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NETTING ANALYSER LIBRARY

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7 May 2013

Dear Sirs

FOA Collateral Opinion

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

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

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

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

1.1.1 persons which are Irish Companies or foreign companies,

insofar as each may act as a counterparty (a "**Counterparty**") providing Collateral (as defined in paragraph 1.12) to a member firm of the Futures and Options Association (each a "**Firm**") under an Agreement.

1.2 However, this opinion is also given in respect of Counterparties providing Collateral to a Firm that are any of the following, subject to the terms of reference, definitions, modifications and additional assumptions and qualifications set out in the applicable Schedule:

1.2.1 The Governor and Company of the Bank of Ireland, an Irish Licensed Bank or a Foreign Bank with an Irish Branch (Schedule 1);

1.2.2 an Irish Company which is an investment firm/broker dealer under the IIA or the MiFID Regulations (Schedule 2);

1.2.3 Partnerships within the meaning of the Partnership Act, 1890 (Schedule 3);

1.2.4 Insurance companies being an Irish Company which is an is authorised as a life assurance undertaking under the European Communities (Life Assurance) Framework Regulations 1994 or authorised as a non-life insurance undertaking under the European Communities (Non-Life Insurance) Framework Regulations 1994 (an "Insurance Company"), (Schedule 4);

1.2.5 Individuals (Schedule 5);

1.2.6 Special fund entities (Schedule 6);

1.2.7 Trusts (other than Pension Schemes and Special fund entities) (Schedule 7);

1.2.8 Pension Schemes (Schedule 8); and

1.2.9 Building Societies incorporated or deemed by section 124(2) to be incorporated under the Building Societies Act 1989 (Schedule 9),

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

1.3 For these purposes:

1.3.1 an "**Irish Company**" means a company which is incorporated pursuant to the Irish Companies Acts;

1.3.2 "**Irish Companies Acts**" means Companies Acts 1963 to 2005 and Parts 2 and 3 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006, the Companies (Amendment) Act 2009, the Companies (Miscellaneous Provisions) Act 2009 and the Companies (Amendment) Act 2012, all enactments which are to be read as one with, or construed or read together as one with, the Companies Acts and every statutory modification and re-enactment thereof for the time being in force; and

1.3.3 a "**foreign company**" means a company incorporated under the laws of another jurisdiction with an Irish Branch (other than a "**Societas Europaea**" established pursuant to EU Council Regulation 2157/2001 of 8th October 2001 on the European Company Statute).

1.4 This Opinion is confined to and given in all respects on the basis of the laws of Ireland (including insolvency laws) in force as at the date hereof as currently applied by the courts and does not consider the impact of any laws (including insolvency laws) other than the laws of Ireland even where under Irish law, any foreign law is applied. We have made no investigations of, and we express no opinion as to, the laws of any other jurisdiction or the effect thereof. In particular, we express no opinion on the laws of the European Union as they affect any jurisdiction other than Ireland. We have assumed without investigation that insofar as the laws of any jurisdiction other than Ireland are relevant, such laws do not prohibit and are not inconsistent with any of the obligations or rights expressed in the Agreements or the transactions contemplated thereby.

1.5 This Opinion is also strictly confined to the matters expressly stated herein and is not to be read as extending by implication or otherwise to any other matter. In particular save as expressly opined on herein, no opinion is provided on the effect, validity or enforceability of or the creation or effectiveness of any document. This opinion is subject to the assumptions and qualifications set out below.

1.6 We express no opinion, and make no representation or warranty, as to any matter of fact, tax or capacity and authority (corporate, regulatory or otherwise) or in respect of any documents (including without limitation any confirmation relating to a Transaction, which may exist in relation to a Transaction) other than the Security Interest Provisions insofar as expressly opined on herein. For the purpose of giving this Opinion, we have examined email copies of the Agreements.

1.7 This Opinion is governed by and is to be construed in accordance with the laws of Ireland as interpreted by the courts as at the date hereof. This Opinion speaks only as of its date. We assume no obligation to update this Opinion at any time in the future or to advise you of any change in law or change in interpretation of law which may occur after the date of this Opinion.

1.8 No account has been taken, enquiry made or diligence done in respect of any Party to the Agreements not being a Party who is described at paragraph 1.1 or 1.2 above.

1.9 No verification or enquiry had been made into references to non-Irish laws or legislation or rules of any non-Irish authorities or bodies, or the meaning or effect thereof and phrases used in the Agreements have been construed by us as having the meaning and effect they would if the Agreements were governed by Irish law.

1.10 No opinion is expressed as to the taxation consequences (including without limitation, stamp duty and VAT) of the Agreements or the Transactions contemplated thereby.

1.11 No regard has been made to the laws of Ireland relating to, or applicable rules of, recognised exchanges, systems or clearing houses or any other payment systems.

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

1.13 In this opinion letter:

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

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

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

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

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

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

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

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

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

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

(ii) appropriation of the Collateral,

in either case in accordance with the Security Interest Provisions.

1.13.5 A "**Transaction**" has the meaning given to it in Annex 2.

1.13.6 in other instances other than those referred to at 1.13.4 above, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy.

1.13.7 "**Insolvency Proceedings**" shall, in respect of persons which are Irish Companies or foreign companies, mean:

Liquidation

The following methods of winding up exist in Ireland:

Compulsory or by Court order – Section 212 1963 Act

(a) This method may be initiated by a member, creditor or the company itself on (save in the case of an Irish Insurance Company, where the Central Bank can also present the petition and we refer you to Schedule 4 hereof. The Director of Corporate Enforcement can also petition for the winding up of a company on the grounds set out in the 1990 Act, s12.) a variety of grounds including inability to pay debts, just and equitable grounds and oppression grounds. Such a winding up may be solvent or insolvent. The making of a winding up order activates certain provisions of the Irish Companies Acts including those relating to fraudulent dispositions, fraudulent preference of creditors, invalidation of floating charges and disclaimer of onerous property by liquidators.

(b) This procedure is initiated by the presentation of a petition, which is usually listed for hearing by the Court three to four weeks after the date of presentation of the petition. If a winding up order is made on foot of the petition, once made, the winding up is deemed to have commenced on the date of the presentation of the petition and any disposition of company property between the date of presentation of the petition and the making of the winding-up order is void unless the Court orders otherwise.

(c) The jurisdiction of the Court to make a winding up order is discretionary.

Voluntary winding-up – Sections 251 to 273 1963 Act

Which divides up into two categories as follows:

(a) members voluntary winding-up - being a solvent winding-up which is initiated by the members of the company; and

(b) a creditors winding-up - being an insolvent winding up initiated by the members but incorporating the holding of a creditors meeting as part of the winding up procedure. The creditors meeting considers certain matters including the appointment of a replacement liquidator, the raising of issues on a statement of affairs prepared by the directors and the appointment of representatives to a committee inspection if desired.

The commencement of such a winding up activates certain provisions of the Irish Companies Acts including those relating to fraudulent dispositions, fraudulent preference of creditors, invalidation of floating charges and disclaimer of onerous property by liquidators.

Cross-border proceedings

Debtors with centre of main interests ("COMI") in Ireland

Debtors with COMI in Ireland which are not regulated or authorised as insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, or to collective investment undertakings (an "**Insolvency Regulation Party**"), may subject to and in accordance with the Insolvency Regulations (as defined in Annex A) be subject to court liquidation, creditors voluntary winding up, bankruptcy, arrangements under the control of the court and examination using the above procedures irrespective of where they are incorporated or resident. There is a rebuttable presumption in respect of corporates that a company's COMI is in the place of the company's registered office but in all cases and necessarily in the case of natural persons the COMI should correspond to the place where the debtor conducts the administration of its business or interests on a regular basis and where it is understood to do so by third parties.

Non Irish COMI debtors with establishment in Ireland

In addition, subject to and in accordance with the Insolvency Regulation, both compulsory winding-up and creditors' voluntary winding up proceedings (with confirmation of a court), bankruptcy and arrangements under the control of the court, may also be taken in Ireland in relation to an Insolvency Regulation Party if such Insolvency Regulation Party has its COMI in a Member State (other than Denmark), provided it has an "establishment" in Ireland. In such a case the main insolvency proceedings will open elsewhere and secondary or territorial proceedings can be opened in Ireland. An "establishment" for this purpose means "any place of operations where the debtor carries out a non-transitory economic activity with human means and goods", however, there is little guidance on how it should be interpreted. The effects of such territorial or secondary proceedings taken in Ireland are limited to assets of the debtor situated here.

Debtors with COMI in a Member State other than Ireland (and Denmark)

A liquidator (as such term is used in the Insolvency Regulation) appointed by the Court of a Member State (other than Denmark) in which the debtor's COMI is located may exercise in another Member State all the powers conferred on him by the laws of the Member State where he was appointed so long as no other insolvency proceedings have opened in that other Member State. More particularly such a liquidator can enter another Member State and, subject to the laws and procedures of

that Member State, repatriate company assets back to the Members State where he was appointed.

Unregistered companies

Winding up of Unregistered Company in Ireland–Section 345 1963 Act

Subject to the Insolvency Regulation, the Insurance Winding-Up Regulations and the Winding-Up Regulations, where a company incorporated outside Ireland and which does not otherwise fall to be wound up under any of the above categories (referred to in the relevant legislation as an "unregistered company"), and is expressly stated to include any trustee savings bank certified as such by specified legislation, any partnership whether limited or not, any association and any company with the exception of (a) a company formed and registered under the 1963 Act or an existing company and (b) a partnership, association or company which consists of less than eight members and is not formed outside Ireland) has been carrying on business in Ireland and then ceases to do so, it may be wound up by way of court or compulsory winding up (but not by way of voluntary winding up) as an unregistered company, even if it has been wound up or dissolved under the laws of the country where it was incorporated (Section 345(7) of the 1963 Act). The grounds on which it can be wound up are:

(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) if the company is unable to pay its debts; or

(c) if the Court is of the opinion that it is just and equitable that the company should be wound up.

Recognition of Foreign Winding up

Recognition of Foreign Winding up - Section 250(1) 1963 Act

It is possible for a winding up order made by a court of a recognised country to be enforced by the Court in the same manner and in all respects as if the order had been made by the Court.

Since the enactment of the Insolvency Regulation, the Insurance Winding-Up Regulations and the Winding-Up Regulations this provision is now confined to circumstances where the Insolvency Regulation and the Winding-Up Regulations do not apply for example applications by liquidators appointed by the courts of non-EU countries or Denmark. Recognition is by way of ministerial order and to date only Great Britain and Northern Ireland are recognised.

Acting in aid

Acting in aid of foreign courts - Section 142 1988 Act /Common law

The Court may act in aid of any court in the Isle of Man or the Channel Islands at the request of such court in any bankruptcy matter. In such event, the Court will have like jurisdiction and authority as in the case of a bankruptcy originating under its own original jurisdiction.

In addition to this statutory mechanism, acting in aid is a concept widely known in common law jurisdictions and in operation in Ireland whereby, the Court will have jurisdiction to grant an order giving effect to the appointment and powers of a foreign assignee or trustee and generally facilitate such an office-holder in the realisation of assets.

Since the enactment of the Insolvency Regulation, section 142 of the 1988 Act and this common law concept will now be confined to circumstances where the Insolvency Regulation does not apply, for example, applications by personal bankruptcy officials appointed by the courts of non-EU countries or Denmark.

Protection of the Court

Court Protection – Examinership/Examination – 1990 Act

Examinership is a court moratorium/protection procedure, which is available under Irish company law. Where a company whose COMI is in Ireland is, or is likely to be, unable to pay its debts an examiner ("**Examiner**") may be appointed on a petition to the Court under the 1990 Act. A company is deemed to be unable to pay its debts if:

(a) it is unable to meet its debts as they fall due;

(b) the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities;

(c) failure to pay or secure, to the reasonable satisfaction of a creditor, a debt exceeding €1,270 within 3 weeks of a demand in writing being left at the registered office of the company; or

(d) if execution or other process issued on foot of a judgment in favour of a creditor of the company is returned unsatisfied in whole or in part.

A petition may be presented by the company, the directors, a creditor including a contingent or prospective creditor or by members of the company holding, at the date of presentation of the petition, not less than one-tenth of the voting share capital of the company (save (i) in the case of an Irish Licensed Bank where only the Central Bank can present the petition and we refer you to Schedule 1 hereof and (ii) in the case of an Irish Insurance Company, where only the Minister for Jobs, Enterprise and Innovation can present the petition and we refer you to Schedule 4 hereof). The petition must be accompanied by an independent accountant's report showing, inter alia, the financial position of the company. The test for appointment of an Examiner is that Court must be satisfied that there is a reasonable prospect of the survival of the company and the whole or any part of its undertaking as a going concern. As regards companies incorporated or with a COMI in other Member States (other than Denmark) the comments above under the heading "Cross-border proceedings" in relation to the effect of winding up through application of the Insolvency Regulation apply equally to examinership.

Examiner's Proposals

Once appointed, an Examiner must, as soon as practical, formulate proposals for a compromise or scheme of arrangement in relation to the company to which he has been appointed. Typically, a scheme of arrangement will involve the writing down of creditors' claims (both secured and/or unsecured) and the introduction into the

company of new funds. Having prepared his proposals, the examiner must convene meetings of classes of members and creditors to consider his proposals. There is acceptance by a class of creditors when both a majority in number and in value of the class, vote in favour of the proposals.

The proposals must be confirmed by the Court if they are to become effective and the Court can confirm the proposals only if (inter alia):

(a) at least one class of creditors whose interests or claims would be impaired by implementation of the proposals have accepted them;

(b) they are fair and equitable in relation to any class of members or creditors that has not accepted them and whose interests and claims would be impaired by implementation; and

(c) they are not unfairly prejudicial to the interests of any interested party.

Once confirmed by the Court, the proposals become binding on all creditors (whether secured or unsecured) and their rights are accordingly modified.

Repudiation of Contracts

Under Section 20 of the 1990 Act, where proposals for a compromise or scheme of arrangement are to be formulated in relation to a company, the company may, subject to the approval of the Court, affirm or repudiate any contract under which some element of performance other than payment remains to be rendered both by the company and the other contracting party or parties. Any person who suffers loss or damage as a result of such repudiation stands as an unsecured creditor for the amount of such loss or damage.

Effects of Examinership

The effect of the appointment of an Examiner is to suspend the rights of a secured creditor for the protection period but, save as provided herein, the appointment does not of itself affect the security itself or the rights of the secured creditor.

Section 5 of the 1990 Act provides that for as long as a relevant body is under the protection of the Court under the 1990 Act, no attachment, sequestration, distress or execution shall be put into force against the property or effects of the relevant body except with the consent of the Examiner. The section goes on to provide, amongst other things, that, except with the consent of the Examiner:

(a) where any claim against the relevant body is secured by a charge on the whole or any part of the property, effects or income of the relevant body, no action may be taken to realise the whole or any part of such security;

(b) no receiver over any part of the property or undertaking of the relevant body shall be appointed; and

(c) no proceedings for the winding up of the relevant body may be commenced or resolution for winding-up passed in relation to that relevant body and no resolution passed shall have any effect.

Pursuant to subsection 5A(1) of the 1990 Act, subject to an order of the Court pursuant to Section 5A(2), no payment may be made by a relevant body during the period of court protection by way of satisfaction or discharge of the whole or a part of a liability incurred by the company before the date upon which the petition for the Examiner's appointment was presented unless the report of the independent accountant accompanying the said petition contains a recommendation that the whole or that part of that liability should be discharged or satisfied. Section 5A(2) provides that the Court may on application being made to it in that behalf by the Examiner or any interested party, authorise the discharge or satisfaction in whole or in part by the company concerned of such a liability if it is satisfied that a failure to discharge or satisfy in whole or in part that liability would considerably reduce the prospects of the relevant body or the whole or any part of its undertaking surviving as a going concern.

Accordingly in any examinership, the company will be precluded from paying over monies to its creditors.

Powers of the Examiner

Section 6 of the 1990 Act confers on the Court broad powers to prevent any receiver or provisional liquidator who has been appointed before the commencement of the examinership from continuing to act as such. Under section 7(5) of the 1990 Act where an Examiner becomes aware of any actual or proposed act, omission, course of conduct, decision or contract by or on behalf of the relevant body or by any person in relation to the income, assets or liabilities of the relevant body which, in his opinion, is or is likely to be to the detriment of the relevant body or certain other persons, he is given broad powers, subject to the right of parties acquiring an interest in good faith for value in such income, assets or liabilities, to take whatever steps are necessary to halt, prevent or rectify the effects of such act, omission, course of conduct, decision or contract. An Examiner's powers under Section 7(5) fall short of enabling him to repudiate a pre-protection contract.

Examinership and Foreign Banks

The 1990 Act applies to companies with their COMI in Ireland. It is possible for any body corporate, which does not have its COMI in an EU Member State (other than Denmark) and which is liable to be wound up under the Irish Companies Acts (see details above), to have an Examiner appointed to it as a "related" company to a company in respect of which the main examinership proceedings have been commenced. "Related" for this purpose broadly means a subsidiary, a parent or where the businesses have been run so as to be unidentifiable from each other. Any Examiner so appointed shall have the same powers or duties conferred on him in relation to the company the subject of the main examinership proceedings.

Also note that the 1990 Act expressly provides that in presenting a petition in respect of a Regulated Entity (other than an Irish Licensed Bank) if the Central Bank does not present the petition, notice of intention to present a petition must be given to it.

Foreign proceedings equivalent to examinership

Subject to our comments on the Insolvency Regulation and the Winding-up Regulations, as to whether the Courts would recognise foreign proceedings analogous to examinership, this again is a matter of conflicts of law. Section 36 of the 1990 Act contains a provision similar to Section 250 of the 1963 Act, which envisages the Courts giving effect to orders made by a foreign court in such proceedings. No

jurisdictions have been recognised for this purpose. Any recognition by a Court of an order made by a foreign court in such proceedings is a matter for is discretion.

Compromise or Scheme of Arrangement – Section 201 of the 1963 Act

A compromise or scheme of arrangement between a company and any class of creditors or between the company and any class of members, which is approved of by a majority in number representing three quarters of in value of creditors or members (or class thereof as the case may be), may be sanctioned by the Court such that it is binding on the company, its liquidator and contributories. The process may be initiated by any creditor, member or liquidator applying to the Court to order a meeting of the creditors or members (or class of either) to be summoned as the court directs.

Receivership

A receiver (a "**Receiver**") is a person appointed to receive and take control of all or specified parts of the assets of a party (the "**Security Provider**") for the benefit of creditor(s) of the Security Provider (the "**Secured Creditor**"). A Receiver is sometimes appointed as receiver and manager in which case he/she has the power to run the business to which he has been appointed. A Receiver may be appointed by the Court pursuant to statute or the laws of equity or by contract by the Secured Creditor. The latter is the most common method of appointing a Receiver and does not in general require the assistance of the Courts.

The Receiver in such circumstances is appointed by deed of appointment between him/her and the Secured Creditor pursuant to the powers contained in the relevant security document. The powers and duties of a Receiver will depend upon the terms of his appointment, and the relevant security document. The function of the Receiver usually involves getting in the assets to which he/she is appointed, realising value and applying them as provided in the relevant security document or as otherwise provided by law. In the appropriate case the effect of the appointment of the Receiver is to terminate the powers of the directors in relation to matters within the scope of his/her appointment.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings without the need for any additions. However we recommend that:

1. the following voluntary procedures are included, "receivership", "compromise" and "examinership";

2. the following appointee is included in the definition of Custodian "receiver and manager";

3. the following involuntary procedures are included, "compromise", "receivership" and "examinership".

1.13.8 references to "**Core Provisions**" include Core Provisions that have been modified by Non-Material Amendments (as defined herein);

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

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

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

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

2. ASSUMPTIONS

We assume the following:

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

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

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

2.4 That each Party has the full and independent capacity, power and authority under all applicable law(s) to enter into the Agreement; to perform its obligations under the Agreement; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.

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

2.6 That the Agreement has been properly executed by both Parties.

2.7 That the Agreement is entered into prior to the commencement of any Insolvency Proceedings, in respect of either Party and neither Party has actual notice of the insolvency of the other at the time of entry into of the Agreement and each Transaction.

2.8 That each Party has entered into the Agreements in its own name, and not, in any case by reference to a particular branch, although individual Transactions may be entered into through particular branches of the Party.

2.9 That there is no evidence the Transactions entered into through the separate branches are separate agreements rather than a single agreement with the relevant Agreement, as stated therein.

2.10 That there is no other agreement, instrument or other arrangement between the Parties which modifies or supersedes the Agreement and, insofar as any transaction or obligation arising under a Transaction is a "transfer order" under the Settlement Finality Regulations, that there are no provisions in the rules of the system which purport to override or are inconsistent with the Netting Provisions and that no decision has been made by the Central Bank under Regulation 5 of the Settlement Finality Regulations that a person should be treated as a participant in a designated system such that the Settlement Finality Regulations do not apply.

2.11 That the Agreements will be executed in a form and content having no material difference to the drafts provided to us and will be delivered by the parties thereto and not be subject to any escrow arrangements and the terms thereof will be observed and performed by the parties thereto and one of the Parties is a party described in paragraph 1.1 and 1.2.

2.12 The absence of fraud, coercion, duress or undue influence and lack of bad faith on the part of the parties to the Agreements and their respective officers, employees, agents and advisers and any calculation made under the Agreement will be made in good faith and in a commercially reasonable manner.

2.13 The truth, completeness and accuracy of all representations and statements as to factual matters contained in the Agreements at the time they were made and at all times thereafter.

2.14 The Agreement has been entered into, and each of the transactions referred to therein is carried out, by each of the parties thereto in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.

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

2.16 That no provisions of the Agreement, or a document of which the Agreement forms part, or any other arrangement between the Parties, invalidate the enforceability or effectiveness of the Security Interest Provisions or the Rehypothecation Clause under Irish law insofar as opined upon herein.

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

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

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

2.20 The execution, delivery and performance of the Agreements (i) does not and will not contravene the laws of any jurisdiction outside Ireland; (ii) does not and will not result in any breach of any agreement, instrument and obligation to which they are a party and (iii) is not and will not be illegal or unenforceable by virtue of the laws of that jurisdiction.

2.21 Any Insolvency Proceedings are brought against a Party in Ireland and that Irish law only is applied. Different results may arise in the insolvency of a Party in another jurisdiction or to the extent that foreign law is applied in Irish insolvency proceedings.

2.22 Any Party is not, by entering into the Agreements or any Transaction or performing its obligations thereunder, providing financial assistance for the purpose of or in connection with a purchase or subscription of its shares or those of its holding company or which would otherwise be prohibited by Section 60 of the 1963 Act.

2.23 That none of the Transactions contemplated by the Agreement or any Transaction is prohibited by virtue of Section 31 of the 1990 Act, which prohibits certain transactions between companies and its directors or persons connected with its directors.

2.24 The contractual arrangements and obligations established pursuant to and by the Agreement are not capable of being avoided or otherwise set aside for any reason under any applicable law other than the laws of Ireland (insofar as opined upon herein).

2.25 All consents, approvals, notices, filings, formalities, requirements and other steps of the laws of any relevant jurisdiction (other than the laws of Ireland) and of any regulatory authority therein applicable to, necessary or desirable to permit the execution, performance, delivery, enforceability or perfection or protection of the interests created by the Agreements and the Transactions have been attended to in full.

2.26 Where the Netting Act applies to an Agreement:

2.26.1 That there has been no fraud, misrepresentation or similar ground between the Parties in respect of an Agreement and/or any Transaction which would prevent the legal enforceability of netting, set-off, enforcement or realisation within the meaning of Section 4(1) of the Netting Act or render it void;

2.26.2 The agreement under which the Financial Contracts are entered into constitutes a "netting agreement" for the purposes of the Netting Act; and

2.26.3 The proceeds of the enforcement and realisation of any collateral in the form of any money, securities or other property provided solely secures the obligations of a Counterparty in respect of the Financial Contracts between the parties.

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

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

2.29 That all steps necessary for the perfection of the security interests intended to be constituted by the Agreement, the Security Interest Provisions and the securities and/or other property are taken including:

2.29.1 the giving of notices to any party to a document where the rights of the assigning Counterparty against such party have been assigned;

2.29.2 any necessary consents or waivers in respect of the assets which are the subject to the security; and

2.29.3 the taking of all steps required by any relevant applicable law (other than Irish law insofar as opinion upon herein).

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

2.31 That (i) each Counterparty was or, as applicable, will be able to pay its debts within the meaning of Section 214 of the 1963 Act and Section 2 of the 1990 Act or any analogous provisions under any applicable laws immediately after the execution and delivery of the Agreement; (ii) each Counterparty will not as a consequence of doing any act or thing which the Agreement contemplates, permits or requires the relevant party to do, be unable to pay its

debts within the meaning of such Sections or any analogous provisions under any applicable laws; (ii) no liquidator receiver or examiner or other similar or analogous officer has been appointed in relation to any of the assets or undertakings of any Counterparty; and (iv) no petition for the making of a winding-up order or the appointment of an examiner or any similar or analogous procedure has been presented in relation to any Counterparty.

2.32 That under all applicable laws (other than those of Ireland):

2.32.1 the choice of English law or the laws of the State of New York, as the governing law for the Agreement (to the extent that it is expressed to be governed by English law or, as the case may be, the laws of the State of New York) is a valid and binding selection which will be upheld, recognised and given effect by the courts of any relevant jurisdiction; and

2.32.2 the submission of each party to the Agreement to the jurisdiction of the courts of England or the laws of the State of New York (to the extent that they are so expressed) is valid and binding and will be upheld, recognised and given effect by the courts of any relevant jurisdiction.

3. OPINIONS

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

3.1 Valid Security Interest

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

3.1.2 There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.

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

3.2 Further acts

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

4. QUALIFICATIONS

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

4.1 *Registration of Security*

4.1.1 Failure to register the particulars of the Agreement and the Security Interest Provisions and any other requisite documents in the CRO (in accordance with the Irish Companies Acts which require the particulars of any security created pursuant to the Agreement, the Security Interest Provisions and any other requisite documents

together with a Form C1 or Form 8E (in the case of a company incorporated outside Ireland which has an established place of business in Ireland in respect of assets located in Ireland) and the prescribed fee to be delivered to the Companies Registration Office for registration in the manner required by Section 99 or Section 111 (in the case of a company incorporated outside Ireland which has an established place of business in Ireland in respect of assets located in Ireland) of the 1963 Act, as applicable, within 21 days following the creation of the security interests referred to therein) will render the relevant charge void as against any liquidator or creditor of the Company. This applies in respect of any Irish Company on the creation of security by it notwithstanding the location of the assets or governing law of the Security Interest Provisions.

4.2 *Financial Collateral Arrangement (where relevant account is located outside Ireland)*

4.2.1 We would like to draw your attention to the Collateral Regulations. The Collateral Regulations were passed to give effect to the Financial Collateral Directive. Regulation 3 of the Collateral Regulations provides that the regulations apply to a financial collateral arrangement and financial collateral only. A financial collateral arrangement means either a Title Transfer Arrangement or Security Arrangement (a "**Collateral Arrangement**").

You should note that, as the Agreement is governed either by English law, or the laws of the State of New York, the exact nature of the rights created between the Counterparties will be a matter of English law or the laws of the State of New York.

4.2.2 If the Agreement were regarded by a court as a financial collateral arrangement in relation to book entry securities collateral, any question relating to (a) legal nature and proprietary effects (b) perfection requirements (such as those listed at 4.1.1 above) and completion of steps necessary to render such Agreements effective against third parties (c) title to assets and competing claims, and (d) the steps required for realisation of the secured assets would be governed by the domestic law of the country in which the relevant account is maintained; our opinion at 3.1.3 is given only insofar as Regulation 18 of the Collateral Regulations are held to apply to the Agreement such that each of the matters listed at (a), (b), (c) and (d) above would be governed by the domestic law of the country in which the relevant account is maintained. The creation, validity, perfection, enforceability or admissibility in evidence of a financial collateral arrangement or the provision of financial collateral under such an arrangement will not depend upon the performance of a formal act. Where the Security Interest Provision constitutes a financial collateral arrangement no formal acts would need to be effected or fulfilled in order to ensure the validity, enforceability and perfection of the Firm's Security Interest in the Collateral and to enable the Firm to enforce that Security Interest in accordance with the Agreement.

4.2.3 In order for the Collateral Regulations apply, the following must be satisfied:

(a) all collateral provided pursuant to the Agreement exclusively comprises prescribed forms of financial collateral (broadly cash or Financial Instruments);

(b) under the Security Interest Provisions the financial collateral is delivered, transferred, held, registered or otherwise designated so as to be under the possession or control of the collateral taker or person acting on its behalf and is provided to secure or otherwise cover the performance of obligations that give a right to a cash settlement or the delivery of Financial Instruments, or both. We assume that the legal effect of the Agreement under its governing

law being either English law or the laws of the State of New York satisfies this sub-paragraph (b);

(c) there must be evidence in writing (including by electronic means) of the provision of the collateral and all Transactions (including any payment or delivery) under the Collateral Arrangement of which the Agreement or Transactions form part, which must identify the financial collateral concerned. For this purpose, it is sufficient to prove:

(i) the relevant financial collateral that consists of Financial Instruments, title to which is evidenced by entries in a register or account kept by or on behalf of an intermediary, has been credited to or forms a credit in the register or account (which may be kept by the collateral taker or someone on its behalf); and

(ii) the relevant securities and/or other property has been credited to, or forms part of, a designated account;

(d) each of the Counterparties to a Collateral Arrangement must be a Qualifying Counterparty. The Counterparty to the Firm is not identified in the Agreement but as long as it is not a natural person, this requirement is satisfied.

Insofar as the assets expressed to be subject to a Security Interest in the Security Interest Provisions comprises "financial collateral" as defined in the Collateral Regulations and to the extent that such assets are in the "possession or control" (as such term is used in the Financial Collateral Regulations) where the provisions of paragraph (c) and (d) above are met in the particular circumstances, the Agreement should, were an Irish court called upon to determine the matter and assuming Irish law is relevant, be regarded as a financial collateral arrangement.

4.2.4 The Collateral Regulations require that the financial collateral is delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control[1] of the collateral taker or of a person acting on the collateral taker's behalf. The level and type of control which is required is not defined in the Collateral Regulations. Neither the Irish nor European courts have had to consider the meaning of the control test. The Chancery Division decision of *Gray v G-T-P Group Ltd, Re F2G Realisations Limited (in Liquidation)* [2010] EWHC 1772 (Ch) would however be of persuasive value. It is likely however that where the collateral is posted to accounts maintained outside of this jurisdiction that 'possession' and 'control' will be determined pursuant to the law of the lex situs jurisdiction.

4.2.5 There is a carve out in the Collateral Regulations which states that a right under a financial collateral arrangement to substitute or withdraw excess financial collateral in favour of the collateral provider does not prejudice the financial collateral that is provided to the collateral taker under the Collateral Regulations.

4.2.6 Furthermore, where the Collateral Regulations apply there is an express statutory recognition that a close-out netting provision has effect in accordance with its terms irrespective of whether:

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[1] Unlike the position in the UK there is no statutory definition of "possession" in Ireland for the purposes of the Financial Collateral Arrangements.

(i) winding-up proceedings or reorganisation measures have been commenced, or are continuing, in relation to the collateral provider or collateral taker concerned; or

(ii) rights arising in respect of the relevant financial collateral purport to have been assigned or attached as a result of judicial or other process or any other disposition.

"**Close-out Netting Provision**" for this purpose means:

(i) a provision of a Collateral Arrangement, or of an arrangement of which a Collateral Arrangement forms part; or

(ii) an enactment or rule of law

as a result of which, on the occurrence of an enforcement event, either or both of the following apply (whether through the operation of netting or set-off or otherwise):

(i) the obligations of the parties:

(A) are accelerated so as to be immediately due and are expressed as an obligation to pay an amount representing the current value of the obligations; or

(B) are terminated and replaced by an obligation to pay such an amount:

(ii) an account is taken of what is due from each party to the other in respect of those obligations and the party from which the larger amount is due is required to pay to the other party a net amount equal to the balance of the account.

"**winding up proceedings**" for this purpose appears to include voluntary and court winding up procedures as described above.

"**reorganisation measure**" for this purpose appears to include the examinership/examination procedure as described above.

4.3 **The Netting of Financial Contracts Act, 1995 (the "Netting Act")**

4.3.1 The Netting Act provides for the disapplication (the "**Disapplication**") of any rule of law regarding bankruptcy, insolvency or receivership or in the Irish Companies Acts or the Bankruptcy Act, 1988 to the enforceability of provisions relating to netting as contained within a netting agreement and a master netting agreement. It expressly recognises provisions relating to netting, the set off of money provided by way of security, the enforcement of a guarantee and the enforcement and realisation of collateral and the set off of the net amount due under netting agreements pursuant to a master netting agreement are legally enforceable against a party to the master netting agreement notwithstanding the aforesaid provisions and, where applicable, against a guarantor or security provider.

4.3.2 The Disapplication referred to above is not absolute and is subject to a carve out for certain matters detailed below.

4.3.3 "**Netting**" for this purpose means the termination of Financial Contracts, the determination of the termination values of those contracts and the set-off of the termination values so determined so as to arrive at a net amount due by one party to the other where each such determination and set-off is effected in the terms of a netting agreement between those parties. "**Netting Agreement**" for this purpose means an agreement between two parties only in relation to present or future Financial Contracts between them which provide, inter alia, for the termination of those contacts for the time being in existence, the determination of the termination values of those contracts and the set-off of the termination values so determined so as to arrive at a net amount due. "**Master Netting Agreement**" for this purpose means an agreement between two parties only in relation to present or future Financial Contracts between them which provide, inter alia, for the set off of the net amounts due under two or more netting agreements between them. Provided the legal effect of the Netting Provisions as a matter of English law or the laws of the State of New York, being the governing law, is to provide for the above (as a matter of non Irish law we are not competent to opine on it), then these provisions should constitute a Master Netting Agreement for the purposes of the Netting Act.

The Disapplication also applies to the set off of proceeds of realisations of collateral (provided solely to secure obligations under the Netting Agreement).

4.3.4 The Disapplication provided for in the Netting Act does not apply in circumstances where any enactment or rule of law would prevent the enforceability of the netting set-off, enforcement and realisation, within the meaning of section 4(1) of the Netting Act in respect of the Netting Provisions or the Agreement and/or any Transactions on the ground of fraud or misrepresentations or any similar grounds and in particular by reason of the following:

(a) section 286 of the Companies Act 1963 (fraudulent preference);

(b) section 139 of the Companies Act 1990 (power of a Court to order the return of assets which have been improperly transferred);

(c) Section 57 of the 1988 Act (fraudulent preference);

(d) Section 58 of the 1988 Act (avoidance of certain transactions); and

(e) Section 59 of the 1988 Act (power of a court to render certain settlements of property void as against the Official Assignee).

Further the Disapplication will not apply to permit the enforceability of an agreement between the Parties for netting, set-off, enforcement and realisation, within the meaning of section 4(1) of the Netting Act, under the Netting Provisions or the Agreement and the Transactions if any provision of such agreement would make such netting, set-off, enforcement and realisation void whether because of fraud or misrepresentation or any similar ground.

4.3.5 For the avoidance of doubt, where the Netting Act applies to an Agreement and any of Section 286 of the 1963 Act (fraudulent preference), Section 139 of the 1990 Act (power of the court to order the return of assets which have been improperly transferred), Section 57 of the 1988 Act (fraudulent preference), Section 58 of the

1988 Act (avoidance of certain transactions) or Section 59 of the 1988 Act (power of a court to render certain settlements of property void as against the Official Assignee) or grounds similar to fraud or misrepresentation are found to apply, the Disapplication discussed above will not affect the application of any rules of law relating to bankruptcy, insolvency or receivership or in the Irish Companies Acts or the 1988 Act which will apply to an Agreement.

4.3.6 Where the Netting Act does not apply to an Agreement no disapplication of the Irish Companies Acts or the Bankruptcy Act, 1988 or laws relating to bankruptcy, insolvency or receivership will be applicable such that the foregoing and any of, inter alia, Section 286 of the 1963 Act (fraudulent preference), Section 139 of the 1990 Act (power of the court to order the return of assets which have been improperly transferred), Section 57 of the 1988 Act (fraudulent preference), Section 58 of the 1988 Act (avoidance of certain transactions) or Section 59 of the 1988 Act (power of a court to render certain settlements of property void as against the Official Assignee) will apply in full such that and Agreement could be invalidated or rendered void.

4.4 **Insolvency Regulations**

To the extent that the Insolvency Regulation applies, it provides that main insolvency proceedings (as set out in Annex A to the Insolvency Regulation) may only be opened in the territory where the debtor has its centre of main interests (which we have assumed to be in Ireland). The courts of any other Member State (other than Denmark) may open "*territorial insolvency proceedings*", (or, after the opening of main insolvency proceedings, secondary insolvency proceedings) in the event that such debtor possesses an establishment in such Member State. The place of a debtor's COMI (being the jurisdiction in which the Party has its registered office or conducts the administration of his interests) and whether it has an establishment (being any place of operations where a debtor carried out a non-transitory economic activity with human means and goods) outside Ireland is a matter of fact and we express no Opinion on this. To the extent that the debtor has its COMI or an establishment outside Ireland, it is possible that main insolvency proceedings, territorial insolvency proceedings or secondary insolvency proceedings may be commenced in a Member State other than Ireland and be subject to the jurisdiction of the courts of such Member State.

The Insolvency Regulations contain the following provisions:

4.4.1 that the opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets belonging to the debtor which are situated in another Member State at the time of the opening of the proceedings;

4.4.2 the opening of insolvency proceedings shall not affect the right of creditors to demand set off of their claims against claims of the debtor, where such a set off is permitted by the law applicable to the insolvent debtors claim subject to this not precluding any actions for voidness, voidability or unenforceability; and

4.4.3 without prejudice to 4.4.1 above, the effects of insolvency proceedings on the rights and obligations of the parties to a payment or settlement system or to a financial market shall be governed solely by the law of the Member State applicable to that system or market. However this does not preclude any action for voidness, voidability or unenforceability which may be taken to set aside payments or transactions under such law.

4.5 Limitations Arising from Insolvency Law

To the extent that the Security Interest Provisions do not constitute a "financial collateral arrangement" pursuant to the Collateral Regulations, or the Netting Act does not apply, the following issues may be relevant:

4.5.1 Fraud on Creditors

If it can be shown,[2] on the application of a liquidator, creditor or contributory of a company which is being wound up, to the satisfaction of the High Court that any property of such company was disposed of (which would include by way of charge, security assignment or mortgage) and the effect of such a disposal was to "perpetrate a fraud" on the company, its creditors or members, the High Court may, if it deems it just and equitable, order any person who appears to have "use, control or possession" of such property or the proceeds of the sale or development thereof to deliver it or pay a sum in respect of it to the liquidator on such terms as the High Court sees fit. In determining whether this order should be made the court will (a) consider whether it is just and equitable to do so and (b) will look at the effect of the transaction rather than the motives behind it. In exercising its just and equitable discretion, the court must have regard to the rights of persons who have acquired in good faith and for value an interest in the property that is the subject matter of the application. This is not limited to persons who take from creditors and extends to those who are the direct recipients of the disposition. To our knowledge, Section 139 has been the subject of very limited judicial consideration. Most notably, in *Le Chatelaine Thudichum Ltd v Conway* [2010] 1 IR 529(the High Court held that it was not necessary under Section 139 that an intention to defraud be present and that a disposal of company property would have the effect of perpetrating a fraud within the meaning of Section 139 if such disposal deprived the company, its creditors or members of some assets to which it is, or to which they are, lawfully entitled.

In defending a challenge under Section 139 it must be proven that the effect of the disposal did not deprive the company, its creditors or members of assets to which they were entitled.

4.5.2 Fraudulent Preference

Fraudulent preference[3] is a concept which seeks to prevent companies from granting a preference to one creditor over another and provides that any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company, which is unable to pay its debts as they become due to any creditor, within six months of the commencement of the winding up of the company with a view to giving such creditor (or any surety or guarantor of the debt due to such creditor) a preference over the other creditors, shall be deemed to be a fraudulent preference of its creditors and be invalid accordingly. Case law relevant to Section 286 indicates that a dominant intent on the part of the entity

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[2] Under Section 139 of the 1990 Act, ("**Section 139**") as it applies to companies being wound up and not by virtue of section 251 of the 1990 Act which allows the invocation of the remedy in relation to a company that is not being wound up in certain circumstances.

[3] Section 286 of the 1963 Act ("**Section 286**").

concerned to prefer a creditor over its other creditors is necessary in order for Section 286 to apply (*Corran Construction Co Ltd. v. Bank of Ireland* [1976-7] ILRM 175, *Station Motors Ltd v. Allied Irish Banks, p.l.c* [1985] IR 756).

Where the conveyance, mortgage, delivery of goods, payment, execution or other action is in favour of a "connected person" the six month period is extended to two years. In addition, any such act in favour of a connected person is deemed a preference over the other creditors and as such to be a fraudulent preference and invalid accordingly. A "connected person" includes a director, shadow director of the company, a director's spouse, parent, sibling or child, and any trustee or surety or guarantor for the debt due to any person referred to above as well as a related company within the meaning of Section 140 of the 1990 Act. Consequently, the burden of proof is on the connected person to show that any such act was not a fraudulent preference. Furthermore, Section 286 is only applicable if at the time of the conveyance, mortgage or other relevant act, the company was unable to pay its debts. The rights of a third party are not affected if he took title to assets that are the subject of a fraudulent preference both in good faith and for valuable consideration and through a creditor of a company.

In defending a challenge under Section 286 it must be proved that there was no intention to prefer. An example of an absence of an intention to prefer would be where the creditor, surety or guarantor as the case may be has put significant pressure on the company to pay the debt so as to overbear the will of the company's controllers the transaction.

4.5.3 **Floating Charges**

Section 288 of the 1963 Act (as amended) provides that floating charge on the undertaking or property of the company created within 12 months of the commencement of the winding up, shall unless it is proved that the company immediately after the creation of the charge was solvent, be deemed invalid. Subsection (3) provides that where a floating charge is created in favour of a connected person, this period is extended to 2 years.

4.5.4 **Section 218 of the 1963 Act**

Section 218 of the 1963 Act provides that, in a winding up by a court, any disposition of the property of the company made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

4.5.5 **Section 290 of the Companies Act 1963**

A liquidator of any company may pursuant to Section 290 of the Companies Act 1963 (as amended) and an Official Assignee of any bankrupt may pursuant to Section 56 of the 1988 Act disclaim any onerous property which includes any unprofitable contract and which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act. The decided case law on this section principally relates to leases and environmental licences in respect of which there are on-going obligations and/or burdened by onerous covenants.

4.5.6 **Examination**

In the event that an Examiner is appointed to a company, no proceedings may be taken against such company to enforce any debt or security during such

time as an Examiner is appointed to such company (save with the Examiner's consent).

Under Section 20 of the 1990 Act ("**Section 20**"), if the Counterparty was in examination and where proposals for a compromise or scheme of arrangement are to be formulated in relation to it, it may, subject to the approval of the High Court, affirm or repudiate any contract under which some element of performance other than payment remains to be rendered both by the relevant body and the other contracting party or parties. Any person who suffers loss or damage as a result of such repudiation stands as an unsecured creditor for the amount of such loss or damage (and will rank for a dividend in any scheme of arrangement based on that amount). Where the High Court approves the affirmation or repudiation of a contract under this section, it may in giving such approval, make such orders as it thinks fit for the purposes of giving full effect to its approval including orders as to notice to, or declaring the rights of, any party affected by such affirmation or repudiation. Existing case law in relation to the scope of Section 20 has been limited to the repudiation of leases where on-going obligations remain to be performed and it would appear from Section 20(3) that the company must establish that the contract is onerous and its continued performance would jeopardise the survival of the company.[4]

Pooling and Contribution

4.5.7 Under Section 140 of the 1990 Act on the application of a liquidator, creditor or contributory of a company which is being wound up, the court, if it is satisfied that it is just and equitable to do so, may order that any company that is or has been related to the company being wound up shall pay to the liquidator of that company an amount equivalent to the whole or part of all or any of the debts provable in the winding up.

4.5.8 Under Section 141 of the 1990 Act provision exists where two or more related companies are being wound up and the court, on the application of the liquidator of any of the companies, is satisfied that it is just and equitable to do so may order, subject to such terms and conditions as it may impose, that the companies be wound up together as if they were one company and specified provisions of the Companies Acts shall apply accordingly. This provision is expressly stated not to affect the rights of any secured rights of any of the companies.

4.6 **Effectivenes of Security Interest Provisions**

4.6.1 Subject to our reservation at 4.2.2 we express no opinion on whether Irish law will be the applicable law regarding the enforceability or validity in Ireland of any security interests created over assets (including claims against third parties) situated outside Ireland or pursuant to any agreement not governed by Irish law. To the extent that such assets (including claims against third parties) are situated in a Member State of the European Union (other than Denmark), if the laws of that Member State consider such security interest to constitute "rights in rem" for the purposes of the Insolvency Regulation, the Insolvency Regulation provides that the opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of

[4] Note that the only person entitled to petition for the appointment of an examiner in respect of a Bank is the Central Bank.

certain assets belonging to the debtor which are situated in another Member State. To the extent that such assets (including any claims against third parties) are situated in any jurisdiction, then on the basis that the *lex situs* of such assets is in that jurisdiction, the enforceability of such security interests may be a matter for the courts of such jurisdiction.

4.6.2 Except as otherwise expressly opined upon herein we express no opinion on the nature, ranking or priority of any of the security interests purported to be taken by the Security Interest Provisions or whether such security interests are legal or equitable or fixed or floating in nature.

4.6.3 We express no opinion as to whether the Counterparty has good legal or other title to the assets or rights which are expressed to be subject to a security interest under the Security Interest Provisions, or as to the existence or value of any such assets or rights.

4.6.4 It is open to a court to find that assignments and charges described as fixed charges constitute floating charges rather than fixed charges, the description given to them as fixed charges not being determinative and no opinion is expressed on whether security interests created by the Security Interest Provisions are fixed charges or floating charges. One of the three characteristics of a floating charge is the ability of the chargor to carry on business in the ordinary way so far as concerns the particular class of assets in question until some further step is taken by or on behalf of the chargee. Where the chargor is free to deal with the assets, which form the subject matter of the charge, without the consent of the chargee, or the chargee does not exercise the requisite degree of control over the assets, or the proceeds of such assets, the court would be likely to hold that the charge in question constitutes a floating charge, notwithstanding that it may be described as a fixed charge. Irish case law and some recent English case law have interpreted the requisite level of control to a very high standard. To the extent that any of the secured assets are not specifically identified a court may hold that such assets which are expressed to be subject to a fixed charge may in fact be subject to a floating charge. It should be noted that insofar as the Security Interest Provisions purport to create fixed security over future assets the asset must either be identified as at the date of execution of the Security Interest Provisions or identifiable as falling within the security purported to be created thereby.

4.6.5 We draw your attention to the fact that a floating charge is more vulnerable than a fixed charge both to being set aside in a winding-up and to losing its priority to other rights and interests. A floating charge will take effect subject to:

(a) third party rights or interests (including rights of set-off) unless the third party concerned had express notice that a term in the relevant Security Interest Provision prohibited the type of transaction which the mortgagor, chargor or assignor thereunder entered into with such third party or that the floating charge had crystallised;

(b) any execution or attachment completed before crystallisation; and

(c) any distress, whether levied on or after crystallisation.

Moreover, amounts received in a winding-up or receivership by realising assets subject to a floating charge must first be used to pay certain preferential debts, for example, money owed to the Revenue Commissioners for tax deducted at source, value added tax and remuneration of employees.

4.6.6 A fixed charge on book debts is subject to the provisions of Section 1001 TCA which provides inter alia that on receipt of a notice from the Revenue Commissioners that the chargor is in arrears on its PAYE or VAT payments the holder of the fixed charge must thereafter pay all sums it receives from the chargor to the Revenue Commissioners until the arrears (and any further arrears which accrue) of PAYE or VAT payments (as the case may be) have been discharged in full. The terms of this paragraph 4.6.6 shall apply where a company creates a fixed charge on book debts notwithstanding the location of the assets secured or the governing law of the security thereover, Monies held in a bank account of a Counterparty or otherwise owed to it by the other could, notwithstanding any charge or right of netting or set-off over such account being held by the other Counterparty be subject to Section 1002 TCA which provides *inter alia* that on receipt of a notice from the Revenue Commissioners that a taxpayer is in arrears in the discharge of any tax, interest or penalty, a person owing money to the taxpayer (including, without limitation, a bank holding monies of the taxpayer) must pay such monies to the Revenue Commissioners).

4.6.7 We have not investigated the nature of or the title to property and assets the subject of the Agreement or insurance, merger/competition, regulatory or environmental status or compliance nor have we considered any implications or perfection or other requirements (other than as opined on herein) arising in respect thereof or the security purported to be created by the Agreement. We have not conducted any other searches whatsoever. We have conducted no due diligence nor checked the regulatory status or compliance of any Counterparty (including the Firm) or any of its affiliates or shareholders, or banks, or any other person. We have not conducted any due diligence on the status of any person, and in particular have not considered any due diligence on any Counterparty, or enquired or investigated as to whether they hold appropriate licenses or approvals.

4.7 **General**

4.7.1 The description of obligations in this Opinion as "enforceable" refers to the legal character of the obligations assumed by the relevant party under the relevant instrument. It implies no more than the obligations are of a character which the laws of Ireland recognize and will in certain circumstances enforce. In particular, it does not mean or imply that the relevant instrument will be enforced in all circumstances in accordance with its terms or by or against third parties or that any particular remedy will be available. In particular (without limiting the foregoing):

(a) the binding effect and enforceability of the obligations of the Party under the Agreements (other than the Security Interest Provisions insofar as the Netting Act or the Collateral Regulations apply as opined upon herein) may be limited by liquidation, insolvency, bankruptcy, receivership, court protection, examinership, moratoria, reorganisation, reconstruction, company voluntary arrangements, fraud of creditors, fraudulent preference of creditors or similar laws whether in Ireland or elsewhere affecting creditors' rights generally;

(b) the binding effect and enforceability of the obligations of the Party under the Agreement may also be limited as a result of the provisions of the laws of Ireland applicable to contracts held to have become frustrated by events happening after their execution, and any breach of the terms of any document by the party seeking to enforce such document;

(c) enforcement may be limited by general principles of equity. In particular, equitable remedies are not available where damages are considered to be an adequate remedy; the remedy of specific performance is discretionary and

will not normally be ordered in respect of a monetary obligation; and injunctions are granted only on a discretionary basis and accordingly we express no opinion on such matters;

(d) claims may become barred under the Statute of Limitations 1957 and other statutes of limitation or may be or become subject to liens, rights of reunion, defences, rights of set-off or counterclaim;

(e) enforcement will be subject to, netting, claims and attachment and any other rights of another party to a contract; and

(f) enforcement may be limited by reason of fraud.

4.7.2 Where any obligations of any person are to be performed in jurisdictions outside Ireland, such obligations may not be enforceable under Irish law to the extent that performance thereof would be illegal under the laws of any such jurisdiction or contrary to public policy under the laws of any such jurisdiction and an Irish court may take into account the law of the place of performance in relation to the manner of performance and to the steps to be taken in the event of defective performance.

4.7.3 Where a judgment creditor seeks to enforce his judgment, he can only do so in accordance with the applicable rules of Irish courts. The making of an execution order against particular assets, such as a charging order over land or a beneficial interest therein or most types of investment or a third party debt order over a bank account or certain other debts, is a matter for the Court's discretion.

4.7.4 We express no opinion as to the effectiveness of the severability clause in the Agreements. The question of whether or not any invalid provision may be severed from other provisions would be determined by an Irish court at its discretion.

4.7.5 No opinion is expressed on any stamp duty indemnity or currency indemnity.

4.7.6 Any provision of the Agreements which constitutes, or purports to constitute, a restriction on the exercise of any statutory power by any party thereto or any other person may be ineffective.

4.7.7 We express no opinion as to the circumstances in which a party may transfer a contract or any obligation in or under a contract without an agreement by way of novation entered into between the transferor, the transferee and the other party to the contract.

4.7.8 No enquiry or diligence has been made into the tax, regulatory position, prospectus, capacity, authority, compliance, status or otherwise of any party to the Agreements or the assets the subject thereof and no opinion is expressed thereon or the implications thereof.

4.7.9 The clauses in the Agreement providing for an increased rate of interest payable upon default or late payment may not be binding if construed by an Irish court as a penalty and therefore invalid. Interest on interest may not be recoverable and any increased rate of default interest may be treated as a penalty and therefore invalid.

4.7.10 A court in Ireland may order the payment of money in a currency other than euro if the creditor is entitled to such other currency under the terms of a relevant agreement. While the rule of law that, when a debtor is wound up or adjudicated bankrupt after a sum expressed in a foreign currency has become due, such sum should be converted

into euro at the rate of exchange prevailing on the date it became due has not been varied by a decision of the Irish courts, it is likely that in the event of winding up or bankruptcy of the Party, amounts claimed in a foreign currency would (to the extend properly payable in the winding-up or bankruptcy) be paid, if not in a foreign currency, in the euro equivalent of the amount due in the foreign currency, converted at the rate of exchange on the date of the commencement of such winding-up or bankruptcy.

4.7.11 There is a possibility that an Irish court would hold that a judgement on the Agreements, whether given in an Irish court or elsewhere, would supersede the relevant agreement or instrument to all intents and purposes, so that any obligation thereunder which by its terms would survive such judgement might not be held to do so.

4.7.12 Monies held in a bank account of a Party or otherwise owed to it by the other could, notwithstanding any charge or right of netting or set-off over such account or monies being held by the other Party be subject to the provision of Section 1002 of the Taxes Consolidation Act, 1997 which provides inter alia that on receipt of a notice from the Revenue Commissioners that a taxpayer is in arrears in the discharge of any tax, interest or penalty, a person owing money to the taxpayer (such as a bank holding monies of the taxpayer) must pay such monies to the Revenue Commissioner).

4.7.13 Provisions in the Agreements conferring a right of set-off, a right to net off payments, a right of counterclaim or similar right or remedy would not be effective against a liquidator or Official Assignee if the indebtedness in respect of which such rights are exercised has not crystallised (by the indebtedness becoming actual) prior to liquidation and the exercise of such rights against a company in liquidation or a bankrupt in bankruptcy is subject to:

(a) the statutory requirement as to the pari passu treatment of creditors;

(b) the statutory prohibition as to the divestment of assets after the appointment of an official liquidator; and

(c) the statutory prohibition as to the improper transfer of assets,

(d) such rights would also not be available if the person granting such rights has purported to assign or transfer its rights or title or interest in the debt owing to it.

4.7.14 If a party to an Agreement or to any transfer of, or payment in respect of, such Agreement is controlled by or otherwise connected with a person (or is itself) resident in, incorporated in or constituted under the laws of a country which is the subject of United Nations, European Community or Irish sanctions or sanctions under the Treaty establishing the European Community, as amended, or is otherwise the target of any such sanctions, then obligations to that party under such Agreement or in respect of the relevant transfer or payment may be unenforceable or void.

4.7.15 To the extent that the full beneficial and legal title (free from encumbrances) to any of its property, assets and undertaking is not held by the Counterparty prior to its creating security over them, then such title will not be subject to the security created under the Agreement.

4.7.16 If the Agreements and Transactions governed thereunder are a financial contract, that relates in whole or in part to bank assets prescribed in paragraph 2(a) to (f) of

National Asset Management Agency (Designation Of Eligible Bank Assets) Regulations 2009, they may be acquired by National Asset Management Agency or a group entity of the National Asset Management Agency pursuant to the provisions of the National Asset Management Agency Act, 2009 (the "**NAMA Act**").

4.7.17 Where a party is a consumer any of the following may apply:

(a) The EC (Unfair Terms in Consumer Contracts) Regulations, 1995: It provides that non-core terms in contracts concluded between a supplier of services and a consumer may be invalidated on grounds of unfairness. A contractual term will be deemed to be unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer taking into account the nature of the services for which the contract was concluded and all circumstances surrounding the conclusion of the contract and all other terms of the contract. "Consumer" for this purpose means a natural person acting for purposes outside his business;

(b) The Consumer Protection Code (the "**Code**"): It provides that in the provision of specified services to a consumer, the other party must comply with the general principles of the Code which include without limitation a duty to act honestly, fairly and professionally in the best interests of its customers and the integrity of the market and to employ resources and procedure, systems and control checks necessary for compliance with the Code. A party must also adhere to common rules including those on suitability, disclosure and advertising. The Central Bank is empowered to take action in respect of any contravention of the Code including a caution or reprimand, monetary penalty or the initiation of a summary criminal prosecution. "Consumer" for this purpose means (a) a natural person acting outside his business, trade or profession (b) a person or group of persons, but not an incorporated body with an annual turnover in excess of €3,000,000 or (c) incorporated bodies having an annual turnover of €3,000,000 or less in the previous financial year (provided that such body shall not be a member of a group of companies having a combined turnover greater than said €3,000,000) or (d) a member of a credit union; and

(c) The Consumer Credit Act, 1995 (the "**CCA**"): It applies to agreements for the provision of credit (defined to include a deferred payment, cash loan or other similar form of financial accommodation) to consumers. The CCA provides basic protections and rights for consumers and has a significant impact on the parties' rights and obligations with regard to the marketing of credit, the content of contractual documentation, procedural steps upon entering into the contract including cooling off and limitations on rights of enforcement. A breach of the CCA can lead in certain circumstances to, inter alia, restrictions of enforceability and summary prosecution. "Consumer" for this purpose means a natural person acting outside the person's business.

4.7.18 In any proceedings taken in Ireland for the enforcement of the Agreements, the choice of English Law or the laws of the State of New York as the governing law of the Agreements will be recognised by the Irish courts pursuant to Article 3 of the Rome I Regulation (EC) No. 593/2008 of the European Parliament and of the Council 17 June 2008 on the law applicable to contractual obligations (the "**Rome I Regulation**") with respect to matters falling within the scope of the Rome I Regulation. Article 1(2) of the Rome I Regulation sets out matters not governed by

the Rome I Regulation. They include, but are not limited to, obligations under negotiable instruments, evidence and procedure, insurance matters and trusts. The choice of law will not, where all the other elements relevant to the situation at the time of the choice are connected with another country, prejudice the application of the laws of that country which cannot be derogated from by agreement. Where all of the elements of the contract are located in a country other than that of the governing law and that country has laws which cannot be contracted out of, the Courts of Ireland will apply those overriding laws. Furthermore, if all other elements relevant to the situation at the time of the choice are connected to one or more Member States, the parties choice of Non-Member State law shall not prejudice the application of provisions of community law, where appropriate, as implemented in the forum, which cannot be derogated from by agreement. It is open to the Irish Court to give effect to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, insofar as those overriding mandatory provisions render the performance of the contract unlawful; mandatory provisions for this purpose stem from Article 3(3) of the Rome I Regulation, which stipulates that the fact that the parties have chosen a foreign law shall not, where all the other elements relevant to the situation at the time of the choice are connected with one country only, prejudice the application of rules of law of that country which cannot be derogated from. In considering whether to give effect to those overriding mandatory provisions regard shall be had to their nature and purpose and to the consequence of their applicability or non-applicability. To the extent that such mandatory rules affect any part of the transaction, an Irish Court is likely to restrict the application of those rules to the relevant part of the transaction and to apply English Law or the laws of the State of New York law, as the case may be, in the remainder. The Irish Courts may however refuse to enforce foreign laws which may be considered repugnant to Irish public policy.

4.7.19 Regulation (EC) No. 864/2007 on the law applicable to non-contractual obligations ("**Rome II Regulation**"), which came into force on 11 January 2009, seeks to create a harmonised set of rules within the European Union to govern choice of law in disputes arising from non-contractual obligations. Under Article 4 of the Rome II Regulation the applicable law is that of a country in which the damage occurs irrespective of the country of which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences occur. However, under Article 4 (2) if both parties are habitually resident in the same country at the time at which the damage occurs the law of that country should apply and under Article 4 (3) where the tort/delict is manifestly more closely connected with another country the law of that country should apply. Under Article 14, the parties may agree to submit non contractual obligations to the law of their choice either by (a) an agreement entered into after the event giving rise to the damage occurred or (b) where all the parties are pursuing a commercial activity, also by an agreement freely negotiated before the event giving rise to the damage occurred. The choice of law will not, where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in a country other than a country whose law has been chosen, prejudice the application of provisions of the law of the country which cannot be derogated from by agreement. Furthermore, the choice of law of a non-Member State will not, where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in one or more of the Member States, prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement. Certain non-contractual obligations are specifically excluded in Article 1 (2) of the Rome II Regulation, such as non-contractual obligations arising out of (i) bills of exchange/negotiable instruments; (ii) family relationships/matrimonial property regimes and (iii) the law

of companies relating to its administration and liability of auditors responsible for statutory audits of companies accounts.

4.7.20 Subject to EU Council Regulation No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the "**2001 Brussels Regulation**") the submission to the non-exclusive jurisdiction of the courts of England to the extent so submitted will be upheld by the Irish courts. This will not preclude the bringing of proceedings in other courts with jurisdiction according to the general rules set out in the 2001 Brussels Regulation.

4.7.21 In addition, the courts of Ireland will only enforce the submission by the Party to the jurisdiction of the courts of the laws of the State of New York and a judgment of the courts of the State of New York will be enforced by the courts of Ireland if the following general requirements are met:

4.7.22 the foreign court must have had jurisdiction in relation to the particular defendant according to Irish conflict of law rules (the submission to jurisdiction by the defendant would satisfy this rule); and

4.7.23 the foreign judgment must be final and conclusive and the decree must be final and unalterable in the court which pronounces it. A judgment can be final and conclusive even if it is subject to appeal or even if an appeal is pending. Where however, the effect of lodging an appeal under the applicable law is to stay execution of the judgment, it is possible that, in the meantime, the judgment should not be actionable in Ireland. It remains to be determined whether final judgment given in default of appearance is final and conclusive.

However, the Irish courts may refuse to enforce a judgment of the courts of the State of New York which meets the above requirements for one of the following reasons:

(a) the foreign judgment is not for a definite sum of money;

(b) the foreign judgment was obtained by fraud;

(c) the enforcement of the foreign judgment in Ireland would be contrary to natural or constitutional justice;

(d) the foreign judgment is contrary to Irish public policy or involves certain foreign laws which will not be enforced in Ireland; and

(e) jurisdiction cannot be obtained by the Irish courts over the judgment debtors in the enforcement proceedings by personal service in Ireland or outside Ireland under Order 11 of the Superior Courts Rules.

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

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

Markets Act 2000) and to any competent authority supervising such member firms and their affiliates in connection with their compliance with their obligations under prudential regulation.

Yours faithfully,

Arthur Cox

ARTHUR COX

SCHEDULE 1

The Governor and Company of the Bank of Ireland, an Irish Licensed Bank or a Foreign Bank with an Irish Branch

Subject to the modifications and additions set out in this Schedule 1 (*The Governor and Company of the Bank of Ireland, an Irish Licensed Bank or a Foreign Bank with an Irish Branch*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are The Governor and Company of the Bank of Ireland, an Irish Licensed Bank or a Foreign Bank with an Irish Branch as each such term is defined herein.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

The terms of the opinion letter as they apply to Irish Companies apply in full such that this Schedule 1 (*The Governor and Company of the Bank of Ireland, an Irish Licensed Bank or a Foreign Bank with an Irish Branch*), shall be read as if such provisions were set out, mutatis mutandis, in full herein and apply in respect of a Bank other than as modified by this Schedule 1.

For the purposes of this Schedule 1:

"**authorised credit institution**" for the purposes of the Resolution Act means, an Irish Licensed Bank, a building society or a credit union;

"**Banking Regulations**" means the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992;

"**Banks**" means collectively Parties who are Irish Licensed Banks or Foreign Banks with Irish Branches and in the singular "**Bank**";

"**Consolidation Directive**" means directive 2006/48/EC of the European Parliament and the council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast);

"**Credit Institution**", for the purposes of the Stabilisation Act and the Resolution Act means, any person authorised in the State to accept deposits or other repayable funds from the public and to grant credit on its own account;

"**EEA Credit Institution**" means a credit institution that is incorporated or established in a Member State other than Ireland and that:

(a) holds an authorisation for the purposes of the Consolidation Directive and applicable law in the Member State in which it is incorporated or established; and

(b) has duly exercised its right to provide activities referred to in paragraph 1 of Annex 1 of the Consolidation Directive by establishing a branch in Ireland in accordance with the Consolidation Directive, the Banking Regulations and the laws which implement the Consolidation Directive in the Member State in which it is incorporated or established;

"**Foreign Bank**" means a Party that is a company or body corporate incorporated or organised outside Ireland and which is either an Irish Licensed Bank or an EEA Credit Institution;

"**ICA**" means the Investor Compensation Act, 1998;

"**IIA**" means the Investment Intermediaries Act, 1995;

"**Ireland**" means Ireland exclusive of Northern Ireland;

"**Irish Branch**" means a branch registered in Ireland under section 352 of the 1963 Companies Act;

"**Irish Licensed Bank**" means a Party which is the holder of a licence granted under Section 9 of the Central Bank Act 1971 (the "**CBA**");

"**Member State**" means a member state of the EU;

"**Relevant Institution**" for the purpose of the Stabilisation Act, means

(*a*) a body:

(i) that has its registered office in the State,

(ii) that is, or was on the date on which this Act came into operation, a bank licensed under section 9 of the Central Bank Act 1971, and

(iii) to which financial support has been given or is to be given by the Minister,

(*b*) a body that has its chief office in the State and is, or was on the date on which this Act came into operation, a building society within the meaning of the Building Societies Act 1989,

(*c*) a body that has its chief office in the State and is, or was on the date on which this Act came into operation, a credit union within the meaning of the Credit Union Act 1997,

(*d*) a person or body prescribed under *section 3*,

(*e*) a subsidiary of a person or body referred to in any of paragraphs(a) to (d), and

(f) a holding company of a person or body referred to in any of paragraphs (a) to (d).

"**Reorganisation measure**", for the purpose of the Winding up Regulations in relation to a credit institution, means a measure that is intended to preserve or restore the financial position, but that could affect the rights of third parties existing before the measure is imposed in respect of the institution, and includes any measure that contemplates the possibility of:

(a) payments being suspended by the institution, or

(b) enforcement measures being suspended in relation to the institution, or

(c) claims against the institution being reduced,

and, in particular, includes any of the following:

(i) a scheme of arrangement under Section 201 or the 1963 Act;

(ii) the appointment of an examiner under section 2 of the 1990 Act;

(iii) a court order made under section 3A of the 1990 Act placing the institutions under the protection of the court for a period pending the submission of an independent accountant's report;

(iv) a direction given to the institution under section 21 of the CBA, section 26 of the Trustee Savings Bank Act 1989 or section 40 of the Building Societies Act 1989 to suspend:

(I) carrying on banking business;

(II) making payments to which the carrying on of banking business does not relate, or

(III) acquiring or disposing of other assets or liabilities, except with the authorisation of the Central Bank.

(v) a direction under section 20 or 21 of the Assets Covered Securities Act 2001 prohibiting the institution from carrying on a specified activity except with the permission of the Central Bank and Financial Services Authority of Ireland;

(vi) a subordinated liabilities order (within the meaning given by the Stabilisation Act);

(vii) a direction order, special management order or transfer order (within the respective meanings given by the Stabilisation Act) that contains a declaration that it or part of it is made with the intention of preserving or restoring the financial position of the relevant institution;

(viii) a requirement imposed by the Minister pursuant to section 50 of the Stabilisation Act that is expressed as being made with the intention of preserving or restoring the financial position of a relevant institution; or

(ix) an order under section 33(1) of the Central Bank Act 1971 (No. 24 of 1971) that is expressed as set out in section 33(4) of that Act.

"**Resolution Act**" means the Central Bank and Credit Institutions (Resolution) Act, 2011;

"**Stabilisation Act**" means the Credit Institutions (Stabilisation) Act 2010;

"Winding-Up Directive" means Directive 2001/24/EC of the European Parliament and of the council of 4 April 2001 on the reorganisation and winding up of credit institutions;

"**Winding-up Proceedings**" means for the purpose of the Winding up Regulations:

(a) in relation to authorised credit institutions, means collective proceedings commenced and monitored by or before an administrative or judicial authority of the State for the purposes of realising assets under the supervision of that authority, and includes any such proceedings that are terminated by a composition of creditors or other similar arrangement, and, in particular, includes:

(i) a winding-up order made under section 213 of the 1963 Act; and

(ii) the appointment of a provisional liquidator under section 226 of the 1963 Act, and

(iii) the appointment of a liquidator under section 225 of the 1963 Act, and

(iv) the passing of a resolution for a voluntary winding-up under section 251 of the 1963 Act;

(v) the appointment of a liquidator in a creditors' voluntary winding up under section 267 of the 1963 Act; and

(vi) an arrangement under the control of the Court that involves the vesting of all or part of the property of the institution in the Official Assignee for realisation and distribution, and

(b) in relation to a credit institution authorised in another Member State, means collective proceedings commenced and monitored by or before an administrative or judicial authority of the other State for the purposes of realising assets under the supervision of that authority, and includes any such proceedings that are terminated by a composition of creditors or other similar arrangement.

Paragraph 1.13.7 is deemed deleted and replaced with the following

"**Insolvency Proceedings**" means the procedures listed below where governed by Irish law:

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a The Governor and Company of the Bank of Ireland, an Irish Licensed Bank or a Foreign Bank with an Irish Branch could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

1. those insolvency proceedings set out in the opinion letter at 1.13.7 as they apply to Irish Companies such that this Schedule 1 (*The Governor and Company of the Bank of Ireland, an Irish Licensed Bank or a Foreign Bank with an Irish Branch*), shall be read as if such provisions were set out, mutatis mutandis, in full herein and apply to the insolvency of a Bank;

2. **Foreign Bank – Irish Companies Acts**

A Foreign Bank if it is to be wound up under the Irish Companies Acts in the manner detailed at 1.13.7 of the letter opinion above, the general rule is that the existence of assets in Ireland would have to be established. This alone in absence of any other connection with Ireland may not be sufficient for an order to be made. The only Foreign Bank to which this is likely to be of relevance is a Foreign Bank which is not an EEA Credit Institution.

In a case where there was a separate winding-up proceeding in Ireland and there are a number of such branches in the EU then the Winding-Up Regulations provide for cooperation between the relevant authorities in the Member States where the branch is located. If such proceedings occurred in Ireland it is unclear whether they would extend to the assets and liabilities of the Foreign Bank as a whole rather than those of its Irish Branch alone or just to the assets and liabilities of the Irish Branch. We believe it is unlikely to be the former but there does not appear to be any basis for the latter view other

than it would be a pragmatic solution that recognises the existence of an Irish regulator.

3. **Recognition of Foreign Winding up - Section 250(1) 1963 Act**

It is possible for a winding up order made by a court of a recognised country to be enforced by the Court in the same manner and in all respects as if the order had been made by the Court.

Since the enactment of the Insolvency Regulation and the Winding-Up Regulations this provision is now confined to circumstances where the Insolvency Regulation and the Winding-Up Regulations do not apply for example applications by liquidators appointed by the courts of non-EU countries or Denmark. Recognition is by way of ministerial order and to date only Great Britain and Northern Ireland are recognised.

4. **Part 7 of the Resolution Act**

The terms of Part 7 of the Resolution Act apply in full to authorised credit institutions and Relevant Institutions within the meaning of the Stabilisation Act. This allows for the presentation, advertisement or any other step or publication concerning a person's intention to cause an authorised credit institution to be wound up only where the person has given 10 days written notice to the Central Bank of his or her intention to do so and the Central Bank has confirmed in writing that is has no objection to the person doing so. Only a liquidator approved by the Central Bank may be appointed to an authorised credit institution.

If an authorised credit institution is being wound up voluntarily and the Central Bank has reason to believe that any of the grounds set out in section 77 of the Resolution Act apply, being (i) that in the opinion of the Central Bank the winding-up would be in the public interest; (ii) that the credit institution is or may be unable to meet its obligations to its creditors (iii) failure to comply with certain directions of the Central Bank (iii) revocation of authorisation or licence or that (in the case of the holder of a licence under section 9 of the CBA) that it has ceased to carry on a banking business (iv) the Central Banks considered that it is in the interest of persons having deposits, then the Central Bank may apply to the Court to have that credit institution would up by the Court.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings without the need for any additions. However we recommend that:

1. the following voluntary procedures are included, "receivership", "compromise" and "examinership";

2. the following appointee is included in the definition of Custodian "receiver and manager"; and

3. the following involuntary procedures are included, "compromise", "receivership" and "examinership".

2. ADDITIONAL ASSUMPTIONS

We assume:

2.1.1 Insofar as an Irish Licensed Bank is concerned, it is an "authorised credit institution" for the purposes of the Winding up Regulations.

3. ADDITIONAL QUALIFICATIONS

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

3.1.1 The Governor and Company of the Bank of Ireland is an unregistered company for the purpose of Section 245 of the 1963 Act and the provisions of the letter opinion addressing unregistered companies (at 1.13.7) are relevant to it. The Governor and Company of the Bank of Ireland may be wound up under the Irish Companies Acts.

3.1.2 Agreements with a relevant or authorised credit institution (in relation to which an order under the Stabilisation Act or Resolution Act (the "**Acts**") has been made), may provide for their termination or other consequences in certain circumstances for example, the occurrence of an event of default. Section 61 of the Stabilisation Act and section 100 of the Resolution Act provide that none of the specified consequences will arise by virtue of certain actions including, among others, the enactment of the Acts, the making of any statement by the Minister, the Governor of the Central Bank or the institution in relation to the Acts, and the use of any powers (including the making of an order) under the Acts.

3.1.3 **Supervisory Restrictions**

A Party incorporated in or with a branch in Ireland may become subject to the following moratorium, suspension or similar proceedings:

(a) Banks

The Central Bank can require a Bank to suspend for a period not in excess of six months (subject to extension by the Court) all or any of the following:

(i) the carrying on of banking business;

(ii) the making of payments other than those specifically connected with carrying on banking business;

(iii) the acquisitions or disposal of assets or liabilities;

which have not been authorised by the Central Bank (Section 21 of the CBA). These provisions apply to EEA Credit Institutions.

While such a direction is in effect, no winding up proceedings may be commenced or winding-up resolution passed in relation to the Bank, no receiver may be appointed over all or part of its property or undertaking and the property of the Bank may not be attached, sequestered or otherwise distrained except with the prior sanction of the Court

The circumstances in which such a direction may be given include where the Central Bank is of the opinion that:

(i) it is in the public interest to do so

(ii) the Bank:

(A) has become or is likely to become unable to meet its obligations to its creditors;

(B) is not or is unlikely to be in a position to maintain adequate capital resources having regard to the volume and nature of its business;

(C) is failing or has failed to comply with any condition of its licence and the Central Bank is of the opinion that the Bank's stability and soundness are thereby affected;

(D) is conducting business in such a manner as to jeopardise and prejudice the security of deposits taken by it or the rights and interest of the depositors; or

(E) is in common control with one or more other entities (whether regulated or not), which common control, in the opinion of the Central Bank is not in the interest of the depositors of the Bank.

Provisions similar to the above apply where the bank licence has been revoked (Section 11 of the CBA).

Investor Compensation

Provisions similar to those described above apply to certain investment business firms (including a Bank), pursuant to Section 27 of the ICA and Section 28 of the ICA for failure to comply with certain provisions of the ICA.

(b) Stabilisation Legislation

The Credit Institutions (Stabilisation) Act 2010 (the "**Stabilisation Act**") came into force on 21 December 2010. It is the first step in the legislative framework for the restructuring and stabilisation of the Irish banking system as set out in the National Recovery Plan 2011-2014 and agreed in the joint European Union / International Monetary Fund Programme of Financial Support for Ireland. The Stabilisation Act applies to Relevant Institutions (as defined in Annex A hereto). The application period of the Stabilisation Act was due to end on 31 December 2012 unless otherwise extended; that period was extended to 31 December 2014 (by resolutions of both Houses of the Oireachtas in December 2012 following a motion by

the Minister for Finance). The Stabilisation Act introduces the following concepts:

(i) **Direction Orders**

The Minister may propose a direction order to Court ordering the Relevant Institution to take or refrain from taking any action (an undefined term) but including the disposal of an asset or liability.

(ii) **Special Management Orders**

The Minister may propose a special management order to the Court where in his opinion, a special manager should be appointed to the Relevant Institution. The statutory functions of the Special Manager include the taking over of the management of the business and carrying on that business as a going concern with a view to preserving and restoring the financial position of the Relevant Institution and the power to acquire and dispose of any asset or liability and the taking of all such steps, as thought necessary, to remedy the matters which led to the making of the special management order.

The effect of the appointment of a special manager includes that: (i) all functions ordinarily vesting in the directors will vest in the special manager; and (ii) no proceedings for the winding up of the Relevant Institution can be commenced without the prior consent of the Minister.

(iii) **Transfer Orders**

The Minister may propose a transfer order in respect of the assets or liabilities of a Relevant Institution.

(iv) **Subordinated Liabilities Orders**

The Minister may propose a subordinated liabilities order in respect of a Relevant Institution to provide for any of a number of matters in respect of certain subordinated liabilities of the relevant institution. The specified matters may include modifying rights to interest and the repayment of principal, events of default, timing of obligations, etc and may facilitate a debt for equity swap.

We assume that no such orders have been made and that the obligations of a Party under the Agreement are not subordinated liabilities within the meaning of the Stabilisation Act and so we have not considered subordinated liabilities orders further for the purposes of this Opinion.

The Minister has a general power to impose terms and conditions when providing financial support which any other provider of financial support would be entitled to impose. This would, inter alia, enable the Minister to suspend for a specified period (not exceeding 6 months) a specified activity.

In the case of each of the aforementioned orders, the Court, when hearing an application by the Minister in accordance with the relevant provisions of the Stabilisation Act, shall, if satisfied that the relevant requirements of the Stabilisation Act have been complied with and that the opinion of the Minister under that section was reasonable and was not vitiated by any error of law, make an order in the terms of the proposed order.

In addition, it is possible for the process mandated by the order to be made with the "intention of preserving or restoring the financial position" of a Credit Institution and as such to be classified as a "*reorganisation measure*" for the purpose of the Winding Up Regulations. Pursuant to the Winding-Up Directive, a reorganisation measure imposed by the Irish courts must be recognised in other EU Member States and will apply to branches of a Relevant Institution in other EU Member States.

The Resolution Act came into effect on 28 October 2011 and aims to provide a regime for dealing with failing credit institutions. The Resolution Act will apply to all authorised credit institutions in Ireland once the temporary emergency regime under the Stabilisation Act expires (and otherwise to all credit institutions not covered by the Stabilisation Act) from 1 January 2013 (the Stabilisation Act continues to apply to those credit institutions that have received financial support from the Irish government until the end of 2014 unless extended).

Like the Stabilisation Act, if certain pre-conditions are met and if it is considered necessary, the Central Bank is able to make an application to the High Court seeking a transfer order in respect of a failing institution and/or impose a special management regime on that failing institution. The Central Bank is empowered to present a petition to the High Court for the winding up of a failing credit institution in certain circumstances and further, no person is allowed to petition to wind up a credit institution without giving the Central Bank notice and receiving the approval of the Central Bank. It is provided that the Irish Companies Acts will apply to the winding up of an authorised credit institution under this legislation, subject to certain modifications.

Section 65 of the Stabilisation Act and section 104 of the Resolution Act respectively provide that nothing in such legislation shall affect the operation of the Netting Act, the Collateral Regulations or Regulation 30 of the Winding Up Regulations in relation to an agreement to which a Relevant Institution or authorised credit institution or any of its subsidiaries is a party.

(c) NAMA

The NAMA Act came into effect on 21 December 2009. The following is relevant to this Opinion, insofar as it is relevant to a Relevant Party that is a "participating institution" within the meaning of the NAMA Act. A "participating institution" means a credit institution that has been designated by the Minister for Finance under section 67 of the NAMA Act, including any subsidiary of such credit institution that has not been excluded under that section.

Some of the principal purposes of the NAMA Act are to establish the National Asset Management Agency (***NAMA***) and provide a mechanism for the acquisition by NAMA or a NAMA group entity (each a ***NAMA Entity***), of certain assets from participating

institutions and the holding, managing and realisation by the NAMA Entities of those assets and certain other related functions. The assets that may be acquired by the NAMA Entities ("**Eligible Bank Assets**") comprise such assets of a participating institution as may from time to time be prescribed by regulation by the Minister pursuant to, and in accordance with the provisions of, section 69 of the NAMA Act (after undertaking the consultation referenced in that subsection).

Eligible Bank Assets may, therefore, depending on the terms of any relevant ministerial regulations, comprise the entire, or any, interest of a "participating institution" in any Agreement or Transaction to which that "participating institution" is party. Specific obligations or liabilities relating to an eligible bank asset may be excluded from the acquisition.

Financial contracts between a "participating institution" and either a credit institution or a financial institution within the meaning of the Central Bank Act 1997 are excluded from the ambit of the Eligible Bank Assets.

Section 217 of the NAMA Act provides that nothing in the NAMA Act affects the operation of the Netting Act, the Collateral Regulations or the Winding-Up Regulations in relation to an agreement to which a participating institution is party.

4. MODIFICATIONS TO QUALIFICATIONS

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

4.1.1 Qualification 4.4 shall not apply and shall be substituted in full as set out below:

(a) Winding-Up Regulations

(i) The Winding-Up Regulations implement the Winding-Up Directive in Ireland and establish for credit institutions to which it applies the general principle, except as expressly provided to the contrary, that Reorganisation Measures, which in Ireland include examinership, and Winding up Proceedings are to be commenced under Irish law in respect of an Irish Licensed Bank (including any branch of that entity in other Member States). Further where such a measure or proceeding is imposed by the competent authority of another Member State, where the credit institution is authorised, then the measure/proceeding is to be recognised without further formality in Ireland in respect of the credit institution (including any branch of the institution in Ireland) as soon as it takes effect under the laws of that other Member State.

(ii) The Winding-up Regulations also expressly provides for the effect of a Reorganisation Measure or Winding-Up Proceedings on certain contracts and include express provision that a netting agreement to which a credit institution (which term includes an Irish Licensed Bank and a Foreign Bank) is a party is to be governed solely by the law of contract that governs such an agreement (Regulation 30 of the

Winding-Up Regulations). To the extent that foreign law is applied, results other that those opined upon herein, may arise.

SCHEDULE 2
INVESTMENT FIRMS / BROKER DEALERS

Subject to the modifications and additions set out in this Schedule 2 (*Investment firms / broker dealers*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are investment firms / broker dealers. For the purposes of this Schedule 2 (*Investment firms / broker dealers*), the terms "investment firm" or "broker dealer" when used herein means a company incorporated under the Irish Companies Acts that either holds an authorisation pursuant to the IIA (an "**IIA Entity**"), or, holds an authorisation as an investment firm pursuant to the MiFID Regulations (a "**MiFID Entity**").

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

The terms of the opinion letter as they apply to Irish Companies apply in full such that this Schedule 2 (*Investment firms / broker dealers*), shall be read as if such provisions were set out, mutatis mutandis, in full herein other than as modified by this Schedule 2.

Except where the context otherwise requires:

1. references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules);
2. references to "*section*" are to sections of this Schedule;
3. "**Client Asset Requirements**" those requirements imposed by the Central Bank of Ireland on investment firms who hold client assets (terms defined therein) pursuant to Regulation 79 of the MiFID Regulations and on investment business firms authorised to hold client assets (terms defined therein) pursuant to Section 52 of the IIA;
4. the "**IIA**" means the Investment Intermediaries Act, 1995;
5. "**Irish Companies Acts**" means Companies Acts 1963 to 2005 and Parts 2 and 3 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006, the Companies (Amendment) Act 2009, the Companies (Miscellaneous Provisions) Act 2009 and the Companies (Amendment) Act 2012, all enactments which are to be read as one with, or construed or read together as one with, the Companies Acts and every statutory modification and re-enactment thereof for the time being in force;
6. "**MiFID**" means Directive 2004/39/EC of the European Parliament and of the Council of 21st April 2004 on markets in financial instruments as amended by Directive 2006/31/EC of 5th April 2006 and Directive 2006/73/EC of 10th August 2006 as regards organisational requirements and operating conditions for investment firms and defined terms for Directive 2004/39/EC; and
7. "**MiFID Regulations**" means the European Communities (Markets in Financial Instruments) Regulations 2007 (as amended).

Paragraph 1.13.7 is deemed deleted and replaced with the following:

"**Insolvency Proceedings**" means the procedures listed below where governed by Irish law:

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

1. those insolvency proceedings set out in the opinion letter as they apply to Irish Companies such that this Schedule 2 (*Investment firms / broker dealers*) shall be read as if such provisions were set out, mutatis mutandis, in full herein;

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

1. the following voluntary procedures are included, "receivership", "compromise" and "examinership";

2. the following appointee is included in the definition of Custodian "receiver and manager";

3. the following involuntary procedures are included, "compromise", "receivership" and "examinership".

2. ADDITIONAL QUALIFICATIONS

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

2.1.1 An IIA Entity may be required pursuant to client money requirements made under Section 52 of the IIA to procure the agreement of the other Party not to set off any amount due from him to the IIA Entity in respect of Transactions made by the IIA Entity for any of its clients whose monies are required to be treated as client monies against any amount due from the IIA Entity. This requirement was maintained by the MiFID Regulations and subsists by virtue of Regulation 79(3) thereof; together with the requirements set down in section 52 of the IIA these form the subject of the Client Asset Requirements.

2.1.2 ***Supervisory Restrictions***

IIA

Provisions similar to those described in Schedule 1 (*The Governor and Company of the Bank of Ireland, an Irish Licensed Bank or a Foreign Bank with an Irish Branch*) of this opinion letter (regarding Section 21 of the CBA) apply to IIA Entitles (Section 21 of the IIA) and to such entitles whose authorisation has been revoked or who were previously authorised (Section 16 of the IIA).

MiFID Entity

Provisions similar to those described in Schedule 1 (*The Governor and Company of the Bank of Ireland, an Irish Licensed Bank or a Foreign Bank with an Irish Branch*) of this opinion letter (regarding Section 21 of the CBA) apply to MiFID Entities (Regulation 148 MiFID Regulations) and to such entities whose authorisation has been revoked (Regulation 21 MiFID regulations).

Investor Compensation

Provisions similar to those described in Schedule 1 (*The Governor and Company of the Bank of Ireland, an Irish Licensed Bank or a Foreign Bank with an Irish Branch*) of this opinion letter (regarding Section 21 of the CBA) above apply to certain investment business firms (including an IIA Entity), pursuant to Section 27 of the

ICA and Section 28 of the ICA for failure to comply with certain provisions of the ICA.

SCHEDULE 3
PARTNERSHIPS

Subject to the modifications and additions set out in this Schedule 3 (*Partnerships*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are partnerships. For the purposes of this Schedule 3 (*Partnerships*), "**Partnership**" means a partnership within the meaning of the Partnership Act, 1890 (as amended) (the "**1890 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 "*section*" are to sections of this Schedule.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1.1 The terms of the opinion letter as they apply to Irish Companies apply herein in full such that this Schedule 3 (*Partnerships*) shall be read as if such provisions were set out, mutatis mutandis, in full herein and apply to a partner which is an Irish Company;

1.1.2 The terms of Schedule 5 (*Individuals*) of this opinion letter as they apply to individuals apply herein in full such that this Schedule 3 (*Partnerships*) shall be read as if such provisions were set out, mutatis mutandis, in full herein and apply to a partner who is an individual.

1.1.3 Paragraph 1.13.7 is deemed deleted and replaced with the following

"**Insolvency Proceedings**" means the procedures listed below where governed by Irish law

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

(a) those insolvency proceedings set out in the opinion letter as they apply to Irish Companies such that this Schedule 3 (*Partnerships*) shall be read as if such provisions were set out, mutatis mutandis, in full herein and apply to the insolvency of a corporate partner;

(b) those insolvency proceedings set out in Schedule 5 (*Individuals*) of this opinion letter as they apply to individuals such that this Schedule 3 (*Partnerships*) shall be read as if such provisions were set out, mutatis mutandis, in full herein and apply to the bankruptcy of a partner who is an individual;

(c) 1890 Act: bankruptcy of the firm

(i) Every partnership may be wound up by means of an application to court by a partner seeking a decree of dissolution (section 35 1890 Act). Where a partnership is unable to pay its debts a partner may seek a court dissolution under Section 35 of the 1890 Act on the grounds that the business of the partnership can only be carried on at a loss (s35(e)) or on the grounds that it is just and equitable (s35(f)). Such a winding up will usually be compulsory in the sense that not all the partners will wish to have the firm wound up. Unlike the

position of creditors of companies under the Irish Companies Acts, a creditor of a partnership has no standing to seek the winding up of a Partnership under the 1890 Act however, both the Stock Exchange Act 1995 and the IIA give the Central Bank of Ireland the right to apply to court for the dissolution of certain types of partnership.

(d) Irish Companies Acts

(i) As referred to in this letter opinion under section 344 – 345 of the Irish Companies Acts, a partnership of eight or more partners may be wound up as an unregistered company. This form of winding up permits a petition to wind up by a creditor of the firm.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings without the need for any additions. However we recommend that:

1. the following voluntary procedures are included, "receivership", "compromise" and "examinership";

2. the following appointee is included in the definition of Custodian "receiver and manager"; and

3. the following involuntary procedures are included, "compromise", "receivership" and "examinership".

2. ADDITIONAL ASSUMPTIONS

We assume the following:

2.1.1 that there are no partners of minor age in the Partnership;

2.1.2 that all partners who are individuals are alive and of sound mind and have not been made a ward of court at the time of entry into, and throughout the duration of the Agreements;

2.1.3 that the Partnership is not illegal and will remain valid and subsisting during the life of the Agreements;

2.1.4 that the entry into of the Agreements, the Security Interest Provisions and any Transactions by the partners will not breach or be inconsistent with the terms of the partnership agreement which governs their particular Partnership and that all partners are capable of performing their part of the partnership agreement; and

2.1.5 that the entry into of the Agreements, the Security Interest Provisions and any Transactions by the partners is an act within the ordinary course of business of the relevant Partnership in accordance with the 1890 Act and does not prejudicially effect the carrying on of the business of the relevant Partnership.

3. ADDITIONAL QUALIFICATIONS

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

4.1.2 a Partnership is not a separate legal entity but an aggregate of its partners. As a matter of Irish law a contract which is entered into with a Partnership will be a

contract with that Partnership, as from time to time constituted. A partner is an agent of the relevant Partnership and his other partners for the purposes of the business of the partners;

4.1.3 under the Netting Act, in order to satisfy the definition of a "*netting agreement*", Transactions would be required, inter alia, to be between two parties only. If a Partnership was counterparty to a Transaction, we consider that the relevant Transaction could nevertheless constitute an agreement between two parties only. Our view in this regard is based on Section 1A(2)(a) of the Netting Act, which provides that "party" includes:

"*any number of persons who share a single, identical interest in the agreement referred to subsequently in this definition if there is no differentiation in the rights and obligations of each of them in that agreement*"

Provided that the rights and obligations of the partners were identical and not subject to any differentiation, and that the other requirements of the Netting Act were satisfied, such an agreement would be capable of constituting a "netting agreement" for the purposes of the Netting Act.

3.1.1 There is no system of registration in respect of security created by a partnership in Ireland.

SCHEDULE 4

Insurance Company

Subject to the modifications and additions set out in this Schedule 4 (*Insurance Company*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Insurance Companies. For the purposes of this Schedule 4 (*Insurance Company*), "**Insurance Company**" means a company incorporated under the Irish Companies Acts and authorised as a **Life Assurance Undertaking** under the European Communities (Life Assurance) Framework Regulations 1994 or authorised as a **Non-Life Insurance Undertaking** under the European Communities (Non-Life Insurance) Framework Regulations 1994.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

The terms of the opinion letter as they apply to Irish Companies apply herein in full such that this Schedule 4 (*Insurance Company*) shall be read as if such provisions were set out, mutatis mutandis, in full herein except as otherwise modified hereby. Notwithstanding the above, all references to the Insolvency Regulation shall be disapplied in respect of Insurance Companies.

Except where the context otherwise requires:

1. references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules);

2. references to "*sections*" are to sections of this Schedule;

3. "**Insolvency Regulation**" means Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings;

4. "**Insurance Winding-Up Directive**" means Directive 2001/17/EC of the European Parliament and the Council of 19 March 2001 on the reorganisation and winding-up of Insurance Undertakings.

5. "**Insurance Winding-Up Regulations**" means the European Communities (Reorganisation and Winding-up of Insurance Undertakings) Regulations 2003 (S.I No. 168 of 2003).

6. "**Life Regulations**" means the European Communities (Life Assurance) Framework Regulations 1994; and

7. "**Non-Life Regulations**" means the European Communities (Non-Life Insurance) Framework Regulations 1994.

Paragraph 1.13.7 is deemed deleted and replaced with the following:

> "**Insolvency Proceedings**" means the procedures listed below where governed by Irish law
>
> The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is Insurance Company could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

1. those insolvency proceedings set out in the opinion letter as they apply to Irish Companies (i.e. "the **Insolvency Proceedings**" as defined in paragraph 1.13.7 of the opinion letter) such that this Schedule 4 (*Insurance Company*) shall be read as if such provisions were set out, mutatis mutandis, in full herein and apply to the insolvency of an Insurance Company. Notwithstanding the foregoing, the opinions given in respect of the Insolvency Regulation shall not apply to Irish Insurance Companies.

2. **Court Protection – Administration – Insurance (No. 2) Act 1983**

Administration is a Court sanctioned procedure which is available to the Central Bank under Irish insurance legislation in respect of an Insurance Company in distress. On the application of the Central Bank, the Court can appoint an Administrator to an Insurance Company where the Court considers that:

(a) the manner in which the business of the Insurance Company is being or has been conducted has failed to make adequate provision for its debts, including contingent and prospective liabilities, or

(b) the business of the Insurance Company is being or has been so conducted as to jeopardise the rights and interests of persons arising under policies issued by the insurer, or

(c) the Insurance Company has become unable to comply with its statutory obligations in a material respect; and

(d) that the making of such order for administration and the appointment of an Administrator would assist in the maintenance, in the public interest, of the proper and orderly regulation and conduct of insurance business or reinsurance business.

Any Administrator so appointed shall take over the management of the business of the Insurance Company and carry on that business as a going concern with a view to placing the Insurance Company on a sound commercial and financial footing. The Administrator shall have all such powers as may be necessary or incidental to his functions including the sole authority over and direction of all officers and employees of the insurer.

The appointment of an Administrator has the following effect:

(i) the Administrator shall have power to sell the property of the Insurance Company (i.e. the power to dispose of all and any part of the business, undertaking or assets of an Insurance Company) and all statutory provisions shall apply to him as if he were a liquidator appointed by the Court, and

(ii) the Court shall have all the powers that it would in the event that it had made a winding-up order and appointed a liquidator in respect of the Insurance Company concerned, and

(iii) the Court shall have all the functions that it would have in the event that a petition had been presented for the winding-up of the Insurance Company.

For as long as the appointment of the Administrator shall continue the following provisions, amongst others, shall have effect:

(i) no winding-up proceedings or resolution may be commenced or passed without the prior sanction of the Court;

(ii) no receiver over any part of the property of the Insurance Company may be appointed without the prior sanction of the Court;

(iii) no attachment, sequestration, distress or execution shall be put in force against the property or effects of the insurer without the prior sanction of the Court;

(iv) all the functions of the directors or any committee of management of the Insurance Company shall be performable only by the Administrator and all the powers of the Insurance Company exercisable by general meeting shall be exercisable only by the Administrator subject to the sanction of the Court.

If the Court so declares the Administrator shall not be bound or shall be bound only to the extent or in the manner specified in the declaration by any rule, regulation or other provision of the Insurance Company concerned (whether contained in the memorandum and articles of association of the Insurance Company or in any other document relating to the constitution of the Insurance Company or in any agreement or in any other document whatsoever) restricting or defining the classes or categories of persons to whom the Insurance Company may issue policies or the terms upon which it may issue policies.

3. **Power to issue Directions in case of doubtful solvency**

The Central Bank may issue directions requiring an Insurance Company to refrain from taking on new business or making new investments of a particular type, to maintain assets at a level equal to its liabilities in respect of business carried on in Ireland, to realise investments of a particular class or description or such further measures as may be required. The circumstances in which the Central Bank can issue such directions include the doubtful solvency of the Insurance Company, or where the Insurance Company has failed to comply with its statutory obligations or made inadequate reinsurance arrangements. Failure to comply with a direction can result in suspension or revocation of the Insurance Company's licence. The Central Bank may also issue directions pursuant to other legislative powers where the Insurance Company has failed to maintain the required minimum solvency amount, failed to comply with the requirements for technical provisions, policyholder interests are prejudiced etc. The Central Bank may also issue directions restricting or prohibiting the Insurance Company from freely disposing of its assets.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings without the need for any additions. However we recommend that:

1. the following voluntary procedures are included, "receivership", "compromise" and "examinership";

2. the following appointee is included in the definition of Custodian "receiver and manager"; and

3. the following involuntary procedures are included, "compromise", "receivership", "examinership" and "administration".

2. ADDITIONAL ASSUMPTIONS

We assume:

2.1.1 That in respect of an Insurance Company, participation in an Agreement, the Security Interest Provisions and any Transaction is a permissible activity under the Insurance Company's conditions of authorisation, approved investment policy and investment mandate and all other binding rules, regulations, and codes of conduct issued by the Central Bank of Ireland (the "**Central Bank**").

2.1.2 That any assets that the Insurance Company uses for the Agreement (including without limitation as collateral provided pursuant to the Security Interest Provisions) is not counted towards the assets representing technical reserves or solvency margin of the Insurance Company (i.e. it constitutes "*free assets*") of the Insurance Company which are not earmarked for any regulatory purpose, such that there is no specific regulatory impediment to it entering into the Security Interest Provisions.

3. ADDITIONAL QUALIFICATIONS

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

3.1.1 The Insurance Winding-Up Directive provides that with respect to assets representing the technical provisions[5] of an Insurance Company, a Member State must ensure that insurance claims (broadly these include policy holder claims and other valid claims under an insurance policy), take precedence over all other claims on the insurance undertaking. The Insurance Winding-Up Directive allows Member States to make exceptions to this for claims such as those relating to employment contracts and claims by public bodies on taxes. However, Ireland has not provided for these exceptions when it adopted the Insurance Winding-Up Regulations. The Insurance Winding-Up Regulations require certain procedures to be followed by Insurance Companies in the process of reorganisation or winding-up. The Regulations state, amongst other things, that policyholders' claims take absolute precedence over all other claims against the Insurance Company, in respect of assets forming part of technical reserves of the Insurance Company. This includes those of preferential creditors such as the Irish Revenue Commissioners. Only expenses arising out of the winding up are expressly excluded from this precedence given to policyholders' claims in respect of the assets representing technical reserves.

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[5] Technical Provisions are referred to as Technical Reserves in the Insurance Winding-Up Regulations.

3.1.2 The priority for policyholder claims in respect of assets representing to technical reserves on its face is absolute in all circumstances including receivership of an Irish Life Assurance Undertaking. It is arguable that it does not apply in the case of receivership for a number of reasons including that the legislation is enacted in the context of winding up and reorganisation measures only. However, as a general rule, Insurance Companies are required to maintain sufficient assets representing technical reserves to meet all policyholder liabilities. Further, the Insurance Winding-Up Regulations provide that where an asset of an Insurance Company is recorded in its register of assets representing technical reserves and is subject to a right in rem, (which is generally considered to include many forms of security), with the result that the value of the assets subject to the rights is not available for the purpose of covering commitments, this fact must be recorded in the register. The Insurance Winding-Up Regulations go on to provide that the value of the assets subject to the right in rem is not included in calculating whether the value of the assets comprised in the technical reserves meets the value required at law.

3.1.3 In the event that an Insurance Company enters into administration[6] in Ireland the business continues without interruption as a going concern. The appointment of an administrator does not result in the avoidance, cancellation or staying of any contract, policy, transaction, bank account or mandate or of any claims of the Insurance Company (the appointment does not of itself affect the security or the rights of the secured creditor, though it can be affected by it). No liquidator or receiver can be appointed for so long as the administrator stands appointed, without prior Court sanction. No attachment, sequestration, distress or execution may be put in force against the property or effects of the Insurance Company without prior Court sanction. The appointment of an administrator to an Insurance Company will constitute a reorganisation measure for the purposes of the Insurance Winding-Up Regulations. The reorganisation measure will be fully effective in accordance with Irish legislation throughout the EU.

3.1.4 There are exceptions in Article 18 of the Insurance Winding-Up Regulations regarding rights in rem affecting assets of an Insurance Company located in another Member State. Where the conditions in Article 18 are satisfied, the opening of the administration or liquidation in Ireland will have no effect on the rights in rem of a creditor in respect of tangible, moveable assets which change from time to time which are located in another member state. The rules of the Member State of the opening of proceedings relating to voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors may be relied upon to attempt to defeat rights in rem.

3.1.5 With regard to the opening of administration proceedings in Ireland and the existence of security over collateral situated overseas other than a Member State whether this protection would be recognised is a matter of the law of that jurisdiction. It is assumed that the foreign court would have regard to the protection and any application or representations made by an administrator thereto however advice in that jurisdiction is required.

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[6] Pursuant to section 2 of the Insurance (No. 2) Act, 1983

SCHEDULE 5
INDIVIDUALS

Subject to the modifications and additions set out in this Schedule 5 (*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 5 (*Individuals*), an "individual" means a natural person.

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

1.1.1 Paragraph 1.13.7 is deemed deleted and replaced with the following

"**Insolvency Proceedings**" means the procedures listed below where governed by Irish law:

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 as follows:

Bankruptcy

The formal insolvency procedure applicable under Irish law to natural persons is bankruptcy.

Irish bankruptcy laws apply to any natural person being a debtor who has (i) his COMI in Ireland (ii) his domicile in Ireland, (iii) is ordinarily resident in Ireland within one year of the petition, (iv) has had a dwelling house, place of business or (v) has carried on a business in Ireland and commits an act of bankruptcy as defined in the Bankruptcy Act, 1998 (the "**1988 Act**") and in this Schedule 5.

Insofar as a debtor of any other Member State (other than Denmark) is concerned, the Irish courts, may open and recognise bankruptcy proceedings in accordance with the procedures set out in paragraph 1.13.7 (*Cross Border Proceedings*) in this letter opinion and in respect of proceedings in all other countries, in accordance with paragraph 1.13.7 (*Acting in aid*) of this letter opinion above in respect of Irish Companies.

Bankruptcy - Adjudication – Sections 14 and 15 1988 Act

The Irish bankruptcy procedure may be initiated by a creditor or the debtor himself following the commission of an "act of bankruptcy". By far the most common act of bankruptcy on which a bankruptcy petition might be brought is the failure by the debtor to pay a creditor having been served with a bankruptcy summons. The debtor need not be insolvent and may be adjudicated a bankrupt as a consequence either of inability or unwillingness to discharge his debts. The making of an adjudication order activates certain provisions of the 1988 Act including those relating to fraudulent and voluntary conveyances and disclaimer of onerous property by the Official Assignee.

The adjudication procedure is initiated by the presentation of a petition, which is usually listed for hearing by the Court three to four weeks after the date of

presentation of the petition. Where the Court is satisfied that certain requirements have been complied with, it shall by order, adjudicate the debtor bankrupt. Where the petition is presented by the debtor the Court will, on proof that he is unable to meet his engagements with his creditors and that his available estate is sufficient to raise €1,900, by order, adjudicate the debtor bankrupt.

The procedure can last for up to 12 years. When the Personal Insolvency Act 2012 is commenced, certain charges will be made to the 1988 Act as follows:

(i) a creditor must be owed more than €20,000 to petition;

(ii) a debtor may only petition if his debts exceed his assets by at least €20,000 and he has made reasonable efforts to reach appropriate arrangements with his creditors by making a proposal in relation to a debt settlement arrangement or a personal insolvency arrangement to them;

(iii) in the case of either type of petition, the court must consider whether the matter could be more appropriately dealt with by way of debt settlement arrangement or a personal insolvency arrangement;

(iv) the automatic discharge period will be reduced from 12 years to 3 years (unless the court upholds a creditor's objections to such discharge); and

(v) persons adjudicated bankrupt more than 3 years earlier will be discharged after 6 months (subject to creditor objections).

Arrangements under control - Part IV 1988 Act [7]

Analogous to the comments set out above on examinership is the mechanism of arrangements under the control of the court in respect of debtors being natural persons. In this case, a debtor unable to meet his engagements with his creditors and wishing to place the state of his affairs before them with a view to making a proposal for the composition of his debts, under the control of the court, may present a petition to the court setting out the reasons for his inability to pay his debts and requesting that his person and property be protected until further order from any action or other process. Note however that secured creditors are not affected by such an order for Court protection nor are they bound by any scheme which might be brought forward pursuant to the arrangement, unless they waive their security.

The petition is made by way of standard form and supported by affidavit of the debtor setting forth the particulars of his assets of every kind and description, and where they are, together with estimated value of such assets and amount of liabilities.

The Court on hearing the petition may by order grant such protection and renew the same from time to time as it thinks fit and the debtor will be immune from any action or process for the duration of the protection.

Effect of the order

Where the order for protection is granted, the debtor cannot without the prior sanction of the Court pledge, depart with or dispose of his property or any part thereof save in the ordinary course of trade or business, and this applies so long as the order is in

[7] Part IV 1988 Act will be repealed once the Personal Insolvency Act, 2012 is fully commenced

force. The order acts to protect the debtor from execution against his assets, even where there is an execution order in the hands of the sheriff or county registrar.

Proposal for creditors

On the granting of an order for protection the court will direct that the arranging debtor call a preliminary meeting of his creditors to present a statement of assets and liabilities and direct that a private sitting be held before the Court to consider the proposal. Where three-fifths in number and value of the creditors voting at the private sitting accept the proposal, or any modification thereof, it shall be deemed to be accepted by the creditors subject to the approval of the Court. If approved by the Court it will be binding on the debtor and all persons who are creditors at the date of the petition and who had notice of the sitting. The proposal must be to pay a composition on all the debtor's unsecured debts and engagement or on such portion of his partly secured debts as is not covered by security or in such other forms as may be acceptable to his creditors. Preferential creditors must be discharged in full. The proposal may provide for the vesting of all or part of the arranging debtors' property in the Official Assignee either as security for the order or for the purposes of having the property realised and distributed by the Official Assignee in accordance with the terms of the approval.

Where the proposal of the debtor is carried into effect the Court will, on the report of the Official Assignee and in the absence of fraud, grant to the arranging debtor a certificate under the seal of the court which operates as a discharge to the debtor from the claims of creditor who received notice of the arrangement.

The Court may however adjudicate a petitioning debtor bankrupt where he does not comply with a number of requirements set out in Part IV of the 1988 Act, for example, where it appears that the debtor does not wish to make a bona fide arrangement with all his creditors.

Composition after Bankruptcy – Section 38 of the 1988 Act

A bankrupt may apply to the Court for a stay on the realisation of his estate to enable an offer of composition to be made by him to his creditors. A date will be fixed by the court for a meeting at which the creditors will vote on the offer. A Court will not ordinarily refuse approval of an offer accepted by three-fifths in number and value of the creditors unless it views the offer as unreasonable. Once the Personal Insolvency Act 2012 is commenced, a creditor whose debt is less than €500 will not be allowed to vote at such a meeting (previously, the figure was €130). Court approval will render the composition binding on the creditors. Where the composition fails the bankruptcy will proceed after the expiry of the term of the stay on realisation or earlier if the court removes the stay.

Statutory Deed of Arrangement – Deeds of Arrangement Act 1887

Where creditors of a bankrupt would not be inclined to accept a composition they have an option whereby they may require that the property of the debtor be assigned to a trustee for realisation and distribution. This arrangement occurs outside the control of the Court. This process will ordinarily be used where the number of creditors is small, and where each of the creditors can rely on all of their number joining in the deed as, a conveyance or assignment of all or substantially all of the debtor's property to a trustee for the benefit of creditors generally will constitute an act of bankruptcy and as such may found a petition for adjudication by a creditor who has not assented to or joined in the deed. The deed must be filed in the Central Office

of the High Court within 7 days of execution, failure to do so will render the deed void.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings without the need for any additions. However we recommend that:

1. the following voluntary procedures are included, "receivership", "adjudication" and "compromise";

2. the following appointee is included in the definition of Custodian "receiver and manager" and "Official Assignee";

3. the following involuntary procedures are included, "compromise", "adjudication" and "receivership";

4. the words "or commits an act of bankruptcy" are inserted after the words "or is bankrupt or insolvent" where such wording so appears.

2. ADDITIONAL ASSUMPTIONS

We assume the following:

2.1.1 That any Party being a party as described in Schedule 5 is alive, of sound mind and has not been made a ward of court at the time of entry into, and throughout the duration of the Agreements.

3. ADDITIONAL QUALIFICATIONS

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

Limitations arising from insolvency law

3.1.1 Section 57 of the 1988 Act provides for the avoidance of fraudulent preferences. Section 57 states, inter alia, that every conveyance or transfer of property or charge thereon, every payment made, every obligation incurred by an individual unable to pay his debts as they become due from his own money in favour of any creditor, with a view to giving such creditor a preference over other creditors, shall if the person making the payment, conveyance, transfer, etc. is adjudicated bankrupt within one year[8] of the date of payment, conveyance, transfer etc. be deemed fraudulent and void as against the Official Assignee in Bankruptcy. Where a transaction is set aside pursuant to Section 57 of the 1988 Act, the Court will normally order the return of the property transferred, and the preferred creditor will rank *pari passu* with other unsecured creditors in the distribution of assets. The onus of proof is on the Official Assignee, who must establish that the dominant motive of the debtor was to prefer.

[8] Please note that once the Personal Insolvency Act 2012 is commenced, this period will be extended to three years

3.1.2 Section 58 of the Act provides that where a debtor commits an act of bankruptcy within one year[9] prior to being adjudicated bankrupt, and thereafter sells any of his property at a price which the Court believes to be below value, or enters into a transaction which would substantially reduce the sum available for distribution to creditors, such a transaction will be void against the Official Assignee. The onus will be on the person benefitting from the transfer to prove that the transaction was bona fide entered into and the other party had not at the time of the transaction notice of any prior act of bankruptcy committed by the bankrupt.

3.1.3 Section 59 of the Act provides that any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall be void as against the Official Assignee if the settler is adjudicated bankrupt within two years[10] after the date of the settlement and, if the settler is adjudicated bankrupt within five years after the date of settlement, the settlement shall be void as against the Official Assignee unless the parties claiming under the settlement prove that the settler was, at the time of making the settlement, able to pay all of his debts without the aid of property comprised in the settlement and that interest of the settler in such property passed to the trustee of such settlement on the execution thereof.

Arrangements under control - Part IV 1988 Act

3.1.4 Analogous to the comments set out above on examinership is the mechanism of arrangements under the control of the court in respect of debtors being natural persons. In this case, a debtor unable to meet his engagements with his creditors and wishing to place the state of his affairs before them with a view to making a proposal for the composition of his debts, under the control of the court, may present a petition to the court setting out the reasons for his inability to pay his debts and requesting that his person and property be protected until further order from any action or other process. Note however that secured creditors are not affected by such an order for Court protection nor are they bound by any scheme which might be brought forward pursuant to the arrangement, unless they waive their security.

3.1.5 The Court on hearing the petition may by order grant such protection and renew the same from time to time as it thinks fit and the debtor will be immune from any action or process for the duration of the protection.

3.1.6 Where the order for protection is granted, the debtor cannot without the prior sanction of the Court pledge, depart with or dispose of his property or any part thereof save in the ordinary course of trade or business, and this applies so long as the order is in force. The order acts to protect the debtor from execution against his assets, even where there is an execution order in the hands of the sheriff or county registrar.

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[9] Please note that once the Personal Insolvency Act 2012 is commenced, this period will be extended to three years

[10] Please note that once the Personal Insolvency Act 2012 is commenced, this period will be extended to three years

Collateral Regulations and Netting Act

3.1.7 A natural person cannot constitute a Qualifying Counterparty for the purposes of the Collateral Regulations. A natural person can constitute a 'party' for the purposes of the Netting Act.

Perfection

3.1.8 There is no comprehensive system of registration of security in respect of individuals in Ireland. Where an individual or a group of individuals working together as a partnership create a mortgage or charge over "personal chattels" as security for any debt or for the payment of money such agreement will be deemed to be a bill of sale and must be registered in accordance with the bills of sale legislation in order to create effective security. [11] Only in such a case, the security document must be duly attested and registered within 7 days of its creation if executed in Ireland or if it is executed outside Ireland within 7 days after the time at which it would normally arrive in Ireland if posted immediately after its execution in accordance with the Bills of Sale (Ireland) Acts 1879 and 1883.

[11] "Personal chattels" means *goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale*

ANNEX A

"**act of bankruptcy**"

(1) An individual (natural person) (in the 1998 Act called a "debtor") commits an act of bankruptcy in each of the following cases—

(*a*) if in the State or elsewhere he makes a conveyance or assignment of all or substantially all of his property to a trustee or trustees for the benefit of his creditors generally;

(*b*) if in the State or elsewhere he makes a fraudulent conveyance, gift, delivery or transfer of his property or any part thereof;

(*c*) if in the State or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this or any other Act be void as a fraudulent preference if he were adjudicated bankrupt;

(*d*) if with intent to defeat or delay his creditors he leaves the State or being out of the State remains out of the State or departs from his dwelling-house or otherwise absents himself or evades his creditors;

(*e*) if he files in the Court a declaration of insolvency;

(*f*) if execution against him has been levied by the seizure of his goods under an order of any court or if a return of no goods has been made by the sheriff or county registrar whether by endorsement on the order or otherwise;

(*g*) if the creditor presenting a petition has served upon the debtor in the prescribed manner a bankruptcy summons, and he does not within fourteen days after service of the summons pay the sum referred to in the summons or secure or compound for it to the satisfaction of the creditor.

"**Official Assignee**" means the official assignee in bankruptcy for the time being and his successors as and when appointed, or, where appropriate, the trustee in bankruptcy;

"**1988 Act**" means the Bankruptcy Act 1988;

NB – when section 143 of the Personal Insolvency Act 2012 is commenced, the following will be inserted in the definition of "**act of bankruptcy**":

(ca) the individual has been subject as a debtor to a debt settlement arrangement which has been terminated under section 83 of the Personal Insolvency Act 2012;

(cb) the individual has been subject as a debtor to a debt settlement arrangement which under section 84 of the Personal Insolvency Act 2012 is deemed to have failed;

(cc) the individual has been subject as a debtor to a personal insolvency arrangement which has been terminated under section 122 of the Personal Insolvency Act 2012;

(cd) the individual has been subject as a debtor to a personal insolvency arrangement which under section 123 of the Personal Insolvency Act 2012 is deemed to have failed.

SCHEDULE 6

SPECIAL FUND ENTITIES

Subject to the modifications and additions set out in this Schedule 6 (*Special fund entities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are special fund entities. For the purposes of this Schedule 6 (*Special fund entities*), "Special fund entities" means (i) an investment company incorporated under the Irish Companies Acts and authorised by the Central Bank under Part XIII of the 1990 Act or the UCITS Regulations; (ii) a unit trust duly formed, and authorised by the Central Bank, under the Unit Trusts Act or the UCITS Regulations; (iii) a common contractual fund duly formed, and authorised by the Central Bank, under the Investment Funds, Companies and Miscellaneous Provisions Act 2005 or the UCITS Regulations; (iv) an investment limited partnership duly formed, and authorised by the Central Bank, under the Investment Limited Partnerships Act, 1994; or (v) an Unregulated Trust.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1.1 The terms of the opinion letter as they apply to Irish Companies apply herein in respect of an Investment Company and a corporate trustee in full such that this Schedule 6 (*Special fund entities*) shall be read as if such provisions were set out, mutatis mutandis, in full herein except as otherwise modified hereby.

Except where the context otherwise requires:

1. references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules);

2. references to "*sections*" are to sections of this Schedule;

3. "**CCF**" means either (i) a common contractual fund duly formed, and authorised by the Central Bank, under the Investment Funds, Companies and Miscellaneous Provisions Act, 2005, or (ii) a common contractual fund duly formed, and authorised by the Central Bank, under the UCITS Regulations;

4. "**Central Bank**" means the Central Bank of Ireland;

5. "**Constitutive Documents**" means the constitutional documentation establishing the Special fund entity and regulating its operation including without prejudice to the generality of the foregoing its certificate of incorporation, memorandum and articles of association, prospectus, trust deed, deed of constitution, partnership agreement, custodian agreement, management agreement, investment management agreement and any other relevant service provider agreement, any authorisations and consents from the Central Bank and any other relevant regulator and includes all such documentation which is applicable to the Special fund entity and the corporate trustee or otherwise relevant to the Special fund entity.

6. "**Investment Company**" means either (i) an investment company incorporated under the Irish Companies Acts and authorised by the Central Bank under Part XIII of the 1990 Act or (ii) an investment company incorporated under the Iirsh Companies Acts, and authorised by the Central Bankunder the UCITS Regulations;

7. **"ILP"** means limited partnership duly formed and authorised by the Central Bank under the Investment Limited Partnerships Act, 1994;

8. "**UCITS Regulations**" means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 as amended;

9. "**Unit Trust**" means a unit trust authorised by the Central Bank under the Unit Trusts Act or the UCITS Regulations;

10. "**Unit Trusts Act**" means the Unit Trusts Act, 1990;

11. "**Non-corporate Special fund entity**" means a CCF, an ILP, a Unit Trust or an Unregulated Trust;

12. "**Unregulated Trust**" means a trust established by a trust deed as an express trust, which is not regulated by the Central Bank; and

13. "**1990 Act**" means the Companies Act, 1990.

Paragraph 1.13.7 is deemed deleted and replaced with the following

"**Insolvency Proceedings**" means the procedures listed below where governed by Irish law

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Special 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:

1. Investment Company

   Those insolvency proceedings set out in the opinion letter as they apply to Irish Companies such that this Schedule 6 (Special fund entities), shall be read as if such provisions were set out, mutatis mutandis, in full herein and shall apply as appropriate to the insolvency of an Investment Company.

2. Unit Trust

   (a) the provisions governing the winding-up of a Unit Trust will be set out in the trust deed constituting the Unit Trust.

   (b) Unit Trusts have trustees which are regulated by the Central Bank. The assets of the Unit Trust are held on a segregated basis by the trustee and in the event of the insolvency of the trustee should be ring-fenced. The distribution of assets of a Unit Trust occurs in accordance with the provisions of the trust deed constituting the Unit Trust. These usually provide for the payment of trust assets pro rata to unitholders after discharge of the payment of the liabilities of the trust (including any trustee liens over the assets of the trust). In the event of security having been granted over the assets of the Unit Trust, this will be dealt with in accordance with the terms of the security document creating the security. Usually the secured creditor should rank ahead of the ordinary unsecured creditors of the trust, with the costs of the realisation by the secured creditor usually being paid before the secured creditors claim but after any trustee lien. In the case of a deficiency of trust assets, subject to the terms of the trust deed, the trustee will be liable for any loss arising from its

negligence, fraud, bad faith, wilful default or recklessness in the performance of its duties in the case of a Unit Trust authorised under the Unit Trusts Act, and for any loss arising from its unjustifiable failure to perform or its improper performance of its duties in the case of a Unit Trust authorised under the UCITS Regulations.

3. ILP

(a) An ILP is wound up by the general partners in accordance with the provisions of the partnership agreement unless the Irish courts otherwise order on the application of a partner or creditor in accordance with Section 38 of the Investment Limited Partnerships Act 1994.

(b) Section 38(3) of the Investment Limited Partnerships Act, 1994 provides that Part X of the Companies Act, 1963 (i.e., the provisions governing the winding-up of unregistered companies; see paragraph 1.13.7 of the opinion letter) shall, with certain modifications, apply to the winding-up of an ILP by the court as it would to an unregistered company irrespective of the number of partners.

4. CCF

(a) The provisions governing the winding-up of a CCF will be set out in the deed of constitution constituting the CCF.

(b) CCFs have custodians which are regulated by the Central Bank. The assets of the CCF are held on a segregated basis by the custodian and in the event of the insolvency of the custodian should be ring-fenced. The distribution of assets of a CCF occurs in accordance with the provisions of the deed of constitution constituting the CCF. These usually provide for the payment of fund assets pro rata to unitholders after discharge of the payment of the liabilities of the CCF (including any custodian liens over the assets of the fund). In the event of security having been granted by the CCF, this will be dealt with in accordance with the terms of the security document creating the security. Usually the secured creditor should rank ahead of the ordinary unsecured creditors of the CCF, with the costs of the realisation by the secured creditor usually being paid before the secured creditors claim but after any custodian lien.

3.1.5 Unregulated Trust

(a) Unregulated Trusts have corporate trustees and detailed in our opinion at 1.13.7 as it applies to Irish Companies are the insolvency procedures which apply to corporate trustees with the corporate structures detailed therein. These rules are relevant to the distribution of the assets of the trustee and not the trust assets themselves. A liquidator of a trustee apparently has the power to conduct a trusteeship and as a practical matter may distribute trust assets to avoid the need to appoint a new trustee. The distribution of trust assets in the case of an Unregulated Trust occurs in accordance with the provisions of the trust deed constituting the Unit Trust. These usually provide for the payment of trust assets pro rata to beneficiaries after discharge of the payment of the liabilities of the

trust. In the event of security having been granted by the Unit Trust, this will be dealt with in accordance with the terms of the security document creating the security. Usually the secured creditor should rank ahead of the ordinary unsecured creditors of the trust, with the costs of the realisation by the secured creditor usually being paid before the secured creditors claim. In the case of a deficiency of trust assets the trustee can have personal liability for the deficit subject to any limited recourse provisions of the trust deed or under the contract where the liability was incurred.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings without the need for any additions. However we recommend that:

1. the following voluntary procedures are included, "receivership", "compromise" and "examinership";

2. the following appointee is included in the definition of Custodian "receiver and manager";

3. the following involuntary procedures are included, "compromise", "receivership" and "examinership".

2. ADDITIONAL ASSUMPTIONS

We assume the following:

2.1.1 that the Agreement has been duly and properly executed by both Parties or in the case of a Non-corporate Special fund entity it has been executed by the Special fund entity's trustee, custodian, general partner, manager and/or investment manager (as applicable) in accordance with its Constitutive Documents, with, in the case of sub-funds of an umbrella fund, appropriate segregation of liability wording;

2.1.2 that each Counterparty has obtained, complied with the terms of and maintained all authorisations, approvals, licences, relevant legal, regulatory and compliance requirements including without limitation the notices, guidelines and requirements from time to time of the Central Bank to which it is subject, and consents required to enable it lawfully to enter into deliver and perform its obligations under the Agreement, the Security Interest Provisions and Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the Agreement in this jurisdiction;

2.1.3 that the Investment Company, if an umbrella fund authorised before 30 June 2005, has segregated liability between sub-funds;

2.1.4 that during the life of the Agreement, any trustee/custodian, general partner, manager and/or investment manager (as applicable) which executes the Agreement in respect of a Non-corporate Special fund entity will remain unchanged; and

2.1.5 The execution, delivery and performance of the Agreement including the Security Interest Provisions (i) does not and will not contravene the laws of any jurisdiction outside Ireland, (ii) does not and will not result in any breach of any agreement, instrument or obligation to which they are a party including its Constitutive

Documents and is not and (iii) will not be illegal or unenforceable by virtue of the laws of that jurisdiction.

3. ADDITIONAL QUALIFICATIONS

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

3.1.1 As a trust will typically be wound up in accordance with the provisions of the trust deed, and an ILP will typically be wound up in accordance with the provisions of the partnership agreement and a CCF will typically be wound up in accordance with the provisions of the deed of constitution, same will need to be reviewed on a case by case basis to ensure that the events specified in the Insolvency Events of Default Clause adequately capture the winding up mechanic.

3.1.2 It should be noted that the requirement for two parties to come within the scope of the Netting Act envisages that each is a person constituting one of the parties to the agreement.

3.1.3 A Unit Trust is constituted by a trust deed entered into by a management company and a trustee but beneficial ownership of the trust remains with the Unit Trust's unitholders. A Unit Trust does not have separate legal personality and contracts in relation to the trust or a particular sub-fund are entered into by the trustee or the management company in respect of the trust or a particular sub-fund of the trust.

3.1.4 Similarly, a CCF is constituted by a deed of constitution entered into by the management company and the custodian, but beneficial ownership of the CCF's assets remains with the unitholders and each unitholder in the CCF is entitled to an undivided co-ownership interest as a tenant in common with the other unitholders in the assets of the CCF. A CCF is an unincorporated body and therefore does not have legal personality. Contracts in relation to the CCF or a particular sub-fund are entered into by the custodian or management company on behalf of the CCF or a particular sub-fund of the CCF.

3.1.5 An ILP does not have separate legal personality and contracts in relation to the ILP are entered into by the general partner or by the custodian on behalf of the ILP.

3.1.6 Segregation of liability between sub-funds of a Unit Trust or a CCF constituted as an umbrella fund (ILPs cannot be established as umbrella funds) is provided for in the trust deed or deed of constitution respectively, and is typically also agreed as a matter of contract in agreements entered into by the management company or trustee/custodian on behalf of the Unit Trust or CCF respectively.

3.1.7 There is no express recognition of the fact that Non-corporate Special fund entities act through other legal persons in the Netting Act. Notwithstanding this we are of the view that the Unit Trust, CCF or ILP acting through its custodian/trustee, management company or general partner as a party to the Transaction should constitute a party for the purposes of the Netting Act.

3.1.8 Collective investments undertakings are outside the scope of the Insolvency Regulation and the opinion should be read and construed accordingly.

3.1.9 In the case of Funds authorised by the Central Bank, the Fund's Constitutive Documents must be complied with at all times and must be reviewed on a case by case basis to confirm the existence of requisite capacity and compliance with any limits including, but not limited to counterparty exposure and the granting of security.

3.1.10 Pursuant to Regulation 131 of the UCITS Regulations, the Central Bank has the power to give a direction in writing to the management company, investment company or trustee requiring it to wind-up an Investment Company, a Unit Trust or a CCF, irrespective of whether the Special fund entity is authorised under the UCITS Regulations or the relevant non-UCITS legislations (i.e., the 1990 Act, the Unit Trusts Act, or the Investment Funds, Companies and Miscellaneous Provisions Act, 2005) where the Central Bank is of the opinion that:

(a) it is in the public interest;
(b) it is in the interests of the orderly and proper regulation of the Special fund entity;
(c) any of the requirements for authorising the Special fund entity are no longer satisfied; or
(d) the management company, investment company or trustee of such Special fund entity:
(i) has become or is likely to become unable to meet its obligations to its creditors;
(ii) has contravened any provision of the UCITS Regulations, or has failed to comply with any condition or requirement imposed under the UCITS Regulations by the Central Bank, or in purported compliance with any such provision, has provided the Central Bank with information that it knows to be false, inaccurate or misleading; (iii) is not maintaining adequate capital resources having regard to the volume and nature of its business; or
(iv) no longer complies with the capital or other financial requirements imposed by the Central Bank from time to time.

3.1.11 Similarly, pursuant to Section 33 of the Investment Limited Partnerships Act, 1994, the Central Bank has the power to give a direction to wind-up an ILP.

SCHEDULE 7

TRUSTS

Subject to the modifications and additions set out in this Schedule 7 (*Trusts*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Trusts. For the purposes of this Schedule 7 (*Trusts*), "Trust" means a trust established under principles of Irish law and excludes Pension Schemes which are dealt with in Schedule 8 (*Pension Schemes*) and also excludes unit trusts which are dealt with in Schedule 6 (*Fund entities*).

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1.1 Paragraph 1.13.7 is deemed deleted and replaced with the following

"**Insolvency Proceedings**" means the procedures listed below where governed by Irish law:

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

1. A Trust will typically be wound up in accordance with the provisions of the instruments constituting the trust (the "**Trust Deed**") and same will need to be reviewed on a case by case basis.

2. Where a Trust has a corporate trustee the provisions of our opinion at 1.13.7 as they apply to Irish Companies are the insolvency procedures which apply to corporate trustees with the corporate structures detailed therein. These rules are relevant to the distribution of the assets of the trustee and not the trust assets themselves. A liquidator of a trustee apparently has the power to conduct a trusteeship and as a practical matter may distribute trust assets to avoid the need to appoint a new trustee. The distribution of trust assets in the case of an Unregulated Trust occurs in accordance with the provisions of the trust deed constituting the Unit Trust. These usually provide for the payment of trust assets pro rata to beneficiaries after discharge of the payment of the liabilities of the trust. In the case of a deficiency of trust assets the trustee can have personal liability for the deficit subject to any limited recourse provisions of the Trust Deed or under the contract where the liability was incurred.

2. ADDITIONAL ASSUMPTIONS

We assume:

2.1.1 That the Trust has been validly created and constituted as a matter of Irish law pursuant to the terms of a trust deed.

2.1.2 That during the life of the Agreement, any trustee will remain unchanged in respect of a Party which is a trust or trustee.

3. ADDITIONAL QUALIFICATIONS

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

3.1.1 A trust does not have legal personality and cannot enter into contractual arrangements in its own right. Transactions are concluded by its trustees or trustee (the "Trustee"), being persons who and/or an entity that holds the legal title to the assets of the trust pursuant to the Trust Deed.

3.1.2 As a Trust will typically be wound up in accordance with the provisions of the Trust Deed same will need to be reviewed on a case by case basis to ensure that the events specified in the Insolvency Events of Default Clause adequately capture the winding up mechanic.

3.1.3 The Trustee may only act in accordance with the powers conferred on the Trustee by statute and under the Trust Deed. The principal legislation for this purpose is the Trustee Act 1893, as amended (the "Trustee Act"), The Trustee Act confers a number of basic powers on Trustees. However, it is the Trust Deed that will generally determine the precise ambit of the Trustee's powers, especially as regards the transaction of financial arrangements (the Trust Deed should specifically provide the Trustee with express power to enter into such transactions including the express power to create security). The provisions of the Trust Deed will be subject to such limitations as are imposed by other applicable law in a given case.

SCHEDULE 8

PENSION SCHEMES

Subject to the modifications and additions set out in this Schedule 8 (*Pension Schemes*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Pension Schemes. For the purposes of this Schedule 8 (*Pension Schemes*), "**Pension Scheme**" means a Revenue[12] exempt approved occupational pension fund established under Irish law as an irrevocable trust.

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

1.1.1 Paragraph 1.13.7 is deemed deleted and replaced with the following

"**Insolvency Proceedings**" means the procedures listed below where governed by Irish law

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

1. a Pension Scheme will be established as a trust under Irish law. Pension schemes established as trusts are outside the scope of insolvency legislation. The pension equivalent to insolvency would be a winding-up in deficit. The Pension Scheme does not have legal personality and where there is a deficiency of trust assets, the trustees can have personal liability for the deficit. Trustees, however, are generally protected by exoneration and indemnity provisions both under the governing deeds and under some limited statutory protections provided the trustee has acted honestly, reasonably and in good faith. Where a trust has a corporate trustee the procedures listed in the opinion letter as they apply to Irish Companies are the insolvency procedures which apply to corporate trustees with the corporate structures detailed therein;

2. while the provisions of the Pensions Act 1990, as amended (the "**Pensions Act**") provide for priorities on the winding up of a Pension Scheme (section 48) the terms of the trust deed and rules will set out the primary triggers effect and mechanisms (to the extent that these are not inconsistent with those set out in the Pensions Act) for the winding up of a Pension Scheme and these will need to reviewed on a case by case basis.

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

1. the following voluntary procedures are included, "receivership", "compromise" and "examinership";

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[12] The Office of the Revenue Commissioners

2. the following appointee is included in the definition of Custodian "receiver and manager";

3. the following involuntary procedures are included, "compromise", "receivership", "examinership" and "a direction requiring the suspension of business, the making of payments or the acquisition or disposal of assets".

2. ADDITIONAL QUALIFICATIONS

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

2.1.1 A Pension Scheme is a trust and, as such, does not have legal personality and cannot enter into contractual arrangements in its own right. Transactions in respect of a Pension Scheme are concluded by its trustees or trustee (the "**Trustee**"), being persons who and/or an entity that holds the legal title to the assets of the Pension Scheme pursuant to the instruments constituting the trust and rules related to it (the "**Trust Deed**") and who, subject to the terms of the trust, may be personally liable for any resulting obligations in the event that scheme assets are insufficient to meet them.

2.1.2 The Trustee may only act in respect of the Pension Fund in accordance with the powers conferred on the Trustee by statute and under the Trust Deed. The principal legislation for this purpose is the Trustee Act 1893, as amended (the "**Trustee Act**"), the Pensions Act 1990 (as amended) and the Taxes Consolidation Act 1997 (as amended). The Trustee Act confers a number of basic powers on Trustees. However, it is the Trust Deed that will generally determine the precise ambit of the Trustee's powers, especially as regards the transaction of financial arrangements (the Trust Deed should specifically provide the Trustee with express power to enter into such transactions). The provisions of the Trust Deed will be subject to such limitations as are imposed by other applicable law, in particular the Pensions Act and the Occupational Pension Schemes (Investment) Regulations 2006 to 2010 (the "**Pension Investment Regulations**").

2.1.3 As a trust will typically be wound up in accordance with the provisions of the Trust Deed, (and having regard to our comments at 1 above in respect of Pension Schemes established as a trust under Irish law) same will need to be reviewed on a case by case basis to ensure that the events specified in the Insolvency Events of Default Clause adequately capture the winding up mechanic.

2.1.4 Legislative and regulatory restrictions

Section 59(1)(b) of the Pensions Act imposes a duty on the Trustee of a Pension Scheme to provide for the proper investment of the Pension Scheme's resources in accordance with the Pension Investment Regulations and, subject to those Regulations, in accordance with the rules of the Pension Scheme. The Pension Investment Regulations impose a number of limitations on the discretion of the Trustee regarding the categories of investments available to it.

Articles 6(3) and (4) provide that the assets of the Pension Scheme must be invested in a manner designed to ensure the security, quality, liquidity and profitability of the portfolio as a whole so far as is appropriate having regard to the nature and duration of the expected liabilities of the Pension Scheme. Assets must be invested predominantly on regulated markets and investment in assets which are not admitted to trading on a regulated market must, in any event, be kept to a prudent level. Article 6(5) provides that the assets of a Pension Scheme must be properly diversified in such

a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group must not expose the Pension Scheme to excessive risk concentration.

Section 61(B) of the Pensions Act and article 4 of the Occupational Pension Schemes (Investment) Regulations 2006 impose restrictions on borrowings by trustees of occupational pension schemes other than by one member arrangements – they may not borrow save for liquidity purposes and only on a temporary basis.

2.1.5 Access to pension fund assets by beneficiaries is restricted by the terms of the governing documents which must be compliant with the requirements of the Office of the Revenue Commissioners ("**Revenue**"). Members of a Pension Scheme may not use their beneficial interest as security for borrowing. A Pension Scheme will typically contain an express prohibition on assignment of benefits as it is a condition of Revenue approval that no pension is capable of surrender, commutation (save in certain limited circumstances) or assignment. Section 36 of the Pensions Act contains a prohibition on forfeiture. Outside regulatory constraints, Trustees' ability to give guarantees or indemnities and to grant security over pension fund assets depends on the terms of the governing documents of the relevant Pension Scheme.

SCHEDULE 9

BUILDING SOCIETIES

Subject to the modifications and additions set out in this Schedule 9 (*Building Societies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Building Societies.

For the purposes of this Schedule 9 (*Building Societies*), "**Building Society**" means a Building Society incorporated or registered or deemed such (pursuant to section 124(2)) under the Building Society Acts. "**Building Society Acts**" means the Building Societies Acts 1989 (the "**BSA**") to 2006. The "**1989 Act**" means the Building Societies Act 1989.

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

1.1.1 Paragraph 1.13.7 is deemed deleted and replaced with the following

"**Insolvency Proceedings**" means the procedures listed below where governed by Irish law:

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Building Society could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as set out for Irish Companies in this opinion letter where a Building Society may only be wound up in accordance with section 109(1) of the BSA which provides that:

> "*Subject to this section, a building society may be would up in accordance with the Companies Acts and accordingly those Acts shall, subject to any necessary modifications, apply as if the society were a company limited by shares.*"

A Building Society may not be wound up as an unregistered company for the purposes of section 345 of the 1963 Act.

Part 7 of the Resolution Act

The terms of Part 7 of the Resolution Act apply in full to authorised credit institutions and Relevant Institutions within the meaning of the Stabilisation Act. This allows for the presentation, advertisement or any other step or publication concerning a person's intention to cause an authorised credit institution to be wound up only where the person has given 10 days written notice to the Central Bank of his or her intention to do so and the Central Bank has confirmed in writing that is has no objection to the person doing so. Only a liquidator approved by the Central Bank may be appointed to an authorised credit institution.

If an authorised credit institution is being wound up voluntarily and the Central Bank has reason to believe that any of the grounds set out in section 77 of the Resolution Act apply, being (i) that in the opinion of the Central Bank the winding-up would be in the public interest; (ii) that the credit institution is or may be unable to meet its obligations to its creditors (iii) failure to comply with certain directions of the Central

Bank (iii) revocation of authorisation or licence or that (in the case of the holder of a licence under section 9 of the CBA) that it has ceased to carry on a banking business (iv) the Central Banks considered that it is in the interest of persons having deposits, then the Central Bank may apply to the Court to have that credit institution would up by the Court.

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

1. the following voluntary procedures are included, "receivership", "compromise" and "examinership";

2. the following appointee is included in the definition of Custodian "receiver and manager";

3. the following involuntary procedures are included, "compromise", "receivership" and "examinership".

2. ADDITIONAL QUALIFICATIONS

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

2.1.1 While a direction under Section 40 of the 1989 Act is in force, no winding up proceedings may be commenced or resolution for winding-up passed in relation to the Building Society, no receiver over its property (or any part of its property) or its undertaking may be appointed and the property of the Building Society may not be attached, sequestered or otherwise distrained except with the prior sanction of the High Court.

2.1.2 ICS Building Society is currently the only registered Building Society in Ireland.

2.1.3 ***Supervisory Restrictions***

A Party incorporated in or with a branch in Ireland may become subject to the following moratorium, suspension or similar proceedings:

Section 40BSA

Similar provisions to Section 21 CBA (as set out in Schedule 1 of this opinion letter) apply, pursuant to Section 40 BSA, to a Building Society. Where the Central Bank of Ireland (the "**Central Bank**") is satisfied that one of a number of circumstances has occurred in relation to s Building Society, it may give a written decision to it to suspend for such period, not exceeding six months (if confirmed by the High Court the relevant period can be extended for up to twelve months), as shall be specified in the direction, all or any of the following:

(a) the carrying on of the ordinary business of the Building Society;

(b) the making of payments to which subparagraph (a) does not relate;

(c) the acquisition or disposal of other assets or liabilities,

which have not been authorised by the Central Bank.

The circumstances in which a direction may be given include where the Central Bank is of the opinion that:

(i) it is expedient in the public interest or in order to protect the funds of shareholders or depositors;

(ii) the Building Society:

(A) has not made use of the authorisation granted to it by the Central Bank pursuant to the 1989 Act within 12 months of the date on which it has been granted;

(B) has ceased to engage in the business of a building society for more than 6 months;

(C) has ceased to pursue as one of its objects the making of housing loans within the meaning of the 1989 Act;

(D) has, or is likely to, become unable to meet its obligations to its creditors and shareholders or suspends payments lawfully due by it;

(E) has failed to send to the Central Bank copies of its annual accounts as required by the 1989 Act;

(F) has failed to comply with a condition attached to its authorisation or to an approval to exercise a power under the 1989 Act;

(G) has failed to comply with a requirement of the 1989 Act or a requirement condition of, or notice from, the Central Bank in the exercise of its powers under the 1989 Act;

(H) has been convicted on indictment of any offence under any provision of the 1989 Act or an offence involving fraud, dishonesty or breach of trust;

(I) no longer possesses, is not maintaining, or is unlikely to be in a position to maintain, adequate capital resources and, in particular, no longer provides security for the funds entrusted to it;

(J) obtained its authorisation through false statements or any other irregular means; or

(K) since the Building Society's authorisation was granted or deemed granted, the circumstances relevant to the grant have changed and are such that, if an application for authorisation

were made in the changed circumstances, it would be refused.

While a direction under Section 40 of the 1989 Act is in force, no winding up proceedings may be commenced or resolution for winding-up passed in relation to the Building Society, no receiver over its property (or any part of its property) or its undertaking may be appointed and the property of the Building Society may not be attached, sequestered or otherwise distrained except with the prior sanction of the High Court.

ANNEX 1
FORM OF FOA AGREEMENTS

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

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

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

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

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

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

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

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

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

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

Where the form of any Agreement listed in this Annex 1 (as published by the Futures and Options Association) (the "**FOA Published Form Agreement**") expressly contemplates the election of certain variables and alternatives, the Agreements listed above shall be deemed to include any such document in respect of which the parties have made such expressly contemplated elections (and have made any deletions required by such elections, where such deletions are expressly contemplated in the event of such election by the applicable FOA Published Form Agreement).

Each of the Agreements listed in this Annex 1 may be deemed to include Agreements identical to the relevant FOA Published Form Agreement, save for the substitution of Two Way Clauses in place of the equivalent terms in the FOA Published Form Agreement.

ANNEX 2
DEFINED TERMS RELATING TO THE AGREEMENTS

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

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

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

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

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

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

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

6. "**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.

7. "**Master Netting Agreements**" means each of the One-Way Master Netting Agreement 1997 and the Two-Way Master Netting Agreement 1997.

8. "**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):

   (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***); and

(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***); and

(g) in relation to an Equivalent Agreement, a clause that is identically the same in form and language as the Clauses and sub-Clauses (in their totality) referred to in any of one the foregoing paragraphs (i) to (v) of this definition (except in so far as variations may be required for internal cross-referencing purposes).

9. "**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):

(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***); and

(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***); and

(g) in relation to an Equivalent Agreement, a clause that is identically the same in form and language as the Clauses and sub-Clauses (in their totality) referred to in any of one the foregoing paragraphs (i) to (v) of this definition (except in so far as variations may be required for internal cross-referencing purposes).

10. "**Professional Client Agreements**" means each of the Professional Client Agreement (with Security Provisions) Agreement 2007, the Professional Client Agreement (with Title Transfer Provisions) Agreement 2007, the Professional Client Agreement (with Security Provisions) Agreement 2009, the Professional Client Agreement (with Title Transfer Provisions) Agreement 2009, the Professional Client Agreement (with Security Provisions) Agreement 2011 or the Professional Client Agreement (with Title Transfer Provisions) Agreement 2011.

11. "**Rehypothecation Clause**" means:

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

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

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

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

12. "**Retail Client Agreements**" means each of the Retail Client Agreement (with Security Provisions) Agreement 2007, the Retail Client Agreement (with Title Transfer Provisions) Agreement 2007, the Retail Client Agreement (with Security Provisions) Agreement 2009, the Retail Client Agreement (with Title Transfer Provisions) Agreement 2009, the Retail Client Agreement (with Security Provisions) Agreement 2011 or the Retail Client Agreement (with Title Transfer Provisions) Agreement 2011.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. "**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.

15. "**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.

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

17. **Transactions**: The following groups of Transactions may be entered into under the Agreements:

(A) (Futures and options and other transactions) Transactions as defined in the Agreements itemised above:

(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 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.

ANNEX 3
NON-MATERIAL AMENDMENTS

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

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

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

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

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

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

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

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

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

ANNEX A

"**Central Bank**" means the Central Bank of Ireland;

"Collateral Arrangement" means collectively a Title Transfer Arrangement or Security Agreement;

"Collateral Directive" means Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements;

"Collateral Regulations" means the European Communities (Financial Collateral Arrangements) Regulations 2010 (S.I. No. 626 of 2010), (as amended by the European Communities (Financial Collateral Arrangements) (Amendment) (No. 2) Regulations, 2011 (S.I. No. 318 of 2011) which implement the Collateral Directive in Ireland;

"**collateral security**" means all realisable assets of any kind (including without limitation, financial collateral referred to in Article 1(4)(a) of the Collateral Directive provided under a pledge, a repurchase or similar agreement or otherwise, for the purpose of securing rights and obligations that may arise in connection with a designated system or provided to a central bank and includes money provided under a pledge for that purpose;

"**COMI**" shall have the meaning ascribed to it at paragraph 3.1.2(c).

"Courts" means the courts of Ireland and the **Court** shall be construed accordingly;

"**entity**" is defined for the purposes of a Financial Contract as including:

(a) a natural or legal person, including a state or any international organisation duly established;

(b) any subdivision or authenticating authority of a state or international organisation, and

(c) an unincorporated body of persons";

"EU" means the European Union or the European communities, as applicable;

"**Financial Contracts**" means one or more contracts consisting of one or more or a combination of the following:

(a) interest-rate contracts which are one or more of:

(i) single-currency interest rate swaps;

(ii) basis swaps;

(iii) forward-rate agreements;

(iv) interest-rate futures;

(v) interest-rate options;

(vi) other contracts of a similar nature to those specified in any of subparagraphs (i) to (v), and

(vii) contracts which are combinations of contracts referred to in subparagraphs (i) to (vi).

(b) foreign-exchange contracts which are one or more of:

(i) cross-currency interest-rate swaps;

(ii) spot foreign exchange contracts;

(iii) forward foreign-exchange contracts;

(iv) currency futures;

(v) currency options;

(vi) other contracts of a similar nature to those specified in any of subparagraphs (i) to (v), and

(vii) contracts which are combinations of contracts referred to in subparagraphs (i) to (vi);

(c) contracts relating to, or which concern indices relating to, one or more of equities, bonds, gold, precious metals other than gold, and commodities other than precious metals, or a combination of them, which consist of one or more of—

(i) swaps,

(ii) spot contracts,

(iii) forward contracts,

(iv) futures,

(v) options,

(vi) other contracts of a similar nature to those specified in any of subparagraphs (i) to (v), and

(vii) contracts which are combinations of contracts referred to in subparagraphs (i) to (vi);

(d) securities lending and securities borrowing contracts;

(e) sale and repurchase agreements, including reverse repurchase agreements, in relation to securities;

(f) buy and sell back agreements in relation to either or both securities and equities;

(g) in relation to equities,

(i) equities lending and equities borrowing contracts, and

(ii) sale and repurchase agreements, including reverse repurchase agreements;

(h) in relation to commodities,

(i) commodity lending and commodity borrowing contracts, and

(ii) sale and repurchase agreements, including reverse repurchase agreements;

(i) contracts for either or both the assumption of and laying off of credit risk—

(i) on loans, debt securities or other assets, or

(ii) in relation to an entity,

or other contracts of a similar nature;

(j) any derivatives not otherwise encompassed by paragraphs (a) to (i) or paragraphs (k) to (o) concerning a reference item or index, whether cash-settled or physically settled, including:

(i) swaps,

(ii) spot contracts,

(iii) forwards,

(iv) futures,

(v) options, and

(vi) contracts for difference;

(k) title transfer collateral arrangements;

(l) any net amount due under a netting agreement or a master netting agreement;

(m) agreements to buy or sell, clear or settle transactions in, or act as a depository for, any:

(i) financial asset, including, without limitation, any security (including any equity), currency, obligation evidencing debt (including a loan or deposit) and any negotiable or transferable instrument and any intangible asset, or

(ii) commodity (including precious metal), energy or energy source;

(n) contracts contained in points 4 to 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;

(o) any contract included by virtue of section 2 under the Netting Act;

(p) contracts designated by regulations made under section 3 of the Netting Act.

the following contracts have been designated as "financial contracts" for the purposes of the Netting Act by the Netting of Financial Contracts Act, 1995 (Designation of Financial Contracts) Regulations, 2000:

(a) buy and sell back agreements in relation to either or both securities and equities;

(b) in relation to equities:

(i) equities lending and equities borrowing contracts; and

(ii) sale and repurchase agreements, including reverse repurchase agreements.

(c) contracts for either or both the assumption of and laying off of credit risk:

(i) on loans, debt securities or other assets;

(ii) in relation to an entity;

or other contracts of a similar nature

(d) contracts which are a combination of contracts specified at either or both:

(i) paragraph (a), (b) (c) or (d) of the definition of Financial Contracts in section 1 of the Netting Act, and

paragraph (a), (b), or (c) above.

"**financial collateral**" means cash, financial instruments or credit claims provided under a financial collateral arrangement, but does not include shares in a company whose exclusive purpose is(a) to own means of production that are essential for the collateral provider's business, or (b) to own real property.

"**Financial Instruments**" means:

(a) shares in companies;
(b) securities equivalent to shares in companies;
(c) bonds or other forms of debt instruments if these are negotiable on the capital market;
(d) any other securities (other than instruments referred to in subparagraphs (a) to (c)) that are normally dealt in and give the right to acquire any such shares, bonds or other securities by subscription, purchase or exchange, or
(e) any other securities (other than instruments referred to in subparagraphs (a) to (c) and instruments of payment) that give rise to a cash settlement;
(f) units in collective investments undertakings;
(g) money market instruments; or
(h) claims relating to, or rights in or in respect of, shares, securities, bonds, instruments of a kind referred to in paragraphs (a) to (g),
but excluding shares in a company whose exclusive purpose is:
(i) to own means of production that are essential for the collateral provider's business, or
(ii) to own real property;

"Insolvency Regulation" means Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings;

"**Ireland**" means Ireland exclusive of Northern Ireland;

"Member State" means a member state of the EU;

"Netting Act" means the Netting of Financial Contracts Act 1995 (as amended);

"Parties" means in respect of any Agreement, the parties to that Agreement and "**Party**" means either of them insofar as opined on herein;

"Qualifying Party" means:

(a) a public authority being a local government body and a public sector body of a Member State that is charged with responsibility for, or is involved in, the management of public debt and a public sector body of a Member State that is authorised to hold accounts for customers (excluding a publicly guaranteed undertaking unless it is covered by paragraphs (b) to (f) below);

(b) a central bank, the European Central Bank, the Bank for International Settlements, a multilateral development bank, the International Monetary Fund or the European Investment Bank;

(c) a supervised financial institution;

(d) a central counterparty, settlement agent or clearing house, or any similar entity that is operating in the futures, options or derivatives markets in a way not covered by Settlement Finality Directive provided the entity is regulated under the law of the State or of another country; or

(e) a person (other than a natural person) who acts as a trustee, or in a representative capacity, on behalf of:

(i) any one or more persons of whom at least one is a bondholder or the holder of any form of securitised debt; or

(ii) any authority, bank or institution or other entity referred to in paragraphs (a) to (d);

(f) any other person or group (other than a natural person), but only if the other party to the arrangement is an authority, bank, institution or other entity of a kind specified in any of paragraphs (a) to (e).

"Security Arrangement" means an arrangement under which a collateral provider provides financial collateral (broadly being cash or Financial Instruments) by way of security in favour of, or to, a collateral taker but only of the full ownership of the collateral remains with the collateral provider after the security right is established;

"**Settlement Finality Regulations**" means the European Communities (Settlement Finality) Regulations 2010 (S.I. No. 624 of 2010);

"**State**" shall mean Ireland unless the context suggests otherwise;

"Title Transfer Arrangement" means an arrangement (including a repurchase agreement) under which a collateral provider transfers full ownership of financial collateral (broadly being cash or Financial Instruments) to a collateral taker in order to secure or otherwise cover the performance of obligations that give right to cash settlement or the delivery of Financial Instruments, or both;

"1963 Act" means the Companies Act 1963;

"**1988 Act**" means the Bankruptcy Act 1988;

"1990 Act" means the Companies (Amendment) Act 1990;

"1999 Act" means the Companies Amendment (No 2) Act 1999.