FIA EUROPE - NETTING OPINIONS PROJECT

FIA Europe
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10 February 2015

Dear Sirs,

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

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

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

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

1.1.1 Czech companies (in Czech: "*obchodní korporace*") incorporated under the Czech Act No. 90/2012 Coll., on business corporations (the "**Business Corporations Act**") or non-Czech companies (other than a "Societas Europea" established pursuant to EU Regulation No. 2157/2001 on the Statute of a European company, as amended) incorporated or formed under the laws of another jurisdiction which are companies and which have a branch (in Czech: "*pobočka*") established in this jurisdiction in accordance with the Czech Act No. 89/2012 Coll., civil code (the "**Civil Code**").[1]

1.1.2 Czech banks within the meaning of the Czech Act No. 21/1992 Coll., on banks, as amended (the "**Act on Banks**") and non-Czech banks incorporated or

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

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

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

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

1.2.1 Securities Dealers (Schedule 1);

1.2.2 Insurance Providers (Schedule 2);

1.2.3 Individuals (Schedule 3);

1.2.4 Fund Entities (Schedule 4);

1.2.5 Public Entities (Schedule 5);

1.2.6 Pension Funds (Schedule 6); and

1.2.7 Building Savings Banks (Schedule 7).

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

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

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

1.6 A person incorporated or organised in this jurisdiction may be a Party to a Clearing Agreement in the capacity of "**Firm**" (as defined in the FOA Clearing Module) or "**Clearing Member**" (as defined in the ISDA/FOA Clearing Addendum) or as "**Client**" (as defined in either of them). Where a person incorporated or organised in this jurisdiction is a Party to a Clearing Agreement as Firm, or as the case may be Clearing Member, our opinion relates only to persons incorporated or organised as banks or securities dealers. A reference to "Defaulting Party" in the reservations in paragraph 4 is, in relation to the Clearing Agreement and the Firm Trigger Event /CM Trigger Event and CCP Default, a reference to Client, Firm or Clearing Member incorporated or organised in this jurisdiction and a reference to "Non-Defaulting" is a reference to Client, Firm or Clearing Member as the other Party to the Clearing Agreement.

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. The opinion at paragraphs 3.7, 3.8 and 3.9 in respect of the FOA Set-off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-off Provisions, when given in respect of Margin, is given only with respect to cash balances credited to an account provided by the Non-Defaulting Party to the Defaulting Party which is located outside this jurisdiction. The opinion at paragraph 3.10 in respect of the Title Transfer Provisions is given only in respect of Margin consisting of securities 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 This opinion relates only to laws of this jurisdiction as applied by the courts of this jurisdiction as at the date of this opinion and does not consider the impact of any laws (including insolvency laws) other than the laws of this jurisdiction, even where, under the laws of this jurisdiction, any foreign law falls to be applied. We express no opinion in this opinion letter on the laws of any other jurisdiction. Our opinion is based upon the express words of the FOA Netting Agreement and the Clearing Agreement as they would be interpreted under the laws of this jurisdiction, and takes no account of how such words would be interpreted under, or the effect of, the governing law of the FOA Netting Agreement and the Clearing Agreement.

1.11 As of 1 January 2014, the whole of Czech private law as it has gradually developed via amendments and judicial interpretation since the early 1990s has been changed. The previous Civil Code (Act No. 40/1964 Coll., as amended), the Commercial Code (Act No. 513/1991 Coll., as amended), the Private International Law and Procedure Act (Act No. 97/1963 Coll.) and other laws and regulations were repealed or amended by the Civil Code, the Business Corporations Act, the Czech Act No. 91/2012 Coll., on international private law (the "**IPL Act**") and other related laws and regulations. However, please note that the previous Civil Code, Commercial Code, the Private International Law and Procedure Act and other laws and regulations that were

repealed or amended may apply to the FOA Netting Agreement, the Clearing Agreement and the Transactions entered into before 1 January 2014. Please see qualifications regarding transitional provisions in paragraphs 4.8.27 and 4.8.28 below.

1.12 We express no opinion as to any provisions of the FOA Netting Agreement and the Clearing Agreement other than those to which express reference is made in this opinion.

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

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

1.15 **Definitions**

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

1.15.1 "**Insolvency Proceedings**" means the procedures listed in paragraph 3.1.1;

1.15.2 "**Insolvency Representative**" means an insolvency administrator (in Czech: "*insolvenční správce*") within the meaning of the Czech Act No. 182/2006 Coll., on insolvency and methods of its resolution, as amended (the "**Insolvency Act**") and an administrator (in Czech: "*správce*") within the meaning of the Act on Banks;

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

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

2. ASSUMPTIONS

We assume the following:

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

2.2 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions or, as the case may be the Firm/CCP Transactions and CM/CCP

Transactions are legal, valid, binding and enforceable against both Parties under their governing laws.

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

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

2.5 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions or, as the case may be the Firm/CCP Transactions and CM/CCP Transactions have been properly executed by both Parties.

2.6 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement is entered into prior to (a) the commencement of any insolvency proceedings under the laws of any jurisdiction against either Party, (b) any liquidation proceedings or any enforcement of judgment or other execution proceedings being commenced in respect of either Party, and (c) any decision or another measure affecting the rights of third parties and being adopted or imposed by a court or an administrative authority with a view to maintaining or recovering the financial situation of either Party or prohibiting certain trades or transfers of cash by either Party.

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

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

2.9 The FOA Netting Agreement or, as the case may be, the Clearing Agreement has been entered into, and each of the Transactions or, as the case may be the Firm/CCP Transactions and CM/CCP Transactions referred to therein is and will be carried out, by each of the parties thereto in their own free and sincere will, honestly, in accordance with good manners, not in an abusive manner, and neither the entering into nor the performance of the FOA Netting Agreement or, as the case may be, the

Clearing Agreement does or will prejudice, put at a disadvantage or unjustifiably prefer any creditor.

2.10 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement accurately reflects the true intentions of each Party. None of the parties to the FOA Netting Agreement or, as the case may be, the Clearing Agreement were mistaken or subject to fraud, duress or other unlawful influence when entering in the FOA Netting Agreement or, as the case may be, the Clearing Agreement.

2.11 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.

2.12 That all Margin Transferred pursuant to the Title Transfer Provision is freely transferable and all acts or things required by the laws of this or any other jurisdiction to be done to ensure the validity of each Transfer of Margin pursuant to the Title Transfer Provisions will have been effectively carried out.

2.13 That any cash provided as Margin is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.

2.14 That, when entering into the FOA Netting Agreement or Clearing Agreement, neither Party is insolvent within the meaning of the Insolvency Act and neither Party will become insolvent as a result of the entry into the Agreement.

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

3. OPINION

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

3.1 Insolvency Proceedings

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

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

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

or the branch of the non-Czech bank (other than the EEA Credit Institution) holds a licence under the Act on Banks. Following a withdrawal of the licence by the CNB, the Czech bank or the branch of the non-Czech bank (other than the EEA Credit Institution) might only be subject to bankruptcy under the Insolvency Act. Under the Insolvency Act, the CNB is given specific powers to file a petition for the decision on insolvency (in Czech: "*rozhodnutí o úpadku*") relating to a Czech bank or a branch of a non-Czech bank (other than an EEA Credit Institution). Any insolvency proceedings with respect to an EEA Credit Institution will be carried out in accordance with the laws, regulations and procedures applicable in the state in which the bank has been licensed.

3.1.2 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 5 of Annex 5.

3.2 Recognition of choice of law

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

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

3.3 Enforceability of the FOA Netting Provisions

In relation to a FOA Netting Agreement and in relation to a Clearing Agreement where the Client is a Defaulting Party, the FOA Netting Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their 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 Provisions; 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 the laws of this jurisdiction neither prohibit the Parties from entering into the FOA Netting Provisions, nor render the FOA Netting Provisions unenforceable save as set out in paragraph 4.

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 save as set out in paragraph 4.

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

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

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

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

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the Clearing Module Netting Provision, nor render the Clearing Module Netting Provision unenforceable save as set out in paragraph 4.

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 save as set out in paragraph 4.

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 Provision 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.

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the Addendum Netting Provision, nor render the Addendum Netting Provision unenforceable save as set out in paragraph 4.

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 save as set out in paragraph 4.

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

It is also desirable, but not necessary, to make the amendments to the Addendum Netting Provision 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 the laws of this jurisdiction neither prohibit the Parties from entering into the FOA Set-Off Provisions, nor render the FOA Set-Off Provisions unenforceable save as set out in paragraph 4.

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

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

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

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

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

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

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the FOA Set-Off Provisions, nor render the FOA Set-Off Provisions unenforceable save as set out in paragraph 4.

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

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

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

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the Clearing Module Set-Off Provisions, nor render the Clearing Module Set-Off Provisions unenforceable save as set out in paragraph 4.

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

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

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

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

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

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

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the Addendum Set-Off Provisions, nor render the Addendum Set-Off Provisions unenforceable save as set out in paragraph 4.

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

3.10 Enforceability of the Title Transfer Provisions

3.10.1 In relation to 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 the laws of this jurisdiction neither prohibit the Parties from entering into the Title Transfer Provisions, nor render the Title Transfer Provisions unenforceable save as set out in paragraph 4.

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 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**

3.15.1 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 subject to 3.15.2.

3.15.2 Where the Foreign Defaulting Party is an EEA Credit Institution, there can be no separate Insolvency Proceedings in this jurisdiction in relation to the EEA Credit Institution and the authorities in this jurisdiction would defer to the proceedings in the Foreign Defaulting Party's home 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 to be cleared at, or is a "back to back" with a Transaction to be cleared by a central counterparty.

3.16.1 The IPL Act expressly prohibits any choice of law with respect to rights and obligations of any person arising from participation of such person in a payment or settlement system. Upon decision on insolvency (or adoption of another decision or imposition of another measure by a public authority having similar effects) with respect to any participant in a payment or settlement system, the rights and obligations of such participant shall be governed by the law governing the relationships among the participants in the system when performing the clearing or settlement.

3.16.2 In relation to a Czech bank and a branch of a non-Czech bank (if the non-Czech bank is either an EEA Credit Institution or has a branch in at least two EEA member states), the IPL Act expressly provides that, in respect of insolvency of the Czech bank or the branch of the non-Czech bank, transactions carried in the context of a regulated market in investment instruments shall be governed solely by the law of the contract which governs such transactions. The choice of another law is expressly prohibited by the IPL Act.

4. QUALIFICATIONS

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

4.1 Recognition of the governing law

4.1.1 Our opinion set out in paragraph 3.2 above applies to contractual obligations only. The courts of this jurisdiction will recognise the choice of law made in the FOA Netting Agreement or, as the case may be, the Clearing Agreement subject to, and in accordance with, the provisions of the Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (the "**Rome I Regulation**"). It results from the Rome I Regulation that, among other things:

(a) A court of this jurisdiction may refuse to apply a provision of English law if application of that provision would be manifestly incompatible with Czech public policy.

(b) The choice of English law as the governing law of the FOA Netting Agreement or, as the case may be, the Clearing Agreement does not restrict the courts of this jurisdiction from applying the overriding mandatory rules of laws of this jurisdiction.

(c) Where all the elements relevant to the situation at the time of the choice of governing law are located in a country other than the country chosen, the choice of English law will not prejudice the application of rules of law of that country which cannot be derogated from by contract.

(d) If any obligation arising under the FOA Netting Agreement or, as the case may be, the Clearing Agreement is or is to be performed in a jurisdiction other than this jurisdiction, it may not be enforceable in the courts of this jurisdiction to the extent that performance would be illegal under the laws of the other jurisdiction. Further, the courts of this jurisdiction may give effect to any overriding mandatory

provisions of the law of the place of performance insofar as they render the performance unlawful, otherwise take into account the law of the place of performance in relation to the manner of performance and the steps to be taken in the event of defective performance.

4.1.2 In respect of the FOA Netting Agreement entered into before 17 December 2009, but on or after 1 July 2006, the courts of this jurisdiction will recognise the choice of law made in the FOA Netting Agreement subject to, and in accordance with, the Rome Convention on the law applicable to contractual obligations No. 64/2006 Collections of International Treaties (the "**Rome Convention**"). In respect of the FOA Netting Agreement entered into before 1 July 2006, the courts of this jurisdiction will recognise the choice of law made in the FOA Netting Agreement subject to, and in accordance with, the Private International Law and Procedure Act (Act No. 97/1963 Coll.). However, whether the Czech courts would regard the choice of English law to govern an agreement modifying an existing FOA Netting Agreement entered into before 17 December 2009 as being subject to the provisions of the Rome I Regulation, Rome Convention or IPPL Act, as the case may be, is unclear. Finally, the IPL Act may also apply to the FOA Netting Agreement entered into before 1 July 2006 pursuant to the transitional provisions of the IPL Act (see qualification in 4.8.28 below).

4.1.3 In respect of the matters outside the material scope of the Rome I Regulation, the IPL Act will apply. In relation to a Czech bank and a branch of a non-Czech bank (if the non-Czech bank is either an EEA Credit Institution or has a branch in at least two EEA member states[2]), the IPL Act provides that, in respect of insolvency of the Czech bank or the non-Czech bank:

(a) close-out netting arrangements (e.g., the FOA Netting Provisions) shall be governed solely by the law of the contract which governs such arrangements (e.g., English law); and

(b) the right of creditors to demand set-off of their claims against the claims of the Czech bank or the non-Czech bank shall be governed by the law applicable to those claims,

provided that the choice of another law is expressly prohibited by the IPL Act.

4.1.4 Under the IPL Act, where (i) investment securities, units in collective investment undertakings or money market instruments securities, the ownership of which or other right *in rem* to which, is evidenced by an entry in an evidence; or (ii) rights arising from an entry of the investment securities, units in collective investment undertakings or money market instruments securities into an evidence, which allow the entitled person to dispose of the securities or instruments directly or indirectly at least in the same manner as an entitled holder, are provided as financial collateral, the law of the state in which the evidence is maintained shall govern:

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[2] The IPL contains a drafting legislative mistake in the form of a reference to wrong paragraph within the IPPL Act and non-Czech banks that have a branch in at least two EEA member states are not covered by this provision of the IPL Act.

(a) the legal nature of the financial collateral and proprietary effects of the financial collateral arrangement;

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

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

(d) conditions and manner of the realisation of the financial collateral following the occurrence of an enforcement event (as defined in the Czech Act No. 408/2010 Coll., on financial collateral, as amended (the "**Financial Collateral Act**")),

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

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

(a) a claim for repayment of cash credited to an account or a similar claim for repayment of cash. Czech courts would likely apply the Rome I Regulation and conclude that the law governing the account agreement pursuant to which the account is maintained should govern the proprietary aspects of the cash collateral, including the title transfer and enforcement in respect of the cash collateral so transferred.

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

4.1.6 In relation to a Czech bank and a branch of a non-Czech bank (if the non-Czech bank is either an EEA Credit Institution or has a branch in at least two EEA member states[3]), the IPL Act expressly provides that, in respect of insolvency of the Czech bank or the branch of the non-Czech bank, the exercise and enforcement of rights in respect of investment instruments whose existence or transfer assume entry in a register, on an account or in a central depository system maintained or located in an EEA member state shall be

[3] The IPL contains a drafting legislative mistake in the form of a reference to wrong paragraph within the IPPL Act and non-Czech banks that have a branch in at least two EEA member states are not covered by this provision of the IPL Act.

governed by law of the EEA member state. The choice of another law is expressly prohibited by the IPL Act.

4.1.7 Under the IPL Act, where investment instruments, including rights connected to the investment instruments, are designated for securing rights of a member or an operator of a payment or settlement system, provided that the rights arise from the membership in the system or operation of the system, the rights of the member or the operator of the system or of a person acting on behalf of the member or the operator of the system to such security shall be governed by law of the state in which the evidence of investment instruments is maintained and in which evidence the entry is made that establishes the legal effects of such legal acts. The choice of another law is expressly prohibited by the IPL Act.

4.1.8 Pursuant to the IPL Act, security interests shall be governed by the same law as the secured transaction, unless the security is right in rem or unless the law or the nature of the situation provide or require otherwise, and unless the parties agree, or the security provider unilaterally stipulates, the choice of another law. The choice or change of the governing law shall be without prejudice to the rights of third parties. Only those rights that follow from the law governing its secured obligation may be enforced against the debtor. The two sentences at the end of this provision of the IPL Act may lead to uncertainty as regards the governing law of the charges as regards the scope of rights that may be enforced against the debtor.

4.1.9 Under the IPL Act, the law that would otherwise be applicable pursuant to the provisions of the IPL Act may very exceptionally not be applied if, upon due and reasoned consideration of all the circumstances of the case and in particular the parties' legitimate expectations that other law will be applied, the application would appear inappropriate or would contradict reasonable and equitable resolution of the parties' relations. In these circumstances, and if third parties' rights are not prejudiced, the law corresponding to such resolution shall be applied.

4.1.10 Under the IPL Act, if the contents of foreign law cannot be found out in adequate time or if it is impossible to find out the contents of foreign law, Czech law shall be applied.

4.2 Enforceability of the FOA Netting Provisions, Clearing Module Netting Provisions and Addendum Netting Provisions

In ordered for the FOA Netting Provisions, the Clearing Module Netting Provision or Addendum Netting Provision (as applicable) (the FOA Netting Provisions, the Clearing Module Netting Provision and Addendum Netting Provision together the "**Netting Provisions**") to be enforceable on insolvency, the relevant Netting Provision among other things, (a) cannot be invalid or ineffective undervalue or preferential transactions or fraudulent transaction, (b) cannot be made by the Defaulting Party in breach of restrictions resulting from the automatic stay upon the commencements of insolvency proceedings, (c) must be entered into prior to the commencement of the insolvency proceedings, and (d) must constitute "close out netting" under the Czech Act No. 256/2004 Coll., on conduct of business on the capital market, as amended

(the "**Capital Market Act**"). For details on the conditions under (a) to (c) see paragraphs 4.2.1, 4.2.2 and 4.2.10 to 4.2.13 below and for definition of close out netting see paragraphs 4.2.3 to 4.2.9 below.

4.2.1 In case of insolvency proceedings being commenced pursuant to the Insolvency Act, the Netting Provisions shall not be affected by the provisions of the Insolvency Act if the FOA Netting Agreement or, as the case may be, the Clearing Agreement (in each case including the relevant Netting Provision) has been entered into prior to the commencement of the insolvency proceedings. Please note, however, that the provisions of the Insolvency Act regarding invalidity or ineffectiveness of undervalue and preferential transactions and fraudulent transactions as well as transactions made by the Defaulting Party in breach of restrictions resulting from the automatic stay upon the commencements of insolvency proceedings will apply to the Netting Provision and may thus potentially affect the Netting Provision by rendering it unenforceable or by preventing, delaying or otherwise affecting the exercise of such rights by the Non-Defaulting Party.

Under the Insolvency Act, the Insolvency Representative may challenge as ineffective following legal acts, including:

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

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

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

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

Based on the assumptions in paragraph 2.8 and 2.9 in particular, we are of the view, however, that such challenge of the relevant Netting Provision by the Insolvency Representative would unlikely be successful on the basis of the above provisions of the Insolvency Act *per se* so long as the Netting

Provisions qualifies as a close out netting arrangement within the meaning of the Capital Market Act (see paragraphs 4.2.3 through 4.2.9).

Please note, however, that (i) if the Defaulting Party were insolvent within the meaning of the Insolvency Act when entering into a Transaction or became insolvent as a result of the entry into a Transaction; and (ii) the Insolvency Representative were successful in challenging the Transaction on the basis of the above anti-avoidance rules, the Netting Provisions would not be enforceable in respect of that Transaction. The challenging of one Transaction should not impair the enforceability of the Netting Provisions in relation to the other Transactions that are enforceable.

4.2.2 In case of a forced administration being introduced in respect of a Czech bank pursuant to the Act on Banks, the relevant Netting Provision shall not be affected by the provisions of the Act on Banks regulating introduction of such a forced administration if the FOA Netting Agreement or, as the case may be, the Clearing Agreement (in each case including the relevant Netting Provision) has been entered into prior to the introduction of the forced administration in respect of the Czech bank.

4.2.3 In order for the Netting Provisions to be enforceable on insolvency pursuant to the Insolvency Act and the Act on Banks, the Netting Provisions must constitute "close-out netting" under the Capital Markets Act.

(a) The Capital Market Act defines "close-out netting" as a contractual arrangement under laws of this jurisdiction or foreign law:

(i) which can be evidenced in writing or alternatively by a record allowing for reproduction in an unchanged form;

(ii) which relates to claims of contractual parties, including appurtenances to these claims, which are eligible to be secured by way of a financial collateral arrangement under the Financial Collateral Act, and to claims, including appurtenances to these claims, from a financial collateral arrangement or from a similar legal relationship regulated by foreign law; and

(iii) pursuant to which, upon the occurrence of an agreed event, a termination and replacement of debts corresponding to the claims stated in paragraph (ii) above, or set-off of the then undue or due (as the case may be) debts in paragraph (ii) above occurs so that, as a result, there will be one claim of one contractual party and a corresponding debt of the other contractual party to pay the resulting amount, and

(b) further provides that:

(i) the method for valuation of the claims under sub-section (a)(ii) of paragraph (a), the moment in time as of which the valuation must be performed, and the manner and time of the

performance of the resulting claim must be contained in a close-out netting arrangement and must not be contrary to the practice of the relevant financial market;

(ii) a decision or another measure of the court or administrative authority, which affects the rights of third parties and was adopted with a view to maintaining or recovering the financial situation of either contractual party or to prohibiting certain trades or transfers of funds by either contractual party, has no impact on a close-out netting arrangement provided that the close-out netting arrangement was entered into prior to the adoption of the decision or the other measure;

(iii) sub-paragraph (ii) above will not apply to the effects associated with the commencement of insolvency proceedings, entry into liquidation proceedings or imposition of forced administration; the effects associated with the commencement of insolvency proceedings or imposition of forced administration are disapplied by operation of other laws, including the Insolvency Act and the Act on Banks. Neither Civil Code nor the Business Corporations Act disapply the effects associated with the entry into liquidation proceedings on the close-out netting.

Consequently, the Netting Provisions might not be enforceable and the Non-Defaulting Party might not be entitled to exercise its rights under the Netting Provisions or be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of individual Transactions under the laws of this jurisdiction:

(a) if the claims of the parties arising in connection with any Transaction do not fall within the scope of the close-out netting arrangement as described in paragraph 4.2.3(a)(ii) (please refer to the qualifications set out in paragraphs 4.2.4 through 4.2.6); or

(b) if the Netting Provisions do not comply with requirements applicable to the contents of the close-out netting arrangement as described in paragraphs 4.2.3(a)(iii) and 4.2.3(b)(i) (please refer to the qualifications set out in paragraph 4.2.7 through 4.2.10);

(c) if a liquidation proceedings are commenced under the Civil Code and the Business Corporations Act with respect to the Defaulting Party. (please refer to the qualification set out in paragraph 4.2.13).

4.2.4 The claims of the Parties arising in connection with a Transaction will fall within the scope of the close-out netting arrangement as described in paragraph 4.2.3(a)(ii) provided that these claims are eligible to be secured by way of a financial collateral arrangement under the Financial Collateral Act or are claims under a financial collateral arrangement or under a similar legal relationship governed by foreign law.

4.2.5 The Financial Collateral Act provides that financial collateral arrangements serve to secure claims of financial nature and defines the claims of financial nature as claims from agreements the subject matter[4] of which is cash, investment instruments, emission allowances or commodities as well as rights and claims relating to such agreements. The investment instruments are defined in the Capital Market Act, which implements the Directive 2004/39/EC on markets in financial instruments (please refer to Annex 6 for the definition of investment instruments, which is the Czech implementation of the definition of the financial instruments in the Directive 2004/39/EC). The emission allowances are defined in the Czech Act No. 383/2012 Coll., on conditions for trading in allowances for greenhouse gases emissions (the "**Emission Trading Act**"), which implements the Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, as amended.[5] The commodities are defined in the EU Regulation No. 1287/2006 implementing Directive 2004/39/EC on markets in financial instruments (the "**EU Commodities Regulation**").[6]

We understand that the Transactions include futures, options, contracts for difference, spot or forward contracts of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof. Consequently, we are of the view that futures, options as well as spots and forwards will fall within the scope of the close-out netting pursuant to the Capital Market Act provided that the relevant future, option or forward qualify as an investment instrument within the meaning of the Capital Market Act (or rights and claims relating to the trade in the investment instrument) (please refer to Annex 6 for the definition of investment instruments, which is the Czech implementation of the definition of the financial instruments in the Directive 2004/39/EC).

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

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

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

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

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

If the subject matter of a Transaction included anything other than cash, investment instruments, emission allowances, commodities or rights and claims relating to the Transaction, the claims of the Parties arising in connection with the Transaction would not fall within the scope of the close-out netting as described in paragraph 4.2.3(a)(ii). Although we are of the view that that Transaction should not impair the enforceability of the Netting Provisions in relation to those Transactions that fall within the scope of the close-out netting as described in paragraph 4.2.3(a)(ii), no assurance can be given that the courts of this jurisdiction would not adopt a different view since we are not aware of any case law on this point. Consequently, unless all the Transactions governed by the Agreement fall within the scope of the close-out netting as described in paragraph 4.2.3(a)(ii), the scope of the Transactions for the purposes of the Netting Provisions should be defined accordingly.

4.2.6 The Capital Market Act defines the close-out netting arrangement without any reference to a particular type of counterparties and thus, we are of the view that the Netting Provisions will be enforceable regardless of the particular type of the Counterparty. Since the amendment made to the definition by the Act No. 409/2010 Sb., on amendments made in connection with the adoption of the Financial Collateral Act, as amended, the Capital Market Act defines the close-out netting arrangement by reference to the contractual claims, which are eligible to be secured by way of a financial collateral arrangement under the Financial Collateral Act. We have no reason to take a view that, following the above amendment, the close-out netting should only be enforceable between the particular types of counterparties eligible to enter into financial collateral arrangements (for the list of eligible counterparties, please refer to Annex 7). No assurance can be given, however, whether or not the courts of this jurisdiction would adopt the view.

4.2.7 The Netting Provisions would not comply with requirements applicable to the contents of the close-out netting arrangement as described in paragraph 4.2.3(b)(i), if the manner and time of the performance of the resulting claim were not contained in the Netting Provisions. The Netting Provisions do not contain the time of performance and/or the manner of performance of the Liquidation Amount and the Cleared Set Termination Amount.

(a) While the other FOA Published Form Agreements listed in Annex 1 address the time of performance of the Liquidation Amount in other provisions,[7] the Professional Client Agreements provide for it neither in

[7] The time of performance is set out in Clause 11.7 *(Payment)* of the Retail Client Agreements, in Clause 10.5 *(Payment)* of the Eligible Counterparty Agreements, in Clause 4.7 of the Master Netting Provisions, in

the FOA Netting Provisions nor in any other provisions. Consequently, there is a material risk that that the FOA Netting Provisions of the Professional Client Agreements will not be enforceable in this jurisdiction unless the time of performance of the Liquidation Amount is provided for in the Individually Agreed Terms Schedule. The Netting Provisions of the other FOA Published Form Agreements listed in Annex 1 will only be enforceable together with the other provisions setting out the time of performance of the Liquidation Amount.

(b) While the other FOA Published Form Agreements listed in Annex 1 address the manner of performance of the Liquidation Amount in other provisions so that all payments under the FOA Netting Agreement shall be made in same day funds in such currency as may from time to time be specified to the bank account designated for such purposes,[8] the Short Form One-Way Clauses, the Short Form Two-Way Clauses, the Long Form One-Way Clauses 2007 and the Long Form Two-Way Clauses only provide that the Liquidation Amount shall be paid in the Base Currency. The risk that the Netting Provisions in the Short Form One-Way Clauses, the Short Form Two-Way Clauses, the Long Form One-Way Clauses 2007 and the Long Form Two-Way Clauses would not be enforceable in this jurisdiction on this basis is, however, less material.

(c) The Clearing Agreements provide that the Cleared Set Termination Amount shall be paid in the same currency as the termination amount in respect of the related terminated Firm/CCP Transactions in accordance with the relevant Rule Set. There is a material risk that the Clearing Module Netting Provision and Addendum Netting Provision would not be enforceable in this jurisdiction on the basis that the manner of performance of the Cleared Set Termination Amount is not agreed in the Clearing Agreement but is specified by reference to the relevant Rule Set. Please refer to Section 2 of Annex 5 for desirable amendments to the Clearing Module Netting Provision and the Addendum Netting Provision which could, potentially, limit, but not entirely exclude this risk.

4.2.8 The Netting Provisions would not comply with requirements applicable to the contents of the close-out netting arrangement as described in paragraph 4.2.3(b)(i), if the method for valuation of the claims were not contained in the Netting Provisions.

The Clearing Module Netting Provision and Addendum Netting Provision do not provide for the method for valuation of the claims. Instead, the Clearing Module Netting Provision and Addendum Netting Provision provide that the Aggregate Transaction Value shall be equal to the Firm/CCP Transaction

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Clause 2.5 *(Payment)* of the Short Form One-Way Clauses and Short Form Two-Way Clauses and in Clause 2.7*(Payment)* of the Long Form One-Way Clauses 2007 and the Long Form Two-Way Clauses.

[8] The manner of performance is set out in Clause 1.11*(Payments)* of the Professional Client Agreements and Retail Client Agreements as well as in Clause 1.8 *(Payments)* of the Eligible Counterparty Agreements and Clause 11 of the Master Netting Agreements.

Value or the CM/CCP Transaction Value, calculated pursuant to the Relevant Rule Set. There is a material risk that the Clearing Module Netting Provision and Addendum Netting Provision would not be enforceable in this jurisdiction on this basis. Please refer to Section 2 of Annex 5 for desirable amendments to the Clearing Module Netting Provision and the Addendum Netting Provision which could, potentially, limit, but not entirely exclude this risk.

Further, we have noted that, unlike the other FOA Published Form Agreements listed in Annex 1, the Netting Provisions in the Short Form One-Way Clauses, the Short Form Two-Way Clauses and the Eligible Counterparty Agreements contain neither references to the types of cost, loss or, as the case may be, gain to be included, if appropriate, when determining the total cost, loss or, as the case may be, gain in respect of each Netting Transaction nor references to the market quotations published on, or official settlement prices set by, the relevant Market, due regard to which should be had, if appropriate, when determining the Liquidation Amount.[9] Although we are of the view that the method of valuation is still sufficiently specified, no assurance can be given whether or not the courts of this jurisdiction would adopt this view.

4.2.9 The Netting Provisions would not comply with requirements applicable to the contents of the close-out netting arrangement as described in paragraph 4.2.3(b)(i) if those provisions were contrary to the practice on the relevant financial market. Since neither the term "practice" nor the term "relevant financial market" is defined in laws of this jurisdiction, it is not entirely clear how these terms should be construed.

When construing the term "practice", the courts of this jurisdiction could take into account the term "trade practice" (in Czech: *"obchodní zvyklosti"*) used in the Civil Code. While this term is not defined either, a leading Czech legal commentator has characterised the trade practice as certain stable rules observed by market participants as a matter of fact even though they are not rules as a matter of published law. Such rules should be assessed in relation to a particular territory, industry or a case.[10] The Capital Market Act relates the (trade) practice to the relevant financial market.

When construing the term "relevant financial market", the courts of this jurisdiction could take into account the term "relevant (in Czech: *"relevantní"*) market" used in the Act No. 143/2001 Coll., on protection of economic competition, as amended. This Act defines "relevant market" as a market of goods that is (from the perspective of the characteristic, price and intended use of the goods) identical, comparable or mutually fungible in relation to a territory in which competition conditions are sufficiently homogenous and clearly distinguishable from neighbouring territories. It would be largely a matter of fact whether the relevant (financial) market is a market in a particular type of Transactions on a Market (or in all types of Transactions on

[9] The method of valuation is set out (albeit less specifically) in Clause 2.3(b) of the Short Form One-Way Clauses and the Short Form Two-Way Clauses as well as in Clause 10.3(b) of the Eligible Counterparty Agreements.

[10] The Civil Code distinguishes between the trade practice and a practice (in Czech: *"praxe"*) introduced among parties to a legal relationship.

the Market) or a market in a particular type of Transactions regardless of the Market (or in all types of Transactions regardless of the Market) or the capital market in general (or any other segment of the same).

However, no assurance can be given whether (and, if so, to what extent), the courts of this jurisdiction would construe the term "practice" or the term "relevant financial market" by way of analogy or otherwise and what they would find to be the relevant financial market and practice on that market. In any case, the actual determination whether or not the Netting Provisions are contrary to the practice on the relevant financial market would be largely a matter of fact. Although we do not express any opinion as to any matters of fact, we believe that, given that the FOA Netting Agreement has been prepared by FOA (i.e., one of the standard-setting organisations), it is unlikely that the courts of this jurisdiction would determine that the FOA Netting Provisions are contrary to the practice on the financial market on which the FOA Netting Agreement has, in fact, been consistently used by the participants in those markets over a sufficiently long period of time.

As set out in paragraph 4.2.3(a)(iii), the close-out netting arrangement is defined in the Capital Market Act so that as a result of it, there shall be one claim of one contractual party and a corresponding debt of the other contractual party to pay the resulting amount. The Clearing Module Netting Provision and Addendum Netting Provision provide for the calculation of separate Cleared Set Termination Amount for each Cleared Transaction Set and as a result, there may be two or more claims of one contractual party and corresponding debt of the other contractual party to pay the amounts resulting from the close-out netting. There is a material risk that the Clearing Module Netting Provision and Addendum Netting Provision would not be enforceable in this jurisdiction on this basis if (a) those provisions were found to be contrary to the practice on the relevant financial market, or (b) because an interpretation of the provisions of the Capital Market Act in the sense that there shall be one close-out amount claim of one contractual party per one close-out netting arrangement would prevail. Please refer to Section 2 of Annex 5 for desirable amendments to the Clearing Module Netting Provision and the Addendum Netting Provision which could, potentially, limit, but not entirely exclude this risk.

Finally, we have noted, however, that some of the FOA Netting Agreements and the Clearing Agreement give the Non-Defaulting Party larger discretion with regard to determining the Liquidation Amount (e.g., in respect of the choice of exchange rate for conversion of gains or losses into the Base Currency in the FOA Netting Agreements and the Clearing Agreements with no explicit provision regarding the Base Currency[11] and in respect of the valuation method in the Agreements already referred to in paragraph 4.2.8). If the Non-Defaulting Party used such discretion in a way that would be contrary

[11] 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 and the Eligible Counterparty (with Title Transfer Provisions) Agreement 2009 as well as the Short Form One-Way Clauses and the Short Form Two-Way Clauses.

to the practice on the relevant financial market (as explained above), it would affect the enforceability of the Netting Provisions.

4.2.10 The Insolvency Act provides that the close-out netting arrangement (in Czech: *"závěrečné vyrovnání"*) within the meaning of the Capital Market Act shall not be affected by the provisions of the Insolvency Act if the close-out netting arrangement has been entered into prior to the commencement of the insolvency proceedings. The Act on Banks in respect of forced administration of banks provides that the performance of the close-out netting arrangement (in Czech: *"splnění závěrečného vyrovnání"*) within the meaning of the Capital Market Act shall not be affected by the provisions of the Act on Banks regulating introduction of such a forced administration if the close-out netting arrangement has been entered into prior to the introduction of the forced administration in respect of the Czech bank. We are of the view that the above provisions of the Insolvency Act and the Act on Banks should be construed consistently in that a close-out netting arrangement is protected if the close-out netting arrangement is entered into (rather than applied to close out and net the Transactions) prior to the commencement of the insolvency proceedings. For certain exception from such protection of the Insolvency Act, please refer to our qualification in paragraph 4.2.1.

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

4.2.12 In any case, the Netting Provisions would unlikely be enforceable in respect of a Transaction entered into after the commencement of any Insolvency Proceedings against the Defaulting Party (or any enforcement of judgment or other execution proceedings being commenced in respect of the Defaulting Party/insolvent party or after any decision or another measure affecting the rights of third parties and being adopted or imposed by a court or an administrative authority with a view to maintaining or recovering the financial situation of the Defaulting Party or prohibiting certain trades or transfers of cash by the Defaulting Party).

4.2.13 The Czech Act No. 513/1991 Coll., Commercial Code (the "**Commercial Code**"), that disapplied the effects associated with the entry into liquidation proceedings on the close-out netting, was replaced by the Civil Code and the Business Corporations Act as of 1 January 2014. Neither Civil Code nor the Business Corporations Act disapply the effects associated with the entry into liquidation proceedings on the close-out netting. Consequently, the Netting Provisions might not be enforceable and the Non-Defaulting Party might not be entitled to exercise its rights under the Netting Provisions or be entitled to

receive or obliged to pay only the net sum of the positive and negative mark-to-market values of individual Transactions in case of liquidation being commenced against the Defaulting Party.

4.2.14 Given the absence of available court decisions regarding the close-out netting arrangements, it is difficult to determine how the courts of this jurisdiction would construe and apply the relevant legal provisions and no assurance can be given that the courts of this jurisdiction would arrive at the same conclusions as those contained in this opinion.[12]

4.3 Enforceability of the FOA Set-off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision

The FOA Set-off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision on their own are unlikely to qualify as a close-out netting arrangement within the meaning of the Capital Market Act (please refer to the qualification in paragraph 4.2) or a financial collateral arrangement within the meaning of the Financial Collateral Act (please refer to the qualification in paragraph 4.4) and thus, will unlikely be protected to the extent equivalent to the Netting Provisions or the Title Transfer Provisions, which are protected by the Capital Market Act and the Financial Collateral Act as well as by related rules applicable to the Netting Provisions or the Title Transfer Provisions within the Insolvency Proceedings. We believe, however, that the Margin Cash Set-off Clause should be distinguished from the General Set-off Clause.[13]

4.3.1 The Margin Cash Set-off Clause, together with other clauses within Module G (*Margin and Collateral*), is likely to qualify as the financial collateral arrangement within the meaning of the Financial Collateral Act (subject to the restrictions set out in the qualification in paragraph 4.4.1) or as a financial collateral arrangement within the meaning of foreign legal regulation equivalent to the Financial Collateral Act (subject to any restriction set out in such foreign legal regulation). One could even argue that the Margin Cash Set-off Clause is the set-off referred to in the definition of the close-out netting arrangement in the Capital Market Act (please refer to the qualification in paragraph 4.2.3(a)(iii)).

If a Czech court followed such arguments, the Margin Cash Set-off Clause would be protected from the effects of the Insolvency Proceedings to the same extent as the Title Transfer Provisions (please refer to the qualifications in paragraph 4.4) or, as the case may be, the Netting Provisions (please refer to the qualifications in paragraph 4.2). Otherwise, the rules applicable to set-off would apply as described below in respect of the General Set-off Clause.

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[12] The first definition of the close-out netting arrangement was introduced into law of this jurisdiction as of 1 January 2001. It has changed a number of times since then. The current definition of the close-out netting arrangement has only been in effect since 1 January 2011.

[13] It appears that there is a difference between the Title Transfer Provisions, under which the Default Margin Amount is calculated for the purposes of the calculating the Liquidation Amount, and the Margin Cash Set-off Clause, pursuant to which the Liquidation Amount is taken into account (i.e., the Liquidation Amount has already been calculated) when determining the net balance of the cash margin repayable following such set-off.

4.3.2 The EU Insolvency Regulation would apply to a Defaulting Party, which is a Czech company or a branch of a non-Czech company, and the Insolvency Act would apply to a Defaulting Party, which is a Czech bank or a branch of a non-Czech bank (other than an EEA Credit Institution). It results from both the EU Insolvency Regulation and the Insolvency Act that the opening of relevant Insolvency Proceedings should not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

If so, the Non-Defaulting Party should be entitled to set off: (a) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party against the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount owed by the Defaulting Party if such set-off were permitted under the law governing the Defaulting Party's claim to have the cash margin repaid by the Non-Defaulting Party; and (b) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party against the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount owed by the Non-Defaulting Party if such a set-off were permitted by the law of the state governing the Defaulting Party's claim to have the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount paid by the Non-Defaulting Party.

The General Set-off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision should thus be protected to the extent that such a set-off is permitted by English law as the law governing the relevant claim of the Defaulting Party. It is not entirely clear, however, whether the reference to that governing law is limited to the general rules applicable to set-off or whether the reference extends to insolvency rules applicable to set-off in that jurisdiction. No such rules should, however, preclude actions in this jurisdiction for voidness, voidability or unenforceability of legal acts detrimental to all the creditors of the Defaulting Party. For more details regarding the rules applicable to the undervalue and preferential transactions and the fraudulent transactions, please refer to the qualification in paragraph 4.2.1.

4.3.3 Under the Insolvency Act, a Defaulting Party (other than a bank or insurance company) may file for moratorium (in Czech *moratorium*) anytime prior to the commencement of the Insolvency Proceedings or within (a) seven days from filing of the insolvency petition by the Defaulting Party or (b) 15 days from filing of the insolvency petition by the Defaulting Party's creditor(s). The moratorium petition may only be filed with the approval of majority of the Defaulting Party's creditors' claims. The insolvency court may order moratorium for up to three months; this period may be extended by additional 30 days upon the Defaulting Party's request.

If a moratorium is ordered by the insolvency court in respect of the Defaulting Party, set-off of mutual receivables is prohibited for the duration of the moratorium, even if statutory conditions for the set-off were met prior to the moratorium, unless the insolvency court provides otherwise through the issue of a preliminary measure. If the moratorium is ordered before the commencement of the Insolvency Proceedings, the General Set-off Clause, the

Clearing Module Set-Off Provision and the Addendum Set-Off Provision might be unenforceable for the duration of a moratorium unless and until the commencement of the Insolvency Proceedings in respect of the Defaulting Party's or unless set-off of the Defaulting Party's receivables and liabilities is permitted by the insolvency court.

4.3.4 The Insolvency Act provides that insolvency proceedings with a European international element shall be governed by the EU Insolvency Regulation. The Insolvency Act provides that the European international element shall mean in accordance with the EU Insolvency regulation that (a) the debtor's centre of main interest is located in an EU Member State (other than Denmark), and at the same time (b) at least one of the creditors or part of the debtors assets forming part of the insolvency estate is located in another EU Member State. Similarly, some of the legal commentators expressed their view that in addition to the requirement that the debtor's centre of main interest is located in an EU Member State (other than Denmark) there must be a connection to another EU Member State. At least one of the legal commentators expressed a view that only creditors who have their habitual residences, domiciles or registered offices in the EU Member State may rely on Article 6 of the EU Insolvency Regulation. Consequently, it cannot be entirely excluded that the General Set-off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision would not be enforceable upon the commencement of the Insolvency Proceedings against the Defaulting Party, if no part of the Defaulting Party's assets is located in another EU Member State, if none of its creditors have their habitual residences, domiciles or registered offices in an EU Member State, or if the Party does not have its domicile or registered office in an EU Member State.

4.3.5 Some of the legal commentators expressed their view that Article 6 of the EU Insolvency Regulation applies only to the mutual receivables that came into existence or became due before the commencement of the Insolvency Proceedings or before the insolvency court decided on the method of the resolution of the debtor's insolvency. Consequently, it cannot be entirely excluded that the General Set-off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision would not be enforceable upon the commencement of the Insolvency Proceedings against the Defaulting Party with respect to those receivables that came into existence or became due before the commencement of the Insolvency Proceedings or before the insolvency court decided on the method of the resolution of the Defaulting Party 's insolvency.

4.3.6 If, for any reason, the EU Insolvency Regulation would not apply or English law did not permit such a set-off, the General Set-off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision would only be enforceable against (a) the Defaulting Party, which is a Czech company or a branch of a non-Czech company, subject to, and in accordance with, the Insolvency Act; and (b) the Defaulting Party, which is a Czech bank or a branch of a non-Czech bank (other than an EEA Credit Institution) subject to, and in accordance with, the Act on Banks and, following the withdrawal of its banking licence, the Insolvency Act.

4.4 Enforceability of the Title Transfer Provisions

Our opinion in 3.10 is given to the extent that the Title Transfer Provisions, together with other clauses of the FOA Netting Agreement (with Title Transfer Provisions) and the Clearing Agreement which includes the Title Transfer Provisions, qualify as a "financial collateral arrangement" within the meaning of the Financial Collateral Act, which implements the Directive 2002/47/EC on financial collateral arrangements, as amended, or within the meaning of equivalent foreign legal regulation.

4.4.1 Although the Financial Collateral Act does not define a financial collateral arrangement, it restricts (a) the parties eligible to enter into a financial collateral arrangement to the types of counterparties listed in the Financial Collateral Act (please refer to the qualification in paragraph 4.2.6); (b) the claims capable of being secured by the financial collateral arrangement to the claims of financial nature as defined in the Financial Collateral Act (please refer to the qualification in paragraph 4.2.5); and (c) the subject matter of the financial collateral to eligible types of assets listed in the Financial Collateral Act (the financial collateral can comprise of, among other things, (i) a financial instrument, including an investment security, a unit in collective investment undertakings and or a money market instrument, [14] (ii) independently transferrable rights otherwise connected to a financial instrument; (iii) a right arising from an entry of a financial instrument into an evidence which allow the entitled person to dispose of the securities directly or indirectly at least in the same manner as an entitled holder, (iv) money credited to an account; or (v) a claim for the repayment of money credited to an account) provided that creation of the financial collateral arrangement and provision of the collateral has to be evidenced in writing or in manner which allows reproduction in unaltered form.

Consequently, if (a) the Counterparty were not eligible to enter into the financial collateral arrangement; (b) the obligations collateralised under the Title Transfer Provisions did not qualify as claims of financial nature; or (c) the Margin Transferred did not qualify as the eligible financial collateral (in each case within the meaning of the Financial Collateral Act), the Party would unlikely be entitled to use or invest for its own benefit any Margin Transferred to it pursuant to the Title Transfer Provisions and, following the specification or deemed occurrence of a Liquidation Date, the Non-Defaulting Party would unlikely be entitled to exercise its rights under the Title Transfer Provisions.

Moreover, if obligations of the Parties arising in connection with a Transaction collateralised under the Title Transfer Provisions did not qualify as corresponding to claims of financial nature within the meaning of the Financial Collateral Act, it is not entirely clear whether the Transaction would impair the enforceability of the Title Transfer Provisions in relation to other Transactions collateralised under the Title Transfer Provisions. For our recommendation, please refer to the last sub-paragraph of the qualification in paragraph 4.2.5.

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[14] For the definition of the investment securities, units in collective investment undertakings and money market instruments, please refer to Annex 5.

4.4.2 In case of insolvency proceedings being commenced pursuant to the Insolvency Act, the Insolvency Act provides that a financial collateral arrangement under the Financial Collateral Act or equivalent foreign legal regulation shall not be affected by the provisions of the Insolvency Act if the financial collateral arrangement has been entered into and come into existence (i.e. the collateral has been provided) prior to the commencement of the insolvency proceedings.[15]

Please note, however, that the provisions of the Insolvency Act regarding invalidity or ineffectiveness of undervalue and preferential transactions and fraudulent transactions as well as transactions made by the debtor in breach of restrictions resulting from the automatic stay upon the commencements of insolvency proceedings will apply to the Title Transfer Provisions and may thus potentially affect the Title Transfer Provisions by rendering them invalid or ineffective or by preventing, delaying or otherwise affecting the exercise of the rights of the Non-Defaulting Party. For more details regarding the rules applicable to the undervalue and preferential transactions and the fraudulent transactions, please refer to our qualification in paragraph 4.2.1. In particular, (i) if the Defaulting Party were insolvent within the meaning of the Insolvency Act when transferring the Acceptable Margin pursuant to the Title Transfer Provisions or became insolvent as a result of the transfer of the Acceptable Margin; and (ii) the Insolvency Representative were successful in challenging the Non-Defaulting Party's rights under the Title Transfer Provisions on the basis of the above anti-avoidance rules, the Non-Defaulting Party would not be entitled to exercise those rights, including its right to use or invest for its own benefit, without restriction, any Margin Transferred to it pursuant to the Title Transfer Provisions.

4.4.3 In case of a forced administration being introduced in respect of a bank pursuant to the Act on Banks, the Act on Banks provides that exercise of rights and performance obligations arising from a financial collateral arrangement pursuant to the Financial Collateral Act or equivalent foreign legal regulation shall not be affected by the provisions of the Act on Banks regulating introduction of such a forced administration if the financial collateral arrangement has been entered into and come into existence (i.e. the collateral has been provided) prior to the introduction of the forced administration in respect of the bank.[16]

4.4.4 The Financial Collateral Act provides that financial collateral is usually transferred on the basis of an agreement on re-transfer of the financial collateral upon satisfaction of the obligation so collateralised. The Financial

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

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

Collateral Act further provides that the (ownership) title to the financial collateral is transferred to the collateral taker if such transfer is in accordance with the agreement between the parties and permitted by the nature of the financial collateral. Consequently, the Acceptable Margin specified by the Parties should be limited to the eligible types of the financial collateral, the nature of which permits that the title to the financial collateral be so transferred.

4.4.5 To the extent that the Title Transfer Provisions, together with other clauses of the FOA Netting Agreement and Clearing Agreement (in each case with Title Transfer Provisions), do not qualify as a "financial collateral arrangement" within the meaning of the Financial Collateral Act or within the meaning of equivalent foreign legal regulation, those Title Transfer Provisions would likely be characterised as a "security title transfer" (in Czech: "*zajišťovací převod práva*") rather than re-characterised as a "pledge" (in Czech: "*zástavní právo*") as a matter of Czech law. In any case, after the commencement of any Insolvency Proceedings against the Defaulting Party (or any enforcement of judgment or other execution proceedings being commenced in respect of the Defaulting Party or after any decision or another measure affecting the rights of third parties and being adopted or imposed by a court or an administrative authority with a view to maintaining or recovering the financial situation of the Defaulting Party or prohibiting certain trades or transfers of cash by the Defaulting Party), the Party would unlikely be entitled to use or invest for its own benefit any Margin Transferred to it pursuant to the Title Transfer Provisions and, following the specification or deemed occurrence of a Liquidation Date, the Non-Defaulting Party would unlikely be entitled to exercise its rights under the Title Transfer Provisions.

4.4.6 In any case, the Non-Defaulting Party would unlikely be entitled to exercise its rights under the Title Transfer Provisions in respect of the Margin Transferred after the commencement of any Insolvency Proceedings against the Defaulting Party (or any enforcement of judgment or other execution proceedings being commenced in respect of the Defaulting Party or after any decision or another measure affecting the rights of third parties and being adopted or imposed by a court or an administrative authority with a view to maintaining or recovering the financial situation of the Defaulting Party or prohibiting certain trades or transfers of cash by the Defaulting Party).[17]

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

4.4.7 The Commercial Code, that disapplied the effects associated with the entry into liquidation proceedings on the financial collateral arrangements, was replaced by the Civil Code and the Business Corporations Act as of 1 January 2014. Neither Civil Code nor the Business Corporations Act disapply the effects associated with the entry into liquidation proceedings on the financial collateral arrangements. Consequently, there is a material risk that the Party would not be entitled to use or invest for its own benefit any Margin Transferred to it pursuant to the Title Transfer Provisions and, following the specification or deemed occurrence of a Liquidation Date, the Non-Defaulting Party would not be entitled to exercise its rights under the Title Transfer Provisions.

4.5 Single Agreement

4.5.1 Under the Insolvency Act, if a contract requiring mutual performance has been performed in full neither by the debtor nor by the other party to the contract, the insolvency administrator may either perform the contract (and require the performance by the other party) or refuse performance the contract. The insolvency administrator has a 30-day period commencing upon the declaration of bankruptcy (in Czech: "*prohlášení konkursu*") to decide whether he would perform or refuse to perform a contract requiring mutual performance. Unless otherwise agreed in the contract, the other party may not terminate the contract during the 30-day period.

4.5.2 The FOA Netting Agreement and the Clearing Agreement is designed so that it, the particular terms applicable to each Netting Transaction and all amendments to any of them shall together constitute a single agreement. Consequently, the likelihood that the FOA Netting Agreement and the Clearing Agreement will be considered to be an executory contract is, as matter of fact, higher than if the FOA Netting Agreement and the Clearing Agreement were designed so that each of the Transactions constituted a separate agreement.

4.5.3 However, even if the FOA Netting Agreement or the Clearing Agreement were not terminated prior to the declaration of bankruptcy in respect of the Defaulting Party, the rules of the Insolvency Act applicable to executory contracts should not apply to the Netting Provisions, the FOA Set-off Provisions or Title Transfer Provisions so long as those provisions qualify as a close-out netting arrangement within the meaning of the Capital Market Act or a financial collateral arrangement within the meaning of the Financial Collateral Act.

4.6 Multibranch Parties

4.6.1 Although the EU Insolvency Regulation does not provide for a definition of the term "centre of main interests", it states that, in the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary. Furthermore, recital to the EU Insolvency Regulation states that the centre of main interests should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.

4.6.2 Where the Defaulting Party is a Czech company with its "centre of main interest" in the Czech Republic (please refer to our assumption in paragraph 2.15), the Insolvency Representative would be required to defer to the jurisdiction of the insolvency officer appointed in another EU member state if secondary proceedings under the EU Insolvency Regulation in respect of the Defaulting Party were opened in such other EU member state on the basis that the Defaulting Party possesses an establishment within the territory of that other EU member state. The effect of those proceedings should be restricted to the assets of the Defaulting Party situated in the territory of that EU member state. [18]

4.6.3 Further to our opinion expressed in paragraph 3.3.1 (based on, and subject to, the relevant assumptions and qualifications), we are of the view that the Insolvency Representative should apply the Netting Provisions, the FOA Set-off Provisions, the Clearing Module Set-Off Provision Addendum Set-Off Provision and the Title Transfer Provisions to all obligations between the Defaulting Party and the Non-Defaulting Party arising under the Agreement and only then consider where the net claim (if any) of the Defaulting Party is situated. However, there is a potential danger that, if the secondary proceedings were opened in the jurisdiction in which the Non-Defaulting Party Firm has the centre of its main interest, the Insolvency Representative would not apply the Netting Provisions, the FOA Set-off Provisions, the Clearing Module Set-Off Provision Addendum Set-Off Provision or the Title Transfer Provisions to any obligation of the Non-Defaulting Party against the Defaulting Party arising under the FOA Netting Agreement and the Clearing Agreement on the basis that the Defaulting Party's claim corresponding to such obligation is situated outside the jurisdiction of the Insolvency Representative.

4.7 Insolvency of Foreign Parties

4.7.1 Where the foreign Defaulting Party (i) is a non-Czech company incorporated or formed under the laws of another jurisdiction; (ii) has its centre of its main interests in an EU member state other than the Czech Republic or Denmark (the "**Home Jurisdiction**"); and (iii) has its branch in this jurisdiction,

(i) there may be separate Insolvency Proceedings in this jurisdiction with respect to the foreign Defaulting Party's branch in this jurisdiction if (1) the main insolvency proceedings are opened by the courts of the Home Jurisdiction; or (2) such main insolvency proceedings cannot be opened because of the conditions laid down by the law of the Home Jurisdiction; or (3) the opening of the separate insolvency proceedings is requested by a creditor who has his domicile, habitual residence or registered office in this jurisdiction and whose claim arises from the operation of the foreign Defaulting Party's branch; and

[18] Under the EU Insolvency Regulation, the Member State in which assets are situated shall mean, in the case of claims, the Member State within the territory of which the third party required to meet them has the centre of its main interest.

(ii) an Insolvency Representative in this jurisdiction would restrict such separate Insolvency Proceedings to assets of the foreign Defaulting Party situated (or deemed under the EU Insolvency Regulation to be situated) in the territory of this jurisdiction.

4.7.2 Where the foreign Defaulting Party (i) is a non-Czech company incorporated or formed under the laws of another jurisdiction; (ii) has its centre of its main interests in a non-EU member state or Denmark; and (iii) the foreign Defaulting Party has its branch in this jurisdiction,

(i) there may be separate Insolvency Proceedings in this jurisdiction with respect to the foreign Defaulting Party's branch in this jurisdiction regardless of whether or not the relevant authorities in any other jurisdiction have initiated proceedings in respect of the foreign Defaulting Party; and

(ii) an Insolvency Representative in this jurisdiction would not include in the insolvency estate also assets of the foreign Defaulting Party situated outside the territory of this jurisdiction.

4.7.3 Where the foreign Defaulting Party is an EEA Credit Institution (regardless of whether or not it has its assets or branch in this jurisdiction), there may be no separate Insolvency Proceedings in this jurisdiction and the authorities in this jurisdiction would defer to the proceedings in the foreign Defaulting Party's home jurisdiction.

4.7.4 Where the foreign Defaulting Party (i) is a non-Czech bank (other than an EEA Credit Institution) incorporated or formed under the laws of another jurisdiction; and (ii) has its branch in this jurisdiction,

(i) there may be separate Insolvency Proceedings in this jurisdiction with respect to the foreign Defaulting Party in this jurisdiction regardless of whether or not the relevant authorities in any other jurisdiction have initiated proceedings in respect of the foreign Defaulting Party; and

(ii) an Insolvency Representative in this jurisdiction would not include in the insolvency estate also assets of the foreign Defaulting Party situated outside the territory of this jurisdiction.

4.8 General

4.8.1 The Civil Code provides for a general rule that any transaction is invalid if it contradicts good morals or any law (i.e., not only the Civil Code) if required by the purpose and meaning of the law. Since it is not entirely clear how the general rule applies to entities whose business is subject to special regulation, there is a risk that the FOA Netting Agreement, the Clearing Agreement or any Transaction would be invalid if the FOA Netting Agreement, the Clearing Agreement or such Transaction contradicted such special regulation, including

any prudential or conduct of business rules as well as any other regulatory rules or restrictions contained in such special regulation.

4.8.2 While we do not express any view as to whether both the execution of the FOA Netting Agreement, the Clearing Agreement or any Transaction by a Czech bank or a branch of a non-Czech bank and the performance of the obligations of the Czech bank or the branch of a non-Czech bank under the FOA Netting Agreement, the Clearing Agreement or such Transaction complies with or will comply with any prudential or conduct of business rules as well as any other regulatory rules or restrictions presently in force and applicable to the Czech bank or the branch on a non-Czech bank, we note that the Act on Banks expressly provides that Czech banks and branches of non-Czech banks (other than EEA Credit Institutions) may not enter into agreements on terms that are significantly disadvantageous to them (in particular agreements that bound them to an economically unjustifiable performance or a performance manifestly inadequate to the consideration provided) and that agreements entered in breach of this provision are void.

4.8.3 The Insolvency Act provides that a receivable denominated in a non-Czech currency shall be converted into Czech Koruna at the exchange rate published by the CNB as of the date of the commencement of the insolvency proceedings or, if the receivable becomes due earlier, as of its due date. Consequently, if the Liquidation Amount or another amount becomes due and payable by the Counterparty following the commencement of the insolvency proceedings, it will have to be converted into Czech Koruna accordingly.

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

(i) such discretion is granted in respect of a sufficiently clearly defined matter; and

(ii) such discretion is exercised reasonably or such opinion is based on reasonable grounds.

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

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

(i) the act was made during the last five years with the intention to curtail its creditors and the party's counterparty was aware of this intention;

(ii) the act was made during the last two years with the intention to curtail its creditors and the party's counterparty must have been aware of this intention;

(iii) the act curtailed the creditor and two years between the party and close person or in favour of close person, unless the party's counterparty was not, at the time the act was made, aware of this intention and should not have been aware of this intention.

A creditor of one party may ask the court to declare that a purchase or barter contract made during the last year if the party's counterparty must have realized that the party is wasting its assets which curtails the party's.

Whilst we express no opinion as to whether any particular Transaction could be declared ineffective on the basis that it meets the above conditions, we are not aware of any reason why the FOA Netting Agreement or Clearing Agreement itself should be found ineffective on that basis.

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

4.8.8 Under the Civil Code, a contracting party shall not refuse to perform its obligation, nor terminate the contract on the grounds that the other contracting party failed to perform its obligation arising from a different legal title, Consequently, it cannot be excluded a cross-default, default under specified transaction or any other similar default or termination event would not enforceable on the grounds of contravention of the Civil Code.

4.8.9 Czech courts may refuse to enforce an obligation if they find that the relevant contract or other legal act is in contravention of good morals, that the enforcement of the right would lead to an apparent abuse of right, or that the enforcing party acts dishonestly or that it would benefit from its own dishonest conduct;

4.8.10 Under the new Czech legal regulations, damages shall be compensated via restitution into the original state. Should this not be possible or should the damaged party request so, damages shall be compensated in money;

4.8.11 The new Czech legal regulations provide for unilateral changes of business terms and conditions, not for unilateral changes or amendments to contracts. Accordingly, it may be difficult to enforce terms of the FOA Netting Agreement or the Clearing Agreement that attempt to vest one party with discretion over a determination of a matter that could be viewed as a term of the agreement. Accordingly, it is not clear whether provisions providing that any calculation, determination or certification effected by a party to an agreement is to be conclusive and binding would be enforceable;

4.8.12 Under the new Czech legal regulations, agreements excluding or limiting in advance the liability for damages caused to an individual on his or her natural

rights, or caused intentionally or by gross negligence shall be disregarded. Agreements excluding in advance the weaker party's right to claim any damages shall also be disregarded. In these circumstances, the right to claim damages may not be validly waived either. Accordingly, it may be difficult to enforce terms of the FOA Netting Agreement or Clearing Agreement that attempt to achieve this result;

4.8.13 Under the new Czech legal regulations, provisions of business terms and conditions which the other party could not have reasonably expected are without effect, unless accepted expressly. Contract terms may not diverge from this rule. Whether a provision is subject to the rule will be decided not only based on its contents, but also on the form in which the provision was written;

4.8.14 Under the new Czech legal regulations, merchants may contractually diverge from provisions of the Civil Code on adhesion contracts, except where a party can prove that a term contained outside the main body of the contract and proposed by the other party grossly violates commercial customs and the principle of fair business dealing. In adhesion contracts any stipulation which is illegible or unintelligible or which is particularly disadvantageous to the weaker party, without proper justification, may be declared void in court. A Counterparty may (depending on particular factual circumstances) be regarded as the weaker party;

4.8.15 Enforcement may be limited as the result of the new Czech legal regulations applicable to situations where, after the execution of the contract, circumstances change to such an extent that an exceptionally gross disproportion arises between the parties' rights and obligations, either as the result of an unreasonable increase in the costs of performance, or a unreasonable decrease in the value of the thing performed;

4.8.16 Enforcement may be limited where the debtor proves that after the making of the contract, performance of its obligations thereunder became impossible;

4.8.17 In situations where parties are obligated to perform simultaneously, a party may enforce its right to performance only if it has already performed its obligation or is willing and able to perform simultaneously. The party obligated to perform first may refuse to perform until the other party performs or provides security; however, this applies only if the other party's performance is threatened by circumstances which the first party did not and should not have known at the time of the making of the contract;

4.8.18 Rights may become time-barred under the provisions of the Civil Code on limitation or may be or become subject to a defence of set-off or counterclaim;

4.8.19 A party to a contract may be able to avoid the contract (and may have other remedies) if it has entered in the contract based on a mistake as to a decisive circumstance relating to the contract induced by the other party. The same shall apply in cases of a mistake as to a non-decisive circumstance induced using guile, and also in cases where the mistake has been induced by a third

party acting at the instigation of the other party, or with the actual or inferred knowledge of the other party; and

4.8.20 Regardless of any provision setting out that the particular agreement can be amended in written form only, it cannot be ruled out that Czech courts would consider the agreement amended by factual conduct of the parties not having a written form.

4.8.21 Czech law does not object to agreements on future agreement per se; however, to the extent that any matter is to be determined by future agreement or negotiation, the relevant provision may be unenforceable or void due to uncertainty. In addition, the new Czech legal regulations introduced the new risk that an agreement that a certain part of a contract will be agreed subsequently will be interpreted as a precondition to the contract taking effect.

4.8.22 Any provision of stating that a failure or delay on the part of a Party in exercising any right or remedy under the FOA Netting Agreement or Clearing Agreement shall not operate as a waiver of such right or remedy may not be effective.

4.8.23 The effectiveness of any provision of the FOA Netting Agreement or Clearing Agreement which allows an invalid provision to be severed in order to save the remainder of the FOA Netting Agreement or Clearing Agreement will be determined by the Czech courts at their discretion. In addition, the new Czech legal regulations introduced the new risk that the relevant provision will not be characterised as invalid but rather as non-existent (in Czech *zdánlivé*), which may have a different effect on the rest of the agreement.

4.8.24 If the obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement 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 FOA Set-Off Provisions or the Clearing Module Set-Off Provision. For these purposes, under the laws of this jurisdiction, obligations would not be regarded as "mutual" if the Parties each were not personally and solely liable as regards obligations owing by it and solely entitled to the benefit of obligations owed to it.

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

4.8.26 As of 1 January 2014, the whole of Czech private law as it has gradually developed via amendments and judicial interpretation since the early 1990s has been changed. The previous Civil Code (Act No. 40/1964 Coll., as amended), the Commercial Code (Act No. 513/1991 Coll., as amended), the Private International Law and Procedure Act (Act No. 97/1963 Coll.) and other laws and regulations were repealed or amended by the Civil Code, the

Business Corporations Act, the IPL Act and other related laws and regulations. This opinion applies only to the FOA Netting Agreement, the Clearing Agreement and the Transactions entered into on or after the date of this opinion.

The new laws and regulations are voluminous, a number of the new rules are not unequivocal or comprehensible. Furthermore, no unanimous expert opinion exists as to which provisions of the new laws and regulations are mandatory and which are non-mandatory. The legislative proposals were accompanied with legislative reports that were insufficient in many respects, with a number of the new rules not being given any background explanation at all. Although we believe that the views expressed in this opinion are correct, we cannot, under present circumstances, exclude the possibility that over time, Czech courts will interpret the new rules on which we opine differently from our current understanding of their contents and meaning.

Although we express in this paragraph 4 several specific reservations regarding those uncertainties or other problems in the new laws that we are already aware of, these reservations are without prejudice to the general nature of the reservation in this paragraph 4.8.26.

4.8.27 The transitional provisions of the Civil Code provide that legal relationships (other than personal and family rights and rights in rem) that came into existence prior to 1 January 2014 as well as rights and obligations arising from the legal relationships, including rights and obligations from breach of agreements entered into before 1 January 2014, shall be governed by the laws effective before 1 January 2014. Consequently, the previous Civil Code (Act No. 40/1964 Coll., as amended) and the Commercial Code (Act No. 513/1991 Coll., as amended) and other laws and regulations were repealed or amended by the Civil Code and the Business Corporations Act might apply to the FOA Netting Agreement, the Clearing Agreement and Transactions entered into before 1 January 2014. Further, it cannot be excluded that the previous Civil and the Commercial Code could also apply to the Clearing Agreement and Transactions entered into on or after 1 January 2014 in respect of an FOA Netting Agreement entered into before 1 January 2014. In such case, please refer to qualifications in paragraph 4.8 (*General*) of our opinion dated 21 February 2013.

4.8.28 The transitional provisions of the IPL Act provide that the creation and existence of legal relationships and facts arising from the relationships before 1 January 2014 shall be governed by the Private International Law and Procedure Act (Act No. 97/1963 Coll.) that was replaced by the IPL Act. The transitional provisions of the IPL Act further provide that the IPL Act shall apply to legal relationships that came to existence before 1 January 2014 if the legal relationship is of a permanent long-term nature and repeated or continuous conduct of the participants and facts significant for the participants occur within the relationship after 1 January 2014, as far as such conduct and facts are concerned. Consequently, the conflict of laws rules that will apply to legal relationships established under or in connection with an FOA Netting Agreement entered into before 1 January 2014 may be governed by both the Private International Law and Procedure Act and the IPL Act. For description

of the conflict of laws rules contained in the Private International Law and Procedure Act see our opinion dated 21 February 2013.

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

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

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

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

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

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

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

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

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

Yours faithfully,

SCHEDULE 1
Securities Dealers

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The definition of the "Insolvency Proceedings" in paragraph 1.15.1 is deemed deleted and replaced with the following:

> "*"**Insolvency Proceedings**" means the procedures listed in section 3.1 of Schedule 1 (Securities Dealers).*"

1.2 The definition of "Insolvency Representative" in paragraph 1.15.2 is deemed deleted and replaced with the following:

> "*"**Insolvency Representative**" means an insolvency administrator (in Czech: "insolvenční správce") within the meaning of the Czech Act No. 182/2006 Coll., on insolvency and methods of its resolution, as amended (the "**Insolvency Act**") and a forced administrator (in Czech: "nucený správce") within the meaning of the Capital Market Act.*"

2. MODIFICATIONS TO ASSUMPTIONS

2.1 The assumption in paragraph 2.14 is deemed deleted and replaced with the following:

> "*That the Czech Other Securities Dealer (as defined in Section 4.1) has its "centre of main interest" in the Czech Republic and the branch of a non-Czech Other Securities Dealer constitutes an "establishment", in each case within the meaning of Regulation (EC) No. 1346/2000 on insolvency proceedings, as amended (the "**EU Insolvency Regulation**"), which applies in all EU member states other than Denmark.*"

3. 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: Securities Dealers

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

(a) insolvency proceedings (including bankruptcy, but excluding reorganisation) under the Insolvency Act;

(b) in relation to a Czech securities dealer (unlike a branch of a non-Czech securities dealer), forced administration (in Czech: *"nucená správa"*) under the Capital Market Act in addition to the insolvency proceedings under (a) above.[19]

3.1.2 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 **1** of Annex 5 under the heading "For the purpose of Schedule 1 (*Securities Dealers*)".

3.2 Insolvency of foreign parties: Securities Dealers

Where the Defaulting Party is incorporated or formed under the laws of another jurisdiction (a "**foreign Defaulting Party**"), the foreign Defaulting Party can be subject to Insolvency Proceedings in this jurisdiction.

3.3 Special legal provisions for market contracts: Securities Dealers

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 a back-to-back central counterparty.

The Czech Act No. 91/2012 Coll., on international private law (the "**IPL Act**") expressly prohibits any choice of law with respect to rights and obligations of any person arising from participation of such person in a payment or settlement system. Upon decision on insolvency (or adoption of another decision or imposition of another measure by a public authority having similar effects) with respect to any participant in a payment or settlement system, the rights and obligations of such

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

participant shall be governed by the law governing the relationships among the participants in the system when performing the clearing or settlement.

4. ADDITIONAL QUALIFICATIONS

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

"***Insolvency proceedings***

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

More importantly, the Capital Market Act provides that a client's assets do not form part of the insolvency estate of a Czech securities dealer pursuant to the Insolvency Act. If the decision on insolvency of the Czech securities dealer is issued, the Insolvency Representative will be required to return the assets to the clients without undue delay. Although such requirements should not have impact on the enforceability of the Netting Provisions, it would likely have impact on the recoverability of the net sum, if any, payable by the Czech securities dealer.

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

5. MODIFICATIONS TO QUALIFICATIONS

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

5.1 The qualification in paragraph 4.1.3 is deemed deleted and replaced with the following:

"*In respect of the matters outside the material scope of the Rome I Regulation, the IPL Act will apply.*"

5.2 The qualification in paragraph 4.2.2 is deemed deleted and replaced with the following:

"*In case of a forced administration being introduced in respect of a Czech securities dealer pursuant to the Capital Market Act, the Netting Provisions shall not be affected by the provisions of the Capital Market Act regulating introduction of such a forced administration if the if the FOA Netting Agreement or, as the case may be, the*

Clearing Agreement (in each case including the relevant Netting Provision) has been entered into prior to the introduction of the forced administration in respect of the Czech securities dealer."

5.3 The introductory sentence of qualification 4.2.3 is deemed deleted and replaced with the following:

"*When providing for protection of the close-out netting, both the Insolvency Act and the Capital Market Act refer to the close-out netting pursuant to the Capital Market Act.*"

5.4 The qualification in paragraph 4.2.3(b)(iii) is deemed deleted and replaced with the following:

"*sub-paragraph (ii) above will not apply to the effects associated with the commencement of insolvency proceedings, entry into liquidation proceedings or imposition of forced administration; the effects associated with the commencement of insolvency proceedings or imposition of forced administration are disapplied by operation of other laws, including the Insolvency Act and the Capital market Act. Neither Civil Code nor the Business Corporations Act disapply the effects associated with the entry into liquidation proceedings on the close-out netting.*"

5.5 The qualification in paragraph 4.2.10 is deemed deleted and replaced with the following:

"*The Insolvency Act provides that the close-out netting arrangement (in Czech: "závěrečné vyrovnání") within the meaning of the Capital Market Act shall not be affected by the provisions of the Insolvency Act if the close-out netting arrangement has been entered into prior to the commencement of the insolvency proceedings. The Capital Market Act in respect of forced administration of Czech securities dealers provides that the performance of the close-out netting arrangement (in Czech: "splnění závěrečného vyrovnání") within the meaning of the Capital Market Act shall not be affected by the provisions of the Capital Market Act regulating introduction of such a forced administration if the close-out netting arrangement has been entered into prior to the introduction of the forced administration in respect of the Czech securities dealer. We are of the view that the above provisions of the Insolvency Act and the Capital Market Act should be construed consistently in that a close-out netting arrangement is protected if the close-out netting arrangement is entered into (rather than applied to close out and net the Transactions) prior to the commencement of the insolvency proceedings. For certain exception from such protection of the Insolvency Act, please refer to our qualification in paragraph 4.2.1.*"

5.6 The qualification in paragraph 4.3.2 is deemed deleted and replaced with the following:

"The EU Insolvency Regulation would apply to a Defaulting Party, which is the Other Securities Dealer. It results from the EU Insolvency Regulation that the opening of relevant Insolvency Proceedings should not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

If so, the Non-Defaulting Party should be entitled to set off: (a) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party against the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount owed by the Defaulting Party if such set-off were permitted under the law governing the Defaulting Party's claim to have the cash margin repaid by the Non-Defaulting Party; and (b) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party against the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount owed by the Non-Defaulting Party if such a set-off were permitted by the law of the state governing the Defaulting Party's claim to have the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount paid by the Non-Defaulting Party.

The General Set-off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision should thus be protected to the extent that such a set-off is permitted by English law as the law governing the relevant claim of the Defaulting Party. It is not entirely clear, however, whether the reference to that governing law is limited to the general rules applicable to set-off or whether the reference extends to insolvency rules applicable to set-off in that jurisdiction. No such rules should, however, preclude actions in this jurisdiction for voidness, voidability or unenforceability of legal acts detrimental to all the creditors of the Defaulting Party. For more details regarding the rules applicable to the undervalue and preferential transactions and the fraudulent transactions, please refer to our qualification in paragraph 4.2.1"

5.7 The qualification in paragraph 4.3.3 is deemed deleted and replaced with the following:

"If, for any reason, the EU Insolvency Regulation would not apply or English law did not permit such a set-off, the General Set-off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision would only be enforceable against the Defaulting Party, which is the Other Securities Dealer, subject to, and in accordance with, the Insolvency Act and the Capital Market Act.

The General Set-off Clause General Set-off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision would be enforceable against the Defaulting party which is the Securities Dealer Holding Funds for Third Parties, subject to, and in accordance with, the Capital Market Act and the Insolvency Act, regardless of whether English law permit such a set-off."

5.8 The qualification in paragraph 4.4.3 is deemed deleted and replaced with the following:

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

prior to the introduction of the forced administration in respect of the Czech securities dealer.[20]"

5.9 The qualification in paragraph 4.6.2 is deemed deleted and replaced with:

"*Where the Defaulting Party is the Other Securities Dealer with its "centre of main interest" in the Czech Republic (please refer to our assumption in section 2.1), the Insolvency Representative would be required to defer to the jurisdiction of the insolvency officer appointed in another EU member state if secondary proceedings under the EU Insolvency Regulation in respect of the Defaulting Party were opened in such other EU member state on the basis that the Defaulting Party possesses an establishment within the territory of that other EU member state. The effect of those proceedings should be restricted to the assets of the Defaulting Party situated in the territory of that EU member state.* [21]"

5.10 The qualification in paragraph 4.7.1 is deemed deleted and replaced with:

"*Where the foreign Defaulting Party (i) is the Other Securities Dealer incorporated or formed under the laws of another jurisdiction; (ii) has its centre of its main interests in an EU member state other than the Czech Republic or Denmark (the "**Home Jurisdiction**"); and (iii) has its branch in this jurisdiction,*

(a) *there may be separate Insolvency Proceedings in this jurisdiction with respect to the foreign Defaulting Party's branch in this jurisdiction if (1) the main insolvency proceedings are opened by the courts of the Home Jurisdiction; or (2) such main insolvency proceedings cannot be opened because of the conditions laid down by the law of the Home Jurisdiction; or (3) the opening of the separate insolvency proceedings is requested by a creditor who has his domicile, habitual residence or registered office in this jurisdiction and whose claim arises from the operation of the foreign Defaulting Party's branch; and*

(b) *an Insolvency Representative in this jurisdiction would restrict such separate Insolvency Proceedings to assets of the foreign Defaulting Party situated (or deemed under the EU Insolvency Regulation to be situated) in the territory of this jurisdiction.*"

5.11 The qualification in paragraph 4.7.2 is deemed deleted and replaced with:

"*Where the foreign Defaulting Party (i) is the Other Securities Dealer incorporated or formed under the laws of another jurisdiction; (ii) has its centre of its main interests in a non-EU member state or Denmark; and (iii) the foreign Defaulting Party has its branch in this jurisdiction,*

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

[21] Under the EU Insolvency Regulation, the Member State in which assets are situated shall mean, in the case of claims, the Member State within the territory of which the third party required to meet them has the centre of its main interest.

(a) *there may be separate Insolvency Proceedings in this jurisdiction with respect to the foreign Defaulting Party's branch in this jurisdiction regardless of whether or not the relevant authorities in any other jurisdiction have initiated proceedings in respect of the foreign Defaulting Party; and*

(b) *an Insolvency Representative in this jurisdiction would not include in the insolvency estate also assets of the foreign Defaulting Party situated outside the territory of this jurisdiction.* "

5.12 The qualification in paragraph 4.7.3 is deemed deleted.

5.13 The qualification in paragraph 4.7.4 is deemed deleted and replaced by the following:

"*Where the foreign Defaulting Party (i) is a non-Czech Securities Dealer Holding Funds for Third Parties incorporated or formed under the laws of another jurisdiction; and (ii) has its branch in this jurisdiction,*

(a) *there may be separate Insolvency Proceedings in this jurisdiction with respect to the foreign Defaulting Party in this jurisdiction regardless of whether or not the relevant authorities in any other jurisdiction have initiated proceedings in respect of the foreign Defaulting Party; and*

(b) *an Insolvency Representative in this jurisdiction would not include in the insolvency estate also assets of the foreign Defaulting Party situated outside the territory of this jurisdiction.* "

5.14 The qualification in paragraph 4.8.2 is deemed deleted and replaced by the following:

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

SCHEDULE 2
Insurance Providers

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

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

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The definition of the "Insolvency Proceedings" in paragraph 1.15.1 is deemed deleted and replaced with the following:

> "*"**Insolvency Proceedings**" means the procedures listed in section 3.1 of Schedule 2 (Insurance Providers).*"

1.2 The definition of "Insolvency Representative" in paragraph 1.15.2 is deemed deleted and replaced with the following:

> "*"**Insolvency Representative**" means an insolvency administrator (in Czech: "insolvenční správce") within the meaning of the Czech Act No. 182/2006 Coll., on insolvency and methods of its resolution, as amended (the "**Insolvency Act**"), an administrator (in Czech: "správce") within the meaning of the Insurance Act and a*

forced administrator (in Czech: "nucený správce") within the meaning of the VZP Act and the Health Insurance Companies Act, respectively."

2. MODIFICATIONS TO ASSUMPTIONS

2.1 The assumption in paragraph 2.15 is deemed deleted.

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 Providers

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

(a) in relation to a Czech insurance company, forced administration (in Czech: "*nucená správa*") under the Insurance Act. The Insolvency Act will not apply to a Czech insurance company or a branch of a non-Czech insurance company for so long as the Czech insurance company or the branch of the non-Czech insurance company (other than the EEA Insurance Undertaking) holds a licence under the Insurance Act. Following a withdrawal of the licence by the CNB, the Czech insurance company or the branch of a non-Czech insurance company (other than the EEA Insurance Undertaking) might only be subject to bankruptcy under the Insolvency Act. The CNB is given specific powers to file a petition for the decision on insolvency relating to a Czech insurance company and a branch of a non-Czech insurance company (other than the EEA Insurance Undertaking). Any insolvency proceedings with respect to an EEA Insurance Undertaking will be carried out in accordance with the laws, regulations and procedures applicable in the state in which the insurance company has been licensed;

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

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

3.1.2 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 1 of Annex 5 under the heading "For the purpose of Schedule 2 (*Insurance Providers*).

3.1.3 **Insolvency of Foreign Parties: Insurance Providers**

3.1.4 Where the Defaulting Party (other than an EEA Insurance Undertaking) is incorporated or formed under the laws of another jurisdiction (a "**foreign Defaulting Party**"), the foreign Defaulting Party can be subject to Insolvency Proceedings in this jurisdiction.

3.1.5 Where the Defaulting Party is an EEA Insurance Undertaking, there can be no separate Insolvency Proceedings in this jurisdiction in relation to the EEA Credit Institution and the authorities in this jurisdiction would defer to the proceedings in the foreign Defaulting Party's home jurisdiction.

3.2 **Special legal provisions for market contracts: Insurance Providers**

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 a back-to-back central counterparty.

3.2.1 The Czech Act No. 91/2012 Coll., on international private law (the "**IPL Act**") expressly prohibits any choice of law with respect to rights and obligations of any person arising from participation of such person in a payment or settlement system. Upon decision on insolvency (or adoption of another decision or imposition of another measure by a public authority having similar effects) with respect to any participant in a payment or settlement system, the rights and obligations of such participant shall be governed by the law governing the relationships among the participants in the system when performing the clearing or settlement.

3.2.2 In relation to a Czech insurance company or a branch of a non-Czech insurance company (including the EEA Insurance Undertaking), the Czech Act No. 97/1963 Coll., on international private and procedural law, the IPL Act expressly provides that, in respect of insolvency of the Czech insurance company or a branch of a non-Czech insurance company, the effects of the insolvency proceedings on the rights and obligations of persons on a regulated market shall be governed solely by the law governing such regulated market. The choice of another law is expressly prohibited by the IPL Act.

4. **ADDITIONAL QUALIFICATIONS**

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

"The EU Insolvency Regulation excludes from its scope, among others, insurance undertakings. It is unclear whether the Health Insurance Companies qualify as

insurance undertakings within the meaning of the EU Insolvency Regulation. We are of the view that the term "insurance undertaking" only refers to entities covered by the Directive 73/239/EEC (Non-Life Insurance Directive)[22]*, as amended, and the Directive 2002/83/EC (Life Insurance Directive), as amended. The Non-Life Insurance Directive does not apply to insurance forming part of a statutory system of social security. Consequently, the Health Insurance Companies (which provide public health insurance forming this jurisdiction's statutory system of social security) would unlikely qualify as insurance undertakings within the meaning of the EU Insolvency Regulation and thus, the EU Insolvency Regulation would likely cover the Health Insurance Companies. One could argue, however, that the Health Insurance Companies are not covered by the EU Insolvency Regulation since the Ministry of Health of the Czech Republic has powers of intervention similar to the powers the CNB has in respect of the Czech insurance companies, which are excluded from the scope of the EU Insolvency Regulation. Since no assurance can be given whether a Czech court would apply the EU Insolvency Regulation to the Health Insurance Companies, we do not further address application of the EU Insolvency Regulation to the Health Insurance Companies in this opinion."*

5. MODIFICATIONS TO QUALIFICATIONS

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

5.1 The qualification in paragraph 4.1.3 is deemed deleted and replaced with the following:

"*In respect of the matters outside the material scope of the Rome I Regulation, the IPL Act will apply. In relation to a Czech insurance company or a branch of a non-Czech insurance company (including the EEA Insurance Undertaking), the IPL Act provides that, in respect of insolvency of Czech insurance company or a branch of a non-Czech insurance company the right of creditors to demand set-off of their claims against the claims of the Czech insurance company or the non-Czech insurance company shall be governed by the law applicable to those claims. The choice of another law is expressly excluded by the IPL Act.*"

5.2 The qualification in paragraph 4.2.2 is deemed deleted and replaced with the following:

"*In case of a forced administration being introduced in respect of a Czech insurance company pursuant to the Insurance Act, the Netting Provisions shall not be affected by the provisions of the Insurance Act regulating introduction of such a forced administration if the FOA Netting Agreement or, as the case may be, the Clearing Agreement (in each case including the relevant Netting Provision) has been entered into prior to the introduction of the forced administration in respect of the Czech insurance company. Unlike the Insurance Act, the VZP Act and the Health Insurance Companies Act do not provide for specific protection of close-out netting arrangements in a forced administration introduced by the Ministry of Health of the Czech Republic in respect of VZP and the Health Insurance Companies, respectively.*"

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

5.3 The introductory sentence of qualification 4.2.3 is deemed deleted and replaced with the following:

"*When providing for protection of the close-out netting, both the Insolvency Act and the Insurance Act refer to the close-out netting pursuant to the Capital Market Act.*"

5.4 The qualification in paragraph 4.2.3(b)(iii) is deemed deleted and replaced with the following:

"*sub-paragraph (ii) above will not apply to the effects associated with the commencement of insolvency proceedings, entry into liquidation proceedings or imposition of forced administration; the effects associated with the commencement of insolvency proceedings or imposition of forced administration are disapplied by operation of other laws, including the Insolvency Act and the Insurance Act. Neither Civil Code nor the Business Corporations Act disapply the effects associated with the entry into liquidation proceedings on the close-out netting*"

5.5 The qualification in paragraph 4.2.10 is deemed deleted and replaced with the following:

"*The Insolvency Act provides that the close-out netting arrangement (in Czech: "závěrečné vyrovnání") within the meaning of the Capital Market Act shall not be affected by the provisions of the Insolvency Act if the close-out netting arrangement has been entered into prior to the commencement of the insolvency proceedings. The Insurance Act in respect of forced administration of Czech insurance companies provides that the performance of the close-out netting arrangement (in Czech: "splnění závěrečného vyrovnání") within the meaning of the Capital Market Act shall not be affected by the provisions of the Insurance Act regulating introduction of such a forced administration if the close-out netting arrangement has been entered into prior to the introduction of the forced administration in respect of the Czech insurance companies. We are of the view that the above provisions of the Insolvency Act and the Insurance Act should be construed consistently in that a close-out netting arrangement is protected if the close-out netting arrangement is entered into (rather than applied to close out and net the Transactions) prior to the commencement of the insolvency proceedings. For certain exception from such protection of the Insolvency Act, please refer to our qualification in paragraph 4.2.1.*"

5.6 The qualification in paragraph 4.3.2 is deemed deleted and replaced with the following:

"*The Insolvency Act would apply to a Defaulting Party, which is a Czech insurance company or a branch of a non-Czech insurance company (other than an EEA Insurance Undertaking). It results from the Insolvency Act that the opening of relevant Insolvency Proceedings should not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.*

If so, the Non-Defaulting Party should be entitled to set off: (a) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party against the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount owed by the Defaulting Party if such set-off were permitted under the law governing

the Defaulting Party's claim to have the cash margin repaid by the Non-Defaulting Party; and (b) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party against the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount owed by the Non-Defaulting Party if such a set-off were permitted by the law of the state governing the Defaulting Party's claim to have the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount paid by the Non-Defaulting Party.

The General Set-off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision should thus be protected to the extent that such a set-off is permitted by English law as the law governing the relevant claim of the Defaulting Party. It is not entirely clear, however, whether the reference to that governing law is limited to the general rules applicable to set-off or whether the reference extends to insolvency rules applicable to set-off in that jurisdiction. No such rules should, however, preclude actions in this jurisdiction for voidness, voidability or unenforceability of legal acts detrimental to all the creditors of the Defaulting Party. For more details regarding the rules applicable to the undervalue and preferential transactions and the fraudulent transactions, please refer to our qualification in paragraph 4.2.1."

5.7 The qualification in paragraph 4.3.3 is deemed deleted and replaced with the following:

"*If, for any reason, English law did not permit such a set-off, the General Set-off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision would only be enforceable against the Defaulting Party, which is a Czech insurance company or a branch of a non-Czech insurance company (other than EEA Insurance Undertaking) subject to, and in accordance with, the Insurance Act and, following the withdrawal of its licence, the Insolvency Act.*

The General Set-off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision would only be enforceable against the Defaulting Party which is VZP, subject to, and in accordance with, the VZP Act. The General Set-off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision would only be enforceable against the Defaulting Party which is a Health Insurance Company in accordance with, and subject to, the Health Insurance Companies Act and, following the withdrawal of the licence, the Insolvency Act."

5.8 The qualification in paragraph 4.4.3 is deemed deleted and replaced with the following:

"*In case of a forced administration being introduced in respect of a Czech insurance company pursuant to the Insurance Act, the Insurance Act provides that exercise of rights and performance of obligations arising from a financial collateral arrangement pursuant to the Financial Collateral Act or equivalent foreign legal regulation shall not be affected by the provisions of the Insurance Act regulating introduction of such a forced administration if the financial collateral arrangement has been entered into and come into existence (i.e. the collateral has been provided) prior to the introduction of the forced administration in respect of the Czech insurance*

company.[23] *Unlike the Insurance Act, the VZP Act and the Health Insurance Companies Act do not provide for specific protection of financial collateral arrangements in a forced administration introduced by the Ministry of Health of the Czech Republic in respect of the VZP and the Health Insurance Companies, respectively.* "

5.9 The qualifications in paragraphs 4.6.1 through 4.7.2 are deemed deleted.

5.10 The qualification in paragraph 4.7.3 is deemed deleted and replaced with the following:

"*Where the foreign Defaulting Party is an EEA Insurance Undertaking (regardless of whether or not it has its assets or branch in this jurisdiction), there may be no separate Insolvency Proceedings in this jurisdiction and the authorities in this jurisdiction would defer to the proceedings in the foreign Defaulting Party's home jurisdiction.*"

5.11 The qualification in paragraph 4.7.4 is deemed deleted and replaced with the following:

"*Where the foreign Defaulting Party (i) is a non-Czech insurance company (other than an EEA Insurance Undertaking) incorporated or formed under the laws of another jurisdiction; and (ii) has its branch in this jurisdiction,*

(a) *there may be separate Insolvency Proceedings in this jurisdiction with respect to the branch in this jurisdiction regardless of whether or not the relevant authorities in any other jurisdiction have initiated proceedings in respect of the foreign Defaulting Party; and*

(b) *an Insolvency Representative in this jurisdiction would not include in the insolvency estate also assets of the foreign Defaulting Party situated outside the territory of this jurisdiction.* "

5.12 The qualification in paragraph 4.8.2 is deemed deleted and replaced by the following:

"*While we do not express any view as to whether both the execution of the FOA Netting Agreement, the Clearing Agreement or any Transaction by the Insurance Provider and the performance of the obligations of the Insurance Providers under the FOA Netting Agreement, the Clearing Agreement or such Transaction complies with or will comply with any prudential or conduct of business rules as well as any other regulatory rules or restrictions presently in force and applicable to the Insurance Provider, we note that the Insurance Act, for example, provides that, when carrying on insurance business, insurance companies must act with professional care and in prudent manner, in particular the insurance companies must not carry on the insurance business in a manner that would be detrimental on the value of the property entrusted to it by third parties or in a manner that would endanger their stability and safety or stability and safety of related parties.*"

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

SCHEDULE 3
Individuals

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The definition of the "Insolvency Proceedings" in paragraph 1.15.1 is deemed deleted and replaced with the following:

> "*"**Insolvency Proceedings**" means the procedures listed in section 3.1 of Schedule 3 (Individuals). In this opinion we do not express any view on death of a solvent Individual or a solvent Individual becoming of unsound mind.*"

1.2 The definition of "Insolvency Representative" in paragraph 1.15.2 is deemed deleted and replaced with the following:

> "*"**Insolvency Representative**" means an insolvency administrator (in Czech: "insolvenční správce") within the meaning of the Czech Act No. 182/2006 Coll., on insolvency and methods of its resolution, as amended (the "**Insolvency Act**").*"

2. MODIFICATIONS TO ASSUMPTIONS

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

2.2 The assumption in paragraph 2.15 is deemed and replaced with the following:

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

3. 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: Individuals

3.1.1 The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an Individual could be

subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter are insolvency proceedings (including bankruptcy and reorganisation) under the Insolvency Act.[24]

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

3.2 **Insolvency of foreign parties: Individuals**

The opinion in paragraph 3.15 is deemed deleted on the basis that the opinion in this Schedule 3 (*Individuals*) is only given in respect of individuals with the place of business in this jurisdiction (i.e., the opinion is not given in respect of individuals with the place of business in another jurisdiction).

3.3 **Special legal provisions for market contracts: Individuals**

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

4. **ADDITIONAL QUALIFICATIONS**

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

"An Individual can only act as a financial collateral provider or a financial collateral taker if (a) a particular type of counterparty acts as the other party to the financial collateral arrangement (for the list of such counterparties please refer to Annex 7); and (b) the Individual is an entrepreneur and, when taking into account all circumstances, it must be clear that the financial collateral arrangement is entered into in connection with the Individual's business activity. However, based on the assumption in section 2.1 this should be the case."

5. **MODIFICATIONS TO QUALIFICATIONS**

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

5.1 The qualification in paragraph 4.1.3 is deemed deleted and replaced with the following:

"*In respect of the matters outside the material scope of the Rome I Regulation, the IPL Act will apply.*"

5.2 The qualification in paragraph 4.2.2 is deemed deleted.

5.3 The introductory sentence of qualification 4.2.3 is deemed deleted and replaced with the following:

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

"When providing for protection of the close-out netting, the Insolvency Act refers to the close-out netting pursuant to the Capital Market Act."

5.4 The qualification in paragraph 4.2.3(b)(iii) is deemed deleted and replaced with the following:

"sub-paragraph (ii) above will not apply to the effects associated with the commencement of insolvency proceedings, entry into liquidation proceedings or imposition of forced administration; the effects associated with the commencement of insolvency proceedings are disapplied by operation of the Insolvency Act. Neither Civil Code nor the Business Corporations Act disapply the effects associated with the entry into liquidation proceedings on the close-out netting."

5.5 The qualification in paragraph 4.2.10 is deemed deleted and replaced with the following:

"The Insolvency Act provides that the close-out netting arrangement (in Czech: "závěrečné vyrovnání") within the meaning of the Capital Market Act shall not be affected by the provisions of the Insolvency Act if the close-out netting arrangement has been entered into prior to the commencement of the insolvency proceedings. The Act on Banks, for example, in respect of forced administration of banks provides that the performance of the close-out netting arrangement (in Czech: "splnění závěrečného vyrovnání") within the meaning of the Act on Banks shall not be affected by the provisions of the Act on Banks regulating introduction of such a forced administration if the close-out netting arrangement has been entered into prior to the introduction of the forced administration in respect of the banks. We are of the view that the above provisions of the Insolvency Act and the Act on Banks should be construed consistently in that a close-out netting arrangement is protected if the close-out netting arrangement is entered into (rather than applied to close out and net the Transactions) prior to the commencement of the insolvency proceedings. For certain exception from such protection of the Insolvency Act, please refer to our qualification in paragraph 4.2.1."

5.6 Paragraph 4.3.2 is deemed deleted and replaced with the following:

"It results from the EU Insolvency Regulation that the opening of relevant Insolvency Proceedings should not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

If so, the Non-Defaulting Party should be entitled to set off: (a) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party against the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount owed by the Defaulting Party if such set-off were permitted under the law governing the Defaulting Party's claim to have the cash margin repaid by the Non-Defaulting Party; and (b) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party against the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount owed by the Non-Defaulting Party if such a set-off were permitted by the law of the state governing the Defaulting Party's claim to have the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount paid by the Non-Defaulting Party.

The General Set-off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision should thus be protected to the extent that such a set-off is permitted by English law as the law governing the relevant claim of the Defaulting Party. It is not entirely clear, however, whether the reference to that governing law is limited to the general rules applicable to set-off or whether the reference extends to insolvency rules applicable to set-off in that jurisdiction. No such rules should, however, preclude actions in this jurisdiction for voidness, voidability or unenforceability of legal acts detrimental to all the creditors of the Defaulting Party. For more details regarding the rules applicable to the undervalue and preferential transactions and the fraudulent transactions, please refer to our qualification in paragraph 4.2.1."

5.7 The qualification in paragraph 4.3.6 is deemed deleted and replaced with the following:

"If, for any reason, the EU Insolvency Regulation would not apply or English law did not permit such a set-off, the General Set-off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision would only be enforceable against the Defaulting Party, which is an Individual subject to, and in accordance with, the Insolvency Act."

5.8 The qualification in paragraph 4.4.3 is deemed deleted.

5.9 The qualification in paragraph 4.6.2 is deemed deleted and replaced with the following:

"Where the Defaulting Party is an Individual with its "centre of main interest" in the Czech Republic (please refer to our assumption in section 2.1), the Insolvency Representative would be required to defer to the jurisdiction of the insolvency officer appointed in another EU member state if secondary proceedings under the EU Insolvency Regulation in respect of the Defaulting Party were opened in such other EU member state on the basis that the Defaulting Party possesses an establishment within the territory of that other EU member state. The effect of those proceedings should be restricted to the assets of the Defaulting Party situated in the territory of that EU member state. [25]"

5.10 The qualifications in paragraphs 4.7.1 through 4.8.2 are deemed deleted.

[25] Under the EU Insolvency Regulation, the Member State in which assets are situated shall mean, in the case of claims, the Member State within the territory of which the third party required to meet them has the centre of its main interest.

SCHEDULE 4
Fund Entities

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

(a) Czech investment funds (in Czech: "*investiční fondy*") within the meaning of the Czech Act No. 240/2013 Coll., on investment companies and investment funds (the "**Collective Investment Act**"); and

(b) Czech investment companies (in Czech: "*investiční společnosti*") within the meaning of the Collective Investment Act.[26]

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

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The definition of the "Insolvency Proceedings" in paragraph 1.15.1 is deemed deleted and replaced with the following:

> "*"**Insolvency Proceedings**" means the procedures listed in section 3.1 of Schedule 4 (Fund Entities).*"

1.2 The definition of "Insolvency Representative" in paragraph 1.15.2 is deemed supplemented by the following:

> "*"**Insolvency Representative**" means an insolvency administrator (in Czech: "insolvenční správce") within the meaning of the Czech Act No. 182/2006 Coll., on insolvency and methods of its resolution, as amended (the "Insolvency Act") and a forced administrator (in Czech: "nucený správce") within the meaning of the Collective Investment Act.*"

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

2. MODIFICATIONS TO ASSUMPTIONS

2.1 The assumption in paragraph 2.15 is deemed deleted.

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: Fund Entities

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

(a) insolvency proceedings (including bankruptcy and reorganisation)[27] under the Insolvency Act;

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

3.1.2 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 1 of Annex 5 under the heading "For the purpose of Schedule 4 (*Fund Entities*)".

3.2 Insolvency of foreign parties: Fund Entities

The opinion in paragraph 3.15 is deemed deleted on the basis that the opinion in this Schedule 4 (*Fund Entities*) is only given in respect of Czech investment companies and Czech investment funds incorporated under the laws of this jurisdiction (i.e., the opinion is not given in respect of non-Czech investment companies or non-Czech investment funds incorporated or formed under the laws of another jurisdiction).

3.3 Special legal provisions for market contracts: Fund Entities

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 a back-to-back central counterparty.

The Czech Act No. 91/2012 Coll., on international private law (the "**IPL Act**") expressly prohibits any choice of law with respect to rights and obligations of any person arising from participation of such person in a payment or settlement system.

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[27] It is unclear whether a Fund Entity can be subject to reorganisation. Upon the declaration of insolvency of the Fund Entity the CNB should withdraw its licence and upon such withdrawal of the licence the Fund Entity should be liquidated. The Insolvency Act provides that an entity in liquidation cannot be subject to reorganisation.

Upon decision on insolvency (or adoption of another decision or imposition of another measure by a public authority having similar effects) with respect to any participant in a payment or settlement system, the rights and obligations of such participant shall be governed by the law governing the relationships among the participants in the system when performing the clearing or settlement.

4. ADDITIONAL QUALIFICATIONS

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

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

The Collective Investment Act refers to the provisions of the Capital Market Act providing that a client's assets do not form part of the insolvency estate of the Czech investment company pursuant to the Insolvency Act. If the decision on insolvency of the Czech investment company is issued, the Insolvency Representative is required to return the assets to the clients without undue delay. Although such requirements should not have impact on the enforceability of the Netting Provisions, it would likely have impact on the recoverability of the net sum, if any, payable by the Czech investment company."

5. MODIFICATIONS TO QUALIFICATIONS

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

5.1 The qualification in paragraph 4.1.3 is deemed deleted and replaced with the following:

"*In respect of the matters outside the material scope of the Rome I Regulation, the IPL Act will apply.*"

5.2 The qualification in paragraph 4.2.2 is deemed deleted and replaced with the following:

"*In case of a forced administration being introduced in respect of a Fund Entity pursuant to the Collective Investment Act, the Netting Provisions shall not be affected by the provisions of Collective Investment Act regulating introduction of such a forced administration if the FOA Netting Agreement or, as the case may be, the Clearing Agreement (in each case including the relevant Netting Provision), has been entered into prior to the introduction of the forced administration in respect of the Fund Entity.*"

5.3 The introductory sentence of qualification 4.2.3 is deemed deleted and replaced with the following:

"When providing for protection of the close-out netting, both the Insolvency Act and the Collective Investment Act refer to the close-out netting pursuant to the Capital Market Act."

5.4 The qualification in paragraph 4.2.3(b)(iii) is deemed deleted and replaced with the following:

"sub-paragraph (ii) above will not apply to the effects associated with the commencement of insolvency proceedings, entry into liquidation proceedings or imposition of forced administration; the effects associated with the commencement of insolvency proceedings or imposition of forced administration are disapplied by operation of other laws, including the Insolvency Act and the Collective Investment Act. Neither Civil Code nor the Business Corporations Act disapply the effects associated with the entry into liquidation proceedings on the close-out netting"

5.5 The qualification in paragraph 4.2.10 is deemed deleted and replaced with the following:

"The Insolvency Act provides that the close-out netting arrangement (in Czech: "závěrečné vyrovnání") within the meaning of the Capital Market Act shall not be affected by the provisions of the Insolvency Act if the close-out netting arrangement has been entered into prior to the commencement of the insolvency proceedings. The Collective Investment Act in respect of forced administration of Fund Entities provides that the performance of the close-out netting arrangement (in Czech: "splnění závěrečného vyrovnání") within the meaning of the Capital Market Act shall not be affected by the provisions of the Collective Investment Act regulating introduction of such a forced administration if the close-out netting arrangement has been entered into prior to the introduction of the forced administration in respect of the Fund Entity. We are of the view that the above provisions of the Insolvency Act and the Collective Investment Act should be construed consistently in that a close-out netting arrangement is protected if the close-out netting arrangement is entered into (rather than applied to close out and net the Transactions) prior to the commencement of the insolvency proceedings. For certain exception from such protection of the Insolvency Act, please refer to our qualification in paragraph 4.2.1."

5.6 The qualification in paragraph 4.3.2 is deemed deleted.

5.7 The qualification in paragraph 4.3.3 is deemed deleted and replaced with the following:

"The General Set-off Clause would only be enforceable against the Fund Entity, subject to, and in accordance with, the Collective Investment Act and the Insolvency Act."

5.8 The qualification in paragraph 4.4.3 is deemed deleted and replaced with the following:

"In case of a forced administration being introduced in respect of a Fund Entity pursuant to the Collective Investment Act, the Collective Investment Act provides that exercise of rights and performance of obligations arising from a financial collateral arrangement pursuant to the Financial Collateral Act or equivalent foreign legal

regulation shall not be affected by the provisions of the Collective Investment Act regulating introduction of such a forced administration if the financial collateral arrangement has been entered into and come into existence (i.e. the collateral has been provided) prior to the introduction of the forced administration in respect of the Fund Entity.[28]"

5.9 The qualifications in paragraphs 4.6.1 through 4.7.4 are deemed deleted.

5.10 The qualification in paragraph 4.8.2 is deemed deleted and replaced with the following:

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

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

SCHEDULE 5
Public Entities

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

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

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

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

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The definition of "Insolvency Proceedings" in paragraph 1.15.1 is deemed deleted and replaced with the following:

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

2. MODIFICATIONS TO ASSUMPTIONS

2.1 The assumption in paragraph 2.15 is deemed deleted.

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: Public Entities

There are no bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Public Entity could be subject under the laws of this jurisdiction. The Public Entities are expressly exempted from

the effects of the Insolvency Act. The State does not guarantee liabilities of the Regional Self-Governing Units unless it assumes such guarantee under a contract.

3.2 **Multibranch Parties: Public Entities**

The opinion in paragraph 3.14 is deemed deleted on the basis that that it is not **applicable** to the Public Entities.

3.3 **Insolvency of foreign parties: Public Entities**

The opinion in paragraph 3.15 is deemed deleted on the basis that it is not applicable to the Public Entities.

3.4 **Special legal provisions for market contracts: Public Entities**

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 a back-to-back central counterparty.

The Czech Act No 91/2012 Coll., on international private law (the "**IPL Act**") expressly prohibits any choice of law with respect to rights and obligations of any person arising from participation of such person in a payment or settlement system. Upon decision on insolvency (or adoption of another decision or imposition of another measure by a public authority having similar effects) with respect to any participant in a payment or settlement system, the rights and obligations of such participant shall be governed by the law governing the relationships among the participants in the system when performing the clearing or settlement.

4. ADDITIONAL QUALIFICATIONS

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

"*The General Set-off clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision would only be enforceable against the State subject to, and in accordance with, the Act No. 219/2000 Coll., on the assets of the Czech Republic and its acting in legal relationships, as amended (the "**Act on the Assets of the Czech Republic**") and other acts referred to in the Act on the Assets of the Czech Republic.*"

5. MODIFICATIONS TO QUALIFICATIONS

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

5.1 The qualification in paragraph 4.1.3 is deemed deleted and replaced with the following:

"*In respect of the matters outside the material scope of the Rome I Regulation, the IPL Act will apply.*"

5.2 The qualifications in paragraphs 4.2.1 and 4.2.2 are deemed deleted.

5.3 The introductory sentence of qualification 4.2.3 is deemed deleted.

5.4 The qualification in paragraph 4.2.10 is deemed deleted.

5.5 The qualifications in paragraphs 4.3 through 4.4.5 are deemed deleted.

5.6 The qualification in paragraph 4.8.2 is deemed deleted and replaced with the following:

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

SCHEDULE 6
Pension Funds

Subject to the modifications and additions set out in this Schedule 6 (*Pension Funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Pension Funds. For the purposes of this Schedule 6 (*Pensions Funds*) "**Pension Funds**" mean Czech pension funds (in Czech: "*penzijní fondy*") within the meaning of the Czech Act No. 42/1994 Coll., on pension insurance with state contribution, as amended (the "**Pension Insurance Act**")[29].

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The definition of "Insolvency Proceedings" in paragraph 1.15.1 is deemed deleted and replaced with the following:

> "*"**Insolvency Proceedings**" means the procedures listed in section 3.1 of Schedule 6 (Pension Funds).*"

1.2 The definition of "Insolvency Representative" in paragraph 1.15.2 is deemed deleted and replaced with the following:

> "*"**Insolvency Representative**" means an insolvency administrator (in Czech: "insolvenční správce") within the meaning of the Czech Act No. 182/2006 Coll., on insolvency and methods of its resolution, as amended (the "**Insolvency Act**").*"

2. MODIFICATIONS TO ASSUMPTIONS

The assumption in paragraph 2.15 is deemed deleted and replaced with the following:

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

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

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: Pension Funds

3.1.1 The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Pension Fund could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are insolvency proceedings (including bankruptcy and reorganisation)[30] under the Insolvency Act.

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

3.2 Insolvency of foreign parties: Pension Funds

The opinion in paragraph 3.15 is deemed deleted on the basis that the opinion in this Schedule 6 (*Pension Funds*) is only given in respect of Czech pension funds incorporated under the laws of this jurisdiction (i.e., the opinion is not given in respect of non-Czech pension funds incorporated or formed under the laws of another jurisdiction).

3.3 Special legal provisions for market contracts: Pension Funds

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 a back-to-back central counterparty.

The Czech Act No. 91/2012 Coll., on international private law (the "**IPL Act**")[31] expressly prohibits any choice of law with respect to rights and obligations of any person arising from participation of such person in a payment or settlement system. Upon decision on insolvency (or adoption of another decision or imposition of another measure by a public authority having similar effects) with respect to any participant in a payment or settlement system, the rights and obligations of such participant shall be governed by the law governing the relationships among the participants in the system when performing the clearing or settlement.

4. ADDITIONAL QUALIFICATIONS

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

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

[31] The new Czech Act No 91/2012 Coll., on international private law, will replace the IPL Act with effect from 1 January 2014.

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

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

The Insolvency Act lists the claims of participants in the pension insurance system among the claims ranking ahead of claims of other unsecured creditors of a Pension Fund. Although such statutory preference should not have impact on the enforceability of the Netting Provisions, it would likely have impact on the recoverability of the net sum, if any, payable by the Pension Fund."

5. MODIFICATIONS TO QUALIFICATIONS

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

5.1 The qualification in paragraph 4.1.3 is deemed deleted and replaced with the following:

"In respect of the matters outside the material scope of the Rome I Regulation, the IPL Act will apply."

5.2 The qualification in paragraph 4.2.2 is deemed deleted.

5.3 The introductory sentence of qualification 4.2.3 is deemed deleted and replaced with the following:

"When providing for protection of the close-out netting, the Insolvency Act refers to the close-out netting pursuant to the Capital Market Act."

5.4 The qualification in paragraph 4.2.3(b)(iii) is deemed deleted and replaced with the following:

"sub-paragraph (ii) above will not apply to the effects associated with the commencement of insolvency proceedings, entry into liquidation proceedings or imposition of forced administration; the effects associated with the commencement of insolvency proceedings are disapplied by operation of o the Insolvency Act. Neither Civil Code nor the Business Corporations Act disapply the effects associated with the entry into liquidation proceedings on the close-out netting"

5.5 The qualification in paragraph 4.2.10 is deemed deleted and replaced with the following:

"The Insolvency Act provides that the close-out netting arrangement (in Czech: "závěrečné vyrovnání") within the meaning of the Capital Market Act shall not be affected by the provisions of the Insolvency Act if the close-out netting arrangement has been entered into prior to the commencement of the insolvency proceedings. The Act on Banks, for example, in respect of forced administration of banks provides that the performance of the close-out netting arrangement (in Czech: "splnění závěrečného vyrovnání") within the meaning of the Act on Banks shall not be affected

by the provisions of the Act on Banks regulating introduction of such a forced administration if the close-out netting arrangement has been entered into prior to the introduction of the forced administration in respect of the banks. We are of the view that the above provisions of the Insolvency Act and the Act on Banks should be construed consistently in that a close-out netting arrangement is protected if the close-out netting arrangement is entered into (rather than applied to close out and net the Transactions) prior to the commencement of the insolvency proceedings. For certain exception from such protection of the Insolvency Act, please refer to our qualification in paragraph 4.2.1."

5.6 The qualification in paragraph 4.3.2 is deemed deleted and replaced with the following:

"It results from the EU Insolvency Regulation that the opening of relevant Insolvency Proceedings should not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

If so, the Non-Defaulting Party should be entitled to set off: (a) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party against the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount owed by the Defaulting Party if such set-off were permitted under the law governing the Defaulting Party's claim to have the cash margin repaid by the Non-Defaulting Party; and (b) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party against the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount owed by the Non-Defaulting Party if such a set-off were permitted by the law of the state governing the Defaulting Party's claim to have the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount paid by the Non-Defaulting Party.

The General Set-off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision should thus be protected to the extent that such a set-off is permitted by English law as the law governing the relevant claim of the Defaulting Party. It is not entirely clear, however, whether the reference to that governing law is limited to the general rules applicable to set-off or whether the reference extends to insolvency rules applicable to set-off in that jurisdiction. No such rules should, however, preclude actions in this jurisdiction for voidness, voidability or unenforceability of legal acts detrimental to all the creditors of the Defaulting Party. For more details regarding the rules applicable to the undervalue and preferential transactions and the fraudulent transactions, please refer to our qualification in paragraph 4.2.1.

5.7 The qualification in paragraph 4.3.3 is deemed deleted and replaced with the following:

"If, for any reason, the EU Insolvency Regulation would not apply or English law did not permit such a set-off, the General Set-off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision would only be enforceable against the Pension Fund subject to, and in accordance with, the Pension Insurance Act and the Insolvency Act."

5.8 The qualification in paragraph 4.6.2 shall be deemed deleted and replaced with the following:

"Where the Defaulting Party is a Pension Fund with its "centre of main interest" in the Czech Republic (please refer to our assumption in section 2.1), the Insolvency Representative would be required to defer to the jurisdiction of the insolvency officer appointed in another EU member state if secondary proceedings under the EU Insolvency Regulation in respect of the Defaulting Party were opened in such other EU member state on the basis that the Defaulting Party possesses an establishment within the territory of that other EU member state. The effect of those proceedings should be restricted to the assets of the Defaulting Party situated in the territory of that EU member state. [32]"

5.9 The qualifications in paragraph 4.7.1 through 4.7.4 are deemed deleted.

5.10 The qualification in 4.8.2 is deemed deleted and replaced with the following:

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

[32] Under the EU Insolvency Regulation, the Member State in which assets are situated shall mean, in the case of claims, the Member State within the territory of which the third party required to meet them has the centre of its main interest.

SCHEDULE 7
Building Savings Banks

Subject to the modifications and additions set out in this Schedule 7 (*Building Savings Banks*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Building Savings Banks. For the purposes of this Schedule 7 (*Building Savings Banks*) "**Building Savings Banks**" mean Czech building savings banks (in Czech: "*stavební spořitelna*") within the meaning of Czech Act No. 96/1993 Coll., on building savings, as amended (the "**Building Savings Act**"). Since the Building Savings Bank is a Czech bank within the meaning of the Act on Banks,[33] the reference to a Czech bank in the opinion letter is deemed to include also a Building Savings Bank.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The definition of "Insolvency Proceedings" in paragraph 1.15.1 is deemed deleted and replaced with the following:

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

2. MODIFICATIONS TO ASSUMPTIONS

2.1 The assumption in paragraph 2.15 is deemed deleted.

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: Building Savings Banks

3.1.1 The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Building Savings Bank could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are forced administration (in Czech: "*nucená správa*") under the Act on Banks. The Insolvency Act will not apply to a Building Savings Bank for so long as it holds a licence under the Act on Banks. Following a withdrawal of the licence by the CNB the Building Savings Bank might only be subject to bankruptcy under the Insolvency Act. Under the Insolvency Act, the CNB is given specific powers to file a petition for the decision on insolvency relating to a Building Savings Bank.

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

3.1.2 We confirm that the events specified in the Insolvency Events of Default We confirm that the events specified in the Insolvency Events of Default 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 1 of Annex 5 under the heading "For the purpose of Schedule 7 (*Building Savings Banks*)".

3.2 **Insolvency of foreign parties: Building Savings Banks**

The opinion in paragraph 3.15 is deemed deleted on the basis that the opinion in this Schedule 7 (*Building Savings Banks*) is only given in respect of Czech building savings banks incorporated under the laws of this jurisdiction (i.e., the opinion is not given in respect of non-Czech building savings banks incorporated or formed under the laws of another jurisdiction).

4. ADDITIONAL QUALIFICATIONS

No additional qualifications.

5. MODIFICATIONS TO QUALIFICATIONS

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

5.1 The qualifications in paragraphs 4.6.1 through 4.7.4 are deemed deleted.

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[34], 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.

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

ANNEX 3
DEFINITIONS RELATING TO THE AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) 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);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Rehypothecation Clause**" means:

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

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

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

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

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

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

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

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

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

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

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

ANNEX 4

PART 1
CORE PROVISIONS

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

1. **FOA Netting Provision:**

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

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

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

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

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

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

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

"**Set-off:** Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or

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

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

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

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

"The following shall constitute Events of Default:

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

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

5. **Title Transfer Provisions:**

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

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

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

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

a) [Firm Trigger Event/CM Trigger Event]

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

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

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

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

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

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

b) CCP Default

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

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

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

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

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

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

c) Hierarchy of Events

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

Or

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

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

Or

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

d) Definitions

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

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

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

(a) is attributable to such Client Transactions;

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

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

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

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

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

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

8. **Addendum Set-Off Provision**

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

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

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

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

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

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

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

PART 2
NON-MATERIAL AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

12. Any change modifying the currency of Liquidation Amount, Available Termination Amount, Cleared Set Termination Amount or of any amount relevant to the FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions.

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

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

15. Any change to the FOA Netting Provision 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 3.4:

The Clearing Module Netting Provision to be supplemented with a reference to the currency in which the Cleared Set Termination Amount is to be paid in paragraphs a) and b) of any modified version of such clause provided that it includes at least those parts of paragraph 6 of Part 41 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

(b) For the purposes of paragraph 3.5:

The Addendum Netting Provision to be supplemented with a reference to the currency in which the Cleared Set Termination Amount is to be paid in paragraphs a) and b) of any modified version of such clause provided that it includes at least those parts of paragraph 6 of Part 41 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

2. Desirable amendments

(a) For the purposes of paragraph 3.3:

The FOA Netting Provision to be supplemented with a fall-back definition of "Base Currency" in the absence of such specification by the Non-Defaulting Party in the following provisions:

(i) Clause 2.3(b) of the Short Form One-Way Clauses and Short Form Two-Way Clauses;

(ii) Clause 2.4(b) of the Long Form Two-Way Clauses; and

(iii) Clause 10.3(b) of the Eligible Counterparty Agreements.

The FOA Netting Provision to be supplemented with (a) references to the types of costs or revenues, losses or, as the case may be, gains to be included, if appropriate, when determining the total costs or revenues, losses or, as the case may be, gains in respect of each Netting Transaction, and (b) references to the market quotations published on, or official settlement prices set by, the relevant Market, due regard to which should be had, if appropriate, when determining the Liquidation Amount, in the following provisions:

(i) Clause 2.3(b) of the Short Form One-Way Clauses and Short Form Two-Way Clauses; and

(ii) Clause 10.3(b) of the Eligible Counterparty Agreements.

(b) For the purposes of paragraphs 3.4 and 3.5:

The Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision to be supplemented with the following wording:

(i) "*Each of the parties agree that for the purposes of its execution, performance, termination and interpretation, this Clearing Agreement shall be deemed to constitute as many distinct Clearing Agreements as there are Transaction Sets. Notwithstanding anything in this Clearing Agreement to the contrary, each of the parties agrees that, for all purposes, Client Transactions in Transaction Sets shall be treated as if they had been entered into under a separate Clearing Agreement that applies to that Transaction Set.*"

(ii) The Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision to be supplemented with (a) reference to the relevant Rule Set being attached to the Clearing Agreement (if available at the time of signing), and (b) an undertaking of the Firm or, as the case may be, the Clearing Member to provide to the Client any additional Rule Set together with any changes to the relevant Rule Set adopted by the CCP without undue delay.

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

(a) For the purposes of paragraph 3.3:

FOA Netting Provision

(...)

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**").

(...)

4. Additional events for the purposes of paragraph 3.1:

Insolvency Events of Default Clause to be supplemented in respect of Czech banks by the following event: "forced administration (in Czech: "*nucená správa*")" into the second line after the words "...liquidation, reorganisation..." in the following provisions:

(a) Clause 1(c) of the Long Form Two-Way Clauses, the Long Form One-Way Clauses 2007, the Short Form Two-Way Clauses and the Short Form One-Way Clauses;

(b) Clause 4.1(iii) of the Master Netting Agreements;

(c) Clause 9.1(c) of the Eligible Counterparty Agreements;

(d) Clause 10.1(c) of the Retail Client Agreements and Professional Client Agreements; and

(e) Paragraph iii. of any modified version of such clause 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.

5. Alterations which constitute material alterations:

Not applicable.

For the purpose of **SCHEDULE 1** (*Securities Dealers*)

1. Necessary amendments

Please refer to the necessary amendments for the purposes of paragraphs 3.4 and 3.5 in section 1 above.

2. Desirable amendments

Please refer to the desirable amendments for the purposes of paragraphs 3.3, 3.4 and 3.5 in section 2 above.

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

Please refer to the additional wording to be treated as part of the Core Provisions for the purposes of paragraph 3.3 in section 3 above.

4. Additional events for the purposes of section 3.1:

Insolvency Events of Default Clause to be supplemented in respect of Securities Dealers by the following event: "forced administration (in Czech: "*nucená správa*")" into the second line after the words "...liquidation, reorganisation..." in the following provisions:

(a) Clause 1(c) of the Long Form Two-Way Clauses, the Long Form One-Way Clauses 2007, the Short Form Two-Way Clauses and the Short Form One-Way Clauses;

(b) Clause 4.1(iii) of the Master Netting Agreements;

(c) Clause 9.1(c) of the Eligible Counterparty Agreements;

(d) Clause 10.1(c) of the Retail Client Agreements and Professional Client Agreements; and

(e) Paragraph iii. of any modified version of such clause 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.

5. Alterations which constitute material alterations:

Not applicable.

For the purpose of **SCHEDULE 2** (*Insurance Providers*)

1. Necessary amendments

Please refer to the necessary amendments for the purposes of paragraphs 3.4 and 3.5 in section 1 above.

2. Desirable amendments

Please refer to the desirable amendments for the purposes of paragraphs 3.3, 3.4 and 3.5 in section 2 above.

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

(a) For the purposes of section 3.2:

Please refer to the additional wording to be treated as part of the Core Provisions for the purposes of paragraph 3.3 in section 3 above.

4. Additional events for the purposes of section 3.1:

Insolvency Events of Default Clause to be supplemented in respect of Insurance Providers by the following event: "forced administration (in Czech: "nucená správa") into the second line after the words "...liquidation, reorganisation..." in the following provisions:

(a) Clause 1(c) of the Long Form Two-Way Clauses, the Long Form One-Way Clauses 2007, the Short Form Two-Way Clauses and the Short Form One-Way Clauses;

(b) Clause 4.1(iii) of the Master Netting Agreements;

(c) Clause 9.1(c) of the Eligible Counterparty Agreements;

(d) Clause 10.1(c) of the Retail Client Agreements and Professional Client Agreements; and

(e) Paragraph iii. of any modified version of such clause 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.

5. Alterations which constitute material alterations:

Not applicable.

For the purpose of **SCHEDULE 3** (*Individuals*)

1. Necessary amendments

Please refer to the necessary amendments for the purposes of paragraphs 3.4 and 3.5 in section 1 above.

2. Desirable amendments

Please refer to the desirable amendments for the purposes of paragraphs 3.3, 3.4 and 3.5 in section 2 above.

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

(a) For the purposes of section 3.2:

Please refer to the additional wording to be treated as part of the Core Provisions for the purposes of paragraph 3.3 in section 3 above.

4. Alterations which constitute material alterations:

Not applicable.

For the purpose of **SCHEDULE 4** (*Fund Entities*)

1. Necessary amendments

Please refer to the necessary amendments for the purposes of paragraphs 3.4 and 3.5 in section 1 above.

2. Desirable amendments

Please refer to the desirable amendments for the purposes of paragraphs 3.3, 3.4 and 3.5 in section 2 above.

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

(a) For the purposes of section 3.2:

Please refer to the additional wording to be treated as part of the Core Provisions for the purposes of paragraph 3.3 in section 3 above.

4. Additional events for the purposes of section 3.1:

Insolvency Events of Default Clause to be supplemented by the following event: "forced administration (in Czech: "*nucená správa*")" into the second line after the words "...liquidation, reorganisation..." in the following provisions:

(a) Clause 1(c) of the Long Form Two-Way Clauses, the Long Form One-Way Clauses 2007, the Short Form Two-Way Clauses and the Short Form One-Way Clauses;

(b) Clause 4.1(iii) of the Master Netting Agreements;

(c) Clause 9.1(c) of the Eligible Counterparty Agreements;

(d) Clause 10.1(c) of the Retail Client Agreements and Professional Client Agreements; and

(e) Paragraph iii. of any modified version of such clause 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.

5. Alterations which constitute material alterations:

Not applicable.

For the purpose of **SCHEDULE 5** (*Public Entities*)

1. Necessary amendments

Please refer to the necessary amendments for the purposes of paragraphs 3.4 and 3.5 in section 1 above.

2. Desirable amendments

Please refer to the desirable amendments for the purposes of paragraphs 3.3, 3.4 and 3.5 in section 2 above.

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

(a) For the purposes of section 3.2:

Please refer to the additional wording to be treated as part of the Core Provisions for the purposes of paragraph 3.3 in section 3 above.

4. Alterations which constitute material alterations:

Not applicable.

For the purpose of **SCHEDULE 6** (*Pension Funds*)

1. Necessary amendments

Please refer to the necessary amendments for the purposes of paragraphs 3.4 and 3.5 in section 1 above.

2. Desirable amendments

Please refer to the desirable amendments for the purposes of paragraphs 3.3, 3.4 and 3.5 in section 2 above.

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

(a) For the purposes of section 3.2:

Please refer to the additional wording to be treated as part of the Core Provisions for the purposes of paragraph 3.3 in section 3 above.

4. Alterations which constitute material alterations:

Not applicable.

For the purpose of **SCHEDULE 7** (*Building Savings Banks*)

1. Necessary amendments

Please refer to the necessary amendments for the purposes of paragraphs 3.4 and 3.5 in section 1 above.

2. Desirable amendments

Please refer to the desirable amendments for the purposes of paragraphs 3.3, 3.4 and 3.5 in section 2 above.

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

(a) For the purposes of section 3.2:

Please refer to the additional wording to be treated as part of the Core Provisions for the purposes of paragraph 3.3 in section 3 above.

4. Additional events for the purposes of section 3.1:

Insolvency Events of Default Clause to be supplemented in respect of Building Savings Banks by the following event: "forced administration (in Czech: "*nucenáspráva*")" into the second line after the words "...liquidation, reorganisation..." in the following provisions:

(a) Clause 1(c) of the Long Form Two-Way Clauses, the Long Form One-Way Clauses 2007, the Short Form Two-Way Clauses and the Short Form One-Way Clauses;

(b) Clause 4.1(iii) of the Master Netting Agreements;

(c) Clause 9.1(c) of the Eligible Counterparty Agreements;

(d) Clause 10.1(c) of the Retail Client Agreements and Professional Client Agreements; and

(e) Paragraph iii. of any modified version of such clause 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.

5. Alterations which constitute material alterations:

Not applicable.

ANNEX 6
INVESTMENT INSTRUMENTS

The Capital Market Act defines:

1. "investment instruments" as:

1.1 investment securities;

1.2 units in collective investment undertakings;

1.3 money market instruments;

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

1.5 instruments for the transfer of credit risk;

1.6 financial contracts for differences;

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

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

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

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

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

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

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

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

2.3 securities replacing the securities under item 2.1 or 2.2;

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

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

3. "collective investment units" as in particular:

3.1 shares in an investment fund;

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

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

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

ANNEX 7
ELIGIBLE COUNTERPARTIES

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

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

   (a) a bank;

   (b) a credit union;

   (c) a person among whose key activities are:

      (i) providing mortgage, consumer or other credit;

      (ii) financial leasing;

      (iii) providing payment services;

      (iv) issuing electronic money;

      (v) performing securitisations;

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

      (vii) foreign exchange;

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

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

      (x) safekeeping and management of securities;

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

      (i) payment instruments;

      (ii) money market instruments;

      (iii) foreign exchange assets;

      (iv) investment securities;

      (v) options;

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

(vii) financial contracts for differences;

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

(f) a securities dealer;

(g) a regulated market operator;

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

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

(j) an insurance company;

(k) a reinsurance company;

(l) an investment company;[35]

(m) an investment fund that has its own legal capacity;

(n) a pension fund;

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

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

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

(r) a rating agency;

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

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

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

(u) a regional self-governing unit;

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

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

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

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

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

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

(a) a legal person;

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

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

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

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

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

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

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

(e) the financial collateral taker has, before the entry into the financial collateral arrangement, informed the financial collateral provider of the main characteristics of financial collateral arrangements and how they distinguish

from the general regulation of pledges and transfer of things, rights or other assets in favour of a creditor.