the Title Transfer Provisions with all their effects in accordance with their terms."

1.5 The following paragraph should be added to paragraph 3.13:

"As regards Investment Funds which are not organised as corporate entities, it is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provisions (or, as applicable, the Clearing Module Netting Provisions or Addendum Netting Provisions) although, as the Insolvency Law is not applicable, an option to terminate the agreement would be valid based on the principle of the binding force of an agreement that was made in compliance with the law, subject to our considerations in paragraph 3.3.1."

2. MODIFICATION TO QUALIFICATIONS

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

2.1 Paragraph 4.2 is amended by adding a new sub-paragraph 4.2.4, as follows:

"4.2.4 Notwithstanding the above, the Insolvency Law establishes that, by exception from the rule that the effects of the opening of Insolvency Proceedings against a Bank are governed by Romanian law, the law applicable to certain agreements entered into by the Bank is determined as follows, and such provisions are applicable to Investment Funds organised as companies and subject to the supervision of the FSA as well, based on the reference in the Capital Market Law detailed in paragraph 3.1.2 above:

(a) the exercise of the ownership right and of other rights over financial instruments whose existence or transmission is subject to registration in a registry, an account or a centralised depositary system, held or located in an EU Member State, will be governed by the law of that EU Member State;

(b) repo agreements and agreements documenting transactions on a regulated market are governed by the law applicable to the respective agreements, subject to point (a) above;

(c) contractual set-off and netting agreements are governed by the law applicable to those agreements.

Please note that, nonetheless, the applicability in respect of Investment Funds organised as companies and subject to the supervision of the FSA of the special provisions of the Insolvency Law dedicated to Banks, as such is construed based on the reference in the Capital Market Law detailed in paragraph 3.1.2 above, is untested in practice."

2.2 The following section is added to paragraph 4.3 (*Close-out netting in a non insolvency context*), which shall be renumbered accordingly:

"(a) *Investment Funds*

The Capital Markets Law provides that entities authorised by the FSA may be placed under FSA's special administration (administrare speciala) if such entities are in the situation of becoming insolvent or if any of the entities' directors, executives or auditors are found guilty of violating the provisions of the UCITS Act, the Capital Markets Law, of FSA regulations or of the entities' license. In the light of the Capital Markets Law, an entity is insolvent in case of obvious inability of paying due debts from its own funds or if the FSA has withdrawn its license due to the failure of the financial recovery measures undertaken during the special supervision period.

The special administrator shall entirely take over the attributions of the management board of the supervised entity placed under special administration and shall decide the necessary measures for preserving the entity's assets and recover the entity's receivables to the best interest of the investors and of other creditors. Administrative liquidation (lichidare administrativa) proceedings commence if the entity is not able to recover during special administration and are carried out based on the legal provisions applicable to companies, NSC (or, starting with 30 April 2013, the FSA) regulations and on the clauses in the Investment Fund's partnership agreement (if the case may be).

Upon termination of the civil partnership contract, OIFs and CIFs undergo dissolution (dizolvare) and liquidation (lichidare.)

In respect of supervised entities, including Investment Funds, their license may be withdrawn by their respective regulators, which may seriously question their ability to perform their obligations under the Transactions."

2.3 Paragraph 4.8 (*Multibranch Parties*) is deemed deleted and replaced with the following:

"4.8 Multibranch Parties

The determinations reached within paragraph 3.3 above apply where Insolvency Proceedings are opened with respect to the relevant counterparty under the Romanian insolvency laws. In all other cases, legal advice should be sought with respect to the laws of the relevant non-Romanian jurisdictions concerned.

*The Council Regulation (EC) No. 1346/2000 on insolvency proceedings ("**EUIR**") became directly applicable in Romania as of 1 January 2007, as an effect of Romania becoming a member of the European Union. While the EUIR regulates conflict of law situations where the jurisdictions involved in cross-border insolvency proceedings are those of the European Union member states, the Insolvency Law refers to the situation where non-EU jurisdictions are involved. While the EUIR excludes from its scope of application, inter alia, Investment Funds, the Insolvency Law contains special provisions applicable to credit institutions, including the conflict norms implementing the Directive 2001/24/EC of the European Parliament and of the Council of 4 April*

2001 on the reorganisation and winding up of credit institutions (the "WUD(B)"). The provisions of the Insolvency Law applicable to credit institutions should also apply to "the authorised entities under special administration, the authorisation of which has been revoked by the FSA, to the extent of their compatibility", as provided by the Capital Market Law. Consequently, we interpret that, generally, FSA-supervised entities subject to the Capital Market Law, such as Investment Firms organised as UCITS, would be subject to both the substantial norms applicable to credit institutions and to the conflict norms applicable to credit institutions which implement WUD(B), while Non-UCITS would remain subject to the common provisions of the Insolvency Law. However, as also detailed in paragraph 4.2.4 above, this interpretation has not been tested in practice in Romania.

4.8.1 Investment funds which are not subject to the FSA's regulation and supervision and are organised as corporate entities

*Since under the EUIR and the Insolvency Law insolvency proceedings may be opened simultaneously in Romania and various other jurisdictions in respect of a Non-UCITS organised as corporates and not subject to FSA's regulation and supervision, with assets located in such other jurisdictions, subject as follows in this paragraph 4.8 there can be insolvency proceedings in Romania with respect to the insolvent Party (the **"Insolvent Party"**):*

(a) *where the Insolvent Party is a Romanian corporate and has one or several Offices (i.e. which must be "Establishments" within the meaning of the EUIR and the Insolvency Law) in other jurisdictions; or*

(b) *where the Insolvent Party is a foreign corporate and has one or several Designated Offices (i.e. Establishments) in Romania;*

whether or not the relevant authorities in any other jurisdiction than Romania have initiated proceedings in respect of the Insolvent Party, except where:

(a) *the Insolvent Party is an entity subject to the Insolvency Law or the EUIR and not an Excepted Entity, and*

(b) *it is alleged and proved that the centre of main interests (**"COMI"**) of the Insolvent Party is not in Romania and the Insolvent Party has no Establishment in Romania.*

in which case Romanian courts will have no jurisdiction in respect of insolvency proceedings in relation to the Insolvent Party.

Subject to the requirements above regarding the jurisdiction of Romanian insolvency authorities being satisfied, our view is that an Insolvency Representative should, subject as follows below, include assets and obligations arising from all Transactions governed by the FOA Netting

Agreements or by the Clearing Agreements (regardless of the Designated Office from which they were entered into) in the calculation of amounts owed to and from the Insolvent Party and should uphold the close-out netting provisions of the FOA Netting Agreements and of the Clearing Agreements. However, where the Insolvent Party is an entity subject to the EUIR and not an Excepted Entity and if:

(a) *the COMI of the Insolvent Party is in Romania, the COMI of the Non-Insolvent Party is in another EU Member State, and there are territorial insolvency (secondary) proceedings in respect of the Insolvent Party in that other EU Member State; or*

(b) *both the COMI of the Insolvent Party and the COMI of its counterparty (the "**Non-Insolvent Party**") are not in Romania, but in another EU Member State;*

then the authorities in Romania would defer to the proceedings in the EU jurisdiction where the claims of the Insolvent Party are situated (i.e. the jurisdiction where the COMI of the Non-Insolvent Party is situated). This is due to the fact that, under the EUIR, if territorial proceedings are opened in an EU Member State, such proceedings will take effect only with respect to the assets of the insolvent debtor that are located in that EU Member State as, according to the EUIR, "the Member State in which assets are situated" means, in respect of assets taking the form of claims, the "Member State within the territory of which the third party required to meet them (i.e. debtor of such claims or, in other words, the Non-Insolvent Party under the FOA Netting Agreement or the Clearing Agreement, our explanation) has its centre of main interests".

Where (i) the Insolvent Party has its main headquarters[11] in Romania and there are secondary insolvency proceedings opened in non-EU jurisdictions and recognised in Romania or (ii) where the main insolvency procedure of the Insolvent Party is opened in a non-EU jurisdiction and there are secondary insolvency proceedings opened in Romania, in accordance with the Insolvency Law, the Insolvency Representatives (both Romanian and foreign) will be entitled to challenge in Romania the acts and operations of the Insolvent Party only with the observance of the provisions of Romanian law. As the netting of Transactions under the FOA Netting Agreement and/or the Clearing Agreements are protected under the Insolvency Law, we are of a view that, to the extent that claims under Transactions may be located in Romania (i.e. under the Insolvency Law, claims are deemed located in the jurisdiction where

[11] Under the Insolvency Law, the "main headquarters" of a company will be deemed to be located where the center of the main management, supervision and administration of the statutory activity of the company is located, as such center may be determined by third parties, even if the resolutions of the relevant corporate bodies are adopted pursuant to instructions received from stakeholders located in other jurisdictions.

their debtor has its centre of main interests), the Firm/CM will be able to rely on the Insolvency Law protecting netting.

Furthermore, the opening of insolvency proceedings shall not affect the rights "in rem" of creditors or third parties in respect of assets belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings. Thus, the holder of the right "in rem" retains all his rights in respect of such asset (e.g. may exercise the right to separate the security from the insolvent estate and, where necessary, to realize the asset individually to satisfy the claim). Therefore, where there is a right "in rem" affecting an asset located outside the state where the proceedings were opened, the right is immune from the effects of EU Member State proceedings except for actions for voidness, voidability or unenforceability (of legal acts detrimental to all the creditors).

4.8.2 Investment Funds regulated and supervised by the FSA

The provisions of the Insolvency Law should also apply to "the authorised entities under special administration, the authorisation of which has been revoked by the FSA", as provided by the Capital Market Law, thus including Investment Funds which are authorised and supervised by the FSA—please note that, however, as also detailed in paragraph 4.2.4 above, this interpretation has not been tested in practice in Romania.

(a) *Investment Funds authorised in Romania with branches abroad*

Based on the provisions of the Insolvency Law, our view is that whenever a Romanian Investment Fund supervised by the NSC becomes bankrupt, the Romanian law does not admit any bankruptcy proceedings on such investment fund (including its Designated Offices abroad) other than those conducted by Romanian relevant authorities according to the Romanian law, regardless whether that Investment Fund has branches established abroad, whether in a EU Member State or a non-EU jurisdiction. We express such view based on the following:

(i) *as a matter of principle, the Insolvency Law establishes that the proceedings set forth therein shall fall within the exclusive jurisdiction of the tribunal that includes within its territorial range the headquarters of the relevant Romanian bankrupt bank (which should also apply to Investment Funds supervised by the FSA);*

(ii) *the Insolvency Law states that the above-mentioned tribunal shall be the only authority empowered to rule the enforcement of a bankruptcy proceeding on a Romanian bank, including its*

branches located in other EU Member States, and such proceeding shall be governed by the Romanian law which shall regulate, inter alia, the assets subject to the proceeding of the insolvent bank (which should also apply to investment funds supervised by the FSA);

(iii) *the Insolvency Law states that the opening of bankruptcy proceedings with respect to a bank authorised in Romania and its branches located in other EU Member States is governed by Romanian law as regards the regime and application of the bankruptcy procedures (which should also apply to Investment Funds supervised by the FSA);*

(iv) *the Romanian legal doctrine has so far agreed on the exclusive jurisdiction of Romanian courts applying Romanian law to rule on insolvency matters related to Romanian companies having their seat of business in Romania. The seat of business determined pursuant the provisions of the Romanian Civil Code represents "the place where the head office as the main seat of administration and management of activity is located". Therefore, the commencement of Romanian insolvency proceedings against the headquarters would take effect on foreign branches, subject to recognition by foreign courts of the initial judgment (exequatur proceedings in the host country).*

(b) *Investment funds authorised in another EU Member State with branches in Romania*

*In line with the Directive No. 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (the "**WUD(B)**"), as a matter of principle, the Insolvency Law provides that:*

(i) *the authorities in the home EU Member State (i.e. the Member State where the bank was authorised) would be the only authorities entitled to rule on insolvency proceedings (reorganisation and liquidation) against banks authorised under their jurisdiction, branches and offices abroad included;*

(ii) *the law governing the regime and application of the insolvency procedure will be the law of the home EU Member State.*

Consequently, based on the provisions of the Capital Market Law, in the event of insolvency proceedings opened with respect to an investment fund authorised in an EU Member State but with a Designated Office in Romania, such proceedings would be conducted in respect of the Romanian office by the insolvency authorities from the foreign investment fund's home EU member state, and in accordance with the laws of such home state, which shall apply to all its assets, including those located in Romania..

(c) *Investment funds authorised in a non-EU state with branches in Romania*

It should be noted that unlike the WUD(B)—which expressly contemplates the possibility of opening in the relevant EU Member States of proceedings in respect of branches of a non-EU bank which are located on the territory of those EU Member States—the Insolvency Law does not seem to include specific provisions as regards the cross-border insolvency of Romanian branches of a non-EU bank, apart from the obligation of the NBR to inform the EU Member States hosting branches of the non-EU bank of the commencement of the proceedings as soon as it becomes aware of such. In this particular situation, the principle set forth in the Romanian Civil Code should be applied in the sense that the law of the parent company (as law of the "organic statute of the company") is to govern, among others, its dissolution and liquidation.

Nevertheless, in respect of (a) and (b) above, please note that there are exceptions from the principle that proceedings would be subject to the law of the home Member State. These exceptions are the following: (i) the exercise of the ownership right and of other rights over financial instruments whose existence or transmission is subject to registration in a registry, an account or a centralised depositary system, held or located in an EU Member State, will be governed by the law of that EU Member State; (ii) repo agreements and agreements documenting transactions on a regulated market are governed by the law applicable to the respective agreements, subject to point (i) above; (iii) contractual set-off and netting agreements are governed by the law applicable to those agreements.

Therefore, if the only law applicable to the netting would be the governing law of the agreement, if the governing law of the claim allows netting, the reorganisation or winding up governed by a different law should not impair netting. Nevertheless, in respect of (b) above this position should also be checked under the law of the relevant EU Member State, since the WUD(B) is not of direct application in the EU Member States, and different Member States may have implemented it differently than Romania.

In respect of (c) above, the validity and effectiveness of netting depend on the law that governs the insolvency of the relevant non-Romanian investment fund, counterparty to the FOA Netting Agreements and/or the Clearing Agreements."

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SCHEDULE 5
STATUTORY CORPORATIONS

Subject to the modifications and additions set out in this Schedule 5 (*Statutory Corporations*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Statutory Corporations.

1. MODIFICATIONS TO OPINIONS

1.1 Except as otherwise provided in this Schedule, the opinions expressed in paragraph 3 will be amended to read "*Statutory Corporations*" instead of "*Ordinary Corporates*".

2. MODIFICATIONS TO QUALIFICATIONS

The qualifications at paragraph 4 are deemed modified as follows:

2.1 The qualifications in paragraph 4.8 shall be amended to read "*Statutory Corporations*" instead of "*Ordinary Corporates*".

SCHEDULE 6
STATE-OWNED ENTITIES

Subject to the modifications and additions set out in this Schedule 6 (*State-Owned Entities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are State Owned Entities.

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 OPINIONS

1.1 Except as otherwise provided in this Schedule, the opinions expressed in paragraph 3 will be amended to read "*State-Owned Entities*" instead of "*Ordinary Corporates*".

2. MODIFICATIONS TO QUALIFICATIONS

The qualifications at paragraph 4 are deemed modified as follows:

2.1 The qualifications in paragraph 4.8 shall be amended to read "*State-Owned Entities*" instead of "*Ordinary Corporates*".

2.2 The following section is added to paragraph 4.3 (*Closeout netting in a non-insolvency context*), which shall be renumbered accordingly:

"***4.3.1 State Owned Entities***

State owned entities in process of privatisation, where the Romanian State or local public administration authority holds a majority share capital, may be subject in certain circumstances to a special administration (administrare speciala) proceeding. The prerogatives of the special administrator include, inter alia the filing of claims for the annulment of, inter alia (a) fraudulent acts entered into by the management of the relevant company to the detriment of the shareholders or the company itself, if the case may be; (b) patrimonial transfers, commercial acts entered into by the management of the relevant company and provision of collateral which might damage the rights of the shareholders."

SCHEDULE 7
NON-BANKING FINANCIAL INSTITUTIONS

Subject to the modifications and additions set out in this Schedule 7 (*Non-Banking Financial Institutions*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are NFIs.

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 THE TERMS OF REFERENCE AND DEFINITIONS

The following section is added to paragraph 1 (*Terms of reference and definitions*) of the opinion letter which shall be renumbered accordingly:

"*1.16 The opinions given at paragraph 3.10 (Enforceability of the Title Transfer Provisions) do not apply in respect of NFIs registered in the General Registry maintained by the National Bank of Romania in accordance with the NFI Law, which are not subject to the prudential supervision of the National Bank of Romania.*"

2. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), the opinions at paragraph 3 of the opinion letter are deemed modified as follows.

2.1 Except as otherwise provided in this Schedule, the opinions expressed in paragraph 3 will be amended to read "*Non-Banking Financial Institutions*" instead of "*Ordinary Corporates*".

2.2 In paragraph 3.10, sub-paragraphs 3.10.2 and 3.10.3 and the non-numbered sub-paragraph after 3.10.3 are deemed deleted and replaced with the following:

3.10.2 *In relation to a FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions where the Client is a Defaulting Party, to which a NFIs registered in the Special Registry maintained by the National Bank of Romania and supervised by the National Bank of Romania is a party, following the specification or deemed occurrence of a Liquidation Date, the Non-Defaulting Party would be immediately (and without fulfilment of any further condition) entitled to exercise its rights under the Title Transfer Provisions, so that the Default Margin Amount (as calculated pursuant to the terms of the Title Transfer Provisions) would be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision, subject to our considerations in paragraph 4.7.(b).*

3.10.3 In relation to a Clearing Agreement which includes the Title Transfer Provisions, to which a NFIs registered in the Special Registry maintained by the National Bank of Romania and supervised by the National Bank of Romania is a party, and in the case of a Firm Trigger Event, a CM Trigger Event, or a CCP Default, the value of the Transferred Margin would be taken into account as part of the Relevant Collateral Value, subject to our considerations in paragraph 4.7.(b).

We are of this opinion because NFIs registered in the Special Registry maintained by the National Bank of Romania and supervised by the National Bank of Romania are Qualifying Entities under the Financial Collateral Ordinance, subject to our considerations in paragraph 4.7.(b), and therefore a Romanian court should recognise the Title Transfer Provisions with all their effects in accordance with their terms.

3. MODIFICATIONS TO QUALIFICATIONS

The qualifications at paragraph 4 are deemed modified as follows:

3.1 The following section is added to paragraph 4.3, which shall be renumbered accordingly:

"(a) *Supervised entities in general*

In respect of supervised entities, including NFIs registered in the Special Registry maintained by the National Bank of Romania, their license may be withdrawn by their respective regulators, which may seriously question their ability to perform their obligations under the Transactions."

3.2 The qualifications in paragraph 4.8 shall be amended to read "*Non-Banking Financial Institutions*" instead of "*Ordinary Corporates*".

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SCHEDULE 8
PENSION FUNDS

Subject to the modifications and additions set out in this Schedule 8 (*Pension Funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Pension Funds.

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

The following sections are added to paragraph 1 (*Terms of reference and definitions*) of the opinion letter, which shall be renumbered accordingly:

"*1.16 The opinions given in paragraphs 3.10 and 3.11 of this opinion letter shall not apply in respect of Pension Funds, as such entities are not Qualifying Entities and as they may not create any collateral on their assets.*

1.17 The opinions given in paragraph 3.14 (Multibranch Parties) of this opinion letter shall not apply in respect of Pension Funds."

2. MODIFICATIONS TO OPINIONS

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

2.1 Except as otherwise provided in this Schedule, the opinions expressed in paragraph 3 will be amended to read "*Pension Funds*" instead of "*Ordinary Corporates*".

2.2 Paragraph 3.1 is deemed deleted and replaced with the following:

"*3.1* ***Insolvency Proceedings: Pension Funds***

As Pension Funds are not corporate entities, they are not capable of being subjected to any Insolvency Proceedings, subject to paragraph 4.3 below."

2.3 Paragraphs 3.3.1 and 3.3.2 are deemed deleted and replaced with the following:

"*We are of this opinion because, in respect of Parties which are Pensions Funds, although the confirmation of the effects of close-out netting, expressly provided by the Insolvency Law, would not apply to the case of such Parties, in accordance with paragraph 3.1 above, but, however, subject to the reservations made in connection to the special powers of special administrators of Pension Funds in paragraph 4.3, our view is that the effects of the FOA Netting Provisions should be upheld under the Romanian law based on the principle of the binding force of an agreement that was*

made in compliance with the law (pacta sunt servanda). However, this argument was not, to the best of our knowledge, tested before a Romanian court and we are not currently in a position to clearly confirm the enforceability of FOA Netting Provisions in respect of Pension Funds."

2.4 The second sub-paragraph of paragraph 3.4 is deemed deleted and replaced with the following:

"We are of this opinion for the reasons detailed in the second sub-paragraph of paragraph 3.3 above."

2.5 The second sub-paragraph of paragraph 3.5 is deemed deleted and replaced with the following:

"We are of this opinion for the reasons detailed in the second sub-paragraph of paragraph 3.3 above."

2.6 The second sub-paragraph of paragraph 3.7.1 is deemed deleted and replaced with the following:

"We are of this opinion for the following reasons:

(a) the principle of the binding force of an agreement that was made in compliance with the law (pacta sunt servanda); and

(b) set-off is generally recognised under Romanian law and may occur either as (i) legal set-off (which requires that the receivables are mutual, certain, liquid and due and that they have as object the payment of an amount of money of the delivery of goods and operates as an effect of the law, without further parties' consent) or (ii) contractual (which generally operates based on the parties' agreement when the legal conditions for legal set-off are not met)."

2.7 The second sub-paragraph of paragraph 3.7.2 is deemed deleted and replaced with the following:

"We are of this opinion for the reasons detailed in the second sub-paragraph of paragraph 3.7.1 above."

2.8 Paragraph 3.13 is deemed deleted and replaced with the following:

"3.13 Automatic Termination

It is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provisions, although, in respect of Pension Funds, as the Insolvency Law is not applicable, an option to terminate the agreement would be valid based on the principle of the binding force of an agreement that was made in compliance with the law, subject to our considerations in paragraph 3.3."

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3. MODIFICATIONS TO QUALIFICATIONS

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

3.1 Paragraphs 4.3.1, 4.3.2 and 4.3.3 are deemed deleted and replaced with the following (paragraph 4.3.4 being renumbered as 4.3.2):

"4.3 (*Closeout netting in a non-insolvency context*)

(a) Pension Funds

Non-corporate Counterparties (such as Pension Funds) cannot be subject to insolvency proceedings under the Romanian law.

Under both the PMPF Law and the OPF Law, Pension Funds may be placed by the FSA under special supervision (supraveghere speciala), a form of regulatory supervision of a Pension Fund, and, respectively, under special administration (administrare speciala), aiming at assisting the participants to the Pension Fund to transfer their personal assets to other pension funds in a given timeline.

The FSA may place Pension Funds under special supervision in circumstances where the pension fund registers operational deficiencies or certain financial or investment related inadequacies e.g. failure to meet required technical provisions; failure to observe minimum share capital requirements; decrease of the fund's return rate under the level of the minimum return rate computed by the FSA during two consecutive quarters; the impending failure of the Pension Fund to meet its obligations etc. The main purpose of the special supervision is to limit the risks related to the Pension Fund's activity and to ensure the recovery of the Pension Fund, in view of protecting the interests of the Pension Fund participants and beneficiaries. A special supervision council is appointed by the FSA to oversee the Pension Fund's activity.

Similarly, the FSA initiates the special administration in respect of a Pension Fund in the case of withdrawal of the authorization of the Pension Fund or of its administrator, in cases such as failure of compliance with the prospectus of a Pension Fund, decrease of the number of participants of the Pension Fund under the minimum legal number, decrease of the fund's return rate under the level of the minimum return rate during four consecutive quarters, the withdrawal of the administrator's authorization or the failure by the administrator to protect the interests of the fund's participants and beneficiaries or the administrator's failure to establish sufficient technical provisions for its entire activity. After communication by the FSA of the decision to withdraw the Pension Fund's authorization or the authorization of the Pension Fund's administrator and until the date at which the special administrator is appointed, the activity of the Pension Fund is assisted and supervised by the FSA representatives specifically appointed to this end, with

similar attributions to the ones of the supervision commission appointed to exert special supervision over the Pension Fund. After appointment of the special administrator by the FSA, its main attribution is to supervise the transfer of the participants to other Pension Funds.

The PMPF Law and the OPF Law list, among the attributions of the supervisory committees appointed by the FSA (in the case of both the special supervision and the special administration procedures), the right to suspend or cancel the decisions (actele de decizie) of the Pension Fund's administrator which are contrary to the prudential regulations or which determine the deterioration of the financial situation of the Pension Fund. In the absence of an official interpretation of this attribution of the FSA's supervisory committee and considering that the legal provision does not make a distinction between decisions made by the Pension Fund's administrator before or after the start of the special supervision procedure or the communication of the withdrawal of the administrator's authorization and appointment of a supervisory committee to overlook the Pension Fund's activity until appointment of a special administrator, there is a risk that the FSA interprets these provisions, in an extensive manner, as granting to the supervisory committee powers to examine and potentially sanction decisions (acte de decizie) taken by a Pension Fund's administrator even before the appointment of the supervisory committee. If such an interpretation is followed by the FSA, this could potentially lead to the cancellation of decisions of the administrator which approved the entry of the Pension Fund into Transactions before the appointment of the supervisory committee, including to retroactively cancel such decisions based on opportunity grounds or on grounds of non-compliance with regulations. Such cancellation could potentially lead to the termination of the Transaction itself.

In our view, however, this interpretation would be excessive, as it would grant to the special supervision committees appointed by the FSA more extensive powers than an Insolvency Representative has in an ordinary bankruptcy procedure and would significantly harm the stability and predictability of the contractual relationships of a Pension Fund. The supervisory committee appointed by the FSA should only be entitled to supervise and sanction decisions of the Pension Fund's administrator taken only after establishment of the special supervision or special administration measures. However, to the best of our knowledge, none of the interpretations above was confirmed by the FSA until the date of issuance of this opinion letter, nor have such interpretations been tested in court.

Moreover, in respect of supervised entities, including OPFs and PMPFs, their license may be withdrawn by their respective regulators, which may seriously question their ability to perform their obligations under the Transactions.

3.2 Paragraphs 4.5, 4.6 and 4.8 are deemed deleted (without subsequent renumbering).

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SCHEDULE 9
MINISTRY OF PUBLIC FINANCE

Subject to the modifications and additions set out in this Schedule 9 (*Ministry of Public Finance*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of MPF.

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

The following section is added to paragraph 1 (*Terms of reference and definitions*) of the opinion letter, which shall be renumbered accordingly:

"*1.15 The opinions given in paragraph 3.14 (Multibranch Parties) of this opinion shall not apply in respect of the MPF.*"

2. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), the opinions at paragraph 3 of the opinion letter are deemed modified as follows.

2.1 Except as otherwise provided in this Schedule, the opinions expressed in paragraph 3 will be amended to read "*MPF*" instead of "*Ordinary Corporates*".

2.2 Paragraph 3.1 is deemed deleted and replaced with the following:

"*3.1 **Insolvency Proceedings: MPF***

The Romanian State, acting through the MPF, as legal person of public law cannot be subject to any Insolvency Proceedings, subject to paragraph 4.3."

2.3 Paragraphs 3.3.1 and 3.3.2 are deemed deleted and replaced with the following:

"*We are of this opinion because, in respect of the MPF, although the confirmation of the effects of close-out netting, expressly provided by the Insolvency Law would not apply, our view is that the effects of the FOA Netting Provisions should be upheld under the Romanian law based on the following arguments:*

(a) *the principle of the binding force of an agreement that was made in compliance with the law (*pacta sunt servanda*); and*

(b) *in the case of the Romanian State (acting through the MPF), the Romanian law governing public debt provides expressly that, for the purpose of*

managing the risks associated with the governmental public indebtedness, the MPF may enter into master agreements that will define and regulate netting, which involves the set-off of rights and obligations of the MPF and its counterparty (financial institution) until a single net amount, convertible in a single currency, is obtained,

but these arguments were not, to the best of our knowledge, tested before a Romanian court and we are not currently in a position to clearly confirm the enforceability of the FOA Netting Provisions in respect of the MPF.

Further, subject to paragraphs 4.3 and 4.4 of this opinion letter, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Non-Defaulting Party.

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this paragraph 3.3 to apply."

2.4 The second sub-paragraph of paragraph 3.4 is deemed deleted and replaced with the following:

"We are of this opinion for the reasons detailed in the second sub-paragraph of paragraph 3.3 above."

2.5 The second sub-paragraph of paragraph 3.5 is deemed deleted and replaced with the following:

"We are of this opinion for the reasons detailed in the second sub-paragraph of paragraph 3.3 above."

2.6 The second sub-paragraph of paragraph 3.7.1 is deemed deleted and replaced with the following:

"We are of this opinion for the following reasons:

(a) the principle of the binding force of an agreement that was made in compliance with the law (pacta sunt servanda); and

(b) set-off is generally recognised under Romanian law and may occur either as (i) legal set-off (which requires that the receivables are mutual, certain, liquid and due and that they have as object the payment of an amount of money of the delivery of goods and operates as an effect of the law, without further parties' consent) or (ii) contractual (which generally operates based on the parties' agreement when the legal conditions for legal set-off are not met)."

2.7 The second sub-paragraph of paragraph 3.7.2 is deemed deleted and replaced with the following:

"We are of this opinion for the reasons detailed in the second sub-paragraph of paragraph 3.7.1 above."

2.8 Paragraph 3.10 is deemed deleted and replaced with the following:

"3.10 Enforceability of the Title Transfer Provisions

3.10.1 In relation to the FOA Netting Agreement (with Title Transfer Provisions) or a Clearing Agreement which includes the Title Transfer Provisions, (x) the characterisation of Transfers of Margin as outright transfers of title or creating a security or other interest and (y) the possibility to use the Margin Transferred without restriction would, under the conflicts of laws rules of this jurisdiction, be determined under the law chosen by the parties to apply to the FOA Netting Agreement (with Title Transfer Provisions) and/or a Clearing Agreement which includes the Title Transfer Provisions, subject to our considerations under paragraph 4.2.

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

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

We are of this opinion because the MPF is a Qualifying Entity under the Financial Collateral Ordinance and therefore a Romanian court would recognise the Title Transfer Provisions with all their effects in accordance with their terms.

No amendments to the Title Transfer Provisions are necessary in order for the opinions expressed in this paragraph 3.10 to apply."

2.9 Paragraph 3.13 is deemed deleted and replaced with the following:

"3.13 Automatic Termination

It is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provision to ensure the effectiveness of netting under the FOA Netting Agreement in the event of bankruptcy, liquidation or other similar circumstances because, in respect of the MPF, although

the Insolvency Law is not applicable, an option to terminate the agreement would be valid based on the principle of the binding force of an agreement that was made in compliance with the law."

3. MODIFICATIONS TO QUALIFICATIONS

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

3.1 Paragraphs 4.3.1, 4.3.2 and 4.3.3 are deemed deleted and replaced with the following, while paragraph 4.3.4 is renumbered as 4.3.2:

"4.3.1 Close-out netting in a non-insolvency context

As the Romanian State (acting through the MPF) as legal person of public law cannot be subject to any insolvency proceedings, the Events of Default clause of the FOA Netting Agreements may not apply in the current form to the Romanian State. We suggest amending the Events of Default clause of the FOA Netting Agreements so as to cover specific Events of Default concerning the Romanian State whenever the Romanian State is the Counterparty under the FOA Netting Agreement and each Transaction, such as the Romanian State (a) disaffirming, disclaiming, repudiating or rejecting, in whole or in part, or challenging the validity of, or it being or it admitting to being unable to pay, its indebtedness, or declaring or imposing a moratorium, standstill, waiver or deferral, whether de facto or de jure, with respect to its indebtedness, or ceasing to be a member in good standing of the International Monetary Fund or ceasing to be fully eligible to utilise the resources of the International Monetary Fund."

3.2 Paragraphs 4.5, 4.6 and 4.8 are deemed deleted (without subsequent renumbering).

3.3 The following sections are added to paragraph 4.14 (*Further reservations*) which shall be renumbered accordingly:

"(a) Under the Romanian Government Ordinance No. 22/2002 on the foreclosure of the public institutions' payment obligations under writs of enforcement, as subsequently amended and supplemented, the foreclosure of the payment obligations of public institutions established through writs of enforcement may only be carried out against the amounts included for such purposes in the relevant public budget. Should there not be sufficient amounts in the budget for such purpose, the public institution has the benefit of a six month period from the date of receipt of the summons for payment from a competent enforcement officer to fulfil its payment obligations before the relevant creditor may begin the foreclosure proceeding against it according to the Romanian Code of Civil Procedure or other applicable foreclosure laws. Furthermore, a court of law may grant a grace period or rescheduling of payments at the request of the respective public institution, if the respective public institution evidences that it is unable to meet its obligations towards the

relevant creditor because of obligations incumbent on the respective public institution according to the law.

(b) *Outside the framework of Emergency Government Ordinance no. 46/2013 on the financial crisis and insolvency of territorial-administrative units (which do not include the MPF), Romanian courts are not familiar with the concept of insolvency of public authorities, and consequently the procedure for, and enforcement of payment under the FOA Netting Agreements or the Clearing Agreements in such circumstances is uncertain.*

(c) *Certain rights and properties of the Romanian State, as the case may be, benefit from sovereign immunity under Romanian or international law, which implies, inter alia, that such rights and properties, on the grounds that they belong to the public domain of Romania or of Romanian administrative-territorial units (i.e. counties, cities or villages): (i) cannot be sold or otherwise subjected to transfer of ownership, (ii) cannot constitute security for creditors or be subjected to foreclosure and (iii) cannot be acquired by third parties by prolonged possession over immovables ("uzucapiune"), by good-faith possession of movable assets or by any other means whatsoever. For the purposes hereof, such rights and properties include, without limitation, all the assets listed in Article 136 of the Romanian Constitution and Article 859 of the new Civil Code (i.e. subterranean resources of public interest, airspace, waters with hydroelectric potential, of national or local interest, beaches, territorial waters, natural resources of the contiguous economic zone and the continental shelf, as well as other assets established by law), the assets listed in the Schedule of the Public Property Law No. 213/1998 as subsequently amended (e.g. electrical energy transportation networks, railway infrastructure and their tunnels, oil and gas pipes, navigable channels, reservoirs and dams etc.), any present or future "premises of the mission" as defined in the Vienna Convention on Diplomatic Relations signed in 1961 (including the furnishings and other property therein and the means of transport of such mission), any "consular premises" as defined in the Vienna Convention on Consular Relations signed in 1963 (including the furnishings and other property therein and the means of transport of such mission) or military property or military assets or property or assets of the Romanian State related thereto, and any other assets that according to the Romanian laws or by their nature are of public use or interest and are acquired by legal means by the Romanian State or by the administrative-territorial units of Romania."*

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SCHEDULE 10
NATIONAL BANK OF ROMANIA

Subject to the modifications and additions set out in this Schedule 10 (*National Bank of Romania*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of NBR.

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

The following section is added to paragraph 1 (*Terms of reference and definitions*) of the opinion letter which shall be renumbered accordingly:

"*1.15 The opinions given in paragraph 3.8 (Multibranch Parties) of this opinion shall not apply in respect of the NBR.*"

2. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), the opinions at paragraph 3 of the opinion letter are deemed modified as follows.

2.1 Except as otherwise provided in this Schedule, the opinions expressed in paragraph 3 will be amended to read "*NBR*" instead of "*Ordinary Corporates*".

2.2 Paragraph 3.1 is deemed deleted and replaced with the following:

"*3.1* ***Insolvency Proceedings: NBR***

The Romanian State, acting through the NBR, as legal person of public law cannot be subject to any Insolvency Proceedings, subject to paragraph 4.3 (Closeout netting in a non-insolvency context)."

2.3 Paragraphs 3.3.1 and 3.3.2 are deemed deleted and replaced with the following:

"*We are of this opinion because, in respect of the NBR, although the confirmation of the effects of close-out netting, expressly provided by the Insolvency Law, would not apply, our view is that the effects of the FOA Netting Provisions should be upheld under the Romanian law based on the following arguments:*

(a) *the principle of the binding force of an agreement that was made in compliance with the law (pacta sunt servanda); and*

(b) *in the case of the NBR, the Financial Collateral Ordinance would be applicable (provided the FOA Netting Agreements qualify under the Financial Collateral Ordinance) as it would fall under the scope of the mentioned ordinance by being a central bank; although it deals with financial collateral and not with netting in general, the Financial Collateral Ordinance expressly gives effect to close-out netting provisions,*

but these arguments were not, to the best of our knowledge, tested before a Romanian court and we are not currently in a position to clearly confirm the enforceability of Netting Provisions in respect of the NBR.

Further, subject to paragraphs 4.3 and 4.4 of this opinion letter, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Non-Defaulting Party.

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this paragraph 3.3 to apply."

2.4 The second sub-paragraph of paragraph 3.4 is deemed deleted and replaced with the following:

"We are of this opinion for the reasons detailed in the second sub-paragraph of paragraph 3.3 above."

2.5 The second sub-paragraph of paragraph 3.5 is deemed deleted and replaced with the following:

"We are of this opinion for the reasons detailed in the second sub-paragraph of paragraph 3.3 above."

2.6 The second sub-paragraph of paragraph 3.7.1 is deemed deleted and replaced with the following:

"We are of this opinion for the following reasons:

(a) the principle of the binding force of an agreement that was made in compliance with the law (pacta sunt servanda); and

(b) set-off is generally recognised under Romanian law and may occur either as (i) legal set-off (which requires that the receivables are mutual, certain, liquid and due and that they have as object the payment of an amount of money of the delivery of goods and operates as an effect of the law, without further parties' consent) or (ii) contractual (which generally operates based on the parties' agreement when the legal conditions for legal set-off are not met)."

2.7 The second sub-paragraph of paragraph 3.7.2 is deemed deleted and replaced with the following:

"We are of this opinion for the reasons detailed in the second sub-paragraph of paragraph 3.7.1 above."

2.8 Paragraph 3.10 is deemed deleted and replaced with the following:

"3.10 Enforceability of the Title Transfer Provisions

3.10.1 In relation to the FOA Netting Agreement (with Title Transfer Provisions) or a Clearing Agreement which includes the Title Transfer Provisions, (x) the characterisation of Transfers of Margin as outright transfers of title or creating a security or other interest and (y) the possibility to use the Margin Transferred without restriction would, under the conflicts of laws rules of this jurisdiction, be determined under the law chosen by the parties to apply to the FOA Netting Agreement (with Title Transfer Provisions) and/or a Clearing Agreement which includes the Title Transfer Provisions, subject to our considerations under paragraph 4.2.

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

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

We are of this opinion because the NBR is a Qualifying Entity under the Financial Collateral Ordinance and therefore a Romanian court would recognise the Title Transfer Provisions with all their effects in accordance with their terms.

No amendments to the Title Transfer Provisions are necessary in order for the opinions expressed in this paragraph 3.10 to apply."

2.9 Paragraph 3.13 is deemed deleted and replaced with the following:

"3.13 Automatic Termination

It is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provision to ensure the effectiveness of netting under the FOA Netting Agreement in the event of bankruptcy, liquidation or other similar circumstances because, in respect of the NBR, although the Insolvency Law is not applicable, an option to terminate the agreement would be valid based on the principle of the binding force of an agreement that was made in compliance with the law."

3. MODIFICATIONS TO QUALIFICATIONS

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

3.1 Paragraphs 4.3.1, 4.3.2 and 4.3.3 are deemed deleted and replaced with the following, while paragraph 4.3.4 is renumbered as 4.3.2:

"4.3.1 Close-out netting in a non-insolvency context

As the Romanian State (acting through the NBR) as legal person of public law cannot be subject to any insolvency proceedings, the Events of Default clause of the FOA Netting Agreements may not apply in the current form to the Romanian State. We suggest amending the Events of Default clause of the FOA Netting Agreements so as to cover specific Events of Default concerning the Romanian State whenever the Romanian State is the Counterparty under the FOA Netting Agreements and each Transaction, such as the Romanian State (a) disaffirming, disclaiming, repudiating or rejecting, in whole or in part, or challenging the validity of, or it being or it admitting to being unable to pay, its indebtedness, or declaring or imposing a moratorium, standstill, waiver or deferral, whether de facto or de jure, with respect to its indebtedness, or ceasing to be a member in good standing of the International Monetary Fund or ceasing to be fully eligible to utilise the resources of the International Monetary Fund."

3.2 Paragraphs 4.5, 4.6 and 4.8 are deemed deleted (without subsequent renumbering).

3.3 The following sections are added to paragraph 4.14 (*Further reservations*) which shall be renumbered accordingly:

"(a) Under the Romanian Government Ordinance No. 22/2002 on the foreclosure of the public institutions' payment obligations under writs of enforcement, as subsequently amended and supplemented, the foreclosure of the payment obligations of public institutions established through writs of enforcement may only be carried out against the amounts included for such purposes in the relevant public budget. Should there not be sufficient amounts in the budget for such purpose, the public institution has the benefit of a six month period from the date of receipt of the summons for payment from a competent enforcement officer to fulfil its payment obligations before the relevant creditor may begin the foreclosure proceeding against it according to the

Romanian Code of Civil Procedure or other applicable foreclosure laws. Furthermore, a court of law may grant a grace period or rescheduling of payments at the request of the respective public institution, if the respective public institution evidences that it is unable to meet its obligations towards the relevant creditor because of obligations incumbent on the respective public institution according to the law.

(b) *Outside the framework of Emergency Government Ordinance no. 46/2013 on the financial crisis and insolvency of territorial-administrative units (which do not include the MPF), Romanian courts are not familiar with the concept of insolvency of public authorities, and consequently the procedure for, and enforcement of payment under the FOA Netting Agreements or the Clearing Agreements in such circumstances is uncertain.*

(c) *Certain rights and properties of the Romanian State, as the case may be, benefit from sovereign immunity under Romanian or international law, which implies, inter alia, that such rights and properties, on the grounds that they belong to the public domain of Romania or of Romanian administrative-territorial units (i.e. counties, cities or villages): (i) cannot be sold or otherwise subjected to transfer of ownership, (ii) cannot constitute security for creditors or be subjected to foreclosure and (iii) cannot be acquired by third parties by prolonged possession over immovables ("uzucapiune"), by good-faith possession of movable assets or by any other means whatsoever. For the purposes hereof, such rights and properties include, without limitation, all the assets listed in Article 136 of the Romanian Constitution and Article 859 of the new Civil Code (i.e. subterranean resources of public interest, airspace, waters with hydroelectric potential, of national or local interest, beaches, territorial waters, natural resources of the contiguous economic zone and the continental shelf, as well as other assets established by law), the assets listed in the Schedule of the Public Property Law No. 213/1998 as subsequently amended (e.g. electrical energy transportation networks, railway infrastructure and their tunnels, oil and gas pipes, navigable channels, reservoirs and dams etc.), any present or future "premises of the mission" as defined in the Vienna Convention on Diplomatic Relations signed in 1961 (including the furnishings and other property therein and the means of transport of such mission), any "consular premises" as defined in the Vienna Convention on Consular Relations signed in 1963 (including the furnishings and other property therein and the means of transport of such mission) or military property or military assets or property or assets of the Romanian State related thereto, and any other assets that according to the Romanian laws or by their nature are of public use or interest and are acquired by legal means by the Romanian State or by the administrative-territorial units of Romania."*

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SCHEDULE 11
INDIVIDUALS

Subject to the modifications and additions set out in this Schedule 11 (*Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Individuals.

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

The following section is added to paragraph 1 (*Terms of Reference and Definitions*) of the opinion letter which shall be renumbered accordingly:

"*1.15 The opinions given in paragraphs 3.10, 3.11 and 3.14 of this opinion letter shall not apply in respect of Individuals.*"

2. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), the opinions at paragraph 3 of the opinion letter are deemed modified as follows.

2.1 Paragraph 3.1 is deemed deleted and replaced with the following:

"*3.1* ***Insolvency Proceedings: Individuals***

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Individual could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are the ***simplified proceeding*** *representing the proceeding whereby a debtor which is an individual merchant, enters directly into the bankruptcy proceeding at the same time as the opening of the insolvency proceeding, or after an observation period.*

Apart from such natural persons licensed to operate a business, Romanian Individuals are not capable of being liquidated or be subject to Insolvency Proceedings.

According to the Romanian Code of Fiscal Procedure, individuals may also be declared insolvent ("insolvabil") for fiscal purposes (i.e. under the respective provisions, it is deemed insolvent for fiscal purposes the debtor whose incomes or assets that may be pursued in enforcement have a value lower than that of its due fiscal obligations, or the debtor who has no incomes or assets that may be

foreclosed). However, these fiscal provisions do not provide for any liquidation or similar proceedings against the insolvent individual. The fiscal claims against insolvent debtors are filed and monitored pursuant to special procedures until settled through foreclosure or until their limitation period expires (if there are no incomes or assets to enforce on). Certain third parties may be held jointly liable with the insolvent debtor for the respective fiscal claims."

2.2 The first paragraph of paragraph 3.3.2 is deemed deleted and replaced with the following:

"The Insolvency Law is the law that sets forth the general legal framework on Insolvency Proceedings. Its provisions apply to Insolvency Proceedings concerning most corporates and also Individuals licensed to operate a business, to the extent that special laws do not provide otherwise. Thus, subject to the various considerations and implications outlined at paragraph 4.5, close-out netting falls under the Insolvency Law where the Party is an Individual licensed to operate a business."

2.3 The following paragraph is inserted in paragraph 3.3.2, after the last phrase of the paragraph:

"Apart from natural persons licensed to operate a business, which fall under the scope of the Insolvency Law as described above, Romanian Individuals are not capable of being liquidated or be subject to Insolvency Proceedings (subject to our considerations herein on the insolvability ("insolvabilitatea") for fiscal purposes). However, our view is that the effects of the FOA Netting Provisions should be upheld under the Romanian law based on the principle (that was not, to the best of our knowledge, tested before a Romanian court in such context) of the binding force of an agreement that was made in compliance with the law (pacta sunt servanda)."

2.4 Except as otherwise provided in this Schedule, the opinions expressed in paragraph 3 will be amended to read "*Individuals*" instead of "*Ordinary Corporates*".

2.5 Paragraph 3.13 is deemed deleted and replaced with the following:

"*3.13* ***Automatic Termination***

It is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provision to ensure the effectiveness of netting under the FOA Netting Agreements in the event of bankruptcy, liquidation, or other similar circumstances, because we consider that the Romanian applicable laws allow the Non-Defaulting Party to exercise its contractual rights including the option to terminate provided by the FOA Netting Agreements, as follows:

(a) *in respect of Individuals licensed to operate a business, the Insolvency Law recognises the key effects of netting under qualified financial contracts, as detailed in paragraph 3.3.2 above, including the termination and liquidation*

of Transactions upon commencement of Insolvency Proceedings, while in the case of restrictions to the legal capacity of an Individual, netting should be enforceable as per the understanding of the parties, as explained in paragraph 3.3.1 above; and

(b) *in respect of other Individuals, as the Insolvency Law is not applicable, an option to terminate the agreement would be valid based on the principle of the binding force of an agreement that was made in compliance with the law."*

3. MODIFICATIONS TO QUALIFICATIONS

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

3.1 Paragraphs 4.3.1 to 4.3.3 are deemed deleted.

3.2 Paragraphs 4.5 and 4.8 are deemed deleted (without subsequent renumbering).

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ANNEX 1
FORMS OF FOA NETTING AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX 2
LIST OF TRANSACTIONS

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX 3
DEFINITIONS RELATING TO THE AGREEMENTS

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

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

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

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

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

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

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

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

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

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

"**Banking Law**" means Emergency Government Ordinance no. 99/2006 on credit institutions and capital adequacy, as further amended.

"**Capital Market Law**" means Law no. 297/2004 on capital markets, as further amended.

"**Civil Code**" means the Romanian Civil Code in force since 1 October 2011, as further amended.

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

(a) on the terms of the FOA Netting Agreement when used (i) in conjunction with the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum, or (ii) in conjunction with a Clearing Module Netting Provision and/or an Addendum Netting

Provision and with or without a Clearing Module Set-Off Provision and/or an Addendum Set-Off Provision;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Companies Law**" means Law no. 31/1990 on commercial companies, as republished and further amended.

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

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

(b) for the purposes of paragraph 3.4 (Enforceability of the Clearing Module Netting Provision), the Clearing Module Netting Provision together with the defined terms

"Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value";

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

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

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

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

(g) for the purposes of paragraph 3.10.1 and 3.10.3, (i) in relation to a FOA Netting Agreement, the Insolvency Events of Default Clause, the FOA Netting Provision and the Title Transfer Provisions; and (ii) in relation to a Clearing Agreement, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value" or, as the case may be, the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Title Transfer Provisions;

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

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

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

"**Eligible Counterparty Agreements**" means each of the Eligible Counterparty (with Security Provisions) Agreement 2007, the Eligible Counterparty (with Title Transfer

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

"**EU Regulation no. 575/2013**" means the Regulation (EU) no. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) no 648/2012.

"**Financial Collateral Ordinance**" means Government Ordinance no. 9/2004 on certain financial collateral arrangements, as further amended, transposing EC Directive 2002/47 of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements;

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

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

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

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

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

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

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

Romania/Prudential Regulation/FOA Documentation/Netting/Class 3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**FX Regulation**" means NBR's Regulation no. 4/2005 on foreign exchange, as further amended.

"**GEO No. 30/1997**" means the Government Emergency Ordinance no. 30/1997 on the reorganisation of the autonomous regies, as further amended.

"**GO No. 15/1993**" means Government Ordinance no. 15/1993 on the reorganisation of the activity of the autonomous regies, as further amended.

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

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

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

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

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

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

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

"**Insolvency Law**" means Law no. 85/2014 on insolvency prevention and insolvency proceedings, as further amended.

"**Insolvency Proceedings**" means the procedures listed in paragraph 3.1.

"**Insolvency Representative**" has the meaning given to such term in paragraph 1.15.2.

"**Insurance Companies Law**" means Law no. 32/2000 on insurance companies and insurance supervision, as further amended.

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

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

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

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

"**NFI Law**" means Law no. 93/2009 on non-banking financial institutions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**OPF Law**" means Law no. 204/2006 regarding optional pensions.

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

"**PMPF Law**" means Law no. 411/2004 regulating the establishment, the organisation, the operation and the prudential supervision of the privately managed pension funds.

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

"**Provision**" means the delivery, transfer, holding, registration of financial collateral or any other means that enable the collateral taker or the person acting on its behalf to hold or obtain the control over the financial collateral, as specified also in paragraph 4.7(c) above, in accordance with the Financial Collateral Ordinance.

"**Public Order**" has the meaning given to such term in paragraph 4.2.2.

"**Qualifying Entity**" means one of the entities specified in paragraph 4.7(b) above, which may enter into financial collateral arrangements regulated under the Financial Collateral Ordinance.

"**Regulation 575/2013**" means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.

"**Rehypothecation Clause**" means:

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

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

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

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

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

"**Rome 1**" means the Regulation (EC) no. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I);

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

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

"**State Owned Entities Law**" means Law no. 15/1990 on the reorganisation of state owned economic entities as autonomous regies and commercial companies, as further amended.

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

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

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

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

"**UCITS Act**" means Emergency Government Ordinance no. 32/2012 on undertakings for collective investments in transferrable securities and investment management companies and on the amendment of Law no. 297/2004 on the capital market.

"**Writing**" means a written document, an electronic or other type of recording assimilated to writing, as specified in paragraph 4.7(c) above.

ANNEX 4

PART 1
CORE PROVISIONS

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

1. **FOA Netting Provision:**

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

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

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

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

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

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

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

"**Set-off:** Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) owed by you to us against any amount (whether actual or contingent, present or future) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained."

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

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

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

"The following shall constitute Events of Default:

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

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

5. **Title Transfer Provisions:**

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

amount, calculated in the Base Currency of the aggregate value as at the relevant Liquidation Date (as determined by us) of the Transferred Margin.

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

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

a) [Firm Trigger Event/CM Trigger Event]

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

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

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

(c) the applicable Cleared Set Termination Amount will be determined by Client on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the date on which the [Firm/CM] Trigger Event occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the day on which the relevant Client Transactions [had

all been/were] terminated (in either case, provided that, if [Firm/Clearing Member] gives notice to Client requiring it to determine such amount and Client does not do so within two Business Days of such notice being effectively delivered, [Firm/Clearing Member] may determine the applicable Cleared Set Termination Amount) and, in either case, will be an amount equal to the sum, but without duplication, of (A) the Aggregate Transaction Value, (B) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (C) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (D) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[or any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributed] [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included [Clauses 5.2.2(c)(4) to 5.2.2(c)(C)] [Sections 8(b)(ii)(3)(A) to 8(b)(ii)(3)(C)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]);

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

b) CCP Default

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

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

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

3. the applicable Cleared Set Termination Amount will be determined by [Firm/Clearing Member] on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the date on which the CCP Default occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the day on which the relevant Client Transactions had all been terminated and, in either case, will be an amount equal to the sum, but without duplication, of (1) the Aggregate Transaction Value, (2) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (3) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (4) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[and any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included in [Clauses 5.3.3(1) to 5.3.3(3)] [Sections 8(c)(iii)(1) to 8(c)(iii)(3)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if

such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing member]);

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

c) Hierarchy of Events

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

Or

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

Or

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

d) Definitions

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

"**[Firm/CM]/CCP Transaction Value**" means, in respect of a terminated Client Transaction or a group of terminated Client Transactions, an amount

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

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

(a) is attributable to such Client Transactions;

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

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

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

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

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

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

8. **Addendum Set-Off Provision**

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

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

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

(B) if any Other Amounts are unascertained, X may in good faith estimate such Other Amounts and set off in respect of the estimate, subject to

the relevant party accounting to the other when such Other Amounts are ascertained; and

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

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

PART 2
NON-MATERIAL AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

12. Any change modifying the currency of Liquidation Amount, Available Termination Amount, Cleared Set Termination Amount or of any amount relevant to the FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

Romania/Prudential Regulation/FOA Documentation/Netting/Class 3

PART 3
SECURITY INTEREST PROVISIONS

1. **Security Interest Clause:**

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

2. **Power of Sale Clause:**

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

3. **Client Money Additional Security Clause**

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

4. **Rehypothecation Clause**

"You agree and authorise us to borrow, lend, appropriate, dispose of or otherwise use for our own purposes, from time to time, all non-cash margin accepted by us from you and, to the extent that we do, we both acknowledge that the relevant non-cash margin will be transferred to a proprietary account belonging to us (or to any other account selected by us from time to time) by way of absolute transfer and such margin will become the absolute property of ours (or that of our transferee) free from any security interest under this Agreement and from any equity, right, title or interest of yours. Upon any such rehypothecation by us you will have a right against us for the delivery of property, cash, or securities of an identical type, nominal value, description and amount to the rehypothecated non-cash margin, which, upon being delivered back to you, will become subject to the provisions of this Agreement. We agree to credit to you, as soon as reasonably practicable following receipt by us, and as applicable, a sum of money or property equivalent to (and in the same currency as) the type and amount of income (including interest, dividends or other distributions whatsoever with respect to the non-cash margin) that would be received by you in respect of such

non-cash margin assuming that such non-cash margin was not rehypothecated by us and was retained by you on the date on which such income was paid.".

ANNEX 5
NECESSARY OR DESIRABLE AMENDMENTS

1. Necessary amendments:

(a) For the purposes of paragraph 3.4 (*Enforceability of the Clearing Module Netting Provision*):

In the FOA Clearing Module:

The definition of the "***Aggregate Transaction Value***" in Section 11 (*Definitions*) will be amended to read as follows:

> "***Aggregate Transaction Value***" *means, in respect of the termination of Client Transactions of a Cleared Transaction Set, an amount (which may be positive or negative or zero) equal to the aggregate of the Firm/CCP Transaction Values for all Client Transactions in the relevant Cleared Transaction Set, any such Firm/CCP Transaction Values being converted in the currency in which the relevant Cleared Set Transaction Amount would be payable, in accordance with this Module, or, if there is just one Firm/CCP Transaction Value in respect of all such Client Transactions, an amount (which may be positive or negative or zero) equal to such Firm/CCP Transaction Value.*

(b) For the purposes of paragraph 3.5 (*Enforceability of the Addendum Netting Provision*):

In the ISDA/FOA Clearing Addendum:

The definition of the "***Aggregate Transaction Value***" in Section 11 (*Definitions*) will be amended to read as follows:

> "***Aggregate Transaction Value***" *means, in respect of the termination of Client Transactions of a Cleared Transaction Set, an amount (which may be positive or negative or zero) equal to the aggregate of the CM/CCP Transaction Values for all Client Transactions in the relevant Cleared Transaction Set, any such CM/CCP Transaction Values being converted in the currency in which the relevant Cleared Set Transaction Amount would be payable, in accordance with this Addendum, or, if there is just one CM/CCP Transaction Value in respect of all such Client Transactions, an amount (which may be positive or negative or zero) equal to such CM/CCP Transaction Value.*