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25 January 2013

Dear Sirs

**NETTING ANALYSER LIBRARY**

You have asked us to give an opinion in respect of the laws of Romania ("**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 ordinary trading corporates regulated pursuant to the Companies Law (the "**Ordinary Corporates**");

insofar as each may act as a counterparty (a "**Counterparty**") providing Collateral (as defined in paragraph 1.3) 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 (if any):

1.2.1 Credit institutions incorporated in Romania and regulated pursuant to the Banking Law and to the relevant secondary legislation issued by the National Bank of Romania ("**Credit Institutions**") (Schedule 1);

1.2.2 Insurance companies incorporated in Romania and regulated pursuant to the Insurance Companies Law and to the relevant secondary legislation issued by the Insurance Supervision Commission (the "**ISC**") ("**Insurance Companies**") (Schedule 2);

1.2.3 Statutory corporations established or incorporated in Romania and operating pursuant to the State Owned Entities Law, the GO No. 15/1993 and other specific legislation (the "**Statutory Corporations**") (Schedule 3);

1.2.4 State owned entities established or incorporated in Romania and operating pursuant to the State Owned Entities Law, the GEO No. 30/1997 and other specific legislation (the "**State Owned Entities**") (Schedule 4);

1.2.5 Collective investments undertakings established or incorporated in Romania and regulated pursuant to the Capital Market Law and to the relevant secondary legislation issued by the National Securities Commission (the "**NSC**") (the "**Investment Funds**") (Schedule 5);

1.2.6 Financial investment services companies incorporated in Romania and regulated pursuant to the Capital Market Law and to the relevant secondary legislation issued by the NSC (the "**Investment Firms**") (Schedule 6);

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

1.2.8 Romanian Ministry of Public Finance (the "**MPF**") (Schedule 8);

1.2.9 National Bank of Romania (the "**NBR**") (Schedule 9); and

1.2.10 Individuals regulated pursuant to the Romanian Civil Code (the "**Individuals**") (Schedule 10),

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

1.3 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.

1.4 For the purpose of issuing this opinion we have reviewed only the documents referred to in Annex 1 (*Forms of FOA Agreements*) to this opinion.

1.5 This opinion letter and the opinions given in it are governed by Romanian law and relate only to Romanian law as applied by the Romanian courts as of the date of this

opinion letter (up to and including the Official Gazette of Romania Part I, No. 56 of 24 January 2013). All non-contractual obligations and any other matters arising out of or in connection with this opinion letter are governed by Romanian law. We express no opinion in this opinion letter on the laws of any other jurisdiction.

1.6 We express no opinion as to any liability to tax which may arise or be suffered as a result of or in connection with the Agreement.

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

1.8 Schedules 1 to 10 hereof are integral part of this opinion letter and must be read together with this opinion letter.

1.9 In this opinion letter:

1.9.1 "**Insolvency Proceedings**" means insolvency, bankruptcy or analogous proceedings (where, for the purposes of paragraph 3 of this opinion, the occurrence of such proceedings in respect of the Counterparty falls within the definition of Event of Default under the Agreement).

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

1.9.3 "**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;

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

1.9.5 "**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.

1.9.6 in other instances other than those referred to at 1.9.5 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.

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

1.9.8 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;

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

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

1.9.11 "**Banking Bankruptcy Ordinance**" means Government Ordinance no. 10/2004 on judicial reorganisation procedure and bankruptcy of credit institutions, as approved;

1.9.12 "**Banking Law**" means Emergency Government Ordinance no. 99/2006 on credit institutions and capital adequacy, as further amended;

1.9.13 "**Capital Market Law**" means Law no. 297/2004 on capital markets, as further amended;

1.9.14 "**Companies Law**" means Law no. 31/1990 on commercial companies, as republished and further amended;

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

1.9.16 "**Financial Collateral Ordinance**" means Government Ordinance no. 9/2004 on certain financial collateral arrangements as further amended, transposing the European Financial Collateral Directive;

1.9.17 "**GEO No. 30/1997**" means the Government Emergency Ordinance no. 30/1997 on the reorganisation of the autonomous regies, as further amended;

1.9.18 "**GO No. 15/1993**" means Government Ordinance no. 15/1993 on the reorganisation of the activity of the autonomous regies, as further amended;

1.9.19 "**Insurance Companies Law**" means Law no. 32/2000 on insurance companies and insurance supervision, as further amended;

1.9.20 "**Insolvency Law**" means Law no. 85/2006 on insolvency proceedings, as further amended;

1.9.21 "**NFI Law**" means Law no. 93/2009 on non-banking financial institutions;

1.9.22 "**OPF Law**" means Law no. 204/2006 regarding optional pensions;

1.9.23 "**PMPF Law**" means Law no. 411/2004 regulating the establishment, the organisation, the operation and the prudential supervision of the privately managed pension funds;

1.9.24 "**Public Order**" means a rule of public order under the Romanian international private law;

1.9.25 "**State Owned Entities Law**" means Law no. 15/1990 on the reorganisation of state owned economic entities as autonomous regies and commercial companies, as further amended; and

1.9.26 References to "**Core Provisions**" include Core Provisions that have been modified by Non-Material Amendments (as defined herein).

## 2. ASSUMPTIONS

We assume the following:

2.1 That the Agreements (including any Equivalent Agreement) 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 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 and validly executed, Schedule(s) to the Agreement have been duly and properly filled in and any modules or other annexes to the Agreement have been duly and properly included and filled in by both Parties.

2.7 That each Designated Office designated by Parties within the Agreement (if the case may be) is an Establishment[1] within the meaning of the EUIR and the Cross- Border Insolvency Law. Moreover, we assume that such Designated Office has no legal personality (*personalitate juridica*) separate from that of the relevant Party.

2.8 That the Agreement is entered into prior to the commencement of any Insolvency Proceedings in respect of either Party.

2.9 Any individual signing any document has no restrictions as to his legal capacity which would prevent the respective individual from duly signing such documents.

2.10 There has been no error ("*eroare*"), induced error ("*dol*"), violence/duress ("*violență*"), harm ("*leziune*") or other undue influence on the part of or against any of the parties to the Agreement, and 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.

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

2.12 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 Provisions or the Rehypothecation Clause under the governing law of the Agreement.

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

2.14 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.

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[1] Under the EUIR and the Cross Border Insolvency Law an "Establishment" is any place of operations where the debtor carries out a non-transitory economic activity with human means and goods.

2.15 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.

2.16 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.

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

2.18 The parties to the Agreement are not seeking to achieve any purpose not apparent from the Agreement which would have the effect of rendering the Agreement illegal or void.

2.19 Without prejudice to the fact that this opinion relates only to Romanian law, there is no law in any other jurisdiction which would render any of the opinions set out in this opinion inaccurate, materially or at all.

2.20 The Counterparty has legal, valid, binding, marketable and enforceable ownership titles and respectively valid rights to the Collateral.

2.21 Any securities which are subject to the Security Interest Provisions have been legally issued to, or validly acquired by, the Counterparty.

2.22 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.

## 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 governing the perfection of the Security Interest.

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 **General**

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

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

(c) The new Romanian Civil Code defines "standard clauses" as being the clauses previously established by one of the parties to be utilized generally and repeatedly and which are included in the contract without being negotiated with the other party. Further, the new Romanian Civil Code provides that certain standard non-usual clauses of the types detailed below will not be effective unless negotiated and expressly accepted in writing by the counterparty. Such standard non-usual clauses are those which (A) provide in favour of their proposer (i) the limitation of liability, (ii) the right to unilaterally terminate (in Romanian: *denuntare unilaterala*) the contract or (iii) the right to suspend performing its obligations, or (B) provide to the detriment of the counterparty (i) the forfaiture of rights (in Romanian: *decadere din drepturi*), (ii) the forfaiture of the benefit of a timeline (in Romanian: *decaderea din beneficiul termenului*), (iii) the limitation of the right to raise defences (in Romanian: *dreptul de a*

*opune exceptii*), (iv) the limitation of the right to contract with third parties, (v) the tacit renewal of the agreement, (vi) the applicable law, (vii) the submission to arbitration (in Romanian: *clauzele compromisorii*) or clauses derogating from the rules of court jurisdiction. Given the large liberty of appreciation of the courts under the new Romanian Civil Code and the fact that the actual negotiation of the Agreement is a matter of fact, should the Counterparty successfully prove that there are clauses in the Agreement of the types listed above which it did not negotiate and that such non-usual clauses are standard, the Romanian court may hold such clauses ineffective.

4.2 **Choice of law**

Subject to paragraphs 4.3. and 4.6 below:

(a) The designation in the Agreement of the English law or of the law of the State of New York (as the case may be) as the governing law of the Agreement would be recognised and applied in an action brought before a court of competent jurisdiction in Romania only: (a) to the extent specifically pleaded and proved; and (b) if such laws are not considered by the Romanian court to be procedural in nature, fiscal or penal laws; and (c) if such laws did not become applicable through fraudulent means and are not inconsistent with or contrary to Public Order or overriding mandatory provisions of Romanian law or, where all other elements relevant to the situation at the time that the Agreement was entered into are located in one or more Member States of the European Community, the provisions of Community law, where appropriate as implemented in Romania which cannot be derogated from by agreement.

(b) If all other elements relevant to the situation at the time that the Agreement was entered into are located in a country other than England or the State of New York (as the case may be), the choice of English or State of New York law as the governing law of the Agreement shall not prejudice the application by a Romanian court of provisions of the law of that other country which cannot be derogated from by agreement.

4.3 **Law governing the creation and perfection of security interest**

The law governing the creation and perfection of security interests depends on the type of Collateral and its location (or, in certain cases, the location of the debtor). Consequently, additional actions required to create and perfect a security interest may differ depending on the applicable law. We set out below the relevant conflict rules provided by the Romanian law.

(a) Securities in physical form.

(aa) As a general rule, according to the Romanian international private law rules (Article 2613 of the Romanian Civil Code), the possession, ownership and any other rights *in rem* including real security interests over assets are governed by the law of the place where such assets are

located, unless otherwise provided under special laws. Referring specifically to security interests in the form of movable mortgages on physical assets, Article 2627 of the Romanian Civil Code states that the validity, publicity and ranking of such movable mortgage are governed by the law of the place where the mortgaged asset was located at the date when the mortgage agreement was entered into (*lex cartae sitae*).

(bb) Under Article 2628 of the Romanian Civil Code, the requirements for the validity, publicity and ranking of a security interest on negotiable titles (*titlu de valoare negociabil*, which under Romanian law include securities) which are not in the possession of the creditor are governed by the law of the place where the debtor was located at the date when the mortgage agreement was entered into (*lex societatis*).

(cc) In the case of bonds and equity in physical form, the law governing the validity, publicity and effects of a movable mortgage there on will be the law of the issuer (*lex societatis*).

(b) Dematerialised securities. There are two possible scenarios, depending on whether the Security Interest qualifies under the Romanian Civil Code or rather under the special and derogatory provisions of the Financial Collateral Ordinance (please refer to Annex 4 to this opinion letter for the criteria that may qualify the Security Interest under the Financial Collateral Ordinance):

(i) Security Interest falling under the Romanian Civil Code

(aa) The general rule is that security interests are governed by the law of the place where the assets are located (i.e. *lex situs*).

(bb) Under Article 2628 of the Romanian Civil Code, the validity and perfection requirements for a movable mortgage charging intangible movable assets or negotiable titles which are not in the possession of the creditor (i.e. which include dematerialised securities) are governed by the law of the place where the collateral provider's headquarters were located at the moment the mortgage was created (*lex societatis*).

(cc) In the case of dematerialised bonds, the applicable law will be the law of the issuer (*lex societatis*) or, if admitted to trading on a regulated market, the law of the State where the regulated market is located (*lex libri siti*).

Nevertheless, it is not clear, with respect to securities other than bonds and equity, traded on a regulated market, whether Article 2628 of the Romanian Civil Code contemplated the difficulties that may arise in creating a security interest in book entry securities which complies with *lex societatis*, but may not comply with *lex situs*. Consequently, in the absence of any relevant court practice on this subject, our view is that

*lex societatis* governs the creation/perfection of security interests in book-entry securities other than bonds and equity traded on a regulated market, although it is recommendable that *lex situs* is observed as well. Therefore, for any collateral on dematerialised bonds issued by a Romanian issuer or traded on a Romanian regulated market, the rules provided by the Romanian law should be observed.

(ii) Security Interest falling under the Financial Collateral Ordinance

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

(c) Immobilised securities. In the case of interests in immobilised securities, where a physical global instrument constituting the underlying securities is held by a depositary for the clearing system, two interpretations as to the *lex situs* of such securities are possible on the basis of the Romanian Civil Code:

(i) Because the securities exist in the form of tangible asset, they may be viewed as corporal assets.

(ii) There is, however, a different approach to this matter. One may argue that securities and interests in securities are different types of assets, having different legal characteristics. Therefore, it would be incorrect to assume, for example, that a physical bearer bond is the same as an unallocated, indirect and intangible interest in such a bond.

Although there is no court practice with respect to this issue, our view is that in the case of immobilised securities, the second approach detailed under (b)(ii) above should be taken by a Romanian court. This approach accords with existing customary practice in the international securities market. It is also consistent with the provisions of the Settlement Finality Directive no. 98/26/CE and of the Financial Collateral Directive.

A distinction must be made on whether the Security Interest qualifies under the Romanian Civil Code or rather under the special and derogatory provisions of the Financial Collateral Ordinance, similar to the distinction made above on dematerialised securities: where the Security Interest falls under the Romanian Civil Code, *lex societatis* would be relevant, as nuanced under (b)(i) above, while where the Security Interest falls under Financial Collateral Ordinance, *lex libri siti* would be relevant, as detailed under (b)(ii) above.

(d) Cash. Where cash is standing to the credit of a bank account, security is being created over the claim for the payment of money against the bank with which the account is domiciled. Such claim is, under the Romanian law, an intangible

movable asset. On the basis of the Romanian Civil Code the creation and perfection of a security interest over such claim is governed by the law of the place where the debtor is located as at the date the security was established (*lex societatis*).

4.4 **Validity of a security interest**

The Romanian law is relevant for the validity of the Security Interest where the Collateral or, as applicable, the collateral provider is located in Romania, as detailed at 4.3 above.

(a) Where the Financial Collateral Ordinance is applicable

Subject to the Security Interest meeting all the requirements listed in Annex 4 to this opinion letter, we note that the financial collateral ordinance expressly states that Financial Collateral Arrangements are effective according to their terms.

However, please note that, as under Romanian law a security interest is an accessory to the main obligation, the invalidity and unenforceability of the Secured Obligations will cause the invalidity and unenforceability of the Security Interest.

(b) Where the Financial Collateral Ordinance is not applicable

Should any of the requirements for a valid financial collateral arrangement under the Financial Collateral Ordinance not be met, the Security Interest will not benefit from any of the protective provisions of the Financial Collateral Ordinance. In such a case, the mandatory Romanian rules governing the security interests (i.e. the Romanian Civil Code) would apply and might eventually affect, in part or in whole, the purpose as well as the validity and enforceability of the Security Interest.

With the entry into force of the new Romanian Civil Code as of 1 October 2011, the most common security agreement in movable assets recognised under Romanian law and used in banking practice, i.e. the movable collateral security interest (*garantia reala mobiliara*), was replaced with the movable mortgage.

In order to be valid, in addition to the general requirements concerning the capacity, authority, consent validly expressed, legal object and valid consideration of an agreement, a collateral agreement must meet the following requirements under the Romanian Civil Code:

(i) it must be made in writing;

(ii) it must include the secured amount or it must include provisions for determining the secured amount;

(iii) it must identify the security provider, the secured creditor and the purpose (cause) of the Secured Obligations;

(iv) it must include a description of the charged asset; where security interests are created on cash deposited in a bank account, the security agreement must clearly identify such bank account (the practice in Romania is to identify the account by its IBAN number).

In addition to the above requirements, the Romanian Central Depositary's regulations provide the following validity requirements:

(a) the security interest must be registered into special accounts opened on behalf of the security provider;

(b) the relevant security document should contain special provisions with respect to the valuation method of the securities in case of enforcement by appropriation of the securities for the account of the secured obligations.

Additionally, a bank deposit of funds transfers the ownership over the funds to the bank and gives rise to the obligation of the bank to repay an equivalent amount of money at any time upon the request of the person constituting the deposit. Consequently, a mortgage cannot be created over the proceeds of a deposit (as such proceeds become ownership of the bank), but only over the right of the person making the deposit to reclaim such funds from the bank.

4.5 **Perfection requirements**

(i) Under the Financial Collateral Ordinance

Under the Financial Collateral Ordinance the creation, validity, priority ranking, opposability to third parties, enforceability or admissibility in evidence of a financial collateral arrangement or the Provision of financial collateral (i.e. Cash, Credit Claims or Financial Instruments) under a financial collateral arrangement shall not be dependent on the performance of any formal act (please refer to Annex 4 to this opinion letter). To that end, the perfection requirements for security agreements specified under the Romanian Civil Code are specifically disapplied.

However, the Provision of financial collateral, the evidencing in Writing of such Provision and the evidencing in Writing of the financial collateral arrangement are not deemed to be formal acts for the purposes of the above legal provisions (please refer to Annex 4 to this opinion letter for details).

(ii) Under the Romanian Civil Code

Insofar as the Romanian law applies to the perfection of a security agreement governed by a foreign law, under the Romanian Civil Code the publicity,

opposability against third parties and priority ranking over collateral is ensured by:

(a) Securities in physical form. As a general rule, publicity and priority ranking are obtained through registration with the Electronic Archive for Secured Transactions. Pursuant to the Romanian Civil Code (i) the registration with the Electronic Archive for Secured Transactions renders the movable mortgage enforceable (*opozabil*) against third parties; (ii) a creditor which files for registration is presumed to be aware of the existence of prior registered charges on the collateral; (iii) the registration with the Electronic Archive for Secured Transactions does not validate and invalid mortgage; (iv) the priority ranking of perfected mortgages is determined based on the order of registration/perfection.

Where no special rules apply (such as those detailed at item (b) below), the publicity of a security interest in a security in physical form is made through registration with the Electronic Archive for Secured Transactions, by the possession or endorsement (as applicable) of the relevant instrument and registration of the security interest in the shareholders registry.

(b) Dematerialised and immobilised securities. According to the Romanian Civil Code, the publicity of a security interest in securities that according to the relevant capital market rules may be transferred by a simple registration in the registries that serve the relevant market, the publicity is done according to the rules of that relevant market.

(c) Cash. In case of security interest over cash held in bank accounts, the publicity and opposability against third parties of such security interest may be achieved either by the registration of the security interest with the Electronic Archive for Secured Transactions and/or by control over the bank account.

The creditor obtains the control over the bank account if:

(i) the creditor is the credit institution with which the bank account is opened;

(iii) the security provider, the creditor and the credit institution agree in writing that the latter will follow the instructions of the creditor in relation to the amounts in the bank account;

(iv) the creditor becomes the holder/joint holder of the bank account.

Please note that the mortgage of the creditor which has control over the bank account shall supersede a mortgage of a creditor which has no control.

According to the Romanian Civil Code, a movable mortgage is valid as of the date the movable mortgage agreement was validly entered into, but it only becomes effective on the date on which (i) the secured obligation is born and (ii) the mortgagor acquires rights over the mortgaged asset. A movable mortgage is perfected only when (i) it becomes effective (as described above) and (ii) the formalities required by law for its publicity were duly fulfilled.

4.6 **Ranking of mortgages**

(a) Pursuant to the Romanian Civil Code (i) the registration of a movable mortgage with the Electronic Archive for Secured Transactions renders the movable mortgage interest enforceable ("opozabil") against third parties and (ii) the date, hour and minute of such registration determines the priority ranking of the claim of the relevant secured creditor against other creditors having a claim secured with the same movable asset or assets. Similarly, (i) the registration of an immovable mortgage with the Land Book renders the relevant immovable mortgage enforceable ("opozabil") against third parties and (ii) the date of registration by the relevant Land Book office of the determines the priority ranking of the claim of the relevant registered secured creditor against other creditors having a claim on the same immovable assets or assets. However, the following exceptions apply:

(i) a perfected movable mortgage will always be preferred to an unperfected one, even if the latter was registered first;

(ii) where the same asset is subject to both movable and immovable mortgages, creditors whose movable or immovable mortgage was made public first in the relevant publicity registrars will be preferred. However, if registered in the same day, an immovable mortgage will take priority over a movable mortgage;

(iii) a mortgage on an individual movable asset takes priority over the mortgage on a universality of movable assets, unless the contract and Electronic Archive for Secured Transactions registration of the mortgage on the universality of movable assets describes the relevant universality with sufficient detail as to identify the individual movable asset in question;

(iv) the mortgage of a creditor who has control over a bank account will take precedence over the mortgage of a creditor who does not have such control, provided that the creditor having control also registered its mortgage with the Electronic Archive for Secured Transactions;

(v) the movable mortgage in favour of the seller of an asset or in favour of the creditor who financed the purchase of an asset takes priority over a prior mortgage over the same asset if, prior to the debtor taking possession of the relevant mortgaged asset, the seller or financier registered its mortgage with the Electronic Archive for Secured

Transactions and notified the prior secured creditor with respect to the sale and the registration of its mortgage;

(vi) the movable mortgage over crops or over the product of its sale, created to obtain the amounts necessary to produce the crops, or the movable mortgage created during the period of growth of the crops or during the six month preceding the harvest will take precedence, as of the moment of their registration with the Electronic Archive for Secured Transactions, over any other mortgage;

(vii) the movable mortgage over herds or flocks of animals or over their products, created for obtaining the funds permitting the purchase of necessary forage, medicine or hormones necessary for feeding or treating the animals, will take precedence over any other mortgage over the same assets or their products, except for the mortgage of the seller of forage, medicine or hormones.

(b) Where publicity is obtained through registration with the Electronic Archive for Secured Transactions, if the description in the Electronic Archive for Secured Transactions of an asset does not cover the type of products that resulted from the asset, the mortgage will not preserve its ranking over such products, except if the mortgagee registers with the Electronic Archive for Secured Transactions a modifying registration notice within 15 days as of the date when the mortgagor obtained those products, or if the relevant products are amounts of money.

(c) A registered mortgage over an asset has priority over a pledge ("*gaj*"), even if the pledgor delivered the asset to the pledgee prior to registration of the mortgage.

(d) Where the Collateral falls under the Romanian Civil Code, please note that a statutory lien (Romanian: "*privilegiu*") would take priority over a duly perfected security interest over the same asset only if such lien is duly registered in the Electronic Archive for Secured Transactions or other relevant registrars before such security interest has been perfected.

(e) According to the Romanian conflict of law provisions, the movable mortgage registered pursuant to the law of the place where the asset is located shall maintain its priority ranking in another state if the publicity requirements applicable in such other state have been observed:

(i) before the priority ranking obtained pursuant to the law applicable as at the creation of the mortgage;

(ii) within 60 days from the date the asset has entered that other state or within 15 days from the date the creditor became aware of this event.

The above provisions apply *mutatis mutandis* also in case the mortgage was registered pursuant to the law of the place where the debtor was located, by

taking into account in respect of (ii) above the date when the debtor established its headquarters in that state or, respectively, when the creditor became aware of it.

If the foreign law regulating the priority ranking of a movable mortgage does not provide for any publicity formalities and the asset is not in the creditor's possession, such movable mortgage shall have a priority ranking inferior to that of:

(i) a mortgage over a cash receivable payable in Romania;

(ii) a mortgage over a corporal asset created when the asset was located in Romania;

(iii) a mortgage over a negotiable title;

except if such movable mortgage is registered pursuant to the Romanian law before the mortgages mentioned under (i)-(iii) above are created.

4.7 **Further acts**

Where pursuant to paragraph 4.5(ii) above publicity is made through registration with the Electronic Archive for Secured Transactions, such registration will expire after five years from the date of registration, if not renewed in the meantime, rendering the Security Interest unenforceable against registered third party creditors secured with the same asset or assets. Only the collateral taker (not the collateral provider) may renew such registration.

To the extent new bank accounts are mortgaged from time to time thereafter, security amendments should be executed each time a new bank account is charged with security and, to the extent the publicity is performed through registration with the Electronic Archive for Secured Transactions (please refer to paragraph 4.5(ii)(c) above) such amendment must be registered (as a modifying registration to the existing registration) with the Electronic Archive for Secured Transactions.

Additional collateral taken over dematerialised and immobilised securities should be registered with the relevant registries in order to be perfected (please refer to paragraph 4.4(b), 4.5(ii)(b) above and paragraph (d) of Annex 4 to this opinion letter).

In respect of bonds/state bonds traded on the Romanian regulated market or Romanian state bonds traded in SaFIR, the relevant notices must be sent by the relevant licensed intermediary to RoClear and SaFIR respectively from time to time to make the necessary registrations in respect of the bonds added to security.

Also, where the secured amount changes (increases), amendments to the security agreement are necessary.

Additionally, please note that where the Financial Collateral Ordinance is inapplicable, the Firm has a general statutory duty of care in connection with Collateral in its

possession, including without limitation (i) to maintain the asset with the same care as for his own assets, (ii) to maintain a clear accounting evidence of the asset, as applicable and (iii) to collect the proceeds and interests produced by the asset.

4.8 **Future obligations**

It is permitted under the Romanian law to secure future contractual binding obligations.

Given the absence of relevant practice in Romania and the relative complexity of the drafting of the Agreement, it is recommendable to include in the Agreement a straightforward acknowledgement by the parties with respect to the fact that the Security Interest refers, among others, to future obligations. This is a minimum measure of precaution, given the fact that under the Romanian law the satisfaction of the main obligation triggers the automatic termination of the related security interest, unless the parties expressly provide otherwise.

We set out below a brief description of the approach taken by the Financial Collateral Ordinance and the Romanian Civil Code, respectively.

(a) Where the Financial Collateral Ordinance applies

As mentioned above, under the Financial Collateral Ordinance the secured obligations must give a right to cash settlement and/or delivery of financial instruments and their performance must be secured by a Financial Collateral Arrangement.

Also, the Financial Collateral Ordinance specifies that the relevant financial obligations that are secured by a Financial Collateral Arrangement may consist of or include: (i) present or future, simple or affected by a condition or subject to a term, or prospective obligations (including such obligations arising under a master agreement or similar arrangement); (ii) obligations owed to the collateral taker by a person other than the collateral provider; or (iii) obligations of a specified class or kind arising from time to time.

(b) Where the Financial Collateral Ordinance is inapplicable

The Romanian Civil Code provides that any type of obligation may be secured (including future obligations).

In respect of future obligations, the law emphasises such security takes effect at the moment when the secured obligation is born (as, under the Romanian law security interests are accessories to the main obligation) and the security provider obtains rights over the charged assets.

Regardless of the moment when the security becomes effective, against third parties such security gains its ranking as of the date when the publicity requirements are satisfied, even if the publicity is made before the main obligation is validly created.

4.9 **Future collateral**

It is generally permitted under the Romanian law to charge with security future assets. We set out below a brief description of the approach taken by the Financial Collateral Ordinance and the Romanian Civil Code, respectively.

(a) Where the Financial Collateral Ordinance applies

As emphasised under paragraph (d) of Annex 4 to this opinion letter, the Provision of the eligible collateral and the evidencing of such Provision in Writing are prerequisites for the application of the Financial Collateral Ordinance. That being said, our view is that security may be created over future assets under the Financial Collateral Ordinance, principally because:

(i) the Financial Collateral Ordinance states that a Financial Collateral Arrangement is effective according to its terms; and

(ii) the Financial Collateral Ordinance provides that a Financial Collateral Arrangement may provide for the obligation to Provide, to supplement the Provided, Cash, Financial Instruments and/or Credit Claims according to the fluctuations in the value of Provided collateral or of the secured obligations, or to substitute the Provided collateral.

Nevertheless, the security agreement made in Writing must permit the identification of the relevant Cash, Financial Instruments or Credit Claims charged with security. It is sufficient for such purpose to prove that the book entry securities collateral has been credited to, or forms a credit in, the relevant account, that the cash collateral has been credited to, or forms a credit in, a designated account and that the Credit Claims have been included in a list of receivables provided to the collateral taker in writing or in a legally equivalent manner.

Therefore, if at the moment of entering into the Agreement it is not possible to provide therein at least for the minimum criteria of identification described above, amendments to the Security Interest Provisions may be necessary from time to time.

The creation of the security over future assets under the Financial Collateral Ordinance is dependent on the Provision of such assets (please refer to paragraph (d) of Annex 4 to this opinion letter).

(b) Where the Financial Collateral Ordinance is inapplicable

Under the Romanian Civil Code future assets can be charged by a security interest. Such security becomes effective as of the date when debtor obtains rights on the relevant assets, which must correspond with the description of such assets set out in the security agreement. Against third parties, such security gains its priority ranking as of the moment when the relevant publicity

requirements have been satisfied, even if such publicity is made before the debtor obtains any right in the relevant asset.

Under the Romanian Civil Code, the security agreement must provide for a precise description of the charged asset; where security interest are created on cash deposited in a bank account the security agreement must clearly identify such bank account (the practice in Romania is to identify a bank account by its IBAN number).

The security over future bonds is perfected at the moment it is registered with the relevant registries - SaFIR or RoCLear (please also refer to paragraph 4.5 above).

4.10 **Fluctuating pools of assets**

It is generally permitted under the Romanian law to charge with security a fluctuating pool of assets. We set out below a brief description of the approach taken by the Financial Collateral Ordinance and the Romanian Civil Code, respectively.

(a) Where the Financial Collateral Ordinance applies

There is no restriction under the Financial Collateral Ordinance in charging a fluctuating pool of assets. On the contrary, the Financial Collateral Ordinance expressly states that the financial collateral is deemed Provided even if the collateral provider has the right to substitute the financial collateral or to withdraw the excess of Cash or Financial Instruments. Also, the Financial Collateral Ordinance provides that if the secured party has used the financial collateral provided, the equivalent financial collateral provided in lieu of the used collateral will be subject to the same Financial Collateral Arrangement. Bear in mind however our considerations at 4.9(a) above regarding the identification of the collateral in a Financial Collateral Arrangement.

Nevertheless, in order for the security under the Financial Collateral Ordinance, the collateral should be Provided (please refer to paragraph (d) of Annex 4 to this opinion letter).

(b) Where the Financial Collateral Ordinance is inapplicable

The Romanian Civil Code expressly allows the charging with security of fluctuating pools of assets (i.e. an universality). When charging an universality, the security agreement must describe the nature and the content of such universality. A generic formula, such as "all the present and future assets of the debtor" or any similar formula would not constitute a description sufficiently precise under the Romanian Civil Code. As, subject to the above rules, the level of detail of the asset description is entirely up to the parties, in practice creditors tend to make lengthy and precise description to avoid losing the ranking before a subsequent secured creditor that employed and publicised a more accurate description. Nevertheless, the new Romanian Civil Code has clarified that between a mortgage over an universality of movable assets and a

mortgage over certain specific movable assets, the mortgage registered or perfected first takes priority.

In order to be perfected, the security over bonds under the Romanian Civil Code should be registered with the relevant registries - SaFIR or RoCLear (please also refer to paragraph 4.5(ii) above).

4.11 **Fixed or maximum secured amount**

The considerations in respect of this issue depend on whether the Financial Collateral Ordinance applies or not.

(a) Where the Financial Collateral Ordinance applies

Insofar as collateral agreements falling under the Financial Collateral Ordinance are concerned, there is no requirement under the Financial Collateral Ordinance to indicate a fixed or maximum secured amount.

(b) Where the Financial Collateral Ordinance is inapplicable

Under the Romanian Civil Code it is a validity requirement for the security agreement that the secured amount is determined or may reasonably be determined pursuant to the terms of the security agreement.

4.12 **Secured party's right of use**

(a) Where the Financial Collateral Ordinance applies

According to the Financial Collateral Ordinance, if and to the extent that the terms of a Security Financial Collateral Arrangement so provide, the collateral taker is entitled to exercise a right of use (Romanian: "*drept de utilizare*") in relation to financial collateral provided under the Security Financial Collateral Arrangement, except in case of Credit Claims in respect of which the relevant provisions of the Financial Collateral Ordinance are not applicable.

Where a collateral taker exercises a right of use, he thereby incurs an obligation to transfer equivalent collateral to replace the original financial collateral at the latest on the due date for the performance of the relevant financial obligations covered by the Security Financial Collateral Arrangement.

Alternatively, the collateral taker must, on the due date for the performance of the relevant financial obligations, either transfer equivalent collateral, or, if and to the extent that the terms of the relevant Security Financial Collateral Arrangement so provide, set off the value of the equivalent collateral against or apply it in discharge of the relevant financial obligations. The equivalent collateral transferred in discharge of an obligation as described above, will be subject to the same Security Financial Collateral Agreement to which the original financial collateral was subject and shall be treated as having been

provided under the Security Financial Collateral Arrangement at the same time as the original financial collateral was first provided.

The Financial Collateral Ordinance expressly states that the use of financial collateral by the collateral taker as described above does not render invalid or unenforceable the rights of the collateral taker under the Security Financial Collateral Arrangement in relation to the financial collateral transferred by the collateral taker in discharge of an obligation as described above.

(b) Where the Financial Collateral Ordinance is inapplicable

For the cases where the Financial Collateral Ordinance is not applicable, we would like to emphasise that the Romanian Civil Code establishes that *lex situs* determines the very contents of rights *in rem* (such as security rights). Further, the Romanian legal writers have appreciated that a security agreement is governed by the law selected by the parties, insofar as its contractual aspects are concerned (*lex voluntatis*), but with respect to its *in rem* aspects it is governed by the *lex situs*.

Although the security interest governed by the Romanian Civil Code may be created with or without dispossession of the debtor of the charged asset, such security interest never involves an outright transfer of ownership or any similar effect. The secured creditor has a right *in rem* in the charged asset but he does not become the owner of the asset, nor does he achieve the right to dispose of the secured asset, at least not until the security is enforced. Also, as mentioned above, there are special rules in Romania for charging with security certain types of assets. Therefore, it is questionable whether, insofar as the Romanian law applies to the Security Interest where the collateral provider is Romanian, the outright transfer feature of the Security Interest Provisions would be recognised by a court of law and enforced in Romania as envisaged by the parties.

Additionally, the Romanian Civil Code is not familiar with the concept of rehypothecation of assets, however a secured creditor may assign its security interest (as a standalone right) to another party.

4.13 **Substitution**

(a) Where the Financial Collateral Ordinance applies

Where the Security Interest falls under the Financial Collateral Ordinance, the latter expressly recognises the fact that a Financial Collateral Arrangement may include clauses (mutually consented by the parties) allowing the collateral provider to substitute posted collateral with collateral of the same value. The Financial Collateral Ordinance also provides the fact that the Financial Collateral Arrangement is effective in accordance with its terms (hence, including the substitutions clause). Nevertheless, our view is that the substitute collateral must be Provided and the Provision thereof must be evidenced in

Writing, as there is no exception from these requirements in the Financial Collateral Ordinance in respect of substitute collateral.

(b) Where the Financial Collateral Ordinance is inapplicable

Our view is that it is possible under the Romanian Civil Code to substitute collateral originally charged with new collateral, however this may require an amendment of the security agreement and all the relevant perfection requirements should be observed in respect of the new collateral provided (see paragraph 4.5(ii) above for details).

4.14 **Enforcement of Security Interest in the absence of an Insolvency Proceeding**

4.14.1 Where the Financial Collateral Ordinance applies

Under the Financial Collateral Ordinance the enforceability of a Financial Collateral Arrangement shall not be dependent on the fulfilment of any formal act. On the occurrence of an enforcement event, the collateral taker will be able to realise in the following manners, any financial collateral Provided under, and subject to the terms agreed in, a Financial Collateral Arrangement:

(a) Financial Instruments by sale or appropriation and by setting off their value against, or applying their value in discharge of, the relevant financial obligations;

(b) Cash by setting off the amount against or applying it in discharge of the relevant financial obligations;

(c) Credit Claims by sale or appropriation and by setting off their value against, or applying their value in discharge of, the relevant financial obligations.

According to the Financial Collateral Ordinance appropriation is possible only if:

(aa) this has been agreed by the parties in the Security Financial Collateral Arrangement; and

(bb) the parties have agreed in the Security Financial Collateral Arrangement on the valuation of the Financial Instruments.

The manners of realising the financial collateral referred to above shall, subject to the terms agreed in the Security Financial Collateral Arrangement, be without any requirement to the effect that:

(a) prior notice of the intention to realise must have been given;

(b) the terms of the realisation be approved by any court, public officer or other person;

(c) the realisation be conducted by public auction or in any other prescribed manner; or

(d) any additional time period must have elapsed.

The realisation or valuation of financial collateral and the calculation of the relevant financial obligations must be conducted in a commercially reasonable manner.

In respect of state bonds traded in SaFIR, according to the SaFIR Rules on enforcement of security on state bonds, the method for enforcement shall be mentioned by the parties upon creation of security, and may be either of the following:

(a) appropriation by the collateral taker, by means of delivery free of payment transfer from the account of the collateral provider into the account of the collateral taker;

(b) direct sale of all or part of the pledged state bonds by the collateral taker, by means of a delivery versus payment transfer.

In respect of bonds traded on the Romanian regulated market and registered with RoClear, the general enforcement rules, as described under paragraph 4.14.2 below, are applicable.

4.14.2 Where the Financial Collateral Ordinance is inapplicable

(a) The opinions expressed under paragraph 3 of this opinion letter are subject to the reservation that under the Romanian law one of the conditions for the enforcement of a movable or immovable security interest is that the secured obligation is certain, liquid and payable; therefore, in the absence of an Event of Default under the Agreement rendering the payment obligation as being certain, liquid and payable, the enforcement of such Security Interest cannot be initiated.

Under the Romanian law, enforcement may generally be made only pursuant to a court judgment (which, if rendered by a foreign court is subject to recognition in Romania and the declaration of enforceability) or another writ of execution. Under the Romanian Civil Code, security agreements qualify as writs of execution, and a simplified enforcement procedure, without or with limited court intervention, is possible. However, taking into consideration that the Romanian Civil Code governs security agreements subject to Romanian law and the qualification as writ of execution and the swift enforcement procedure are exceptions to the general rule according to which enforcement is subject to the condition precedent of obtaining a court order and should comply with the Romanian Civil Code, the enforcement of a security interest governed by a foreign law such as the Security Interest would

be subject to the obtaining of a court judgment on the merits of the case which would have to be recognised in Romania, and the enforcement would be subject to the civil procedure rules of the Romanian Civil Procedure Code.

The main rules set forth in the Romanian Civil Procedure Code in respect of enforcement against moveable assets in Romania are: (a) the enforcement proceedings are conducted by an enforcement officer; (b) enforcement may be made through public or direct sale; (c) the starting price for the sale shall be established by the enforcement officer with the approval of the parties or further to a valuation report; (d) the appropriation of the collateral for the account of the secured party's claim is possible only in limited cases[2]; (e) there is a mandatory order for distribution of the enforcement proceeds[3].

Enforcement of a security interest in securities traded on the capital markets must observe the rules set forth in the relevant capital markets regulations. In case the parties agree to the enforcement proceedings, the creditor shall be allowed to sell the securities through an authorised market intermediary. In case the parties do not agree on this method of enforcement, the creditor is bound to follow the legal procedures in order to commence enforcement, and the sale shall be conducted by the enforcement officer through an authorised market intermediary. Should the sale price be inferior to the value of the secured obligations, the secured party may apply for the direct transfer of the collateral to its account, only if it provides evidence that the secured obligation cannot be discharged pursuant to a sale.

In respect of state bonds traded in SaFIR, the SaFIR System Rules admit that the enforcement may be carried out only through appropriation (a free of payment operation) or direct sale (a delivery versus payment operation) of the relevant state bonds. Where the Financial Collateral Ordinance does not apply, the following particular aspects are worth mentioning:

- enforcement may be carried out only when expressly agreed upon by the parties. In case the parties do not agree on the enforcement, a final court judgment to that effect will be required (accompanied by the exequatur obtained in Romania);

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[2] Such as (a) in case the purchaser is the same with the secured creditor that started the enforcement proceedings and there are no other creditors interested in the proceedings or there are only inferior ranking creditors, or (b) in case the asset subject to enforcement could not be sold, any creditor entitled to commence the enforcement against the debtor is entitled to appropriate for the account of its claim for the bidding price.

[3] According to the Romanian Civil Procedure Code, the beneficiary of the security interest over the asset subject to enforcement shall be paid after the discharge of court expenses, costs related to preservation of the asset, enforcement costs and any other costs made in the common interest of the creditors.

- the collateral provider shall be informed by the system regarding the request of enforcement of the collateral, and may confirm or not the enforcement. If no such confirmation is received by the system, the pledged financial instrument shall be regarded as "under litigation" until the court judgement is final;

- funds resulting from total or partial redemptions of financial instruments "under litigation" shall be transferred to the collateral provider;

- optional redemption of state bonds "under litigation" is not allowed.

In the case of cash standing to the credit of a bank account in Romania, the realisation of such cash is made through a court bailiff (Romanian: "*executor judecatoresc*"). At the request of the creditor, the court bailiff sends an attachment (Romanian: "*poprire*") notice to the relevant bank, together with the relevant writ of execution (e.g. the exequatur). Such bank must freeze the cash then standing to the credit of the relevant account and will continue to accept credits to (but not debits from) such bank account. After 15 days from the receipt of evidence that the cash has been frozen, the court bailiff starts the distribution of the amounts to the relevant creditors, in the order of their ranking, and only after the payment of the expenses of the enforcement.

Where a mortgagee took over the mortgaged asset on account of its claim against the mortgagor, the secured claim is terminated and the creditor will not be entitled to exercise any other personal action or pursue the mortgagor, even if the value of the mortgaged asset does not entirely cover the secured claim.

The court of law may suspend the foreclosure by a higher ranking secured creditor of an asset mortgaged to a lower ranking secured creditor, if the latter requests this before merits of the case are tried, indicates the other assets mortgaged to the higher ranking creditor that he can foreclose instead and advances the funds necessary to such foreclosure.

In case an enforcement is started by a third party with respect to all or any part of the Collateral, the ability of the Firm to receive proceeds corresponding to the ranking of its mortgage right, when such proceeds from the sale of the relevant Collateral are distributed, might in practice be conditioned upon the presentation by the Firm of an enforcement title (*titlu executoriu*).

(b) Law No 381/2009 implemented a contractual standstill mechanism for a company in distress to reorganise its activity outside the insolvency

proceedings, with limited involvement from the part of the court. As of the moment the court acknowledges the moratorium and until the end of the moratorium period (maximum 18 months), foreclosure against the assets of the debtor is blocked (even if made by creditors who are not parties to the moratorium), the maturity of receivables can be extended with maximum 18 months (subject to granting adequate security) and no insolvency or bankruptcy proceedings can be started against that debtor. By contrast with insolvency laws, the bodies participating in the moratorium procedure do not hold any cherry picking powers which may restrict close out netting.

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

If the paulian action was approved by court, the challenged act will be unenforceable against the challenging creditor(s). The debtor's counterparty to the challenged act may keep payments and/or deliveries made by the debtor under the respective act to the extent it agrees to pay damages to the challenging creditor(s).

4.15 **Enforcement of Security Interest after the commencement of an Insolvency Proceeding**

(a) Where the Financial Collateral Ordinance applies

According to the Financial Collateral Ordinance the opening of insolvency proceedings against the main obligor or against another collateral provider will not suspend the enforcement of the financial collateral (falling within the scope of the Financial Collateral Ordinance) by its beneficiary.

Please refer to our considerations in paragraph 4.14.1 above as regards the realisation (including appropriation) of the financial collateral by the collateral taker.

(b) Where the Financial Collateral Ordinance is inapplicable

(i) Stay of actions

Under the Insolvency Law, an automatic stay of all and any judiciary or extra-judiciary actions takes effect automatically from the date of the court judgment opening the insolvency proceeding. Secured creditors cannot enforce their claim separately. Enforcement against the assets of the insolvent debtor is made within the insolvency proceeding.

There are only two cases where a secured creditor may seek before the court relief from the automatic stay of actions and the immediate enforcement of the relevant asset subject to payment of the sale expenses out of the proceeds thus obtained:

(i) if the value of the asset subject to security, as valuated in accordance with international valuation standards by a licensed valuator, is fully covered by the secured claims and the respective asset is not essential for the success of a proposed reorganisation plan and its detaching and separate sale will not affect the value of the remaining functional ensemble which the asset is part of, or

(ii) if there is no sufficient protection of the secured claim due to:

- the depreciation in the value of the collateral or the existence of a real danger that the collateral might suffer a material depreciation in value;

- the decrease in the value of an inferior ranking claim as a consequence of the accruing of the interest, default interest and penalties related to a higher ranking claim;

- the absence of insurance in connection with the collateral.

In case the creditor's claim falls under the situation envisaged under letter (ii) above, the court may still deny the creditor's request to enforce its security and adopt measures that are likely to offer sufficient protection of the claim such as periodic payments in favour of the respective secured creditor, or replacement by novation of the initial security (e.g. granting of an additional security or guarantee or substitution of the collateral).

If the requirements mentioned above are not met or if they are met but the court holds that immediate liquidation is not necessary, the secured net claim resulting from the Agreement will continue to be registered with the table of claims within the insolvency proceeding and liquidated within the insolvency proceeding (to the extent a liquidation

of the relevant assets is decided) and the resulting proceeds will be distributed according to the rules briefly described below.

(ii) Suspect periods under the Romanian insolvency laws

Under the Insolvency Law the insolvency official (or the creditors' committee, in case the insolvency official remains inactive) may lodge before the court requests for the annulment of certain contracts or acts of the insolvent entity in certain cases provided by the law (i.e. specific type of contracts – "**Suspect Contracts**", entered into by the debtor within a specific period before the initiation of the insolvency procedure).

In case the request of annulment is approved by the court, a third party transferee must return to the Romanian insolvent entity the transferred asset or, if the asset no longer exists, it will have to return its value as at the date of initial transfer by the insolvent party. After restitution, such transferee will hold a receivable (with a value equal to the value of the assets transferred as at the date of initial transfer by the insolvent counterparty) against the assets of its Romanian insolvent counterparty, provided that the transferee had accepted the transfer in good faith and without the intention to prevent, delay or mislead the Romanian entity's creditors.

Out of the cases of annulment provided by the Insolvency Law and the Banking Bankruptcy Ordinance we have selected a few types of Suspect Contracts that may be relevant in the context of this opinion letter:

(i) acts and contracts attempting to fraud the interests of the creditors executed three years prior to the opening of the insolvency proceedings;

(ii) acts of gratuitous transfer executed three years before the opening of the insolvency proceedings;

(iii) commercial operations where the performance of the insolvent party clearly exceeds the performance of its counterparty, entered into three years before the opening of the insolvency proceedings;

(iv) operations made during the three years prior to the opening of the insolvency proceeding with the intention of all the parties involved to excerpt certain assets from the pursuit of creditors or to damage their rights;

(v) ownership transfers to a creditor to terminate a previous debt towards it or in such creditor's benefit, effected 120 days (180 days in case of insolvent Credit Institutions under the Banking

Bankruptcy Ordinance) prior to the opening of the insolvency proceedings, if the amount that the creditor might obtain in case of winding-up of its counterparty would be lower than the value of such transfer;

(vi) the establishing or perfecting of a security interest for an unsecured receivable within the 120 days prior to the opening of the insolvency proceedings;

(vii) debt prepayment made within the 120 days prior to the opening of proceedings, if the maturity of such debts was supposed to occur at a date after the opening of insolvency proceedings; and

(viii) acts of transfer or the undertaking of obligations by the debtor in a period two years prior to the opening of the insolvency proceedings with the intention to hide or delay the state of insolvency or to fraud an individual or an entity towards which the insolvent entity was a debtor as at the date of, or has become a debtor after the date of, a transfer made under financial derivative transactions (including the performance of a netting master agreement).

(iii) Transactions entered into after the Insolvency Proceedings have commenced

According to the Romanian insolvency laws, all the acts, operations and payments performed by the debtor after the opening of an insolvency proceeding shall be considered null and void, except for those that:

(a) meet the following requirements: (1) are made during the observation period, (2) are current activities, (3) the payments are made to the creditors which are known and are carried out in the regular course of business and (4) they are supervised or conducted by the insolvency official; or

(b) are authorised by the insolvency official.

(iv) Order of discharge

According to Romanian insolvency laws, secured claims will be discharged out of the proceeds resulted from the sale within the insolvency proceeding of the relevant charged assets, in the following order:

(a) taxes and other expenses related to the proceeding, including payment of expenses related to the preservation, administration and sale of the assets and the payment of the remuneration of certain professionals hired within the insolvency proceeding;

(b) claims of secured creditors. Creditors secured with the same asset will be satisfied in the order provided by the ranking of their claim.

Secured creditors hold this position in respect of the proceeds resulted out of the sale of assets subject to their security interests. In case such proceeds are insufficient to fully discharge the secured obligations, for the uncovered difference the secured creditors are assimilated to unsecured creditors and in such case their unsecured claims will be discharged according to the general order of discharge, which is as follows:

(aa) taxes and other expenses related to the insolvency proceeding, including payment of expenses related to the preservation, administration and sale of the assets and the payment of the remuneration of certain professionals hired within the insolvency proceeding;

(bb) claims resulted from labour contracts;

(cc) claims related to loans granted by credit institutions after the commencement of the insolvency proceeding and credits resulted from the performance of the debtor's activities following the commencement of the insolvency proceeding;

(dd) debts to the state budget;

(ee) amounts owed by the debtor to third parties on the basis of alimony obligations, etc.;

(ff) banking loans;

(gg) other unsecured claims; and

(hh) subordinated claims.

The general order of discharge of unsecured claims is slightly different in the case of bankruptcy proceedings under the Banking Bankruptcy Ordinance, as follows:

(i) taxes and other expenses related to the insolvency proceeding, including payment of expenses related to the preservation, administration and sale of the assets and the payment of the remuneration of certain professionals hired within the insolvency proceeding;

(ii) claims resulted from secured deposits (including those of the Banking System Deposits Guarantee Fund), as well as from

labour contracts during no more than six months previous to the opening of proceedings;

(iii) claims resulted from the debtor's activity after the opening of the insolvency proceedings;

(iv) debts to the state budget, to the Banking System Deposits Guarantee Fund (other than those at item (ii) above) and debts to the NBR resulting from loans granted by the latter to the Credit Institution;

(v) claims resulting from the treasury activity, inter-banking transactions, client transactions, transactions with financial instruments, other banking operations, delivery of goods and services, works, leases and other unsecured claims;

(vi) gratuitous acts;

(vii) subordinated claims; and

(viii) shareholder claims.

(v) Multibranch

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

4.16 **Oral Agreements**

For the purpose of evidencing a contractual relationship, the former Romanian Civil Code (by a provision of a hundred years old which continues to be in force until the entering into force of the new Romanian Civil Procedure Code) provides that a contractual relationship having a value exceeding RON 0.025 cannot be evidenced before a court unless expressed in written form. Therefore any oral agreement (that is recognised by the Romanian law as being a binding contract) should be followed by written evidence of the terms of such oral agreement.

4.17 **UN or EU sanctions**

If any Party to the Agreement is controlled by a person or is itself incorporated in the laws of a country which is subject of United Nations, European Union or Romanian sanctions or other similar measures implemented and effective in Romania, the obligations of the Romanian Counterparty to such Party may be unenforceable or void.

4.18 **Public Order**

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

4.19 **Enforceability of claims**

(a) The power of a Romanian court to order specific performance of, or to issue any injunction, for an obligation or other remedy is discretionary and, accordingly, a Romanian court might make an award of damages where specific performance of an obligation is sought.

(b) Claims under the Agreement may be or become subject to a defence of set-off or counterclaim.

(c) A party to a contract may be able to avoid its obligations under that contract (and may have other remedies) where it has been induced to enter into that contract by a misrepresentation or violence/duress or by taking advantage of its ignorance (harm) and the Romanian courts will generally not enforce an obligation if there has been fraud.

(d) The enforceability of the Agreement may be affected by the principle that rights must be exercised in good faith and in a reasonable manner.

(e) Where any party to the Agreement is vested with a discretion or may determine a matter in its opinion, Romanian law requires that such discretion cannot be abused.

(f) Any provision providing that any calculation, determination or certification is to be conclusive and binding may not be effective if such calculation, determination or certification is fraudulent or manifestly incorrect and a Romanian court may regard any certification, determination or calculation as no more than *prima facie* evidence.

(g) Without limiting the generality of the foregoing, a determination by a Party or any party named thereby as to any matter provided for in the Agreement might be held by a Romanian court not to be final, binding or conclusive if such determination could be shown to have an erroneous, arbitrary or incorrect basis or not to have been given or made in good faith.

(h) In any dispute arising under or in connection with the Agreement on any matter which is not covered either by law or by contract, a Romanian court will apply the relevant business practices applicable in the relevant industry, legal rules applicable to similar situations and the relevant principles of law.

(i) Romanian courts have exclusive jurisdiction in respect of enforcement proceedings carried out in Romania. Furthermore, the recognition and enforcement of a foreign judgment by the Romanian courts and any enforcement of a Security Interest directly before a Romanian court will require the payment of the judiciary taxes levied by the Romanian law. Moreover, where the enforcement in Romania of a Security Interest will require the involvement of enforcement officers/court bailiffs (*executori judecatoresti*) payment of their fees will be necessary. Additionally, in case of enforcement in Romania, all relevant documents must be accompanied by a legalised Romanian language translation.

4.20 **Further reservations**

(a) Where any filing or registration is required to be made outside Romania in respect of the Agreement, this opinion shall not cover the effects of such filing or registration requirement on the validity, enforceability and effectiveness of such Agreement.

(b) Any provision of the Agreement which constitutes, or purports to constitute, a restriction on the exercise of any statutory power by any party to the Agreement or any other person may be ineffective.

(c) Force majeure (*forta majora*) has been generally defined by Romanian legal writers and case law as being an external event, absolutely unpredictable and which cannot be overcome, which suspends the parties' obligations. In this respect, Article 1351 of the new Romanian Civil Code states that no damages may be granted in case the failure to perform an obligation is due to force majeure. Additionally, the Romanian Civil Code also defines the unforeseeable event (*caz fortuit*) as being an event that may not be foreseen nor overcome by the party which would have been be liable if that event would have not arisen. Its legal effect is the same with that of force majeure. Furthermore, according to

the Romanian Civil Code, if the execution of a significant contractual obligation becomes totally and irreversibly impossible as a result of force majeure or of an unforeseeable event, the contract is rightfully terminated as of the moment when force majeure or the unforeseeable event arose. If such impossibility to execute is only temporary, the creditor of that obligation is entitled to either suspend the execution of its own obligations or to request the termination of the contract.

(d) There are no exchange control restrictions currently. However, please bear in mind that in the context of the liberalisation of operations in deposit accounts opened by non-residents with credit institutions in Romania and denominated in domestic currency, the NBR has reserved the right under the FX Regulation no. 4/2005 to activate certain safeguard measures, if massive short term foreign currency inflows exercise significant pressures on the foreign exchange market and significantly affect the central bank's monetary and foreign exchange policies, with significant impact on internal liquidity and material deterioration of the payments balance). The safeguard measures may consist of applying a fee on transactions made on the foreign exchange market, temporarily withholding in an account with the NBR incoming/outgoing RON/foreign currency amounts of residents/non-residents resulted from foreign exchange transactions, increasing minimum reserve requirements, etc. Nevertheless, the enforcement of such measures should be notified to the European Commission (and stopped, if so requested by the same) and it would apply without discrimination and not against a particular transaction or entity. Also, such measure cannot extend beyond six months.

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 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 members of the Futures and Options Association and their 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,

**Clifford Chance Badea SCA**

## SCHEDULE 1
## Credit Institutions

Subject to the modifications and additions set out in this Schedule 1 (*Credit Institutions*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Credit Institutions.

## SCHEDULE 2
## Insurance Companies

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

## SCHEDULE 3
## Statutory Corporations

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

## SCHEDULE 4
## State Owned Entities

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

## SCHEDULE 5
## Investment Funds

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

The Romanian laws regulate the following types of Investment Funds:

(1) undertakings in collective investment in transferrable securities (the "**UCITS**") set up either as funds without legal personality or as corporate entities, as follows:

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

(b) open-end investment companies ("**OIC**") organised as joint stock companies, Romanian legal entities, authorised by the NSC;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 1. MODIFICATIONS TO QUALIFICATIONS

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

(a) The qualifications in paragraph 4.15 (*Enforcement of Security Interest after the commencement of an Insolvency Proceeding*) shall apply solely to Investment Funds which may be subject to insolvency proceedings under the Banking Bankruptcy Ordinance and/or the Insolvency Law, as applicable.

(b) The qualification in paragraph 4.14.2(b) shall apply solely to Investment Funds organised as corporate entities.

## SCHEDULE 6
## Investment Firms

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

## SCHEDULE 7
## NFIs

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

## SCHEDULE 8
## MPF

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

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

### 1. MODIFICATIONS TO QUALIFICATIONS

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

(a) Paragraphs 4.14.2(b) and 4.15 are deemed deleted.

(b) The following sections are added to paragraph 4.18 (*Further reservations*) which shall be renumbered accordingly:

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

(b) *Romanian courts are not familiar with the concept of insolvency of public authorities, and consequently the procedure for, and enforcement of payment under the Agreement in such circumstances is uncertain.*

(c) *Certain rights and properties of the Romanian State (acting through the MPF), as the case may be, benefit from sovereign immunity under Romanian or international law, which implies, inter alia, that such rights and properties, on the grounds that they belong to the public*

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

## SCHEDULE 9
## NBR

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

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

### 1. MODIFICATIONS TO QUALIFICATIONS

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

(a) Paragraphs 4.14.2(b) and 4.15 are deemed deleted.

(b) The following sections are added to paragraph 4.18 (*Further reservations*) which shall be renumbered accordingly:

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

*(b) Romanian courts are not familiar with the concept of insolvency of public authorities, and consequently the procedure for, and enforcement of payment under the Agreement in such circumstances is uncertain.*

*(c) Certain rights and properties of the Romanian State (acting through the NBR), as the case may be, benefit from sovereign immunity under Romanian or international law, which implies, inter alia, that such rights and properties, on the grounds that they belong to the public*

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

## SCHEDULE 10
## Individuals

Subject to the modifications and additions set out in this Schedule 10 (*Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Individuals.

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

### 1. MODIFICATIONS TO QUALIFICATIONS

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

Paragraphs 4.14.2 (b) and 4.15 shall apply solely to Individuals operating a business that may be subject to insolvency proceedings under the Insolvency Law.

## 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. "**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 c lause 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);

7. "**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 c lause 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 c lause 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 c lause 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 c lause 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).

8. "**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.

## 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 4
# FINANCIAL COLLATERAL ARRANGEMENTS

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

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

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

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

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

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

(ii) a central bank or an IFI, such as the European Central Bank, the Bank for International Settlements, a multilateral development bank, the International Monetary Fund and the European Investment Bank;

(iii) a financial institution subject to prudential supervision including a credit institution, a financial services investment company or a brokerage company, a financial institution, an insurance company, an insurance-reinsurance company or a reinsurance company, an insurance intermediary, an undertaking for collective investment in transferable securities (UCITS) (by contrast, closed-ended investment undertakings

do not fall under the scope of application of the Financial Collateral Ordinance), an investment management company;

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

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

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

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

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

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

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

(aa) the financial collateral arrangement over securities is registered with the issuer's register. As regards bonds and state bonds that are traded on the Romanian capital markets, the financial collateral arrangement needs to be registered with the relevant individual account held with RoClear, the Romanian Clearing-Settlement, Custody, Depository and Registry

System maintained by S.C. Depozitarul Central S.A. (the "**Central Depository**"). Note that securities may be traded on the Romanian capital markets only through licensed intermediaries;

(bb) the financial collateral arrangement over state bonds is registered with the relevant state bonds registry i.e. by registration of the financial collateral arrangement with the relevant account opened within SaFIR, the State Bonds Registration and Settlement System managed by the NBR, organised and operating according to the SaFIR System Rules (the "**SaFIR**");

(cc) the account moneys and credit balances of bank accounts are blocked into the relevant bank account;

(dd) Credit Claims are included in a list of receivables provided to the collateral taker in writing or in a legally equivalent manner.

(e) The financial collateral to be Provided must consist of Cash, Financial Instruments or Credit Claims. For the purposes of Financial Collateral Ordinance:

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

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

Credit Claims refer to pecuniary claims arising out of agreements under which credit is granted under the form of loans by a credit institution or any entity with headquarters in a Member State of the European Economic Area and authorised to attract deposits or other non-reimbursable funds from the public and grant credits on own account, or by any other entity, other than credit institutions, with headquarters in an European Economic Area Member State, authorised to issue electronic means of payment. The Financial Collateral Ordinance specifically provides that Credit Claims are validly identified and the Provision of Credit Claims as financial collateral is validly proved (between parties and

towards the debtor under the Credit Claim) by the inclusion of the Credit Claim in a list of receivables provided to the beneficiary of the collateral in writing or in a legally equivalent manner.

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