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Dear Sirs,

Netting Analyser Library

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

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

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

1.1.1 Parties which are a public limited liability company (*naamloze vennootschap*) or a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) and which have their COMI in The Netherlands at all relevant times (not being a Dutch Credit Institution, a Dutch Insurance Company or any of the entities dealt with in the Schedules to this opinion); and

1.1.2 Dutch Credit Institutions and Dutch Insurance Companies;

1.1.3 Parties incorporated or formed under the laws of another jurisdiction which are companies, banks or insurance companies and which have a branch or branches located in this jurisdiction (i.e. Foreign Companies, EEA Credit Institutions, EEA Insurance Companies, Third Country Credit Institutions or Third Country Insurance Companies, all as defined below).

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 applicable Schedule:

1.2.1 a "**Dutch Pension Fund**" meaning a pension fund (*pensioenfonds*) as defined in and authorized pursuant to the Pension Act (*Pensioenwet*) that is duly incorporated under the laws of this jurisdiction as a public limited liability company (*naamloze vennootschap*), as a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) or as a foundation (*stichting*) which has its COMI in The Netherlands at all relevant times (Schedule 1);

1.2.2 an "**Individual**" meaning a person resident in The Netherlands (Schedule 2);

1.2.3 an "**Investment Firm**" meaning an investment firm (*beleggingsonderneming*) as defined in Article 1:1 FMSA that is validly incorporated under the laws of this jurisdiction as a public limited liability company (*naamloze vennootschap*) or a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) and which is licensed under the FMSA and has its COMI in The Netherlands at all relevant times; an Investment Firm may include a broker dealer (Schedule 3);

1.2.4 an "**Investment Fund**" meaning either (i) a custodian (*bewaarder*) represented by the manager (*beheerder*) both acting for the account of an investment fund (*beleggingsfonds, a.k.a. fonds voor gemene rekening* (*FGR*) hereinafter an "**FGR Investment Fund**") or (ii) an investment company (*beleggingsmaatschappij*) represented by a manager (*beheerder*) (hereinafter an "**Investment Company**"), all such custodians and managers in any case validly incorporated under the laws of this jurisdiction as a public limited liability company (*naamloze vennootschap*), a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) or a foundation (*stichting*) and having a license (or being exempt) to engage in

such business under the FMSA or otherwise meeting the requirements imposed by (or being exempt from) the FMSA; FGR Investment Funds and Investment Companies may include a hedge fund, a sovereign wealth fund, an investment company with variable capital and a UCITS (Schedule 4);

1.2.5 a "**Partnership**" meaning either a general partnership (*vennootschap onder firma; VOF*) or a limited partnership (*commanditaire vennootschap; CV*) in each case established under Dutch law and having its COMI in this jurisdiction provided each Managing Partner of such Partnership also has its COMI in this jurisdiction (Schedule 5);

1.2.6 "**Sovereign and public sector entities**", namely the Dutch State, Provinces, Municipalities, Waterboards and Local Government Entities; and

1.2.7 "**Charitable foundations**" meaning charitable legal entities duly incorporated under Dutch law as a "*stichting*" (Schedule 7).

1.2.8 For the avoidance of doubt, this opinion does not extend to:

(a) building societies as described in your instruction letter as such concept does not exist in The Netherlands;

(b) limited liability partnerships as such concept does not exist in The Netherlands;

(c) any religious entities (*kerkgenootschappen*);

(d) any international or supranational organisations;

(e) any trusts;

(f) any regulatory authorities or central banks.

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

1.4 This opinion covers all types of Transaction, whether entered into an exchange, any other forms of organised market place or multilateral trading facility, or over the counter.

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.

1.5 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

1.6 **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 an FOA Netting Agreement or, as the case may be, a Clearing Agreement, a defined term has been changed but the changed term corresponds to a term defined in a FOA Published Form Agreement or, as the case may, 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.

1.6.1 "**Insolvency Proceedings**" means the procedures listed in paragraph 3.1;

1.6.2 "**Insolvency Representative**" means a liquidator (*curator*) during a bankruptcy (*faillissement*) or an administrator (*bewindvoerder*) during a moratorium of payments (*surseance van betaling*) in the sense of the BA or an administrator appointed in connection with the application of Emergency Measures.

1.6.3 A Party which is insolvent for the purposes of any insolvency law or otherwise subject to Insolvency Proceedings is called the "**Insolvent Party**" and the other Party is called the "**Solvent Party**".

1.6.4 "**FIA Member**" means a member (excluding associate members) of FIA Europe which subscribes to its Netting Analyser service (and whose terms of subscription give access to this opinion); and

1.6.5 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. We express no view whether an alteration not contemplated in Part 2 (*Non-material Amendments*) of Annex 4 hereto would or would not constitute a material alteration.

2.2 That under the laws of England to which they are expressed to be subject and under all other relevant laws (other than those of The Netherlands): (i) the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions constitute and will at all times constitute valid and legally binding obligations of both Parties thereto, enforceable against each of them in accordance with their terms; (ii) the FOA Netting Provisions, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions and the Title Transfer Provisions are

valid and enforceable also in insolvency proceedings and that the obligation to pay the net sum resulting from the application of such provisions is legally binding and enforceable between the Parties under such laws.

2.3 That, without prejudice to our opinion under paragraph 3.2 below, that the Netherlands courts will, in giving effect to the choice of law provisions in the Agreement, apply English law correctly.

2.4 That each Party has the capacity, power (corporate, regulatory and otherwise) and authority under all applicable law(s) (including those of this jurisdiction) to enter into the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; to perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the 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 has validly executed such agreements.

2.5 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.

2.6 That each Party (excluding any Individuals and any Partnership but including each partner of a Partnership), is duly incorporated as a legal entity or, in case of a Partnership, duly formed as a Partnership and validly existing and in good standing (where such concept is legally relevant to its capacity) under the laws of its jurisdiction of incorporation and of the jurisdiction of its place of business.

2.7 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 against either Party.

2.8 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.

2.9 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.

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

2.11 That the obligations assumed under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions are 'mutual' between the Parties, in the sense that they (a) arise between the Parties acting in the same capacity and as

principals and not as agents, (b) are not assigned to one of the Parties by a third party and (c) are not assigned, pledged or otherwise encumbered by one of the Parties to a third party or otherwise transferred to a third party[1].

2.12 In relation to the opinions set out at paragraphs 3.4, 3.5, 3.8 and 3.9 only, that each form of Insolvency Proceeding respectively constitutes a Firm Trigger Event or a CM Trigger Event under the relevant Rule Set.

2.13 That each Party, when transferring margin pursuant to the Title Transfer Provisions, has full legal title to such margin at the time of Transfer, free and clear of any lien, claim, charge or encumbrance or any other interest of the transferring party or of any third person (other than a lien routinely imposed on all securities in a relevant clearance or settlement system).

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

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

2.16 In relation to the opinions at 3.10 only, that any non-cash provided as margin is a financial instrument, meaning (securities equivalent to) shares in companies, bonds and other forms of debt instruments if these are negotiable on the capital market, and any other securities which are normally dealt in and which give the right to acquire any such shares, bonds or other securities by subscription, purchase or exchange or which give rise to a cash settlement (excluding instruments of payment), including units in collective investment undertakings, and money market instruments;.

2.17 That, in relation to a Clearing Agreement, a Party incorporated in this jurisdiction which acts as "Firm" (as defined in the FOA Clearing Module) or "Clearing Member" (as defined in the ISDA/FOA Clearing Addendum) will be (a) a clearing member in respect of any Agreed CCP Service to which the Clearing Agreement relates, and (b) will be a Dutch Credit Institution, a Dutch Insurance Company or an Investment Firm.

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.

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[1] In this context, "mutual" means that the Parties are each personally and solely liable as regards obligations owing by it to the other Party and solely entitled to the benefit of obligations owed to it by the other Party. Circumstances in which the requisite mutuality will not be established include, without limitation, where a Party is acting as agent for another person, where a Party is acting as a trustee, where a Party has a joint interest (other than where a Party is a Partnership organised under the laws of this jurisdiction and then only in relation to the position between the Partnership and the other Party to the FOA Netting Agreement or, as the case may be, Clearing Agreement), or where a Party's rights or obligations or any interest therein have been assigned, charged or transferred (whether in whole or in part) whether unilaterally, by agreement or by operation of law or by order. Accordingly, where such mutuality does not exist in respect of any Transactions or Client Transactions (as the case may be), amounts in respect of such Transactions shall not be capable of being included in a set-off in Insolvency Proceedings.

3.1 Insolvency Proceedings

3.1.1 General

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

(a) bankruptcy (*faillissement*), as referred to in and governed by title I of the BA;

(b) moratorium of payments (*surseance van betaling*) as referred to in and governed by title II of the BA;

(c) Emergency Measures in respect of Regulated Entities; as referred to in and governed by title 3.5.5 of the Financial Markets Supervision Act (*Wet op het financieel toezicht*; "**FMSA**");

(d) Transfer Measures in respect of a Dutch Credit Institution or a Dutch Insurance Company; and

(e) WSNP Procedures in respect of Individuals as referred to in and governed by title III of the BA.

3.1.2 Bankruptcy: general overview

Bankruptcy is a general attachment on (practically) all of the assets of a debtor, imposed by a judgment of the appropriate Dutch court (*rechtbank*) for the benefit of the insolvent debtor's collective creditors. The objective of the bankruptcy is to provide for an equitable liquidation and distribution of (the proceeds of) the debtor's assets among its creditors. In practice, however, bankruptcy proceedings serve as an important instrument for the reorganisation and continuation of businesses in financial distress.

According to the BA, bankruptcy proceedings can be opened in respect of any debtor, natural or legal person, regardless of whether he carries on a business, practises an independent profession or not.

The BA does not provide for the consolidation of bankruptcy proceedings opened in respect of companies belonging to the same group. However, there are some examples of cases in which courts have allowed such consolidation.

If a bankruptcy proceeding is opened, the Insolvent Party loses the right to manage and dispose of his assets with retroactive effect to 00.00 hrs. of the day the bankruptcy order is issued. The court appoints a receiver who is charged with the management and realisation of the Insolvent Party's assets (including by means of a transfer of (part of) the business as a going concern). The receiver acts under the general supervision of a supervisory judge (rechter-commissaris). For certain acts of the receiver the law requires the (prior) authorisation of the supervisory judge, e.g. for conducting legal

proceedings and for terminating employment and rental contracts. The estate is not liable for obligations incurred by the Insolvent Party after the bankruptcy adjudication, except to the extent that such obligations arise from transactions that are beneficial to the estate.

3.1.3 Moratorium of payments: general overview

Moratorium of payments is a court ordered general suspension of a debtor's payment obligations; its objective is to provide an instrument for the reorganisation and continuation of viable businesses in financial distress. It is available only at the request of the debtor and only has effect in respect of ordinary (non-secured and non-preferred) creditors. During the period for which the moratorium of payments has been granted, creditors with non-preferential claims cannot take recourse in respect of the debtor's assets.

Moratorium of payments proceedings can be opened in respect of natural persons carrying on a business or practising an independent profession and juristic persons. The moratorium of payments may be granted by the court for a maximum period of one and a half years and may be prolonged at the request of the debtor (if necessary more than once) with a maximum of one and a half years.

As a result of the granting of a moratorium of payments, the debtor can no longer manage and dispose of its assets without the co-operation or authorisation of a court appointed administrator. Likewise, the administrator cannot act without the co-operation or authorisation of the debtor. The moratorium of payments order has retroactive effect to 00.00hrs of the day it has been issued. In a moratorium of payments proceeding, the court may appoint a supervisory judge, whose role is limited to regulating certain procedural matters and advising the administrator upon his request.

3.1.4 Regulated Entities: Emergency Measures

The BA is applicable to Dutch Credit Institutions and Dutch Insurance Companies (as well as to Dutch branches of Third Country Credit Institutions and of Third Country Insurance Companies). However, the FMSA provides a substitute procedure to the BA's moratorium of payments (*surseance van betaling*) in respect of Regulated Entities.

In relation to such Regulated Entities, (i) the FMSA provides that DNB may petition a Dutch court for the application of Emergency Measures to such a Regulated Entity and (ii) the BA provides that no third party (but only DNB) can file a petition for the bankruptcy of such a Regulated Entity. In relation to a Third Country Credit Institution and a Third Country Insurance Company, Emergency Measures only encompass the business activities conducted from the branch(es) in this jurisdiction.

Emergency Measures are comparable to a moratorium of payments and a number of the BA's provisions apply thereto *mutatis mutandis*; the court appoints one or more administrators in order to restore order to the business of the Regulated Entity and these administrators do not require the cooperation of

the Regulated Entity's management in taking the decisions which they consider in the interests of creditors. At any time during Emergency Measures, the court may authorise the administrators to transfer the Regulated Entity's business in whole or in part to another institution or to wind it up and may issue a bankruptcy order in respect of the Regulated Entity. The Emergency Measures under the FMSA do not affect the analysis set out in this legal opinion.

3.1.5 Resolution Measures (Transfer Measures & Special Measures)

Since 1 July 2012, the FMSA was amended (with retro-active effect) to create a new framework for dealing with distressed financial institutions. The FMSA grants power to DNB and the Dutch Minister of Finance to take Resolution Measures, enabling them to deal with, *inter alia*, ailing Dutch Credit Institutions, Dutch Insurance Companies, Third Country Credit Institutions and Third Country Insurance Companies prior to insolvency.

(a) Transfer Measures

DNB can (i) transfer of all or part of the business (including deposits) of a Dutch Credit Institution, Dutch Insurance Company, Third Country Credit Institution or Third Country Insurance Company to a private sector purchaser, or (ii) transfer of all or part of the business of a Dutch Credit Institution, Dutch Insurance Company, Third Country Credit Institution or Third Country Insurance Company to a "bridge institution". DNB can submit a plan for such a transfer to the Dutch courts in the following situations:

(i) if DNB petitions for the bankruptcy of such an entity;

(ii) during the bankruptcy of such an entity;

(iii) if DNB petitions for the application of Emergency Measures;

(iv) during the application of the Emergency Measures; or

(v) if DNB petitions for the application of Transfer Measures.

Upon the court having approved the Transfer Measures, it will appoint one or more administrators charged with the execution of the transfer.

(b) Special Measures

If the creditworthiness of a Dutch Credit Institution, a Dutch Insurance Company, or any other regulated entity qualifying as financial institution (*financiële onderneming*) within the meaning of the FMSA threatens the stability of the Dutch financial sector, the Dutch Minister of Finance can take Special Measures, which could include public ownership (nationalisation) of or any other measures in relation to the affected entity.

3.1.6 Confirmation of Events of Default

We confirm that the events specified in the Insolvency Events of Default

Clause adequately refer to the Insolvency Proceedings under (a), (b) and (c) of 3.1.1 above, and we recommend that a specific reference is made to Transfer Measures in respect of a Dutch Credit Institution or a Dutch Insurance Company.

3.2 Recognition of choice of law

3.2.1 As regards the contractual obligations arising from the Agreement, 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 and English law would accordingly be applied by the Dutch courts if the FOA Netting Agreement or, as the case may be, the Clearing Agreement or any claim thereunder comes under their jurisdiction upon proper proof of the substantive rules of English law.

3.2.2 Save as set out in 3.3, 3.4, 3.5, 3.7, 3.8, 3.9 and 3.10 below, an Insolvency Representative or court in this jurisdiction would have regard to English law as the governing law of the FOA Netting Agreement or, as the case may be, of the Clearing Agreement, in determining the enforceability or effectiveness of the (i) FOA Netting Provision and the FOA Set-Off Provision 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.

3.2.3 We express no opinion on the binding effect of the choice of English law insofar as it relates to non-contractual obligations arising from or connected with the FOA Netting Agreement or, as the case may be, the Clearing Agreement.

3.3 Enforceability of FOA Netting Provision

3.3.1 In relation to an FOA Netting Agreement, or in relation to a Clearing Agreement where the Defaulting Party acts as Client, 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.

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 or necessary in order for the opinions expressed in this paragraph 3.3 to apply.

3.3.2 We are of this opinion for the reasons as set out in the following paragraphs and subject to the caveats set out therein.

(a) Effect of Dutch Insolvency rules

The determination of the net sum in accordance with the FOA Netting Provision could, depending on the characterisation under English law, be treated by the courts either (i) as an agreed procedure – not involving the legal device of set-off – for arriving at a single net amount representing a Party's damages on close out of the terminated Transactions, or (ii) as a contractual set-off of the mutual claims (representing losses and gains) resulting for both parties from individual terminated Transactions.

As to alternative (i): there is no rule under the laws of this jurisdiction that, as a matter of principle, invalidates a calculation of damages in accordance with the FOA Netting Provision that is valid under the applicable laws of England. Netherlands law allows parties to stipulate in advance how damages will be calculated in case of early termination of certain or all transactions, due to breach or otherwise. In Insolvency Proceedings, the Insolvency Representative is bound by such agreements. However, it is conceivable that the courts would test whether the determination of the Liquidation Amount under the Netting Provisions is compatible with mandatory insolvency set-off provisions. If such a test were to occur, the determination of the net sum in accordance with the FOA Netting Provision does not lead to a result contrary to mandatory Netherlands insolvency set-off provisions (see further details in paragraphs 3.3.2(b) through 3.3.2(f) below).

As to alternative (ii): the determination of the net sum in accordance a contractual set-off equally does not lead to a result contrary to mandatory Netherlands insolvency set-off provisions (see further details in paragraphs 3.3.2(b) through 3.3.2(f) below).

(b) Insolvency set-off

The FOA Netting Provision does not appear to lead to a result contrary to mandatory Dutch insolvency set-off provisions. In the event that a creditor of an insolvent debtor is also the latter's debtor, allows this creditor/debtor to plead a set-off provided that his claim(s) and his obligations (expressed in the same currency or "generic consideration"):

(i) have come into existence before the date of the Insolvency Proceeding; *or*

(ii) resulted directly from (one or more) transactions with the bankrupt entered into prior to the Insolvency Proceeding date.

This follows from Article 53 BA for bankruptcy and Article 234 BA for moratorium. Art. 234 BA also applies to Emergency Measures in respect of Regulated Entities through Article 3:177(1) of the FMSA.

Insolvency set-off is therefore allowed, and contractual set-off arrangements can be enforced in an Insolvency Proceeding, provided that (a) claim and counterclaim have "pre-insolvency roots" and (b) there is "mutuality" (as explained in paragraph 2.9 above) and (c) the claim and counterclaim are expressed in the same currency or "generic consideration".

To the extent that either the claim or the counterclaim do not result from pre-insolvency transactions or there is no such mutuality or single currency, a contractual set-off will not be effective in Insolvency Proceedings.

We understand that the FOA Netting Agreement and the Clearing Agreement provide for conversion by either Party of all amounts due and payable into a single currency in accordance with a pre-agreed conversion rate of exchange which will satisfy requirement (c).

The requirements under (a) and (b) are mandatory and cannot be excluded by contract or otherwise. Because article 53/234 BA presupposes that each creditor of an insolvent party may regard his obligations to the insolvent party as security for the payment of his claims, it is the prevailing view that all contractual set-off arrangements can be enforced in Insolvency Proceedings, provided the above conditions (a) and (b) are met. For the purpose of this opinion, we have assumed that there will be mutuality between the Parties (see paragraph 2.9 above).

Contractual set-off arrangements that contain limitations of set-off are not contrary to Article 53/234 BA. In accordance with established case law of the Dutch Supreme Court, such contractual limitations therefore remain effective in Insolvency Proceedings [2]. Therefore a contractual arrangement that limits set-off to one or more designated claims and obligations, such as a provision for separate netting sets, is enforceable in accordance with its terms in Insolvency Proceedings.

It is not required for set-off in Insolvency that the claim or the counterclaim is due and payable. The valuation rules of Article 130 and 131 BA may be applied to such claims or counterclaims.

(c) Effect of the Insolvency Regulation

In the event that the Insolvency Regulation applies to Insolvency Proceedings in this jurisdiction[3] and the FOA Netting Provision would be treated as a contractual set-off arrangement by the courts in this jurisdiction, a set-off is permitted if:

(i) it is permitted under Dutch law (Article 4.2(d) of the Insolvency Regulation); or

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[2] See HR 28 June 1985, NJ 1986, 192 (Meijvast/Voute); HR 16 January 1987, NJ 1987, 553 (Hooijen/THB); and HR 22 July 1991, NJ 1991, 748 (ADB/Planex).

[3] I.e. where a Party is not a credit institution, an insurance undertaking, an investment undertaking holding funds or securities for third parties, or a collective investment undertaking, and its COMI is in The Netherlands.

(ii) it is permitted by the law applicable to the insolvent debtor's claim (Article 6(1) of the Insolvency Regulation), even if set-off is not permitted under Dutch law.

Consequently, the insolvency laws of this jurisdiction would in principle determine whether a set-off is permitted, and if not, such a set-off may still be valid if permitted under English law. Thus, a set-off which is not possible due the restrictions mentioned in 3.3.2(b) above, may still be accepted by the courts of this jurisdiction if it is permitted under English law. Otherwise, we express no views as to the validity of the close-out netting and/or set-off provisions under English law.

However, the courts of this jurisdiction may not apply Articles 4.2(d) and 6.1 of the Insolvency Regulation to the FOA Netting Provision, particularly if they take the view that it includes features other than set-off,, *i.e.* a method of valuation of Transactions as well as the termination of Transactions.[4] If this interpretation is followed, Articles 4.2(d) and 6.1 of the Insolvency Regulation will not be applicable to the FOA Netting Provision and the general rule of Article 4 of the Insolvency Regulation will apply, which means that Netherlands insolvency law shall apply to the effectiveness of the FOA Netting Provision. Please refer to paragraphs 3.3.2(a) above.

(d) Effect of the WUDCI

Dutch law provides that the insolvency laws of the home Member State of an EEA Credit Institution must be applied by the courts and will in principle govern the effects on such transactions of any reorganisation or liquidation measures. Such measures will by law encompass that EEA Credit Institution's branches in this jurisdiction according to Articles 3:239 and 3:240 FMSA. See paragraph 3.15.2 below.

The following analysis will only deal with the situation that Insolvency Proceedings are commenced in this jurisdiction in respect of a Dutch Credit Institution or a Third Country Credit Institution and that therefore Dutch Insolvency rules determine the effects of such Insolvency Proceedings on the Agreement and any Transactions.

If the FOA Netting Provision would be treated as a set-off arrangement within the meaning of Article 23 of the WUDCI, then in the event Insolvency Proceedings are commenced in this jurisdiction in respect of a Dutch Credit Institution, a set-off is permitted if:

(i) it is permitted under Dutch insolvency law (Article 10.2(c) of the WUDCI); or

[4] This interpretation is supported by the fact that other EU legislation contains specific rules with respect to netting provisions (*e.g.*, Article 9 of the Insolvency Regulation and Article 25 of the WUDCI).

(ii) it is permitted by the law applicable to the Dutch Credit Institution's claim (Article 23 of the WUDCI, Article 3:243 FMSA and Article 212w BA)[5].

This means that a set-off as contemplated by the FOA Netting Provisions will be allowed if and to the extent that it is permitted under the laws of England as the law which governs such Dutch Credit Institution's claim under the Agreement, even if Dutch insolvency law would not allow such a set-off.

However, the courts of this jurisdiction may not apply Articles 10.2(c) and 23 of the WUDCI to the FOA Netting Provision, particularly if they take the view that it includes features other than set-off, *i.e.* a method of valuation of Transactions as well as the termination of Transactions. If this interpretation is followed, Articles 10.2(c) and 23 of the WUDCI will not be applicable to the FOA Netting Provision and the courts would most likely regard the FOA Netting Provision as a "netting agreement" within the meaning of Article 25 of the WUDCI.

If the FOA Netting Provision would be treated as a "netting agreement", then in Insolvency Proceedings in respect of a Dutch Credit Institution, the effectiveness of the FOA Netting Provisions shall be determined solely by the governing law of the Agreement (*i.e.* English law)[6].

Article 25 WUDCI refers to the *lex contractus* as "solely" governing a netting agreement, which implies that the insolvency rules of the law governing the netting agreement exclusively determine the validity and effectiveness of a netting agreement in the insolvency of a credit institution. This means that to the extent that the determination of the net sum would be valid and enforceable under English insolvency rules, it must also be valid and enforceable in Insolvency Proceedings in respect of a Dutch Credit Institution.

The position of Regulated Entities that are Dutch Finco's is mostly like that of a Dutch Credit Institution. Regardless of whether they comply with the conditions for being exempt under the FMSA (Article 3:2 FMSA), they can

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[5] In our view, the right to demand set-off is not limited to situations where the Dutch Credit Institution's claim is governed by the law of an EU member state (other than Denmark), but should also be allowed when this claim is governed by the law of a non-member state. Neither article 23 of the WUDCI, nor article 6 of the EU Insolvency Regulation, nor article 3:243 of the FMSA, nor article 212w of the BA require that this right of set-off is restricted to the law of an EU member state. However, it has been argued in legal writing that the restriction to the law of an EU member state must be implied in these provisions, because other provisions of the WUDCI and the EU Insolvency Regulation do expressly confine the applicability of a law other than the lex concursus (article 4) to situations where that other law is the law of an EU member state. Even if this interpretation is correct (which we dispute), the Dutch courts may still apply article 23 WUDCI by way of analogy (i.e. to the situation where the governing law is that of a non-member state), so that set-off may still be possible if permitted under the law of a non-member state.

[6] Article 25 WUDCI has been implemented in Article 212ff of the Bankruptcy Act (for bankruptcy) and Article 3:252 FMSA (for Emergency Measures regarding Credit Institutions). Unfortunately, in both Articles a "netting agreement" is defined by reference to netting of payment or transfer orders in the context of payment or clearing systems designated in accordance with the Settlement Finality Directive and it can therefore be argued that The Netherlands has incorrectly implemented the WUDCI in this respect. Only if the Dutch courts would interpret Article 212ff of the BA and Article 3:252 FMSA in accordance with the WUDCI, would the effectiveness of the Netting Provision be determined solely by the governing law of the Agreement

become subject to Emergency Measures, they cannot be granted a moratorium of payments by the courts (Article 214 BA) and instead of the Insolvency Regulation, the Dutch rules implementing the WUDCI apply to their Insolvency Proceedings.

(e) Effect of WUDIU

As is the case in respect of EEA Credit Institutions, the laws of this jurisdiction provide that the laws of the home Member State will be applied in the event of insolvency of an EEA Insurance Company, even if it has branches in this jurisdiction[7]. Therefore, the laws of this jurisdiction will be applied by the Dutch courts in the event of an Insolvency Proceedings of a Dutch Insurance Company or a Third Country Insurance Company.

The same rules with regard to insolvency set-off as are applicable to Credit Institutions, also apply to Dutch Insurance Companies and Third Country Insurance Companies, pursuant to the Dutch implementation of the WUDIU. This follows from Article 3:243 FMSA for Emergency Measures and Article 213r BA for bankruptcy. There is no separate rule of law in the WUDIU and in this jurisdiction with regard to netting arrangements entered into by Dutch Insurance Companies that is equivalent to Article 25 WUDCI.

(f) Final Argument

Further there is no rule of the law of this jurisdiction which would, in our view, apply to prohibit the parties from entering into a contract upon the terms of the FOA Netting Provision or which would render such terms ineffective.

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, 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 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.

3.4.2 We are of this opinion for the reasons as set out in paragraph 3.3.2 above and subject to the caveats set out therein and the qualifications set out below.

3.4.3 Furthermore, Dutch law allows parties to stipulate in advance the triggering events for early termination for certain or all transactions and the calculation of damages in case of such early terminations. Accordingly, there are no rules under the laws of this jurisdiction that invalidate a stipulation in advance whereby (i) the early termination for certain or all transaction is triggered by an event regarding one of the parties under another contract or even a third party; or (ii) the calculation of damages is determined by reference to a

[7] Based upon article 9 WUDIU.

calculation of damages under another contract. 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 rights under the Clearing Module Netting Provision.

3.4.4 No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this paragraph 3.4 to apply.

3.5 Enforceability of the Addendum Netting Provision

3.5.1 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 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.

3.5.2 We are of this opinion for the reasons as set out in paragraphs 3.3.2 and 3.4.3 above and subject to the caveats set out therein and the qualifications set out below.

3.5.3 No amendments to the Addendum Netting Provision are necessary in order for the opinions expressed in this paragraph 3.5 to apply.

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 Agreement 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 questions 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 an 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:

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

(a) 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

(b) 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

(ii) 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 for the reasons as set out in paragraph 3.3.2 above and subject to the caveats set out therein and the qualifications set out below.

To the extent that the Margin Cash Set-off Provisions qualify as a financial collateral arrangement, the requirements for set-off in insolvency (as stated in paragraph 3.3.2(b) above) are partly disapplied. Such a set-off will be allowed in respect of claims that have arisen after 0.00 hours on the day of the Insolvency judgment provided that Non-Defaulting Party was not aware of such judgment at the relevant time. Equally, cash collateral may be transferred in respect of a debt that has arisen on the date of the Insolvency judgment, provided that the transferee was not aware of such judgment at the relevant time.

Although there is no statutory provision or Supreme Court case law confirming this, where both claim and counterclaim are governed by the same law, this law should, in our opinion, govern the set-off between these claims.[8] Therefore, the law by which the Agreement is expressed to be governed should properly determine whether the claims referred to under the Set-Off Provisions may be offset in accordance with the terms thereof to the extent such amounts arise from the Agreement.

The analysis as set out in paragraph 3.3.2 with regard to insolvency set-off and above with regard to *pre-insolvency set-off* under the laws of this jurisdiction, also applies to set-off of claims arising under the Agreement with claims between the Parties arising under another agreement, provided this is not ruled out in the Agreement or such other agreement. Your specific attention is drawn to the requirement of mutuality, as well as the requirements that claim and counterclaim are expressed in the same currency, both in relation to pre-insolvency and insolvency set-off.

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[8] As far as claims arising under the same transaction (or master agreement) are concerned this follows from article 12 Rome I, which provides that the proper law of a transaction governs "the various ways of extinguishing obligations".

No amendments to the General Set-Off Clause or 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, 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 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:

(i) where the FOA Set-Off Provisions includes the General Set-Off Clause:

(a) 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

(b) 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

(ii) 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 for the reasons as set out in paragraph 3.3.2 above and subject to the caveats set out therein and the qualifications set out below.

In relation to a Clearing Agreement, the opinions expressed at paragraph 3.7.1 above in relation to the FOA Set-Off Provisions are not affected by the inclusion of the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision.

No amendments to the General Set-Off Clause or 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

3.8.1 In relation to a Clearing Agreement which includes the Clearing Module Set-Off Provision (whether or not the FOA Set-Off Provisions is a Disapplied Set-Off Provision, 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, upon the exercise of such rights:

(a) if the Client is a Defaulting Party, so that the value of any cash balance owed by the Firm to the Client would be set-off against any Liquidation Amount owed by the Client to the Firm; and

(b) if there has been a Firm Trigger Event or a CCP Default, so that the value of any cash balance owed by one Party to the other would, insofar as not already brought into account as part of the Relevant Collateral Value, be set off against any Available Termination Amount owed by the Party entitled to receive the cash balance.

We are of this opinion for the reasons as set out in paragraph 3.3.2 above and subject to the caveats set out therein and the qualifications set out below. No amendments to the Clearing Module Set-Off Provision are necessary in order for the opinions expressed in this paragraph 3.8.1 to apply.

3.8.2 In relation to a Clearing Agreement which includes the Clearing Module Set-Off Provision for which the FOA Set-Off Provision (insofar as constituting part of the FOA Netting Agreement) is not a Disapplied Set-Off Provision, the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms, as set out in paragraph 3.8.1 above; and the FOA Set-Off Provision will, to the extent that set-off is not already covered by the Clearing Module Set-Off Provision, be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms, as set out in paragraph 3.7.1 above.

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 (i) a CM Trigger Event (as defined in the ISDA/FOA Clearing Addendum) or (iii) a CCP Default (as defined in the ISDA/FOA Clearing Addendum):

(a) in the case of a CM Trigger Event, the Client (as defined in the ISDA/FOA Clearing Addendum); or

(b) in the case of a CCP Default, either Party (the "**Electing 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 for the reasons as set out in paragraph 3.3.2 above and subject to the caveats set out therein and the qualifications set out below. 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 an FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions where the Client is a Defaulting Party, following the specification or deemed occurrence of a Liquidation Date, the Non-Defaulting Party would be immediately (and without fulfilment of any further condition) entitled to exercise its rights under the Title Transfer Provisions, so that the Default Margin Amount (as calculated pursuant to the terms of the Title Transfer Provisions) shall be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision.

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

3.10.3 The courts of this jurisdiction would not recharacterise Transfers of Margin under the Title Transfer Provisions of an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions as creating a security interest, provided this is also the case under English law.

3.10.4 A Party shall be entitled to use or invest for its own benefit, as outright owner and without restriction, any Margin Transferred to it pursuant to the Title Transfer Provisions of an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions.

We are of this opinion because the enforceability of a title transfer provision is safeguarded under the Financial Collateral Rules, provided that the Title Transfer Provisions constitute a financial collateral arrangement.

Title Transfer Provisions constitute a financial collateral arrangement if pursuant to the title transfer provision a collateral provider transfers full ownership of financial collateral, consisting of cash, financial instruments or credit claims, to a collateral taker for the purpose of securing or otherwise covering the performance of relevant financial obligations, and at least one of the parties to the arrangement is, among others, a Credit Institution, Insurance Company or Investment Firm.

It follows from the assumption in paragraph 2.17 that at least one of the parties to the Clearing Agreement will be a Credit Institution, Insurance Company or Investment Firm. Furthermore, it follows from the assumptions in paragraphs 2.15 and 2.16 that the cash and non-cash margin transferred under the Title Transfer Provision consists of financial collateral. Therefore the Title Transfer Provisions fall within the protective scope of the Financial Collateral Rules.

No amendments to the Title Transfer Provisions are necessary in order for the opinions expressed in this paragraph 3.10 to apply.

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

In relation to an FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions, the opinions expressed above in paragraph 3.10 (*Enforceability of the Title Transfer Provisions*) in relation to the Title Transfer Provisions are not affected by the use also in the same agreement of the Non-Cash Security Interest Provisions (used with or without the Rehypothecation Clause) and/or the Client Money Additional Security Clause, provided always that:

(i) a provision in the form of, or with equivalent effect to, Clauses 4.3 and/or 4.4 of the FOA Clearing Module is used or the agreement otherwise unambiguously specifies the circumstances in which the security interest provisions 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 provisions and the Title Transfer Provisions to apply simultaneously to the same item of margin; and

(ii) the pool of margin subject to a security interest and the pool of margin subject to the Title Transfer Provisions are operationally segregated.

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, except in relation to Resolution Measures.

In case of Transfer Measures being taken in respect a Dutch Credit Institution, a Dutch Insurance Company, a Third Country Credit Institution or a Third Country Insurance Company it is desirable that the Transactions and the FOA Netting Agreement or, as the case may be, the Clearing Agreement are part of a single agreement to avoid a break up of netting possibilities as referred to in qualification 4.17 below.

3.13 **Automatic Termination**

3.13.1 Automatic termination enforceable but not necessary

It is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision and/or the Addendum Netting Provision to ensure the effectiveness of netting under the FOA Netting Agreement or, as the case may be, the Clearing Agreement in the event of Insolvency Proceedings of a Party incorporated in this jurisdiction.

Dutch contract law recognises rescission or termination clauses triggered by the notice of one of the Parties and without court intervention as valid and effective. Under Dutch law the main principle is that, unless provided otherwise (see below), the commencement of Insolvency Proceedings does not in itself affect existing contracts, in the sense that such proceedings do not change the terms thereof. Dutch Insolvency rules in principle do not affect these termination clauses.

However, it should be noted that:

(i) for certain physically settled energy or heating Transactions as outlined in 3.13.3 (final paragraph) below, both automatic and optional termination clauses may not be enforceable in Insolvency Proceedings; and

(ii) Dutch electricity companies that are licensed under the Electricity Act are subject to certain restrictions[9] in relation to wholesale purchase agreements (*inkoopcontracten*) that relate to the delivery of electricity to low-volume users (i.e.: consumers). Such licensed electricity companies are not permitted to include in such purchase agreements any clauses providing for automatic termination or for deferral of obligations if their Insolvency is petitioned or Insolvency Proceedings are opened against them. Therefore, with regard to such licensed electricity companies and insofar as an individual Transaction would qualify as a purchase agreement as referred to above, the Netting Provisions will not be enforceable.

3.13.2 Forward, physically settled transactions in Insolvency

There are two provisions in the BA, Articles 38 and 237, which may cause the mandatory automatic termination of all Transactions as of the date of the Insolvency judgment in respect of an Insolvent Party, provided both parties have unperformed obligations as of such date. Article 237 BA applies equally in the event that Emergency Measures are imposed (Article 3:177(1) of the FMSA). Articles 38 and 237 deal with forward contracts for the future delivery of commodities, which commodities are traded on a public exchange (i.e. the forward contract itself could be OTC) and which contracts have a settlement date falling after the Insolvency judgment. With effect from 0.00 hours on the date of such judgment (i) all such outstanding Transactions falling within Articles 38 or 237 BA are terminated by operation of law and (ii) the parties' mutual and unperformed settlement and delivery obligations are extinguished automatically.

If a Dutch court would apply Articles 38 and 237 BA to any forward Transactions (with maturity dates after the Insolvency date) through analogous interpretation, the only practical consequence would be that the non-defaulting Party would have no freedom to terminate such forward Transactions after the Insolvency date, because the relevant Transactions will have already been automatically terminated with effect from such date by operation of Dutch

[9] Pursuant to the Decree on Ensured Delivery Electricity Act (*Besluit leveringszekerheid Elektriciteitswet 1998*).

Insolvency law. The main risk constituted by Articles 38 and 237 BA is that the date of the Insolvency judgment will be imposed by the court for forward Transactions for which under the terms of the Agreement a valuation date after the date of the Insolvency judgment would otherwise apply.

Although this is not settled, it may be argued that physically settled options entail the future delivery of commodities as referred to in article 38/237 BA. If this is indeed the case, then with effect from 0.00 hours on the date of the Insolvency Judgement all outstanding and exercised options where the Insolvent Party is the option seller with a delivery and settlement date after the date of Insolvency are terminated by operation of law.

Otherwise, the legal consequences when applying either Articles 38 and 237 BA or the Netting Provisions are essentially the same: the relevant Transactions will be terminated and the mutual obligations converted into an obligation for one of the Parties to pay damages. Articles 38 and 237 BA do not provide for the manner in which such damages should be calculated, but, on the basis of the legislative history of these Articles, it seems likely that the Parties can validly agree on a method of calculating damages when entering into the Agreement. It should be borne in mind that only those Transactions which are actually outstanding as of the day of the Insolvency judgment and have unperformed obligations for both parties could be affected by Articles 38 and 237 BA.

3.13.3 Delivery Agreements for gas, water, electricity or heating

Furthermore, Article 37b (for bankruptcy) and Article 237b (for moratorium of payments) BA stipulate that in agreements for the continuous physical delivery of gas, water, electricity or heating (each a "**Delivery Agreement**") early termination clauses triggered by (a request petitioning) Insolvency Proceedings or the levying of an attachment may only be invoked against customers who or which are subject to Insolvency Proceedings with the consent of the Insolvency Representative. Article 237b BA applies equally in the event that Emergency Measures are imposed (Article 3:177(1) FMSA). Therefore, insofar as any Transactions under the Agreement could be treated as Delivery Agreements where the Insolvent Party is the party taking delivery of gas, water, electricity or heating, early termination clauses triggered by (a request petitioning) Insolvency Proceedings or attachment may not be effective without the consent of the Insolvency Representative.

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 Provision, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision or the Title Transfer Provisions in so far as the laws of this jurisdiction are concerned. In particular, there is no danger that an Insolvency Representative of a Defaulting Party could treat the obligations in respect of Transactions entered into in this jurisdiction separately from

other obligations arising under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or other Transactions.

3.15 Insolvency of Foreign Parties

3.15.1 Foreign Companies with COMI in a Regulation State

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

(a) is declared insolvent in accordance with the Insolvency Regulation in a Regulation State where its COMI is situated; and

(b) has a Dutch Branch,

the Dutch courts would be competent to open territorial or secondary Insolvency Proceedings pursuant to the Insolvency Regulation in respect of the assets of that Dutch Branch. The applicable law with respect to such Insolvency Proceedings will be Dutch law and such Insolvency Proceedings will be territorial in scope meaning that the effect of such proceedings will be restricted to the Foreign Company's assets situated in this jurisdiction.

In the absence of a Dutch Branch the mere fact that certain assets and liabilities of a Foreign Company are located in this jurisdiction, does not give the courts of The Netherlands jurisdiction to declare Insolvency Proceedings with regard to that Foreign Company, whether or not initiated by local creditors.

3.15.2 EEA Credit Institutions & EEA Insurance Companies

In relation to an EEA Credit Institution or an EEA Insurance Company, no Insolvency Proceedings can be imposed by the courts of this jurisdiction. Reorganisation or liquidation measures with regard to such institutions can only be taken by the authorities of their home member state. Such measures shall include all assets and EU branches of that EEA Credit Institution or that EEA Insurance Company and must be recognised in The Netherlands and territorial or secondary proceedings cannot be opened in respect of the branches in this jurisdiction of such an EEA Credit Institution or EEA Insurance Company. Where any EEA Credit Institution or EEA Insurance Company is subject to insolvency proceedings in another Member State in accordance with (the rules implementing) the WUDCI or the WUDIU, the issue of enforceability of the Netting Provisions in insolvency situations must in our view be determined in accordance with the paragraphs 3.3.2 (d) and (e).

3.15.3 Foreign Company with COMI outside the Regulation States

The Insolvency Regulation is not applicable to insolvency proceedings where the Foreign Company's COMI is situated outside the jurisdiction of the Regulation States, so that it does not govern:

(a) the consequences of the opening of an insolvency proceeding in a Regulation State concerning a Party whose COMI is situated outside the Regulation States, and

(b) the consequences of the opening of an insolvency proceeding in third party states (*i.e.* Denmark and any other States).

It appears from consistent Supreme Court case law that, except where otherwise provided in an international regulation that is binding on the Netherlands, a bankruptcy pronounced in another country has no extra-territorial effect, not only in the sense (a) that the attachment of the bankrupt's assets does not also encompass its assets located in the Netherlands, but also in the sense (b) that the legal effects that are linked to a bankruptcy by the bankruptcy law of that other country cannot be invoked in the Netherlands inasmuch as this would result in unpaid creditors no longer having the possibility of having recourse against assets of the (former) bankrupt located in the Netherlands, either during the bankruptcy or after its completion. This territoriality principle does not preclude the impact in the Netherlands of other effects of a bankruptcy pronounced in another country. This means:

(i) that the foreign general attachment of the insolvent Foreign Company's estate (or similar effects, such as the transfer of the estate to a receiver in bankruptcy) does not include the assets of the debtor that are situated in The Netherlands;

(ii) that creditors of the Foreign Company can petition the Dutch courts to open Insolvency Proceedings in respect of that Foreign Company's Dutch branch office (article 2(4) BA).

Therefore, although Netherlands international insolvency law is based on the territorial effect of foreign insolvency proceedings, this does not mean that these proceedings do not receive any recognition at all. The foreign receiver generally has *locus standi* in The Netherlands and the powers granted to a liquidator by the foreign *lex concursus*, including the power to transfer assets comprised in the bankrupt estate (but such transfer cannot be invoked against creditors levying an attachment), should in principle be recognised in The Netherlands.

3.16 Special legal provisions for market contracts

Other than the rules mentioned in 3.13.2 above, 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. QUALIFICATIONS

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

Limits regarding the chosen governing law

4.1 When applying the laws of England as the laws governing the FOA Netting Agreement or the Clearing Agreement, as the case may be, the competent courts of The Netherlands may or shall act as follows as a result of the limitations arising by virtue of Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations ("**Rome I**"):

4.1.1 they may give effect to the overriding mandatory provisions (i.e. provisions the respect for which is regarded as crucial for a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the Agreement (article 9(1) Rome I)) of the law of the country where the obligations arising out of the contract have to be or have been performed, insofar as those overriding mandatory provisions render the performance of the contract unlawful (article 9(3) Rome I);

4.1.2 they will apply the overriding mandatory provisions of the law of the Netherlands (article 9(2) Rome I). The prevailing attitude in Netherlands case law is that only Netherlands rules which are of a "public law nature" (e.g. exchange control regulations, banking regulations, competition rules) are mandatory rules which are capable of overriding the chosen law;

4.1.3 they may refuse to apply English law if such application is manifestly incompatible with the public policy of the Netherlands (article 21 Rome I). From case law it appears that the test for manifest incompatibility with public policy will only be met in extraordinary circumstances, such as where the application of foreign law would violate fundamental principles of Netherlands law or contravene international law;

4.1.4 they may give effect to the overriding mandatory provisions (i.e. provisions the respect for which is regarded as crucial for a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the Agreement (article 9(1) Rome I)) of the law of the country where the obligations arising out of the contract have to be or have been performed, insofar as those overriding mandatory provisions render the performance of the contract unlawful (article 9(3) Rome I);

4.2 pursuant to Article 12 of Rome I, the law determined to be applicable to a contract will govern the interpretation and performance of the contract as well as the consequences of nullity or a breach of contract (including the assessment of damages and termination) and the statutory limitations on bringing suit for a breach. With respect to the Agreement this entails that in principle the laws of England govern the remedies provided to the parties by the Agreement. Therefore, if these remedies are

enforceable in accordance with the terms of the Agreement under the laws of England, this will in principle be recognised by the courts of The Netherlands. However, the law governing the Agreement will not govern every aspect of the Agreement and the relations of the Parties thereunder. Dutch Insolvency law will govern the question whether provisions for the calculation of damages or contractual set-off provisions, such as the Netting Provision, will be enforceable against the insolvent estate in the event of Insolvency Proceedings being declared in this jurisdiction;

4.3 where both Parties to a FOA Netting Agreement or a Clearing Agreement are incorporated in this jurisdiction the following should be noted. The rules of the Rome I apply to "contractual obligations in any situation involving a choice between the laws of different countries" (article 1(1) of the Rome I), i.e. to contractual obligations which have an "international character". Article 3(3) of the Rome I provides that in situations where except for a choice-of-law and/or a jurisdiction or arbitration clause "all the other elements relevant to the situation at the time of the choice are connected with one country only", a choice-of-law cannot prejudice the mandatory rules of the law of that country. In our view, the question whether or not a contract has an international character cannot always be answered exclusively on the basis of the factual (geographical) connecting factors which the contract has with one or more countries. In particular, contracts that concern a certain sector of international economic activity (so-called "international market" contracts) may have to be qualified as truly international contracts, so as to enable the parties to designate themselves the law governing their contract. This may also be the case where the choice of a certain foreign law (i.e. the laws of England) is, to a significant extent, international market practice or where the contract is embedded in a larger transaction. This view is in accordance with the authoritative conclusion by Advocate-General Strikwerda before HR 26 May 1989 NJ 1992, 105 NILR 1991, 408 (Zerstegen-Van der Horst B.V. v. Norfolk Line B.V.) and in accordance with the prevailing view in legal writing (Vonken 2002 (T&C Vermogensrecht), p. 1720). We believe that it is likely that a Dutch court would for this reason qualify the Agreement as "international market contract" and can also be regarded as being international because the choice of the laws of England which is, to a significant extent, international market practice, even in the event that two Dutch parties would enter into such Agreement in which they make a choice for the laws of England, but in the absence of case law this is not certain;

Meaning of "Enforceable"

4.4 the terms "enforceable", "enforceability", "valid", "binding" and "effective", where used in this opinion, mean that the obligations assumed by the Parties under, and the relevant provisions of, the Agreement are of a type which Netherlands law generally enforces or recognises; it being understood that enforcement before the courts of The Netherlands will in any event be subject to (a) the degree to which the relevant obligations are enforceable under English law and (b) the effect of any sanctions and crisis management legislation;

Insolvency Proceedings/ Regulatory Interventions

4.5 if the DNB finds that a Dutch Finco does not comply with the FMSA or if it finds that Dutch Credit Institution, a Dutch Insurance Company, an Investment Firm, an

Investment Fund or a Dutch Pension Fund does not comply with the solvency, liquidity and administrative directives ("*richtlijnen*") issued by it, or if there are other indications of a development which in the judgment of the DNB endangers or could endanger the solvency or liquidity of such an entity, then the DNB can determine that, as of a certain moment in time, all or certain bodies of the Dutch Finco, Dutch Credit Institution, Dutch Insurance Company, an Investment Firm, Investment Fund or Dutch Pension Fund can only exercise their powers with the approval of one or more persons (known as silent administrators, "*stille curatoren*") designated by the DNB. Pursuant to the FMSA and the Pension Act, the Dutch Finco, Dutch Credit Institution, Dutch Insurance Company, Investment Firm or Investment Fund can challenge the validity of any act performed without such approval, if the counterparty to that act knew that no such approval was given, or could not have been ignorant thereof. The designation as referred to and accordingly the necessity of the approval referred to is not necessarily published. It is likely that without a publication or without it being otherwise obvious to the counterparty that the person or persons was/were designated as referred to, the relevant counterparty will not know, nor ought to have known, that the approval referred to was required;

4.6 if automatic early termination is elected to apply in respect of an entity as referred to in 4.5 above, the appointment of a silent administrator may trigger automatic early termination as such appointment could very well qualify as an insolvency related Insolvency Event of Default under a FOA Netting Agreement or a Clearing Agreement. As such appointments by their nature may not be publicly known, the Non-Defaulting Party may be faced with automatically terminated Transactions without being aware of that. Therefore, it is advisable to exclude the appointment of a silent administrator from the automatic early termination provisions in respect of a Dutch Credit Institution, a Dutch Insurance Company, an Investment Firm, and Investment Fund or a Dutch Pension Fund (see Annex 5).

4.7 an Insolvency Representative can only invoke the nullity and demand refunding of any pre-insolvency payments or transfers made by the insolvent party to the other party (assuming such payments or transfers were made on the due date therefore) in the event that the other party knew, at the time of such payment on the due date, that a petition for the insolvent party's bankruptcy or moratorium had been filed with the court or, alternatively, that such payment resulted from concerted action of the insolvent party and the other party aimed at paying the latter to the detriment of the insolvent party's other creditors;

4.8 a contractual provision that extinguishes one or more of a party's contractual claims for payment *solely* because of (a termination of a contract as a result of) that party becoming insolvent, may be considered void or enforceable on the basis of conflicting with Article 20 BA as an unreasonable deprivation of the insolvent party's assets[10]. The validity of such a clause depends on the context and circumstances of the case. The FOA Clearing Module contains a clause that if, following a Firm Trigger Event, any Firm/CCP Transaction is Transferred (ported) from Firm to another clearing member of the Agreed CCP Service, the value of the Client Transaction and the Relevant Collateral shall be zero for purposes of determining the Cleared Set

[10] Based on: Supreme Court (HR 12 April 2014, JOR 2013/224, [Liquidators of Megapool v. Laser Nederland]).

Termination Amount. Although this is not certain, we would hold the view that in the context of the effective porting of transactions and collateral from a defaulting Firm to a back-up clearing member, as should be facilitated under EMIR, there is sufficient justification for the validity of a clause that determines the value of ported transactions and collateral as zero.

Insolvency Restrictions applicable to Netting and/or Set-Off

4.9 interest accruing after the date on which Insolvency is declared cannot be admitted on an insolvency claim, unless the claim is secured by a right of pledge or mortgage (article 128 BA). Although article 53 BA does not provide for the applicability of this provision *per analogiam* on set-off, there is a remote risk that the claim for interest accruing after the date of the Insolvency judgment may not be capable of being taken into account for set-off purposes. The better view, however, is that (a) insolvency set-off governed by articles 53/234 BA operates, in effect, outside the insolvent estate and therefore would not cause the monetary claims which are the subject of such set-off to be "admitted" in the Insolvency Proceedings, thereby causing article 128/260 BA to be applicable and (b) the only consequence of articles 128/260 BA is that the net amount resulting from the set-off, if any such amount is owed by the Insolvent Party, will not be capable of accruing interest after the date of the Insolvency judgment, in order to be admitted in the Insolvency Proceedings;

4.10 in the Insolvency of a Party in this jurisdiction, any amount payable by the Insolvent Party must be filed with the Insolvency Representative in its equivalent in Euro (converted at the exchange rate prevailing on the date of the Insolvency judgment). This is a result of the application of Article 133 and/or 260 BA. As long as the Base Currency is Euro, this complies with Articles 133/260 BA. It is not possible to obtain a payment from the Insolvency Representative in a currency other than Euro. The BA is unclear as to whether an official exchange rate is to be used, or a rate determined for example by the Non-Defaulting Party;

4.11 on the basis of Articles 53/234 BA in combination with Articles 133/260 BA, it could be argued that in case of Insolvency Proceedings, the calculation to be effected pursuant to the Netting Provisions, the Set-Off Provisions or the Title Transfer Provisions should be made in Euro instead of any other base currency. On the basis of this argument, any claims of the Non-Defaulting Party on the Insolvent Party would by operation of law be converted in Euro whereas any claims of the latter on the former would remain in the relevant base currency[11]. If the base currency is not the Euro, this could theoretically have the result that such claims cannot be set off, since the requirement that such claims should correspond to each other is not met. In our view however the insolvency set-off of Articles 53/234 BA would operate, in effect, outside the Insolvent estate and therefore would not cause the monetary claims which are the subject of such set-off to be "admitted" in the Insolvency Proceedings, thereby causing section 133/260 BA to be applicable.

[11] It should be noted that Articles 133 and/or 260 BA only refers to claims to be "verified" by the Insolvency Representative, i.e. claims of the creditors of the Insolvent Party.

Furthermore, in our view:

(i) the contractual arrangements providing for conversion of other currencies into a base currency would be effective vis-à-vis the Insolvency Representative, that Representative in this respect being in the same contractual position as the Insolvent Party; and

(ii) the only consequence of Articles 133/260 BA is that the amount resulting from the Netting Provisions, if any such amount is owed by the Insolvent Party, must be converted in Euro at the market rate of exchange prevailing on the date of Insolvency judgment, in order to be admitted in the Insolvency Proceedings.

In other words, it is, as a matter of Dutch Insolvency law, unlikely that the application of a Base Currency other than Euro would frustrate the operation of the Netting Provisions, the Set-Off Provisions or the Title Transfer Provisions;

4.12 all calculations under the Netting Provisions, the Set-Off Provisions and the Title Transfer Provisions may have to be made by reference to a date not later than the date on which the Insolvency Proceedings were declared. Although there is no express provision in the BA stating this, it is held that as a general rule an Insolvency judgment fixes the rights of the creditors unalterably as of its date. Any amount by which the Liquidation Amount increased between the Insolvency judgment date and the (later) Liquidation Date by reference to which calculation was made, may not be recoverable and therefore not capable of set-off. This may be different where financial collateral arrangements are concerned (see paragraphs 4.14 to 4.16 below);

4.13 transactions entered into after Insolvency Proceedings have commenced in relation to a Party might not be capable of inclusion in the netting under the Netting Provisions or a set-off pursuant to the Set-Off Provisions, but this would not (a) impair the effectiveness of the Netting Provision or the Set-Off Provisions in respect of Transactions entered into before the commencement of such Insolvency Proceedings; or (b) impair the effectiveness of the Margin Set-Off Provisions (in the event they would quality as a financial collateral arrangement) in respect of Transactions entered into, or cash collateral transferred on the date of the Insolvency judgment provided the Non-Defaulting Party was not aware of such judgment;

4.14 the BA contains provisions (Article 63a regarding bankruptcy and Article 241a regarding moratorium) allowing the supervisory judge (*rechter-commissaris*) in case of bankruptcy and the court in case of moratorium to render an order/judgment to the effect that the rights of recourse of all or specifically designated third parties in respect of assets belonging to the insolvent estate (or in the possession of the insolvent debtor) are suspended for a period of no more than two months (with a possibility of extension by - at most - two more months), save with prior permission of the supervisory judge /court. Although there is no case law on this matter, we endorse the view that has been expressed in authoritative legal writing that termination rights and set-off are not within the scope of Article 63a and Article 241a BA and that therefore a "freeze-order" should have no impact on the exercise of such rights; in the event that the Margin Set-Off Provisions qualify as a financial collateral arrangement, articles 63a/241a are disapplied entirely;

4.15 save as set out in 4.17 below, there are no rules under Dutch Insolvency law that would lead to a splitting-up or segregation of the portfolio of Transactions under a FOA Netting Agreement or a Clearing Agreement into two or more "netting pools", although it is possible that certain Transactions are subject to mandatory automatic termination (see paragraph 3.13.2 above), while others can still be terminated by notice after the judgment declaring the commencement of Insolvency Proceedings;

4.16 we express no view as to whether or not the courts of this jurisdiction would make any distinction between the concepts of set-off and (close-out) netting for the purposes of the WUDCI, the WUDIU or the Insolvency Regulation.

Resolution Measures

4.17 in addition to the consequences of any Resolution Measures as set out in paragraph 3.1.5 above, an FOA Netting Agreement or a Clearing Agreement as the case may be entered into with, or Margin Transferred by a Dutch Credit Institution, a Dutch Insurance Company, a Third Country Credit Institution or a Third Country Insurance Company, which becomes subject to Resolution Measures, may be affected by the replacement or substitution of the relevant Counterparty, a transfer of the relevant Counterparty's rights and obligations under the FOA Netting Agreement or Clearing Agreement or any such Transactions to a third party, a modification of the terms of the FOA Netting Agreement, the Clearing Agreement or such Transactions, or even the expropriation of assets and liabilities of a Dutch Credit Institution, a Dutch Insurance Company, a Third Country Credit Institution or a Third Country Insurance Company arising under the FOA Netting Agreement or a Clearing Agreement as the case may be. Such measures may result in the terms of the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision being ineffective and unenforceable against any such Counterparty. In view of the single agreement provisions in the FOA Netting Agreement or the Clearing Agreement and assuming these are effective as a matter of English law, the risk that these Resolution Measures might through "cherry picking" adversely affect the operation of the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision is to be deemed remote if not academic. Furthermore, any contractual or statutory obligation, regardless of the governing law, of a Dutch Credit Institution or a Dutch Insurance Company (or Dutch Party forming part of the same group as such Dutch Credit Institution or a Dutch Insurance Company) to notify a Party of the preparation, application and execution of Resolution Measures or to provide any details in relation thereto, shall be unenforceable (article 3:267g FMSA);

4.18 by virtue of article 3:267f FMSA the preparation, application and implementation of Resolution Measures (or their foreign equivalents) will affect the rights of a Party in respect of its Transactions with a Dutch Credit Institution or a Dutch Insurance Company (or a Dutch Party which is part of the same group as the Dutch Credit Institution or a Dutch Insurance Company). Regardless of the laws governing the contractual relationship with the Dutch Credit Institution or a Dutch Insurance Company (or such group entity), a Party will not be entitled – except with DNB's prior approval - to exercise acceleration rights, invoke termination events or events of default, set off its claims or apply any other remedy against the affected entity if any

such rights or remedies arise as a result of either of the following (hereinafter: "**Relevant Events**")[12]:

(a) the preparation, application or implementation of a Resolution Measure (or their foreign equivalents) in relation to the affected entity, or

(b) any act or omission (including any default) resulting from it[13].

The above provisions of the FMSA:

(a) are stated in the explanatory parliamentary papers to override the governing law of any agreements. Whether an English court would apply article 9(1) and 9(3) Rome I to any cases brought before it is beyond the scope of this opinion, but a Dutch court would probably use article 9(2) Rome I to override English law[14];

(b) do not apply to (i) rights or remedies arising from financial collateral arrangements that qualify as such under the Financial Collateral Rules; or (ii) rights or remedies arising from a Party's participation in a clearing system designated in accordance with the Settlement Finality Directive (a "**Qualifying Clearing System**") as against other such participants.

Consequently, in respect of all Margin Transferred which (i) does not qualify as Cash or book-entry securities, or (ii) which is not provided to a Party in connection with its participation in a Qualifying Clearing System by another participant in such Qualifying Clearing System, the Party cannot invoke the Netting Provisions or the Title Transfer Provisions in respect of such Transferred Margin against a Dutch Credit Institution or (or a Dutch Party which is part of the same group) as a result of Relevant Events.

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[12] The Intervention Act does not provide for a fixed period for the stay of termination rights. Rather, it rules out any termination based on an event of default triggered by a Relevant Event without the prior consent of the Dutch Central Bank. In other words, the stay on termination right relating to a Relevant Event is permanent until DNB has approved the termination. Termination by law pursuant to article 38 and 237 BA is not affected by the automatic stay on termination rights. Therefore, if a party is declared bankrupt after a Relevant Event, an agreement within the scope of article 38/237 BA will be terminated by operation of law

[13] It is important to note that the stay only relates to termination rights that are triggered by/as a result of a Relevant Event. Termination rights caused by circumstances which do not constitute a Relevant Event may lead to a termination even during the stay. For example, if a party has stopped payments before a Relevant Event, that event of default entitles its counterparty to terminate the agreement even after the Intervention Act is put into force. Therefore, a failure to pay that does not in any way result from a Relevant Event can be relied upon. It remains unclear what causal link needs to exist between the circumstances leading to the Event of Default (for example if the Relevant Event entails that the party is forced to stop its payments) then Failure to Pay may not be exerted without the prior consent of DNB.

[14] In our view it is very doubtful whether to do so would be correct. First of all, the relevant FMSA provisions are rules of insolvency law, the international scope of which must be determined in accordance with the (national rules implementing the) WUDCI and the WUDIU and not in accordance with Rome I. Secondly, article 3:267f FMSA is clearly in breach of the WUDCI and the WUDIU, which unequivocally indicate that set-off should be permitted if allowed as a matter of the governing law.

4.19 we express no opinion as to whether any party needs to comply with or as to the consequences of compliance or non-compliance with any applicable provisions of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories ("**EMIR**") and any technical standards made thereunder in respect of anything done by it in relation to or in connection with the Agreement. However, Article 12(3) of EMIR provides that any infringement of the rules under Title II of EMIR "shall not affect the validity of an OTC derivative contract or the possibility for the parties to enforce the provisions of an OTC derivative contract", consequently any failure by a party to so comply should not make the Agreement invalid or unenforceable;

Title Transfer Provisions

4.20 questions relating to proprietary effects, perfection requirements, requirements for rendering the Title Transfer Provisions effective against third parties, and the steps required for its realisation, will, as a matter of Dutch private international law, be governed by the domestic law of the country in which the "relevant account" (*rekening waarin effecten worden geadministreerd*) (as referred to in article 10:141 of the Dutch Civil Code)[15] is maintained, to the extent that Margin Transferred consists of book entry securities;[16]

Financial Collateral Rules

4.21 in Insolvency Proceedings under the laws of this jurisdiction, any dispositions of the Insolvent Party's property made after the commencement of Insolvency Proceedings of such Party are void under article 23 of the BA unless the court otherwise orders or the Financial Collateral Rules prevent its application; and

4.22 financial collateral arrangements will only benefit from the Financial Collateral Rules if at least one of the parties falls within one of several specified categories. It is not entirely clear when – in an international transaction – the eligibility requirements of the Financial Collateral Rules are applicable. An argument can be made that where the property law aspects of the Transfer of Margin are governed by the law of another jurisdiction, the limitations as to the qualifying parties imposed by the Financial Collateral Rules are not applicable.

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[15] Neither article 9 of the Collateral Directive nor article 10:141 of the Dutch Civil Code specifies the manner of determining the relevant account. According to the Dutch State Committee on Private International Law as cited in the legislative history of (the substantially identical predecessor of) article 10:141 of the Dutch Civil Code, relevant intermediaries who administer accounts in securities in book entry form (*giraal overdraagbare effecten*) are credit institutions, central securities depositories and securities clearing companies such as Euroclear and Cedel (currently Clearstream).

[16] Regarding the location of the relevant account, there are strong arguments to support the view that the location agreed upon by the account holder and the securities intermediary is decisive for locating a securities account. In case parties have not agreed upon the location of the account, the location can be assumed to be the location where the securities are held according to the administration of the intermediary. The relevant account is in any case not the share register in which transfers of shares in book entry form (*giraal overdraagbare aandelen*) or rights of pledge thereon could be administered by the issuing company. In case an international transaction makes use of a chain of accounts, meaning that the transaction must be administered in multiple accounts, article 10:141 does not make clear whether the designated law governs such an entire transaction or whether the applicable law should be determined for each link in the transaction. In general, it is assumed that the latter is the case: the applicable law should be determined for each link.

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

5. RELIANCE

This opinion:

5.1 is strictly limited to the matters set forth herein and no opinion may be inferred or implied beyond that expressly stated herein and expresses and describes Dutch legal concepts in English and not in their original Dutch terms; consequently, this opinion is issued and may only be relied upon on the express condition that it shall be governed by and that all words and expressions used herein shall be construed and interpreted in accordance with the laws of The Netherlands;

5.2 is given for the sole benefit of FIA Europe and such of its members (excluding associate members) as subscribe to FIA Europe's opinions library and whose terms of subscription give them access to this opinion (each a "subscribing member");

5.3 may not, without our prior written consent, be relied upon for any other purpose or be disclosed to or relied upon by any other person save that it may be disclosed without such consent to:

5.3.1 any affiliate of a subscribing member (being a member of the subscribing member's group, as defined by the UK Financial Services and Markets Act 2000) and the officers, employees, auditors and professional advisers of such affiliate;

5.3.2 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;

5.3.3 the officers, employees, auditors and professional advisers of any addressee; and

5.3.4 any competent authority supervising a subscribing member or its affiliates in connection with their compliance with their obligations under prudential regulation

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 only had regard to the interests of our client;

We accept responsibility to FIA Europe and subscribing members in relation to the matters opined on in this opinion. However, the provision of this opinion is not to be taken as implying that we assume any other duty or liability to FIA Europe's members of their affiliates. The provision of this opinion does not create or give rise to any client relationship between this firm and FIA Europe's members or their affiliates.

Yours faithfully,

F.G.B. Graaf
advocaat
Clifford Chance LLP

SCHEDULE 1
DUTCH PENSION FUNDS

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

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

None

2. ADDITIONAL ASSUMPTIONS

We assume the following:

(a) that each Dutch Pension Fund will not enter into Transactions under the Agreement solely for speculative purposes and that such Transactions will not have the same legal or economic effect as a guarantee of (or as joint and several liability for) another person's or entity's liabilities or a loan other than a temporary loan for liquidity purposes and that all Transactions will be entered into in accordance with the "prudent person rule" within the meaning of article 135 of the Pension Act;

(b) that each Dutch Pension Fund that is a company pension fund will not enter into any transactions under the Agreements with regard to the shares in the company for whose employees that Dutch Pension Fund is instituted.

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: Dutch Pension Funds

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

(a) bankruptcy (*faillissement*)

(b) moratorium of payments (*surseance van betaling*)

The Insolvency Regulation, as discussed in paragraph 3.3.2 of the opinion, is applicable to Dutch Pension Funds. Therefore, the rules of the Insolvency Regulation with regard to set-off will apply to Dutch Pension Funds.

4. **ADDITIONAL QUALIFICATIONS**

None

5. **MODIFICATIONS TO QUALIFICATIONS**

None

SCHEDULE 2
INDIVIDUALS

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

None

2. ADDITIONAL ASSUMPTIONS

None

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

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

(a) bankruptcy (*faillissement*), as referred to in and governed by title I of the BA;

(b) moratorium of payments (*surseance van betaling*) as referred to in and governed by title II of the BA; and

(c) WSNP Procedures.

A private individual can be declared bankrupt or, if he/she carries on a business or practices an independent profession, a moratorium of payments proceeding can also be opened in respect of a natural person. Given that (i) a bankruptcy can only lead to a debt-free restart if either the bankrupt person is able to repay his debts or reaches an agreement with his creditors (on the basis of a court-approved scheme of arrangement); and (ii) in the past only a few private individuals succeeded therein, a special procedure for individuals, the WSNP Procedure, was enacted.

The WSNP Procedure may be pursued in respect of any natural person, regardless of whether he/she carries on a business and regardless of whether he/she practices an independent profession. As opposed to the bankruptcy procedure, it is not necessary that there is a plurality of creditors. The WSNP Procedure can be declared applicable

to a natural person if he/she is in a situation where he/she has stopped to pay his debts and the situation allows for an arrangement for debt reorganisation (*schuldsanering*).

The consequences of the WSNP Procedure are roughly similar to Insolvency Proceedings, although it should be noted that the arrangements for debt reorganisation in the WSNP Procedure are primarily aimed at protecting the debtor. The WSNP Procedure is designed as a liquidation procedure: the estate of the natural person is liquidated and the proceeds will be divided among the creditors. After settlement of the estate, remaining debts will no longer be enforceable. If a composition is reached with the creditors (in principle possible with a simple majority) and the composition has been approved by the court, the court will determine that the WSNP Procedure ceases to be applicable. Applicability of the WSNP Procedure can be verified with the national register.

Consistent with the bankruptcy procedure:

(i) the Individual to whom the WSNP Procedure has been declared applicable in principle loses his/her right to manage and dispose most of his/her assets with retroactive effect to 00.00 hrs. of the day on which the WSNP Procedure was declared applicable, although he/she will still be allowed during the WSNP Procedure to manage certain assets, such as a car for work related purposes;

(ii) the court appoints an administrator (*bewindvoerder*) who is charged with the management and realisation of the Individual's assets that are affected by the WSNP Procedure and who acts under the general supervision of a supervisory judge;

(iii) the assets that are not included in the WSNP Procedure are for example (i) a protected earnings level (*beslagvrije voet)* which debtor is considered to need for living; (ii) the debtor's household effects (*inboedel)* and (iii) assets that cannot be subject to attachments *(beslag);*

(iv) the debtor will still be able to perform legal acts, although he/she will required the prior approval of the administrator for (a) entering into a credit agreement; (b) entering into an agreement pursuant to which the debtor stands surety for or provides collateral for a third party's debts; or (c) making a donation unless the donation is customary to local standards and not excessive.

4. ADDITIONAL QUALIFICATIONS

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

In a WSNP Procedure, the BA (article 307) allows a creditor to plead a set-off provided that its claim(s) and its obligations (expressed in the same currency or the same "generic consideration") have come into existence before the commencement of the WSNP Procedure. This requirement is mandatory and cannot be excluded by contract or otherwise. Therefore, the Netting Provisions (if the court would treat these as a contractual set-off) and/or the Set-Off Provisions will not be effective unless both

the claim and the counterclaim came into existence before the WSNP Procedure was opened. This means that in respect of WSNP Procedures it is necessary to apply automatic termination.

Individuals that do not carry on a business or practice an independent profession are excluded from the scope of the Financial Collateral Rules. The Title Transfer Provisions may therefore not be enforceable.

5. MODIFICATIONS TO QUALIFICATIONS

None

SCHEDULE 3
INVESTMENT FIRMS

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

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

None

2. ADDITIONAL ASSUMPTIONS

We assume the following:

"That none of the Margin Transferred belongs to the Investment Firm's clients or, to the extent that it does, all relevant legal requirements have been met permitting such Margin Transferred to be validly charged under the FMSA"

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: Investment Firms

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

(a) bankruptcy (*faillissement*)

(b) moratorium of payments (*surseance van betaling*)

3.2 However, although the Insolvency Regulation does not apply to investment undertakings holding funds or securities for third parties, the possibility exists that its set-off rules as explained in paragraph 3.3.2 above, will nevertheless be applied by a Dutch court to such institutions.

4. ADDITIONAL QUALIFICATIONS

None

5. MODIFICATIONS TO QUALIFICATIONS

None

SCHEDULE 4
INVESTMENT FUNDS

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

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

None

2. ADDITIONAL ASSUMPTIONS

We assume the following:

(a) That the Agreement, each Transaction and each Transfer of Margin and any transactions thereunder by or on behalf of each Investment Company and each Investment Fund will be within such Investment Company's or Investment Fund's investment policies and any other requirements pursuant to the relevant prospectus and/or applicable Terms and Conditions.

(b) With regard to Agreements entered into with FGR Investment Funds, we have assumed that in accordance with current Dutch market practice the FGR Investment Fund's Manager enters into the Agreement and any Transactions thereunder not in its own name as principal but in the name and on behalf of the Custodian as principal. In such case, the requirement of mutuality for Dutch Insolvency set-off will be met.

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: Investment Funds

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

(a) bankruptcy (*faillissement*)

(b) moratorium of payments (*surseance van betaling*)

3.2 The Insolvency Regulation does not apply to credit institutions, insurance undertakings, investment undertakings holding funds or securities for third parties, or

collective investment undertakings. Based on our reading of the Insolvency Regulation in combination with the Virgos/Schmidt Report (which report accompanied the draft European Bankruptcy Convention of September 1995, which never entered into force but contains virtually identical provisions to the Insolvency Regulation), the rules of the Insolvency Regulation with regard to set-off as explained in paragraph 3.3.2 above will not apply to FGR Investment Funds or Investment Companies to the extent they qualify as UCITS (under Directive 85/611/EC on the Coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, as last amended by Directive 95/26/EC).[17] Consequently, it is our view that FGR Investment Funds and Investment Companies that are non-UCITS or are of the closed-ended type are within the scope of the Insolvency Regulation and that therefore paragraph 0 above applies to such FGR Investment Funds and Investment Companies.

3.3 Investment Funds in the form of an FGR Investment Fund are non-incorporated pools of cash, securities or other assets raised or obtained for collective investment for the purpose of allowing the participants to share in the proceeds of such investments. An FGR Investment Fund is not a legal entity but a contractual arrangement. The contractual arrangement will typically be entered into between the participants, the fund manager (*beheerder*, the "**Manager**") (which may be licensed as a manager under the FMSA) and a separate custodian (*bewaarder*, the "**Custodian**"), subject to applicable terms and conditions for management and custody (*voorwaarden voor beheer en bewaring*, the "**Terms and Conditions**"). The Manager manages the FGR Investment Fund's assets, which should be done in compliance with the investment objectives and restrictions set out in the relevant Terms and Conditions and/or the relevant prospectus. It is market practice that the Manager in its capacity as manager of the FGR Investment Fund enters into investment and hedging agreements and any transactions in the Custodian's name and for the account of the relevant FGR Investment Fund. The Custodian holds legal title to the Investment Fund's assets. This structure is obligatory for regulated FGR Investment Funds and normally used by unregulated FGR Investment Funds. Custodians usually grant a power of attorney (*volmacht*), which may be subject to certain conditions or limitations, to the Manager (*beheerder*) to enter into agreements on behalf and for the account of the Custodian acting in its capacity as depositary (*bewaarder*) of a specific FGR Investment Fund. The FGR Investment Fund's Manager and Custodian are normally organised in the form of a legal entity incorporated under the laws of this jurisdiction, either a foundation (*stichting*), a public company with limited liability (*naamloze vennootschap*) or a private company with limited liability (*besloten vennootschap*).

4. ADDITIONAL QUALIFICATIONS

None

5. MODIFICATIONS TO QUALIFICATIONS

None

[17] See the Preamble no 9 to the Insolvency Regulation as well as paragraph 56 of the Virgos/Schmidt Report.

SCHEDULE 5
PARTNERSHIPS

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

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

None

2. ADDITIONAL ASSUMPTIONS

We assume the following:

where a Party is a Partnership, the Agreement, each Transaction and each Transfer of Margin has been validly entered into by a General Partner on behalf of a Partnership that is a general partnership (*vennootschap onder firma*) or by a Managing Partner on behalf of a Partnership that is a limited partnership (*commanditaire vennootschap*) and that the obligations of each Partnership are mutual between the Partnership and the other Party in the sense that they (a) arise between the Partnership and the other Party acting in the same capacity and as principals and not as agents, (b) are not assigned to one of the Parties by a third party and (c) are not assigned, pledged or otherwise encumbered by one of the Parties to a third party or otherwise transferred to a third party.

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: Partnerships

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

(a) bankruptcy (*faillissement*)

(b) moratorium of payments (*surseance van betaling*)

3.2 Partnerships and Insolvency / Set-Off

The same analysis as set out above in paragraphs 3.3 and following applies *mutatis mutandis* to Partnerships, subject to the following observations:

The Insolvency of a General Partner, Managing Partner or Limited Partner will not automatically result in the Insolvency of the Partnership itself. The Insolvency of such a partner will in principle result in the dissolution (*ontbinding*) of the relevant Partnership. However, partnership agreements often contain a continuation arrangement (*voortzettingsregeling*) to avoid automatic dissolution of the Partnership as a whole in the Insolvency of one of the partners. If this is the case, the enforceability of the Netting Provisions, the Set-Off Provisions and the Title Transfer Provisions vis-à-vis the relevant Partnership will in principle remain unaffected in the event of Insolvency of a partner.

It should be noted that the Partnership's assets will continue to be available for recourse for the partnership's creditors, also when the new partner has acquired an interest in the partnership fund and is not externally liable for all Partnership debts.

4. ADDITIONAL QUALIFICATIONS

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

(a) Set-off will, however, not be possible where new partners are admitted to the Partnership or existing partners withdraw from that Partnership to the extent that this would result in such new partners becoming also a Party to the Agreement. Claims arising under Transactions entered into before the appointment of a new partner can thus not be set-off with claims arising under Transactions entered into after such appointment. Resigning partners will continue to be liable for the Partnership debts existing at the time their resignations from the Partnership but will not be liable for claims incurred after their departure. A change with regard to a Limited Partner should not affect the analysis on enforceability of the Netting Provisions as set out in the Opinion. A Limited Partner is generally not a contracting party to any agreement and also not liable vis-à-vis the creditors of the Limited Partnership.

(b) In exceptional circumstances, the changing of partners could lead to the dissolution of the original Partnership and the creation of a new Partnership. It is generally held in legal writing that this will only be the case where the original partners have unequivocally stated their intention to this effect, in particular by publication of the dissolution in the commercial register of the chamber of commerce with which the Partnership is registered. If dissolution of the Partnership take place, no Insolvency set-off will be allowed of claims arising under Transactions entered into by the new Partnership, as the required mutuality will be lacking.

5. MODIFICATIONS TO QUALIFICATIONS

None

SCHEDULE 6
SOVEREIGN AND PUBLIC SECTOR ENTITIES

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

None

2. ADDITIONAL ASSUMPTIONS

None

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: Sovereign and Public Sector Entities

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Sovereign on Public Sector 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) bankruptcy (*faillissement*)

(b) moratorium of payments (*surseance van betaling*)

General

Dutch insolvency law does not explicitly rule out the possibility that the public bodies can be declared insolvent, in which case the Insolvency procedures would apply to it in accordance with paragraph 3.1 above.

Municipalities

As far as we are aware, a Dutch Municipality has never been declared bankrupt nor is there any case law on the application of the BA to Municipalities. The BA does not address the applicability of Insolvency Proceedings to Municipalities. In practice, as a result of the financial support system pursuant to the Financial-Ratio Act (*Financiële-verhoudingswet*), the risk of a Municipality being declared insolvent is probably theoretical in any event.

Provinces

As far as we are aware, a Province has never been declared bankrupt nor is there any case law on the application of the BA to Provinces. The BA does not address the applicability of Insolvency Proceedings to Provinces, although it seems that the majority of authoritative legal writers are of the view that Provinces *cannot* be declared bankrupt.

Water Boards

No special Dutch insolvency provisions apply to Water Boards.

Local Government Entities

No special Dutch insolvency provisions apply to Local Government Entities in general. We note however that Municipalities or other local authorities participating in such Local Government Entities in practice often act as a guarantor for the obligations of the legal person.

4. ADDITIONAL QUALIFICATIONS

None

5. MODIFICATIONS TO QUALIFICATIONS

None

SCHEDULE 7
CHARITABLE FOUNDATIONS

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

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

None

2. ADDITIONAL ASSUMPTIONS

None

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: Charitable Foundations

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

(a) bankruptcy (*faillissement*)

(b) moratorium of payments (*surseance van betaling*)

4. ADDITIONAL QUALIFICATIONS

None

5. MODIFICATIONS TO QUALIFICATIONS

None

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 an 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[18], 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.

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

ANNEX 3
DEFINITIONS RELATING TO THE AGREEMENTS

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

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

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

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

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

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

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

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

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

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

"**BA**" means the Dutch Bankruptcy Act (*Faillissementswet*);

"**Collateral Directive**" means EU Directive 2002/47/EC;

"**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 an 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.

"**COMI**" means an entity's centre of main interests, as defined in Article 3(1) of the Insolvency Regulation.

"**Core Provision**" means those parts of the clauses or provisions specified below in relation to a paragraph of this opinion letter (and 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 3.7.1, 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 3.7.2, the Insolvency Events of Default Clause, the FOA Netting Provision, either or both of the General Set-off Clause and the Margin Cash Set-off Clause, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision;

(f) for the purposes of paragraph 3.8.1, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value", and the Clearing Module Set-Off Provision;

(g) for the purposes of paragraph 3.8.2, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value", the Clearing Module Set-Off Provision and the FOA Set-Off Provision;

(h) 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", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Addendum Set-Off Provision;

(i) for the purposes of paragraph 3.10.1, (i) in relation to an 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; and

(j) for the purposes of paragraphs 3.10.3 and 3.10.4, the Title Transfer Provisions;

in each case, incorporated into an 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.

"**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.

"**DNB**" means the Dutch Central Bank (*De Nederlandsche Bank N.V.*).

Dutch Credit Institution" means a company that is validly incorporated under the laws of this jurisdiction as a public limited liability company (*naamloze vennootschap*), a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) or a

cooperative *(cooperatie)* and has a license to engage in the business of a bank pursuant to article 2:12 of the FMSA.

"**Dutch Finco**" means a Dutch company engaging in financial activities that bring it within the FMSA's definition of a "bank" (which means that it has raised repayable funds from the public (being others than professional market parties or within a closed circle (both within the meaning of the FMSA)) and which is either exempt from the FMSA's banking license requirement by complying with the conditions of Article 3:2 FMSA or in breach of such conditions.

"**Dutch Insurance Company**" means a company that is validly incorporated under the laws of this jurisdiction as a public limited liability company (*naamloze vennootschap*) or a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) with a license to engage in the business of an insurance company pursuant to article 2:31 of the FMSA.

"**EEA**" means the European Economic Area.

"**EEA Credit Institution**" means an EEA undertaking which qualifies as a credit institution under EU Banking Co-ordination Directive (2006/48) (recast), but which is not a Dutch Credit Institution and which has obtained a banking license under its local laws equivalent to a license in this jurisdiction to operate as such and that has a branch (*bijkantoor*) or branches established or located in this jurisdiction that meets all the requirements of the FMSA for that branch to be lawfully engaged in business in this jurisdiction.

"**EEA Insurance Company**" means an EEA undertaking duly incorporated or organised under the laws of a member state of the EEA, not being a Dutch Insurance Company and which has obtained an insurance license under its local laws equivalent to a license in this jurisdiction to operate as such and that has a branch (*bijkantoor*) or branches established or located in this jurisdiction that meets all the requirements of the FMSA in order for that branch to be lawfully engaged in business in this jurisdiction.

"**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).

"**Emergency Measures**" are to the administration procedures (*noodregeling*) imposed by a Dutch Court pursuant to the FMSA in respect of certain Regulated Entities which are a substitute procedure to the BA's moratorium of payments (*surseance van betaling*).

"**Financial Collateral Rules**" mean the rules in Book 7 of the Dutch Civil Code and in the BA that implemented the Collateral Directive into Dutch law.

"**financial collateral arrangement**" means an arrangement defined as such in the Collateral Directive and the FCA Rules.

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

"**FMSA**" means the Dutch Financial Markets Supervision Act (*Wet op het financieel toezicht*), together with all its implementing and subordinate decrees and regulations.

"**Foreign Company**" means a company (not being an SE, an EEA Credit Institution, an EEA Insurance Company, a Third Country Credit Institution or a Third Country Insurance Company) incorporated with legal entity status under the laws of another jurisdiction and having a branch or branches established or located in this jurisdiction and if such a company has its COMI in a Regulation State that such Dutch Branch will qualify as an "establishment" within the meaning of article 2 (h) of the Insolvency Regulation (each, a "**Dutch Branch**").

"**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 Provision, 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 an 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***); and

(d) 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***);

(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***); and

(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) where the FIA Member's counterparty is not a natural person:

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

(ii) in relation to the terms of the Short Form One-Way Clauses and Short Form Two-Way Clauses, Clauses 1.1 (a) to (c) (inclusive);

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

(iv) in relation to the terms of the Eligible Counterparty Agreements, Clause 9.1 (a) to (c) (inclusive);

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

(vi) provided that any modification of such clauses include at least those parts of paragraph 4(a) of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and

(b) where the FIA Member's counterparty is a natural person:

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

(ii) in relation to the terms of the Master Netting Agreements, Clause 4.1 (i) and (iv);

(iii) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1(a) and (d); or

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

"**Insolvency Regulation**" means the EU Council Regulation No. 1346/2000 of 29 May 2000 on insolvency proceedings, which applies to all EU member states other than Denmark.

"**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.

"**Limited Partner**" means a partner of a Limited Partnership, whose identity must remain undisclosed, which has agreed to abstain from involvement in the management of a Limited Partnership and whose roles is to contribute money or property to the Limited Partnership on the condition that its liability for the Limited Partnership's losses is limited to the value of its contribution.

"**Limited Recourse Provision**" means Clause 8.1 of the FOA Clearing Module or Clause 15(a) of the ISDA/FOA Clearing Module.

"**Local Government Entities**" means quasi-governmental entities or public law institutions that are incorporated as an association of local governments with legal entity status pursuant the "*Wet gemeenschappelijke regelingen*".

"**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).

"**Managing Partner**" means a partner of a Limited Partnership which has agreed to manage the business of such Limited Partnership.

"**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).

"**Municipality**" means a municipality (*gemeente*) in this jurisdiction that is duly established under the *Gemeentewet* as a legal entity under public law (*publiekrechtelijke rechtspersoon*);

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

"**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 an FOA Published Form Agreement.

"**Party**" means a party to an 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).

"**Province**" means a province (*provincie*) in this jurisdiction that is duly established pursuant to article 123 of the Dutch Constitution (*Grondwet*) as a legal entity under public law (*publiekrechtelijke rechtspersoon*);

"**Regulated Entities**" means:

(a) Dutch Credit Institutions and Dutch Insurance Companies;

(b) Dutch branches of Third Country Credit Institutions and of Third Country Insurance Companies;

(c) Dutch Finco's.

"**Regulation Proceedings**" are the types of main insolvency proceedings possible in The Netherlands as permitted under Annex A of the Insolvency Regulation (and include winding-up by the court, creditors' voluntary winding-up, administration and company voluntary arrangements);

"**Regulation State**" means any one of the member states of the European Union save for Denmark.

"**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

(d) 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.

"**Resolution Measures**" means transfer measures within the meaning of Chapter 3.5.4A of the FMSA (*overdrachtsregeling*, "**Transfer Measures**") and special measures within the meaning of Chapter 6 of the FMSA (*bijzondere maatregelen*, "**Special Measures**") in respect of a Dutch Credit Institution, a Dutch Insurance Company, a Third Country Credit Institution or a Third Country Insurance Company;

"**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).

"**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.

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

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

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

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

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

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

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

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

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

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

(x) 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.

Rome I" has the meaning described in paragraph 4.1 above.

"**SE**" means a "*Societas Europaea*" established pursuant to EU Council Regulation No. 2157/2001 of 8 October 2001 on the European Company Statute.

"**Settlement Finality Directive**" means Directive 98/26/EC of the European Parliament and the Council of 19th May 1998 on settlement finality in payment and securities settlement systems.

"**Settlement Finality Rules**" means the rules of the BA, the FMSA and the DCC that implemented the Settlement Finality Directive into Dutch law.

"**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).

"**this jurisdiction**" and "**the Netherlands**" mean the part of the Kingdom of The Netherlands located in Continental Europe (excluding, for the avoidance of doubt, any overseas nations forming part of the Kingdom of the Netherlands such as Aruba, Curacao, and St Maarten and any overseas special municipalities such as Saba, St. Eustatius and Bonaire).

"**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.

"**Water Board**" means a water board (*waterschap*) in this jurisdiction that is duly established pursuant to article 133 of the Dutch Constitution (*Grondwet*) as a legal entity under public law (*publiekrechtelijke rechtspersoon*).

"**WSNP Procedure**" means the debt restructuring procedure for natural persons from the Debt Restructuring of Private Individuals Act (*Wet Schuldsanering natuurlijke personen*) which is part of the BA.

"**WUDCI**" means the EU Directive 2001/24/EC on the Reorganisation and Winding Up of Credit Institutions.

"**WUDIU**" means the EU Directive 2001/17/EC on the Reorganisation and Winding Up of Insurance Undertakings.

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 (a), the total cost, loss or, as the case may be, gain, in each case expressed in the Base Currency specified by the Non-Defaulting Party as such in the Individually Agreed Terms Schedule as a result of the termination, pursuant to this Agreement, of each payment or delivery which would otherwise have been required to be made under such Netting Transaction; and

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

(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:**

(a) In the case of a Counterparty that is not a natural person:

A. "The following shall constitute Events of Default:

(i) a party fails to make any payment when due under or to make delivery of any property when due under, or to observe or perform any other provision of this Agreement, [and such failure continues for [one/two] Business Day[s] after notice of non-performance has been given by the Non-Defaulting Party to the Defaulting Party];

(ii) 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;

(iii) 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."

(b) In the case of a Counterparty that is a natural person:

B. "The following shall constitute Events of Default:

(i) a party fails to make any payment when due under or to make delivery of any property when due under, or to observe or perform any other provision of this Agreement, [and such failure continues for [one/two] Business Day[s] after notice of non-performance has been given by the Non-Defaulting Party to the Defaulting Party];

(ii) you die, become of unsound mind, are unable to pay your debts as they fall due or are bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to you; or any indebtedness of yours is not paid on the due date therefore, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings relating to this Agreement are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, the whole or any part of your property, undertaking or assets (tangible and intangible)."

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:

(i) 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)];

(ii) 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;

(iii) 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]);

(iv) 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 [Cor Provisions of the relevant] Rule Set, be dealt with as set out below:

(i) 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)];

(ii) 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;

(iii) 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]);

(iv) 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:

(i) is attributable to such Client Transactions;

(ii) 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

(iii) 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.[19]

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.[19]

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.[19]

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.

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[19] Counsel to delete and if any such provisions would alter agreement so as to prevent opinion from applying.

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).[19]

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 Provision, 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 scope of the provision where a Party acts as agent, (iv) the use of currency conversion in case of cross-currency set-off, (v) the application or disapplication of any grace period to set-off, (vi) the exercise of any lien, charge or power of sale against obligations owed by one Party to the other; 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 a provision in the form of, or with equivalent effect to, clauses 4.3 and/or 4.4 of the FOA Clearing Module is used or the agreement otherwise 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 an FOA Published Form Agreement (including as modified in accordance with paragraph 5 above).

21. Any change to the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision providing that any applicable Cleared Set Termination Amount will be determined by the Firm or, as the case may be, the Clearing Member in any event (even in the case of a Firm Trigger Event or, as the case may be, a CM Trigger Event).

22. Any change to the FOA Netting Provision providing that any applicable Liquidation Amount will be determined by the Defaulting Party.

23. Any addition to the Clearing Module Netting Provision or the Addendum Netting Provision providing that, if any Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin has been ported to another clearing member of the Agreed CCP Service following a Firm Trigger Event or CM Trigger Event, the Party in charge of the calculation of the Cleared Set Termination Amount can ascribe an appropriately reduced value (including zero) to the Client Transaction and related margin or collateral corresponding to the Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin so ported.

PART 3
SECURITY INTEREST PROVISIONS

1. Security Interest Clause:

"As a continuing security for the performance of the Secured Obligations under or pursuant to this Agreement, you grant to us, with full title guarantee, a first fixed security interest in all non-cash margin now or in the future provided by you to us or to our order or under our direction or control or that of a Market or otherwise standing to the credit of your account under this Agreement or otherwise held by us or our Associates or our nominees on your behalf."

2. Power of Sale Clause:

"If an Event of Default occurs, we may exercise the power to sell all or any part of the margin. The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to any exercise by us of our rights to consolidate mortgages or our power of sale. We shall be entitled to apply the proceeds of sale or other disposal in paying the costs of such sale or other disposal and in or towards satisfaction of the Secured Obligations."

3. Client Money Additional Security Clause

"As a continuing security for the payment and discharge of the Secured Obligations you grant to us, with full title guarantee, a first fixed security interest in all your money that we may cease to treat as client money in accordance with the Client Money Rules. You agree that we shall be entitled to apply that money in or towards satisfaction of all or any part of the Secured Obligations which are due and payable to us but unpaid."

4. Rehypothecation Clause

"You agree and authorise us to borrow, lend, appropriate, dispose of or otherwise use for our own purposes, from time to time, all non-cash margin accepted by us from you and, to the extent that we do, we both acknowledge that the relevant non-cash margin will be transferred to a proprietary account belonging to us (or to any other account selected by us from time to time) by way of absolute transfer and such margin will become the absolute property of ours (or that of our transferee) free from any security interest under this Agreement and from any equity, right, title or interest of yours. Upon any such rehypothecation by us you will have a right against us for the delivery of property, cash, or securities of an identical type, nominal value, description and amount to the rehypothecated non-cash margin, which, upon being delivered back to you, will become subject to the provisions of this Agreement. We agree to credit to you, as soon as reasonably practicable following receipt by us, and as applicable, a sum of money or property equivalent to (and in the same currency as) the type and amount of income (including interest, dividends or other distributions whatsoever with respect to the non-cash margin) that would be received by you in respect of such non-cash margin assuming that such non-cash margin was not rehypothecated by us and was retained by you on the date on which such income was paid.".

ANNEX 5
NECESSARY OR DESIRABLE AMENDMENTS

1. Necessary amendments

For the purposes of paragraph 3.1.6:

We advise the inclusion of Resolution Measures in respect of a Dutch Credit Institution or a Dutch Insurance Company in the Insolvency Events of Default Clause.

We suggest adding the wording highlighted in yellow to the Insolvency Events of Default Clause, under (a)(iii):

"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, including a transfer plan (*overdrachtsplan*) or special measures (*bijzondere maatregelen betreffende de stabiliteit van het financiële stelsel*), or seeking the appointment of a Custodian of it or any substantial part of its assets."

2. Desirable amendments

For the purposes of paragraph 3.1.6 and 3.13:

If automatic termination is elected to apply in respect of a Dutch Credit Institution, Dutch Insurance Company, an Investment Firm, Investment Fund or Dutch Pension Fund we advise to exclude the appointment of a silent administrator from the Insolvency Events of Default Clause. See paragraph 4.7.

We suggest adding the wording highlighted in yellow to the Insolvency Events of Default Clause, under (a)(iii):

"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, save that the appointment of a silent administrator (*stille curator*) under Dutch regulatory laws shall not be eligible for Automatic Early Termination."

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

None