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

FIA Europe
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16 October 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 the Republic of Slovenia ("**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:

1.1.1 persons which are companies (*družbe*) incorporated under the Companies Act;

1.1.2 banks (*banke*) and saving institutions (*hranilnice*) incorporated under the Banking Act and investment firms (*investicijska podjetja*); and

1.1.3 branches in this jurisdiction of foreign banks, investment firms and other corporations.

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

1.2.1 Brokerage companies (*borznoposredniške družbe)* organised under the Financial Instruments Market Act (Schedule 1);

1.2.2 Central clearing and depository houses *(centralne klirinškodepotne družbe*) organised under the Financial Instruments Market Act (Schedule 2);

1.2.3 Partnerships (*družbe z neomejeno odgovornostjo*) org*anised under* the Companies Act (Schedule 3);

1.2.4 Insurance undertakings (*zavarovalnice*) incorporated under the Insurance Act (Schedule 4);

1.2.5 Individuals acting as independent entrepreneurs (*samostojni podjetniki*); (Schedule 5);

1.2.6 Individuals acting as private persons (*zasebniki*) (Schedule 6);

1.2.7 Consumers (*potrošniki*) (Schedule 7);

1.2.8 Investment fund management companies (*družbe za upravljanje*) organised under the Investment Funds and Management Companies Act (Schedule 8);

1.2.9 Investment funds (*investicijski skladi*) organised under the Investment Funds and Management Companies Act (Schedule 9);

1.2.10 The Republic of Slovenia (*Republika Slovenija*) and the municipalities (*občine*) (Schedule 10); and

1.2.11 Sovereign assets funds (as defined in Schedule 11).

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 Subject to paragraph 1.5 below, this opinion covers all Transactions except for those referred to in paragraph (A)(v) of Annex 2, namely "any other Transaction which the parties agree to be a Transaction".

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 (*banke*), brokerage companies (*borznoposredniške hiše*) or other types of investment firms (*investicijska podjetja*).

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 **Scope of the opinion**

1.10.1 The opinions contained herein are strictly limited to matters of the laws of this jurisdiction. We express no opinion whatsoever with respect to the laws of any other jurisdiction.

1.10.2 The opinions contained herein are given only as to circumstances existing on the date hereof and known to us and are limited to the laws of this jurisdiction as in force on the date hereof. We assume no obligation to update or supplement this opinion to reflect any relevant facts or circumstances which may come to our attention or any changes in law which may occur after the date hereof.

1.10.3 The purpose of the opinions and legal analyses stated herein is to provide general information on the legal system of this jurisdiction and/or certain specific risks which may arise thereunder. In no event shall such opinions and statements be considered as our legal advice in relation to any specific legal relationship.

1.10.4 This opinion describes and analyses concepts of Slovenian law in the English language and not in their original Slovenian wording; therefore it may not necessarily correspond to such concepts in the English legal language or in the reader's jurisdiction.

1.10.5 Each part of this opinion should be read and construed in conjunction with all other parts hereof.

1.10.6 We express no opinion as to any matter not specifically addressed in paragraph 3.

1.11 **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.

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

1.11.2 A Party which is insolvent for the purposes of any insolvency law or otherwise subject to Insolvency Proceedings is called the "**Insolvent Party**" and the other Party is called the "**Solvent Party**".

1.11.3 "**Bankruptcy proceedings**" means bankruptcy proceedings (*stečaj*), compulsory settlement proceedings (*prisilna poravnava*), simplified compulsory settlement proceedings (*poenostavljena prisilna poravnava*) or preventive restructuring proceedings (*postopek preventivnega prestrukturiranja*) (referred to in paragraph 3.1) as defined in the Insolvency Act, unless there is a specific indication that the analysis does not apply (or does not apply to the same extent) to compulsory settlement proceedings and/or simplified compulsory settlement proceedings and/or preventive restructuring proceedings.

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

1.11.5 "**Member State**" means a member state of the European Union;

1.11.6 "**Companies Act**" means the Slovenian Companies Act: *Zakon o gospodarskih družbah (ZGD-1)* (Official Gazette of the Republic of Slovenia no. 42/2006, as amended);

1.11.7 "**Banking Act**" means the Slovenian Banking Act: *Zakon o bančništvu (ZBan-1)* (Official Gazette of the Republic of Slovenia no. 131/2006, as amended);

1.11.8 "**Financial Collateral Act**" means the Slovenian Financial Collateral Act: *Zakon o finančnih zavarovanjih (ZFZ)* (Official Gazette of the Republic of Slovenia no. 47/2004, as amended);

1.11.9 "**Financial Instruments Market Act**" means the Slovenian Financial Instruments Market Act: *Zakon o trgu finančnih instrumentov (ZTFI)* (Official Gazette of the Republic of Slovenia no. 67/2007, as amended);

1.11.10 "**Insolvency Act**" means the Slovenian Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act: *Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju (ZFPPIPP)* (Official Gazette of the Republic of Slovenia no. 126/2007, as amended);

1.11.11 "**Insurance Act**" means the Slovenian Insurance Act: *Zakon o zavarovalništvu (ZZavar)* (Official Gazette of the Republic of Slovenia no. 13/2000, as amended);

1.11.12 "**Investment Funds and Management Companies Act**" means the Slovenian Investment Funds and Management Companies Act: *Zakon o investicijskih skladih in družbah za upravljanje (ZISDU-2)* (Official Gazette of the Republic of Slovenia no. 77/2011, as amended);

1.11.13 "**Netting Definition**" means the definition of a netting agreement set out in paragraph 3.3(b)(ii).

1.11.14 "**Private International Law and Procedure Act**" means the Slovenian Private International Law and Procedure Act: *Zakon o mednarodnem zasebnem pravu in postopku (ZMZPP)* (Official Gazette of the Republic of Slovenia no. 56/1999, as amended);

1.11.15 "**Rome I Regulation**" means Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I); and

1.11.16 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 (without limitation) by reason of a Mandatory CCP Provision. In our view, an alteration contemplated in Part 2 (*Non-material Amendments*) of Annex 4 hereto would not constitute a material alteration for this purpose unless the alteration has been set out by us in Section 5 of Annex 5. We express no view whether an alteration not contemplated in Part 2 (*Non-material Amendments*) of Annex 4 would or would not constitute a material alteration.

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

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

2.4 That each Party has obtained, complied with the terms of and maintained all authorizations, approvals, licences and consents, and has performed all necessary registrations, notifications and any other formal requirements 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 any relevant jurisdiction.

2.5 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement is entered into prior to the commencement of any insolvency proceedings under the laws of any jurisdiction against either Party, and at the time of entering into the FOA Netting Agreement or, as the case may be, the Clearing Agreement and/or the Transaction each Party was not aware and was not obliged to be aware of insolvency of the other Party.

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

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

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

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

2.10 All factual circumstances which may be relevant for the application of the provisions of the FOA Netting Agreement or, as the case may be, the Clearing Agreement and/or the Transaction can be objectively determined, whereby we do not consider the Liquidation Amount (or the calculation thereof) to be a factual circumstance.

2.11 When translated into the language of this jurisdiction for the purposes of any proceedings taking place in this jurisdiction the meaning of the English language terms used in the FOA Netting Agreement or, as the case may be, in the Clearing Agreement and in the Transaction will remain identical.

## 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:

3.1.1 Companies (including partnerships): bankruptcy (*stečaj*), compulsory settlement (*prisilna poravnava*), simplified compulsory settlement

(*poenostavljena prisilna poravnava*),[1] preventive restructuring proceedings (*postopek preventivnega prestrukturiranja*), [2] compulsory liquidation (*prisilna likvidacija*), dissolution without liquidation (*izbris is sodnega registra brez likvidacije*), ordinary liquidation (*redna likvidacija*).

3.1.2 Banks and savings institutions: bankruptcy (*stečaj*), compulsory liquidation (*prisilna likvidacija*), extraordinary management body appointed by the regulator (*izredna uprava*), ordinary liquidation (*redna likvidacija*), dissolution without liquidation (*izbris is sodnega registra brez likvidacije*).[3]

Of the Insolvency Proceedings listed above, bankruptcy proceedings, compulsory settlement proceedings, simplified compulsory settlement proceedings and preventive restructuring proceedings are of such nature that the commencement thereof generally affects (or may affect) the rights and obligations of the Solvent Party (hereinafter we use the term "**Bankruptcy Proceedings**" as defined above).

Commencement of the Insolvency Proceedings other than the Bankruptcy Proceedings which are listed above does not affect the rights and obligations of the Solvent Party; however the rights of the Solvent Party generally cease upon completion of such proceedings (as upon completion of such proceedings the counterparty ceases to exist).

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

It would however, be advisable to additionally incorporate in the Insolvency Events of Default Clause:

(i) for the avoidance of doubt, Slovenian terms describing Insolvency Proceedings together with English translations of such terms when dealing with counterparties from this jurisdiction,

and

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[1] Applicable only in relation to the following categories:

(i) companies which meet at least two of the following criteria: - the average number of employees in the respective business year does not exceed 10; - net sales turnover does not exceed EUR 2,000,000, and - value of assets does not exceed EUR 2,000,000;

(ii) companies which are not companies within the meaning of (i) above and meet at least two of the following criteria: - the average number of employees in the respective business year does not exceed 50; - net sales turnover does not exceed EUR 8,800,000, and - value of assets does not exceed EUR 4,400,000.

[2] Applicable only in relation to the following legal entities (conditions are cumulative):

(i) which have the status of companies limited by shares (i.e. companies with personally liable partners (partnerships) are excluded);

(ii) companies which are not companies within the meaning of (i) and/or (ii) from the preceding footnote; and

(iii) companies in respect of which conducting of compulsory settlement (*prisilna poravnava*) is allowed.

[3] Due to the fact that banks and savings institutions are regulated entities the probability of dissolution without liquidation (*izbris is sodnega registra brez likvidacije*) is remote.

(ii) when the counterparty is a bank or a savings institution incorporated in this jurisdiction, a specific reference to extraordinary management body appointed by the regulator.

## 3.2 Recognition of choice of law[4]

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 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 the 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:

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

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

We are of this opinion because:

(a) In circumstances where an Event of Default has occurred but no Bankruptcy Proceedings are commenced:

As the FOA Netting Agreement or, as the case may be, the Clearing Agreement are governed by English law, under Article 21 of Regulation 593/2008/EC in this jurisdiction the FOA Netting Provision would only be set aside if it were manifestly incompatible with the public policy (*ordre public*) of this jurisdiction. Considering in particular the fact that close-out netting is expressly regulated in the Financial Collateral Act and in the Insolvency Act, we are of the opinion that the FOA Netting Provision is not manifestly contrary to the public order of this jurisdiction.

[4] We note that this opinion is not intended to cover the choice of *forum*.

For the avoidance of doubt, the reasoning of the preceding paragraph of this point (a) also applies in circumstances where Insolvency Proceedings other than Bankruptcy Proceedings are commenced.

(b) In circumstances leading to commencement of Bankruptcy Proceedings:

The Act Amending the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (ZFPPIPP-C, Official Gazette of the Republic of Slovenia, No. 52/2010; applicable as of 15 July 2010), introduced amendments[5] to the Insolvency Act which were intended to ensure (including in insolvency scenarios) the validity and enforceability of:

(i) **qualified financial contracts** defined in Para 1 of Article 24.a of the Insolvency Act as agreements the object of which are financial instruments under the Financial Instruments Market Act, [6] and derivative financial instruments in relation to commodities or rights of emission as an underlying instrument, which can be settled by transfer of the underlying instrument; and

(ii) **netting agreements** defined in Para 2 of Article 24.a of the Insolvency Act, as:

(a) contractual agreement of parties, included in an individual qualified financial contract or concluded as a framework agreement in relation to certain types of financial contracts to be entered into between the parties;

**and**

[5] The recognition of validity and enforceability of close-out netting in insolvency situations was first introduced in the Financial Collateral Act, but only in relation to obligations secured by financial collateral arrangements (as defined therein). The ZFPPIPP-C however extended validity and enforceability of close-out netting also to obligations from other agreements which are not necessarily secured by financial collateral. For this reason, the provisions of the Financial Collateral Act concerning netting are not analysed in more detail at this paragraph (but are explained further in paragraph 4.3.2 below.

[6] Financial instruments (defined for the purpose of defining investment services and transactions) are the following: 1. transferable securities; 2. money-market instruments; 3. units in collective investment undertakings; 4. options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields as the underlying instruments or other derivatives, financial indices or other financial measures which can be settled physically, with the transfer of the underlying instrument, or in cash; 5. options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities as the underlying instrument, which: - either must be settled in cash or - they may be settled in cash at the option of one of the parties (otherwise than by reason of a default of the opposite contracting party or other contract termination event); 6. options, futures, swaps, and any other derivative contract relating to commodities as the underlying instrument that can be settled physically, with the transfer of the underlying instrument (commodity), provided that they are traded on a regulated market and/or a multilateral trading facility (hereinafter: MTF); 7. options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities as the underlying instrument: - which can be settled physically and are not stated in point 6. of this paragraph, - which do not have commercial purposes and - 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 the provision of regular (daily) cover; 8. derivative instruments for the transfer of credit risk; 9. financial contracts for differences; 10. 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: - either must be settled in cash or - they may be settled in cash at the option of one of the parties (otherwise than by reason of a default of the opposite contracting party or other contract termination event); 11. as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in points 1. to 10. of this paragraph, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, - they are traded on a regulated market and/or an MTF and - they are cleared and settled through recognised clearing houses or are subject to the provision of regular (daily) cover. Derivative financial instruments are the ones listed in points 4. to 11.

(b) comprising the following rules to be applied in case a party becomes insolvent or another situation occurs which under the netting agreement or under the qualified financial contract constitutes an event of default of a party:

- a rule that upon occurrence of an event of default (i) the qualified financial contract is terminated or (ii) the other party has the right to terminate, or (iii) all obligations of the contracting parties mature immediately;

- rules on calculation of the close-out value, market value, liquidation value or replacement value of mutual obligations of the parties upon termination or acceleration in accordance with the rule referred to in the preceding indent;

- rules on conversion of any amounts of the obligations referred to in the preceding indent, if such amounts are expressed in different currencies; **and**

- rules on determination of the net balance of the monetary obligation of one party and the monetary claim of the other party following the netting of amounts of the obligations owed by the parties, as calculated under the second indent above and converted under the third indent above.

The Act Amending the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (ZFPPIPP-E, Official Gazette of the Republic of Slovenia, No. 47/2013; applicable as of 15 June 2013), introduced also the category of "other qualified contracts" which are defined in Para 1 of Article 24.b of the Insolvency Act as individual or framework agreements against payment having as subject trading with electrical energy or other energy products, where a netting agreement (as defined in Para 2 of Article 24.a of the Insolvency Act) is usual for such type of trading. The benefits of the Insolvency Act envisaged for qualified financial agreements apply *mutatis mutandis* also to other qualified agreements.

(c) In addition to the above described provisions, the most important provisions of the Insolvency Act concerning enforceability of the FOA Netting Provision include:

(i) Article 164.a of the Insolvency Act which stipulates that neither commencement nor confirmation (adoption) of compulsory settlement has any legal effect on a netting agreement and/or a qualified financial contract which is subject to the rules agreed in a netting agreement.

(ii) Para 4 of Article 44.l of the Insolvency Act which provides for the application (*mutatis mutandis*) of the relevant parts of Article 164.a of the Insolvency Act in preventive restructuring proceedings (which effectively means that neither commencement nor confirmation (adoption) of preventive restructuring has any legal effect on a netting agreement and/or a

qualified financial contract which is subject to the rules agreed in a netting agreement).

(iii) Sub-paragraph 15 of Para 2 of Article 221.b of the Insolvency Act which refers to use (*mutatis mutandis*) of Article 164.a of the Insolvency Act in simplified compulsory settlement proceedings (which effectively means that neither commencement nor confirmation (adoption) of simplified compulsory settlement has any legal effect on a netting agreement and/or a qualified financial contract which is subject to the rules agreed in a netting agreement).

(iv) Para 5 of Article 44.l of the Insolvency Act which stipulates that neither commencement of preventive restructuring proceedings nor confirmation (adoption) of preventive restructuring has any legal effect on financial collateral under the Financial Collateral Act or the receivable secured with such financial collateral, except if the holder of financial collateral agrees to enter into the restructuring agreement.

(v) Article 264.a of the Insolvency Act which stipulates that commencement of bankruptcy proceedings does not have any legal effect on a netting agreement and / or a qualified financial agreement which is subject to the rules agreed in a netting agreement.

(vi) In relation to qualified financial contracts and netting agreements referred to in (i) and (ii) above, application of the following rules of the Insolvency Act (otherwise generally applicable in Bankruptcy Proceedings) is excluded:

a. rules on automatic conversion of non-pecuniary receivables to pecuniary receivables;

b. rules on conversion of receivables which mature from time to time to one-time receivables;

c. rules on conversion of receivables in foreign currencies to receivables in Euros;

d. mandatory limitations regarding accruing of interest following commencement of bankruptcy proceedings;

e. rules on mandatory (*ex lege*) set-off;

f. rules on the right of the insolvent debtor (represented by the administrator) to withdraw from mutually unfulfilled agreements (i.e. the cherry picking right).

(vii) Para 1 of Article 483 the Insolvency Act which stipulates that the law governing the netting agreement (between the creditor and the debtor) shall

also govern the legal consequences of Bankruptcy Proceedings for the mutual rights and obligations arising from such agreement.[7]

After giving effect to the FOA Netting Provision the claim of the Solvent Party against the Insolvent party for the payment of the Liquidation Amount (if positive) in Bankruptcy Proceedings will be subject to the rules of the Insolvency Act as generally applicable to any other receivables of any non-preferred, general unsecured creditors (such as the obligation to report the Liquidation Amount into the relevant Bankruptcy Proceedings, possible haircut concerning the Liquidation Amount and similar).[8]

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

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

It is also desirable, but not necessary, to make the amendments to the FOA Netting Provision specified in Section 2 of Annex 5.

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

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

The legal reasoning for our opinion is the same as described under paragraph 3.3, *mutatis mutandis* (where, in particular, all references to the FOA Netting Provision shall be read as references to the Clearing Module Netting Provision). We note that other than the laws described in paragraph 3.3(a), (b) and (c), there is no specific legal base intended to address (including in insolvency scenarios) the validity and enforceability of the Clearing Module Netting Provision.

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

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[7] Although the wording of this provision is not entirely clear, we understand that the main purposes thereof are a) to ensure that designation of Insolvency as an Event of Default is enforceable in insolvency situations and, b) that close-out netting is in fact performed under the provisions of the governing law chosen by the parties (and without regard to any different mandatory provisions of the insolvency legislation of this jurisdiction concerning set-off), in particular in insolvency scenarios comprising a foreign element.

[8] For completeness, we note that under the Insolvency Act only claims of secured creditors and certain very limited categories of claims may have priority over the claim for payment of the Liquidation Amount (such as costs of proceedings, certain salaries and compensations arising from employment relationships for a limited period of time, certain taxes and duties related to such payments and certain social contributions).

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

It is also desirable, but not necessary, to make the amendments to the Clearing Module Netting Provisions specified in Section 2 of Annex 5.

### 3.5 Enforceability of the Addendum Netting Provision

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

The legal reasoning for our opinion is the same as described under paragraph 3.3, *mutatis mutandis* (where, in particular, all references to the FOA Netting Provision shall be read as references to the Addendum Netting Provision). We note that there is no specific legal base other than the laws described in paragraph 3.3(a), (b) and (c) which would be specifically intended to ensure (including in insolvency scenarios) the validity and enforceability of the Addendum Module Netting Provision.

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

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

It is also desirable, but not necessary, to make amendments to the Addendum Netting Provisions specified in Section 2 of Annex 5.

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

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

## 3.7 Enforceability of the FOA Set-Off Provisions

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

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

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

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

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

We are of this opinion because:

(a) In circumstances where an Event of Default has occurred but no Bankruptcy Proceedings are commenced:

As the FOA Netting Agreement or, as the case may be, the Clearing Agreement are governed by English law, under Article 21 of Regulation 593/2008/EC in this jurisdiction the FOA Set-Off Provisions would only be set aside if it were manifestly incompatible with the public policy (*ordre public*) of this jurisdiction. Considering in particular the fact that set-off is expressly regulated in the relevant legislation of this jurisdiction and that set-off has been traditionally recognised and used in this jurisdiction, we are of the opinion that the FOA Set-Off Provisions are not manifestly contrary to the public order of this jurisdiction.

For the avoidance of doubt, the reasoning of the preceding paragraph of this point (a) also applies in circumstances where Insolvency Proceedings other than Bankruptcy Proceedings are commenced.

(b) In the circumstances leading to Bankruptcy Proceedings, set-off is generally (but subject to certain exceptions) recognised, and in some cases even automatic (mandatory). Please see paragraph 4.7 for details.

It is desirable, but not necessary, to make amendments to the General Set-Off Clause and the Margin Cash Set-Off Clause specified in Section 2 of Annex 5.

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

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

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

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

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

The legal reasoning for our opinion is the same as in the case of paragraph 3.7.1., *mutatis mutandis*.

It is desirable, but not necessary, to make the amendments to the General Set-Off Clause and the Margin Cash Set-Off Clause specified in Section 2 of Annex 5.

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

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

The legal reasoning for our opinion is the same as in the case of paragraph 3.7.1., *mutatis mutandis.*

It is desirable, but not necessary, to make amendments to the Clearing Module Set-Off Provision specified in Section 2 of Annex 5.

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

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

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

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

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

The legal reasoning for our opinion is the same as in the case of paragraph 3.7.1., *mutatis mutandis.*

It is desirable, but not necessary, to make amendments to the Addendum Set-Off Provision specified in Section 2 of Annex 5.

### 3.10 Enforceability of the Title Transfer Provisions

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

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

3.10.3 The questions in relation to the FOA Netting Agreement (with Title Transfer Provisions) or a Clearing Agreement which includes the Title Transfer Provisions, (x) whether Transfers of Margin would be characterised as outright transfers of title or creating a security or other interest, and (y) whether Margin Transferred may be used without restriction, would, under the

conflicts of laws rules of this jurisdiction, be determined by reference to the governing law of the FOA Netting Agreement (with Title Transfer Provisions) and a Clearing Agreement which includes the Title Transfer Provisions, and/or by reference to the governing law of the place where the Margin is located.

We are of this opinion because:

(a) In respect of the opinions stated in paragraphs 3.10.1 and 3.10.2: the Financial Collateral Act provides for a specific legal basis for enforceability of the Title Transfer Provisions (both in insolvency situations as well as out of insolvency). In particular, under Article 11 of the Financial Collateral Act, an arrangement concerning financial collateral as well as the rights obtained on the basis thereof (including the right to realise the financial collateral) shall remain valid also following commencement of compulsory settlement, bankruptcy proceedings or involuntary liquidation. In addition, under Para 5 of Article 44.l of the Insolvency Act neither commencement of preventive restructuring proceedings nor confirmation of preventive restructuring have adverse effect on financial collateral nor the receivable secured therewith (except if the holder of financial collateral agrees to enter into the financial restructuring agreement).

(b) In respect of the opinion stated in paragraph 3.10.3:

(i) Under the general rule of Para 1 of Article 18 of the Private International Law and Procedure Act, rights *in rem* on assets shall be governed by the law of the location of the asset (which may apply, subject to the special provisions described in (iii) below in particular to non-cash collateral and cash in the narrow sense).

(ii) Under Article 14 of the Rome I Regulation, the relationship between assignor and assignee may be chosen freely but the law governing the assigned claim shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and whether the debtor's obligations have been discharged (which may apply in particular where cash comprises also receivables for payment of money such as a deposit in the monetary market).

(iii) Under Article 15 of the Financial Collateral Act, insofar that the collateral is perfected by registration of the security interest into a register of financial instruments, the following aspects will be governed by the law of the state of the register:

a. the legal nature of the financial collateral;

b. the legal effects of the financial collateral;

c. the requirements for perfecting the financial collateral;

d. the requirements for enforcement of the financial collateral.

(iv) Under Article 282 of the Insolvency Act, if a creditor who has a right to "separate settlement" (*ločitvena pravica)* is entitled, under the general rules

which apply to his right of separate settlement, to carry out an **out-of-court sale** of the relevant assets (objects of security), he shall maintain such right also after the initiation of bankruptcy proceedings.

(v) Under Para 1 of Article 483 the Insolvency Act the law governing the netting agreement (between the creditor and the debtor) shall also govern the legal consequences of Bankruptcy Proceedings for the mutual rights and obligations arising from such agreement.[9]

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

In relation:

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

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

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

3.12 **Single Agreement**

Under the laws of this jurisdiction it is not necessary 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**

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

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

[9] Same as footnote 7.

and liquidation of Client Transactions does not occur automatically upon the opening of Insolvency Proceedings in relation to a Firm, or as the case may be Clearing Member, incorporated or organised in this jurisdiction.

3.14 **Multibranch Parties**

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

3.15 **Insolvency of Foreign Parties**

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

3.16 **Special legal provisions for market contracts**

There are special provisions of law which would affect the opinions given in this paragraph 3 which would apply to a Transaction between two Parties as a result of the fact that such Transaction was entered into on, or is back-to-back with a Transaction entered into on an exchange (in this or another jurisdiction), or is cleared at, or is back-to-back with a transaction to be cleared by a central counterparty.

Such provisions of law include:

3.16.1 Para 3 of Article 482 of the Insolvency Act which provides that legal consequences of Bankruptcy Proceedings[10] for the rights and obligations arising out of legal transactions entered into in organised markets shall be governed by the general contractual law which is under the rules of the relevant market applicable for such legal transactions, if not provided otherwise in Para 2 of Article 481 of the Insolvency Act, which sets out the following special rules concerning securities or other financial instruments: if the securities/financial instruments are acquired or transferred:

(a) by registration in a system of a central depository, then the governing law shall be the law of the jurisdiction of the central depository, or

(b) by registration to the credit of an account held in a sub-depository, then the governing law shall be the law of the jurisdiction used for managing accounts in the respective sub-depository.

On the other hand, Para 1 of Article 483 of the Insolvency Act also expressly provides that legal consequences of Bankruptcy Proceedings[11] for mutual

[10] other than preventive restructuring proceedings.

[11] other than preventive restructuring proceedings

rights and obligations of parties in netting agreements (provided that they contain elements as discussed in sub-paragraph 3.3.2(b)(ii) above) shall be subject to the general contractual law governing such netting agreements. It is not entirely clear, whether this provision was intended to prevail as *lex specialis* over the above described provisions of Para 2 of Article 482 of the Insolvency Act (in conjunction with Para 2 of Article 481 of the same) or not.

3.16.2 Certain additional comforts relevant for transactions entered into on an exchange market in this jurisdiction are set out under Article 365 of the Financial Instruments Market Act which can be briefly summarised as follows:

(a) commencement of Insolvency Proceedings with respect to member of the stock exchange (of this jurisdiction) shall not affect the validity of stock exchange traded transactions which were by such member entered into the trading system until the end of the day on which the Insolvency Proceedings commenced;

(b) it is prohibited to withdraw from transactions referred to in the preceding paragraph (even if a special law / regulation provides for such a right);

(c) the obligations which have arisen for such member in relation to transactions mentioned under (a) above shall not be affected by any rules of the Insolvency Act which may otherwise prohibit (i) set-off and / or (ii) settlement from the cash or financial instrument provided by the member within a settlement system for collateralisation of such member's obligations deriving from stock market transactions.

3.16.3 The rules of Articles 450, 450.a and 450.b of the Financial Instruments Market Act relating to Insolvency Proceedings of members of a settlement system are also relevant and may be briefly summarised as follows:

(a) Insolvency proceedings shall not have retroactive effects on the rights and obligations of a participant (or other participants of the settlement system) arising from, or in connection with, the relevant participant's participation in a system before the moment of commencement of Insolvency Proceedings.

(b) In case of paragraph (a), the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by the law governing the relevant settlement system.

(c) Special rules concerning validity and prohibition of withdrawal from transactions settled through settlement system or set-off of orders / transactions entered into the system by such participant, as well as concerning validity of any collateral provided (which broadly correspond to the regulation stipulated in Directive 98/26/EC of the European Parliament and the Council of 19 May 1998 on settlement finality in payment and securities settlement systems).

## 4. QUALIFICATIONS

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

### 4.1 General qualifications

4.1.1 Where an obligation has been entered into (including under a Transaction or a transfer of Margin under the Title Transfer Provisions) (or has been obtained by way of assignment (*cesija*)) after the commencement of Insolvency Proceedings in relation to a Party, any amount which is due in respect of such an obligation may not be capable (and in some situations will not be capable) of inclusion in the netting under the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, or a set-off under the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision, but this would not impair the effectiveness of the netting under the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, or a set-off under the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision in respect of amounts due in respect of Transactions entered into before the commencement of such Insolvency Proceedings.

4.1.2 If the obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or, as the case may be, the Title Transfer Provisions are not "mutual" between the Parties they may not be eligible for inclusion in a netting or set-off pursuant to the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision. For these purposes, under the laws of this jurisdiction, obligations would not be regarded as "mutual" if the title on the corresponding receivable is not owned by the relevant Party or due to another reason the Parties are not each personally and solely liable as regards obligations owing by it and solely entitled to the benefit of obligations owed to it. However, the inclusion of amounts in respect of non-mutual obligations would not impair the effectiveness of the netting under the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, or a set-off under the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision in respect of amounts due in respect of Transactions which are mutual.

4.1.3 If the fulfilment of any obligation of a Party under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or, as the case may be, the Title Transfer Provisions becomes impossible or unlawful, such obligation shall, by operation of the law of this jurisdiction, cease to be effective. Certain rights and obligations may be qualified by doctrines of good faith and fair conduct, the principle of mutual fulfilment of obligations, general legal principles referring to force majeure, "*rebus sic stantibus*" principle, capital maintenance rules and similar, and proceedings to enforce a claim may become barred under the statute of limitations.

4.1.4 The actual recovery or enforcement of any amount or other sum following (a) giving effect to netting under the FOA Netting Provision, the Clearing Module

Netting Provision or the Addendum netting Provision, and / or (b) giving effect to set-off under the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision may be subject to the applicable Insolvency Proceedings and / or any applicable immunities from, or limitations of, enforcement.

4.1.5 As a matter of law of this jurisdiction, if bankruptcy (*stečaj*) is commenced with respect to the counterparty in this jurisdiction, the fact that the collateral is located outside Slovenia should generally not make any difference in the counterparty's bankruptcy, unless the collateral is located in another Member State in which foreign secondary insolvency proceedings are commenced pursuant to the Regulation 1346/2000/EC (Article 3) or another applicable EU legislation.

Pursuant to Article 4 of Regulation 1346/2000/EC the law of this jurisdiction shall, among others, determine "the assets which form part of the estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings", as well as "the respective powers of the debtor and the liquidator" and "the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending".

As provided in Para 1 of Article 5 of Regulation 1346/2000/EC, the opening of insolvency proceedings "shall not affect the rights *in rem* of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets ... belonging to the debtor which are situated within the territory of another Member State at the time of the opening of proceedings". On the basis of Article 18 of Regulation 1346/2000/EC, the Slovenian bankruptcy administrator may remove the counterparty's assets from the territory of the Member State in which they are situated, but subject to Article 5 (and Article 7) of the Regulation.

As also decided upon in Case C-444/07, only the opening of secondary insolvency proceedings under Regulation 1346/2000/EC is capable of restricting the universal effect of the main insolvency proceedings.

As a general rule, the Slovenian bankruptcy administrator shall be entitled to represent the bankrupt counterparty and perform other operations necessary for bankruptcy proceedings also outside this jurisdiction (Article 451 of the Insolvency Act and Regulation 1346/2000/EC). Express recognition of Slovenian bankruptcy proceedings in other Member States is not required, as the recognition is automatic. In case of jurisdictions other than Member States, the Slovenian bankruptcy administrator would in our opinion have to attempt to employ the respective local procedures and mechanisms to have the bankruptcy proceedings pending in Slovenia recognised (if possible).

The most important additional rules concerning bankruptcy proceedings pending concurrently in this jurisdiction and another jurisdiction have been summarised in paragraph 4.15.

4.1.6 As a general rule, if a petition for institution of bankruptcy proceedings against the counterparty is initiated within 12 months[12] of entering into the relevant agreement, or any transaction representing a part thereof[13] including payments and transfers of collateral – and provided that bankruptcy proceedings are indeed instituted by the court following such petition – any security interest and/or payments or transfers of collateral may be challenged by the counterparty's bankruptcy administrator or any counterparty's creditor (on behalf of the bankruptcy estate) for the reasons of a) decrease in the net value of the counterparty's assets, so as to decrease payments to other creditors or, b) providing more favourable payment conditions for a Party against the counterparty's in bankruptcy.

Namely, under Article 271 of the Insolvency Act, any legal action of the counterparty in bankruptcy, carried out within the 12-months challengeability period, shall be challengeable:

(i) if the consequences of such action are:

- either a decrease in the net value of assets of the counterparty in bankruptcy, so as to enable other creditors to receive payment for their claims in a smaller portion than if the action had not been performed, or

- the other Party has acquired more favourable payment conditions for a claim against the counterparty in bankruptcy,

and

(ii) if the other Party, at the time when such action has been executed, was aware of, or should have been aware of, the fact that the counterparty was insolvent.

In this respect, unless it proves otherwise, a Party shall be deemed to have been aware of, or should have been aware of, the counterparty's insolvency if (Article 272 of the Insolvency Act):

(a) it has received fulfilment of a claim prior to its maturity, or has received fulfilment in a form and manner which, according to business practices, usages or practice that existed between the parties, is not considered as a normal form or manner of fulfilment of liabilities based on legal transactions having characteristics equal to those of the legal transactions that represented the basis for the execution of fulfilment of the counterparty, or

[12] In relation to transactions where the relevant person received the debtor's assets without the obligation to perform a counter-fulfilment or for a residual counter-fulfilment, the challengeability period is 36 months.

[13] If bankruptcy proceedings are instituted against the Counterparty within 12 months of entering into any transaction, any such transaction may be challengeable under the rules described in this paragraph, regardless of the fact that the Agreement in respect of such transaction had been entered into more than 12 months prior to the institution of bankruptcy proceedings.

(b) the action was carried out within the last three months prior to the introduction of bankruptcy proceedings.

Not having knowledge of insolvency shall be irrelevant if a Party came into possession of the counterparty's assets without being liable to execute its counter-fulfilment, of for a counter-fulfilment of small value.

If the conditions for challenging debtor's legal actions in detail set forth in the Insolvency Act are proven by the challenging party (whereby in certain cases the burden of proof is reversed), the challenged legal action shall be set aside and the payments or transfers of collateral made would be recovered.

**However, if the Financial Collateral Act applies, the following special rules apply as an exception to the above general rules concerning claw-back:**

(i) The financial collateral arrangement or the provision of collateral shall not be without legal effect, null and void or challengeable for the sole reason that it was entered into, or, as the case may be, made within a certain period before the moment of filing a petition for institution of Insolvency Proceedings and / or prior to the issuing of a resolution on institution of Insolvency Proceedings.

(ii) The financial collateral arrangement entered into or the provision of collateral made on the day of filing a petition for institution of Insolvency Proceedings but after the moment of filing the respective petition and / or after the issuing of a resolution on institution of Insolvency Proceedings shall not be without legal effect, null and void or challengeable if the collateral taker proves that it had been acting in good faith as regards the fact that such proceedings were commenced.

(iii) The obligation to establish a financial collateral arrangement or to provide additional collateral and the provision of such additional collateral in cases where there is a reduction in the value of the (existing) collateral or an increase in the secured claim, or a contractual provision on the right to exchange the collateral or the provision of collateral or the exchange of the collateral shall not be without legal effect, challengeable or null and void for the sole reason that:

a. they had been performed before the moment of filing the petition for institution of Insolvency Proceedings; or
b. the claim to which the financial collateral relates came into existence before the moment of provision of collateral or additional collateral and / or before the moment of exchange of the collateral.

Other than as mentioned above, the provisions of the Financial Collateral Act do not exclude the application of the provisions of the Insolvency Act relating to the challenging of debtor's legal actions on insolvency.

4.1.7 A court of this jurisdiction may hold that a judgment and/or arbitral award concerning obligations of the Parties obtained in a jurisdiction other than this jurisdiction supersedes the relevant FOA Netting Agreement or, as the case may be, the relevant Clearing Agreement or, as the case may be, the relevant Title Transfer Provisions with respect to such obligation.

4.1.8 To the extent any of the provisions subject of this opinion are unilaterally amended by the Solvent Party under any clause such as Clause 14.1 of the Eligible Counterparty Agreements, such an amendment would likely be seen as manifestly contrary to the public order and would thus not be enforceable under the laws of this jurisdiction.

4.1.9 Derivatives transactions and collateral arrangements are not widely developed in this jurisdiction and no opinions of Slovenian legal scholars and / or court precedents are available thereon. Therefore, in relation to any actual enforcement of its rights, the Solvent Party may face lengthy proceedings and confusion in the jurisprudence.

## 4.2 Qualifications specific to paragraph 3.2 (*Recognition of choice of law*)

4.2.1 The Parties will not be able to choose any law other than the law of this jurisdiction in a situation where there is no conflict of law, e.g. where both Parties are incorporated in this jurisdiction.[14] In such case a choice of English law to govern the agreement would not be recognised in this jurisdiction and an Insolvency Representative would not have regard to such law as the governing law of the FOA Netting Agreement or, as the case may be, the Clearing Agreement.

4.2.2 Where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement (Para 4 of Article 3 of Regulation 593/2008/EC).

4.2.3 The choice of law provisions contained in the FOA Netting Agreement or, as the case may be, the Clearing Agreement may be disregarded insofar as they relate to non-contractual obligations.

4.2.4 Specific to paragraph 3.2.2: The Insolvency Representative and/or the court of this jurisdiction would need to consider the FOA Netting Agreement or, as the case may be, the Clearing Agreement in light of the public policy (ordre public) of this jurisdiction. There is no specific court practice determining whether

[14] Although the issue has not yet been tested in practice, we believe that this qualification should not apply in the case where e.g. a Counterparty incorporated in this jurisdiction enters into a FOA Netting Agreement or, as the case may be, a Clearing Agreement with a Party incorporated in another jurisdiction through its Slovenian branch as under the Companies Act a branch office of a foreign legal entity does not have independent legal personality and merely acts as a limb of the foreign legal entity (i.e. the legal entity incorporated abroad obtains the rights and assumes the liabilities).

any (and, if so, which) provisions of the FOA Netting Agreement or, as the case may be, the Clearing Agreement could violate ordre public of this jurisdiction as such. Therefore, we have traditionally been assuming a conservative approach by pointing out that there is a (theoretical) risk that the following provisions of any agreement could be contrary to ordre public of this jurisdiction:

(a) any provision which intends to stipulate a liability to pay default interest on mature, but unpaid interest;

(b) any provision requiring any person to pay amounts imposed in circumstances of breach or default of pecuniary obligations (on the grounds that it is a contractual penalty, which as a matter of Slovenian law cannot be agreed for breach of pecuniary obligation);

(c) any provision which constitutes, or purports to constitute, a restriction on the exercise of any statutory power by any party or any other person;

(d) any matter to the extent that it is expressly to be determined by future agreement or negotiation or is left to the discretion of one party (for the reason of uncertainty);

Nevertheless, the risk that any of the provisions mentioned under points (a) to (d) above would not be upheld by a court of this jurisdiction is in our opinion remote due to the following main reasons:

(i) Although (as mentioned before) no court practice is available with regard to enforceability of any provisions of the FOA Netting Agreement or, as the case may be, the Clearing Agreement, on several occasions the Supreme Court of this jurisdiction assumed a position that exceptions to recognition of foreign judgments due to violation of *ordre public* of this jurisdiction should be interpreted restrictively.[15] In resolution no. Cp 16/2006 the Supreme Court elaborated that *ordre public* comprises the principles of the Constitution, the fundamental principles of individual legal areas, the fundamental principles of EU law, the principles derived from international conventions (particularly the Convention for the Protection of Human Rights and Fundamental Freedoms), international customary law and fundamental principles of morality. In our belief the risk that any the provisions mentioned under points (a) to (d) is contrary to any of the listed components of *ordre public* is remote.

(ii) Furthermore, in order not to be upheld by the Insolvency Representative and/or court of this jurisdiction, the relevant contractual provision should not only be contrary to the *ordre public* of this jurisdiction, but should be **manifestly**

[15] Resolutions of the Supreme Court no. Cp 10/2005 of 12 October 2005, Cp 16/2006 of 7 February 2007 and Cp 17/2009 of 18 June 2009.

**incompatible** with it (Article 34 of Regulation 44/2001/EC, Article 21 of Regulation 593/2008/EC). In decisions no. Cp 10/2005 and Cp 17/2009 the Supreme Court interpreted that "incompatibility must be evident at first sight" and that "the result of recognition should be simply intolerable." In our belief, none of the provisions mentioned under points (a) to (d) is manifestly incompatible with the *ordre public* of this jurisdiction.

4.2.5 To the extent appropriate, these qualifications also apply to other parts of paragraph 3.

## 4.3 Qualifications specific to paragraph 3.3 (*Enforceability of the FOA Netting Provision*)

4.3.1 Where Bankruptcy Proceedings are commenced against the Insolvent Party, the opinion given in paragraph 3.3 only applies insofar as the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions fall into the scope of definitions of a qualified financial contract and netting agreements as described in sub-paragraph (b) of paragraph 3.3.

In particular, we note that the conditions which are required to be met by an agreement in order to fall with the scope of the Netting Definition are listed **cumulatively** (please see sub-paragraph 3.3 (b) for details concerning such cumulative elements). [16] Therefore, under a grammatical (literal) interpretation, insofar the FOA Netting Provision lacks any of the components of the Netting Definition, the opinion given in paragraph 3.3 may not apply. In particular:

(a) The Short Form One Way Clauses and the Short Form Two Way Clauses lack the Base Currency provision (which is contained in the other agreements listed in Annex 1). Base Currency is the only provision which includes rules which could be considered as "rules on conversion of any amounts of the obligations from the previous indent, if such amounts are expressed in different currencies" (as required by the third indent of the Netting Definition). Consequently, enforceability of the FOA Netting Provision as contained in the Short Form One Way Clauses and the Short Form Two Way Clauses may be disputed if the amendment to the FOA Netting Provision specified in Section 1(a) of Annex 5 to this Opinion is not made.

(b) In relation to the issue discussed in paragraph 4.2.4 (d) above, there is a theoretical risk that the Base Currency provision (as part of the FOA Netting Provision) is set aside (and not recognised as a component of

[16] It is possible that this is due to an unintended inconsistency in language / translation. Namely, according to certain commentators, the respective provisions of the Insolvency Act concerning qualified financial contracts and netting agreements were drafted by example of the ISDA 2006 Model Netting Act. In Part I 1. "netting" is defined as the occurrence of "any or all" of four listed components which are materially similar to the components of Article 24.a of the Insolvency Act. However, in the latter, the underlined part was not applied. Considering the purpose of the amendments (i.e. to expressly recognise close-out netting arrangements in insolvency situations) it is likely that such modification was not intentional; however under the grammatical (literal) interpretation the difference is material and should be considered

the netting agreement under the Netting Definition) for the reason that the manner of conversion is left to the discretion of the Non-Defaulting party. In such case, enforceability of (the entire) FOA Netting Provision may be disputed. However, as discretion of the Non-Defaulting Party (i) does not seem to be manifestly incompatible with the public order of this jurisdiction (see paragraph 4.2.4 for details), and (ii) is limited with the obligation to act reasonably, this risk is very remote.

(c) The FOA Netting Provision may not be enforceable with regard to Transactions which do not fall within the scope of Articles 24.a and 24.b of the Insolvency Act.

4.3.2 Notwithstanding paragraph 4.3.1 above, the FOA Netting Provision would be enforceable provided that the Financial Collateral Act applied to the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transaction.[17] The reasons are as follows:

(a) Under Article 12 of the Financial Collateral Act a close-out netting provision can take effect in accordance with its terms notwithstanding any judicial or other attachment, the commencement or continuation of Insolvency Proceedings in respect of the collateral provider or the collateral taker or any assignment, pledge or another disposal by the collateral taker in respect of the secured claim.

(b) The Financial Collateral Act contains a less strict definition of close-out netting compared to the Insolvency Act, i.e. under point 12. of Article 3 of the Financial Collateral Act "agreement on close-out netting means that upon the occurrence of the conditions for realisation of the collateral all unmatured secured claims shall be deemed mature, all non-monetary claims shall be converted to monetary claims and shall be set-off among each other at their current value."[18]

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[17] In this respect, the interrelationship between the Insolvency Act and the Financial Collateral Act is the following: the Insolvency Act is a law of universal applicability while the Financial Collateral Act applies only to situations described in paragraph 4.10 below (and, for the avoidance of doubt, can apply simultaneously with the Insolvency Act). The Financial Collateral Act was the first act in this jurisdiction which expressly provided for enforceability of close-out netting in insolvency scenarios. However, as the applicability thereof is limited to situations described in paragraph 4.10 below, the legislator later introduced the categories of qualified financial contracts and netting agreements also within the framework of the Insolvency Act (with the intention to expressly provide for enforceability of netting agreements also in situations where the Financial Collateral Act does not apply). However, (see the footnote no. 9) the Netting Definition as introduced in the Insolvency Act is in a way stricter than the definition of close-out netting contained in the Financial Collateral Act. Namely, in order that the FOA Netting Provision is enforceable under the Insolvency Act, all elements of the Netting Definition should exist cumulatively. Therefore, the qualification in paragraph 4.3.2 is drafted as a potential comfort to the qualification in paragraph 4.3.1. In absence of any cumulatively required element(s) of the Netting Definition as contained in the Insolvency Act, the FOA Netting Provision would still be enforceable if the Financial Collateral Act applies. In other words, in insolvency scenarios the Insolvency Act will apply in any case and the Financial Collateral Act may apply simultaneously (if the conditions described in paragraph 4.10 are met). In such case (i.e. if the Financial Collateral Act applies) the FOA Netting Provision lacking any of the cumulative elements required by the Insolvency Act would still be enforceable. Please see paragraphs 4.3.1, 4.3.2 and 4.10 for details.

[18] In this respect, it should be noted that the wording of the Financial Collateral Act (as an act implementing Directive 2002/47/EC) does not entirely correspond to the definition of "close-out netting provision" contained in Article 2(1)(n) of that Directive which defines close-out netting provision as "a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or, in the absence of any such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise: (i)

Please see paragraph 4.10 below for a detailed description of limitations concerning the application of the Financial Collateral Act.

4.3.3 If the reasoning described in paragraph 4.3.1 were adopted by the Insolvency Representative and the court of this jurisdiction, and at the same time the Financial Collateral Act did not apply to the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transaction, the FOA Netting Provision would most likely not be enforceable due to the following reasons:

Under the law of this jurisdiction, there are two phases of Bankruptcy Proceedings commencement, namely: (i) the first phase, where a petition is filed with the court to institute such proceedings and (ii) the second phase, where the court decides upon such petition and either institutes or does not institute such proceedings against the debtor. Only upon the issuance of the court decision instituting Bankruptcy Proceedings and publishing of the notice of the institution of Bankruptcy Proceedings the legal effects of Bankruptcy Proceedings start to apply.

Although the Solvent Party could be informed of an Event of Default (as defined in the FOA Netting Agreement or, as the case may be, the Clearing Agreement) at (or shortly after) the moment of filing the petition for institution of Bankruptcy Proceedings against the Insolvent Party, the court could decide on such institution before the Liquidation Date set forth in the notice, meaning that the mandatory provisions of the Insolvency Act would start to apply before the Liquidation Date. This means that at the moment of issuance of the court decision instituting Bankruptcy Proceedings, the mandatory provisions of the Insolvency Act, including the right of the debtor to repayment of its creditors' claims prior to maturity (Articles 257 (applicable to bankruptcy) and 164 (applicable to compulsory settlement and simplified compulsory settlement) of the Insolvency Act) and the cherry picking right (Articles 267 (applicable to bankruptcy) and 166 (applicable to compulsory settlement and simplified compulsory settlement) of the Insolvency Act), would prevail over the contractual provisions of the FOA Netting Agreement or, as the case may be, the Clearing Agreement. For easier review, further analysis in the following paragraphs refers to bankruptcy proceedings only although similar reasoning would apply to other Bankruptcy Proceedings as well.

As regards the mandatory provisions of the Insolvency Act, under Article 267 of the Insolvency Act, the debtor (represented by the Insolvency Representative) shall have the right to withdraw from each mutually unfulfilled bilateral contract within three months following the institution of

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the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or (ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party." In the wording of the Financial Collateral Act, the underlined part has been left out. Therefore, a risk exists that a court would not apply the provisions of the Financial Collateral Act concerning close-out netting if some, but not all, obligations arising under the FOA Netting Agreement or, as the case may be, the Clearing Agreement are secured by provision of financial collateral (unless Directive 2002/47/EC proved to be directly enforceable).

bankruptcy proceedings provided that it obtains consent of the bankruptcy court for such withdrawal. A mutually unfulfilled bilateral contract is defined in Article 24 of the Insolvency Act as a bilateral contract: (i) which has been concluded prior to the initiation of Bankruptcy Proceedings, and (ii) until Bankruptcy Proceedings are initiated: – neither the insolvent debtor nor the opposite party to the contract have fulfilled their obligations arising from this contract, or – neither party has fulfilled such obligations in whole.

The bankruptcy court shall consent to the withdrawal if such withdrawal is necessary to secure more favourable conditions for the payment of creditors. The court would likely consider that the FOA Netting Provision (falling outside the Netting Definition and outside the scope of the Financial Collateral Act) would jeopardize the right of the debtor in bankruptcy (i.e. the Insolvent Party) to withdraw from a mutually unfulfilled bilateral contract resulting in less favourable conditions for the payment of other Insolvent Party's creditors. Therefore, when deciding upon the claims arising in relation to the Insolvent Party's insolvency, the bankruptcy court would most likely apply mandatory provisions of the Insolvency Act and disregard such FOA Netting Provision, allowing the bankruptcy administrator to cherry pick the Transactions.

4.3.4 Electing Automatic Termination (as described in paragraph 3.13, hereinafter ("Automatic Termination") would not materially affect the analysis provided in paragraphs 4.3.1, 4.3.2 and 4.3.3 above. This conclusion is subject to the following considerations.

(a) **If**:

(i) the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions fall within the scope of definitions of a **qualified financial contract and netting agreements** as described in sub-paragraph (b) of paragraph 3.3 (but please see the qualification stated in paragraph 4.3.1), or

(ii) the **Financial Collateral Act applies** to the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions (please see the analysis under paragraph 4.3.2),

election by the Parties of Automatic Termination should not have any material effect concerning enforceability of the FOA Netting Provision. Namely, both the definition of netting agreements contained in Article 24.a of the Insolvency Act as well as the definition of close-out netting contained in point 12 of Article 3 of the Financial Collateral Act are structured in such way[19] that netting is enforceable regardless of whether (following a termination event) termination takes place upon exercising of a Party's right to terminate, or automatically.

[19] (in case of Insolvency Act expressly and in case of the Financial Collateral Act read together with other provisions and interpreted by intent)

(b) **If the interpretation described in paragraph 4.3.3 were adopted,** the following analysis should be considered:

Automatic Termination should generally be enforceable under Slovenian law, but it is questionable whether it would be recognised as valid and enforceable in case of Bankruptcy Proceedings.

It would be possible to argue that any type of provisions attempting to regulate termination of agreements linked to insolvency-related events should be overridden by provisions of the Insolvency Act. If such an argument were accepted, Automatic Termination would be overridden by provisions of the Insolvency Act and would not be enforceable upon commencement of Bankruptcy Proceedings.

It would, however, also be possible to argue that the mandatory provisions of the Insolvency Act and the legal consequences of commencement of Bankruptcy Proceedings do not affect termination of the FOA Netting Agreement or, as the case may be, the Clearing Agreement as the Parties agreed Automatic Termination in advance. Under such argument, commencement of Bankruptcy Proceedings should not affect the provisions on Automatic Termination, in particular if termination is linked to an event occurring before the actual commencement of Bankruptcy Proceedings (please see phases of institution of Bankruptcy Proceedings described in paragraph 4.3.3 above). Under such interpretation, the legal consequences of Bankruptcy Proceedings would override the contractual agreement of the Parties only from the moment of institution of Bankruptcy Proceedings (i.e. when the court decides upon the commencement petition and either institutes or does not institute such proceedings), which is always later than the submission of the petition for commencement to the court.

However, irrespective of the outcome of the question discussed above, the following risks would need to be considered:

(i) the risk that Automatic Early Termination provisions are successfully challenged by the Insolvency Representative or a creditor of the Insolvent Party for the reasons of (a) decrease in the net value of the Insolvent Party's assets, so as to decrease payments to creditors other than the Solvent Party, or, (b) providing more favourable payment conditions for the Solvent Party's claim against the Insolvent Party in bankruptcy, subject to the condition that no more than 12 months have passed between entering into the FOA Netting Agreement or, as the case may be, the Clearing Agreement and institution of Bankruptcy Proceedings and subject to certain additional conditions set forth in the Insolvency Act (particularly certain legal presumptions and rules concerning the burden of proof), and/or

(ii) even if Automatic Termination were enforceable upon the insolvency, the claims originating from such Automatic Termination would in our opinion still be subject to the mandatory provisions of the Insolvency Act described in paragraph 4.3.3 above. Namely, from the moment the court decides to commence Bankruptcy Proceedings, such mandatory provisions of the Insolvency Act would become applicable and effectively override the FOA Netting Provision (as they regulate payments made as a result of Automatic Termination).

4.3.5 The FOA Netting Provision is not likely to be enforceable to the extent that it would be applied by a unilateral decision of the Solvent Party to any Transaction outstanding between the Parties but not generally governed by the terms of the FOA Netting Provision (pursuant to any clause such as Clause 4.6 of the Master Netting Agreements).

4.3.6 To the extent appropriate, paragraph 4.12.1 qualifies the opinion given in paragraph 3.3 as well.

4.3.7 To the extent appropriate, paragraph 4.7 qualifies the opinion given in paragraph 3.3 concerning the legal effects of Insolvency Proceedings with respect to the Liquidation Amount.

4.3.8 Qualification which is derived from the general qualification under paragraph no. 4.1.4 above and is specific to the part of the wording of paragraph 3.3 which reads: "Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Non-Defaulting Party": if the FOA Netting Provision were exercised prior to commencement of Bankruptcy Proceedings over the Insolvent Party and were at the time of commencement of such proceedings subject to litigation or enforcement proceedings (due to failure to pay voluntarily), then such (litigation or enforcement) proceedings would be suspended subject to the provisions of the Insolvency Act.

## 4.4 Qualifications specific to paragraph 3.4 (*Enforceability of the Clearing Module Netting Provision*)

4.4.1 The qualifications described in paragraph 4.3 apply, *mutatis mutandis*, and the below described additional qualifications apply.

4.4.2 There is no clear legal basis for creation of, and for netting to be effective in respect of, separate Cleared Transaction Sets. Namely, both the Netting Definition (as described under sub-paragraph 3.3 (b)) as well as the definition of close out netting as set out in the Financial Collateral Act (if applicable) envisage accelerated maturity and netting of **all** obligations between the Parties. We note that the wording of such definitions does not correspond to the "close-out netting provision" contained in Article 2(1)(n) of Directive 2002/47/EC which defines close-out netting provision as "a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or, in the absence of any

such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise: (i) **the** obligations [comment: not **all** obligations] of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or (ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party." Therefore, unless (in case where financial collateral is provided) Directive 2002/47/EC proved to be directly enforceable also in respect of all aspects of the Clearing Module Netting Provision, there is substantial risk that the Clearing Module Netting Provision is deemed not to fit into the Netting Definition (as set out in the Insolvency Act) and / or the definition of close-out netting (as set out in the Financial Collateral Act) and is thus not able to benefit from the special regime envisaged in those acts (as described in more detail in paragraph 3.3). Consequently, there is a risk that the Clearing Module Netting Provision is completely unenforceable in all insolvency scenarios (for the avoidance of doubt, in circumstances where an Event of Default has occurred but no Bankruptcy Proceedings are commenced, our opinion set out in paragraph 3.4 is not affected by this qualification).

4.4.3 Under a less strict interpretation, however, the Clearing Module Netting Provision could be enforceable also in insolvency scenarios, with a risk that all mutual obligations of the Parties are mandatorily netted (and not only the relevant Cleared Transaction Set).

4.4.4 From grammatical perspective (if interpreted literally), the Clearing Module Netting Provision could also be deemed not to fit into the Netting Definition (as set out in the Insolvency Act) and / or the definition of close-out netting (as set out in the Financial Collateral Act) to the extent that the time of termination of the relevant Client Transactions is linked to termination of the related Firm/CCP Transaction. Namely, both the Netting Definition (as set out in the Insolvency Act) as well as the definition of close-out netting (as set out in the Financial Collateral Act) envisage performing of netting "**upon** (i.e. at approximately the same time as) occurrence of an event of default" or "**upon** arising of conditions for enforcement of financial collateral". However, in case of a CCP Default, the netting under the Clearing Module Netting Provision is envisaged to (possibly) be performed **later** than the occurrence of the relevant event of default (i.e. the CCP Default) which deviates from the word "upon" contained in the Netting Definition. Consequently, there is a certain risk that Clearing Module Netting Provision is unenforceable in all insolvency scenarios, although this risk is, in our view, remote. There is also a certain risk that netting would be deemed to have occurred upon arising of the CCP Default, but in our view such risk is also remote.

## 4.5 Qualifications specific to paragraph 3.5 (*Enforceability of the Addendum Netting Provision*)

4.5.1 The qualifications described in paragraphs 4.3 and 4.4 apply, *mutatis mutandis* (in particular, all references to the Clearing Module Netting Provision shall be read as references to the Addendum Netting Provision).

## 4.6 Qualifications specific to paragraph 3.6 (*Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to FOA Netting Provision*)

4.6.1 The use of FOA Clearing Module or the ISDA/FOA Clearing Addendum could be detrimental to the FOA Netting Provision in following sense: if the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision effectively **prevailed** over the FOA Netting provision, and at the same time interpretation as described in paragraph 4.4.2 were adopted, then in insolvency situations netting would not be possible at all (as an unenforceable provision concerning netting would be prevailing over the generally enforceable FOA Netting Provision). For the avoidance of doubt, in circumstances where an Event of Default has occurred but no Bankruptcy Proceedings are commenced, our opinion set out in paragraph 3.6 is not affected by this qualification.

4.6.2 To the extent appropriate, the qualifications stated in paragraph 4.2 also apply to paragraph 3.6.

## 4.7 Qualifications specific to paragraph 3.7 (*Enforceability of the FOA Set-Off Provisions*)

4.7.1 The opinion given in paragraph 3.7 applies only provided that the Financial Collateral Act applies to the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions. Moreover, due to unclarity of the wording of Article 11 of the Financial Collateral Act concerning perpetuity of the right to enforce the collateral following an enforcement event, the qualification described in the subparagraph 4.7.2(b) may apply even if the Financial Collateral Act applies to the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transaction, although the risk is remote.

Please see paragraph 4.10 below for a detailed description of limitations concerning the application of the Financial Collateral Act.

4.7.2 If the condition stated in paragraph 4.7.1 (i.e. applicability of the Financial Collateral Act) is not met,[20] enforceability of the FOA Set-Off Provisions in Bankruptcy Proceedings may be limited or even excluded for the following reasons:

[20] Example given, this would be the case where (a) cash collateral is provided between Parties which do not fulfil the condition described under paragraph 4.10.1(1) below, or (b) where the Solvent Party tries to apply the General Set-Off Clause to any amount owed to it by the Counterparty but arising from a different legal basis (such as a completely unrelated commercial agreement, damages etc.).

On one hand, under Para 4 of Article 164.a of the Insolvency Act a confirmed compulsory settlement would have legal effect on the net value obtained after performance of close-out netting (i.e. on the calculated Liquidation Amount).[21] Even more explicitly, under Para 4 of Article 264.a of the Insolvency Act, if following the performance of close-out netting the Solvent party has a net claim against the bankrupt debtor, such claim (i.e. the Liquidation Amount) shall be formally reported (*prijava terjatve*) in the bankruptcy proceedings and shall be repaid from the bankruptcy estate under the generally applicable rules of the Insolvency Act.

On the other hand, under the generally applicable rules of the Insolvency Act, commencement of Bankruptcy Proceedings (other than preventive restructuring proceedings) results in a mandatory, automatic set-off of any claims of a specific creditor and counter-claims of the insolvent debtor against such creditor (whether (i) monetary or not, (ii) matured or not and (iii) (in case of bankruptcy and subject to certain conditions) conditional or not. Under such rules, the creditor is not obliged to formally report the claim but to merely inform (*obvestilo)* the bankruptcy administrator of the set-off. We note the difference between these rules and the special provisions concerning netting which provide for an express obligation to report the Liquidation Amount.

The above mentioned general rules on mandatory set-off clearly do not apply to the close-out netting itself, whereas their general application to the Liquidation Amount is unclear. Two interpretations are possible:

(a) Under **grammatical (literal) interpretation** one could argue that the Insolvency Act expressly provides that the Liquidation Amount must be reported and is repaid from the bankruptcy estate / is subject to the effects of confirmed compulsory settlement. *A contrario,* neither the general provisions of the Insolvency Act concerning mandatory set-off nor the FOA Set-Off Provisions should be applied. Such an interpretation would be further strengthened by arguing that the Solvent Party was already preferred in Bankruptcy Proceedings through enforceability of the Netting Provisions and should not be granted additional preference through the FOA Set-Off Provisions. In insolvency scenarios (other than in case of preventive restructuring proceedings), such an interpretation would result in complete unenforceability of the FOA Set-Off Provisions.

(b) Under **interpretation by intent,** one could argue that the intent of the provisions of Para 4 of Article 164.a and Para 4 of Article 264.a. is not to exclude the generally applicable rules on mandatory set-off but to

[21] The same would apply, *mutatis mutandis,* to:

(i) a confirmed simplified compulsory settlement under Alinea 15 of Para 2 of Article 221.b of the Insolvency Act and

(ii) a confirmed preventive restructuring under Para 4 of Article 44.l.

To clarify, the analysis hereinafter only mentions compulsory settlement, but applies (on the basis of the above) *mutatis mutandis* also to simplified compulsory settlement and preventive restructuring if not specifically stated otherwise in this opinion letter.

emphasise that, following the performance of the Netting Provisions, the Solvent Party will not be preferred (e.g. by being entitled to the entire Liquidation Amount) but shall have the same legal position as other generally unsecured, *pari passu* creditors of the Insolvent Party. Such an interpretation would be further strengthened by arguing that the rules of mandatory set-off have been recognised for the entire history of this jurisdiction as an independent state and are not considered as an undue preference of creditors whose claims are affected by them. In insolvency scenarios (other than in case of preventive restructuring proceedings), such an interpretation would result in limited enforceability of the FOA Set-Off Provisions as the Solvent Party could not choose whether to apply the FOA Set-Off Provisions or not, as set-off would be performed automatically subject to the provisions of the Insolvency Act.

4.7.3 No mandatory set-off is provided in case of preventive restructuring proceedings, therefore in case of such proceedings (in absence of applicability of the Financial Collateral Act)[22] the FOA Set-Off Provisions should generally be enforceable, subject to the fact that confirmed preventive restructuring could have legal effects on the net value obtained after performance of close-out netting (i.e. the calculation of the Liquidation Amount) provided that such amount is included in the so-called "basic list of financial claims" (*osnovni seznam finančnih terjatev*) prepared by the debtor.

4.8 **Qualifications specific to paragraph 3.8 (*Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision*)**

4.8.1 The qualifications described in paragraph 4.7 apply, *mutatis mutandis*.

4.9 **Qualifications specific to paragraph 3.9 (*Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision*)**

4.9.1 The qualifications described in paragraph 4.7 apply, *mutatis mutandis*.

4.10 **Qualifications specific to paragraph 3.10 (*Enforceability of the Title Transfer Provisions*)**

4.10.1 Paragraph 3.10 applies only provided that the Financial Collateral Act applies to the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transaction.

The Financial Collateral Act shall apply[23] provided that the following conditions are cumulatively fulfilled:[24]

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[22] Under Para 5 of Article 44.1 of the Insolvency Act neither commencement not confirmation (adoption) of preventive restructuring would have any effect if Financial Collateral Act applies to the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions.

[23] Note also that the benefits of the Financial Collateral Act cannot be applied to contractual relationships arising before the date of entering into force of the Financial Collateral Act (i.e. 1 May 2004) or some of the relevant amendments thereof (i.e. 30 June 2011). Therefore, this opinion may not apply or its applicability may be limited in relation to such contractual relationships.

(1) At all times and in particular at the time of institution of Insolvency Proceedings either:

(a) both parties to the FOA Netting Agreement or, as the case may be, the Clearing Agreement fall within one of the following categories:[25]

(i) public sector bodies of Member States that are either (i) charged with the management of public debt; or (ii) authorised to hold accounts for clients;

(ii) central banks of Member States, the European Central Bank, the International Monetary Fund, the European Investment Bank, the Bank for International Settlements, and multilateral development banks as defined in point 20. of subsection 4.2. of Part 1 of Annex VI of Direction 2006/48/ES;

(iii) financial institutions subject to prudential supervision including: (i) credit institutions as defined in Article 4(1) of Directive 2006/48/EC, including the institutions listed in Article 2 of that Directive, (ii) investment firms as defined in Article 4(1)(1) of Directive 2004/39/EC; (iii) financial institutions as defined in Article 4(5) of Directive 2006/48/EC, (iv) insurance undertakings as defined in Article 1(a) of Directive 92/49/EEC or assurance undertakings as defined in Article 1(1)(a) of Directive 2002/83/EC, (v) undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 85/611/EEC, (vi) management companies as defined in Article 1a(2) of Directive 85/611/EEC;

(iv) central counterparties, settlement agents or clearing houses, as defined respectively in Article 2(c), (d) and (e) of Directive 98/26/EC; or

(b) at least one party to the FOA Netting Agreement or, as the case may be, the Clearing Agreement falls within one of the categories mentioned in sub-paragraph (a) above while the other qualifies (under the criteria laid down in the Companies Act) as a company **other than a micro company** (which is defined as a

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[24] For transparency, we do not mention entities listed in the Financial Collateral Act in relation to enforcement of a so-called notarial mortgage which is a specific property-law-type of collateral possible among certain subjects active on financial markets. Notarial mortgage is regulated in the Financial Collateral Act but does not have the nature of financial collateral in the narrow sense.

[25] In this jurisdiction, the following entities qualify as falling within such categories: the Republic of Slovenia, the Bank of Slovenia, credit institutions (including SID Bank (SID – Slovenska izvozna in razvojna banka), insurance undertakings, investment funds, investment fund management companies, central clearing securities corporation, Health Insurance Institute of Slovenia, Pension and Disability Insurance Institute of Slovenia, Slovenski državni holding, Kapitalska družba, other companies and funds established by the Republic of Slovenia, other regulated (supervised) financial organizations under the banking and financial services legislation.

company which meets at least two of the following criteria: - the average number of employees in the respective business year does not exceed 10; - net sales turnover does not exceed EUR 2,000,000, and - value of assets does not exceed EUR 2,000,000).[26]

(2) The Parties have included in the FOA Netting Agreement or, as the case may be, the Clearing Agreement an arrangement under which a Party (the collateral provider) is obliged to provide financial collateral to the other Party (the collateral taker), being either in a) the legal form of transfer of title [27] or b) pledge [28] (including maximum pledge) over financial instruments,[29] receivables arising from bank loans or cash,[30] (a financial collateral arrangement).

(3) The financial collateral is provided to secure claims to pay a certain amount of money or claims for the delivery of financial instruments. This condition is likely not to be fulfilled in case of Transactions such as physically settled commodities transactions and physically settled bullion transactions (and where some Transactions meet these conditions and some do not, the ones that do not would not be netted).

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[26] Companies other than micro companies are categorised into small, medium and large companies depending on the average number of employees, net sales turnover and the value of assets. Banks, insurance undertakings, the stock exchange and companies which are obliged to prepare consolidated annual reports always qualify as large.

[27] This condition shall be deemed fulfilled where Title Transfer Provisions are part of the FOA Netting Agreement or, as the case may be, the Clearing Agreement.

[28] In this respect, we note that the relevant definition contained in the Financial Collateral Act is grammatically (i.e. in the literal sense) different from the definition contained in Directive 2002/47/EC.

Under Paragraph (c) of Article 1 of Directive 2002/47/EC "'*security financial collateral arrangement' means an arrangement under which a collateral provider provides financial collateral by way of security to or in favour of 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.*"

Under Point 6 of Article 3 of the Financial Collateral Act, a "pledge on financial instrument, cash or a credit claim is financial collateral where the right on the financial instrument, cash or credit claim remains with the collateral provider, and the collateral taker obtains a pledge." "Pledge" is generally defined in Para 1 of Article 128 of the Law of Property Code (*Stvarnopravni zakonik - SPZ*, Official Gazette of the Republic of Slovenia no. 110/2002, as amended) as "the right of the pledgee to be repaid (in case of non-payment) from the value of the pledged item upon maturity of the secured claim, together with interest and cost, prior to other creditors of the pledgor". Considering that the Financial Collateral Act as a lex specialis envisages specific manners of enforcement of the pledge, including out-of court sale and appropriation, and also specifically regulates the right to use the collateral, we believe that generally the term "pledge" as used in the Financial Collateral Act corresponds to the term "security transfer financial collateral agreement" as used in Directive 2002/47/EC. However, there is no publicly available court practice confirming (or denying such a position). It is likely that when interpreting the provisions of the Financial Collateral Act, the courts of this jurisdiction would take into account the provisions of the Directive 2002/47/EC. However, a direct application of Directive 2002/47/EC by the courts of this jurisdiction could only be expected if Directive 2002/47/EC proved to be directly enforceable.

[29] For the purposes of the Financial Collateral Act, "financial instruments" include shares and other securities, bonds and other debt instruments intended for trading on the capital market, and securities issued in series by an individual issuer of shares or bonds which give the holder the right to purchase, sell or exchange these securities for other securities of the issuer and with the exercise of which a contract is concluded between the holder and the issuer on the purchase, sale or exchange of these securities (excluding instruments of payment), including transferable coupons of mutual funds, money market instruments, debt instruments issued by the Bank of Slovenia and all other rights and claims relating to the aforementioned financial instruments.

[30] For the purposes of the Financial Collateral Act, "cash" means money credited to an account in any currency, or a similar claim for repayment of money (such as money market deposits).

(4) Transactions shall be entered into on the financial market. Most Transactions as specified in Annex 2 are financial instruments and would, as such, in our opinion qualify as transactions entered into on the financial market. This does not, however, apply to Transactions such as physically settled commodities transactions and physically settled bullion transactions (and where some Transactions meet these conditions and some do not, the ones that do not would not be netted).

(5) The existence of the financial collateral agreement and the provision of financial collateral must be evidenced in writing (whereby this requirement is deemed to be fulfilled also in case of records in a durable medium, e.g. electronic record).

4.10.2 Under the Financial Collateral Act, when enforcing the financial collateral by appropriation / set-off of a financial instrument, it shall be deemed that the value of the financial collateral was not less than the value that could be obtained through sale of the financial instrument with prudency of a good expert (*skrbnost dobrega strokovnjaka*).

4.10.3 If the Financial Collateral Act does not apply to the collateral, then under the law of this jurisdiction there is no clear and concise legal basis which would set out similar benefits for the Firm as does the Financial Collateral Act, including, *inter alia*, expressly recognised manners of enforcement of the collateral by out-of-court sale, appropriation and set-off, an express provision that a financial collateral arrangement remains valid also in case of commencement of Bankruptcy Proceedings and similar. Therefore, the opinion given under paragraph 3.10 may be subject to other mandatory provisions of Slovenian law (to the extent that such provisions would take effect under the law of the jurisdiction where the collateral is located), in particular mandatory provisions concerning Bankruptcy Proceedings.

However, as a potential comfort, under Article 282 of the Insolvency Act:

(1) If a creditor who has a right to "separate settlement" (*ločitvena pravica)* is entitled, under the **general rules which apply to his right of separate settlement**, the right to carry out an **out-of-court sale** of the relevant assets (objects of security), that creditor shall maintain such right also after the initiation of bankruptcy proceedings.

(2) A creditor having the right to separate settlement **shall not be obliged to report** (*prijaviti*) **the right to separate settlement** (*ločitvena pravica*) referred to in sub-paragraph (1) above, and a claim (*terjatev*) secured by such right, in bankruptcy proceedings and may enforce such right out-of-court in accordance **with the general rules that apply to such right to separate settlement.**

(3) However, sub-paragraph (2) above shall not apply to the unsecured part of such creditor's claim which represents the amount of the claim exceeding the value of the assets which are the subject of the right to separate settlement.

4.11 **Qualifications specific to paragraph 3.11 (*Use of security interest margin not detrimental to Title Transfer Provisions*)**

4.11.1 The qualifications described in paragraphs 4.2 and 4.10 apply, *mutatis mutandis*.

4.12 **Qualifications specific to paragraph 3.12 (*Single Agreement*)**

4.12.1 The opinion in paragraph 3.12 may not apply if the FOA Netting Agreement or, as the case may be, the Clearing Agreement or the Transactions do not contain specified, clear and unambiguous determinations concerning which Transactions shall be subject of the Netting Provisions. Namely, if it cannot be unambiguously determined with respect to a Transaction whether it was by the Parties' contractual will intended to be covered by the Netting Provisions or not, the court of this jurisdiction and / or the Insolvency Representative may fail to recognise the applicability of the Netting Provisions to such a Transaction.

4.13 **Qualifications specific to paragraph 3.13 (*Automatic Termination*)**

4.13.1 The opinion in paragraph 3.13.2 is qualified, to the extent appropriate, by the qualification described in paragraph 4.4.4, *mutatis mutandis,* and applicable also in relation to the Addendum Netting Provision.

4.14 **Qualification specific to paragraph 3.14 (*Multibranch Parties*)**

4.14.1 The opinion in paragraph 3.14 would not apply in relation to any branch of the Defaulting Party which in the jurisdiction of its location is considered to be a separate entity (having an independent legal personality). In this jurisdiction, a branch (*podružnica*) is not considered as such.

4.14.2 In the absence of any specified statutory provisions in this respect, it is not possible to arrive at any definitive conclusion as to the approach of the Insolvency Representative to treatment of the obligations in respect of Transactions entered into in this jurisdiction compared to other obligations arising under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or other Transactions. Generally, the bankruptcy administrator has an obligation to maximise the bankruptcy estate, which could lead to the risk that the Insolvency Representative of a Defaulting Party tries to treat the obligations in respect of Transactions entered into in this jurisdiction separately from other obligations arising under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or other Transaction.

However, we believe that such risk is remote for the following reasons:

(a) As a general rule, receivables shall be considered located in the jurisdiction where the person required to meet them has the centre of its main interests. The Insolvency Act does not provide for any more detailed provisions concerning receivables subject to close-out netting (Point 3. of Article 448 of the Insolvency Act).

(b) Netting agreements shall take legal effect in Bankruptcy Proceedings in accordance with the terms thereof (Articles 164.a and 264.a of the Insolvency Act).

(c) The law governing the netting agreement (between the Solvent and the Insolvent Party) shall also govern the legal consequences of Bankruptcy Proceedings for the mutual rights and obligations arising from netting agreements (Para 1 of Article 483 the Insolvency Act).

4.15 **Qualifications specific to paragraph 3.15 (*Insolvency of Foreign Parties*)**

Pursuant to the Insolvency Act, the court of this jurisdiction can conduct Bankruptcy Proceedings (other than preventive restructuring proceedings which are not possible over a Foreign Defaulting Party) in the following circumstances:

(a) the debtor has its main centre of interest in this jurisdiction (being, in the absence of the proof to the contrary, the place of its registered seat); or

(b) if the assets of the debtor are situated in this jurisdiction (but in such case only in relation to such assets). In case the provisions of Regulation 1346/2000/EC apply, jurisdiction is narrowed by (i) the condition that the debtor must have an establishment[31] in this jurisdiction, and (ii) the rule that only secondary proceedings may be commenced (also in this case, restricted to the assets of the debtor located in this jurisdiction). In both cases, receivables shall be considered located in the jurisdiction where the person required to meet them has the centre of its main interests.

With the exception of the above, the authorities in this jurisdiction should defer to the proceedings in the foreign Defaulting Party's home jurisdiction (and the insolvency proceedings in the foreign Defaulting Party's home jurisdiction would with no further formalities produce the same effects in this jurisdiction) where:

(a) the foreign Defaulting Party is incorporated in a Member State subject to the provisions of Regulation 1346/2000/EC;

(b) the foreign Defaulting Party is a credit institution incorporated in a Member State subject to the provisions of Directive 2001/24/EC;

(c) the foreign Defaulting Party is an insurance undertaking incorporated in a Member State subject to the provisions of Directive 2001/17/EC.

Where the foreign Defaulting Party does not fall under any of the categories stated under (a), (b) and (c) above, and subject to any international treaty entered into by the Republic of Slovenia providing otherwise,[32] insolvency proceedings instituted in the Defaulting Party's home jurisdiction can take legal effects in this jurisdiction upon recognition thereof subject to detailed provisions of the Insolvency Act concerning in particular (i) type of recognised proceedings (main or secondary), (ii)

[31] Being any place of operations where the debtor carries out a non-transitory economic activity with human means and goods.

[32] Whereby we are not aware of any such treaty.

legal effects of the recognised insolvency proceedings, (iii) legal assistance provided by the court of this jurisdiction to a foreign court or a foreign insolvency representative, (iv) authorisations of the foreign insolvency representative in this jurisdiction, (v) procedural rules and conditions[33] concerning the recognition and eventual temporary measures etc.[34] Parallel insolvency proceedings are possible (i.e. even if foreign insolvency proceedings are recognised, domestic Bankruptcy Proceedings (other than preventive restructuring proceedings which are not possible over a Foreign Defaulting Party) can be commenced, but only as secondary proceedings).

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

This opinion is given for the sole benefit of FIA Europe and members of FIA Europe (other than associate members) and their affiliates which have subscribed to FIA Europe's opinions library and whose terms of subscription give them access to this opinion (as evidenced by the records maintained by FIA Europe and each a "**subscribing member**").

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

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

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

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

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

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

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[33] In this respect, one of the conditions for recognition of foreign insolvency proceedings in this jurisdiction is that in the jurisdiction where proceedings subject of recognition are being conducted, the Insolvent Party has:

(a) in respect of recognition of main proceedings: **the centre of its main interest** (being, in the absence of the proof to the contrary, the place of its registered seat), or

(b) in respect of recognition of secondary proceedings: **a place of business**.

[34] In this respect, under Article 452 of the Insolvency Act the court of this jurisdiction may deny recognition of foreign insolvency proceedings and/or a request for legal assistance by a foreign court or a foreign insolvency representative if this could have a negative impact onto sovereignty, safety or public interest of the Republic of Slovenia.

provision of this opinion does not create or give rise to any client relationship between this firm and the subscribing members.

Yours faithfully,

Odvetniki Šelih & partnerji, o.p., d.o.o.

Mia Kalaš, partner

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## SCHEDULE 1
## BROKERAGE COMPANIES

Subject to the modifications and additions set out in this Schedule 1 (*Brokerage companies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Brokerage companies (*borznoposredniške družbe*). For the purposes of this Schedule 1 (*Brokerage companies*), "***Brokerage company***" means an investment firm[35] with the registered seat in the Republic of Slovenia that is not a bank and that has obtained an authorisation from the Securities Market Agency (*Agencija za trg vrednostnih papirjev)* to provide investment services and activities (Para 2 of Article 11 of the Financial Instruments Market Act).[36]

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

### 1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 Paragraph 1.11.1 is deemed deleted and replaced with the following:

""*Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 1 (Brokerage companies).*".

1.2 Paragraph 1.11.3 is deemed deleted and replaced with the following:

""*Bankruptcy Proceedings" means bankruptcy proceedings (stečaj) (referred to in section 3.1 of Schedule 1 (Brokerage companies), as defined in the Insolvency Act and regulated in the Insolvency Act and in the Financial Instruments Market Act.*".

### 2. ADDITIONAL ASSUMPTIONS

None.

### 3. 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.

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[35] Investment firm means a legal entity whose regular occupation or business is the provision of investment services for third parties or investment activities on professional basis (Para 1 of Article 11 of the Financial Instruments Market Act; Point 1. of Article 4 of Directive 2004/39/EC).

[36] This opinion does not cover so called "small brokerage companies" which are defined as brokerage companies:
1. which only provides the following investment services:
- transmission of orders in relation to transferable securities or the units of a collective investment undertakings to parent investment firms of Member States or EU parent investment firms (as defined in Article 32 of the Financial Instruments Market Act) or to management companies; or
- investment advice; and
2. the annual income of which does not exceed EUR 750,000.

3.1 **Insolvency Proceedings: Brokerage companies**

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Brokerage company could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows: bankruptcy (*stečaj*), compulsory liquidation (*prisilna likvidacija*), ordinary liquidation (*redna likvidacija*), dissolution without liquidation (*izbris is sodnega registra brez likvidacije*).[37]

Of the Insolvency Proceedings listed above, bankruptcy proceedings are of such nature that the commencement thereof generally affects the rights and obligations of the Solvent Party.

Commencement of other Insolvency Proceedings listed above does not in principle affect the obligations of the Solvent Party.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings if supplemented or amended as set out in Section 4 of Annex 5. It would be, however, advisable to additionally incorporate in the Insolvency Events of Default Clause, for the avoidance of doubt, Slovenian terms describing Insolvency Proceedings together with English translations of such terms when dealing with counterparties from this jurisdiction.

## 4. MODIFICATIONS TO QUALIFICATIONS

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

4.1 All references to compulsory settlement (*prisilna poravnava*), simplified compulsory settlement (*poenostavljena prisilna poravnava*) and preventive restructuring proceedings (*postopek preventivnega prestrukturiranja*) and to legal consequences thereof do not apply.

4.2 Sub-paragraph 4.10.1(1) shall be read in such a way that a Brokerage company shall be considered to fall within the category of "investment firms as defined in Article 4(1)(1) of Directive 2004/39/EC" as mentioned in sub-paragraph 4.10.1(1)(a)(iii).

## 5. ADDITIONAL QUALIFICATIONS

None.

[37] Due to the fact that brokerage companies are regulated entities the probability of dissolution without liquidation (*izbris is sodnega registra brez likvidacije*) is remote.

## SCHEDULE 2
## CENTRAL CLEARING AND DEPOSITORY HOUSE

Subject to the modifications and additions set out in this Schedule 2 (*Central clearing and depository house*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of a Party which is a central clearing and depository house (*centralna klirinško depotna družba*).[38] For the purposes of this Schedule 2 (*Central clearing and depository house*), "***Central clearing and depository house***" means an entity organised in the legal form of a public limited company (*delniška družba*) or European public limited company (*evropska delniška družba*) allowed to perform (only) the following activities:

1. services of keeping a central register of book-entry securities and custody services in relation to corporation activities of the issuers of book-entry securities (as further detailed and regulated in the Section IX. of the Book Entry Securities Act),

2. services of operation of a settlement system for the settlement of stock exchange transactions provided that it has obtain an authorisation of the Securities Market Agency to provide such services (as further detailed and regulated in the Financial Instruments Market Act),

3. custody services in relation to the takeovers (as further detailed and regulated in the Takeovers Act), 4. services related to guaranteeing of simultaneous fulfilment in respect of settlement of other transactions concerning book-entry securities,

4. services with regard to payment of returns arising from book-entry securities,

5. other services with regard to book-entry securities transactions and meeting of obligations / exercising of rights arising therefrom,

6. sale and maintenance of computer software developed for the provision of its services under points 1. to 6. above and other related transactions

(Articles 405 and 407 of the Financial Instruments Market Act).

Under Article 425 of the Financial Instruments Market Act, the central clearing and depository house is explicitly prohibited from:

1. assuming the position of a central counterparty and / or

2. crediting clearing members, issuers or other persons in relation to settlement of stock exchange and other transactions concerning securities or payments of liabilities from securities, and/or

3. performing any other transactions where it would assume credit risk of the counter party.

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.

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[38] As at the date of this opinion, the only central clearing and depository house in this jurisdiction is the KDD - CENTRALNA KLIRINŠKO DEPOTNA DRUŽBA delniška družba.

## 1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 Paragraph 1.11.1 is deemed deleted and replaced with the following:

""*Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 2 (Central clearing and depository house).*".

## 2. ADDITIONAL ASSUMPTIONS

None.

## 3. 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.

### 3.1 Insolvency Proceedings: Central clearing and depository house

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a central clearing and depository house could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows: bankruptcy (*stečaj*), compulsory settlement (*prisilna poravnava*), simplified compulsory settlement (*poenostavljena prisilna poravnava*),[39] preventive restructuring proceedings (*postopek preventivnega prestrukturiranja*),[40] compulsory liquidation (*prisilna likvidacija*), ordinary liquidation (*redna likvidacija*), dissolution without liquidation (*izbris is sodnega registra brez likvidacije*).[41]

Of the Insolvency Proceedings listed above, bankruptcy proceedings, compulsory settlement proceedings, simplified compulsory settlement (*poenostavljena prisilna poravnava*) and preventive restructuring proceedings (*postopek preventivnega prestrukturiranja*) (i.e. Bankruptcy Proceedings as defined in paragraph 1.11.3) are of such nature that the commencement thereof generally affects (or may affect) the rights and obligations of the Solvent Party.

Commencement of other Insolvency Proceedings listed above does not in principle affect the obligations of the Solvent Party.

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[39] Possible only if the relevant central clearing and depository house:

(i) meets at least two of the following criteria: - the average number of employees in the respective business year does not exceed 10; - net sales turnover does not exceed EUR 2,000,000, and - value of assets does not exceed EUR 2,000,000; or

(ii) does not meet the criteria from item (i) and meets at least two of the following criteria: - the average number of employees in the respective business year does not exceed 50; - net sales turnover does not exceed EUR 8,800,000, and - value of assets does not exceed EUR 4,400,000

[40] Possible only if the relevant central clearing and depository house:

(i) does not meet the criteria from items (i) and/or (ii) from the preceding footnote.

[41] Due to the fact that central clearing and depository houses are regulated entities the probability of dissolution without liquidation (*izbris is sodnega registra brez likvidacije*) is remote.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings if supplemented or amended as set out in Section 4 of Annex 5. It would be, however, advisable to additionally incorporate in the Insolvency Events of Default Clause, for the avoidance of doubt, Slovenian terms describing Insolvency Proceedings together with English translations of such terms when dealing with counterparties from this jurisdiction.

## 4. MODIFICATIONS TO QUALIFICATIONS

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

4.1 Sub-paragraph 4.10.1(1) shall be read in such a way that the KDD - CENTRALNA KLIRINŠKO DEPOTNA DRUŽBA delniška družba shall be considered to fall within the category mentioned in sub-paragraph 4.10.1(1)(a)(iv).

## 5. ADDITIONAL QUALIFICATIONS

None.

## SCHEDULE 3
## PARTNERSHIPS

Subject to the modifications and additions set out in this Schedule 3 (*Partnerships*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are *Partnerships*. For the purposes of this Schedule 3 (*Partnerships*), "***Partnership***" means (i) an unlimited company (*družba z neomejeno odgovornostjo*) as a company established by two or more persons who are liable for the obligations of the company with all their assets (Para 1 of Article 76 of the Companies Act) or (ii) a limited partnership (*komanditna družba*) as a company formed by two or more persons in which at least one of the partners is liable for the liabilities of the company with all his assets (a general partner) and at least one partner is not liable for the liabilities of the company (a limited partner) (Para 1 of Article 135 of the Companies Act).

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

### 1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 Paragraph 1.11.1 is deemed deleted and replaced with the following:

""*Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 3 (Partnerships).*".

1.2 Paragraph 1.11.3 is deemed deleted and replaced with the following:

"*"**Bankruptcy proceedings**" means bankruptcy proceedings (stečaj), compulsory settlement proceedings (prisilna poravnava), simplified compulsory settlement proceedings (poenostavljena prisilna poravnava) (referred to in section 3.1 of Schedule 1 (Partnerships)) as defined in the Insolvency Act, unless there is a specific indication that the analysis does not apply (or does not apply in the same extent) to compulsory settlement proceedings and/or simplified compulsory settlement proceedings.*".

### 2. ADDITIONAL ASSUMPTIONS

None.

### 3. 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.

#### 3.1 Insolvency Proceedings: Partnerships

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Partnership could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows: bankruptcy (*stečaj*), compulsory settlement (*prisilna*

*poravnava*), simplified compulsory settlement (*poenostavljena prisilna poravnava*),[42] compulsory liquidation (*prisilna likvidacija*), ordinary liquidation (*redna likvidacija*), dissolution without liquidation (*izbris is sodnega registra brez likvidacije*).

Of the Insolvency Proceedings listed above, bankruptcy proceedings, compulsory settlement and simplified compulsory settlement (*poenostavljena prisilna poravnava*), are of such nature that the commencement thereof generally affects the rights and obligations of the Solvent Party.

Commencement of other Insolvency Proceedings listed above does in principle not affect the obligations of the Solvent Party.

Under the general rules of Para 1 of Article 100 and Para 2 of Article 135 of the Companies Act, if the Partnership upon the Solvent Party's written request failed to fulfil its obligations: (a) all partners in case of an unlimited company and (b) the general partner(s) in case of a limited partnership would be liable for the obligations of the Partnership. However, under Articles 348 to 352 of the Insolvency Act, by commencement of bankruptcy proceedings (*stečaj*) over the Partnership the liabilities of personally liable partners shall be generally affected as follows:

(a) The bankruptcy estate of the Partnership shall include also the assets acquired through enforcement of the claims against a personally liable partner on the basis of his/her responsibility for the liabilities of the Partnership;

(b) The right of the Solvent Party to enforce the claims referred to in sub-paragraph (a) above against the personally liable partners shall expire;

(c) The bankruptcy administrator shall acquire the right to, for the account of the bankruptcy estate, enforce the claims referred to in sub-paragraph (a) above against the personally liable partners;

(d) A resolution on the enforcement or securing of claims referred to in sub-paragraph (a) above shall only be issued (by the competent court) upon a proposal of the bankruptcy administrator and to the benefit of the bankruptcy estate;

(e) Enforcement and compulsory security proceedings concerning the claims referred to in sub-paragraph (a) above which have started prior to commencement of bankruptcy proceedings shall be suspended and shall only be continued upon a proposal by the bankruptcy administrator and to the benefit of the bankruptcy estate;

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[42] Possible only in relation to the following categories:

(i) partnerships which meet at least two of the following criteria: - the average number of employees in the respective business year does not exceed 10; - net sales turnover does not exceed EUR 2,000,000, and - value of assets does not exceed EUR 2,000,000;

(ii) partnerships which are not partnerships from item (i) and meet at least two of the following criteria: - the average number of employees in the respective business year does not exceed 50; - net sales turnover does not exceed EUR 8,800,000, and - value of assets does not exceed EUR 4,400,000.

(f) If a claim of a the Solvent Party terminated in relation to the Partnership (as the debtor in bankruptcy) pursuant to certain provisions of the Insolvency Act (typically for failure to duly report a claim or failure to duly commence litigation proceedings for establishment of a denied claim), such claim would at the same time terminate also in relation to the personally liable partner(s).

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings if supplemented or amended as set out in Section 4 of Annex 5. It would be, however, advisable to additionally incorporate in the Insolvency Events of Default Clause, for the avoidance of doubt, Slovenian terms describing Insolvency Proceedings together with English translations of such terms when dealing with counterparties from this jurisdiction.

## 4. MODIFICATIONS TO QUALIFICATIONS

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

4.1 All references to preventive restructuring proceedings (*postopek preventivnega prestrukturiranja*) and to legal consequences thereof do not apply.

## 5. ADDITIONAL QUALIFICATIONS

None.

## SCHEDULE 4
## INSURANCE UNDERTAKINGS

Subject to the modifications and additions set out in this Schedule 4 (*Insurance undertakings*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Insurance undertakings. For the purposes of this Schedule 4 (*Insurance undertakings*), "***Insurance undertaking***" means a legal entity with its registered seat in this jurisdiction which has obtained a licence of the Insurance Supervision Agency for performance of insurance business (Para 1 of Article 1 of the Insurance Act).

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

### 1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 Paragraph 1.11.1 is deemed deleted and replaced with the following:

"*"Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 4 (Insurance undertakings).*".

1.2 Paragraph 1.11.3 is deemed deleted and replaced with the following:

"*"Bankruptcy Proceedings" means bankruptcy proceedings (stečaj) (referred to in section 3.1 of Schedule 4 (Insurance undertakings), as defined in the Insolvency Act and regulated in the Insurance Act.*"

### 2. ADDITIONAL ASSUMPTIONS

None.

### 3. 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.

#### 3.1 Insolvency Proceedings: Insurance undertakings

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an insurance undertaking could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows: bankruptcy (*stečaj*), compulsory liquidation (*prisilna likvidacija*), extraordinary management body appointed by the regulator (*izredna uprava*), ordinary liquidation (*redna likvidacija*), dissolution without liquidation (*izbris is sodnega registra brez likvidacije*).[43]

[43] Due to the fact that insurance undertakings are regulated entities the probability of dissolution without liquidation (*izbris is sodnega registra brez likvidacije*) is remote.

Of the Insolvency Proceedings listed above, bankruptcy proceedings are of such nature that the commencement thereof generally affects the rights and obligations of the Solvent Party.

Commencement of other Insolvency Proceedings listed above does not in principle affect the obligations of the Solvent Party.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings if supplemented or amended as set out in Section 4 of Annex 5. It would, however, be advisable to additionally incorporate in the Insolvency Events of Default Clause:

(i) for the avoidance of doubt, Slovenian terms describing Insolvency Proceedings together with English translations of such terms when dealing with counterparties from this jurisdiction, and

(ii) a specific reference to extraordinary management body appointed by the regulator (*prisilna uprava*).

## 4. MODIFICATIONS TO QUALIFICATIONS

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

4.1 All references to compulsory settlement (*prisilna poravnava*), simplified compulsory settlement (*poenostavljena prisilna poravnava*) and preventive restructuring proceedings (*postopek preventivnega prestrukturiranja*) and to legal consequences thereof do not apply.

4.2 Sub-paragraph 4.10.1(1) shall be read in such way that an Insurance undertaking shall be considered to fall within the category of "insurance undertakings as defined in Article 1(a) of Directive 92/49/EEC or assurance undertakings as defined in Article 1(1)(a) of Directive 2002/83/EC" as mentioned in sub-paragraph 4.10.1(1) (a)(iii).

## 5. ADDITIONAL QUALIFICATIONS

None.

## SCHEDULE 5
## INDEPENDENT ENTREPRENEURS

Subject to the modifications and additions set out in this Schedule 5 (*Independent entrepreneurs*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Independent entrepreneurs. For the purposes of this Schedule 5 (*Independent entrepreneurs*), "***Independent entrepreneur***" means a natural person which independently pursues commercial activity in the scope of an organised business (Para 6 of Article 3 of the Companies Act) and who is liable for obligations arising therefrom with all his/her assets (Para 1 of Article 7 of the Companies Act).

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

### 1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 Paragraph 1.11.1 is deemed deleted and replaced with the following:

""*Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 5 (Independent entrepreneurs).*".

1.2 Paragraph 1.11.3 is deemed deleted and replaced with the following:

""*Bankruptcy Proceedings" means personal bankruptcy proceedings (osebni stečaj), compulsory settlement proceedings (prisilna poravnava) or simplified compulsory settlement proceedings (poenostavljena prisilna poravnava) (referred to in section 3.1 of Schedule 5 (Independent entrepreneurs)) as defined in the Insolvency Act, unless there is a specific indication that the analysis does not apply (or does not apply in the same extent) to compulsory settlement proceedings and/or simplified compulsory settlement proceedings*".

### 2. ADDITIONAL ASSUMPTIONS

We assume the following:

2.1 The FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions were each entered into in connection with the Independent entrepreneur's pursuing of commercial activity within the scope of his/her organised business (and not within the scope of his/her personal legal transactions).

2.2 The Independent entrepreneur has (a) a permanent or temporary place of residence (*stalno ali začasno prebivališče*) in this jurisdiction; or, (b), in absence of the referred in sub-paragraph (a), a registered seat in this jurisdiction.

### 3. 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.

#### 3.1 Insolvency Proceedings: Independent entrepreneurs

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Independent entrepreneur could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows: personal bankruptcy (*osebni stečaj*); compulsory settlement (*prisilna poravnava*), simplified compulsory settlement (*poenostavljena prisilna poravnava*),[44] voluntary termination of performance of business activities (*prenehanje opravljanja dejavnosti*), deletion from the register (*izbris iz AJPES*).

Of the Insolvency Proceedings listed above, personal bankruptcy proceedings compulsory settlement proceedings and simplified compulsory settlement proceedings are of such nature that the commencement thereof generally affects the rights and obligations of the Solvent Party.

Commencement of other Insolvency Proceedings listed above does not in principle affect the obligations of the Solvent Party.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings if supplemented or amended as set out in Section 4 of Annex 5. It would, however, be advisable to additionally incorporate in the Insolvency Events of Default Clause:

(i) for the avoidance of doubt, Slovenian terms describing Insolvency Proceedings together with English translations of such terms when dealing with counterparties from this jurisdiction, and

(ii) when the counterparty is an Independent entrepreneur, a specific reference to personal bankruptcy (*osebni stečaj*); and deletion from the register (*izbris iz AJPES*).

3.2 Paragraph 3.10 is deleted.[45]

## 4. MODIFICATIONS TO QUALIFICATIONS

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

4.1 Throughout paragraph 4, all wording is deemed amended in such way (and to the extent appropriate) that the Financial Collateral Act does not apply to FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions entered into by an Independent entrepreneur. In particular:

(a) any reference in paragraph 4 to the Financial Collateral Act, and the legal consequences and/or legal benefits thereof is not applicable; and

[44] Possible only in relation to the Independent entrepreneurs which meet the following criteria: the average number of employees in the respective business year does not exceed 10 and net sales turnover does not exceed EUR 2,000,000; or: the average number of employees in the respective business year does not exceed 50 and net sales turnover does not exceed EUR 8,800,000.

[45] See paragraph 4.10 – the opinion in paragraph 3.10 can only be given if the Financial Collateral Act applies to the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions, which is not the case where the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions are entered into by an Independent entrepreneur.

(b) any reference to a condition that the Financial Collateral Act applies shall be read as if has been confirmed that the Financial Collateral Act does not apply.

4.2 All references to preventive restructuring proceedings (*postopek preventivnega prestrukturiranja*) and to legal consequences thereof do not apply.

4.3 In the third paragraph of paragraph 4.7.2 the following wording is deleted:

"and (iii) in case of bankruptcy and subject to certain conditions also conditional claims.".

## 5. ADDITIONAL QUALIFICATIONS

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

5.1 Additional qualification to paragraph 3.14 (*Multibranch Parties*):

As a matter of the law of this jurisdiction, an Independent entrepreneur may not establish branches.

## SCHEDULE 6
## PRIVATE PERSONS

Subject to the modifications and additions set out in this Schedule 6 (*Private persons*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Private persons. For the purposes of this Schedule 6 (*Private persons*), "***Private person***" means an individual (natural person) who is not an Independent entrepreneur (as defined in Schedule 5) and performs an activity as occupation such as a farmer, a doctor, a notary, an attorney-at-law and similar (Para 7 of Article 7 of the Insolvency Act).

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

### 1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 Paragraph 1.11.1 is deemed deleted and replaced with the following:

""*Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 6 (Private persons).*".

1.2 Paragraph 1.11.3 is deemed deleted and replaced with the following:

""*Bankruptcy Proceedings" means personal bankruptcy proceedings (osebni stečaj) (referred to in section 3.1 of Schedule 6 (Private persons)) as defined in the Insolvency Act.*".

### 2. ADDITIONAL ASSUMPTIONS

We assume the following:

2.1 The FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions were each entered into in the Private person's acting in pursue of and in the scope of his/her occupational activity (and not in the scope of his/her personal legal transactions).

2.2 The Private person has (a) a permanent or temporary place of residence (*stalno ali začasno prebivališče*) in this jurisdiction; or, (b), in absence of the referred in sub-paragraph (a), a registered seat in this jurisdiction.

### 3. 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.

3.1 **Insolvency Proceedings: Private persons**

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Private person could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this

opinion letter, are as follows: personal bankruptcy (*osebni stečaj*); voluntary termination of performance of occupational activities (*prenehanje opravljanja poklicne dejavnosti*), deletion from the register (*izbris iz AJPES*) (if applicable – certain categories of Private persons may not be registered with the AJPES, e.g. farmers).

Of the Insolvency Proceedings listed above, personal bankruptcy proceedings are of such nature that the commencement thereof generally affects the rights and obligations of the Solvent Party.

Commencement of other Insolvency Proceedings listed above does not in principle affect the obligations of the Solvent Party.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings if supplemented or amended as set out in Section 4 of Annex 5. It would, however, be advisable to additionally incorporate in the Insolvency Events of Default Clause:

(i) for the avoidance of doubt, Slovenian terms describing Insolvency Proceedings together with the English translation of such terms when dealing with counterparties from this jurisdiction, and

(ii) when the counterparty is a Private person, a specific reference to personal bankruptcy (*osebni stečaj*); and (if applicable) deletion from the register (*izbris iz AJPES*).

3.2 Paragraph 3.10 is deleted.[46]

## 4. MODIFICATIONS TO QUALIFICATIONS

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

4.1 Throughout paragraph 4, all wording is deemed amended in such way (and to the extent appropriate) that the Financial Collateral Act does not apply to the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions entered into by a Private person. In particular:

(a) any reference in paragraph 4 to the Financial Collateral Act, and the legal consequences and/or legal benefits thereof is not applicable; and

(b) any reference to a condition that the Financial Collateral Act applies shall be read as if has been confirmed that the Financial Collateral Act does not apply.

4.2 All references to compulsory settlement (*prisilna poravnava*), simplified compulsory settlement (*poenostavljena prisilna poravnava*), and/or preventive restructuring proceedings (*postopek preventivnega prestrukturiranja*) and legal consequences thereof do not apply.

[46] See paragraph 4.10 – the opinion in paragraph 3.10 can only be given if the Financial Collateral Act applies to the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions, which is not the case where the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions are entered into by a Private person.

4.3 In the third paragraph of paragraph 4.7.2 the following wording is deleted:

"and (iii) in case of bankruptcy and subject to certain conditions also conditional claims.".

## 5. ADDITIONAL QUALIFICATIONS

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

5.1 Additional qualification to paragraph 3.14 (*Multibranch Parties*):

As a matter of the law of this jurisdiction, a Private person may not establish branches.

## SCHEDULE 7
## CONSUMERS

Subject to the modifications and additions set out in this Schedule 7 (*Consumers*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Consumers. For the purposes of this Schedule 7 (*Consumers*), "***Consumer***" means an individual (natural person) who is neither an Independent entrepreneur (as defined in Schedule 5) nor a Private person (as defined in Schedule 6) (Para 8 of Article 7 of the Insolvency Act).

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

### 1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 Paragraph 1.11.1 is deemed deleted and replaced with the following:

""*Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 7 (Consumers).*".

1.2 Paragraph 1.11.3 is deemed deleted and replaced with the following:

""*Bankruptcy Proceedings" means personal bankruptcy proceedings (osebni stečaj) (referred to in section 3.1 of Schedule 7 (Consumers)) as defined in the Insolvency Act.*".

### 2. ADDITIONAL ASSUMPTIONS

We assume the following:

2.1 The FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions were each entered into by the Consumer for a purpose which can be regarded as personal, i.e. being outside the Consumer's business (trade) or occupation (profession) activities.

2.2 The Consumer has (a) a permanent or temporary place of residence (*stalno ali začasno prebivališče*) in this jurisdiction; or, (b), in absence of the referred in sub-paragraph (a), receives a salary or other regular remuneration in this jurisdiction, or his/her assets are in this jurisdiction.

### 3. 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.

#### 3.1 Insolvency Proceedings: Consumers

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Consumer could be subject

under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, is personal bankruptcy (*osebni stečaj*).

Personal bankruptcy proceedings are of such nature that the commencement thereof generally affects the rights and obligations of the Solvent Party.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to Bankruptcy Proceedings as the only possible Insolvency Proceedings if supplemented or amended as set out in Section 4 of Annex 5. It would be, however, advisable to additionally incorporate in the Insolvency Events of Default Clause:

(i) for the avoidance of doubt, Slovenian terms describing Insolvency Proceedings together with the English translations of such terms when dealing with counterparties from this jurisdiction, and

(ii) when the counterparty is a Private person, a specific reference to personal bankruptcy (*osebni stečaj*).

3.2 Paragraph 3.10 is deleted.[47]

3.3 See also paragraph 4.2 of this Schedule 7.

## 4. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the referred in paragraph 3 and the qualifications at paragraph 4 are deemed modified as follows.

4.1 Qualification in paragraph 4.2.5 is renumbered to 4.2.7.

4.2 Throughout paragraphs 3 and 4 any reference to the incorporation, registered seat or centre of main interest shall be read (if applicable) with respect to a Party which is a Consumer as a reference to the Consumer's permanent or temporary residence (*stalno ali začasno prebivališče*).

4.3 Throughout paragraph 4, all wording is deemed amended in such way (and to the extent appropriate) that the Financial Collateral Act does not apply to the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions entered into by a Consumer. In particular:

(a) any reference in paragraph 4 to the Financial Collateral Act, and the legal consequences and/or legal benefits thereof is not applicable; and

(b) any reference to a condition that the Financial Collateral Act applies shall be read as if has been confirmed that the Financial Collateral Act does not apply.

[47] See paragraph 4.10 – the opinion in paragraph 3.10 can only be given if the Financial Collateral Act applies to the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions, which is not the case where the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions are entered into by a Consumer.

4.4 All references to compulsory settlement (*prisilna poravnava*), simplified compulsory settlement (*poenostavljena prisilna poravnava*), and/or preventive restructuring proceedings (*postopek preventivnega prestrukturiranja*) and legal consequences thereof do not apply.

4.5 In the third paragraph of paragraph 4.7.2 the following wording is deleted:

"and (iii) in case of bankruptcy and subject to certain conditions also conditional claims.".

## 5. ADDITIONAL QUALIFICATIONS

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

5.1 The opinions expressed in paragraph 3 are also qualified (to the extent appropriate) by the following:

5.1.1 Under Para 2 of Article 6 of Regulation 593/2008/EC, in connection with Para 1 of Article 6 of Regulation 593/2008/EC, an agreement concluded between a Consumer and a Party which is acting in the exercise of his trade or profession (the "**Professional**"), where the Professional:

(a) pursues his commercial or professional activities in this jurisdiction, or

(b) by any means, directs such activities to this jurisdiction or to several countries including this jurisdiction;

and the agreement falls within the scope of such activities (whereby the FOA Netting Agreement, or as the case may be, the Clearing Agreement and the Transactions will presumably fall within the above conditions), the Parties' choice of law may not result in depriving the Consumer of the protection afforded to him by the provisions that cannot be derogated from by agreement by virtue of the law of this jurisdiction.

Under subparagraph (d) of Para 4 of Article 6 of Regulation 593/2008/EC, the above rule shall not apply to rights and obligations which constitute a financial instrument as referred to in Article 4 of Directive 2004/39/EC[48] (i.e. in that case, the Parties shall choose the governing law freely without the above limitation).

[48] Under Section C of Annex 1 relating to Article 4 of Directive 2004/39/EC, financial instruments comprise: (1) transferable securities; (2) money-market instruments; (3) units in collective investment undertakings; (4) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash; (5) 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); (6) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF; (7) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in (6) 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; (8) derivative instruments for the transfer of credit risk; (9) financial contracts for differences; (10) 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 that must be settled in cash or may be settled in cash at the option of

In line with the above, insofar as the relevant FOA Netting Agreement, or as the case may be, the Clearing Agreement and Transactions do not comprise rights and obligations of the Parties which constitute a financial instrument, the courts of this jurisdiction will apply all provisions of the laws of this jurisdiction affording protection to Consumers which cannot be derogated from by agreement (in particular all mandatory provisions of the Slovenian Consumer Protection Act: *Zakon o varstvu potrošnikov (ZVPot)* (Official Gazette of the Republic of Slovenia no. 20/1998, as amended). The most relevant provisions thereof potentially relating to the FOA Netting Agreement, or as the case may be, the Clearing Agreement and the Transactions would (example given) include:

- the requirement that the contractual conditions are fair towards the Consumer (including a list of provisions which are deemed unfair by the law itself and thus null and void, such as a waiver by the Consumer of his objections, undefined price, the Professional's option to unilaterally amend the contractual conditions, a contractual penalty in favour of the Professional, the Professional's exclusive right to interpret the contractual conditions etc.);

- that any ambiguity in the wording of the Agreement and the Transactions shall be interpreted in favour of the Consumer.

5.2 Additional qualification to paragraph 3.14 (*Multibranch Parties*):

As a matter of the law of this jurisdiction, a Consumer may not establish branches.

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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 in Section C of Annex 1, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

## SCHEDULE 8
## INVESTMENT FUND MANAGEMENT COMPANIES

Subject to the modifications and additions set out in this Schedule 8 (*Investment fund management companies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Investment fund management companies. For the purposes of this Schedule 8 (*Investment fund management companies*), "***Investment fund management company***" means a legal entity with registered seat in this jurisdiction which is performing services of management of investment funds on the basis of a licence obtained from the Securities Market Agency (Article 13 of the Investment Funds and Management Companies Act).

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

### 1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 Paragraph 1.11.1 is deemed deleted and replaced with the following:

""*Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 8 (Investment fund management companies).*".

1.2 Paragraph 1.11.3 is deemed deleted and replaced with the following:

""*Bankruptcy Proceedings" means bankruptcy proceedings (stečaj) (referred to in section 3.1 of Schedule 8 (Investment fund management companies), as defined in the Insolvency Act and regulated in the Insolvency Act and in the Investment Funds and Management Companies Act.".*

### 2. ADDITIONAL ASSUMPTIONS

None.

### 3. 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.

#### 3.1 Insolvency Proceedings: Investment fund management companies

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Investment fund management company could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows: bankruptcy (*stečaj*), compulsory liquidation (*prisilna likvidacija*), ordinary liquidation (*redna likvidacija*), dissolution without liquidation (*izbris is sodnega registra brez likvidacije*).[49]

[49] Due to the fact that investment fund management companies are regulated entities the probability of dissolution without liquidation (*izbris is sodnega registra brez likvidacije*) is remote.

Of the Insolvency Proceedings listed above, bankruptcy proceedings are of such nature that the commencement thereof generally affects the rights and obligations of the Solvent Party.

Commencement of other Insolvency Proceedings listed above does not in principle affect the obligations of the Solvent Party.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings if supplemented or amended as set out in Section 4 of Annex 5. It would, however, be advisable to additionally incorporate in the Insolvency Events of Default Clause for the avoidance of doubt, Slovenian terms describing Insolvency Proceedings together with English translations of such terms when dealing with counterparties from this jurisdiction.

## 4. MODIFICATIONS TO QUALIFICATIONS

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

4.1 All references to compulsory settlement (*prisilna poravnava*), simplified compulsory settlement (*poenostavljena prisilna poravnava*) and preventive restructuring proceedings (*postopek preventivnega prestrukturiranja*) and to legal consequences thereof do not apply.

4.2 Sub-paragraph 4.10.1(1) shall be read in such way that an Investment fund management company shall be considered to fall within the category of "management companies as defined in Article 1a(2) of Directive 85/611/EEC " as mentioned in sub-paragraph 4.10.1(1) (a)(iii).

## 5. ADDITIONAL QUALIFICATIONS

None.

## SCHEDULE 9
## INVESTMENT FUNDS

Subject to the modifications and additions set out in this Schedule 9 (*Investment funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Investment funds. For the purposes of this Schedule 9 (*Investment funds*), "**Investment fund**" means a collective investment undertaking with the sole object of collecting assets from the public and further investing such assets into different types of investments pursuant to an investment policy set out in advance and solely to the benefit of the holders of the units of such investment fund (Para 1 of Article 5 of the Investment Funds and Management Companies Act).[50]

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

### 1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 Paragraph 1.11.1 is deemed deleted and replaced with the following:

""*Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 9 (Investment funds).*".

1.2 Paragraph 1.11.3 is deemed deleted.

### 2. ADDITIONAL ASSUMPTIONS

None.

### 3. 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.

### 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

[50] To summarise briefly, an investment fund may be formed as an UCITS fund (which is always open-ended) or as a non-UCITS fund (which may be open- or close-ended). In this jurisdiction, an investment fund may take one of the following forms: (i) a mutual fund (*vzajemni sklad*) (defined as an open-ended investment fund, formed as separate assets, the operation of which is regulated in Section 7 of the Investment Funds and Management Companies Act); (ii) a cover fund (*krovni sklad*) (defined as a mutual fund, composed of two or more sub-funds, which are formed as separate assets, the operation of which is regulated in Section 7 of the Investment Funds and Management Companies Act), (iii) an alternative fund (*alternativni sklad*) (defined as an open-ended investment fund, formed as separate assets, the operation of which is regulated in Section 10.2 of the Investment Funds and Management Companies Act), and (iv) an investment company (*investicijska družba*) defined as a close-ended investment fund, formed in the corporate form of a joint stock company with registered seat in this jurisdiction, the share capital of which is divided to shares of the same class, which are freely transferrable and traded on an organised market, and the operation of which is regulated in Section 10.3 of the Investment Funds and Management Companies Act). The mutual funds and the cover funds are UCITS funds and the alternative funds and investment companies are non-UCITS funds.

subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows: compulsory liquidation (*prisilna likvidacija*), compulsory transfer of management (*prisilni prenos upravljanja*), ordinary liquidation (*redna likvidacija*); and, with respect to an investment company, also dissolution without liquidation (*izbris is sodnega registra brez likvidacije*).[51]

In principle, commencement of the Insolvency Proceedings listed above does not affect the obligations of the Solvent Party (as no bankruptcy and/or compulsory settlement and / or simplified compulsory settlement and / or preventive restructuring proceedings can be commenced against an Investment fund).

**However, it is important to note that no enforcement is possible against the assets of an Investment fund.**

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings if supplemented or amended as set out in Section 4 of Annex 5. It would, however, be advisable to additionally incorporate in the Insolvency Events of Default Clause:

(i) for the avoidance of doubt, Slovenian terms describing Insolvency Proceedings together with the English translations of such terms when dealing with counterparties from this jurisdiction, and

(ii) when the counterparty is an Investment fund, a specific reference to compulsory transfer of management of an investment fund.

3.2 In this jurisdiction, an Investment fund cannot be subject to bankruptcy, compulsory settlement, simplified compulsory settlement and / or preventive restructuring proceedings. Therefore, all references to Bankruptcy Proceedings and legal consequences thereof do not apply.

## 4. MODIFICATIONS TO QUALIFICATIONS

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

4.1 Paragraph 4.1.4 is deemed deleted and replaced by the following:

***"No enforcement is possible against the assets of an Investment fund."***

4.2 In this jurisdiction, an Investment fund cannot be subject to bankruptcy, compulsory settlement, simplified compulsory settlement and / or preventive restructuring proceedings. Therefore, all references to Bankruptcy Proceedings and legal consequences thereof do not apply.

4.3 Sub-paragraph 4.10.1(1) shall be read in such a way that an Investment fund management company shall be considered to fall (as appropriate) within the categories mentioned in sub-paragraph 4.10.1(1)(a).

[51] However, due to the fact that investment companies are regulated entities the probability of dissolution without liquidation (*izbris is sodnega registra brez likvidacije*) is remote.

## 5. ADDITIONAL QUALIFICATIONS

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

5.1 Additional qualification to paragraph 3.14 (*Multibranch Parties*):

As a matter of the law of this jurisdiction, it is not envisaged that an Investment fund could have a branch.

## SCHEDULE 10
## THE REPUBLIC OF SLOVENIA AND MUNICIPALITIES

Subject to the modifications and additions set out in this Schedule 10 (*The Republic of Slovenia and Municipalities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are *The Republic of Slovenia and/or Municipalities*. For the purposes of this Schedule 10 (*The Republic of Slovenia and Municipalities*), "***Municipality***" means a basic self-governing local community established as a legal person of public law under the Local Self-Government Act: *Zakon o lokalni samoupravi,* ZLS (Official Gazette of the Republic of Slovenia, no. 72/1993, as amended.

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

### 1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 Paragraph 1.11.1 is deemed deleted and replaced with the following:

""*Insolvency Proceedings" means (from a theoretical point of view), the procedures listed in section 3.1 of Schedule 10 (The Republic of Slovenia and Municipalities).*".

1.2 Paragraph 1.11.3 is deemed deleted and replaced with the following.

""*Bankruptcy Proceedings" means bankruptcy proceedings (stečaj) (referred to in section 3.1 of Schedule 10 (The Republic of Slovenia and Municipalities).*"

### 2. ADDITIONAL ASSUMPTIONS

None.

### 3. 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.

#### 3.1 Insolvency Proceedings: the Republic of Slovenia and Municipalities

Theoretically, the only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is the Republic of Slovenia or a Municipality could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows: bankruptcy (*stečaj*), and with respect to a Municipality also any voluntary or compulsory reorganisation (not regulated specifically in the relevant legislation).

However, it is unclear whether the Republic of Slovenia and/or a Municipality can at all become subject of bankruptcy proceedings (*stečajni postopek*). To clarify, the following legal analysis refers only to the Republic of Slovenia (the "Republic").

3.1.1 Interpretation by intent

The Republic is not expressly exempt from the scope of Insolvency Act. Under interpretation by intent it should be concluded that the provisions of the Insolvency Act cannot be applied to an eventual insolvency of the Republic due to the following main reasons:

(a) Several general principles of the Insolvency Act are of such nature that they cannot be applied to a sovereign – the most typical one being that following bankruptcy proceedings the bankrupt debtor ceases to exist.

(b) There are no special provisions contained in the Insolvency Act governing any of the special procedural issues which would arise in case of insolvency of the Republic, such as:

(i) maintaining the principles of separation of powers with respect to branches of government and appointment of an administrator;

(ii) the manner of resolving the conflict of interest in the appointment of the insolvency proceedings administrator;

(iii) the manner of resolving the conflict of interest in case any rights of the creditors need to be tested in front of Slovenian courts (which, in case of insolvency of the Republic, would formally be a representative body of the insolvent debtor) etc.

(c) Furthermore, there are several provisions which indirectly imply that the Republic is exempt from the scope of the Insolvency Act, such as:

(i) The provision of Article 223 stipulating that insolvency proceedings can only be commenced over a company employing mainly disabled persons (in Slovenian: *invalidsko podjetje*) with the consent of the Government (it would be illogical to require a Government consent for this and no consent at all for commencement of insolvency proceedings with respect to the Republic).

(ii) The provision of Para 7 of Article 374 stipulating that, if all the assets of a bankrupt debtor are sold as a whole to the Republic, [52] then the Republic shall not be liable for the bankrupt debtor's obligations (as opposed to the general rule that the purchaser shall be considered a universal legal successor of the bankrupt debtor and thus liable for its debts).

(iii) The provision of Article 452 stipulating that the Slovenian court may reject recognition of foreign insolvency proceedings or a request of a foreign court or a foreign administrator for legal assistance or co-operation should that have a negative impact on sovereignty, safety or public interest of the Republic

52 Certain conditions apply which are not summarised in detail as they are not relevant for the present legal analysis.

(considering the categories protected under this provision it would be illogical to generally apply the Insolvency Act to the Republic).

3.1.2 Grammatical (literal) interpretation

On the other hand, it should be noted that under a grammatical (literal) interpretation (in Slovenian: *gramatikalna razlaga*) the Republic is not excluded from the scope of the Insolvency Act. Namely, Article 4 of the previously valid Compulsory Composition, Bankruptcy and Liquidation Act (Official Gazette of the Republic of Slovenia, No. 67/1993, as amended; valid until 15 January 2008) stipulated that insolvency proceedings can be instituted over certain entities enumerated therein and any other entities if so provided by a special law (whereby no special law provided that insolvency proceedings could be applied over the Republic). However, in Article 223 of the currently valid Insolvency Act this definition has been modified so that bankruptcy proceedings can be initiated over any legal person unless a special law provides otherwise. The Republic is a legal person and we have not found any special law expressly excluding bankruptcy proceedings in respect of it.

3.1.3 Conclusion:

When considering the two opposing interpretations described above, the interpretation by intent would in our belief prevail, i.e. we believe that the Insolvency Act does not apply to the Republic.

As most of the arguments stated in section 3.1.1 above do not seem to apply to Municipalities (save for the argument 3.1.1(c)(ii)), the probability that the Insolvency Act can be applied to Municipalities is higher. However, the issue is not entirely clear and has not been tested in practice.

3.2 Therefore, all parts of the opinion should be read in conjunction with section 3.1 above and understood in an appropriately modified manner.

3.3 Subject to sections 3.1 and 3.2 above, we confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings.

3.4 Inapplicability of the Financial Collateral Act

See Additional Qualification in paragraph 5.2. of this Schedule 10.

## 4. MODIFICATIONS TO QUALIFICATIONS

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

4.1 All references to compulsory settlement (*prisilna poravnava*), simplified compulsory settlement (*poenostavljena prisilna poravnava*) and preventive restructuring proceedings (*postopek preventivnega prestrukturiranja*) and to legal consequences thereof do not apply.

4.2 Sub-paragraph 4.10.1(1) shall be read in such way that the Republic of Slovenia shall be considered to fall within the categories as mentioned in sub-paragraph 4.10.1(1)(a).

## 5. ADDITIONAL QUALIFICATIONS

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

5.1 The Republic of Slovenia and the Municipalities should as direct budget users assume all their obligations in writing (Article 50 of the Public Finance Act: *Zakon o javnih financah, ZJF* (Official Gazette of the Republic of Slovenia, no. 79/1999, as amended).

5.2 It is likely that the Financial Collateral Act does not apply to Municipalities. Therefore, in relation to Municipalities, throughout paragraphs 3 and 4, all wording is deemed amended in such way (and to the extent appropriate) that there is a risk that the Financial Collateral Act does not apply to the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions entered into by a Municipality. In particular:

(a) any reference to the Financial Collateral Act, and the legal consequences and/or legal benefits thereof may not be applicable; and

(b) any reference to a condition that the Financial Collateral Act applies shall be read with the reservation that this may not be the case.

5.3 Additional qualification to paragraph 3.14 (*Multibranch Parties*):

As a matter of the law of this jurisdiction, it is not envisaged that the Republic of Slovenia or a Municipality could have a branch.

## SCHEDULE 11
## SOVEREIGN ASSETS FUNDS

Subject to the modifications and additions set out in this Schedule 11 (*Sovereign assets funds*), the opinions, assumptions and qualifications set out in this opinion letter will generally also apply in respect of Parties which are *Sovereign assets funds*. For the purposes of this Schedule 11 (*Sovereign assets funds*), "***Sovereign assets fund***" means a public fund founded by the Republic of Slovenia for the purpose of performing activities in public interest. We note that the Sovereign assets funds are regulated by several laws which are not necessarily completely harmonised in relation to each other. Therefore, this schedule should be read as a very general legal analysis, and further advice should be sought in relation to a specific entity established and / or managed by the Republic of Slovenia.

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

### 1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 Paragraph 1.11.1 is deemed deleted and replaced with the following:

""*Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 11 (Sovereign assets funds).*".

1.2 Paragraph 1.11.3 is deemed deleted and replaced with the following:

""*Bankruptcy Proceedings" means bankruptcy proceedings (stečaj) (referred to in section 3.1 of Schedule 11 (Sovereign assets funds).*".

### 2. ADDITIONAL ASSUMPTIONS

None.

### 3. 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.

#### 3.1 Insolvency Proceedings: Sovereign assets funds

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Sovereign assets fund could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows: bankruptcy (*stečaj*) provided that the founder of the Sovereign assets fund is not liable for the obligations thereof by under the law or under the act on foundation, non-voluntary liquidation *(neprostovoljna likvidacija*), voluntary liquidation (*prostovoljna likvidacija*, other cases of cessation provided expressly by the law or the act on foundation of the relevant Sovereign assets fund.

Of the Insolvency Proceedings listed above, bankruptcy proceedings are of such nature that the commencement thereof generally affects the rights and obligations of the Solvent Party.

Commencement of other Insolvency Proceedings listed above does not in principle affect the obligations of the Solvent Party.

It would be advisable to include in the Insolvency Events of Default Clause an additional reference to "*any other cases of cessation provided expressly by a law applicable to the counterparty or the counterparty's act on foundation*". Provided that this recommendation is met, we confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings. It would, however, be advisable to additionally incorporate in the Insolvency Events of Default Clause, for the avoidance of doubt, Slovenian terms describing Insolvency Proceedings together with English translations of such terms when dealing with counterparties from this jurisdiction.

## 4. MODIFICATIONS TO QUALIFICATIONS

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

4.1 All references to compulsory settlement (*prisilna poravnava*), simplified compulsory settlement (*poenostavljena prisilna poravnava*) and preventive restructuring proceedings (*postopek preventivnega prestrukturiranja*) and to legal consequences thereof do not apply.

4.2 Sub-paragraph 4.10.1(1) shall be read in such way that the Sovereign assets funds shall be considered to fall within the categories as mentioned in sub-paragraph 4.10.1(1)(a).

## 5. ADDITIONAL QUALIFICATIONS

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

5.1 If a Sovereign Asset Fund is a direct budget user it should assume all its obligations in writing (Article 50 of the Public Finance Act: *Zakon o javnih financah, ZJF* (Official Gazette of the Republic of Slovenia, no. 79/1999, as amended).

5.2 Additional qualification to paragraph 3.14 (*Multibranch Parties*):

As a matter of the law of this jurisdiction, it is not envisaged that a Sovereign assets fund could have a branch.

## 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).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) where the FIA Member's counterparty is not a natural person:

(i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1.1 (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; and

(b) where the FIA Member's counterparty is a natural person:

(i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1.1 (d);

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

(iii) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1 (d) ; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Rehypothecation Clause**" means:

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

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

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

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

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

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

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

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

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

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

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

## ANNEX 4

## PART 1
## CORE PROVISIONS

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

1. **FOA Netting Provision:**

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

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

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

      ii. the Non-Defaulting Party shall as soon as reasonably practicable determine (discounting if appropriate), in respect of each Netting Transaction referred to in paragraph (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.

## PART 3
## SECURITY INTEREST PROVISIONS

1. **Security Interest Clause:**

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

2. **Power of Sale Clause:**

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

3. **Client Money Additional Security Clause**

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

4. **Rehypothecation Clause**

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

## ANNEX 5
## NECESSARY OR DESIRABLE AMENDMENTS

1. Necessary amendments

(a) For the purposes of paragraph 3.3:

Inclusion of provisions setting out "rules on conversion of any amounts of the obligations concerning close-out value, market value, liquidation value or replacement value of mutual obligations of the parties upon termination or acceleration, if such amounts are expressed in different currencies".

(b) For the purposes of paragraph 3.4:

Inclusion of provisions setting out "rules on conversion of any amounts of the obligations concerning close-out value, market value, liquidation value or replacement value of mutual obligations of the parties upon termination or acceleration, if such amounts are expressed in different currencies".

(c) For the purposes of paragraph 3.5:

Inclusion of provisions setting out "rules on conversion of any amounts of the obligations concerning close-out value, market value, liquidation value or replacement value of mutual obligations of the parties upon termination or acceleration, if such amounts are expressed in different currencies".

2. Desirable amendments

(a) For the purposes of paragraph 3.3:

Inclusion of the provision obliging a Party which has a right to exercise discretion (e.g. in valuing a contingent or otherwise unascertained amount) to act in good faith and reasonably.

(b) For the purposes of paragraph 3.4:

Inclusion of the provision obliging a Party which has a right to exercise discretion (e.g. in valuing a contingent or otherwise unascertained amount) to act in good faith and reasonably.

(c) For the purposes of paragraph 3.5:

Inclusion of the provision obliging a Party which has a right to exercise discretion (e.g. in valuing a contingent or otherwise unascertained amount) to act in good faith and reasonably.

(d) For the purposes of paragraph 3.7.1:

Inclusion of the provision obliging a Party which has a right to exercise discretion (e.g. in valuing a contingent or otherwise unascertained amount) to act in good faith and reasonably.

(e) For the purposes of paragraph 3.7.2:

Inclusion of the provision obliging a Party which has a right to exercise discretion (e.g. in valuing a contingent or otherwise unascertained amount) to act in good faith and reasonably.

(f) For the purposes of paragraph 3.8:

Inclusion of the provision obliging a Party which has a right to exercise discretion (e.g. in valuing a contingent or otherwise unascertained amount) to act in good faith and reasonably.

(g) For the purposes of paragraph 3.9:

Inclusion of the provision obliging a Party which has a right to exercise discretion (e.g. in valuing a contingent or otherwise unascertained amount) to act in good faith and reasonably.

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

None.

4. Additional events for the purposes of paragraph 3.1:

(a) where the FIA Member's counterparty is not a natural person:

(i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1.1 (h);

(ii) in relation to the terms of the Short Form One-Way Clauses and Short Form Two-Way Clauses: [blank, no additional event required];

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

(iv) in relation to the terms of the Eligible Counterparty Agreement: [intentionally blank, no additional event required];

(v) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1 (h);

and

(b) where the FIA Member's counterparty is a natural person:

(i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1.1 (b), (c) and (h);

(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);

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

(iv) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1 (b), (c) and (h).

5. Alterations which constitute material alterations:

None.

For the purpose of each **SCHEDULE:**

1. Necessary amendments

Same as under item 1 above.

2. Desirable amendments

Same as under item 2 above.

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

None.

4. Additional events for the purposes of paragraph 3.1:

Save as under item 4 above, exceptions being Schedule 10 and Schedule 11 where no additional events are required.

5. Alterations which constitute material alterations:

None.