FIA EUROPE - NETTING OPINIONS PROJECT
Legal opinion for netting agreement

FIA Europe
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4 March 2015

Dear Sirs,

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

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

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

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

1.1.1 Slovak companies (in Slovak: "*obchodné spoločnosti*") incorporated under the Slovak Act No. 513/1991 Coll., commercial code, as amended (the "**Commercial Code**"), including Slovak general partnerships (in Slovak: "*verejné obchodné spoločnosti*")[1], or non-Slovak companies (other than a "Societas Europea" established pursuant to EU Regulation No. 2157/2001 on the Statute of a European company, as amended), including non-Slovak general partnerships (so long as they are legal entities (in Slovak: "*právnické osoby*")), incorporated or formed under the laws of another jurisdiction which are companies and which have a branch (in Slovak: "*organizačná zložka*") established in this jurisdiction in accordance with the Commercial Code.

[1] Under law of this jurisdiction the general partnerships (in Slovak: "*verejné obchodné spoločnosti*") incorporated under the Commercial Code have corporate legal personality and thus fall, and are addressed in this opinion letter, within the category of the Slovak companies.

1.1.2 Slovak banks within the meaning of the Slovak Act No. 483/2001 Coll., on banks, as amended (the "**Act on Banks**") and non-Slovak banks incorporated or formed under the laws of another jurisdiction which have a branch (in Slovak: "*pobočka zahraničnej banky*") established in this jurisdiction in accordance with the Act on Banks, including a branch of a non-Slovak bank, which has its registered office in another EEA member state and benefits from a single licence in accordance with EU law (the "**EEA Credit Institution**") and a branch of a non-Slovak bank, which has its registered office in a state other than an EEA member state if the non-Slovak bank was duly licensed by the National Bank of Slovakia (the "**NBS**"). For the purposes of this opinion, the Slovak banks exclude the NBS, which is regulated by the Slovak Act No. 566/1992 Coll., on the National Bank of Slovakia, as amended, and the Export-Import Bank of the Slovak Republic, which is regulated by the Slovak Act No. 80/1997 Coll., on the Export-Import Bank of the Slovak Republic, as amended.

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

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

1.2.1 Securities Dealers (Schedule 1);

1.2.2 Insurance Providers (Schedule 2);

1.2.3 Individuals (Schedule 3);

1.2.4 Fund Entities (Schedule 4);

1.2.5 Public Entities (Schedule 5);

1.2.6 Pension Fund Entities (Schedule 6); and

1.2.7 Building Savings Banks (Schedule 7).

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

1.4 This opinion covers all types of Transactions except the Transactions defined in paragraph (v) of Clause (A) of Annex 2.

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

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

1.7 The opinions set out in paragraphs 3.10 and 3.11 are given only in relation to Margin which is located outside this jurisdiction. The opinions set out in paragraphs 3.7, 3.8 and 3.9 in respect of the FOA Set-Off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provisions, when given in respect of Margin, are given only in relation to cash balances credited to an account provided by the Non-Defaulting Party to the Defaulting Party which is located outside this jurisdiction.

1.8 This opinion letter and the opinions given in it are governed by laws of this jurisdiction and relate only to laws of this jurisdiction as applied by the courts of this jurisdiction as at the date of this opinion and does not consider the impact of any laws (including insolvency laws) other than the laws of this jurisdiction, even where, under the laws of this jurisdiction, any foreign law falls to be applied. All non-contractual obligations and any other matters arising out of or in connection with this opinion letter are governed by laws of this jurisdiction. We express no opinion in this opinion letter on the laws of any other jurisdiction. Our opinion is based upon the express words of the FOA Netting Agreement and the Clearing Agreement as they would be interpreted under the laws of this jurisdiction, and takes no account of how such words would be interpreted under, or the effect of, the governing law of the FOA Netting Agreement and the Clearing Agreement.

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

1.10 In this opinion, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy.

1.11 We do not express any opinion as to any matter of fact.

1.12 A reference in this opinion to a Transaction is a reference, in relation to the FOA Netting Agreement to a Transaction (as defined therein) and, in relation to FOA Clearing Module and ISDA/FOA Clearing Addendum to a Client Transaction (as defined therein).

1.13 **Definitions**

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

1.13.1 "**Insolvency Proceedings**" means the procedures listed in paragraph 3.1. The Insolvency Proceedings do not include liquidation or other proceedings in respect of solvent counterparties under the Commercial Code or otherwise.

1.13.2 "**Insolvency Representative**" means an administrator (in Slovak: "*správca*") within the meaning of the Slovak Act No. 7/2005 Coll., on bankruptcy and restructuring, as amended (the "**Bankruptcy Act**") and an administrator (in Slovak: "*správca*") within the meaning of the Act on Banks; and

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

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

2. ASSUMPTIONS

We assume:

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

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

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

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

2.5 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement is entered into prior to the commencement of any insolvency proceedings under the laws of any jurisdiction against either Party and that the FOA Netting Agreement or, as the case may be, the Clearing Agreement is entered into prior to any liquidation proceedings under the Commercial Code.

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

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

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

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

2.10 That, when entering into the FOA Netting Agreement or, as the case may be, the Clearing Agreement, neither Party is insolvent within the meaning of the Bankruptcy Act and neither Party will become insolvent as a result of the entry into the FOA Netting Agreement or, as the case may be, the Clearing Agreement.

2.11 That the Slovak company has its "centre of main interest" in the Slovak Republic and the branch of a non-Slovak company having its "centre of main interest" in an EU member state other than the Slovak Republic or Denmark constitutes an "establishment", in each case within the meaning of Regulation (EC) No. 1346/2000 on insolvency proceedings, as amended (the "**EU Insolvency Regulation**"), which applies to all EU member states other than Denmark.[2]

2.12 That all acts, conditions or things, including, without limitation, reflection in the records of the Parties, any filing or registration, required to be fulfilled, performed or effected for the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision or the Title Transfer Provisions to be

[2] According to the EU Insolvency Regulation, an "establishment" shall mean any place of operation where the debtor carries out a non-transitory economic activity with human means and goods.

effective under all applicable law(s) (other than the laws of this jurisdiction) have been, or will in good time be, duly fulfilled, performed and effected.

3. OPINION

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

3.1 Insolvency Proceedings

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

(a) in relation to a Slovak company or a non-Slovak company having a branch in this jurisdiction, restructuring and bankruptcy proceedings under the Bankruptcy Act. Furthermore, the EU Insolvency Regulation has direct effect in this jurisdiction;

(b) in relation to a Slovak bank or a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction, forced administration (in Slovak: "*nutená správa*") under the Act on Banks. Following the permission of the NBS, a Slovak bank or a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction might only be subject to bankruptcy proceedings under the Bankruptcy Act (i.e. the provisions of the Bankruptcy Act on restructuring do not apply to a Slovak bank or a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction). The administrator (in Slovak: "*správca*") within the meaning of the Act on Banks might, following the permission of the NBS and the Council for Resolution of Crisis Situations (the "**Crisis Council**"), file a petition for the declaration of bankruptcy relating to a Slovak bank or a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction under the Bankruptcy Act. In addition, under the Bankruptcy Act, the NBS is given specific powers to file a petition for the declaration of bankruptcy relating to a Slovak bank or a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction. Any bankruptcy or restructuring proceedings with respect to an EEA Credit Institution will be carried out in accordance with the laws, regulations and procedures applicable in the state in which the EEA Credit Institution has been licensed.

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

3.2 Recognition of choice of law

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

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

3.3 Enforceability of FOA Netting Provision

3.3.1 In relation to a FOA Netting Agreement, where the Defaulting Party is a Slovak company or a non-Slovak company having a branch in this jurisdiction, and in relation to a Clearing Agreement where the Client, who is a Slovak company or a non-Slovak company having a branch in this jurisdiction, is a Defaulting Party, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default other than as a result of the opening of any Insolvency Proceedings:

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

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

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the FOA Netting Provision, nor render the FOA Netting Provision unenforceable save as set out in paragraphs 3.3.2 and 4.

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

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this paragraph 3.3.1 to apply.

3.3.2 In relation to a FOA Netting Agreement, where the Defaulting Party is a Slovak company or a non-Slovak company having a branch in this jurisdiction, and in relation to a Clearing Agreement where the Client, who is a Slovak company or a non-Slovak company having a branch in this jurisdiction, is a Defaulting Party, the FOA Netting Provision will be unlikely to be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default resulting from the opening of any Insolvency Proceedings:

(c) the Non-Defaulting Party would be unlikely to be entitled immediately to exercise its rights under the FOA Netting Provision; and

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

We are of this opinion because under laws of this jurisdiction neither a Slovak company nor a non-Slovak company having a branch in this jurisdiction is considered an eligible counterparty for the purposes of close-out netting under the Bankruptcy Act. Please further refer to reasons set out in paragraph 4.

3.3.3 In relation to a FOA Netting Agreement, where the Defaulting Party is a Slovak bank or a non-Slovak bank having a branch in this jurisdiction, and in relation to a Clearing Agreement where the Client, who is a Slovak bank or a non-Slovak bank having a branch in this jurisdiction, is a Defaulting Party, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

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

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

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

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

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this paragraph 3.3.3 to apply.

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

Furthermore, in addition to the highlighted words shown in Annex 4, it is necessary that the words shown as underlined in Section (b) of Annex 5 be treated as Core Provisions in order for the opinions expressed in this paragraph 3.3.3 to apply.

3.4 Enforceability of the Clearing Module Netting Provision

3.4.1 In relation to a Clearing Agreement which includes the Clearing Module Netting Provision where the Client is a Slovak company or a non-Slovak company having a branch in this jurisdiction, the Clearing Module Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following (i) a Firm Trigger Event or (ii) a CCP Default, the Parties would be entitled to

receive or obliged to pay, in respect of each Cleared Transaction Set, only the net sum of the positive and negative mark-to-market values of the relevant individual Client Transactions that are terminated in accordance with the Clearing Agreement.

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the Clearing Module Netting Provision, nor render the Clearing Module Netting Provision unenforceable save as set out in paragraphs 3.3.2 and 4.

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

No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this paragraph 3.4.1 to apply.

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

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

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

Amendments to the Clearing Module Netting Provision specified in Section 1 of Annex 5 to this opinion are necessary in order for the opinions expressed in this paragraph 3.4.2 to apply.

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

3.5 Enforceability of the Addendum Netting Provision

3.5.1 In relation to a Clearing Agreement which includes the Addendum Netting Provision where the Client is a Slovak company or a non-Slovak company having a branch in this jurisdiction, the Addendum Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following (i) a CM Trigger Event or (ii) a

CCP Default, the Parties would be entitled to receive or obliged to pay, in respect of each Cleared Transaction Set, only the net sum of the positive and negative mark-to-market values of the individual Client Transactions that are terminated in accordance with the Clearing Agreement.

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the Addendum Netting Provision, nor render the Addendum Netting Provision unenforceable save as set out in paragraphs 3.3.2 and 4.

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

No amendments to the Addendum Netting Provision are necessary in order for the opinions expressed in this paragraph 3.5.1 to apply.

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

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

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

Amendments to the Addendum Netting Provision specified in Section 1 of Annex 5 to this opinion are necessary in order for the opinions expressed in this paragraph 3.5.2 to apply.

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

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

In relation to a Clearing Agreement, the opinions expressed at paragraph 3.3 above in relation to the FOA Netting Provision are not affected by the use of the FOA Clearing Module or the ISDA/FOA Clearing Addendum in conjunction with the FOA Netting Agreement. In a case where a Party, who would (but for the use of the FOA Clearing Module or the ISDA/FOA Clearing Agreement) be the Defaulting Party for the

purposes of the FOA Netting Agreement, acts as Firm (as defined in the FOA Clearing Module) or Clearing Member (as defined in the ISDA/FOA Clearing Addendum), the question as to whether the FOA Netting Provision will, to the extent inconsistent with the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision, be superseded by the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision would be determined under the governing law of the Clearing Agreement.

3.7 Enforceability of the FOA Set-Off Provisions

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

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

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

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

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

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

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

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

exercise its rights under either or both of the FOA Set-Off Provisions, and in particular so that, upon the exercise of such rights:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.10 **Enforceability of the Title Transfer Provisions**

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

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

3.10.3 The questions in relation to the FOA Netting Agreement (with Title Transfer Provisions) or a Clearing Agreement which includes the Title Transfer Provisions, (x) whether Transfers of Margin would be characterised as outright transfers of title or creating a security or other interest, and (y) whether Margin Transferred may be used without restriction, would, under the conflicts of laws rules of this jurisdiction, be determined by reference to the governing law of the FOA Netting Agreement (with Title Transfer Provisions) and a Clearing Agreement which includes the Title Transfer Provisions, and/or by reference to the governing law of the place where the Margin is located.

We are of this opinion because the title transfer collateral arrangements within the meaning of the EU Financial Collateral Directive are not expressly recognised by law of this jurisdiction. Please further refer to reasons set out in paragraph 4.

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

In relation:

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

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

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

3.12 **Single Agreement**

Under the laws of this jurisdiction it is not necessary that the Transactions and the FOA Netting Agreement or, as the case may be, the Clearing Agreement are part of a single agreement in order for the termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision to be enforceable.

3.13 **Automatic Termination**

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

3.13.2 It is not problematic for the effectiveness of netting that, under the Clearing Module Netting Provision and the Addendum Netting Provision, termination and liquidation of Client Transactions does not occur automatically upon the opening of Insolvency Proceedings in relation to a Firm, or as the case may be Clearing Member, incorporated or organised in this jurisdiction.

3.14 **Multibranch Parties**

We do not consider that the use of the FOA Netting Agreement or, as the case may be, the Clearing Agreement by a Party with branches in a number of different

jurisdictions, including some where netting may not be enforceable would jeopardise the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision or the Title Transfer Provisions insofar as the laws of this jurisdiction are concerned.

3.15 **Insolvency of Foreign Parties**

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

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

3.16 **Special legal provisions for market contracts**

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

3.16.1 The Bankruptcy Act expressly provides that, in case of bankruptcy of the Slovak bank and a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction:

(a) transactions carried out on an organised market shall be governed solely by law of the EEA member state governing the contract on the basis of which the transaction was entered into; and

(b) claims in respect of rights related to financial instruments, which are recorded in a register, on an account, in a central depository or similar system shall be governed by law of the EEA member state in which the relevant register, account, central depository system or similar system is maintained.

3.16.2 Also, if a settlement system under the Slovak Act No. 566/2001 Coll., on securities and investment services, as amended (the "**Securities Act**") or a payment system agreement under the Slovak Act No. 492/2009 Coll., on payment services, as amended are governed by the laws of this jurisdiction, the rights and obligations of an operator of the payment system or a central depository, as applicable, or a participant in the respective system arising in connection with participation in the respective system (including rights of third parties to any collateral provided by the participant in the respective system in connection with such participation) shall be governed by the laws of this jurisdiction notwithstanding the declaration of bankruptcy, approval of

restructuring, suspension of payments, termination of bankruptcy proceedings or cancellation of bankruptcy due to insufficient funds with respect to an operator of a payment system or a central depository, as applicable, or the participant in the respective system.

4. QUALIFICATIONS

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

4.1 Recognition of choice of law

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

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

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

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

(d) If any obligation arising under the FOA Netting Agreement or, as the case may be, the Clearing Agreement is or is to be performed in a jurisdiction other than this jurisdiction, it may not be enforceable in the courts of this jurisdiction to the extent that performance would be illegal under the laws of the other jurisdiction. Further, the courts of this jurisdiction may give effect to any overriding mandatory provisions of the law of the place of performance insofar as they render the performance unlawful, otherwise take into account the law of the place of performance in relation to the manner of performance and the steps to be taken in the event of defective performance.

4.1.2 In respect of the FOA Netting Agreement entered into before 17 December 2009, but on or after 1 August 2006, the courts of this jurisdiction will recognise the choice of law made in the FOA Netting Agreement subject to, and in accordance with, the Rome Convention on the law applicable to contractual obligations, No. 474/2006 Coll. (the "**Rome Convention**"). In respect of the FOA Netting Agreement entered into before 1 August 2006, the courts of this jurisdiction will recognise the choice of law made in the FOA

Netting Agreement subject to, and in accordance with, Act No. 97/1963 Coll., on international private and procedural law, as amended (the "**IPPL Act**"). However, whether the Slovak courts would regard the choice of English law to govern an agreement modifying an existing FOA Netting Agreement entered into before 17 December 2009 as being subject to the provisions of the Rome I Regulation, Rome Convention or IPPL Act, as the case may be, is unclear.

4.1.3 In respect of the matters outside the material scope of the Rome I Regulation or the Rome Convention, as the case may be, the Bankruptcy Act, Securities Act or IPPL Act, as relevant, will apply.

(a) According to the specific provisions of the Bankruptcy Act applicable to a Slovak bank or a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction:

(i) the close-out netting (i.e. the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision) in bankruptcy shall be governed solely by the law of the EEA member state governing the close-out netting agreement (e.g. English law); and

(ii) the set-off of claims in bankruptcy shall be governed by the laws of the EEA member State (e.g. English law) applicable to the insolvent debtor's claim, provided, however, that application of that governing law should not prejudice the right to set-off under the Bankruptcy Act.

(b) Under the Securities Act, the validity, effectiveness and enforcement of the security and title transfer financial collateral related to account-held securities recorded in a register or on an account, including the validity and effectiveness of the respective collateral agreement, must be governed exclusively by law of the country in which the relevant register or account is maintained (however, please refer to paragraph 4.7 on enforceability of the title transfer collateral under law of this jurisdiction in general). Consequently, the law of the country in which the relevant register or account is maintained applies not only to the proprietary aspects (e.g., perfection requirements), but also to the contractual aspects of a security and title transfer financial collateral arrangement. Moreover, the choice of governing law by parties to a security or title transfer financial collateral agreement is expressly prohibited by the Securities Act. As a result, it appears that there is a material risk that:

(i) the choice of English law to govern the FOA Netting Agreement or, as the case may be, the Clearing Agreement would not be recognised in respect of the Title Transfer Provisions related to account-held securities; and

(ii) an Insolvency Representative or a court in this jurisdiction would have regard to English law in case of account-held

securities recorded in a register or on an account maintained in England.

In such case, the Non-Defaulting Party might not be entitled to enforce the security and title transfer financial collateral arrangement related to account-held securities, or, if it is entitled to enforce such security and title transfer financial collateral arrangement, only subject to, and in accordance with, the law of the country in which the relevant register or account is maintained, as the law of that country would be applied by courts of this jurisdiction.

(c) Act No. 40/1964 Coll., civil code, as amended (the "**Civil Code**") provides that the security financial collateral arrangement in relation to cash can be provided in the form of, *inter alia*, an account receivable, deposit receivable (other than securities) and other form of deposit receivable. It might be argued that the courts of this jurisdiction could apply the IPPL Act. Under the IPPL Act, the proprietary aspect of a security over an asset should be governed by the law of the place where the asset is located (*lex situs*). However, there is uncertainty under laws of this jurisdiction as to how the location of receivables can be determined and what criteria other than the location (*lex situs*) may be relevant for the determination of the proprietary aspects of the security interest in receivables. Consequently, the proprietary aspects of the security financial collateral arrangement in relation to cash could be governed by the law of the country where the respective account is maintained or by the law of the country where the account bank has its registered office.

4.2 Enforceability of the FOA Netting Provision

4.2.1 Slovak law protects a close out netting provided that a close-out netting agreement is entered into between parties falling within one of the categories set out in Annex 6 (*Eligible counterparties*). If one or both parties to a close-out netting agreement do not fall within one of the categories set out in Annex 6 (*Eligible counterparties*), close out netting would be unlikely to be protected under Slovak law.

4.2.2 In the event of the declaration of bankruptcy (in Slovak: "*vyhlásenie konkurzu*") or commencement of restructuring proceedings (in Slovak: "*začatie reštrukturalizačného konania*") in respect of a Slovak company or a non-Slovak company haviug a branch in this jurisdiction, the Non-Defaulting Party would be unlikely to be entitled to exercise its rights under the FOA Netting Provision and the FOA Netting Provision would be unlikely to be enforceable under the laws of this jurisdiction on the basis that the Bankruptcy Act does not protect a close-out netting agreement entered into by a Slovak company or a non-Slovak company having a branch in this jurisdiction. Consequently, the general rules under the Bankruptcy Act would apply to the FOA Netting Provision (e.g. rules relating to a set-off). Furthermore, any contractual arrangements allowing the Non-Defaulting Party to terminate the contract due to bankruptcy proceedings or restructuring proceedings in respect of a Slovak company or a non-Slovak company having

a branch in this jurisdiction would be ineffective as of the commencement of the restructuring proceedings in respect of the Slovak company or the non-Slovak company having a branch in this jurisdiction.

4.2.3 Moreover, the provisions of the Bankruptcy Act regarding invalidity or ineffectiveness of undervalue and preferential transactions, as well as fraudulent transactions, will apply to the FOA Netting Provision. Under the Bankruptcy Act, the Insolvency Representative may challenge as ineffective following legal acts, including any Transaction:

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

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

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

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

4.2.4 If the Event of Default results from declaration of bankruptcy (in Slovak: "*vyhlásenie konkurzu*") in respect of a Slovak bank or a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction under the Bankruptcy Act or commencement of forced administration (in Slovak: "*zavedenie nútenej správy*") by the NBS against a Slovak bank or a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction under the Act on Banks, the Non-Defaulting Party would only be entitled to exercise its rights under the FOA Netting Provision and the FOA Netting Provision would only be enforceable under the laws of this jurisdiction provided that the FOA Netting Agreement or, as the case may be, a Clearing Agreement is entered into between two "eligible counterparties" (i.e. the Non-Defaulting Party also falls within the definition of the "eligible counterparty") and relates to a transaction falling within the scope of the close-out netting agreement as described in paragraph 4.2.5(b). Please also refer to the qualification in paragraph 4.2.3 for rules applicable to the undervalue and

preferential transactions as well as the fraudulent transactions. In connection with these rules as set out in the qualification in paragraph 4.2.3, please note that (i) if a Slovak bank or a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction, as a Defaulting Party, were insolvent within the meaning of the Bankruptcy Act when entering into a Transaction or became insolvent as a result of the entry into a Transaction; and (ii) the Insolvency Representative were successful in challenging the Transaction on the basis of the anti-avoidance rules as set out in the qualification in paragraph 4.2.3, the FOA Netting Provision would not be enforceable in respect of that Transaction.

4.2.5 When providing for protection of the close-out netting, the Act on Banks refers to the close-out netting pursuant to the Bankruptcy Act. The Bankruptcy Act defines "close-out netting" and the related term "closed-out netting agreement" as follows:

(a) "close-out netting" is defined as a calculation in accordance with the terms of a close-out netting agreement of the amount of a single net obligation in respect of any losses or gains incurred, whether actual or estimated, arising in connection with the termination or cancellation of one or more transactions under or in connection with that close-out netting agreement. The parties will agree on the method of calculation of the single net obligation in the close-out netting agreement, provided that the calculation shall be made by reference to any actual or estimated losses or gains of the parties relating to any payments or performances that would have been paid or made if the event giving rise to termination or cancellation of one or more of those transactions had not have occurred, including any costs or revenues incurred in connection with such termination or cancellation; the calculation may be based on quotations of interest rates, exchange rates or prices obtained from other participants in relevant financial markets in connection with the transactions so terminated or cancelled; and

(b) a "close-out netting agreement" is defined as any agreement entered into between eligible counterparties in relation to one or more derivatives transactions, repo transactions, transferable securities transactions, securities lending transactions, transactions involving foreign exchange values, transactions with security rights to financial instruments or other similar financial transactions entered into outside an organised public market or governing such transactions that provides for the calculation of the amount of a single net obligation in respect of any losses or gains incurred, whether actual or estimated, in connection with the termination or cancellation of one or more transactions entered into under or in connection with such agreement.

4.2.6 Consequently, the FOA Netting Provision might not be enforceable and the Non-Defaulting Party might not be entitled to exercise its rights under the FOA Netting Provision or be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of individual Transactions under the laws of this jurisdiction if the Parties to such Transaction do not fall within one of the categories set out in Annex 6

(*Eligible counterparties*) or if such Transaction does not fall within the scope of the close-out netting agreement as described in paragraph 4.2.5(b) (please also refer to paragraphs 4.2.7 and 4.2.8).

4.2.7 A Transaction would not fall within the scope of the close-out netting agreement as described in paragraph 4.2.5(b) unless the Transaction were a derivatives transaction, a repo transaction, a transferable securities transaction, a securities lending transaction, a transaction involving foreign exchange values, a transaction with security rights to financial instruments or other similar financial transaction entered into outside an organised public market. The Securities Act defines a "derivative" as any right or obligation, valuable in monetary terms relating to securities or derived from securities, commodities, interest rates, foreign exchange rates or other assets used for this purpose in trade as well as any right or obligation, valuable in monetary terms relating to, or derived from, contracts on securities. The derivatives include the following financial instruments in particular:

(a) options, futures, swaps, forwards and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;

(b) options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);

(c) options, futures, swaps and any other derivative contracts relating to commodities that may be settled in cash provided that they are traded on a regulated market or a multilateral trading facility;

(d) options, futures, swaps, forwards and any other derivative contracts relating to commodities not mentioned in subparagraph 4.2.7(c), and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether they are cleared or settled through the clearing and settlement system or are subject to regular margin calls;

(e) derivative instruments for the transfer of credit risk;

(f) financial contracts for differences;

(g) options, futures, swaps, forwards and any other derivative contracts concerning climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled at the option of one of the parties (otherwise than by reason of insolvency or other termination event) as well as any other derivative contracts concerning assets, rights, obligations, indices and other factors not otherwise mentioned in the definition of financial instruments, which have the characteristics of other derivative financial instruments having regard to whether they are traded on a regulated

market or a multilateral trading facility, are cleared or settled through the clearing and settlement system or are subject to regular margin calls,

being the financial instruments listed in Section C of Annex 1 to the Directive 2004/39/EC on markets in financial instruments, as amended, as implemented in the Securities Act (the "**MiFID Financial Instruments**").

4.2.8 We understand that the Transactions include futures, options, swaps, contracts for differences, spot or forward contract of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof. Consequently, we are of the view that any Transaction would not fall within the scope of the close-out netting agreement as described in paragraph 4.2.5(b) unless such Transaction qualifies as (i) one of the MiFID Financial Instruments described in paragraphs 4.2.7(a) through 4.2.7(g) (e.g., futures, options or forward contract in relation to any commodity or metal would have to meet the criteria set out in one of the paragraphs 4.2.7(b) through 4.2.7(d)) or (ii) a "derivative transaction" within the meaning of the general definition of the "derivative" under the Securities Act, a repo transaction, a transferable securities transaction, a securities lending transaction, a transaction involving foreign exchange values, a transaction with security rights to financial instruments or other similar financial transaction entered into outside an organised public market.

4.2.9 With respect to any Transaction falling under point (ii) of paragraph 4.2.8 (i.e. any Transaction not qualifying as the MiFID Financial Instruments under point (i) of paragraph 4.2.8), one could argue that the specific types of transaction listed above should fall within the scope the close-out netting agreement as described in paragraph 4.2.5(b) regardless of the market on which such transactious are entered into or traded and that only the "other similar financial transactions" have to be entered into outside an organised public market.[3] It appears, however, that the better view is that all Transactions falling under point (ii) of paragraph 4.2.8 have to be entered into outside an organised public market in order for them to fall with the scope of the close-out netting agreement as described in paragraph 4.2.5(b).

4.2.10 If any Transactiou did not fall within the scope of the close-out netting agreement as described in paragraph 4.2.5(b) (whether on the basis of the types of transactions covered or on the basis of the market on which such transactions are entered into or traded), (A) the FOA Netting Provision would not be enforceable in respect of such Transaction, and (B) it is not entirely clear whether that Transaction would impair the enforceability of the FOA

[3] As mentioned in paragraph 4.2.7, the Securities Act provides that derivatives include the financial instruments listed in paragraphs 4.2.7(a) through 4.2.7(g). Some of those paragraphs include a criterion that the financial instrument has to be traded on a regulated market or a multilateral trading facility in order for it to be a financial instrument and thus, a derivative. We note that, if the close-out netting agreement as described in paragraph 4.2.5(b) is restricted to the transactions entered into outside an organised public market, such restriction arguably amounts to incomplete implementation of the Directive 2002/47/EC on financial collateral arrangements, as amended (the "**EU Financial Collateral Directive**").

Netting Provision in relation to those Transactions that fall within the scope of the close-out netting agreement as described in paragraph 4.2.5(b). Consequently, unless all the Transactions governed by the FOA Netting Agreement or, as the case may be, a Clearing Agreement fall within the scope of the close-out netting agreement as described in paragraph 4.2.5(b), the scope of the Transactions for the purposes of the FOA Netting Provision (in some FOA Netting Agreements defined as the "Netting Transactions") should be defined accordingly.

4.2.11 According to the Bankruptcy Act, the method of a calculation of the amount of a single net obligation in respect of any losses or gains is to be agreed upon by parties in a close-out netting agreement provided that the calculation shall be made by reference to any actual or estimated losses or gains of the parties relating to any payments or performances that would have been paid or made if the event giving rise to termination or cancellation of one or more of those transactions had not have occurred, including any costs or revenues incurred in connection with such termination or cancellation; the calculation may be based on quotations of interest rates, exchange rates or prices obtained from other participants in relevant financial markets in connection with the transactions so terminated or cancelled. The FOA Netting Provision would not comply with this requirement, if the method of a calculation were not contained in the FOA Netting Provision. We have noted that, unlike the other FOA Published Form Agreements listed in Annex 1, the FOA Netting Provision in the Short Form One-Way Clauses, the Short Form Two-Way Clauses, the Long Form Two-Way Clauses and the Eligible Counterparty Agreements, when addressing the Calculation of Liquidation Amount refer to the Base Currency as specified by the Non-Defaulting Party while omitting the fall-back definition of "Base Currency" as the lawful Currency of the United Kingdom, in the absence of such specification by the Non-Defaulting Party.[4] In addition, the FOA Netting Provision in the Short Form One-Way Clauses, the Short Form Two-Way Clauses and the Eligible Counterparty Agreements contain neither references to the types of costs or revenues, losses or, as the case may be, gains to be included, if appropriate, when determining the total costs or revenues, losses or, as the case may be, gains in respect of each Netting Transaction nor references to the market quotations published on, or official settlement prices set by, the relevant Market, due regard to which should be had, if appropriate, when determining the Liquidation Amount.[5] Although we are of the view that the method of a calculation of the amount of a single net obligation within the meaning of the Bankruptcy Act is still sufficiently specified, no assurance can be given whether or not the courts of this jurisdiction would adopt this view. For desirable amendments to the FOA Netting Provision, please refer to Section 2 of Annex 5.

4.2.12 The Bankruptcy Act provides that the close-out netting (in Slovak: "*záverečné vyrovnanie ziskov a strát*") according to a close-out netting agreement shall

[4] Clause 2.3(b) of the Short Form One-Way Clauses and Short Form Two-Way Clauses, Clause 2.4(b) of the Long Form Two-Way Clauses and Clause 10.3(b) of the Eligible Counterparty Agreements.

[5] Clause 2.3(b) of the Short Form One-Way Clauses and Short Form Two-Way Clauses and Clause 10.3(b) of the Eligible Counterparty Agreements.

not be affected by the declaration of bankruptcy or approval of restructuring. The Act on Banks in respect of forced administration of banks provides that the validity, effectiveness and exercise of rights under the close-out netting agreement (in Slovak: "*platnosť, účinnosť a výkon práv podľa zmluvy o záverečnom vyrovnaní ziskov a strát*") shall not be affected by commencement of the forced administration if the close-out netting agreement meets the requirements set out by the Bankruptcy Act. We are of the view that the above provisions of the Bankruptcy Act and the Act on Banks should be construed consistently in that a close-out netting is protected if the close-out netting agreement is entered into (rather than the close-out netting being applied to close out and net the Transactions) prior to the declaration of bankruptcy or approval of restructuring under the Bankruptcy Act and/or commencement of the forced administration under the Act on Banks, as applicable.

4.2.13 In any case, the FOA Netting Provision would be unlikely to be enforceable in respect of a Transaction entered into after the commencement of any Insolvency Proceedings against the Defaulting Party (or a Transaction entered into after any liquidation proceedings under the Commercial Code).

4.2.14 If the Event of Default results from commencement of forced administration by the NBS against a Slovak bank or a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction under the Act on Banks, the provisions of the Act on Banks regarding invalidity or ineffectiveness of fraudulent transactions will apply to the FOA Netting Provision. Under the Act on Banks, the Insolvency Representative may challenge as ineffective legal acts, including any Transaction, defrauding the bank or its creditors. The Insolvency Representative can challenge fraudulent transactions undertaken three years prior to the commencement of forced administration.

4.2.15 Given the absence of available court decisions regarding the close-out netting arrangements, it is difficult to determine how the courts of this jurisdiction would construe and apply the relevant legal provisions and no assurance can be given that the courts of this jurisdiction would arrive at the same conclusions as those contained in this opinion.[6]

4.3 Enforceability of the Clearing Module Netting Provision and the Addendum Netting Provision

The qualifications in paragraph 4.2 in respect of the FOA Netting Provision apply to the Clearing Module Netting Provision, the Addendum Netting Provision and the calculation of the Cleared Set Termination Amount thereunder *mutatis mutandis*. Moreover, the following qualifications apply:

4.3.1 As set out in paragraph 4.2.5(b), a "close-out netting agreement" as defined in the Bankruptcy Act shall provide for the calculation of the amount of a single net obligation in respect of any losses or gains incurred, whether actual or

[6] The definitions of close-out netting and close-out netting agreement were introduced into law of this jurisdiction as of 14 January 2005 and have been in effect since 1 January 2006. However, we are not aware of any published case-law of the Slovak courts addressing close-out netting or close-out netting agreements.

estimated, in connection with the termination or cancellation of one or more transactions entered into under or in connection with such agreement. The Clearing Module Netting Provision and the Addendum Netting Provision provide for the calculation of separate Cleared Set Termination Amount for each Cleared Transaction Set and as a result, there may be two or more net obligations resulting from the close-out netting. There is a risk that the Clearing Module Netting Provision and the Addendum Netting Provision would not be enforceable in this jurisdiction on this basis if an interpretation of the provisions of the Bankruptcy Act in the sense that there shall be a single net obligation per one close-out netting agreement would prevail. Please refer to Section 2 of Annex 5 for desirable amendments to the Clearing Module Netting Provision and the Addendum Netting Provision which could, potentially, limit, hut not entirely exclude this risk.

4.3.2 The Clearing Module Netting Provision and the Addendum Netting Provision provide that the Cleared Set Termination Amount shall be paid in the same currency as the termination amount in respect of the related terminated Firm/CCP Transactions in accordance with the relevant Rule Set. Moreover, the Clearing Module Netting Provision and the Addendum Netting Provision do not refer to any actual or estimated losses or gains of the parties relating to any payments or performances that would have been paid or made if the event giving rise to termination or cancellation of one or more of transactions had not have occurred, including any costs or revenues incurred in connection with such termination or cancellation. Instead, the Clearing Module Netting Provision and Addendum Netting Provision provide that the Aggregate Transaction Value shall be equal to the Firm/CCP Transaction Value or the CM/CCP Transaction Value, respectively, calculated pursuant to the relevant Rule Set. Consequently, there is a material risk that the Clearing Module Netting Provision and the Addendum Netting Provision would not be enforceable in this jurisdiction on the basis that the method of calculation of the Cleared Set Termination Amount is not agreed in the Clearing Agreement but is specified by reference to the relevant Rule Set. Please refer to Section 2 of Annex 5 for desirable amendments to the Clearing Module Netting Provision and the Addendum Netting Provision which could, potentially, limit, but not entirely exclude this risk.

4.3.3 Under the Clearing Module Netting Provision and the Addendum Netting Provision, the Relevant Collateral Value in respect of the relevant Client Transactions is taken into account when calculating the Cleared Set Termination Amount. Due to the conceptual differences between the "security title transfer" under law of this jurisdiction and "title transfer collateral arrangements" under the EU Financial Collateral Directive or other title transfer collateral arrangements of similar type (see qualification in paragraph 4.7), there is a material risk that calculating the Cleared Set Termination Amount under the Clearing Module Netting Provision and the Addendum Netting Provision by taking into account the Relevant Collateral Value would not be enforceable in this jurisdiction.

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

The qualifications in paragraph 4.1 regarding the governing law of the Clearing Agreement apply.

4.5 Enforceability of the FOA Set-Off Provisions

The FOA Set-Off Provisions on their own are unlikely to qualify as close-out netting arrangement within the meaning of the Bankruptcy Act (please refer to the qualification in paragraph 4.2) and thus, will be unlikely to be protected to the extent equivalent to the FOA Netting Provision, which is protected by the Bankruptcy Act. We believe, however, that the Margin Cash Set-off Clause should be distinguished from the General Set-off Clause.

4.5.1 The Margin Cash Set-off Clause, together with other clauses within Module G (*Margin and Collateral*), may qualify as:

(a) the close-out netting within the meaning of the Bankruptcy Act; one could argue that the Margin Cash Set-off Clause is the method of calculation of the single net obligation agreed upon by the Parties in the close-out netting agreement in the accordance with the Bankruptcy Act (please refer to paragraph 4.2.5(a)). If a Slovak court followed such argument, the Margin Cash Set-off Clause would be protected from the effects of the Insolvency Proceedings to the same extent as the FOA Netting Provision (please refer to the qualification in paragraph 4.2); or

(b) the security financial collateral arrangement in relation to cash within the meaning of the Civil Code; one could argue that the Margin Cash Set-off Clause is the method of realisation of the security financial collateral arrangement in relation to cash. If a Slovak court followed such argument, the Margin Cash Set-off Clause would be protected from the effects of the Insolvency Proceedings to the same extent as law of this jurisdiction protects the security financial collateral arrangement in relation to cash.

Otherwise, rules applicable to set-off would apply as described below in respect of the General Set-off Clause.

4.5.2 The EU Insolvency Regulation would apply to a Defaulting Party, which is a Slovak company or a non-Slovak company having a branch in this jurisdiction. It results from the EU Insolvency Regulation that the opening of relevant Insolvency Proceedings should not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim.

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

a set-off were permitted by the law of the state governing the Defaulting Party's claim to have the Liquidation Amount paid by the Non-Defaulting Party. The General Set-Off Clause should thus be protected to the extent that such a set-off is permitted by English law as the law governing the relevant claim of the Defaulting Party.

If, for any reason, the EU Insolvency Regulation would not apply or English law did not permit such a set-off, the General Set-off Clause would only be enforceable against the Defaulting Party, which is a Slovak company or a non-Slovak company having a branch in this jurisdiction, subject to, and in accordance with, the Bankruptcy Act.

4.5.3 The Bankruptcy Act would apply to a Defaulting Party, which is a Slovak bank or a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction. It results from the Bankruptcy Act that the opening of relevant Insolvency Proceedings should not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the EEA member state law applicable to the insolvent debtor's claim, provided, however, that such application of that governing law should not prejudice the right to set-off under the Bankruptcy Act.

If so, the Non-Defaulting Party should be entitled to set off: (a) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party against the Liquidation Amount owed by the Defaulting Party if such set-off were permitted under the law of the EEA member state (e.g. English law) governing the Defaulting Party's claim to have the cash margin repaid by the Non-Defaulting Party; and (b) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party against the Liquidation Amount owed by the Non-Defaulting Party if such a set-off were permitted by the law of the EEA member state (e.g. English law) governing the Defaulting Party's claim to have the Liquidation Amount paid by the Non-Defaulting Party. In addition, the Non-Defaulting party should be entitled to such a set-off even if such a set-off was not permitted under the laws of the EEA member state governing the respective Defaulting Party's claim so long as the Bankruptcy Act allows for such a set-off. The General Set-off Clause should thus be protected to the extent that such a set-off is permitted by English law as the law governing the relevant claim of the Defaulting Party.

If, for any reason, English law did not permit such a set-off, the General Set-off Clause would only be enforceable against the Defaulting Party, which is a Slovak bank or a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction, subject to, and in accordance with, the Act on Banks and within the bankruptcy proceedings subject to, and in accordance with, the Bankruptcy Act.

4.5.4 In any case, it is not entirely clear whether any reference to governing law under paragraphs 4.5.2 and 4.5.3 is limited to the general rules applicable to set-off or whether the reference extends to insolvency rules applicable to set-off in that jurisdiction. No such rules should, however, preclude actions in this jurisdiction for voidness, voidability or unenforceability of legal acts

detrimental to all the creditors of the Defaulting Party. For more details regarding the rules applicable to the undervalue and preferential transactions and the fraudulent transactions, please refer to our qualifications in paragraphs 4.2.3 and 4.2.14.

4.5.5 Following the commencement of forced administration by the NBS against a Slovak bank or a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction under the Act on Banks, the provisions of the Act on Banks regarding set-off will apply. Under the Act on Banks, any set-off in respect of receivables owed to, or by, the bank under forced administration is prohibited within six months following the commencement of forced administration, unless such set-off following the introduction of a reorganisation measure is permitted under the law of the EEA Member State in which the creditor's residence or registered office is located.

4.6 Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision or an Addendum Set-Off Provision

4.6.1 The qualifications in paragraph 4.5 in respect of the FOA Set-Off Provision and, in particular, the General Set-off Clause apply to the Clearing Module Netting Provision and the Addendum Set-Off Provision *mutatis mutandis*.

4.6.2 To the extent the Relevant Collateral Value is purported to be set off under the Clearing Module Set-Off Provision or the Addendum Set-Off Provision, the qualifications in paragraph 4.7 regarding the enforceability of the Title Transfer Provisions apply.

4.7 Enforceability of the Title Transfer Provisions

4.7.1 There are conceptual differences between the "security title transfer" (in Slovak: "*zabezpečovací prevod práva*") under law of this jurisdiction and "title transfer collateral arrangements" under the EU Financial Collateral Directive or other title transfer collateral arrangements of similar type. The EU Financial Collateral Directive has been implemented into the Securities Act by disapplying certain formal requirements generally applicable to the security title transfer in relation to securities. Otherwise, however, the Securities Act refers to the Civil Code applicable to the security title transfer. Under the Civil Code, the security title transfer is a temporary transfer of a title, throughout the duration of which a creditor, as transferee, is not allowed to further transfer the title to a third party or encumber the title in any way for the benefit of a third party. Upon the termination of the secured obligation, the transferred title is re-transferred to the transferor (i.e. the debtor) by operation of law. In addition, any arrangement, entered into prior to the secured obligation being due and payable, according to which the transferee (i.e. the creditor) can enforce the security by permanently keeping the temporarily transferred title (including by way of set-off) are invalid. Furthermore, according to the Bankruptcy Act, upon declaration of bankruptcy the "security title transfer" is recharacterised as "pledge" by operation of law. Consequently, the title transfer collateral arrangements within the meaning of the EU Financial Collateral Directive and other title transfer collateral arrangements of similar type are not expressly recognised by law of this jurisdiction. As a result, the Non-Defaulting Party

would be unlikely to be entitled to exercise its rights under the Title Transfer Provisions and a Party shall be unlikely to be entitled to use or invest for its own benefit, without restriction, any Margin Transferred to it pursuant to the Title Transfer Provisions.

4.7.2 The qualifications in paragraphs 4.1.3(b) and 4.1.3(c) regarding the governing law of particular financial collateral arrangements apply.

4.8 Use of security interest margin not detrimental to Title Transfer Provisions

4.8.1 The qualifications in paragraph 4.7 regarding the enforceability of the Title Transfer Provisions apply.

4.9 Single Agreement

4.9.1 Under the Bankruptcy Act, if an executory contract has not been discharged (whether at all or partially only) by both the Defaulting Party and the Non-Defaulting Party prior to the declaration of bankruptcy, either party to the contract may rescind it (or, if the executory contract has been fully discharged by either party prior to the declaration of bankruptcy, such party to the contract may rescind it). Such rescission, however, is limited to the extent of the obligations that have not yet been discharged. In addition, if the subject of the relevant contract is continuous or repeated performance, the Insolvency Representative may withdraw from that contract subject to a two-month notice period or such shorter period as provided for in that contract.

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

4.9.3 However, even if the FOA Netting Agreement or, as the case may be, the Clearing Agreement were not terminated prior to the declaration of bankruptcy in respect of the Defaulting Party, the rules of the Bankruptcy Act applicable to executory contracts should not apply to the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, and the FOA Set-Off Provisions, so long as those provisions qualify as close-out netting within the meaning of the Bankruptcy Act (please refer to paragraphs 4.2.5 to 4.2.7, 4.3 and 4.5.1(a)).

4.10 Automatic Termination

4.10.1 The Bankruptcy Act provides that contractual arrangements allowing a party to an agreement to terminate the agreement due to restructuring proceedings or bankruptcy proceedings in respect of a Slovak company or a non-Slovak company having a branch in this jurisdiction are ineffective as of the commencement of restructuring proceedings in respect of the Slovak company

or a non-Slovak company having a branch in this jurisdiction. It can be argued that the automatic termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision would be effective even following the commencement of restructuring proceedings in respect of the Slovak company or a non-Slovak company having a branch in this jurisdiction on the basis that the contract terminate automatically (as opposed to the termination on the basis of a decision of the Non-Defaulting Party). There is, however, a general rule under law of this jurisdiction which provides that an act in law shall be invalid if its contents or purpose contradicts or circumvents the law, or if the act contravenes good morals. An administrator could, therefore, argue that the relevant provision of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision is invalid on the basis that the purpose of such automatic termination under the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision is to circumvent the above provision of the Bankruptcy Act.

4.11 Multibranch Parties

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

4.11.2 Where the Defaulting Party is a Slovak company with its "centre of main interest" in the Slovak Republic (please refer to our assumption in paragraph 2.11), the Insolvency Representative would be required to defer to the jurisdiction of the insolvency officer appointed in another EU member state if secondary proceedings under the EU Insolvency Regulation in respect of the Defaulting Party were opened in such other EU member state on the basis that the Defaulting Party possesses an establishment within the territory of that other EU member state. The effect of those proceedings should be restricted to the assets of the Defanlting Party situated in the territory of that EU member state.[7] In any case, an Insolvency Representative in this jurisdiction could only include any asset situated in a non-EU member state into bankruptcy proceedings opened in this jurisdiction provided that the laws of such non-EU member state allow for such inclusion.

4.11.3 Further to our opinion expressed in paragraphs 3.3 to 3.9 (based on, and subject to, the relevant assumptions and qualifications), we are of the view that the Insolvency Representative should apply the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision (to the extent such provisions are enforceable

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

under law of this jurisdiction (please refer to paragraphs 4.1 to 4.6) to all obligations between the Defaulting Party and the Non-Defaulting Party arising under the FOA Netting Agreement or, as the case may be, the Clearing Agreement and only then consider where the net claim (if any) of the Defaulting Party is situated. However, there is a potential danger that:

(a) if the secondary proceedings were opened in the jurisdiction in which the Non-Defaulting Party has the centre of its main interest, the Insolvency Representative would not apply the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision to any obligation of the Non-Defaulting Party against the Defaulting Party arising under the FOA Netting Agreement or, as the case may be, the Clearing Agreement on the basis that the Defaulting Party's claim corresponding to such obligation is situated outside the jurisdiction of the Insolvency Representative; and

(b) if the Non-Defaulting Party is situated in a non-EU member state, an Insolvency Representative would not apply the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision to any obligation of the Non-Defaulting Party against the Defaulting Party arising under the FOA Netting Agreement or, as the case may be, the Clearing Agreement on the basis that the Defaulting Party's claim corresponding to such obligation is situated in a non-EU member state unless the laws of such non-EU member state allowed for inclusion of such claims into bankruptcy proceedings opened in this jurisdiction.

4.11.4 The qualifications in paragraph 4.7 regarding the enforceability of the Title Transfer Provisions apply.

4.12 Insolvency of Foreign Parties

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

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

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

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

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

(b) an Insolvency Representative in this jurisdiction could include into such separate Insolvency Proceedings assets of the Foreign Defaulting Party situated in another jurisdiction, provided that the laws of such jurisdiction allow for such inclusion.

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

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

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

(b) an Insolvency Representative in this jurisdiction could include into such separate Insolvency Proceedings assets of the Foreign Defaulting Party situated in another jurisdiction, provided that the laws of such jurisdiction allow for such inclusion.

4.13 General qualifications

4.13.1 If the obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement are not "mutual" between the Parties they may not be eligible for inclusion in a netting or set-off pursuant to the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision. For these purposes, under the laws of this jurisdiction, obligations would not be regarded as "mutual" if the

creditor from a receivable is not, at the same time, the debtor from the other receivable and *vice versa*.

4.13.2 The Civil Code provides for a general rule that any transaction is invalid if its contents or purpose contradicts or circumvents any law (i.e., not only the Civil Code) or if such transaction contravenes good morals. Since it is not entirely clear how the general rule applies to entities whose business is subject to special regulation, there is a risk that the FOA Netting Agreement or, as the case may be, the Clearing Agreement or any Transaction would be invalid if the FOA Netting Agreement or, as the case may be, the Clearing Agreement or such Transaction contradicted or circumvented such special regulation, including any prudential or conduct of business rules as well as any other regulatory rules or restrictions contained in such special regulation.

4.13.3 While we do not express any view as to whether both the execution of the FOA Netting Agreement or, as the case may be, the Clearing Agreement or any Transaction by a Slovak bank or a branch of a non-Slovak bank and the performance of the obligations of the Slovak bank or the branch of the non-Slovak bank under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or such Transaction complies with or will comply with any prudential or conduct of business rules as well as any other regulatory rules or restrictions presently in force and applicable to the Slovak bank or the branch of the non-Slovak bank, we note that the Act on Banks provides that Slovak banks and branches of non-Slovak banks may not enter into agreements on terms that are significantly disadvantageous to them (in particular agreements that bound them to an economically unjustifiable performance or a performance manifestly inadequate to the consideration provided, or that provide for manifestly inadequate security to secure their receivables).

4.13.4 The Bankruptcy Act provides that a receivable denominated in a currency other than Euro shall be converted into Euro at the foreign exchange reference rate determined and published by the European Central Bank or the NBS on the day the bankruptcy was declared. Consequently, if the Liquidation Amount, Available Termination Amount, Cleared Set Termination Amount is payable by the Defaulting Party, it will have to be converted into Euro when the Non-Defaulting Party files the corresponding claim with the court of this jurisdiction.

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

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

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

4.13.6 Any provision in the FOA Netting Agreement or, as the case may be, the Clearing Agreement providing that any calculation or certification is to be conclusive and binding will not be effective if such calculation or certification

is fraudulent and will not necessarily prevent judicial enquiry into the merits of any claim by any party thereto. The concept of prima facie evidence may not be recognised under laws of this jurisdiction.

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

(a) the act was made during the last three years;

(b) the party made the act with the intention to curtail its creditors; and

(c) the party's counterparty must have been aware of this intention.

It is also possible to challenge a transaction entered into by a party within last three years if the party assumed an obligation without an adequate consideration provided that:

(i) the party became insolvent on a cash-flow basis as a result of the transaction; or

(ii) the transaction was entered into with the intention to defer or frustrate a payment to a creditor without any ground; or

(iii) the transaction was entered into with the intention to assume a debt that the party would not be able to discharge upon its maturity.

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

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

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

4.13.10 Certain transactions entered into by parties connected through a director, a procurists, other persons entitled to act on behalf of the parties, and any close persons (in Slovak: "*blízka osoba*")[8] to such persons, are subject to strict rules

[8] Generally under law of this jurisdiction, a "close person" means a relative in the direct line of descent, a sibling or a spouse; other persons within a family or a similar relationship shall be considered to be close

under the Commercial Code, the breach of which can cause the transaction being null and void.

4.13.11 Certain transactions entered into by affiliated parties (e.g. a party being a founder of or a direct holder of equity interest in the other party, close persons to or any person controlling or controlled[9] by any of these persons) are subject to strict rules under the Commercial Code, the breach of which can cause the transaction not being effective between the parties, and consequently unenforceable.

4.13.12 The Bankruptcy Act provides for statutory subordination of contractual penalties and any claims, which are or used to be owned by a person, which is or used to be a related party (in Slovak: "*spriaznená osoba*")[10] to the debtor. Any security established over subordinated claims will be deemed ineffective.

4.13.13 If required by the Slovak Act No. 211/2000 Coll., on free access to information, as amended (the "**Information Act**"), certain agreements entered into by an "obliged entity"[11] must be mandatorily published. Such agreements only become effective the following day of their mandatory publication (provided that none of the exceptions applies). If such agreements are not published within three months from the date on which they were entered into, they would be considered as not having been entered into at all and consequently unenforceable under Slovak law. Agreements relating to (i) exchange transactions and their intermediation, or (ii) securities or other financial instruments, are not regarded as mandatorily published contracts under the Information Act. Although we are of the view that the FOA Netting Agreement or, as the case may be, the Clearing Agreement would not be regarded as a mandatorily published contract under the Information Act to the extent it relates to exchange transactions, securities or other financial

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persons if a detriment suffered by one of them would be reasonably perceived by the other person as its own detriment.

[9] Generally under law of this jurisdiction, a "controlled person" is an entity in which certain other entity (a "controlling person") owns a simple majority of the voting rights through an equity interest or as a result of holding shares to which the majority of voting rights is attached or, as a result of the entering into agreements with other parties, may exercise the majority of the voting rights.

[10] According to the Bankruptcy Act, a "related party" to a legal entity is (i) the statutory body or a member of the statutory body, a managing employee (within the meaning of Act No. 311/2011 Coll., the labour code, as amended), a procurist (in Slovak: "*prokurista*") or a member of the supervisory board of the legal entity; (ii) an entity which holds a qualified interest in the legal entity; (iii) the statutory body or a member of the statutory body, a managing employee, a procurist or a member of the supervisory board of a legal entity listed under (ii); (iv) a close person to any of the individuals listed under (i) to (iii); or (v) another legal entity in which the legal entity or any of entities listed under (i) to (iv) holds a qualified interest. In addition, a "related party" to an individual is a close person to the individual as well as a legal entity in which the individual or a close person to the individual holds a qualified interest. A "qualified interest" means a direct or indirect interest representing at least 5 per cent. of the share capital of a legal entity or voting rights in a legal entity or the possibility of a management control of a legal entity comparable to such 5 per cent. interest, and an "indirect interest" means an interest held through an intermediary legal entity in which the holder of the indirect interest holds a qualified interest.

[11] "Obliged entities" under the Information Act include (i) the Public Entities (as defined in Schedule 5), (ii) legal entities and individuals authorised by law to decide on rights and obligations of other legal entities or individuals in public administration, (iii) legal entities established by law or by a Public Entity pursuant to budgetary laws, and (iv) legal entities established by any of entities listed under (i) to (iii).

instruments, no assurance can be given whether or not the courts of this jurisdiction would adopt this view.

4.13.14 The opinions expressed in paragraph 3 are subject to general principles of laws of this jurisdiction, without limitation, including the following:

(a) pursuant to the Commercial Code, damages shall be paid in money. Restitution into the original state will only be ordered to the plaintiff's application where this is both possible and customary;

(b) under the Commercial Code, certain terms of an agreement may be left open for later determination provided, however, that such determination is not dependent solely on the discretion of one party. Accordingly, it may be difficult to enforce terms of the FOA Netting Agreement or, as the case may be, the Clearing Agreement that attempt to vest one party with discretion over a determination of a matter that could be viewed as a term of the agreement. Accordingly, it is not clear whether court of this jurisdiction would enforce provisions providing that any calculation, determination or certification effected by a party to an agreement is to be conclusive and binding;

(c) under the Civil Code, no one may agree to waive rights that may only arise in the future;

(d) under the Commercial Code, no one may waive the right to claim damages prior to the occurrence of the event that may cause the damages to arise;

(e) a party to a contract may be able to avoid its obligations under a contract (and may have other remedies) where it has been induced to enter into that contract by a mistake as to a decisive circumstance relating to the contract, where the mistake was caused by, or known to, the other party or where the other party caused the mistake intentionally; and

(f) concepts of clarity, materiality, reasonableness and good faith, as interpreted and applied by the courts of this jurisdiction.

4.13.15 Under the Slovak Act No. 371/2014 Coll., on resolution of crisis situations on financial market (the "**Crisis Act**"), implementing the EU Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms), a crisis situation resolution proceedings (the "**Resolution Proceedings**") may be commenced in respect of a Slovak bank, a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction and any other respective company within the bank's group qualifying as per the Crisis Act by the Crisis Council on its own motion, or on the basis of a petition submitted by the NBS directly or by the Slovak bank or the non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction through the NBS. The commencement of the Resolution Proceedings cannot be contractually regarded as, and precludes by operation of law, the commencement of the Insolvency Proceedings in respect of such

Slovak bank or non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction. Although the Crisis Act imposes upon the Crisis Council to protect security title transfer agreements, set-off agreements and close-out netting agreements in the Resolution Proceedings and, according to the Crisis Act, the netting protection under the Bankruptcy Act should apply accordingly, the Crisis Council may, *inter alia*, transfer, modify or terminate any obligations of the Slovak bank or the non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction, including derivatives transactions, in order to ensure availability of the covered deposits. Given that the Crisis Act only became effective on 1 January 2015, no views can be given as to the extent in which the Crisis Council will exercise its rights in the Resolution Proceedings in practice. Consequently, following the commencement of the Resolution Proceedings in respect of a Slovak bank or a non-Slovak bank (other than an EEA Credit Institution) having a branch in this jurisdiction, the Non-Defaulting Party might be limited in exercising its rights under the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision and Addendum Set-Off Provision.

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

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

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

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

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

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

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

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

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

Yours faithfully,

SCHEDULE 1
SECURITIES DEALERS

Subject to the modifications and additions set out in this Schedule 1 (*Securities Dealers*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Securities Dealers. For the purposes of this Schedule 1 (*Securities Dealers*) "**Securities Dealers**" mean Slovak securities dealers (in Slovak: "*obchodníci s cennými papiermi*") within the meaning of the Slovak Act No. 566/2001 Coll., on securities and investment services, as amended (the "**Securities Act**") (other than a bank within the meaning of the Act on Banks) and non-Slovak securities dealers incorporated or formed under the laws of another jurisdiction (other than a foreign bank within the meaning of the Act on Banks) which have a branch (in Slovak: "*organizačná zložka*") established in this jurisdiction in accordance with the Securities Act, including a branch of a non-Slovak securities dealer, which has its registered office in another EEA member state and benefits from a single licence in accordance with EU law (the "**EEA Securities Dealer**") and a branch of a non-Slovak securities dealer, which has its registered office in a state other an EEA member state if the non-Slovak securities dealer was duly licensed by the NBS.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The first sentence in paragraph 1.13.1 is deemed deleted and replaced with the following:

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

1.2 The definition of "Insolvency Representative" in paragraph 1.13.2 is deemed deleted and replaced with the following:

"*"**Insolvency Representative**" means an administrator (in Slovak: "*správca*") within the meaning of the Slovak Act No. 7/2005 Coll., on bankruptcy and restructuring, as amended (the "**Bankruptcy Act**") and a forced administrator (in Slovak:* "nútený správca"*) within the meaning of the Securities Act.*"

2. MODIFICATIONS TO ASSUMPTIONS

2.1 Assumption in paragraph 2.11 is deemed deleted and replaced with the following:

"That the Slovak Other Securities Dealer (as defined in section 4) has its "centre of main interest" in the Slovak Republic and the branch of a non-Slovak Other Securities Dealer having its "centre of main interest" in an EU member state other than the Slovak Republic or Denmark constitutes an "establishment", in each case within the meaning of Regulation (EC) No. 1346/2000 on insolvency proceedings, as amended

*(the "**EU Insolvency Regulation**"), which applies to all EU member states other than Denmark.*[12]

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 Insolvency Proceedings: Securities Dealers

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

(a) in relation to a Slovak securities dealer and a non-Slovak securities dealer (other than an EEA Securities Dealer) having a branch in this jurisdiction, forced administration (in Slovak: "*nútená správa*") under the Securities Act. Forced administration in relation to a Slovak securities dealer which is required to have the registered capital of at least EUR 730,000 (the "**Capitalised Securities Dealer**") is regulated by the rules of the Act on Banks applicable to forced administration of banks;

(b) bankruptcy proceedings under the Bankruptcy Act. Following a permission of the NBS, a Securities Dealer might only be subject to bankruptcy proceedings under the Bankruptcy Act (i.e. the Securities Dealer might not be subject to restructuring proceedings under the Bankruptcy Act). The forced administrator might, following the permission of the NBS and, in case of a Capitalised Securities Dealer, the Council for Resolution of Crisis Situations (the "**Crisis Council**"), file a petition for the declaration of bankruptcy relating to a Slovak securities dealer and a non-Slovak securities dealer (other than an EEA Securities Dealer) having a branch in this jurisdiction under the Bankruptcy Act. In addition, under the Bankruptcy Act, the NBS is given specific powers to file a petition for the declaration of bankruptcy relating to a Securities Dealer.

3.1.2 We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, if supplemented or amended as set out in Section 4 of Annex 5 under the heading "For the purpose of Schedule 1 (*Securities Dealers*)".

3.2 Enforceability of FOA Netting Provision: Securities Dealers

In relation to a FOA Netting Agreement and in relation to a Clearing Agreement where the Client is a Defaulting Party, the FOA Netting Provision will be

[12] According to the EU Insolvency Regulation, an "establishment" shall mean any place of operation where the debtor carries out a non-transitory economic activity with human means and goods.

immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

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

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

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

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

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this section 3.2 to apply.

It is desirable, but not necessary, to make the amendments to the FOA Netting Provision specified in Section 2 of Annex 5 under the heading "For the purpose of Schedule 1 (*Securities Dealers*)".

Furthermore, in addition to the highlighted words shown in Annex 4, it is necessary that the words shown as underlined in Section 3 of Annex 5 under the heading "For the purpose of Schedule 1 (*Securities Dealers*)" be treated as Core Provisions in order for the opinions expressed in this section 3.2 to apply.

3.3 Enforceability of the Clearing Module Netting Provision: Securities Dealers

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

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

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

Amendments to the Clearing Module Netting Provision specified in Section 1 of Annex 5 to this opinion under the heading "For the purpose of Schedule 1 (*Securities Dealers*)" are necessary in order for the opinions expressed in this section 3.3 to apply.

It is also desirable, but not necessary, to make the amendments to the Clearing Module Netting Provision specified in Section 2 of Annex 5 under the heading "For the purpose of Schedule 1 (*Securities Dealers*)".

3.4 Enforceability of the Addendum Netting Provision: Securities Dealers

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

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

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

Amendments to the Addendum Netting Provision specified in Section 1 of Annex 5 to this opinion under the heading "For the purpose of Schedule 1 (*Securities Dealers*)" are necessary in order for the opinions expressed in this section 3.4 to apply.

It is also desirable, but not necessary, to make the amendments to the Addendum Netting Provision specified in Section 2 of Annex 5 under the heading "For the purpose of Schedule 1 (*Securities Dealers*)".

3.5 Insolvency of Foreign Parties: Securities Dealers

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

3.6 Special legal provisions for market contracts: Securities Dealers

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

3.6.1 If a settlement system under the Securities Act or a payment system agreement under the Slovak Act No. 492/2009 Coll., on payment services, as amended are governed by the laws of this jurisdiction, the rights and obligations of an operator of the payment system or a central depository, as applicable, or a participant in the respective system arising in connection with participation in the respective system (including rights of third parties to any collateral provided by the participant in the respective system in connection with such

participation) shall be governed by the laws of this jurisdiction notwithstanding the declaration of bankruptcy, approval of restructuring, suspension of payments, termination of bankruptcy proceedings or cancellation of bankruptcy due to insufficient funds with respect to an operator of a payment system or a central depository, as applicable, or the participant in the respective system.

4. ADDITIONAL QUALIFICATIONS

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

"***Insolvency proceedings***

*As the Securities Act provides that a client's assets (in Slovak: "*majetok klienta*") placed with a Slovak securities dealer or a non-Slovak securities dealer (other than an EEA Securities Dealer) having a branch in this jurisdiction do not form part of the assets of the Slovak securities dealer or the non-Slovak securities dealer (other than an EEA Securities Dealer) having a branch in this jurisdiction, the client's assets should not, according to the Bankruptcy Act, form the part of the bankruptcy estate of the Slovak securities dealer or the non-Slovak securities dealer (other than an EEA Securities Dealer) having a branch in this jurisdiction. Following the suspension of the Securities Dealer right to dispose with the client's assets as a result of a decision in the course of the bankruptcy proceedings under the Bankruptcy Act, the client is entitled to either (i) have the securities and financial instruments returned (and the Securities Dealer is obliged to return the securities and financial instruments provided it does not detriment claims of other clients); or (ii) be reimbursed by the Slovak Investment Guarantee Fund under the conditions set out in the Securities Act.*

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

5. MODIFICATIONS TO QUALIFICATIONS

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

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

"*In respect of the matters outside the material scope of the Rome I Regulation or the Rome Convention, as the case may be, the Securities Act or IPPL Act, as relevant, will apply.*"

5.2 The qualification in paragraph 4.1.3(a) is deemed deleted.

5.3 The qualification in paragraph 4.2.2 is deemed deleted.

5.4 The qualification in paragraph 4.2.3 is deemed deleted and replaced with the following:

"*If the Event of Default results from declaration of bankruptcy in respect of a Securities Dealer under the Bankruptcy Act or commencement of forced administration by the NBS against a Slovak securities dealer and a non-Slovak securities dealer (other than an EEA Securities Dealer) having a branch in this jurisdiction under the Securities Act, the Non-Defaulting Party would only be entitled to exercise its rights under the FOA Netting Provision and the FOA Netting Provision would only be enforceable under the laws of this jurisdiction provided that the FOA Netting Agreement or, as the case may be, a Clearing Agreement is entered into between two "eligible counterparties" (i.e. the Non-Defaulting Party also falls within the definition of the "eligible counterparty") and relates to a transaction falling within the scope of the close-out netting agreement as described in paragraph 4.2.5(b).*"

5.5 The qualification in paragraph 4.2.4 is deemed deleted and replaced with the following:

"Please note, however, that the provisions of the Bankruptcy Act regarding invalidity or ineffectiveness of undervalue and preferential transactions, as well as fraudulent transactions, will apply to the FOA Netting Provision. Under the Bankruptcy Act, the Insolvency Representative may challenge as ineffective following legal acts, including any Transaction:

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

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

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

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

Consequently, please note that (i) if a Securities Dealer, as a Defaulting Party, were insolvent within the meaning of the Bankruptcy Act when entering into a Transaction

or became insolvent as a result of the entry into a Transaction; and (ii) the Insolvency Representative were successful in challenging the Transaction on the basis of the above anti-avoidance rules, the FOA Netting Provision would not be enforceable in respect of that Transaction."

5.6 The introductory sentence of the qualification in paragraph 4.2.5 is deemed deleted and replaced with the following:

"*When providing for protection of the close-out netting, the Securities Act refers to the close-out netting pursuant to the Bankruptcy Act. The Bankruptcy Act defines "close-out netting" and the related term "close-out netting agreement" as follows:*"

5.7 The qualification in paragraph 4.2.12 is deemed deleted and replaced with the following:

"*The Bankruptcy Act provides that the close-out netting (in Slovak: "*záverečné vyrovnanie ziskov a strát*") according to a close-out netting agreement shall not be affected by the declaration of bankruptcy or approval of restructuring. The Securities Act in respect of forced administration of securities dealers (other than the Capitalised Securities Dealers), and the Act on Banks in respect of forced administration of the Capitalised Securities Dealers, provide that the validity, effectiveness and exercise of rights under the close-out netting agreement (in Slovak: "*platnosť, účinnosť a výkon práv podľa zmluvy o záverečnom vyrovnaní ziskov a strát*") shall not be affected by commencement of the forced administration if the close-out netting agreement meets the requirements set out by the Bankruptcy Act. We are of the view that the above provisions of the Bankruptcy Act and the Securities Act, or the Act on Banks, respectively, should be construed consistently in that a close-out netting is protected if the close-out netting agreement is entered into (rather than the close-out netting being applied to close out and net the Transactions) prior to the declaration of bankruptcy under the Bankruptcy Act and/or commencement of the forced administration under the Securities Act or the Act on Banks, as applicable."*

5.8 The qualification in paragraph 4.2.14 is deemed deleted and replaced with the following:

"*If the Event of Default results from commencement of forced administration by the NBS against a Slovak securities dealer and a non-Slovak securities dealer (other than an EEA Securities Dealer) having a branch in this jurisdiction under the Securities Act, or the Act on Banks in respect of a Capitalised Securities Dealer, the provisions of the Securities Act, or the Act on Banks, respectively, regarding invalidity or ineffectiveness of transactions will apply to the FOA Netting Provision. Under the Securities Act, the Insolvency Representative may challenge as ineffective legal acts, including any Transaction, in accordance with the Civil Code (please refer to our qualification in paragraph 4.13.7). Under the Act on Banks, the Insolvency Representative may challenge as ineffective legal acts, including any Transaction, defrauding the bank or its creditors. The Insolvency Representative under the Act on Banks can challenge fraudulent transactions undertaken three years prior to the commencement of forced administration.*"

5.9 The qualification in paragraph 4.5.2 is deemed deleted and replaced with the following:

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

If so, the Non-Defaulting Party should be entitled to set off: (a) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party against the Liquidation Amount owed by the Defaulting Party if such set-off were permitted under the law governing the Defaulting Party's claim to have the cash margin repaid by the Non-Defaulting Party; and (b) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party against the Liquidation Amount owed by the Non-Defaulting Party if such a set-off were permitted by the law of the state governing the Defaulting Party's claim to have the Liquidation Amount paid by the Non-Defaulting Party. The General Set-off Clause should thus be protected to the extent that such a set-off is permitted by English law as the law governing the relevant claim of the Defaulting Party.

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

5.10 The qualification in paragraph 4.5.3 is deemed deleted

5.11 The qualification in paragraph 4.5.4 is deemed deleted and replaced with the following:

"In any case, it is not entirely clear whether any reference to governing law under paragraph 4.5.2 is limited to the general rules applicable to set-off or whether the reference extends to insolvency rules applicable to set-off in that jurisdiction. No such rules should, however, preclude actions in this jurisdiction for voidness, voidability or unenforceability of legal acts detrimental to all the creditors of the Defaulting Party. For more details regarding the rules applicable to the undervalue and preferential transactions and the fraudulent transactions, please refer to our qualification in paragraphs 4.2.4 and 4.2.14."

5.12 The qualification in paragraph 4.5.5 is deemed deleted and replaced with the following:

"Following the commencement of forced administration by the NBS against a Slovak securities dealer and a non-Slovak securities dealer (other than an EEA Securities Dealer) having a branch in this jurisdiction under the Securities Act, or the Act on Banks in respect of a Capitalised Securities Dealer, the provisions of the Securities Act, or the Act on Banks, respectively, regarding set-off will apply. Under the Securities Act and the Act on Banks, any set-off in respect of receivables owed to, or by, the securities dealer under forced administration is prohibited within six months following the commencement of forced administration, unless such set-off following the introduction of a restructuring measure is permitted under the law of the EEA Member State in which the creditor's residence or registered office is located."

5.13 The qualification in paragraph 4.10.1 is deemed deleted.

5.14 The qualification in paragraph 4.11.2 is deemed deleted and replaced with the following:

"Where the Defaulting Party is the Other Securities Dealer with its "centre of main interest" in the Slovak Republic (please refer to our assumption in section 2.1), the Insolvency Representative would be required to defer to the jurisdiction of the insolvency officer appointed in another EU member state if secondary proceedings under the EU Insolvency Regulation in respect of the Defaulting Party were opened in such other EU member state on the basis that the Defaulting Party possesses an establishment within the territory of that other EU member state. The effect of those proceedings should be restricted to the assets of the Defaulting Party situated in the territory of that EU member state.[13] *In any case, an Insolvency Representative in this jurisdiction could only include any asset situated in a non-EU member state into bankruptcy proceedings opened in this jurisdiction provided that the laws of the non-EU member state allow for such inclusion."*

5.15 The qualification in paragraph 4.12.1 is deemed deleted and replaced with the following:

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

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

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

5.16 The qualification in paragraph 4.12.2 is deemed deleted and replaced with the following:

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

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

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

(b) *an Insolvency Representative in this jurisdiction could include into such separate Insolvency Proceedings assets of the Foreign Defaulting Party situated in another jurisdiction, provided that the laws of such jurisdiction allow for such inclusion."*

5.17 The qualification in paragraph 4.12.3 is deemed deleted.

5.18 The qualification in paragraph 4.12.4 is deemed deleted and replaced with the following:

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

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

(b) *an Insolvency Representative in this jurisdiction could include into such separate Insolvency Proceedings assets of the Foreign Defaulting Party situated in another jurisdiction, provided that the laws of such jurisdiction allow for such inclusion.*"

5.19 The qualification in paragraph 4.13.3 is deemed deleted and replaced with the following:

"*While we do not express any view as to whether both the execution of the FOA Netting Agreement or, as the case may be, the Clearing Agreement or any Transaction by a Securities Dealer and the performance of the obligations of the Securities Dealer under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or such Transaction complies with or will comply with any prudential or conduct of business rules as well as any other regulatory rules or restrictions presently in force and applicable to the Securities Dealer, we note that the Securities Act provides that Securities Dealers must act in accordance with principles of fair business dealings with professional care in the interests of the clients when providing investment services or ancillary services and carrying out investment activities.*"

5.20 The qualification in paragraph 4.13.15 is deemed deleted and replaced with the following:

"*Under the Slovak Act No. 371/2014 Coll., on resolution of crisis situations on financial market (the "**Crisis Act**"), implementing the EU Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms), a crisis situation resolution proceedings (the "**Resolution***

Proceedings" *) may be commenced in respect of a Slovak securities dealer, a non-Slovak securities dealer (other than an EEA Securities Dealer) having a branch in this jurisdiction and any other respective company within the securities dealer's group qualifying as per the Crisis Act by the Crisis Council on its own motion, or on the basis of a petition submitted by the NBS directly or by the Slovak securities dealer or the non-Slovak securities dealer (other than an EEA Securities Dealer) having a branch in this jurisdiction through the NBS. The commencement of the Resolution Proceedings cannot be contractually regarded as, and precludes by operation of law, the commencement of the Insolvency Proceedings in respect of such Slovak securities dealer or non-Slovak securities dealer (other than an EEA Securities Dealer) having a branch in this jurisdiction. Although the Crisis Act imposes upon the Crisis Council to protect security title transfer agreements, set-off agreements and close-out netting agreements in the Resolution Proceedings and, according to the Crisis Act, the netting protection under the Bankruptcy Act should apply accordingly, the Crisis Council may,* inter alia, *transfer, modify or terminate any obligations of the Slovak securities dealer or the non-Slovak securities dealer (other than an EEA Securities Dealer) having a branch in this jurisdiction, including derivatives transactions, in order to ensure availability of the covered deposits. Given that the Crisis Act only became effective on 1 January 2015, no views can be given as to the extent in which the Crisis Council will exercise its rights in the Resolution Proceedings in practice. Consequently, following the commencement of the Resolution Proceedings in respect of a Slovak securities dealer or a non-Slovak securities dealer (other than an EEA Securities Dealer) having a branch in this jurisdiction, the Non-Defaulting Party might be limited in exercising its rights under the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision and Addendum Set-Off Provision."*

SCHEDULE 2
INSURANCE PROVIDERS

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

(a) Slovak insurance companies (in Slovak: "*poisťovne*") within the meaning of the Slovak Act No. 8/2008 Coll., on insurance business, as amended (the "**Insurance Act**") and non-Slovak insurance companies incorporated or formed under the laws of another jurisdiction which have a branch (in Slovak: "*pobočka*") established in this jurisdiction in accordance with the Insurance Act, including a branch of a non-Slovak insurance company, which has its registered office in other EEA member state and benefits from a single licence in accordance with EU law (the "**EEA Insurance Undertaking**") and a branch of a non-Slovak insurance company, which has its registered office in a state other than an EEA member state if the non-Slovak insurance company was duly licensed by the National Bank of Slovakia (the "**NBS**") and to the extent of such licence only. For the purposes of this opinion, the Slovak insurance companies exclude the Export-Import Bank of the Slovak Republic, which is regulated by the Slovak Act No. 80/1997 Coll., on the Export-Import Bank of the Slovak Republic, as amended; and

(b) Slovak health insurance companies (in Slovak: "*zdravotné poisťovne*") (the "**Health Insurance Companies**") within the meaning of the Slovak Act No. 581/2004 Coll., on health insurance companies, as amended (the "**Health Insurance Companies Act**").

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The first sentence in paragraph 1.13.1 is deemed deleted and replaced with the following:

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

1.2 The definition of "Insolvency Representative" in paragraph 1.13.2 is deemed deleted and replaced with the following:

> "*"**Insolvency Representative**" means an administrator (in Slovak: "*správca*") within the meaning of the Slovak Act No. 7/2005 Coll., on bankruptcy and restructuring, as amended (the "**Bankruptcy Act**") and a forced administrator (in Slovak: "*nútený správca*") within the meaning of the Insurance Act and the Health Insurance Companies Act, respectively.*"

2. MODIFICATIONS TO ASSUMPTIONS

Assumption in paragraph 2.11 is deemed deleted.

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 Insolvency Proceedings: Insurance Providers

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

(a) in relation to a Slovak insurance company or a non-Slovak insurance company (other than an EEA Insurance Undertaking) having a branch in this jurisdiction, forced administration (in Slovak: "*nútená správa*") under the Insurance Act. Following a permission of the NBS, a Slovak insurance company or a non-Slovak insurance company (other than an EEA Insurance Undertaking) having a branch in this jurisdiction might only be subject to bankruptcy proceedings under the Bankruptcy Act (i.e. the Slovak insurance company or the non-Slovak insurance company (other than an EEA Insurance Undertaking) having a branch in this jurisdiction might not be subject to restructuring proceedings under the Bankruptcy Act). The forced administrator (in Slovak: "*nútený správca*") within the meaning of the Insurance Act might, following the permission of the NBS, file a petition for the declaration of bankruptcy relating to a Slovak insurance company or a non-Slovak insurance company (other than an EEA Insurance Undertaking) having a branch in this jurisdiction under the Bankruptcy Act. Any bankruptcy or restructuring proceedings with respect to an EEA Insurance Undertaking will be carried out in accordance with the laws, regulations and procedures applicable in the state in which the EEA Insurance Undertaking has been licensed;

(b) in relation to a Health Insurance Company, forced administration (in Slovak: "*nútená správa*") under the Health Insurance Companies Act. Following a permission of the Healthcare Surveillance Authority, a Health Insurance Company might only be subject to bankruptcy proceedings under the Bankruptcy Act (i.e. the Health Insurance Company might not be subject to restructuring proceedings under the Bankruptcy Act).

3.1.2 We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, if supplemented or amended as set out in Section 4 of Annex 5 under the heading "For the purpose of Schedule 2 (*Insurance Providers*)".

3.2 Enforceability of FOA Netting Provision: Insurance Providers

3.2.1 In relation to a FOA Netting Agreement, where the Defaulting Party is a Slovak insurance company or a non-Slovak insurance company having a branch in this jurisdiction, and in relation to a Clearing Agreement where the Client, who is a Slovak insurance company or a non-Slovak insurance company having a branch in this jurisdiction, is a Defaulting Party, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

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

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

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

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

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this section 3.2.1 to apply.

It is desirable, but not necessary, to make the amendments to the FOA Netting Provision specified in Section 2 of Annex 5 under the heading "For the purpose of Schedule 2 (*Insurance Providers*)".

Furthermore, in addition to the highlighted words shown in Annex 4, it is necessary that the words shown as underlined in Section 3 of Annex 5 under the heading "For the purpose of Schedule 2 (*Insurance Providers*)" be treated as Core Provisions in order for the opinions expressed in this section 3.2.1 to apply.

3.2.2 In relation to a FOA Netting Agreement, where the Defaulting Party is a Health Insurance Company, and in relation to a Clearing Agreement where the Client, who is a Health Insurance Company, is a Defaulting Party, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default other than as a result of the opening of any Insolvency Proceedings:

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

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

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the FOA Netting Provision, nor render the FOA Netting Provision unenforceable save as set out in section 3.2.3 and paragraph 4.

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this section 3.2.2 to apply.

3.2.3 In relation to a FOA Netting Agreement, where the Defaulting Party is a Health Insurance Company, and in relation to a Clearing Agreement where the Client, who is a Health Insurance Company, is a Defaulting Party, the FOA Netting Provision will be unlikely to be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default resulting from the opening of any Insolvency Proceedings:

(c) the Non-Defaulting Party would be unlikely to be entitled immediately to exercise its rights under the FOA Netting Provision; and

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

We are of this opinion because under laws of this jurisdiction a Health Insurance Company is not considered an eligible counterparty for the purposes of close-out netting under the Bankruptcy Act. Please further refer to reasons set out in paragraph 4.

3.3 Enforceability of the Clearing Module Netting Provision: Insurance Providers

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

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the Clearing Module Netting Provision, nor render the Clearing Module Netting Provision unenforceable save as set out in section 3.2.3 and paragraph 4.

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

Amendments to the Clearing Module Netting Provision specified in Section 1 of Annex 5 to this opinion under the heading "For the purpose of Schedule 2 (*Insurance Providers*)" are necessary in order for the opinions expressed in this section 3.3 to apply in respect of a Slovak insurance company or a non-Slovak insurance company having a branch in this jurisdiction.

It is also desirable, but not necessary, to make the amendments to the Clearing Module Netting Provision specified in Section 2 of Annex 5 under the heading "For the purpose of Schedule 2 (*Insurance Providers*)" in respect of a Slovak insurance company or a non-Slovak insurance company having a branch in this jurisdiction.

3.4 **Enforceability of the Addendum Netting Provision: Insurance Providers**

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

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the Addendum Netting Provision, nor render the Addendum Netting Provision unenforceable save as set out in section 3.2.3 and paragraph 4.

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

Amendments to the Addendum Netting Provision specified in Section 1 of Annex 5 to this opinion under the heading "For the purpose of Schedule 2 (*Insurance Providers*)" are necessary in order for the opinions expressed in this section 3.4 to apply in respect of a Slovak insurance company or a non-Slovak insurance company having a branch in this jurisdiction.

It is also desirable, but not necessary, to make the amendments to the Addendum Netting Provision specified in Section 2 of Annex 5 under the heading "For the purpose of Schedule 2 (*Insurance Providers*)" in respect of a Slovak insurance company or a non-Slovak insurance company having a branch in this jurisdiction.

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

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

3.5.2 Where the Foreign Defaulting Party is an EEA Insurance Undertaking, there can be no separate Insolvency Proceedings in this jurisdiction in relation to the

Foreign Defaulting Party and the authorities in this jurisdiction would defer to the proceedings in the Foreign Defaulting Party's home jurisdiction.

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

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

3.6.1 The Bankruptcy Act expressly provides that, in case of bankruptcy of the Slovak insurance company and a non-Slovak insurance company (other than an EEA Insurance Undertaking) having a branch in this jurisdiction:

(a) transactions carried out on an organised market shall be governed solely by law of the EEA member state governing the contract on the basis of which the transaction was entered into; and

(b) claims in respect of rights related to financial instruments, which are recorded in a register, on an account, in a central depository or similar system shall be governed by law of the EEA member state in which the relevant register, account, central depository system or similar system is maintained.

3.6.2 Also, if a settlement system under the Slovak Act No. 566/2001 Coll., on securities and investment services, as amended (the "**Securities Act**") or a payment system agreement under the Slovak Act No. 492/2009 Coll., on payment services, as amended are governed by the laws of this jurisdiction, the rights and obligations of an operator of the payment system or a central depository, as applicable, or a participant in the respective system arising in connection with participation in the respective system (including rights of third parties to any collateral provided by the participant in the respective system in connection with such participation) shall be governed by the laws of this jurisdiction notwithstanding the declaration of bankruptcy, approval of restructuring, suspension of payments, termination of bankruptcy proceedings or cancellation of bankruptcy due to insufficient funds with respect to an operator of a payment system or a central depository, as applicable, or the participant in the respective system.

4. **ADDITIONAL QUALIFICATIONS**

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

"*The EU Insolvency Regulation excludes from its scope, among others, insurance undertakings. It is unclear whether the Health Insurance Companies qualify as insurance undertakings within the meaning of the EU Insolvency Regulation. We are of the view that the term "insurance undertaking" only refers to entities covered by*

the Directive 73/239/EEC (Non-Life Insurance Directive)[14]*, as amended, and the Directive 2002/83/EC (Life Insurance Directive), as amended. The Non-Life Insurance Directive does not apply to insurance forming part of a statutory system of social security. Consequently, the Health Insurance Companies (which provide public health insurance forming this jurisdiction's statutory system of social security) would be unlikely to qualify as insurance undertakings within the meaning of the EU Insolvency Regulation and thus, the EU Insolvency Regulation would likely cover the Health Insurance Companies. One could argue, however, that the Health Insurance Companies are not covered by the EU Insolvency Regulation since they are subject to special arrangements and the Healthcare Surveillance Authority has powers of intervention similar to the powers the NBS has in respect of the Slovak insurance companies, which are excluded from the scope of the EU Insolvency Regulation. Since no assurance can be given whether a Slovak court would apply the EU Insolvency Regulation to the Health Insurance Companies, we do not address application of the EU Insolvency Regulation to the Health Insurance Companies in this opinion.*"

5. MODIFICATIONS TO QUALIFICATIONS

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

5.1 The introductory sentence of qualification in paragraph 4.1.3(a) is deemed deleted and replaced with the following:

"*According to the specific provisions of the Bankruptcy Act applicable to a Slovak insurance company or a non-Slovak insurance company (other than an EEA Insurance Undertaking) having a branch in this jurisdiction*".

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

"*In the event of the declaration of bankruptcy (in Slovak: "*vyhlásenie konkurzu*") or commencement of forced administration (in Slovak: "*zavedenie nútenej správy*") in respect of a Health Insurance Company, the Non-Defaulting Party would be unlikely to be entitled to exercise its rights under the FOA Netting Provision and the FOA Netting Provision would be unlikely to be enforceable under the laws of this jurisdiction on the basis that the Bankruptcy Act does not protect a close-out netting agreement entered into by a Health Insurance Company. Consequently, the general rules under the Bankruptcy Act would apply to the FOA Netting Provision (e.g. rules relating to a set-off).*"

5.3 The qualification in paragraph 4.2.4 is deemed deleted and replaced with the following:

"*If the Event of Default results from declaration of bankruptcy in respect of a Slovak insurance company or a non-Slovak insurance company (other than an EEA Insurance Undertaking) having a branch in this jurisdiction under the Bankruptcy Act or commencement of forced administration by the NBS against a Slovak insurance company or a non-Slovak insurance company (other than an EEA Insurance*

[14] The Directive 2009/138/EC (Solvency II) will replace the Non-Life Insurance Directive with effect from 1 January 2016.

Undertaking) having a branch in this jurisdiction under the Insurance Act, the Non-Defaulting Party would only be entitled to exercise its rights under the FOA Netting Provision and the FOA Netting Provision would only be enforceable under the laws of this jurisdiction provided that the FOA Netting Agreement or, as the case may be, the Clearing Agreement is entered into between two "eligible counterparties" (i.e. the Non-Defaulting Party also falls within the definition of the "eligible counterparty") and relates to a transaction falling within the scope of the close-out netting agreement as described in paragraph 4.2.5(b). Please also refer to the qualification in paragraph 4.2.3 for rules applicable to the undervalue and preferential transactions as well as the fraudulent transactions. In connection with these rules as set out in the qualification in paragraph 4.2.3, please note that (i) if a Slovak insurance company or a non-Slovak insurance company (other than an EEA Insurance Undertaking) having a branch in this jurisdiction, as a Defaulting Party, were insolvent within the meaning of the Bankruptcy Act when entering into a Transaction or became insolvent as a result of the entry into a Transaction; and (ii) the Insolvency Representative were successful in challenging the Transaction on the basis of the anti-avoidance rules as set out in the qualification in paragraph 4.2.3, the FOA Netting Provision would not be enforceable in respect of that Transaction."

5.4 The introductory sentence of qualification in paragraph 4.2.5 is deemed deleted and replaced with the following:

"*When providing for protection of the close-out netting, the Insurance Act refers to the close-out netting pursuant to the Bankruptcy Act. The Bankruptcy Act defines "close-out netting" and the related term "close-out netting agreement" as follows:*"

5.5 The qualification in paragraph 4.2.12 is deemed deleted and replaced with the following:

"*The Bankruptcy Act provides that the close-out netting (in Slovak: "*záverečné vyrovnanie ziskov a strát*") according to a close-out netting agreement shall not be affected by the declaration of bankruptcy or approval of restructuring. The Insurance Act in respect of forced administration of insurance companies provides that the validity, effectiveness and exercise of rights under the close-out netting agreement (in Slovak: "*platnosť, účinnosť a výkon práv podľa zmluvy o záverečnom vyrovnaní ziskov a strát*") shall not be affected by commencement of the forced administration if the close-out netting agreement meets the requirements set out by the Bankruptcy Act. We are of the view that the above provisions of the Bankruptcy Act and the Insurance Act should be construed consistently in that a close-out netting is protected if the close-out netting agreement is entered into (rather than the close-out netting being applied to close out and net the Transactions) prior to the declaration of bankruptcy or approval of restructuring under the Bankruptcy Act and/or commencement of the forced administration under the Insurance Act, as applicable.*"

5.6 The qualification in paragraph 4.2.14 is deemed deleted and replaced with the following:

"*If the Event of Default results from commencement of forced administration by the NBS against a Slovak insurance company or a non-Slovak insurance company (other than an EEA Insurance Undertaking) having a branch in this jurisdiction under the Insurance Act or commencement of forced administration by the Healthcare*

Surveillance Authority against a Health Insurance Company under the Health Insurance Companies Act, the provisions of the Insurance Act and the Health Insurance Companies Act, respectively, regarding invalidity or ineffectiveness of fraudulent transactions will apply to the FOA Netting Provision. Under the Insurance Act and the Health Insurance Companies Act, the Insolvency Representative may challenge as ineffective legal acts, including any Transaction, defrauding the Insurance Provider (other than an EEA Insurance Undertaking) or its creditors, provided that the intention was known to such Insurance Provider. The Insolvency Representative can challenge fraudulent transactions undertaken three years prior to the commencement of forced administration."

5.7 The qualification in paragraph 4.5.2 is deemed deleted and replaced with the following:

"*The General Set-off Clause would only be enforceable against the Defaulting Party which is a Health Insurance Company subject to, and in accordance with, the Health Insurance Companies Act and within the bankruptcy proceedings subject to, and in accordance with, the Bankruptcy Act.*"

5.8 The qualification in paragraph 4.5.3 is deemed deleted and replaced with the following:

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

If so, the Non-Defaulting Party should be entitled to set off: (a) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party against the Liquidation Amount owed by the Defaulting Party if such set-off were permitted under the law of the EEA member state (e.g. English law) governing the Defaulting Party's claim to have the cash margin repaid by the Non-Defaulting Party; and (b) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party against the Liquidation Amount owed by the Non-Defaulting Party if such a set-off were permitted by the law of the EEA member state (e.g. English law) governing the Defaulting Party's claim to have the Liquidation Amount paid by the Non-Defaulting Party. In addition, the Non-Defaulting party should be entitled to such a set-off even if such a set-off was not permitted under the laws of the EEA member state governing the respective Defaulting Party's claim so long as the Bankruptcy Act allows for such a set-off. The General Set-off Clause should thus be protected to the extent that such a set-off is permitted by English law as the law governing the relevant claim of the Defaulting Party.

If, for any reason, English law did not permit such a set-off, the General Set-off Clause would only be enforceable against the Defaulting Party, which is a Slovak insurance company or a non-Slovak insurance company (other than an EEA Insurance Undertaking) having a branch in this jurisdiction subject to, and in

accordance with, the Insurance Act and within the bankruptcy proceedings subject to, and in accordance with, the Bankruptcy Act."

5.9 The qualification in paragraph 4.5.4 is deemed deleted and replaced with the following:

"*In any case, it is not entirely clear whether any reference to governing law under paragraph 4.5.3 is limited to the general rules applicable to set-off or whether the reference extends to insolvency rules applicable to set-off in that jurisdiction. No such rules should, however, preclude actions in this jurisdiction for voidness, voidability or unenforceability of legal acts detrimental to all the creditors of the Defaulting Party. For more details regarding the rules applicable to the undervalue and preferential transactions and the fraudulent transactions, please refer to our qualification in paragraphs 4.2.3 and 4.2.14.*"

5.10 The qualification in paragraph 4.5.5 is deemed deleted and replaced with the following:

"*Following the commencement of forced administration by the NBS against a Slovak insurance company or a non-Slovak insurance company (other than an EEA Insurance Undertaking) having a branch in this jurisdiction under the Insurance Act, the provisions of the Insurance Act regarding set-off will apply. Under the Insurance Act, any set-off in respect of receivables owed to, or by, the insurance company under forced administration is prohibited within six months following the commencement of forced administration, unless such set-off following the introduction of a restructuring measure is permitted under the law of the EEA Member State in which the creditor's residence or registered office is located.*"

5.11 The qualification in paragraph 4.10.1 is deemed deleted.

5.12 The qualification in paragraph 4.11.1 is deemed deleted.

5.13 The qualification in paragraph 4.11.2 is deemed deleted and replaced with the following:

"*An Insolvency Representative in this jurisdiction could only include any asset situated in a non-EU member state into bankruptcy proceedings opened in this jurisdiction provided that the laws of such non-EU member state allow for such inclusion.*"

5.14 The qualification in paragraph 4.11.3(a) is deemed deleted.

5.15 The qualifications in paragraphs 4.12.1 and 4.12.2 are deemed deleted.

5.16 The qualification in paragraph 4.12.3 is deemed deleted and replaced with the following:

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

5.17 The qualification in paragraph 4.12.4 is deemed deleted and replaced with the following:

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

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

(b) *an Insolvency Representative in this jurisdiction could include into such separate Insolvency Proceedings assets of the Foreign Defaulting Party situated in another jurisdiction, provided that the laws of such jurisdiction allow for such inclusion.*"

5.18 The qualification in paragraph 4.13.3 is deemed deleted and replaced with the following:

"*While we do not express any view as to whether both the execution of the FOA Netting Agreement or, as the case may be, the Clearing Agreement or any Transaction by an Insurance Provider and the performance of the obligations of the Insurance Provider under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or such Transaction complies with or will comply with any prudential or conduct of business rules as well as any other regulatory rules or restrictions presently in force and applicable to the Insurance Provider, we note that the Insurance Act provides that Slovak insurance companies and branches of non-Slovak insurance companies (other than EEA Insurance Undertakings) may not enter into agreements on terms that are significantly disadvantageous to them (in particular agreements that bound them to an economically unjustifiable performance or a performance manifestly inadequate to the consideration provided, or that provide for manifestly inadequate security to secure their receivables).*"

5.19 The qualification in paragraph 4.13.15 is deemed deleted.

SCHEDULE 3
INDIVIDUALS

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 Paragraph 1.13.1 is deemed deleted and replaced with the following:

> ""***Insolvency Proceedings***" *means the procedures listed in section 3.1 of Schedule 3 (Individuals). In this opinion we express any view on neither death of a solvent Individual or a solvent Individual becoming of unsound mind nor debt discharge procedures available to Individuals under the Slovak Act No. 7/2005 Coll., on bankruptcy and restructuring, as amended (the "**Bankruptcy Act**").*"

1.2 The definition of "Insolvency Representative" in paragraph 1.13.2 is deemed deleted and replaced with the following:

> "*"**Insolvency Representative**" means an administrator (in Slovak: "*správca*") within the meaning of the Bankruptcy Act.*"

2. MODIFICATIONS TO ASSUMPTIONS

2.1 We assume that when entering into, and performing, the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions, the Individual has acted within, and in connection with, its trade or other business activity.

2.2 The assumption in paragraph 2.11 is deemed deleted and replaced with the following:

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

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 Insolvency Proceedings: Individuals

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

subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter are restructuring and bankruptcy proceedings under the Bankruptcy Act.

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

3.2 Enforceability of FOA Netting Provision: Individuals

3.2.1 In relation to a FOA Netting Agreement and in relation to a Clearing Agreement where the Client is a Defaulting Party, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default, other than as a result of the opening of any Insolvency Proceedings:

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

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

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the FOA Netting Provision, nor render the FOA Netting Provision unenforceable save as set out in section 3.2.2 and paragraph 4.

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

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this section 3.2.1 to apply.

3.2.2 In relation to a FOA Netting Agreement and in relation to a Clearing Agreement where the Client is a Defaulting Party, the FOA Netting Provision will be unlikely to be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default resulting from the opening of any Insolvency Proceedings:

(a) the Non-Defaulting Party would be unlikely to be entitled immediately to exercise its rights under the FOA Netting Provision; and

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

We are of this opinion because under laws of this jurisdiction an Individual is not considered an eligible counterparty for the purposes of close-out netting under the Bankruptcy Act. Please further refer to reasons set out in paragraph 4.

3.3 **Enforceability of the Clearing Module Netting Provision: Individuals**

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

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the Clearing Module Netting Provision, nor render the Clearing Module Netting Provision unenforceable save as set out in section 3.2.2 and paragraph 4.

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

No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this section 3.3 to apply.

3.4 **Enforceability of the Addendum Netting Provision: Individuals**

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

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the Addendum Netting Provision, nor render the Addendum Netting Provision unenforceable save as set out in section 3.2.2 and paragraph 4.

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

No amendments to the Addendum Netting Provision are necessary in order for the opinions expressed in this section 3.4 to apply.

3.5 **Insolvency of Foreign Parties: Individuals**

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

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

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

4. ADDITIONAL QUALIFICATIONS

No additional qualifications.

5. MODIFICATIONS TO QUALIFICATIONS

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

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

"*In respect of the matters outside the material scope of the Rome I Regulation or the Rome Convention, as the case may be, the Slovak Act No. 566/2001 Coll., on securities and investment services, as amended (the "**Securities Act**") or IPPL Act, as relevant, will apply.*"

5.2 The qualification in paragraph 4.1.3(a) is deemed deleted.

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

"*In the event of the declaration of bankruptcy (in Slovak: "*vyhlásenie konkurzu*") or commencement of restructuring proceedings (in Slovak "*začatie reštrukturalizačného konania*") in respect of an Individual, the Non-Defaulting Party would be unlikely to be entitled to exercise its rights under the FOA Netting Provision and the FOA Netting Provision would be unlikely to be enforceable under the laws of this jurisdiction on the basis that the Bankruptcy Act does not protect a close-out netting agreement entered into by the Individual. Consequently, the general rules under the Bankruptcy Act would apply to the FOA Netting Provision (e.g. rules relating to a set-off). Furthermore, any contractual arrangements allowing the Non-Defaulting Party to terminate the contract due to bankruptcy proceedings or restructuring proceedings in respect of the Individual would be ineffective as of the commencement of the restructuring proceedings in respect of the Individual.*"

5.4 The qualifications in paragraph 4.2.4 through 4.2.14 are deemed deleted.

5.5 The introductory sentence of qualification in paragraph 4.3 is deemed deleted and replaced with the following:

"*The qualifications in paragraph 4.2 in respect of the FOA Netting Provision apply to the Clearing Module Netting Provision, the Addendum Netting Provision and the calculation of the Cleared Set Termination Amount thereunder* mutatis mutandis."

5.6 The qualifications in paragraphs 4.3.1 through 4.3.3 are deemed deleted.

5.7 The introductory sentence of the qualification in paragraph 4.5 and the qualification in paragraph 4.5.1 are deemed deleted.

5.8 The qualification in paragraph 4.5.2 is deemed deleted and replaced with the following:

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

If so, the Non-Defaulting Party should be entitled to set off: (a) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party against the Liquidation Amount owed by the Defaulting Party if such set-off were permitted under the law governing the Defaulting Party's claim to have the cash margin repaid by the Non-Defaulting Party; and (b) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party against the Liquidation Amount owed by the Non-Defaulting Party if such a set-off were permitted by the law of the state governing the Defaulting Party's claim to have the Liquidation Amount paid by the Non-Defaulting Party. The FOA Set-Off Provisions should thus be protected to the extent that such a set-off is permitted by English law as the law governing the relevant claim of the Defaulting Party.

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

5.9 The qualification in paragraph 4.5.3 is deemed deleted.

5.10 The qualification in paragraph 4.5.4 is deemed deleted and replaced with the following:

"*In any case, it is not entirely clear whether any reference to governing law under paragraph 4.5.2 is limited to the general rules applicable to set-off or whether the reference extends to insolvency rules applicable to set-off in that jurisdiction. No such rules should, however, preclude actions in this jurisdiction for voidness, voidability or unenforceability of legal acts detrimental to all the creditors of the Defaulting Party. For more details regarding the rules applicable to the undervalue and preferential transactions and the fraudulent transactions, please refer to our qualification in paragraph 4.2.3.*"

5.11 The qualification in paragraph 4.5.5 is deemed deleted.

5.12 The qualification in paragraph 4.9.3 is deemed deleted.

5.13 The qualification in paragraph 4.10.1 is deemed deleted and replaced with the following:

"*The Bankruptcy Act provides that contractual arrangements allowing a party to an agreement to terminate the agreement due to restructuring proceedings or bankruptcy*

proceedings in respect of an Individual are ineffective as of the commencement of restructuring proceedings in respect of an Individual. It can be argued that the automatic termination and liquidation under the FOA Netting Provision, the Clearing Module Provision and the Addendum Netting Provision would be effective even following the commencement of restructuring proceedings in respect of an Individual on the basis that the contract terminate automatically (as opposed to the termination on the basis of a decision of the Non-Defaulting Party). There is, however, a general rule under law of this jurisdiction which provides that an act in law shall be invalid if its contents or purpose contradicts or circumvents the law, or if the act contravenes good morals. An administrator could, therefore, argue that the relevant provision of the FOA Netting Provision, the Clearing Module Provision and the Addendum Netting Provision is invalid on the basis that the purpose of such automatic termination under the FOA Netting Provision, the Clearing Module Provision and the Addendum Netting Provision is to circumvent the above provision of the Bankruptcy Act."

5.14 The qualification in paragraph 4.11.2 is deemed deleted and replaced with the following:

"Where the Defaulting Party is an Individual with its "centre of main interest" in the Slovak Republic (please refer to our assumption in section 2.2), the Insolvency Representative would be required to defer to the jurisdiction of the insolvency officer appointed in another EU member state if secondary proceedings under the EU Insolvency Regulation in respect of the Defaulting Party were opened in such other EU member state on the basis that the Defaulting Party possesses an establishment within the territory of that other EU member state. The effect of those proceedings should be restricted to the assets of the Defaulting Party situated in the territory of that EU member state.[15] In any case, an Insolvency Representative in this jurisdiction could only include any asset situated in a non-EU member state into bankruptcy proceedings opened in this jurisdiction provided that the laws of such non-EU member state allow for such inclusion."

5.15 The qualifications in paragraph 4.12 are deemed deleted.

5.16 The qualifications in paragraphs 4.13.3 and 4.13.15 are deemed deleted.

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

SCHEDULE 4
FUND ENTITIES

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

(a) Slovak asset management companies (the "**Management Companies**", in Slovak: "*správcovské spoločnosti*") within the meaning of the Slovak Act No. 203/2011 Coll., on collective investment (the "**Collective Investment Act**");[16] and

(b) Slovak collective investment undertakings with legal capacity (i.e. companies or co-operatives with their registered office in this jurisdiction) that are internally managed (in Slovak: "*samosprávne alternatívne investičné fondy*") within the meaning of the Collective Investment Act (the "**Alternative Investment Undertakings**").[17]

The Collective Investment Act also regulates Slovak common funds (in Slovak: "*podielové fondy*").[18] Since the common fund is not a legal entity, a Management Company manages the common fund.

Consequently, we understand that the FOA Netting Agreement or, as the case may be, the Clearing Agreement and any Transaction will be entered into by the Fund Entities.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The first sentence in paragraph 1.13.1 is deemed deleted and replaced with the following:

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

1.2 The definition of "Insolvency Representative" in paragraph 1.13.2 is deemed supplemented by the following:

> "*"**Insolvency Representative**" means an administrator (in Slovak: "*správca*") within the meaning of the Slovak Act No. 7/2005 Coll., on bankruptcy and restructuring, as*

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[16] The Slovak asset management companies correspond to "management companies" within the meaning of the Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities ("**UCITS**") and "AIFMs" within the meaning of the Directive 2011/61/EU on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 ("**AIFMD**").

[17] The Alternative Investment Undertakings correspond to "AIFs" which are internally managed within the meaning of the AIFMD. There are no Slovak entities which correspond to "investment companies" within the meaning of the UCITS.

[18] The common funds include common funds managed by management companies within the meaning of the UCITS and AIFs which cannot be internally managed within the meaning of the AIFMD.

*amended (the "**Bankruptcy Act**") and a forced administrator (in Slovak: "*nútený správca*") within the meaning of the Slovak Act No. 566/2001 Coll., on securities and investment services, as amended (the "**Securities Act**").* [19]"

2. MODIFICATIONS TO ASSUMPTIONS

2.1 The assumption in paragraph 2.11 is deemed deleted.

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 Insolvency Proceedings: Fund Entities

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

(a) forced administration [20] (in Slovak: "*nútená správa*") under the Securities Act;

(b) bankruptcy proceedings under the Bankruptcy Act. Following a permission of the NBS, a Fund Entity might only be subject to bankruptcy proceedings under the Bankruptcy Act (i.e. the Fund Entity might not be subject to restructuring proceedings under the Bankruptcy Act). In addition, under the Bankruptcy Act, the NBS is given specific powers to file a petition for the declaration of bankruptcy relating to a Fund Entity.

3.1.2 We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, if supplemented or amended as set out in Section 4 of Annex 5 under the heading "For the purpose of Schedule 4 (*Fund Entities*)".

3.2 Enforceability of FOA Netting Provision: Fund Entities

In relation to a FOA Netting Agreement and in relation to a Clearing Agreement where the Client is a Defaulting Party, the FOA Netting Provision will be

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[19] The Collective Investment Act expressly provides that forced administration of Management Companies is to be regulated by the rules of the Securities Act applicable to forced administration of securities dealers. Moreover, under the Collective Investment Act the provisions relating to forced administration of the Management Companies shall apply to the Alternative Investment Undertakings.

[20] Forced administration may only be commenced against a Fund Entity, which provides one or more of the following services: (i) financial instruments portfolio management or investment management for complementary pension funds; (ii) investment advice; or (iii) safekeeping and administration of fund units issued by asset management companies and securities issued by foreign collective investment entities, including custodianship (at least cash or collateral management). Such services are regarded as investment or ancillary services under the Securities Act.

immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

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

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

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

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

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this section 3.2 to apply.

It is desirable, but not necessary, to make the amendments to the FOA Netting Provision specified in Section 2 of Annex 5 under the heading "For the purpose of Schedule 4 (*Fund Entities*)".

Furthermore, in addition to the highlighted words shown in Annex 4, it is necessary that the words shown as underlined in Section 3 of Annex 5 under the heading "For the purpose of Schedule 4 (*Fund Entities*)" be treated as Core Provisions in order for the opinions expressed in this section 3.2 to apply.

3.3 Enforceability of the Clearing Module Netting Provision: Fund Entities

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

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

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

Amendments to the Clearing Module Netting Provision specified in Section 1 of Annex 5 to this opinion under the heading "For the purpose of Schedule 4 (*Fund*

Entities)" are necessary in order for the opinions expressed in this section 3.3 to apply.

It is also desirable, but not necessary, to make the amendments to the Clearing Module Netting Provision specified in Section 2 of Annex 5 under the heading "For the purpose of Schedule 4 (*Fund Entities*)".

3.4 **Enforceability of the Addendum Netting Provision: Fund Entities**

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

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

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

Amendments to the Addendum Netting Provision specified in Section 1 of Annex 5 to this opinion under the heading "For the purpose of Schedule 4 (*Fund Entities*)" are necessary in order for the opinions expressed in this section 3.4 to apply.

It is also desirable, but not necessary, to make the amendments to the Addendum Netting Provision specified in Section 2 of Annex 5 under the heading "For the purpose of Schedule 4 (*Fund Entities*)".

3.5 **Insolvency of Foreign Parties: Fund Entities**

The opinion in paragraph 3.15 is deemed deleted on the basis that the opinion in this Schedule 4 (*Fund Entities*) is only given in respect of Management Companies and Alternative Investment Undertakings incorporated under the laws of this jurisdiction (i.e., the opinion is not given in respect of non-Slovak investment companies, non-Slovak AIFs or non-Slovak asset management companies incorporated or formed under the laws of another jurisdiction).

3.6 **Special legal provisions for market contracts: Fund Entities**

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

3.6.1 If a settlement system under the Securities Act or a payment system agreement under the Slovak Act No. 492/2009 Coll., on payment services, as amended

are governed by the laws of this jurisdiction, the rights and obligations of an operator of the payment system or a central depository, as applicable, or a participant in the respective system arising in connection with participation in the respective system (including rights of third parties to any collateral provided by the participant in the respective system in connection with such participation) shall be governed by the laws of this jurisdiction notwithstanding the declaration of bankruptcy, approval of restructuring, suspension of payments, termination of bankruptcy proceedings or cancellation of bankruptcy due to insufficient funds with respect to an operator of a payment system or a central depository, as applicable, or the participant in the respective system.

4. ADDITIONAL QUALIFICATIONS

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

"*The Collective Investment Act provides that the assets of administered collective investment undertakings do not form part of the bankruptcy estate of the Management Company. If the decision on bankruptcy of the Management Company is issued, the administrator is required to cooperate with the National Bank of Slovakia (the "NBS"), the depository or the forced administrator (both within the meaning of the Collective Investment Act) in respect of commencement of forced administration over the administered collective investment undertakings or winding up of the administered collective investment undertakings.*

The Bankruptcy Act provides that the Management Companies are not subject to restructuring proceedings thereunder. However, it does not exclude the Alternative Investment Undertakings from restructuring proceedings under the Bankruptcy Act. Given that the Collective Investment Act provisions on Management Companies shall apply to the Alternative Investment Undertakings mutatis mutandis *unless provided otherwise, we are of the view that the Alternative Investment Undertakings should be excluded from restructuring proceedings under the Bankruptcy Act as well. However, no assurance can be given whether or not the courts of this jurisdiction would adopt this view.*"

5. MODIFICATIONS TO QUALIFICATIONS

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

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

"*In respect of the matters outside the material scope of the Rome I Regulation or the Rome Convention, as the case may be, the Securities Act or IPPL Act, as relevant, will apply.*"

5.2 The qualification in paragraph 4.1.3(a) is deemed deleted.

5.3 The qualification in paragraph 4.2.2 is deemed deleted.

5.4 The qualification in paragraph 4.2.3 is deemed deleted and replaced with the following:

"*If the Event of Default results from declaration of bankruptcy in respect of a Fund Entity under the Bankruptcy Act or commencement of forced administration by the NBS against a Fund Entity under the Securities Act, the Non-Defaulting Party would only be entitled to exercise its rights under the FOA Netting Provision and the FOA Netting Provision would only be enforceable under the laws of this jurisdiction provided that the FOA Netting Agreement or, as the case may be, a Clearing Agreement is entered into between two "eligible counterparties" (i.e. the Non-Defaulting Party also falls within the definition of the "eligible counterparty") and relates to a transaction falling within the scope of the close-out netting agreement as described in paragraph 4.2.5(b).*"

5.5 The qualification in paragraph 4.2.4 is deemed deleted and replaced with the following:

"*Please note, however, that the provisions of the Bankruptcy Act regarding invalidity or ineffectiveness of undervalue and preferential transactions, as well as fraudulent transactions, will apply to the FOA Netting Provision. Under the Bankruptcy Act, the Insolvency Representative may challenge as ineffective following legal acts, including any Transaction:*

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

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

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

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

Consequently, please note that (i) if a Fund Entity, as a Defaulting Party, were insolvent within the meaning of the Bankruptcy Act when entering into a Transaction or became insolvent as a result of the entry into a Transaction; and (ii) the Insolvency

Representative were successful in challenging the Transaction on the basis of the above anti-avoidance rules, the Netting Provisions would not be enforceable in respect of that Transaction."

5.6 The introductory sentence of the qualification in paragraph 4.2.5 is deemed deleted and replaced with the following:

"*When providing for protection of the close-out netting, the Securities Act, as law regulating the forced administration of the Fund Entities, refers to the close-out netting pursuant to the Bankruptcy Act. The Bankruptcy Act defines "close-out netting" and the related term "close-out netting agreement" as follows:*"

5.7 The qualification in paragraph 4.2.12 is deemed deleted and replaced with the following:

"*The Bankruptcy Act provides that the close-out netting (in Slovak:* "záverečné vyrovnanie ziskov a strát"*) according to a close-out netting agreement shall not be affected by the declaration of bankruptcy or approval of restructuring. The Securities Act, as law regulating the forced administration of the Fund Entities, provides that the validity, effectiveness and exercise of rights under the close-out netting agreement (in Slovak:* "platnosť, účinnosť a výkon práv podľa zmluvy o záverečnom vyrovnaní ziskov a strát"*) shall not be affected by commencement of the forced administration if the close-out netting agreement meets the requirements set out by the Bankruptcy Act. We are of the view that the above provisions of the Bankruptcy Act and the Securities Act should be construed consistently in that a close-out netting is protected if the close-out netting agreement is entered into (rather than the close-out netting being applied to close out and net the Transactions) prior to the declaration of bankruptcy or approval of restructuring under the Bankruptcy Act and/or commencement of the forced administration under the Securities Act, as applicable.*"

5.8 The qualification in paragraph 4.2.14 is deemed deleted and replaced with the following:

"*If the Event of Default results from commencement of forced administration by the NBS against a Fund Entity under the Securities Act, the provisions of the Securities Act regarding invalidity or ineffectiveness of transactions will apply to the FOA Netting Provision. Under the Securities Act, the Insolvency Representative may challenge as ineffective legal acts, including any Transaction, in accordance with the Civil Code (please refer to our qualification in paragraph 4.13.7).*"

5.9 The qualification in paragraph 4.5.2 is deemed deleted and replaced with the following:

"*The General Set-off Clause would only be enforceable against the Fund Entity subject to, and in accordance with, the Collective Investment Act and the Securities Act and within the bankruptcy proceedings subject to, and in accordance with, the Bankruptcy Act.*"

5.10 The qualifications in paragraph 4.5.3 and 4.5.4 are deemed deleted.

5.11 The qualification in paragraph 4.5.5 is deemed deleted and replaced with the following:

"*Following the commencement of forced administration by the NBS against a Fund Entity under the Securities Act, the provisions of the Securities Act regarding set-off will apply. Under the Securities Act, any set-off in respect of receivables owed to, or by, the Fund Entity under forced administration is prohibited within six months following the commencement of forced administration, unless such set-off following the introduction of a restructuring measure is permitted under the law of the EEA Member State in which the creditor's residence or registered office is located.*"

5.12 The qualifications in paragraphs 4.10.1 and 4.11.1 are deemed deleted.

5.13 The qualification in paragraph 4.11.2 is deemed deleted and replaced with the following:

"*An Insolvency Representative in this jurisdiction could only include any asset situated in a non-EU member state into bankruptcy proceedings opened in this jurisdiction provided that the laws of such non-EU member state allow for such inclusion.*"

5.14 The qualification in paragraph 4.11.3(a) is deemed deleted.

5.15 The qualifications in paragraph 4.12 are deemed deleted.

5.16 The qualification in paragraph 4.13.3 is deemed deleted and replaced with the following:

"*While we do not express any view as to whether both the execution of the Agreement or any Transaction by a Fund Entity and the performance of the obligations of the Fund Entity under the Agreement or such Transaction complies with or will comply with any prudential or conduct of business rules as well as any other regulatory rules or restrictions presently in force and applicable to the Fund Entity, we note that the Collective Investment Act, for example, provides that Fund Entities must act with professional care in the best interests of the unit holders and in the interest of market stability when administering collective investment undertakings.*"

5.17 The qualification in paragraph 4.13.15 is deemed deleted.

SCHEDULE 5
PUBLIC ENTITIES

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

(a) Slovak self-governing regional units (in Slovak: "*samosprávne kraje*") within the meaning of the Slovak Act No. 302/2001 Coll., on self-governing regional units, as amended.

(b) Slovak municipalities (in Slovak: "*obce*") within the meaning of the Slovak Act No. 369/1990 Coll., on municipalities, as amended;

(c) The capital city of the Slovak Republic, Bratislava (in Slovak: "*hlavné mesto Slovenskej republiky Bratislava*") and its districts within the meaning of the Slovak Act No. 377/1990 Coll., on the capital city of the Slovak Republic, Bratislava, as amended; and

(d) The city of Košice (in Slovak: "*mesto Košice*") and its districts within the meaning of the Slovak Act No. 401/1990 Coll., on the city of Košice, as amended

(the Public Entities listed under (a) to (d) above the "**Self-Governing Units**").

In this opinion, the Public Entities exclude any state funds established by law or otherwise for any specific purpose (e.g., the State Housing Development Fund, the National Nuclear Fund).

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The first sentence in paragraph 1.13.1 is deemed deleted and replaced with the following:

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

1.2 The definition of "Insolvency Representative" in paragraph 1.13.2 is deemed supplemented by the following:

"*"**Insolvency Representative**" means a forced administrator (in Slovak: "*nútený správca*") within the meaning of the Slovak Act No. 583/2004 Coll., on budgetary rules for self-governing territorial units, as amended (the "**Budgetary Rules Act**").*"

2. MODIFICATIONS TO ASSUMPTIONS

2.1 The assumption in paragraph 2.11 is deemed deleted.

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 Insolvency Proceedings: Public Entities

3.1.1 The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Self-Governing Unit could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are rehabilitation regime (in Slovak: "*ozdravný režim*") and forced administration (in Slovak: "*nútená správa*") under the Budgetary Rules Act.

3.1.2 We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, if supplemented or amended in respect of the Self-Governing Units as set out in Section 4 of Annex 5 under the heading "For the purpose of Schedule 5 (*Public Entities*)".

3.2 Enforceability of FOA Netting Provision: Public Entities

In relation to a FOA Netting Agreement and in relation to a Clearing Agreement where the Client is a Defaulting Party, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

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

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

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

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

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this section 3.2 to apply.

It is desirable, but not necessary, to make the amendments to the FOA Netting Provision specified in Section 2 of Annex 5 under the heading "For the purpose of Schedule 5 (*Public Entities*)".

Furthermore, in addition to the highlighted words shown in Annex 4, it is necessary that the words shown as underlined in Section 3 of Annex 5 under the heading "For

the purpose of Schedule 5 (*Public Entities*)" be treated as Core Provisions in order for the opinions expressed in this section 3.2 to apply.

3.3 **Enforceability of the Clearing Module Netting Provision: Public Entities**

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

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

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

Amendments to the Clearing Module Netting Provision specified in Section 1 of Annex 5 to this opinion under the heading "For the purpose of Schedule 5 (*Public Entities*)" are necessary in order for the opinions expressed in this section 3.3 to apply.

It is also desirable, but not necessary, to make the amendments to the Clearing Module Netting Provision specified in Section 2 of Annex 5 under the heading "For the purpose of Schedule 5 (*Public Entities*)".

3.4 **Enforceability of the Addendum Netting Provision: Public Entities**

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

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

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

Amendments to the Addendum Netting Provision specified in Section 1 of Annex 5 to this opinion under the heading "For the purpose of Schedule 5 (*Public Entities*)" are necessary in order for the opinions expressed in this section 3.4 to apply.

It is also desirable, but not necessary, to make the amendments to the Addendum Netting Provision specified in Section 2 of Annex 5 under the heading "For the purpose of Schedule 5 (*Public Entities*)".

3.5 **Multibranch Parties: Public Entities**

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

3.6 **Insolvency of Foreign Parties: Public Entities**

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

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

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

3.7.1 If a settlement system under the Slovak Act No. 566/2001 Coll., on securities and investment services, as amended (the "**Securities Act**") or a payment system agreement under the Slovak Act No. 492/2009 Coll., on payment services, as amended are governed by the laws of this jurisdiction, the rights and obligations of an operator of the payment system or a central depository, as applicable, or a participant in the respective system arising in connection with participation in the respective system (including rights of third parties to any collateral provided by the participant in the respective system in connection with such participation) shall be governed by the laws of this jurisdiction notwithstanding the declaration of bankruptcy, approval of restructuring, suspension of payments, termination of bankruptcy proceedings or cancellation of bankruptcy due to insufficient funds with respect to an operator of a payment system or a central depository, as applicable, or the participant in the respective system.

4. **ADDITIONAL QUALIFICATIONS**

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

"*The General Set-off clause would only be enforceable against the Slovak Republic subject to, and in accordance with, the Slovak Act No. 278/1993 Coll., on administration of state assets, as amended (the "**Act on Administration of State Assets**") and other acts referred to in the Act on Administration of State Assets.*"

5. **MODIFICATIONS TO QUALIFICATIONS**

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

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

"*In respect of the matters outside the material scope of the Rome I Regulation or the Rome Convention, as the case may be, the Securities Act or IPPL Act, as relevant, will apply.*"

5.2 The qualification in paragraph 4.1.3(a) is deemed deleted.

5.3 The qualification in paragraph 4.2.1 is deemed deleted and replaced with the following:

"*Slovak law protects a close out netting provided that a close-out netting agreement is entered into between parties falling within one of the categories set out in Annex 6 (Eligible counterparties), including "public authorities of an EU member state or other EEA member state". However, the term "public authority" is not expressly defined under Slovak law. Although we are of the view that the Public Entities fall within that category, no assurance can be given whether or not the courts of this jurisdiction would adopt this view. If one or both parties to a close-out netting agreement do not fall within one of the categories set out in Annex 6 (Eligible counterparties), close out netting would be unlikely to be protected under Slovak law.*"

5.4 The qualifications in paragraphs 4.2.2 to 4.2.4 are deemed deleted.

5.5 The introductory sentence of qualification in paragraph 4.2.5 is deemed deleted and replaced with the following:

"*The Bankruptcy Act defines "close-out netting" and the related term "close-out netting agreement" as follows:*"

5.6 The qualification in paragraphs 4.2.12 and 4.2.14 is deemed deleted.

5.7 The qualifications in paragraph 4.5 are deemed deleted.

5.8 The qualification in paragraph 4.6.1 is deemed deleted.

5.9 The qualifications in paragraphs 4.9 through 4.12.4 are deemed deleted.

5.10 The qualification in paragraph 4.13.3 is deemed deleted and replaced with the following:

"*While we do not express any view as to whether both the execution of the FOA Netting Agreement or, as the case may be, the Clearing Agreement or any Transaction by the Public Entity and the performance of the obligations of the Public Entity under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or such Transaction complies with or will comply with any statutory or regulatory rules or restrictions presently in force and applicable to the Public Entity, we note that the Act on Administration of State Assets, for example, provides that administrators of state assets must use the state assets in accordance with the Act on Administration of State Assets to fulfil their tasks within their scope of activities or in connection with such activities.*"

5.11 Tbe qualification in paragraph 4.13.15 is deemed deleted.

SCHEDULE 6
PENSION FUND ENTITIES

Subject to the modifications and additions set out in this Schedule 6 (*Pension Fund Entities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Pension Fund Entities. For the purposes of this Schedule 6 (*Pension Fund Entities*) "**Pension Fund Entities**" mean

(a) Slovak pension management companies (in Slovak: "*dôchodkové správcovské spoločnosti*") within the meaning of the Slovak Act No. 43/2004 Coll., on pension savings, as amended (the "**Pension Savings Act**"); and

(b) Slovak complementary pension companies (in Slovak: "*doplnkové dôchodcovské spoločnosti*") within the meaning of the Slovak Act No. 650/2004 Coll., on complementary pension savings, as amended (the "**Complementary Pension Savings Act**").

The Pension Savings Act and the Complementary Pension Savings Act also regulate Slovak pension funds (in Slovak: "*dôchodkové fondy*") and Slovak complementary pension funds (in Slovak: "*doplnkové dôchodkové fondy*"), respectively (together the "**Pension Funds**"). Since the Pension Funds are not legal entities, a pension management company or a complementary pension company, as the case may be, manage the Pension Funds.

Consequently, we understand that the FOA Netting Agreement or, as the case may be, the Clearing Agreement and any Transaction will be entered into by the Pension Fund Entities.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The first sentence in paragraph 1.13.1 is deemed deleted and replaced with the following:

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

1.2 The definition of "Insolvency Representative" in paragraph 1.13.2 is deemed deleted and replaced with the following:

> "*"**Insolvency Representative**" means an administrator (in Slovak: "*správca*") within the meaning of the Slovak Act No. 7/2005 Coll., on bankruptcy and restructuring, as amended (the "**Bankruptcy Act**").*"

2. MODIFICATIONS TO ASSUMPTIONS

2.1 The assumption in paragraph 2.11 is deemed deleted and replaced with the following:

> *"That the "centre of main interest" of the Pension Fund Entity is in the Slovak Republic within the meaning of Regulation (EC) No. 1346/2000 on insolvency*

*proceedings, as amended (the "**EU Insolvency Regulation**"), which applies to all EU member states other than Denmark."*

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 Insolvency Proceedings: Pension Fund Entities

3.1.1 The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Pension Fund Entity could be subject under the laws of this jurisdiction and which are relevant for purposes of this opinion letter, are bankruptcy proceedings under the Bankruptcy Act (i.e. the Pension Fund Entities might not be subject to restructuring proceedings under the Bankruptcy Act). Under the Bankruptcy Act, the NBS is given specific powers to file a petition for the declaration of bankruptcy relating to a Pension Fund Entity.

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

3.2 Enforceability of FOA Netting Provision: Pension Fund Entities

3.2.1 In relation to a FOA Netting Agreement and in relation to a Clearing Agreement where the Client is a Defaulting Party, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default, other than as a result of the opening of any Insolvency Proceedings:

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

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

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the FOA Netting Provision, nor render the FOA Netting Provision unenforceable save as set out in section 3.2.2 and paragraph 4.

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

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this section 3.2.1 to apply.

3.2.2 In relation to a FOA Netting Agreement and in relation to a Clearing Agreement where the Client is a Defaulting Party, the FOA Netting Provision

will be unlikely to be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default resulting from the opening of any Insolvency Proceedings:

(a) the Non-Defaulting Party would be unlikely to be entitled immediately to exercise its rights under the FOA Netting Provision; and

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

We are of this opinion because under laws of this jurisdiction a Pension Fund Entity is not considered an eligible counterparty for the purposes of close-out netting under the Bankruptcy Act. Please further refer to reasons set out in paragraph 4.

3.3 Enforceability of the Clearing Module Netting Provision: Pension Fund Entities

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

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the Clearing Module Netting Provision, nor render the Clearing Module Netting Provision unenforceable save as set out in section 3.2.2 and paragraph 4.

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

No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this section 3.3 to apply.

3.4 Enforceability of the Addendum Netting Provision: Pension Fund Entities

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

We are of this opinion because the laws of this jurisdiction neither prohibit the Parties from entering into the Addendum Netting Provision, nor render the Addendum Netting Provision unenforceable save as set out in section 3.2.2 and paragraph 4.

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

No amendments to the Addendum Netting Provision are necessary in order for the opinions expressed in this section 3.4 to apply.

3.5 **Insolvency of Foreign Parties: Pension Fund Entities**

The opinion in paragraph 3.15 is deemed deleted on the basis that the opinion in this Schedule 6 (*Pension Fund Entities*) is only given in respect of Slovak pension management companies and Slovak complementary pension companies incorporated under the laws of this jurisdiction (i.e., the opinion is not given in respect of non-Slovak pension management companies, non-Slovak complementary pension companies or non-Slovak employee pension companies incorporated or formed under the laws of another jurisdiction).

3.6 **Special legal provisions for market contracts: Pension Fund Entities**

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

3.6.1 If a settlement system under the Slovak Act No. 566/2001 Coll., on securities and investment services, as amended (the "**Securities Act**") or a payment system agreement under the Slovak Act No. 492/2009 Coll., on payment services, as amended are governed by the laws of this jurisdiction, the rights and obligations of an operator of the payment system or a central depository, as applicable, or a participant in the respective system arising in connection with participation in the respective system (including rights of third parties to any collateral provided by the participant in the respective system in connection with such participation) shall be governed by the laws of this jurisdiction notwithstanding the declaration of bankruptcy, approval of restructuring, suspension of payments, termination of bankruptcy proceedings or cancellation of bankruptcy due to insufficient funds with respect to an operator of a payment system or a central depository, as applicable, or the participant in the respective system.

4. **ADDITIONAL QUALIFICATIONS**

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

"*The Pension Savings Act provides that pension fund assets do not form part of the bankruptcy estate of the Slovak pension management company. If the decision on bankruptcy of the Slovak pension management company is issued, the administrator is required to cooperate with the National Bank of Slovakia (the "**NBS**"), the depository or the forced administrator (both within the meaning of the Pension Savings Act) in respect of commencement of forced administration over the pension funds.*

*Similarly, the Complementary Pension Savings Act provides that complementary pension fund assets and assets credited to the unassigned payments account (in Slovak: "*účet nepriradených platieb*") do not form part of the bankruptcy estate of the Slovak complementary pension company. If the decision on bankruptcy of the Slovak complementary pension company is issued, the administrator is required to cooperate with the NBS, the depository or the forced administrator (both within the meaning of the Complementary Pension Savings Act) in respect of commencement of forced administration over the complementary pension funds.*

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

5. MODIFICATIONS TO QUALIFICATIONS

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

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

"*In respect of the matters outside the material scope of the Rome I Regulation or the Rome Convention, as the case may be, the Securities Act or IPPL Act, as relevant, will apply.*"

5.2 The qualification in paragraph 4.1.3(a) is deemed deleted.

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

"*In the event of the declaration of bankruptcy (in Slovak: "*vyhlásenie konkurzu*") in respect of a Pension Fund Entity, the Non-Defaulting Party would be unlikely to be entitled to exercise its rights under the FOA Netting Provision and the FOA Netting Provision would be unlikely to be enforceable under the laws of this jurisdiction on the basis that the Bankruptcy Act does not protect a close-out netting agreement entered into by a Pension Fund Entity. Consequently, the general rules under the Bankruptcy Act would apply to the FOA Netting Provision (e.g. rules relating to a set-off).*"

5.4 The qualifications in paragraphs 4.2.4 through 4.2.14 are deemed deleted.

5.5 The introductory sentence of qualification in paragraph 4.3 is deemed deleted and replaced with the following:

"*The qualifications in paragraph 4.2 in respect of the FOA Netting Provision apply to the Clearing Module Netting Provision, the Addendum Netting Provision and the calculation of the Cleared Set Termination Amount thereunder* mutatis mutandis."

5.6 The qualifications in paragraphs 4.3.1 through 4.3.3 are deemed deleted.

5.7 The introductory sentence of the qualification in paragraph 4.5 and the qualification in paragraph 4.5.1 are deemed deleted.

5.8 The qualification in paragraph 4.5.2 is deemed deleted and replaced with the following:

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

If so, the Non-Defaulting Party should be entitled to set off: (a) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party against the Liquidation Amount owed by the Defaulting Party if such set-off were permitted under the law governing the Defaulting Party's claim to have the cash margin repaid by the Non-Defaulting Party; and (b) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party against the Liquidation Amount owed by the Non-Defaulting Party if such a set-off were permitted by the law of the state governing the Defaulting Party's claim to have the Liquidation Amount paid by the Non-Defaulting Party. The FOA Set-Off Provisions should thus be protected to the extent that such a set-off is permitted by English law as the law governing the relevant claim of the Defaulting Party.

If, for any reason, the EU Insolvency Regulation would not apply or English law did not permit such a set-off, the FOA Set-Off Provisions would only be enforceable against (a) the Defaulting Party, which is a Slovak pension management company, subject to, and in accordance with, the Pension Savings Act and within the bankruptcy proceedings in accordance with the Bankruptcy Act; and (b) the Defaulting Party, which is a Slovak complementary pension company, subject to, and in accordance with, the Complementary Pension Savings Act and within the bankruptcy proceedings subject to, and in accordance with, the Bankruptcy Act."

5.9 The qualification in paragraph 4.5.3 is deemed deleted.

5.10 The qualification in paragraph 4.5.4 is deemed deleted and replaced with the following:

"*In any case, it is not entirely clear whether any reference to governing law under paragraph 4.5.2 is limited to the general rules applicable to set-off or whether the reference extends to insolvency rules applicable to set-off in that jurisdiction. No such rules should, however, preclude actions in this jurisdiction for voidness, voidability or unenforceability of legal acts detrimental to all the creditors of the Defaulting Party. For more details regarding the rules applicable to the undervalue and preferential transactions and the fraudulent transactions, please refer to our qualification in paragraph 4.2.3.*"

5.11 The qualification in paragraph 4.5.5 is deemed deleted.

5.12 The qualifications in paragraphs 4.9.3 and 4.10.1 are deemed deleted.

5.13 The qualification in paragraph 4.11.2 is deemed deleted and replaced with the following:

"*Where the Defaulting Party is a Pension Fund Entity with its "centre of main interest" in the Slovak Republic (please refer to our assumption in section 2.1), the Insolvency Representative would be required to defer to the jurisdiction of the insolvency officer appointed in another EU member state if secondary proceedings under the EU Insolvency Regulation in respect of the Defaulting Party were opened in such other EU member state on the basis that the Defaulting Party possesses an establishment within the territory of that other EU member state. The effect of those proceedings should be restricted to the assets of the Defaulting Party situated in the territory of that EU member state.*[21] *In any case, an Insolvency Representative in this jurisdiction could only include any asset situated in a non-EU member state into bankruptcy proceedings opened in this jurisdiction provided that the laws of such non-EU member state allow for such inclusion.*"

5.14 The qualifications in paragraph 4.12 are deemed deleted.

5.15 The qualification in paragraph 4.13.3 is deemed deleted and replaced with the following:

"*While we do not express any view as to whether both the execution of the FOA Netting Agreement or, as the case may be, the Clearing Agreement or any Transaction by a Pension Fund Entity and the performance of the obligations of the Pension Fund Entity under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or such Transaction complies with or will comply with any prudential or conduct of business rules as well as any other regulatory rules or restrictions presently in force and applicable to the Pension Fund Entity, we note that the Pension Savings Act and the Complementary Pension Savings Act, for example, provide that the Pension Fund Entities must act with professional care in the best interests of the beneficiaries and in the interest of their protection when administering the Pension Funds.*"

5.16 The qualification in paragraph 4.13.15 is deemed deleted.

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

SCHEDULE 7
BUILDING SAVINGS BANKS

Subject to the modifications and additions set out in this Schedule 7 (*Building Savings Banks*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Building Savings Banks. For the purposes of this Schedule 7 (*Building Savings Banks*) "**Building Savings Banks**" mean Slovak building savings banks (in Slovak: "*stavebná sporiteľňa*") within the meaning of the Slovak Act No. 310/1992 Coll., on building savings, as amended (the "**Building Savings Act**"). Since the Building Savings Bank is a Slovak bank within the meaning of the Act on Banks,[22] the reference to a Slovak bank in the opinion letter is deemed to include also a Building Savings Bank.

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The first sentence in paragraph 1.13.1 is deemed deleted and replaced with the following:

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

2. MODIFICATIONS TO ASSUMPTIONS

2.1 The assumption in paragraph 2.11 is deemed deleted.

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 Insolvency Proceedings: Building Savings Banks

3.1.1 The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Building Savings Bank could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are forced administration (in Slovak: "*nútená správa*") under the Act on Banks. Following a permission of the National Bank of Slovakia (the "**NBS**"), a Building Savings Bank might only be subject to bankruptcy proceedings under the Bankruptcy Act (i.e. the Building Savings Bank might not be subject to restructuring proceedings under the Bankruptcy Act). The administrator (in Slovak: "*správca*") within the meaning of the Act on Banks might, following the permission of the NBS, file a petition for the declaration of bankruptcy relating to a Building Savings Bank under the Bankruptcy Act. In addition, under the Bankruptcy Act, the

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

NBS is given specific powers to file a petition for the declaration of bankruptcy relating to a Building Savings Bank.

3.1.2 We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, if supplemented or amended as set out in Section 4 of Annex 5 under the heading "For the purpose of Schedule 7 (*Building Savings Banks*)".

3.2 **Enforceability of FOA Netting Provision: Building Savings Banks**

In relation to a FOA Netting Agreement and in relation to a Clearing Agreement where the Client is a Defaulting Party, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

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

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

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

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

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this section 3.2 to apply.

It is desirable, but not necessary, to make the amendments to the FOA Netting Provision specified in Section 2 of Annex 5 under the heading "For the purpose of Schedule 7 (*Building Savings Banks*)".

Furthermore, in addition to the highlighted words shown in Annex 4, it is necessary that the words shown as underlined in Section 3 of Annex 5 under the heading "For the purpose of Schedule 7 (*Building Savings Banks*)" be treated as Core Provisions in order for the opinions expressed in this section 3.2 to apply.

3.3 **Enforceability of the Clearing Module Netting Provision: Building Savings Banks**

In relation to a Clearing Agreement which includes the Clearing Module Netting Provision, the Clearing Module Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following (i) a Firm Trigger Event or (ii) a CCP Default, the Parties would be entitled to receive or obliged to pay, in respect of each Cleared Transaction Set, only the net

sum of the positive and negative mark-to-market values of the relevant individual Client Transactions that are terminated in accordance with the Clearing Agreement.

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

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

Amendments to the Clearing Module Netting Provision specified in Section 1 of Annex 5 to this opinion under the heading "For the purpose of Schedule 7 (*Building Savings Banks*)" are necessary in order for the opinions expressed in this section 3.3 to apply.

It is also desirable, but not necessary, to make the amendments to the Clearing Module Netting Provision specified in Section 2 of Annex 5 under the heading "For the purpose of Schedule 7 (*Building Savings Banks*)".

3.4 Enforceability of the Addendum Netting Provision: Building Savings Banks

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

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

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

Amendments to the Addendum Netting Provision specified in Section 1 of Annex 5 to this opinion under the heading "For the purpose of Schedule 7 (*Building Savings Banks*)" are necessary in order for the opinions expressed in this section 3.4 to apply.

It is also desirable, but not necessary, to make the amendments to the Addendum Netting Provision specified in Section 2 of Annex 5 under the heading "For the purpose of Schedule 7 (*Building Savings Banks*)".

3.5 Insolvency of Foreign Parties: Building Savings Banks

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

given in respect of non-Slovak building savings banks incorporated or formed under the laws of another jurisdiction).

4. ADDITIONAL QUALIFICATIONS

No additional qualifications.

5. MODIFICATIONS TO QUALIFICATIONS

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

5.1 The qualification in paragraph 4.5.2 is deemed deleted.

5.2 The qualification in paragraph 4.10.1 is deemed deleted.

5.3 The qualification in paragraph 4.11.1 is deemed deleted.

5.4 The qualification in paragraph 4.11.2 is deemed deleted and replaced with the following:

"*An Insolvency Representative in this jurisdiction could only include any asset situated in a non-EU member state into bankruptcy proceedings opened in this jurisdiction provided that the laws of such non-EU member state allow for such inclusion.*"

5.5 The qualification in paragraph 4.11.3(a) is deemed deleted.

5.6 The qualifications in paragraph 4.12 are deemed deleted.

ANNEX 1
FORMS OF FOA NETTING AGREEMENTS

1. Master Netting Agreement - One-Way (1997 version) (the "**One-Way Master Netting Agreement 1997**")

2. Master Netting Agreement - Two-Way (1997 version) (the "**Two-Way Master Netting Agreement 1997**")

3. Default, Netting and Termination Module (One-Way Netting) (2007 version) (the "**Long-Form One-Way Clauses 2007**")

4. Short Form Default, Netting and Termination Module (One-Way Netting) (2007 version) (the "**Short-Form One-Way Clauses 2007**")

5. Short Form Default, Netting and Termination Module (One-Way Netting) (2009 version) (the "**Short-Form One-Way Clauses 2009**")

6. Short Form Default, Netting and Termination Module (One-Way Netting) (2011 version) (the "**Short-Form One-Way Clauses 2011**")

7. Default, Netting and Termination Module (Two-Way Netting) (2007 version) (the "**Long-Form Two-Way Clauses 2007**")

8. Default, Netting and Termination Module (Two-Way Netting) (2009 version) (the "**Long-Form Two-Way Clauses 2009**")

9. Default, Netting and Termination Module (Two-Way Netting) (2011 version) (the "**Long-Form Two-Way Clauses 2011**")

10. Short Form Default, Netting and Termination Module (Two-Way Netting) (2007 version) (the "**Short-Form Two-Way Clauses 2007**")

11. Short Form Default, Netting and Termination Module (Two-Way Netting) (2009 version) (the "**Short-Form Two-Way Clauses 2009**")

12. Short Form Default, Netting and Termination Module (Two-Way Netting) (2011 version) (the "**Short-Form Two-Way Clauses 2011**")

13. Professional Client Agreement (2007 Version), including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2007**")

14. Professional Client Agreement (2009 Version), including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2009**")

15. Professional Client Agreement (2011 Version) including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2011**")

16. Professional Client Agreement (2007 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2007**")

17. Professional Client Agreement (2009 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2009**")

18. Professional Client Agreement (2011 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2011**")

19. Retail Client Agreement (2007 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2007**")

20. Retail Client Agreement (2009 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2009**")

21. Retail Client Agreement (2011 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2011**")

22. Retail Client Agreement (2007 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2007**")

23. Retail Client Agreement (2009 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2009**")

24. Retail Client Agreement (2011 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2011**")

25. Eligible Counterparty Agreement (2007 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2007**")

26. Eligible Counterparty Agreement (2009 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2009**")

27. Eligible Counterparty Agreement (2011 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2011**")

28. Eligible Counterparty Agreement (2007 Version) excluding Module G (***Margin***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2007**")

29. Eligible Counterparty Agreement (2009 Version) excluding Module G (***Margin***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2009**")

30. Eligible Counterparty Agreement (2011 Version) excluding Module G (***Margin***) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2011**")

Where a FOA Published Form Agreement expressly contemplates the election of certain variables and alternatives, the Agreements listed above shall be deemed to include any such document in respect of which the parties have made such expressly contemplated elections (and have made any deletions required by such elections, where such deletions are expressly contemplated in the event of such election by the applicable FOA Published Form Agreement), provided that any election made does not constitute an Adverse Amendment.

Each of the Agreements listed at items 13 to 30 of this Annex 1 may be deemed to include FOA Netting Agreements identical to the relevant FOA Published Form Agreement, save for the substitution of Two Way Clauses in place of the equivalent terms in the FOA Published Form Agreement, in which case references to the Insolvency Events of Default and FOA Netting Provision in respect of such FOA Netting Agreements shall mean the Insolvency Events of Default and FOA Netting Provision in relation to the Two Way Clauses.

ANNEX 2
LIST OF TRANSACTIONS

The following groups of Transactions may be entered into under the FOA Netting Agreements or Clearing Agreements:

(A) (Futures and options and other transactions) Transactions as defined in the FOA Netting Agreements or Clearing Agreements:

(i) a contract made on an exchange or pursuant to the rules of an exchange;

(ii) a contract subject to the rules of an exchange; or

(iii) a contract which would (but in terms of maturity only) be a contract made on, or subject to the rules of, an exchange and which, at the appropriate time, is to be submitted for clearing as a contract made on, or subject to the rules of, an exchange,

in any of cases (i), (ii) and (iii) being a future, option, contract for difference, spot or forward contract of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof; or

(iv) a transaction which is back-to-back with any transaction within paragraph (i), (ii) or (iii) of this definition, or

(v) any other Transaction which the parties agree to be a Transaction;

(B) (fixed income securities) Transactions relating to a fixed income security or under which delivery of a fixed income security is contemplated upon its formation;

(C) (equities) Transactions relating to an equity or under which delivery of an equity is contemplated upon its formation;

(D) (commodities) Transactions relating to, or under the terms of which delivery is contemplated, of any base metal, precious metal or agricultural product.

(E) (OTC derivatives) Transactions which fall within paragraphs (4) to (10) of Section C of Annex 1 to Directive 2004/39/EC[23], including (but not limited to) interest rate swaps, credit default swaps, derivatives on foreign exchange, and equity derivatives, provided that, where the Transaction is subject to the Terms of a Clearing Agreement, the Transaction (or a transaction which is back-to-back with the Transaction) is eligible to be cleared by a central counterparty.

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

ANNEX 3
DEFINITIONS RELATING TO THE AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) for the purposes of paragraph 3.10.1 and 3.10.2, (i) in relation to a FOA Netting Agreement, the Insolvency Events of Default Clause, the FOA Netting Provision and the Title Transfer Provisions; and (ii) in relation to a Clearing Agreement, the Clearing Module Netting Provision together with the defined terms "Aggregate

Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value" or, as the case may be, the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Title Transfer Provisions;

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

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

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

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

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

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

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

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

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

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

"**FOA Netting Agreements (with Title Transfer Provisions)**" means each of the Professional Client (with Title Transfer Provisions) Agreement 2007, the Professional Client (with Title Transfer Provisions) Agreement 2009, the Professional Client (with Title Transfer Provisions) Agreement 2011, the Retail Client (with Title Transfer Provisions) Agreement 2007, the Retail Client (with Title Transfer Provisions) Agreement 2009, the Retail Client (with Title Transfer Provisions) Agreement 2011, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2007, the Eligible Counterparty (with Title Transfer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) in relation to the terms of the Short Form One-Way Clauses and Short Form Two-Way Clauses, Clauses 1.1 (b) and (c) (inclusive);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Rehypothecation Clause**" means:

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

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

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

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

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

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

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

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

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

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

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

ANNEX 4

PART 1
CORE PROVISIONS

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

1. **FOA Netting Provision:**

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

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

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

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

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

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

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

"**Set-off:** Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) owed by you to us against any amount (whether actual

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

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

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

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

"The following shall constitute Events of Default:

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

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

5. **Title Transfer Provisions:**

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

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

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

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

a) [Firm Trigger Event/CM Trigger Event]

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

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

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

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

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

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

b) CCP Default

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

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

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

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

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

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

c) Hierarchy of Events

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

Or

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

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

Or

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

d) Definitions

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

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

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

(a) is attributable to such Client Transactions;

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

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

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

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

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

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

8. **Addendum Set-Off Provision**

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

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

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

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

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

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

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

PART 2
NON-MATERIAL AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. Any change to the FOA Netting Provision adding or taking from the amounts to be taken into account for the calculation of the Liquidation Amount.

16. Any addition to any of the Core Provisions that leaves both the plain English sense and legal effect of such provision unchanged.

17. Any change converting the Core Provisions of the FOA Netting Provision to a 'one-way' form in the style of the One-Way Master Netting Agreement 1997 (in which only the default of one Party is contemplated).

18. Including multiple forms of netting provision in respect of Client Transactions, in any of the following combinations:

- more than one ISDA/FOA Clearing Addendum or Addendum Netting Provision
- more than one FOA Clearing Module or Clearing Module Netting Provision
- one or more ISDA/FOA Clearing Addendum or Addendum Netting Provision and one or more FOA Clearing Module or Clearing Module Netting Provision

provided that the agreement specifies unambiguously that only one such netting provision shall apply in respect of any given Client Transaction.

19. Including the Title Transfer Provisions together with provisions which create a security interest over cash and/or non-cash margin, provided that the agreement unambiguously specifies the circumstances in which the security interest or the Title Transfer provisions apply in respect of any given item of margin so that it is not possible for both the security interest and the Title Transfer Provisions to apply simultaneously to the same item of margin.

20. Adding to the definition of "Firm Trigger Event" or, as the case may be, "CM Trigger Event" (or defined terms equivalent thereto) any further events of default in relation to the Firm or, as the case may be, the Clearing Member, including those in the definition of Events of Default appearing in a FOA Published Form Agreement (including as modified in accordance with paragraph 5 above).

21. Any change to the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision providing that any applicable Cleared Set Termination Amount will be determined by the Firm or, as the case may be, the Clearing Member in any event (even in the case of a Firm Trigger Event or, as the case may be, a CM Trigger Event).

22. Any change to the FOA Netting Provision providing that any applicable Liquidation Amount will be determined by the Defaulting Party.

23. Any addition to the Clearing Module Netting Provision or the Addendum Netting Provision providing that, if any Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin has been ported to another clearing member of the Agreed CCP Service following a Firm Trigger Event or CM Trigger Event, the Party in charge of the calculation of the Cleared Set Termination Amount can ascribe an appropriately reduced value (including zero) to the Client Transaction and related margin or collateral corresponding to the Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin so ported.

PART 3
SECURITY INTEREST PROVISIONS

1. **Security Interest Clause:**

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

2. **Power of Sale Clause:**

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

3. **Client Money Additional Security Clause**

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

4. **Rehypothecation Clause**

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

ANNEX 5
NECESSARY OR DESIRABLE AMENDMENTS

1. Necessary amendments

(a) For the purposes of paragraph 3.4.2:

The Clearing Module Netting Provision to be supplemented with a reference to the currency in which the Cleared Set Termination Amount is to be paid in paragraphs a) and b) of any modified version of such clause provided that it includes at least those parts of paragraph 6 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

(b) For the purposes of paragraph 3.5.2:

The Addendum Netting Provision to be supplemented with a reference to the currency in which the Cleared Set Termination Amount is to be paid in paragraphs a) and b) of any modified version of such clause provided that it includes at least those parts of paragraph 6 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

2. Desirable amendments

(a) For the purposes of paragraph 3.3.3:

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

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

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

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

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

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

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

(b) For the purposes of paragraphs 3.4.2 and 3.5.2:

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

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

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

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

(a) For the purposes of paragraph 3.3.3:

FOA Netting Provision

(...)

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

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

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

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

(...)

4. Additional events for the purposes of paragraph 3.1:

Insolvency Events of Default Clause to be supplemented in respect of Slovak banks and non-Slovak banks (other than an EEA Credit Institution) having a branch in this jurisdiction by the following event: "forced administration (in Slovak: "*nutená správa*")" into the second line after the words "...liquidation, reorganisation..." in the following provisions:

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

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

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

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

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

5. Alterations which constitute material alterations:

Not applicable.

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

1. Necessary amendments

(a) For the purposes of section 3.3:

Please refer to the necessary amendments for the purposes of paragraph 3.4.2 in section 1 above.

(b) For the purposes of section 3.4:

Please refer to the necessary amendments for the purposes of paragraph 3.5.2 in section 1 above.

2. Desirable amendments

(a) For the purposes of section 3.2:

Please refer to the desirable amendments for the purposes of paragraph 3.3.3 in section 2 above.

For the purposes of sections 3.3 and 3.4:

Please refer to the desirable amendments for the purposes of paragraphs 3.4.2 and 3.5.2 in section 2 above.

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

(a) For the purposes of section 3.2:

Please refer to the additional wording to be treated as part of the Core Provisions for the purposes of paragraph 3.3.3 in section (b) above.

4. Additional events for the purposes of section 3.1:

Insolvency Events of Default Clause to be supplemented in respect of Securities Dealers having a branch in this jurisdiction by the following event: "forced administration (in Slovak: "*nutená správa*")" into the second line after the words "...liquidation, reorganisation..." in the following provisions:

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

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

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

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

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

5. Alterations which constitute material alterations:

Not applicable.

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

1. Necessary amendments

(a) For the purposes of section 3.3:

Please refer to the necessary amendments for the purposes of paragraph 3.4.2 in section 1 above.

(b) For the purposes of section 3.4:

Please refer to the necessary amendments for the purposes of paragraph 3.5.2 in section 1 above.

2. Desirable amendments

(a) For the purposes of section 3.2.1:

Please refer to the necessary amendments for the purposes of paragraph 3.3.3 in section 2 above.

(b) For the purposes of sections 3.3 and 3.4:

Please refer to the desirable amendments for the purposes of paragraphs 3.4.2 and 3.5.2 in section 2 above.

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

(a) For the purposes of section 3.2.1:

Please refer to the additional wording to be treated as part of the Core Provisions for the purposes of paragraph 3.3.3 in section 2 above.

4. Additional events for the purposes of section 3.1:

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

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

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

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

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

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

5. Alterations which constitute material alterations:

Not applicable.

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

1. Necessary amendments

(a) For the purposes of section 3.3:

Please refer to the necessary amendments for the purposes of paragraph 3.4.2 in section 1 above.

(b) For the purposes of section 3.4:

Please refer to the necessary amendments for the purposes of paragraph 3.5.2 in section 1 above.

2. Desirable amendments

(a) For the purposes of section 3.2:

Please refer to the desirable amendments for the purposes of paragraph 3.3.3 in section 2 above.

(b) For the purposes of sections 3.3 and 3.4:

Please refer to the desirable amendments for the purposes of paragraphs 3.4.2 and 3.5.2 in section 2 above.

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

(a) For the purposes of section 3.2:

Please refer to the additional wording to be treated as part of the Core Provisions for the purposes of paragraph 3.3.3 in section 2 above.

4. Additional events for the purposes of section 3.1:

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

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

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

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

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

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

5. Alterations which constitute material alterations:

Not applicable.

For the purpose of **SCHEDULE 5** (*Public Entities*)

1. Necessary amendments

(b) For the purposes of section 3.3:

Please refer to the necessary amendments for the purposes of paragraph 3.4.2 in section 1 above.

(c) For the purposes of section 3.4:

Please refer to the necessary amendments for the purposes of paragraph 3.5.2 in section 1 above.

2. Desirable amendments

(a) For the purposes of section 3.2:

Please refer to the desirable amendments for the purposes of paragraph 3.3.3 in section 2 above.

(b) For the purposes of sections 3.3 and 3.4:

Please refer to the desirable amendments for the purposes of paragraphs 3.4.2 and 3.5.2 in section 2 above.

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

(a) For the purposes of section 3.2:

Please refer to the additional wording to be treated as part of the Core Provisions for the purposes of paragraph 3.3.3 in section 2 above.

4. Additional events for the purposes of section 3.1:

Insolvency Events of Default Clause to be supplemented in respect of Self-Governing Units by the following events: "rehabilitation regime (in Slovak: "*ozdravný režim*"), forced administration (in Slovak: "*nútená správa*")" into the second line after the words "...liquidation, reorganisation..." in the following provisions:

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

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

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

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

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

5. Alterations which constitute material alterations:

Not applicable.

For the purpose of **SCHEDULE 7** (*Building Savings Banks*)

1. Necessary amendments

(a) For the purposes of section 3.3:

Please refer to the necessary amendments for the purposes of paragraph 3.4.2 in section 1 above.

(b) For the purposes of section 3.4:

Please refer to the necessary amendments for the purposes of paragraph 3.5.2 in section 1 above.

2. Desirable amendments

(a) For the purposes of section 3.2:

Please refer to the desirable amendments for the purposes of paragraph 3.3.3 in section 2 above.

(b) For the purposes of sections 3.3 and 3.4:

Please refer to the desirable amendments for the purposes of paragraphs 3.4.2 and 3.5.2 in section 2 above.

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

(a) For the purposes of section 3.2:

Please refer to the additional wording to be treated as part of the Core Provisions for the purposes of paragraph 3.3.3 in section (b) above.

4. Additional events for the purposes of section 3.1:

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

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

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

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

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

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

5. Alterations which constitute material alterations:

Not applicable.

ANNEX 6
ELIGIBLE COUNTERPARTIES

"Eligible counterparties" include the following:

(a) public authorities of an EU member state or other EEA member state;

(b) NBS or a foreign central bank, European Central Bank, International Monetary Fund, European Investment Bank, an international development bank, Bank for International Settlement;

(c) a Slovak bank, Slovak securities dealer, Slovak asset management company, Slovak insurance company, Slovak electronic money institution, Slovak collective investment undertaking;

(d) a foreign bank, foreign securities dealer, foreign asset management company, foreign insurance company, foreign electronic money institution, foreign collective investment undertaking (i.e. a foreign fund or a foreign management company);

(e) any person other than a person under sub-paragraphs (c) and (d) above which is subject to prudential supervision and is carrying out as its main business activity one of the activities to be carried out by a bank, as well as a foreign entity with a similar line of business;

(f) any person other than a person under sub-paragraphs (c) and (d) above which is subject to prudential supervision and is carrying out as its main business activity acquisitions of interests in assets, as well as a foreign entity with a similar line of business; and

(g) a central depositary of securities, payment system operator, settlement agent, clearing institute, joint representative of bond holders or other debt securities holders as well as a foreign entity with a similar line of business, including a person whose business activity is the settlement and clearing of transactions in financial instruments or activities of a central counterparty (even if it is not a foreign central depositary).