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CCP Opinion in relation to CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH

Dear Sirs,

You have asked us to give an opinion in respect of the laws of the Republic of Austria ("this jurisdiction") as to *inter alia* the effect of certain collateral arrangements in relation to CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH (the "Clearing House") as between the Clearing House and its clearing members (each a "Member") as well as, for lack of netting and / or set off provisions in the Clearing House Documentation, statutory set-off under the laws of this jurisdiction.

References herein to "this opinion" are to the opinion given in Section 3.

1. TERMS OF REFERENCE

- 1.1 Except where otherwise defined herein, terms defined in the Rules of the Clearing House have the same meaning in this opinion letter (the "Opinion").
- 1.2 The opinions given in Section 3 other than Sections 3.4 and 3.5 are in respect of a Member's powers under the Clearing House Documentation as at the date of this Opinion. We express no opinion as any provisions of the Rules of the Clearing House other than those on which we expressly opine.
- 1.3 The opinions given in Sections 3.4 and 3.5 are (for lack of contractual basis) given only on the basis of Austrian statutory law.

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All our activities in these jurisdictions, including cooperation with independent attorneys, are in compliance with relevant law and other rules and regulations, in particular rules of professional conduct.

- 1.4 The opinions given in Section 3.7 are given only in relation to Non-cash Collateral comprising securities credited to an account.
- 1.5 This Opinion is solely based on the laws and regulations applicable in the Republic of Austria, as applied and officially published by the Austrian courts, the European Court of Justice, the General Court and the competent administrative authorities as at the date of this Memorandum, all of which are collectively referred to herein as "**Austrian law**". We neither express nor imply any opinion on any laws other than Austrian law and we have made no investigation of any other laws which may be relevant to the Clearing House Documentation, even if, under Austrian law, such laws would have to be applied. Our opinions expressed herein are given on the basis that they represent a fair view of the legal position (*vertretbare Rechtsansicht*) under Austrian law but do not purport to reflect all positions taken by the courts and legal writing (to the extent such decisions or legal writing are available) in the past with respect to a particular legal issue.
- 1.6 For the purposes of this Opinion, any reference to "**belief**" or words of similar import means that our assessment is based on our analysis of Austrian law, our professional experience and the relevant legal sources, if any are available. It implies, however, that, for lack of court practice, we cannot exclude that an Austrian court or other authority would take positions that deviate from what we express as our belief.

1.7 Definitions

In this opinion, unless otherwise indicated:

- (a) "**Assessment Liability**" means a liability of a Member to pay an amount to the Clearing House (including a contribution to the assets or capital of the Clearing House, or to any default or similar fund maintained by the Clearing House); but excluding:
 - (i) any obligations to provide margin or collateral to the Clearing House, where calculated at any time by reference to Contracts open at that time;
 - (ii) membership fees, fines and charges;
 - (iii) reimbursement of costs incurred directly or indirectly on behalf of or for the Member or its own clients;
 - (iv) indemnification for any taxation liabilities;
 - (v) payment or delivery obligations under Contracts; or
 - (vi) any payment of damages awarded by a court or regulator for breach of contract, in respect of any tortious liability or for breach of statutory duty;
- (b) "**Cash Account**" means the cash account maintained by a Member with the Clearing Bank pursuant to § 14 of the Rules.



- (c) "**Cash Collateral**" means the cash collateral provided to the Clearing House as margin under the Security Documentation and credited on the Cash Securities Account;
- (d) "**Cash Securities Account**" means the account for Cash Collateral maintained by a Member with the Clearing Bank pursuant to § 14 of the Rules, the balance of which is pledged to the Clearing House under the Security Documentation;
- (e) "**Cash Securities Account for Clearing Fund**" means the account maintained by a Member with the Clearing Bank for purposes of depositing an amount corresponding to the Member's Assessment Liabilities (i.e. its contribution(s) to the Clearing Fund), the balance of which is pledged to the Clearing House under the Security Documentation
- (f) "**CCP-eligible Transactions**" means
 - (i) exchange transactions in securities admitted to listing on the Official Market or Second Regulated Market of the Vienna Stock Exchange in its function as a securities exchange and executed by exchange members of the Vienna Stock Exchange through the cash and / or derivatives markets in trading in the automated trading systems Xetra® and EUREX® (each a "**Transaction**"); or
 - (ii) transactions in securities traded on the Multilateral Trading System (MTF) operated by Wiener Börse AG, the Third Market, concluded by exchange members of the Vienna Stock Exchange in its function as a securities exchange through the automated trading system Xetra® and EUREX® (each a "**Trade**")each to the extent that these are not Transactions or Trades that qualify as exchange transactions (each a "**transactions in non-CCP-eligible securities**"), which pursuant to § 21 of the Rules have not been included in the clearing system by the Clearing House, securities transactions concluded through an intermediary and ancillary transactions (*Hilfsgeschäfte*) related to securities transactions or trades in options and financial futures contracts;
- (g) "**Clearing Agreement**" means a Model Form Clearing Agreement;
- (h) "**Clearing Bank**" means Oesterreichische Kontrollbank Aktiengesellschaft.
- (i) "**Clearing Collateral**" means Cash Collateral, Non-cash Collateral or bank guarantees;
- (j) "**Clearing Fund**" means the solidarity fund (*Solidarfonds*) maintained by the Clearing House, and funded by the Participating Clearing Members, pursuant to §§ 2 (3) and 53 of the Rules.
- (k) "**Clearing House Documentation**" means the Clearing Agreement, the Security Documentation and the Rules;

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- (l) "**Contract**" means a CCP-eligible Transaction or options / financial futures contracts subject to clearing under the Clearing House Documentation (if any).
- (m) "**Direct Clearing Member**" means a Member pursuant to § 6 (2) of the Rules¹;
- (n) "**General Clearing Member**" means means a Member pursuant to § 6 (3) of the Rules²;
- (o) "**Model Form Clearing Agreement**" means the clearing agreement entered into between each Member and the Clearing House in the form attached hereto at Annex 1 of this Opinion;
- (p) "**Non-cash Collateral**" means the non-cash collateral provided to the Clearing House as margin under the Security Documentation and credited on the Non-cash Securities Account;
- (q) "**Non-cash Securities Account**" means the account for Non-cash Collateral maintained by a Member with the Clearing Bank pursuant to § 14 of the Rules, the balance of which is pledged to the Clearing House under the Security Documentation;
- (r) "**Participating Clearing Member**" means a General Clearing Member or a Direct Clearing Member³;
- (s) "**Party**" means the Clearing House or the relevant Member;
- (t) "**Rules**" means the "Rules for the Clearing and Settlement of Exchange Trades by CCP Austria (CCP.A Clearing Rules)" of the Clearing House in force as at the date of this Opinion;
- (u) "**Security Documentation**" means the security document (*pledge*) attached as Annex ./5 to the Clearing Agreement entered into between each Member

¹ Direct Clearing Members shall be permitted to clear transactions which are either proprietary trades or agent trades for their own account, but may not clear transactions of exchange members who are not clearing members.

² General Clearing Members are those clearing members which in addition to the clearing of their own trades agree to the clearing of transactions of exchange members (irrespective of whether proprietary or agent trades) who are not members of the clearing system.

³ For the sake of completeness, we note that the English translation of the Rules available under www.ccpa.at is somewhat incorrect and misleading. While in the German original of the Rules the term "*Unmittelbarer Abwicklungsteilnehmer*" (immediate clearing member) is defined § 6 (1) as either "*direkter Abwicklungsteilnehmer*" (direct clearing member) pursuant to § 6 (2) of the Rules or "*General-Abwicklungsteilnehmer*" (general clearing member) pursuant to § 6 (3) of the Rules, the English translation uses in § 6 (2) the term "Participating Clearing Member" for the German term "*direkter Abwicklungsteilnehmer*" (direct clearing member). However, in various other sections of the Rules, the term ""Participating Clearing Member" is used in capitalized terms whenever the German original refers to "*Unmittelbarer Abwicklungsteiler*" (immediate clearing member) as defined in § 6 (1) of the Rules. In this Opinion we have, therefore, used our own definition of the term "Participating Clearing Member" that differs from such term as used in capitalized terms in the English translation of the Rules.



and the Clearing House in the form attached hereto as Annex 2 of this Opinion;

- (v) 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, except as set out in this Opinion, without risk of successful challenge. We do not opine on the availability of any judicial remedy;
- (w) references to a "**section**" or to a "**paragraph**" are (except where the context otherwise requires) to a section or paragraph of this Opinion (as the case may be).

2. ASSUMPTIONS

We assume the following:

- 2.1 That, except with regards to the provisions discussed and opined on in this Opinion, the Clearing House Documentation and Contracts are legally binding and enforceable against both Parties under their governing laws.
- 2.2 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Clearing House Documentation and Contracts; to perform its obligations under the Clearing House Documentation and Contracts; and that each Party has taken all necessary steps to execute and deliver and perform the Clearing House Documentation and Contracts.
- 2.3 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 Clearing House Documentation and Contracts and to ensure the legality, validity, enforceability or admissibility in evidence of the Clearing House Documentation in this jurisdiction.
- 2.4 That both Parties have properly executed the Model Form Clearing Agreement, in substantially identical form to that attached at Annex 1.
- 2.5 That, in the case of the opinion given at paragraph 3.6 and 3.7 only, the Parties have properly executed the Security Documentation, in substantially identical form to that attached at Annex 2.
- 2.6 That the Clearing House Documentation has been entered into prior to the commencement of any insolvency procedure under the laws of any jurisdiction in respect of either Party.
- 2.7 That each Party acts in accordance with the powers conferred by the Clearing House Documentation and Contracts; and that each Party performs its obligations under the Clearing House Documentation and each Contract in accordance with their respective terms.
- 2.8 That, apart from any circulars, notifications and equivalent measures published by the Clearing House in accordance with the Clearing House Documentation, there are not any other agreements, instruments or arrangements between the Parties which modify or supersede the terms of the Clearing Agreement or Security Do-



cumentation and that there is nothing in such circulars, notifications and / or equivalent measures which would affect any of the opinions in this Opinion.

- 2.9 That the Member is at all relevant times solvent and not subject to insolvency proceedings under the laws of any jurisdiction.
- 2.10 That the obligations assumed under the Clearing House Documentation and Contracts are mutual between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owing by it and is solely entitled to the benefit of obligations owed to it.
- 2.11 That entering into the Clearing House Documentation provides for a corporate benefit of the Member.

3. OPINION

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

3.1 Insolvency Proceedings

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which the Clearing House could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion, are:

3.1.1 Insolvency proceedings

The Insolvency Code (*Insolvenzordnung* – *IO*) governs insolvency proceedings (*Insolvenzverfahren*) against debtors such as the Clearing House. Depending on whether or not a restructuring plan (*Sanierungsplan*) is presented with the application for the opening of insolvency proceedings, insolvency proceedings are called **restructuring proceedings** (*Sanierungsverfahren*) or **bankruptcy proceedings** (*Konkursverfahren*). The term insolvency proceedings used in the Insolvency Code covers both, restructuring proceedings and bankruptcy proceedings.

Bankruptcy proceedings must be opened by the court upon a petition filed by the debtor or any of his creditors whenever it has been established that a debtor is **illiquid** (*zahlungsunfähig*) or is **overindebted** in the meaning of insolvency law (*insolvenzrechtlich überschuldet*).

Restructuring proceedings may also be initiated if the risk of the debtor's inability to pay its debts is at least imminent (*drohende Zahlungsunfähigkeit*) and the debtor files an application for the opening of restructuring proceedings.

Restructuring proceedings intend to discharge the debtor from a part of his debts and to enable the debtor to continue his activities. The debtor has to offer at least a **quota of 20 %** to the unsecured creditors, payable within two years. A qualified simple majority of unsecured creditors must approve the restructuring plan. Qualified simple majority means that the



simple majority of unsecured creditors in number present at the hearing must vote in favour of the restructuring plan and that the total sum of these unsecured creditors' claims must amount to 50 % of the unsecured claims present at the hearing. If the restructuring plan is accepted by the creditors, confirmed by the court and fulfilled by the debtor, the latter is released from the rest of his debts.

If the debtor offers a quota of at least 30% and provides certain qualified documents, he is entitled to self administration (*Eigenverwaltung*). In this case he is monitored by a court appointed restructuring administrator (*Sanierungsverwalter*) to whom certain powers are reserved.

Unless the debtor meets the requirements for self administration, the debtor is **deprived of his rights** to dispose of the assets subject to insolvency, i.e. the insolvent's estate (*Insolvenzmasse*). After the opening of insolvency proceedings without self-administration legal acts of the debtor in relation to the insolvent's estate take no effect towards the creditors (§ 3 para 1 IO). The court appoints an **insolvency administrator** (*Insolvenzverwalter*) along with its decision on the opening of insolvency proceedings. After the opening of insolvency proceedings without self administration only the **insolvency administrator** is entitled to act on behalf of the insolvent's estate.

If neither a restructuring plan nor the sale of the debtor's business is possible, the insolvency administrator will break up the company and the bankruptcy proceedings will ultimately lead to the sale and distribution of the debtor's assets, the debtor remaining liable for his residual debts.

The opening of insolvency proceedings takes effect as of 0:00 hours of the day following the publication of the receiving order in the official insolvency data base (www.edikte.justiz.gv.at).

3.1.2 Reorganisation proceedings

A debtor who is neither illiquid nor overindebted but is in need of reorganisation (*Reorganisationsbedarf*) (which will be assumed, if he does not meet certain financial ratios) has to file for the initiation of **reorganisation proceedings** (*Reorganisationsverfahren*) under the Business Reorganisation Act (*Unternehmensreorganisationsgesetz – URG*). Contrary to insolvency (bankruptcy and restructuring proceedings), reorganisation proceedings do **not** lead to a mandatory reduction of the creditors' claims to a certain quota.

An **application** for the opening of reorganisation proceedings can only be filed by the debtor. Within 60 days after the initiation of reorganisation proceedings, the debtor has to present a **reorganisation plan** (*Reorganisationsplan*) containing measures to improve its financial and earnings status. The court appoints a reorganisation auditor (*Reorganisations-*

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sprüfer) to examine and assess the reorganisation plan. The opening of such proceedings is not made public.

According to § 18 URG, the "suspect periods" under Austrian insolvency law are extended for the term of pending reorganisation proceedings.

Pursuant to § 19 URG, a contractual stipulation providing for automatic termination or a contractual right to terminate an agreement in the event reorganisation proceedings are opened will be unenforceable (if this was the only reason for terminating that agreement). This is a mandatory provision of Austrian law.

These procedures are together called "**Insolvency Proceedings**".

Legislation applicable to Insolvency Proceedings may be found in:

- (i) Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings;
- (ii) Austrian Insolvency Code (*Insolvenzordnung – IO*);
- (iii) Austrian Financial Collateral Act (*Finanzsicherheitengesetz – FinSG*);
- (iv) Austrian Settlement Finality Act (*Finalitätsgesetz – FinalitätsG*);
- (v) Austrian Business Reorganisation Act (*Unternehmensreorganisationsgesetz – URG*).

3.2 Special provisions of law

Generally, the relevant Austrian law provisions relating to the matters dealt with in this Opinion do not distinguish between exchange traded derivatives and other derivative instruments.

However, in the context of (central counterparty) clearing and cash as well as non-cash collateral posted to such central counterparty, certain special rules will apply pursuant to *inter alia* the Austrian Financial Collateral Act (*Finanzsicherheitengesetz – FinSG*) and the Austrian Settlement Finality Act (*Finalitätsgesetz – FinalitätsG*). The rules of the latter establish a legal framework seeking to ensure functionality, stability and settlement finality of payment and securities settlement systems also in case of Member insolvency (which is not dealt with in this Opinion). The Financial Collateral Act implements the Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, as amended by Directive 2009/44/EC, into Austrian law and provides for certain privileges applying to financial collateral arrangements that supersede other Austrian law rules e.g. in case of enforcement of a security interest (which is not dealt with in this Opinion)

3.3 Recognition of choice of law

The choice of law provisions of § 8 of the Clearing Agreement would be recognised under the laws of this jurisdiction, even if the Member is not incorporated, domiciled or established in this jurisdiction.

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3.4 Netting

Absent contractual provisions in the Clearing House Documentation, a Member will upon the opening of Insolvency Proceedings against the Clearing House not be entitled to close-out any open CCP-eligible Transactions.

We are of this opinion because:

Although Austrian law (subject to certain limitations) recognizes close-out netting provisions also in case of insolvency, a prerequisite for close-out netting to occur is an agreement between the parties to this effect (i.e. a netting agreement). However, the Clearing House Documentation lacks such contractual close-out netting provision entitling a Member to close-out open CCP-eligible Transactions upon insolvency of the Clearing House.

3.5 Set-off

3.5.1 Pre-insolvency set-off

Absent contractual provisions in the Clearing House Documentation but on the basis of statutory Austrian law, a Member will in a pre-insolvency scenario be entitled to set-off:

- (i) monetary claims that such Member has against the Clearing House against monetary claims of the Clearing House against that Member, provided that both monetary claims are due and payable; or
- (ii) claims for the delivery of certain securities (*Wertpapiere*) that such Member has against the Clearing House against claims for the delivery of equivalent securities (*Wertpapiere*) that the Clearing House has against the Member, provided that both claims are (a) due and payable and (b) co-generic (*gleichartig*) within the meaning of § 1438 of the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch – ABGB*). Claims for delivery of securities (*Wertpapiere*) are co-generic (*gleichartig*) if they relate to the **identical** asset, e.g. a share of company X.

3.5.2 Post-insolvency set-off

Pursuant to Article 9 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings the effects of insolvency proceedings on the rights and obligations of the parties to a payment or settlement system shall be governed solely by the law of the Member State applicable to that system (i.e. Austrian law with respect to the Clearing House).

In case of insolvency of the Clearing House, set-off should generally not be adversely affected by the opening of Insolvency Proceedings if both claims were already prior to the opening of Insolvency Proceedings in a position to be set-off (§ 19 (1) of the Austrian Insolvency Code (*Insolvenzordnung – IO*)). It follows that, subject to the below qualifications, a Member should be able to set-off:



- (i) monetary claims that such Member has against the Clearing House against monetary claims of the Clearing House against that Member, provided that both monetary claims were in a position to be set-off already before the opening of insolvency proceedings;
- (ii) claims for the delivery of certain securities (*Wertpapiere*) that such Member has against the Clearing House against claims for the delivery of equivalent securities (*Wertpapiere*) that the Clearing House has against the Member, provided that both claims (a) were in a position to be set-off already before the opening of insolvency proceedings and (b) co-generic (*gleichartig*) within the meaning of § 1438 ABGB. Claims for delivery of securities (*Wertpapiere*) are co-generic (*gleichartig*) if they relate to the **identical** asset, e.g. a share of company X; or
- (iii) claims for the delivery of equivalent securities (*Wertpapiere*) that such Member has against the Clearing House against monetary claims that the Clearing House has against such Member, provided that both claims were in a position to be set-off already before the opening of insolvency proceedings.

Claims will generally have been in a position to be set-off before the opening of Insolvency Proceedings if both claims already existed on their merits (*dem Grunde nach*) prior to the opening of Insolvency Proceedings.

Contrary to set-off in a pre-insolvency scenario, in a post-insolvency scenario not all requirements as stipulated by § 1438 ABGB will need to be met in order to facilitate set-off.

Claims may even be set-off if they – prior to the opening of Insolvency Proceedings – had not yet matured. However, a Member will have to deduct interest at the rate provided for by Austrian statutory law (i.e. 4% p.a.) from its claim against the Clearing House – calculated for the time between the opening of Insolvency proceedings until the scheduled maturity of such (§ 14 (3) IO) – when setting-off its not yet matured claims against claims of the Clearing House (irrespective of whether the claims by the Clearing House had matured prior to insolvency).

Also, claims of the non-insolvent party that are prior to the opening of Insolvency Proceedings still subject to certain conditions (and could thus according to § 1438 ABGB not be set-off) may be set-off in an insolvency scenario. However, the insolvency court may – in certain instances also upon application by any other creditor of the insolvent party – require the non-insolvent party to post security deposits (*Sicherheitsleistung*) for the case that the condition would ultimately not be met.

It is uncertain whether claims that only "crystallized" (i.e. arose) upon, i.e. claims that did not exist on their merits (*dem Grunde nach*) before,



the opening of Insolvency Proceedings can be set-off against claims due and payable prior to the opening of Insolvency Proceedings.

3.6 Cash Collateral

Payments made by a Member to the Cash Securities Account as Cash Collateral or to the Cash Securities Account for Clearing Fund do not constitute an absolute transfer of cash by the Member to the Clearing House. Pursuant to the Security Documentation (i) Cash Collateral is to be delivered to the Cash Securities Account and (ii) an amount equal to a Member's Assessment Liability is to be deposited to the Cash Securities Account for Clearing Fund, both maintained by a Member with the Clearing Bank and pledged to the Clearing House so that, in the event of Insolvency Proceedings relating to the Clearing House, such security interest over the Cash Collateral or cash deposited with the Cash Securities Account for Clearing Fund would be treated as part of the insolvency estate (*Insolvenzmasse*) of the Clearing House available to its creditors generally as long as any obligation owed by the Member to the Clearing House so secured by the Cash Collateral or the moneys deposited with the Cash Securities Account for Clearing Fund has not been discharged in full.

Subject to the Member satisfying its (seared) obligations to the Clearing House, the pledges over the Cash Securities Account and / or the Cash Securities Account for Clearing Fund would due to their accessory nature cease to exist and the insolvency administrator will have no claim to the cash held by the Clearing Bank for the Member on the Cash Securities Account and / or the Cash Securities Account for Clearing Fund.

We are of this opinion because:

Pursuant to *inter alia* §§ 29 et seq and §§ 51 et seq of the Rules, each Member must post Cash Collateral to the Cash Securities Account. Pursuant to § 53 the Rules, each Member must deposit an amount equal to its respective Assessment Liabilities to the Cash Securities Account For Clearing Fund or alternatively provide a bank guarantee in the amount of its Assessment Liabilities to the Clearing House (see paragraph 3.8 below). Pursuant to the Security Documentation the account balances of the Cash Securities Account and the Cash Securities Account for Clearing Fund have been pledged to the Clearing House. A pledge under Austrian law is a possessory security instruments and strictly accessory (*akzessorisch*).

In case of insolvency of the Clearing House, any security interests (including the pledge over the Cash Securities Account and the Cash Securities Account for Clearing Fund) will form part of the insolvency estate (*Insolvenzvermögen*) and the proceeds of realisation of such security interest serve for satisfaction of all of the Clearing House's creditors. Only if the obligations by the relevant Member towards the Clearing House that are secured under the Security Documentation have been discharged in full, the pledge as accessory (*akzessorisches*) security interest will cease to exist and the insolvency administrator will have no claim to the Cash Securities Account and / or Cash Securities Account for Clearing Fund balances pledged to the Clearing House pursuant to the Security Documentation.

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3.7 Non-cash Collateral

Any securities provided to the Clearing House as cover for margin and constituting Non-cash Collateral does not constitute an absolute transfer of ownership title to such securities by the Member to the Clearing House. Pursuant to the Security Documentation Non-cash Collateral is to be delivered to the Non-cash Securities Account with the Clearing Bank and is pledged to the Clearing House so that, in the event of Insolvency Proceedings relating to the Clearing House, such security interest over the Non-cash Collateral would be treated as part of the insolvency estate (*Insolvenzmasse*) of the Clearing House available to its creditors generally as long as any obligation owed by the Member to the Clearing House so secured by the Non-cash Collateral has not been discharged in full.

Subject to the Member satisfying its obligations to the Clearing House, the pledge over the Non-cash Collateral would due to its accessory nature cease to exist and the insolvency administrator will have no claim to the securities held by the Clearing Bank for the Member on the Non-cash Securities Account.

We are of this opinion because:

Pursuant to *inter alia* §§ 29 et seq and §§ 51 et seq of the Rules, each Member must post Non-cash Collateral as margin to the Non-cash Securities Account. Pursuant to the Security Documentation the account balances of the Collateral Securities Account have been pledged to the Clearing House. In case of insolvency of the Clearing House, any security interests (including the pledge over the Non-cash Collateral) will form part of the insolvency estate (*Insolvenzvermögen*) and the proceeds of realisation of such security interest serve for satisfaction of all of the Clearing House's creditors. Only if the obligations by the relevant Member towards the Clearing House have been discharged in full, the pledge as accessory (*akzessorisches*) security interest will cease to exist.

3.8 Members' Assessment Liabilities

A Member's Assessment Liability is as follows:

Pursuant to the Rules, the Clearing House maintains the Clearing Fund to which all Members must contribute. Such contributions are in addition to the requirements to provide Cash Collateral to the Cash Securities Account and Non-cash Collateral to the Non-cash Securities Account.

According to § 53 (3) of the Rules, a Direct Clearing Member shall provide bank guarantees or euro cash deposits as initial contribution in the amount of EUR 1,000,000. This sum is reduced to EUR 50,000 if the clearing member clears and settles only CCP-eligible Transactions in securities.

According to § 53 (4) of the Rules, a General Clearing Member shall provide bank guarantees or euro cash deposits as initial contribution in the amount of EUR 5,000,000. This sum is reduced to EUR 250,000 if the General Clearing Member clears and settles only CCP-eligible Transactions in securities or to EUR 1,000,000 if the General Clearing Member, apart from clearing CCP-eligible

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Transactions in securities, clears only trades in options and financial futures contracts resulting from its own exchange membership.

Upon occurrence of default by a Participating Clearing Member pursuant to § 39 (1) of the Rules, according to § 55 of the Rules Cash Collateral and Non-cash Collateral posted by the respective Member as well as such defaulting Member's contribution to the Clearing Fund is realized.

When realization of the Clearing Collateral pursuant to §§ 53 and 55 of the Rules has been completed and further open liabilities of the defaulting Participating Clearing Member remain, the Clearing House shall pursuant to § 57 of the Rules start to realize the contributions to the Clearing Fund of all other Participating Clearing Members. The Clearing House shall proceed in the following order:

- a) calculate the preliminary amount of the remaining open liabilities of the defaulting Participating Clearing Member, compare it with the remaining Clearing Fund and calculate the percent share of the liabilities;
- b) realize the contributions of all Participating Clearing Members to the Clearing Fund at the percentage rate calculated; and
- c) cover all open liabilities from the realized collateral.

Contributions to the Clearing Fund realized pursuant to this procedure shall be replaced by the individual Participating Clearing Members within 10 banking business days after having been used by making new contributions to the Clearing Fund in the required amounts (each a "**Loss Share**"), unless the Participating Clearing Member notifies the Clearing House of its resignation from direct participation in the clearing and settlement system not later than on the fifth banking business day after use of its contributions to the Clearing Fund. The resigning Participating Clearing Member shall, however, remain liable even without providing new contributions to the Clearing Fund for liabilities due to cases of default that occurred up to the time of its resignation on a prorated basis pursuant to the rules for the Clearing Fund by analogy even after the end of its participation in the clearing system.

The amounts remaining after coverage of all open liabilities shall be refunded by the Clearing House to the Participating Clearing Members on a pro-rated basis within 5 banking business days after the payment of new contributions to the Clearing Fund pursuant to § 57 (2) of the Rules.

If a defaulting Participating Clearing Member renders the performance owed by it fully or in part after the Clearing House has used the contributions of other clearing members to the Clearing Fund, the Clearing House shall refund such performance to the other clearing members on a pro-rated basis, proportionately to their use.

In case a Participating Clearing Member fails to pay its initial contribution to the Clearing Fund, it fails to fulfil all requirements pursuant to § 5 (2) no a) of the Rules and will not be able to participate in the clearing system. Furthermore, pursuant to § 61 of the Rules, each Participating Clearing Member shall be liable to

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the Clearing House and the other exchange members for the timely and orderly fulfilment of its obligations in accordance with the Rules as well as for losses resulting from their violation.

In case that Participating Clearing Members fail to pay their Loss Shares, they are liable towards the Clearing House for payment of such Loss Share. Pursuant to the Security Documentation, the Cash Collateral as well as the Non-cash Collateral secures "all liabilities" of a Participating Clearing Member pursuant to the Rules, i.e. including its Loss Shares. Furthermore, pursuant to § 12 (1) no f) of the Rules, the Clearing House would be entitled to terminate the Clearing Agreement with immediate effect.

If Loss Shares cannot be satisfied out of the Cash Collateral and Non-cash Collateral of the respective Participating Clearing Member, the Clearing House can take legal action against such Member. § 8 of the Clearing Agreement provides for disputes to be subject to the (exclusive⁴) jurisdiction of the competent courts in commercial matters in Vienna, Austria.

4. QUALIFICATIONS

- 4.1 The opinions expressed in this Opinion are subject to the following limitations:
 - 4.1.1 The purpose of this Opinion is to provide assistance to The Futures & Options Association and its members in understanding the issues that may be of relevance in connection with the Clearing House Documentation. This Opinion shall not be relied upon by any person with respect to, or in connection with, any specific transaction or act undertaken or omitted to be undertaken.
 - 4.1.2 In this Opinion Austrian legal concepts are expressed in English terms and not in the original Austrian legal terms. The concepts concerned may not be identical to the concepts described by the same English term as they exist under the laws of any other jurisdiction. This Opinion may thus only be relied upon under the express conditions that (i) any issues of interpretation or liability hereunder will be governed by the laws of Austria and as interpreted by Austrian courts and (ii) the courts competent for the first district of Vienna are to have exclusive jurisdiction in respect of all disputes which may arise out of or in connection with this Opinion. Our aggregate liability under or in connection with this Opinion is limited to an amount of EUR 2,000,000.
 - 4.1.3 Little to no legal writing or court rulings are available on the opinions expressed in this Opinion. While we believe that the opinions expressed are well founded and justifiable, we cannot exclude that an Austrian court or administrative authority would take views that deviate from the opinions expressed in this Opinion.

⁴ Safe for the Clearing House being entitled to bring an action against a Member before any other court that may have jurisdiction.



4.1.4 This Opinion is solely given in connection with the Clearing House Documentation and is limited to the opinions explicitly expressed therein and herein and shall not be construed to express an implied opinion on any other matters in connection with the Clearing House Documentation, the Contracts and / or the Clearing House. In particular, we do not express any opinion on:

- (i) the regulatory aspects of the contemplated transactions under the Clearing House Documentation; or
- (ii) the rights and / or obligations of Members in case of insolvency of the Clearing Bank.

4.1.5 Limitations with respect to the choice of law

Under Regulation (EC) No 593/2008 of the European Parliament and the Council of 17 June 2008 on the law applicable to contractual obligations ("Rome I"), notwithstanding the recognition of Austrian law as the law governing the Clearing House Documentation:

- (i) effect may be given to the overriding mandatory provisions of the law of another jurisdiction with which the situation has a close connection, in so far as those overriding mandatory provisions would render the performance of the Clearing House Documentation unlawful;
- (ii) the application of Austrian law may be refused to the extent it is manifestly incompatible with public policy (*ordre public*) of a jurisdiction other than the Republic of Austria irrespective of Austrian law governing the Clearing House Documentation; and
- (iii) regard will be given to the law of the jurisdiction in which performance takes place in relation to the manner of performance and the steps to be taken in the event of defective performance.

4.2 The opinions expressed in this Opinion are subject to the following qualifications:

4.2.1 Qualifications with respect to our set-off opinion

- (i) Generally, pursuant to § 20 (1) IO, third alternative, and § 20 (2) IO set-off, *inter alia*, will **not** be **enforceable** if (i) the non-insolvent party acquired its counterclaim to be-set off against the claim payable to the insolvent party within six months prior to the opening of Insolvency Proceedings concerning the Defaulting Party and (ii) at that time the non-insolvent party was aware or should have been aware of the insolvent party's illiquidity (*Zahlungsunfähigkeit*).
- (ii) According to § 14 IO non-monetary claims (e.g. claims for the delivery of securities) of the non-insolvent party against the insolvent party will have to be converted into a payment claim in Euro if such claim shall be registered with the insolvency

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administrator. Whereas Austrian legal writing holds that § 14 IO shall not impact on a (post-insolvency) set-off of (co-generic) non-monetary claims that were already in a position to be set-off before the opening of Insolvency Proceedings, this view is not supported by case law. It follows that a (post-insolvency) set-off of non-monetary claims may not be enforceable if a court would come to conclude that non-monetary claims of the non-insolvent party would be converted into a payment claim in Euro upon the opening of insolvency proceedings pursuant to § 14 IO.

- (iii) Kindly note that based on the Clearing House Documentation, we are not entirely sure how relevant a set-off scenario will be from a practical perspective. This is because payments to be made by a Member to the Clearing House, will usually be effected by direct debit orders (i.e. withdrawals) by the Clearing House from the relevant Cash Account, Cash Securities Account or Cash Securities Account for Clearing Fund. Annex .4/ to the Clearing Agreement contains an authorization given by each Member to the Clearing House, whereby a Member irrevocably authorizes the Clearing House, for the duration of its clearing membership and until any open transactions that concern the respective Member are cleared, to withdraw any payments to be made by that Member by way of direct debit from the relevant Member's accounts when due. Therefore, it would appear that monetary claims that such Member has against the Clearing House and monetary claims of the Clearing House against the Member will only be in a position to be set-off in the (presumably relatively short) period between such claims becoming and due and payable and the point in time when the Clearing House directly debits its claims from the Member's relevant account. Once the direct debit order of the Clearing House has been effected, the claim by the Clearing House will have been satisfied and cannot be set-off against the claim that the Member may have against the Clearing House.

4.2.2 Certain aspects in connection with the questions addressed to us may be affected by:

- (i) avoidance laws or similar laws of general application relating to or affecting the enforcement of creditors' rights and remedies;
- (ii) the unavailability of, or limitation on the availability of, a particular right or remedy because of equitable principles of general applicability or a requirement as to commercial reasonableness or good faith. This includes (without limitation) that in cases where a party is vested with a discretion, may determine a matter in its opinion or is granted the right to unilaterally determine essential terms of a contract, such discretion is to be exercised reasonably, such opinion is to be based on reasonable grounds and such determination needs to



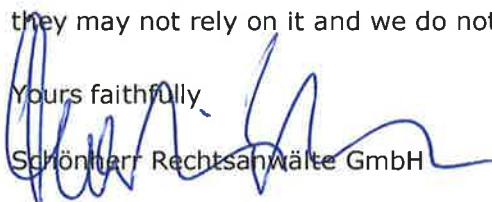
be adequate and not arbitrary under the then prevailing circumstances; and

- (iii) the exception of abuse of law or similar concepts.

There are no other material issues relevant to the issues addressed in this opinion which we wish to draw to your attention, other than that the Clearing House Documentation contains no set-off or close-out netting mechanism entitling a Member to close-out open Contracts or set-off any amounts in case of the Clearing House's insolvency.

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, provided that they may not rely on it and we do not accept a contractual duty or duty of care to them.

Yours faithfully


Schönher Rechtsanwälte GmbH

Annex 1: Form of Clearing Agreement

Version Oct. 2010

Agreement on the Clearing of Exchange Transactions concluded at Wiener Börse in its Function as a Securities Exchange in Securities Transactions and/or in Options and Financial Futures Transactions and in Transactions concluded on the Third Market operated as an Multilateral Trading System (MTF) operated by Wiener Börse AG – Clearing Agreement

concluded between

CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH
Strauchgasse 1-3
A-1010 Vienna

(hereinafter referred to as "CCP.A" or "Clearing House") and

.....
.....
.....

(hereinafter referred to as "Participating Clearing Member") as follows:

PREAMBLE

The Participating Clearing Member is an exchange member of Wiener Börse in its function as a securities exchange and enters into this agreement for the purpose of participating directly, be it as a Direct Clearing Member or as a General Clearing Member in the clearing of CCP-eligible transactions.

CCP.A is commissioned with the task of a clearing house in the clearing of CCP-eligible Transactions pursuant to Article 26 para 3 Stock Exchange Act (BörseG). The CCP-eligible Transactions shall take place exclusively between CCP.A as central counterparty and one exchange member respectively, which directly participates in the clearing.



§ 1 Object of the Agreement

- (1) CCP.A is the contractual counterparty of the Participating Clearing Member in the CCP-eligible transactions concluded by the latter through the trading systems and carries out the clearing and risk management for CCP-eligible transactions.
- (2) The contracting parties confirm that they are aware of the "Rules for the Clearing through CCP Austria (CCP.A Clearing Rules)" ("CCP.A Clearing Rules") which form part of the General Business Conditions of *Wiener Börse AG* ("WBAG") pursuant to Article 13 Stock Exchange Act, that the current version of the CCP.A Clearing Rules is available to the Participating Clearing Member and that this agreement ("Clearing Agreement") is concluded on the basis of the CCP.A Clearing Rules as amended. The contracting parties undertake to comply with the CCP.A Clearing Rules as amended.
- (3) The Participating Clearing Member participates pursuant to the CCP.A Clearing Rules as¹
 - Direct Clearing Member
 - General Clearing Memberin the clearing of (exchange) transactions concluded in trading
 - CCP-eligible securities
 - Options und Financial Futures Contracts

The Participating Clearing Member has its transactions processed via the

- **clearing agent** ("Clearing Agent")

and submits a declaration of the Clearing Agent, by which the Clearing Agent undertakes to process the transactions².

§ 2 Commissioning Third Parties

- (1) The Clearing House has commissioned WBAG and Oesterreichische Kontrollbank Aktiengesellschaft ("OeKB") with operating the technical clearing systems. In addition, in its capacity as settlement bank ("Clearing Bank") the latter is entrusted with making the book entries for securities and payment transactions (the settlement), including the maintaining of deposits and accounts as well as credit investigations.
- (2) The Clearing House is authorized to commission further parties to act on its behalf.

¹ Check if applicable.

² Delete if not applicable.



§ 3 Use of Data

- (1) The Participating Clearing Member hereby explicitly agrees to the use of person-related data connected with its exchange membership or its participation in the clearing, and to the transmission of these data by CCP.A, the exchange operating company and the Clearing Bank to any other entities mentioned for the purposes of fulfilling the specified in the CCP.A Clearing Rules.
- (2) The Participating Clearing Member explicitly agrees to the transmission of data by CCP.A, the exchange operating company and the Clearing Bank to the Austrian Financial Markets Supervision ("FMA") as well as to any competent foreign supervisory authorities for the purposes of carrying out their supervisory tasks over exchange members.
- (3) The Participating Clearing Member hereby releases the Clearing Bank in the meaning of the aforementioned paragraphs from banking secrecy as far as this is necessary for the purpose of fulfilling their tasks by the Clearing Bank pursuant to the CCP.A Clearing Rules or the supervisory tasks of FMA or any competent foreign supervisory authorities.

§ 4 Cash Accounts and Securities Deposits, Collateral

- (1) The accounts and deposits, including collateral deposits and collateral accounts, opened by the Participating Clearing Member at the Clearing Bank in conformity with the requirements of the CCP.A Clearing Rules are shown in the form which is enclosed with this Clearing Agreement as annex J2. The contents of the pledge to be submitted by the Participating Clearing Member (or by its Clearing Agent on its behalf), the direct collection order, and (if applicable) the guarantee are laid down in the samples enclosed with this Clearing Agreement as annexes J3, J4 and J5
- (2) A precondition for the participation of a Participating Clearing Member in the clearing *inter alia* is that the required collateral is duly perfected.
- (3) The Participating Clearing Member confirms that as a collateral provider it belongs to one of the categories of Article 2 Financial Collateral Act (Finanzsicherheitengesetz - FinSG) and thus the FinSG applies to the depositing and realization of the collateral. Should the FinSG turn out to be inapplicable, the contracting parties hereby agree to its applicability unless mandatory statutory provisions contradict such agreement.



§ 5 Duration of the Agreement

- (1) The Clearing Agreement may be terminated by the Participating Clearing Member pursuant to Article 10 of the CCP.A Clearing Rules at any time in writing without stating reasons.
- (2) CCP.A shall be permitted to terminate the Clearing Agreement with immediate effect without observing a notice period, if there is a material reason pursuant to Article 11 of the CCP.A Clearing Rules. The termination by CCP.A shall be made in writing, with the reasons to be stated.
- (3) The termination of the Clearing Agreement shall not release the Participating Clearing Member from its rights and obligations from CCP-eligible transactions already concluded, for whose clearing it is responsible.
- (4) The exchange operating company shall immediately be informed by the contracting parties of the termination of the Clearing Agreement.
- (5) No new orders may be entered into the trading systems for an exchange member without a Clearing Agreement; access of the exchange member to the trading systems for the purposes of entering orders will be interrupted by technical means. All existing orders shall be deleted by the exchange member. If the deletion of the orders is not completed within an adequate time period set by the exchange operating company in each individual case, then the exchange operating company will delete the orders.
- (6) In case the guarantee according to annex .3 contains a time-limit, the Participating Clearing Member shall one month prior to the expiration of the guarantee either arrange for a renewal/prolongation of the guarantee or provide adequate alternative collateral, as otherwise the Clearing Agreement will terminate with immediate effect.

§ 6 Assignability

An assignment of rights or a transfer of obligations under the Clearing Agreement by a Participating Clearing Member shall only be possible with the consent of CCP.A.

§ 7 Liability

- (1) Any liability of CCP.A, of OeKB, of WBAG or other parties acting on CCP.A's behalf for damages due to circumstances for which they are not responsible or for damages whose cause is outside of the sphere of CCP.A, OeKB, WBAG or other third parties acting on CCP.A's behalf shall be excluded.



- (2) CCP.A, OeKB, WBAG and other parties acting on CCP.A's behalf shall not be liable for losses, lost profits or damages, unless these losses, lost profits or damages are the result of their intentional or gross negligent conduct. Liability for consequential damages shall be excluded in any case.
- (3) CCP.A, OeKB, WBAG and other parties acting on CCP.A's behalf shall not be liable to third parties, who are not Participating Clearing Members, for any losses, damages, consequential damages or lost profits that may occur as a result of, or in connection with, the clearing of CCP-eligible Transactions.
- (4) CCP.A, OeKB, WBAG and other parties acting on CCP.A's behalf shall not be liable for damages caused by a disruption of operations due to force majeure, riot, war and natural disasters or due to other events or incidents for which they are not responsible (e.g. strikes, lawful lock-outs, traffic disruptions) or restraints/acts of sovereigns.
- (5) The same shall apply to damages suffered by an exchange member due to technical problems or due to a partial or full failure of the EDP system used by it or suffered by exchange members due to errors in the entering of data in the course of trading or clearing and the administration of the records on the collateral deposited, insofar as these damages do not result from intentional or gross negligent conduct of CCP.A, OeKB, WBAG or other parties acting on CCP.A's behalf.

§ 8 Choice of Law, Jurisdiction

- (1) This Clearing Agreement shall be governed by, and construed in conformity with, Austrian law, with the exception of its conflict of laws provisions.
- (2) Any disputes arising from or in connection with the fulfillment of CCP-eligible transactions including the issue of whether or not a transaction has been concluded between the parties, shall be decided, to the exclusion of the regular courts, by the arbitral tribunal of the stock exchange pursuant to the decree of the Federal Minister of Finance and the Federal Minister of Economic Affairs and Labour in agreement with the Federal Minister of Justice on the implementation of Art. XIII Introductory Law to the Code of Civil Procedure (Einführungsgesetz zur Zivilprozessordnung - EGZPO) (Rules of Arbitration of Wiener Börse), Federal Law Gazette (BGBl) II 230/2000, as a compulsory arbitral tribunal imposed by law.
- (3) Any other disputes shall be subject to the exclusive jurisdiction of the competent courts in commercial matters in Vienna. CCP.A may, however, bring an action against the Participating Clearing Member before any other court that may have jurisdiction.



§ 9 Supplements, Severability

- (1) Should any individual provisions of this Clearing Agreement be or become fully or partially invalid or unenforceable, the validity or enforceability of the other provisions shall not be impaired.
- (2) Invalid provisions shall be replaced by such provisions, which come as close as possible to the intended economic effect. The same shall apply to the filling of any lacking provisions in this Clearing Agreement.

§ 10 Addresses

Except in case of a change of address notified in writing, all notices intended for CCP.A shall be sent to:

CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH
Strauchgasse 1-3
A-1010 Vienna

and any notices intended for the Participating Clearing Member shall be sent to

.....
.....
.....

§ 11 Languages, Counterparts, Form

- (1) This Clearing Agreement shall be executed in two counterparts in German and English respectively. These counterparts shall be legally binding. In case of a deviation between the English and the German version the German text shall prevail. Any translations into other languages are only for information purposes and shall not be binding.
- (2) Amendments of the Clearing Agreement, including a deviation from the requirement of the written form, shall only be valid if in written form.
- (3) The annexes referred to below shall form an integral part of this Clearing Agreement:

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Annex 1: CCP.A Clearing Rules

**Annex 2: Form on Accounts and Deposits of the Participating Clearing Member at the
Clearing Bank**

Annex 3: Guarantee

Annex 4: Direct Debit Order

Annex 5: Pledge of Cash and/or Securities by the Participating Clearing Member

.....
Place, Date

Corporate Signature Participating Clearing Member

.....
Place, Date

CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH

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Annex .12

**CCP Austria Abwicklungsstelle
für Börsengeschäfte GmbH ("CCP.A") and
Oesterreichische Kontrollbank Aktiengesellschaft
Strauchgasse 1-3
A – 1010 Vienna**

**Notification of Accounts and Deposits pursuant to Article 13 of the "Rules for the
Clearing through CCP Austria (CCP.A Clearing Rules)"
("CCP.A Clearing Rules"):**

<u>Type of Account or Deposit</u>	<u>Details of Account and/or Deposit</u>
<u>Cash Clearing Account</u>	
<u>Securities Clearing Account</u>	
<u>Cash Collateral Account</u>	
<u>Securities Collateral Account</u>	

The Business Terms of the Clearing Bank (or, in the case of cash accounts kept at a recognized bank, of the recognized bank) shall apply to the above clearing accounts and collateral accounts.

The Participating Clearing Member hereby declares pursuant to Article 12 par. 4 of the Clearing Rules to release the Clearing Bank from the bond to banking secrecy pursuant to Article 38 Banking Act and to the Data Protection Act for the purpose of executing clearing and for reporting suspicious incidents of breaches of the Clearing Rules or of the Clearing Agreement.

(Place, Date)

(corporate Signature Participating Clearing Member)

Annex .3

**CCP Austria Abwicklungsstelle
für Börsengeschäfte GmbH ("CCP.A")
Strauchgasse 1-3
A – 1010 Vienna**

Bankguarantee

for the benefit of CCP.A pursuant to the "Rules for the Clearing through CCP Austria (CCP.A Clearing Rules)"

Ladies and Gentlemen,

(Corporate Name and Seat of Credit Institution)

as guarantor hereby unconditionally and irrevocably undertakes, as security for the settlement of any obligations and liabilities of

(Corporate Name and Seat of Exchange Member)

as Participating Clearing Member pursuant to the CCP.A Clearing Rules, to pay the requested amount of up to

Euro

(in words:

)

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upon first written demand by CCP.A, at the latest to be issued and sent and pre-advised via facsimile (fax no.) on DD.MM.YYYY, whereas the payment shall take place upon receipt of the original demand note waiving any objections and defenses and without examination of the underlying legal ground or legal relationship, to an account named by CCP.A.

Non-exclusive place of jurisdiction shall be Vienna. This guarantee shall be governed by, and shall be interpreted in conformity with, Austrian substantive law.

After termination of your contractual relationship with the Participating Clearing Member and complete settlement of the obligations arising thereunder, you will return this guarantee to us.

Kind regards,

(Corporate Name and Seat of Credit Institution)

(Place, Date)

(Corporate Signature)

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Annex .4

Return to:

CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH
Strauchgasse 1-3
A - 1010 Vienna

Authorization of Withdrawals by Direct Debit Order

We hereby irrevocably authorize you, for the duration of our clearing membership and until any open transactions that concern us are cleared, to withdraw any payments to be made by us by way of a direct debit from our account when due. This shall also authorize our bank maintaining the account, currently, to fulfill the direct debit. We shall ensure that our account has sufficient coverage. In case of an insufficient coverage the recipient of the payment (=CCP.A) shall be notified. The funds to be withdrawn from the account shall not be subject to any limitations with regard to their amount.

Name and Address of the Payer (= Counterparty of CCP.A and Accountholder)

Name of the Bank:

City: _____

Account Routing Code: _____

Account Number of

Payer:

Payments for (Exchange) Transactions and fees



Payee:

CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH
Strauchgasse 1-3
A - 1010 Vienna

.....

Place, Date

Corporate Signature of Payer



Annex .5

PLEDGE

(Corporate Name and Seat of Participating Clearing Member)

(hereinafter referred to as "Participating Clearing Member")

is authorized to participate as Participating Clearing Member with all rights and obligations in the clearing of CCP-eligible transactions pursuant to the "Rules for the Clearing through CCP Austria (CCP.A Clearing Rules)" (hereinafter "CCP.A Clearing Rules").

The Participating Clearing Member has opened the account no. (blocked account for cash deposits) and the securities deposit no. at Oesterreichische Kontrollbank Aktiengesellschaft ("OeKB") as clearing bank ("Clearing Bank"), which are to be used for the deposit of the collateral pursuant to the CCP.A Clearing Rules.

The Participating Clearing Member hereby pledges any cash deposits and securities on the account no. as well as on the securities deposit no. at OeKB to CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH ("CCP.A" or "Clearing House") as a security for all liabilities of the Participating Clearing Member, which currently and in the future arise from the participation of the Participating Clearing Member in the clearing pursuant to the CCP.A Clearing Rules. In case of a contribution to the solidarity fund pursuant to the CCP.A Clearing Rules by way of a cash deposit, the part of a cash deposit intended to serve as contribution to the solidarity fund shall also serve as a security for the open liabilities of other Participating Clearing Members pursuant to the CCP.A Clearing Rules.

CCP.A shall be authorized to satisfy its claims upon the occurrence of an event of default pursuant to the CCP.A Clearing Rules ("Event of Default") from the pledged cash deposits and the pledged securities. The Clearing House shall irrevocably be authorized pursuant to Article 6 Financial Collateral Act (Finansicherheitengesetz – FinSG) to realize the collateral



provided in its discretion without further consent of the Participating Clearing Member, without approval or consent by a court to the terms of realization and without an auction, without a warning about the intended realization and without a waiting period. The realization or appraisal of the collateral shall be made by the Clearing House pursuant to the principles of fair business dealings (redlicher Geschäftsverkehr) according to the market price of the collateral on the day of realization or appraisal. A surplus will be transferred to the Participating Clearing Member or credited in its favor after full satisfaction of all open liabilities and fulfillment of any obligation to provide additional collateral.

In case of an Event of Default, the Clearing House shall be authorized to sell the securities provided as pledge, without an obligation that the sales price be paid immediately and in cash, or to have them transferred to one of its securities deposits for the purposes of an appropriation pursuant to Article 5 para 2 FinSG and thereafter to set off their value against the open liabilities of the Participating Clearing Member or to use them in lieu of payment. Pledged cash deposits may be set off against the open liabilities of the Participating Clearing Member or may be used in lieu of payment.

Realization shall also be permitted, if bankruptcy or liquidation proceedings, composition or reorganization proceedings, business supervision or any similar proceedings are opened over the assets of the Participating Clearing Member or if such proceedings are still pending.

In case of a realization or termination, the collateral provided or the value representing it may be included into the close-out netting pursuant to Article 58 of the CCP.A Clearing Rules.

Also pledged and (if the need arises) to be realized pursuant to the above provisions are all cash credit balances (cash credit balances within the meaning of Article 4 para 1 FinSG) and the securities to be delivered to the Participating Clearing Member (delivery balances, securities balances within the meaning of Article 4 para 1 FinSG), which shall be retained by CCP.A as additional collateral pursuant to Article 38 para 4 of the CCP.A Clearing Rules in case of an Event of Default. The Participating Clearing Member irrevocably instructs OeKB as holder of the pledge to enter the pledge on the accounts and deposits as well as on its books, to allow disposals with regard to the collateral provided only if also signed by CCP.A, and in an Event of Default to transfer the securities and the cash deposits according to the instructions of CCP.A to CCP.A or a third party named by it.

The Participating Clearing Member releases OeKB from the banking secret, insofar as this is required for the fulfillment of its tasks as Clearing Bank by OeKB pursuant to the CCP.A Clearing Rules of Wiener Börse AG as amended or the supervisory function of the Financial Market Supervision (FMA) as well as of any competent foreign supervisory authorities. The



Participating Clearing Member consents to the use and transmission of personal data by and to OeKB as laid down in Article 3 of its Clearing Agreement with CCP.A.

OeKB herewith declares that it waives any statutory as well as contractual (individually agreed or in general business conditions) pledge, retention and netting rights with respect to all assets deposited on the account no. (blocked account for cash deposits) and the securities deposit no.

This agreement shall be governed by Austrian law. For any disputes arising under this agreement the parties agree on the exclusive jurisdiction of the courts in Vienna with jurisdiction in commercial matters.

.....
Place, Date

.....
Corporate Signature of Participating Clearing Member

CCP.A accepts the pledge pursuant to this pledge agreement as pledgee.

.....
Place, Date

.....
Corporate Signature CCP.A

OeKB also signs this pledge agreement as holder of the pledge.

.....
Place, Date

.....
Corporate Signature OeKB

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Annex 2: Form of Security Documentation

Version Oct. 2010

Annex .5

PLEDGE

(Corporate Name and Seat of Participating Clearing Member)

(hereinafter referred to as "Participating Clearing Member")

is authorized to participate as Participating Clearing Member with all rights and obligations in the clearing of CCP-eligible transactions pursuant to the "Rules for the Clearing through CCP Austria (CCP.A Clearing Rules)" (hereinafter "CCP.A Clearing Rules").

The Participating Clearing Member has opened the account no. (blocked account for cash deposits) and the securities deposit no. at Oesterreichische Kontrollbank Aktiengesellschaft ("OeKB") as clearing bank ("Clearing Bank"), which are to be used for the deposit of the collateral pursuant to the CCP.A Clearing Rules.

The Participating Clearing Member hereby pledges any cash deposits and securities on the account no. as well as on the securities deposit no. at OeKB to CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH ("CCP.A" or "Clearing House") as a security for all liabilities of the Participating Clearing Member, which currently and in the future arise from the participation of the Participating Clearing Member in the clearing pursuant to the CCP.A Clearing Rules. In case of a contribution to the solidarity fund pursuant to the CCP.A Clearing Rules by way of a cash deposit, the part of a cash deposit intended to serve as contribution to the solidarity fund shall also serve as a security for the open liabilities of other Participating Clearing Members pursuant to the CCP.A Clearing Rules.

CCP.A shall be authorized to satisfy its claims upon the occurrence of an event of default pursuant to the CCP.A Clearing Rules ("Event of Default") from the pledged cash deposits and the pledged securities. The Clearing House shall irrevocably be authorized pursuant to Article 6 Financial Collateral Act (Finansicherheitengesetz – FinSG) to realize the collateral



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provided in its discretion without further consent of the Participating Clearing Member, without approval or consent by a court to the terms of realization and without an auction, without a warning about the intended realization and without a waiting period. The realization or appraisal of the collateral shall be made by the Clearing House pursuant to the principles of fair business dealings (redlicher Geschäftsverkehr) according to the market price of the collateral on the day of realization or appraisal. A surplus will be transferred to the Participating Clearing Member or credited in its favor after full satisfaction of all open liabilities and fulfillment of any obligation to provide additional collateral.

In case of an Event of Default, the Clearing House shall be authorized to sell the securities provided as pledge, without an obligation that the sales price be paid immediately and in cash, or to have them transferred to one of its securities deposits for the purposes of an appropriation pursuant to Article 5 para 2 FinSG and thereafter to set off their value against the open liabilities of the Participating Clearing Member or to use them in lieu of payment. Pledged cash deposits may be set off against the open liabilities of the Participating Clearing Member or may be used in lieu of payment.

Realization shall also be permitted, if bankruptcy or liquidation proceedings, composition or reorganization proceedings, business supervision or any similar proceedings are opened over the assets of the Participating Clearing Member or if such proceedings are still pending.

In case of a realization or termination, the collateral provided or the value representing it may be included into the close-out netting pursuant to Article 58 of the CCP.A Clearing Rules.

Also pledged and (if the need arises) to be realized pursuant to the above provisions are all cash credit balances (cash credit balances within the meaning of Article 4 para 1 FinSG) and the securities to be delivered to the Participating Clearing Member (delivery balances, securities balances within the meaning of Article 4 para 1 FinSG), which shall be retained by CCP.A as additional collateral pursuant to Article 38 para 4 of the CCP.A Clearing Rules in case of an Event of Default. The Participating Clearing Member irrevocably instructs OeKB as holder of the pledge to enter the pledge on the accounts and deposits as well as on its books, to allow disposals with regard to the collateral provided only if also signed by CCP.A, and in an Event of Default to transfer the securities and the cash deposits according to the instructions of CCP.A to CCP.A or a third party named by it.

The Participating Clearing Member releases OeKB from the banking secret, insofar as this is required for the fulfillment of its tasks as Clearing Bank by OeKB pursuant to the CCP.A Clearing Rules of Wiener Börse AG as amended or the supervisory function of the Financial Market Supervision (FMA) as well as of any competent foreign supervisory authorities. The



Participating Clearing Member consents to the use and transmission of personal data by and to OeKB as laid down in Article 3 of its Clearing Agreement with CCP.A.

OeKB herewith declares that it waives any statutory as well as contractual (individually agreed or in general business conditions) pledge, retention and netting rights with respect to all assets deposited on the account no. (blocked account for cash deposits) and the securities deposit no.

This agreement shall be governed by Austrian law. For any disputes arising under this agreement the parties agree on the exclusive jurisdiction of the courts in Vienna with jurisdiction in commercial matters.

.....
Place, Date

Corporate Signature of Participating Clearing Member

CCP.A accepts the pledge pursuant to this pledge agreement as pledgee.

.....
Place, Date

Corporate Signature CCP.A

OeKB also signs this pledge agreement as holder of the pledge.

.....
Place, Date

Corporate Signature OeKB

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