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Doc. no. 1178548-10

Copenhagen, 5 December 2013

Dear Sirs,

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

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

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

1 **Terms of reference and definitions**

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

(a) legal persons which are incorporated inter alia under the Danish Companies Act, Consolidation Act no. 322 of 11 April 2011 (as amended)(the "**Companies Act**");

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(b) banks (please also refer to paragraph 1.2(c)(i) below);

(c) branches in this jurisdiction of foreign banks and other companies.

1.2 The entities listed in paragraph 1.1(a)-1.1(c) above include:

(a) a public authority (excluding publicly guaranteed undertakings unless they fall under paragraphs 1.2(b) to 1.2(f)), please refer also to paragraph 1.3 below[1];

(b) a central bank[2], the European Central Bank, the Bank for International Settlements, Multilateral Development Bank as defined in Article 1 (19) of Directive 2000/12/EC, the International Monetary Fund and the European Investment Bank;

(c) a financial institution subject to prudential supervision[3] including:

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[1] In Denmark, this would e.g. include the Danish State and local authorities such as a municipality (in Danish: "kommune") or a region.

[2] In Denmark, the central bank is "Danmarks Nationalbank".

[3] A "financial institution" subject to prudential supervision and incorporated or organised in Denmark would cover:

(a) a bank (in Danish: "pengeinstitut") in the form of (i) a commercial bank (in Danish: "bank") organised in Denmark as a public limited company (in Danish: "aktieselskab") under the Danish Companies Act or an earlier statute, (ii) a savings bank (in Danish: "sparekasse") organised in Denmark as an independent institution (in Danish: "selvejende institution") and (iii) a credit cooperative (in Danish: "andelskasse") organised in Denmark as a credit cooperative (in Danish: "andelskasse") and, in case of each of (i), (ii) and (iii), authorised by the Danish Financial Supervisory Authority (in Danish: "Finanstilsynet") under the Financial Business Act, Consolidation Act No. 948 of 2 June 2013 (the "**Financial Business Act**") or under an earlier statute,

(b) a mortgage-credit institution (in Danish: "realkreditinstitut") organised in Denmark as a public limited company under the Companies Act or an earlier statute and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute,

(c) Danmarks Skibskredit A/S organised in Denmark as a public limited company under the Companies Act or an earlier statute and subject to the supervision by the Danish Financial Supervisory Authority under the Act on a Ship Finance Institute, Consolidation Act No. 886 of 8 August 2011 as amended,

(d) an investment company (in Danish: "fondsmæglerselskab") organised in Denmark as a public limited company under the Companies Act or an earlier statute and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute,

(e) an investment management company (in Danish: "investeringsforvaltningsselskab") organised in Denmark as a public limited company under the Companies Act or an earlier statute and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute, and

(f) an insurance company (in Danish: "forsikringsselskab") organised in Denmark as either (i) a public limited company under the Companies Act or an earlier statute, (ii) a mutual company (in Danish: "gensidigt selskab") or (iii) a pension fund (in Danish: Danish

(i) a credit institution[4] as defined in Article 1 (1) of Directive 2000/12/EC4, including the institutions listed in Article 2 (3) of that Directive,

(ii) an investment firm as defined in Article 1 (2) of Directive 2004/39/EC[5],

(iii) a finance institution as defined in Article 1 (5) of Directive 2000/12/EC[6],

(iv) an insurance undertaking as defined in Article 1 (a) of Directive 92/49/EEC and a life assurance undertaking as defined in Article 1 (a) of Directive 92/96/EEC[7],

(v) an undertaking for collective investments in transferable securities (UCITS) as defined in Article 1 (2) of Directive 85/611/EEC[8], or

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Financial Supervisory Authority under the Financial Business Act or under an earlier statute.

4 In Denmark, the term "credit institution" would in addition to banks cover mortgage-credit institutions.

5 In Denmark, the term "investment firm" would cover an investment company.

6 In Denmark, the term "finance institution" would cover, for example, leasing companies and factoring companies, which under Danish law are generally not subject to prudential supervision. Furthermore, the term would cover investment companies and investment administration companies, which are subject to prudential supervision, cf. footnote 4 above.

7 In Denmark, the term "insurance undertaking" or "life assurance undertaking" would cover
(a) (i) a pension insurance company (in Danish: "pensionsforsikringsselskab") organised in Denmark as a public limited company under the Companies Act or an earlier statute, (ii) a lateral pension fund (in Danish: "tværgående pensionskasse" organised in Denmark as a private foundation, (iii) a company pension fund (in Danish: "firmapensionskasse") organised in Denmark as a private foundation, (iv) an insurance company (in Danish: "forsikringsselskab") organised in Denmark as a public limited company under the Companies Act and, in case of each of (i), (ii), (iii) and (iv), authorised by the Danish Financial Supervisory Authority under the Danish Financial Business Act or under an earlier statute; and
(b) Arbejdsmarkedets Tillægspension ("ATP") organised in Denmark as a self-owned institution regulated under the ATP Act, Consolidation Act No. 942 of 2 October 2009.

8 A "UCITS" would cover a mutual fund which is organised in Denmark as an investment association (in Danish: "investeringsforening"), a company for investment of variable capital (SIKAV) or a securities fund (in Danish: "værdipapirfond") and authorised by the Danish Financial Supervisory Authority under the Danish Investment Associations Act (in Danish: "lov om investeringsforeninger m.v."), Consolidation Act no. 597 of 12 July 2013 as amended (the "**Investment Associations Act**"). A mutual fund, including a hedge fund which is organised in Denmark as a special purpose association (in Danish: "specialforening"), a restricted association (in Danish "fåmandsforening") or a hedge association (in Danish "hedgeforening") and authorised by the Danish Financial Supervisory Authority under the Investment Association Act or a professional association (in Danish: "professionel forening") organised in Denmark as an association and registered with the Danish Financial Supervisory Authority under the Investment Association Act will in our view qualify as a "financial institution subject to prudential supervision" even though it is not covered by any of indents (i) to (vi).

(vi) an investment management company as defined in Article 1 (a)(2) of Directive 85/611/EEC;

(d) a central counterparty, a settlement agent or a clearing house, as defined respectively in Article 2 (c), (d) and (e) of Directive 98/26/EC, including similar institutions regulated under national law acting in the futures, options and derivative markets to the extent not covered by that Directive;

(e) a person, other than a natural person, who acts in a trust or representative capacity on behalf of any one or more persons, including any bondholders or holders of other forms of debt instruments or any institution as defined in paragraphs 1.2(a)-(d) above;

(f) a person, other than a natural person, who is not covered by item 1.2(a)-1.2(e) above, including unincorporated undertakings and partnership, and sole proprietorships[9]; and

(g) in respect of our opinions in paragraphs 3.3-3.9 only, natural persons not conducting business activities, please refer also to paragraph 1.3 below.

1.3 In respect of Parties that are any of the following this opinion is given also subject to the terms of reference, definitions,

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9 1.1(f) would for example cover (a) a public limited company (in Danish: "aktieselskab") organised in Denmark under the Companies Act or an earlier company statute, (b) a private limited company (in Danish: "anpartsselskab") organised in Denmark under the Companies Act or an earlier statute, (c) an association for professional investors organised as an association in Denmark but not registered with the Danish Financial Supervisory Authority, (d) a non-approved restricted association (in Danish: "ikke-godkendt fåmandsforening") organised as an association in Denmark which has not been approved by the Danish Financial Supervisory Authority but has elected to be registered with the Danish Supervisor Authority in accordance with the Investment Associations Act, (e) a limited partnership (in Danish: "kommanditselskab") organised in Denmark under the Danish Act on Undertakings Carrying on Business for Profit (in Danish: "Lov om visse erhvervsdrivende virksomheder"), Consolidation Act no. 1295 of 15 November 2013 as amended (the "**Act on Undertakings Carrying on Business for Profit**"), (f) a partnership (in Danish: "interessentskab") organised in Denmark under the Act on Undertakings Carrying on Business for Profit and (g) a one-man business organised in Denmark under the Act on Undertakings Carrying on Business for Profit, (h) an association with limited liability (in Danish: "forening med begrænset ansvar") organised in Denmark under the Act on Undertakings Carrying on Business for Profit, (i) company with limited liability (in Danish "selskab med begrænset ansvar") organised in Denmark under the Act on Undertakings Carrying on Business for Profit, (j) a co-operative society with limited liability (in Danish: "andelsselskab med begrænset ansvar") organised in Denmark under the Act on Undertakings Carrying on Business for Profit and (k) a commercial fund (in Danish: "erhvervsdrivende fond") organised in Denmark under the Act on Commercial Funds, Consolidation Act No. 560 of 19 May 2010. 1.1.(f) would also cover state-owned companies and other state-owned entities (if not covered by any of the other categories).

modifications and additional assumptions and qualifications set out in the applicable Schedule:

(a) In respect to the public authority mentioned in paragraph 1.2(a) above please also refer to Schedule 1; and

(b) In respect natural persons not conducting business activities mentioned in paragraph 1.2(g) and one man businesses covered by paragraph 1.2(f) above please also refer to Schedule 2.

1.4 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.

1.5 This opinion covers all Transactions whether entered into on 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.

1.6 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.

1.7 Definitions

1.7.1 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.

(a) "**Insolvency Proceedings**" means the procedures listed in paragraph 3.1;

(b) "**Insolvency Representative**" means a liquidator, administrator, administrative receiver or analogous or equivalent official in this jurisdiction;

(c) "**FOA Member**" means a member (excluding associate members) of the Futures and Options Association which subscribes to the Futures and Options Association's Netting Analyser service (and whose terms of subscription give access to this opinion); and

(d) 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:

(a) 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.

(b) That the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions are legally binding and enforceable against both Parties under their governing laws.

(c) That each Party has the capacity, power and authority under all applicable law(s) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

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

(i) 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 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.

(j) 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.

(k) 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).

(l) 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.

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

(n) 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 company, bank, investment firm, partnership, or insurance company.

(o) That all cash, securities and margin are held outside the Danish jurisdiction.

3 Opinion

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

3.1 Insolvency Proceedings

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

(a) The Danish Bankruptcy Act, Consolidation Act No. 217 of 15 March 2011; and

(b) The Danish Administration of Justice Act, Consolidation Act No. 1139 of 24 September 2013 as amended.

3.1.2 The only types of insolvency proceedings possible under the Danish Bankruptcy Act and Administration of Justice Act (which for the purpose of this opinion shall include all proceedings in respect of

its assets, or any branch it may have in this jurisdiction) to which a Party may become subject in this jurisdiction are the following:

(a) a reconstruction carried out under the supervision and authority of one or more supervisors appointed by the bankruptcy court (in Danish: "rekonstruktion"), and

(b) a full bankruptcy under the supervision and authority of one or more trustees appointed by the bankruptcy court (in Danish: "konkurs").

Denmark does not participate in Council Regulation No 1346/2000 on bankruptcy, and this regulation is, therefore, not binding on Denmark nor can it be applied in Denmark.

Directive 2001/24/EC on the reorganisation and winding up of credit institutions has been implemented into Danish law by executive order no. 674 of 24 June 2004 (the "**Bank Executive Order**"). The Bank Executive Order applies to Danish banks, mortgage credit institutions and issuers of electronic money.

Moreover, Directive 2001/17/EC on the reorganisation and winding up of insurance companies has been implemented into Danish law by executive order no. 792 of 16 August 2005 (the "**Insurance Executive Order**"). The Insurance Executive Order applies to Danish insurance companies and pension funds (but not for reassurance business).

As a result of the Bank Executive Order and the Insurance Executive Order our analysis and conclusions in respect of certain of the issues you have asked us to address will depend on whether the Insolvency Proceedings affect banks (or mortgage credit institutions or issuers of electronic money) or insurance companies incorporated in Denmark (that is, an entity covered by either the Bank Executive Order or the Insurance Executive Order) or other Danish entities. When no specific distinction is made, our analysis and conclusions apply equally to entities covered by the Bank/Insurance Executive Order and other entities.

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

3.2 Recognition of choice of law

3.2.1 The choice of English law to govern the FOA Netting Agreement or, as the case may be, the Clearing Agreement will be recognised in

this jurisdiction even if neither Party is incorporated or established in England.

3.2.2 An Insolvency Representative or court in this jurisdiction would have regard to English law, as appropriate, as the governing law of the FOA Netting Agreement or, as the case may be, of the Clearing Agreement, in determining the 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.

3.3 Enforceability of a FOA Netting Provision

In relation to a 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.

We are of this opinion because:

Section 58h, Subsection 1 of the Securities Trading Act contains the main provision regarding close-out netting and has the following wording:

> *"An agreement may with legal effect towards third parties, subject, however to Subsections 3-6, contain a provision to the effect that the financial obligations, cf. Section 58e, as are governed by the agreement shall be netted through close-out netting, if one of the parties is in breach of the agreement, including that close-out netting shall take place, if a party becomes subject to insolvency proceedings, or execution is levied over a claim covered by the agreement on close-out netting. Insolvency proceedings mean bankruptcy, reconstruction proceedings, insolvent administration of the estate of the deceased, debt rescheduling and other Danish and foreign winding-up proceedings and reorganisation measures*

founded in the debtors insolvency as defined in Article 2(1), items (j) and (k) of Directive 2002/47/EC." [our underlining]

In transpires from the above that the bilateral netting rules are available for all "financial obligations" as defined in Section 58e of the Securities Trading Act and the Transactions will thus qualify for the bilateral netting rules only if they fall within the definition of financial obligations in Section 58e of the Securities Trading Act.

Section 58e, Subsection 2 of the Securities Trading Act defines "financial obligations" as obligations which give right to cash settlement or delivery of securities. However, if both parties in an agreement regarding close-out netting are covered by paragraph 1.2(f) above, then only obligations stemming from foreign exchange and securities trading, trading on commodities exchanges and lending and borrowing shall be considered financial obligations, cf. Section 58e, Subsection 3 of the Securities Trading Act. Moreover, if only one or none of the parties to an agreement on close-out netting is covered by paragraph 1.2(a)-1.2(f) only claims originating from trade in foreign currencies and securities shall be regarded as financial obligations.

The definition of financial obligations contains reference to the term "securities" which is defined in Section 2 of the Securities Trading Act. By way of Act No. 108 of 7 February 2007, the Danish Parliament adopted a bill which implemented into Danish law; *inter alia*, Directive 2004/39/EC on Markets for Financial Instruments ("**MiFID**"). Act No. 108 of 7 February 2007 entailed a change of Section 2 of the Securities Trading Act whereby the definition of securities is expanded in accordance with MiFID to include financial instruments which were previously not qualified as securities under Danish law. The new Section 2 of the Securities Trading Act entered into force on 1 November 2007.

The definition of securities is broad and includes most financial instruments, including:

- transferable securities which are negotiable on the capital market, including shares, bonds or other forms of securitised debts, other securities giving the right to acquire or sell such shares or bonds or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures,

- money-market instruments, including treasury bills, certificates of deposit and commercial papers, excluding instruments of payment,
- units in collective investment undertakings and professional associations,
- options, futures, swaps, forward rate agreements and other derivative contracts relating to securities, currencies, interest rates or yields,
- options, futures, swaps, forward rate agreements and other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties,
- options, futures, swaps, and other derivative contracts relating to commodities that can be physically settled provided that they are traded on a regulated market or a multilateral trading facility or otherwise have the characteristics of derivative financial instruments,
- derivative instruments for the transfer of credit risk,
- financial contracts for differences (CFDs),
- options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission permissions or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties, and
- negotiable mortgage deeds regarding real property or movables.

Pursuant to Section 2, Subsection 2 of the Securities Trading Act, the Danish Financial Supervisory Authority is authorised to decide that other instruments and contracts shall be covered by all or parts of the rules governing securities in the Securities Trading Act.

The definition of securities in Section 2 of the Securities Trading Act does not pertain to foreign exchange transactions, be it on a forward or spot basis, but the definition of financial obligations in Section 58e, Subsection 2 also pertains to netting with respect to claims stemming from trade in currencies as such claims give right to "cash settlement". As regards close-out netting agreements

where both parties are covered by paragraph 1.2(f) above or where only one or none of the parties is covered by paragraph 1.2(a) to 1.2(f), the relevant definition of financial obligations, cf. Section 58e, Subsection 3 and Subsection 4, respectively, of the Securities Trading Act explicitly refers to obligations stemming from foreign exchange trading.

There are to our knowledge no administrative rulings from the Danish Financial Supervisory Authority directly applicable to the interpretation of the current wording of Section 2 of the Securities Trading Act (in our view most of the rulings from the Danish Financial Supervisory Authority (previously the Danish Securities Council) regarding the interpretation of the previous wording of Section 2 of the Securities Trading Act are no longer relevant as the subsections to which they refer have been changed).

In our view, Transactions of the type mentioned in Annex 2 hereto would generally fall within the definition of financial obligations in Section 58e of the Securities Act and thus qualify for the bilateral netting rules. However, the description of certain of the Transactions in Annex 2 is wide and not very specific, and in order to fall within the definition of securities, the conditions set out in the wording of Section 2 of the Securities Trading Act would have to be satisfied. This would in particular apply to the Transactions listed in paragraph a(iii) and (v) in Annex 2.

Transactions relating to commodities, including physical commodity transactions would be considered securities according to Section 2 of the Securities Trading Act, provided that such Transactions (i) must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), (ii) can be physically settled provided that the commodity derivatives in question are traded on a regulated market or a multilateral trading facility or (iii) can be physically settled and not being for commercial purposes, and provided that the commodity derivatives have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are cleared and settled through recognised clearing houses or are subject to regular margin calls.

The effect of a Transaction falling outside the scope of the definition on financial obligations is that the Transaction will no be included in the close-out netting.

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or

otherwise affect the exercise of such rights by the Non-Defaulting Party.

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this paragraph 3.3 to apply.

3.4 Enforceability of the Clearing Module Netting Provision

In relation to a Clearing Agreement which includes the Clearing Module Netting Provision, the Clearing Module Netting Provision will be immediately (and without fulfillment 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.

We are of this opinion because of the reasons specified above in paragraph 3.3 as if references in that analysis to "FOA Netting Agreement " were references to "Clearing Agreement", references to "FOA Netting Provision" were references to "Clearing Module Netting Provision" and references to "Event of Default" were references to "Firm Trigger Event" or "CCP Default". Further because Section 58h, Subsection 2 of the Securities Trading Act provides that with legal effect towards the estate and creditors it may be agreed that in case of the occurrence of an event of default, close-out netting shall take effect when the non-defaulting party gives notice in this respect to the defaulting party.

Section 58h, Sub-section 2 of the Securities Trading Act further stipulates that if insolvency proceedings, as defined in Section 58h, Subsection 1 of the Securities Trading Act, are commenced against the defaulting party, this party may demand that close-out netting is effected so that the parties are put in a position as if the close-out netting had occurred without undue delay after the time when the non-defaulting party knew or should have known that the defaulting party became subject to insolvency proceedings (reference is also made to our opinion in paragraph 3.13 below for a further description).

Regardless of whether the Firm Trigger Event or CCP Default applies the restrictions as to what financial obligations may be included in the close-out netting apply according to Section 58h, Subsections 3-6 of the Securities Trading Act (reference is made to our opinion in paragraph 3.3 above for a further description of those provisions).

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.

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

3.5 Enforceability of the Addendum Netting Provision

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.

We are of this opinion because of the reasons stated above in paragraph 3.4 as if references to "Clearing Module Netting Provision" were references to "Addendum Netting Provision" and references to "Firm Trigger Event" were references to "CM Trigger Event".

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 Addendum Netting Provisions.

No amendments to the Addendum Netting Provision are necessary 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 question as to whether the FOA Netting Provision will, to the extent inconsistent with the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision,

be superseded by the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision would be determined under the governing law of the Clearing Agreement.

3.7 Enforceability of the FOA Set-Off Provisions

3.7.1 In relation to 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:

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

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

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

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

We are of this opinion because:

Prior to the commencement of Insolvency Proceedings, the general rule of freedom of contract will, from a Danish law perspective, apply between the parties, meaning that a Danish court would generally uphold an agreement between the Parties validly entered into.

Consequently, the Parties are free to agree on set-off arrangements and such arrangements are thus binding as between the Parties even if the agreed set-off rights widen or restrict the rights of set-off which would otherwise follow by law, including the general principles of set-off under Danish law.

In the case of Insolvency Proceedings the following will apply:

Section 42 of the Danish Bankruptcy Act has the following wording:

> *"A party, who, at the date of notice, had a claim against the debtor may apply such claim, notwithstanding that it has not yet fallen due, in a set-off with its full amount against the debt owing to the debtor unless set-off is barred by the natures of the claims involved.*
>
> *(2) Set-offs between claims, which have both been obtained after the date of notice but prior to pronouncement of the adjudication order may be made under the provisions of the foregoing subsection 1.*
>
> *(3) A claim against the debtor acquired from a third party by assignment or legal process later than three months before the date of notice may not be set-off against a claim, which the debtor had when the other party acquired his claim. The same applies where such acquisition has occurred earlier and the assignee knew or ought to have known at the time that the debtor was insolvent.*
>
> *(4) A set-off may not be applied where the debtor's claim against the other contracting party has been acquired under such circumstances that the acquisition for set-off purposes must be deemed to constitute avoidable payment."*

The paramount requirement set out in Section 42 of the Danish Bankruptcy Act is that in order for a party to be able to set-off its claim against the other party, (i) the obligations of both parties must either have come to effect prior to the date the bankruptcy petition/application for reconstruction was filed against or by the Firm or the Client (as the case may be) (the "Relevant Date") or (ii) the obligations of both parties must have come into effect after the Relevant Date but prior to the pronouncement of the adjudication order. Otherwise, set-off would be precluded.

Section 42, Subsection 1 of the Danish Bankruptcy Act explicitly stipulates that set-off may be effected irrespective of whether the Firm's claim against the Client had fallen due on the Relevant Date.

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

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 fulfillment 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:

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

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

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

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

We are of this opinion because of the reasons stated in paragraph 3.7.1 above. Reference is also made to our opinion in paragraph 3.6 above.

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

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 Provisions, insofar as constituting part of the Clearing Agreement), the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that the Firm would be immediately entitled to exercise its rights under the Clearing Module Set-Off Provision, and in particular,

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 because of the reasons stated above in paragraph 3.7.1 above as if references in that analysis to "FOA Netting Agreement " were references to "Clearing Agreement", references to "FOA Set-Off Provision" were references to "Clearing Module Set-Off Provision" and references to "Event of Default" were references to "Firm Trigger Event or a CCP Default". Reference is also made to our opinion in paragraph 3.6.

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 because of the reasons stated above in paragraph 3.7.1 above. Reference is also made to our opinion in paragraph 3.6.

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

3.10 Enforceability of the Title Transfer Provisions

3.10.1 In relation to a FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions where the Client is a Defaulting Party, following the specification or deemed occurrence of a Liquidation Date, the Non-Defaulting Party would be 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.

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 Danish rules on financial collateral are found in Chapter 18a of the Securities Trading Act. Financial collateral arrangements are defined in Section 58a, subsection 1 as an arrangement between parties referred to in Section 58b (corresponding to the counterparty types set out in paragraph 1.2(a) to 1.2(f) above) regarding provision of financial collateral for financial obligations (as described in our opinion in paragraph 3.3 above) consisting of collateral covered by Section 58 f (cash (meaning cash credited to an account), credit claims or securities covered by Section 2, subsection 1, nos. 1-3 of the Securities Trading Act.

It follows from Section 58k, Subsection 1 of the Securities Trading Act that as regards the act of perfection and realisation the Danish courts should not re-characterise title transfers in respect of posting of collateral as the creation of a security interest or a pledge, provided that the cash or securities which are being used as financial collateral in a financial collateral arrangement are covered by Section 58f of the Securities Trading Act.

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:

(a) 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

(b) 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 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. In our view, the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and Transactions are part of a single agreement.

3.13 Automatic Termination

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 bankruptcy, liquidation, or other similar circumstances.

We are of this opinion because:

Section 58h, Subsection 2 of the Securities Trading Act provides that with legal effect towards the estate and creditors it may be agreed that in case of the occurrence of an Event of Default, close-out netting shall take effect when the Non-Defaulting Party gives notice in this respect to the Defaulting Party. Section 58h, Subsection 2 further stipulates that if insolvency proceedings as defined in Section 58h, Subsection 1 are commenced against the Defaulting Party, this Party may demand that close-out netting is effected so that the Parties are put in a position as if the close-out netting had occurred without undue delay after the time when the Non-Defaulting Party knew or should have known that the Defaulting Party became subject to Insolvency Proceedings.

Certain restrictions as to what financial obligations may be included in a close-out netting apply according to Section 58h, Subsections 3 to 6 of the Securities Trading Act (reference is made to the description thereof in paragraph 3.3 above).

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.

3.15 Insolvency of Foreign Parties

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") there can be no separate Insolvency Proceedings in this jurisdiction in relation to the Foreign Defaulting Party and the authorities in this jurisdiction would defer to the proceedings in the Foreign Defaulting Party's home jurisdiction.

The Danish branch of a company incorporated outside of Denmark cannot be declared bankrupt in Denmark, as the branch is not a separate legal entity under Danish law. Accordingly the netting rules and rules on financial collateral in this jurisdiction will not be applicable towards a Danish branch of a company incorporated outside of Denmark after insolvency proceedings have been initiated towards the company incorporated outside of Denmark as the Danish branch will be part of insolvency proceedings which will not be governed by Danish law.

3.16 Special legal provisions for market contracts

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

4.1 The opinions in this opinion letter are made subject to the following qualification:

(a) The provisions on bilateral netting (as well as the rules on financial collateral arrangements) are found in Chapter 18a of the Securities Trading Act having effect on agreements entered into on or after 1 January 2004 (the "New Regime").

(b) FOA Netting Agreements or as the case ma y be Clearing Module Agreements entered into prior to 1 January 2004 will remain subject to the netting regime under Section 58 of the

then applicable Danish Securities Trading Act (the "Old Regime"). The Old Regime was statutorily enacted with effect from 1 January 1996 by Act No. 1072 of 20 December 1995 on Trading in Securities. This legislation was part of a stock exchange reform which inter alia implemented the EU Investment Service Directive No. 93/22/EEC of 10 May 1993 and parts of the Capital Adequacy Directive into Danish law.

(c) In this opinion we consider FOA Netting Agreements or as the case may be Clearing Module Agreements entered into on or after 1 January 2004 (that is, regulated by the New Regime).

(d) Close-out netting may be also be bilaterally agreed under the Old Regime, however, the bilateral netting rules under the Old Regime are only available for claims stemming from foreign exchange and securities trading. With respect to the definition of "securities" reference is made to paragraph 3.3 above elaborating on the definition under Section 2 of the Securities Trading Act. Thus, the main difference between the Old Regime and the New Regime as regards scope of netting is that netting under the Old Regime does not cover all claims which give rise to cash settlement.

(e) Another main difference between Old Regime and New Regime is that automatic termination would have to be agreed under the Old Regime and in any event close-out netting must according to the Old Regime occur as of the date of filing for reconstruction proceedings or, as the case may be, the date of the bankruptcy decree, or generally the date of the opening of negotiations for a statutory composition scheme as decided by the probate court.

(f) As the Securities Trading Act after implementing the Financial Collateral Directive has solved a number of the issues and uncertainties, including adopting a possibility for giving notice on termination in case of insolvency, relevant for a FOA Agreement entered into prior to 1 January 2004, parties to a FOA Agreement entered into prior to 1 January 2004 may wish to be covered by the new rules in Chapter 18a of the Securities Trading Act. The preparatory remarks do not contain any specific rules as to what is required in this respect. In our view it will be sufficient for the parties to such FOA Agreement or as the case may be the Clearing Module Agreement to sign an addendum to the FOA Agreement or as the case may be the Clearing Module Agreement after 1 January 2004 including the following:

"The parties hereby confirm the terms of the [specification of existing Agreement] dated [ ] between them (the "Agreement") and confirm by their signature to this addendum that the Agreement as amended by this addendum including all Transactions covered by the Agreement and entered into prior to the date hereof (details of which are set out in the appendix hereto) shall be covered by Chapter 18a of the Danish Securities Trading Act (Consolidation Act No. 982 of 9 August 2013 as amended) on Financial Collateral Arrangements and Close-out Netting, etc."

4.2 The opinion in paragraph 3.1.3 of this opinion letter is made subject to the following qualification:

(a) The events specified in the Insolvency Events of Default clause adequately refer to Insolvency Proceedings, in the sense that no additions are necessary.

(b) We note however that a mere failure to make payments under an agreement or to take delivery of any property when due under, or to observe or perform any other provision of an agreement after notice of non-performance which is included in the definition does not qualify as an Insolvency Proceeding under Danish insolvency rules.

4.3 The opinions in paragraph 3.2 in this opinion letter are made subject to the following qualification:

(a) Danish public policy (ordre public) and the mandatory rules of the laws of any country with which the transaction has a significant connection, if, and in so far as under the laws of that country, those rules must be applied whatever the chosen law, under Articles 3(3), 7 and 16 of the Convention on the Law Applicable to Contractual Obligations dated 19 June 1980 (the "Rome Convention"). With the modifications set out in this paragraph, a Danish court would in our view apply Danish procedural laws in case of enforcement through the Danish courts as provided by inter alia the Danish Administration of Justice Act and the Danish Bankruptcy Act, and the netting provisions of Consolidation Act No 982 of 6 August 2013 on Securities Trading (the "Securities Trading Act"), in case of Insolvency Proceedings affecting a Danish Party.

(b) The choice of English law to govern the Transactions under the FOA Netting Agreement or as the case may be, of the Clearing Agreement, may not be upheld by the courts of

Denmark in respect to any non-contractual obligations arising out of such as:

(i) Regulation (EC) No. 864/2007 of 11 July 2007 (the Rome II Regulation) does not apply to Denmark (on account of the general Danish opt-out (cf. The European Council's Edinburgh Decision of 12 December 1992 and the Protocol to the Treaty of Amsterdam on the position of Denmark)); and

(ii) according to Danish principles of private international law, a choice of law agreement in respect of non-contractual obligations entered into before the event giving rise to the damage has occurred may not be enforceable.

(c) As mentioned in paragraph 3.1.2 above, Denmark does not participate in Council Regulation No 1346/2000 on bankruptcy, and this regulation is, therefore, not binding on Denmark nor can it be applied in Denmark. On this basis we are of the view that in case of Insolvency Proceedings affecting a Danish Party that is not covered by the Bank Executive Order or Insurance Executive Order, Danish substantive law (that is, the Danish Bankruptcy Act and the netting provisions of the Securities Trading Act) as described in paragraph 3.3 above will apply on the determination of the enforceability of the 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.

(d) Insolvency Proceedings affecting a Danish Party which is covered by the Bank Executive Order:

As mentioned in paragraph 3.1.2 above, Directive 2001/24/EC on the reorganisation and winding up of credit institutions has been implemented into Danish law by the Bank Executive Order which applies to Danish banks, mortgage credit institutions and issuers of electronic money.

It transpires from recitals (16) and (17) and Article 10 of the Directive that the Directive respects *lex concursus* as the law generally applicable on Insolvency Proceedings with certain exceptions listed elsewhere in the Directive.

It follows from Article 10(2), item c) of the Directive that if a credit institution becomes subject to Insolvency Proceedings the law of the home Member State shall determine the conditions under which set-offs may be invoked. Article 23 modifies this rule by stating that Insolvency Proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of a credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim. In addition, Article 10(2), item c) is modified by Article 25 which stipulates that netting agreements shall be governed solely by the law of the contract which governs such agreements. In our opinion Article 25, which is implemented into Danish law by Section 19 of the Bank Executive Order, as *lex specialis*, applies to the FOA Agreement or as the case may be the Clearing Agreement. In our opinion and although to our knowledge there is no relevant published court practice, this entails that in case of Insolvency Proceedings in respect of a Danish bank, mortgage credit institution or issuer of electronic money, the enforceability of the 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, will depend on the governing law of the FOA Agreement or as the case may be the Clearing Agreement (and not Danish law, being the law where the Insolvency Proceedings are carried out).

(e) Insolvency Proceedings affecting a Danish Party which is covered by the Insurance Executive Order:

As mentioned in paragraph 3.1.2 above Directive 2001/17/EC on the reorganisation and winding up of insurance companies has been implemented into Danish law by the Insurance Executive Order which applies to Danish insurance companies and pension funds (but not for reassurance business).

It transpires from recital (11) and Article 9 of the Directive that the Directive respects *lex concursus* as the law generally applicable on Insolvency Proceedings with certain exceptions listed elsewhere in the Directive.

It follows from Article 9(2), item c) of Directive 2001/17/EC that if an insurance company becomes subject to Insolvency Proceedings the law of the home Member State shall determine the conditions under which set-offs may be invoked. Article 9(2), item c) is not explicitly implemented in

the Insurance Executive Order but the same principles will in our view apply as a matter of general Danish law. Article 22 (implemented into Danish law in Section 15 of the Insurance Executive Order) modifies this rule by stating that Insolvency Proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of an insurance company, where such a set-off is permitted by the law applicable to the insurance company's claim. A rule similar to Article 25 of Directive 2001/24/EC covering credit institutions is not included in Directive 2001/17/EC.

In the absence of any clear authority in the Insurance Executive Order we are of the opinion that Articles 9(2), item c) and 22 in Directive 2001/17/EC on set-off cannot be considered applicable on the determination of the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision upon the insolvency of a Danish insurance company or pension fund. As a consequence thereof, we are of the view that in such cases Danish substantive law (that is, the Danish Bankruptcy Act and the netting provisions of the Securities Trading Act) as described in paragraph 3.3 above will apply on the determination of the enforceability of the 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. To our knowledge there is no relevant published court practice.

4.4 The opinions in paragraph 3.3 above of this opinion letter are made subject to the following qualification:

(a) The Non-Defaulting Party would be entitled to cancel, rescind or terminate all outstanding Transactions with a Defaulting Party, and the Insolvency Representative would not under Danish law be able to require selective performance of particular Transactions. Moreover, the Non-Defaulting Party would be entitled to net any losses payable by it to the Defaulting Party on Transactions profitable to the Defaulting Party in respect of cancelled Transactions, regardless of the currency of those losses subject, however, to the modifications set out in Section 58h, Subsections 3 to 6 of the Securities Trading Act which contains certain restrictions on which financial obligations may be subject to close-out netting in case of insolvency proceedings.

Section 58h, Subsections 3 to 6 has the following wording:

"Subsection 3. A final discharge covered by Subsection 1, which is effected after the defaulting party has been made subject to reconstruction proceedings, may include claims, which have come into existence prior to the time when the non-defaulting party knew or ought to have known the circumstances establishing the suspect date, cf. Section 1 of the Bankruptcy Act.

Subsection 4. A final discharge covered by Subsection 1, which is effected after the defaulting party has been declared bankrupt, may include claims, which have come into existence prior to the time when the non-defaulting party knew or ought to have known the circumstances establishing the suspect date, cf. Section 1 of the Bankruptcy Act. Claims that came into existence after the expiry of the day where the bankruptcy was announced in the Official Gazette can, however, not be included in a close-out netting.

Subsection 5. A claim, which is covered by the provisions in Section 42, Subsections 3 and 4 of the Bankruptcy Act, can be included in a close-out netting pursuant to Subsection 1, unless the non-defaulting party knew or ought to have known that the defaulting party was insolvent when the claim vis-à-vis the defaulting party was acquired or came into existence respectively.

Subsection 6. Close-out netting pursuant to Subsection 1 is only voidable pursuant to Section 69 of the Bankruptcy Act if the final discharge covered claims which could not have been included in an agreed close-out netting in case of bankruptcy, cf. Subsections 4 and 5."

Section 58d of the Securities Trading Act provides that the calculation of the relevant financial obligations, which are being netted, must be conducted in a commercially reasonable manner.

According to Section 40, Subsection 2, of the Danish Bankruptcy Act any amounts in a foreign currency filed against a Danish bankruptcy estate shall be converted into Danish Kroner at the exchange rate prevailing on the date of pronouncement of the bankruptcy decree. This rule will override contractual conversion provisions.

We also refer to paragraph 3.1.2 above for a description of the Bank Executive Order applicable to banks, mortgage credit

institutions and issuers of electronic money under which questions regarding netting agreements shall be determined by the law governing the netting agreement.

Subject to the paragraphs above, the FOA Netting Agreement a single obligation, covering all Transactions under the FOA Netting Agreement, such that, if an Event of Default resulting from an Insolvency Proceeding occurs in relation to a Danish Party which results in close-out against that Party in accordance with the FOA Netting Agreement, the Non-Defaulting Party would have a claim or obligation, respectively, to receive or pay only the net sum of the positive and negative mark-to-market values of the Transactions.

4.5 The opinions in paragraph 3.7.1 are subject to the following qualifications:

(a) Pursuant to the Danish Act on Contracts, Consolidation Act No. 781 of 26 August 1996, the terms of an agreement may be modified or set aside by a court to the extent that such terms are deemed to be unreasonable even if the circumstances giving rise thereto have arisen after the FOA Netting Agreement in question was entered into; and

(b) The rules in the Rome Convention as further described in paragraph 4.3(a) above, as the FOA Netting Agreement is made subject to the laws of England.

(c) Under the general rules on set-off under Danish law, one of the conditions to be fulfilled in order for a creditor to apply set-off is that equalisation of the claims must be possible i.e. cash against cash. This condition is generally considered also to apply for set-off in insolvency pursuant to Section 42 of the Danish Bankruptcy Act although it is not entirely clear under Danish law at what time the condition on equalisation of claims must be fulfilled. There is – based on certain remarks in the preparatory works to Section 42 of the Danish Bankruptcy Act and by Danish legal scholars – a risk that the Danish courts would find that the equalisation condition must be fulfilled at the Relevant Date. An interpretation of Section 42 of the Danish Bankruptcy Act whereby the equalisation condi-tion must be fulfilled at the Relevant Date in our view implies that the claims under the FOA Agreement must be cash claims at the Relevant Date (as opposed to claims for delivery of securities or commodities). We believe that this condition would be fulfilled in respect of a claim for delivery of securities or commodities if, pursuant to the terms of the

Transaction in question, cash settlement of the delivery obligation from time to time is possible. If, on the other hand, certain claims under Transactions are not cash claims at the Relevant Date and do not allow for cash settlement, there is a risk that the equalisation condition will not be considered fulfilled which entails a risk of the Firm not being able to effect the set-off.

Set-off is only available for claims between the Firm and the relevant Client. Pursuant to Section 42 (3) of the Danish Bankruptcy Act set-off is not permitted if the Firm has acquired its claim against the Client from a third party later than three months before the Relevant Date. The same applies where such acquisition has occurred earlier and the Firm knew or ought to have known at the time that the Client was insolvent. The Danish courts will look to the facts on a case by case basis to determine whether the Firm "ought to have known" at the time that the Client was insolvent. It is generally held that the burden of proof in this respect lies with the bankruptcy estate.

Generally, set-off will not be allowed if prohibited by other mandatory legislation relating to the claim, i.e. if the claim is voidable.

If the above requirements are met set-off of amounts owed under the FOA Netting Agreement may be effected against the Client's bankruptcy estate, however, subject to the Firm delivering notice of set-off to the bankruptcy estate.

Moreover, we note that even if the set-off takes place prior to the bankruptcy of the Client, the voidance rule in Section 69 of the Danish Bankruptcy Act may apply if the Client becomes subject to Insolvency Proceedings. Section 69 of the Danish Bankruptcy Act provides that the provisions on avoidable payments are equally applicable to set-off if set-off according to Section 42 of the Danish Bankruptcy Act could not have taken place after the bankruptcy decree. Thereby the set-off completed prior to the insolvency of the Client can in certain circumstances be reversed if the set-off could not have been completed if the Client had entered into bankruptcy prior to the set-off. Furthermore, Section 69 provides that if set-off has been effected with the claim on the debtor which had been acquired from a third party by assignment of legal process and the assignee knew or ought to have known at the time that the debtor was insolvent, such set-off is always voidable.

According to Section 40, Subsection 2, of the Danish Bankruptcy Act any amounts in a foreign currency filed against a Danish bankruptcy estate shall be converted into Danish Kroner at the exchange rate prevailing on the date of pronouncement of the bankruptcy decree. This rule will override contractual conversion provisions.

4.6 The opinions in paragraph 3.10 are subject to the following qualifications:

Section 58k, Subsection 1 applies to title transfer financial collateral arrangement as regards the act of perfection and realisation. However, Section 58k, Subsection 1 does not apply to title transfer financial collateral arrangement as regards the voidance rules in the Danish Bankruptcy Act. This is explicitly mentioned in the preparatory remarks to the bill implementing the Financial Collateral Directive into Danish law. The general rule under Danish law is that the substance of an agreement is the decisive factor in determining whether an agreement constitutes a title transfer or a pledge. If the Transferee's primary interest is the realisation value of the asset, the agreement will under Danish law generally be characterised as a pledge even though the parties have characterised the agreement as a title transfer. Thus, if the Margin is securing pre-existing debts or otherwise improperly favours the Non-Defaulting Party at the expense of other creditors, the Danish courts are likely to treat the Margin as a pledge in relation to the voidance rules.

The voidance rules in the Danish Bankruptcy Act as modified by the Danish Securities Trading Act will thus apply to the Title Transfer Provisions in case of insolvency proceedings being conducted with regards to a Danish Party. This means that there is a risk that a title transfer which de facto is a security interest will be treated as a security interest, pledge, etc., in the insolvency proceedings. Thereby there is a risk that the security interest in fact created by the title transfer will be voidable under Danish law if the act of perfection to be complied with in order to obtain a valid security interest in the jurisdiction where the collateral is located is not complied with.

The voidance rules in the Danish Bankruptcy Act are to some extent modified by the Danish Securities Trading Act in respect of substitution of collateral posting of additional Collateral and rights of use. In these situations the following will apply:

Substitution of collateral:

According to Section 58m of the Securities Trading Act, which implemented Article 8(3) of the Financial Collateral Directive into Danish law, a pledgor may by way of agreement with the secured party substitute financial collateral with other financial collateral of substantially the same value. If the replacement financial collateral has been provided at the latest simultaneously with the pledgor regaining its right to dispose over the substituted financial collateral, then the replacement financial collateral may only be voided if the substituted financial collateral was voidable.

Therefore, the substitution of the securities collateral during the so-called "Suspect Period" (i.e. the three-month period (or two years if between related parties) preceding the Relevant Date) will not invalidate the collateral, if the replacement securities collateral are of substantially the same value as the substituted securities collateral, provided that the substitute securities collateral are posted either simultaneously with or prior to the release of the securities collateral. If the securities collateral are released prior to the posting of the replacement securities collateral, such posting of the replacement securities collateral will be considered as the provision of new financial collateral and thus subject to being set aside under Section 70 of the Danish Bankruptcy Act. In order to remove any risk of invalidation of the replacement securities Collateral, the Firm must ensure that no release of securities collateral is to take place unless it is simultaneous with the posting of the replacement securities collateral. If the replacement securities collateral are of substantially greater value than the securities collateral released, the entire excess (but only the excess) securities collateral may likewise be subject to being set aside under Section 70 of the Danish Bankruptcy Act.

In relation to the provision of cash collateral over money credited to a bank account, new deposits made by the Client will automatically form part of the collateral, if the agreement on such financial collateral is drawn up in a way that the collateral include deposits made at the specified bank account at any time. In our view such additional deposits will not be viewed as substitution of collateral and will therefore in our view not be covered by the criteria of "substantially same value" in Section 58m of the Securities Trading Act. Therefore, any additional collateral may be challenged pursuant to Section 70 of the Danish Bankruptcy Act. Even if the deposit cannot be challenged according to Section 70, it may be challenged as a voidable payment, if the Firm has received the additional deposit under such circumstances that the deposit can be compared to a direct payment. According to Section 67 of the Danish Bankruptcy Act, a payment that has materially reduced the debtor's ability to satisfy his debts and did not appear as ordinary is

voidable, if it took place during the Suspect Period. In this situation "ordinary" means that the deposit has been made as a normal part of the operations of the Client, and not only with a view to creating a payment possibility for the Firm in anticipation of the bankruptcy.

The preparatory remarks to Section 58m of the Securities Trading Act do not contain any further guidance as to what constitutes collateral of "substantially" the same value.

Posting of additional collateral

According to Section 58l, Subsection 1 of the Securities Trading Act, which implemented Article 8(3) of the Financial Collateral Directive into Danish law, a financial collateral arrangement may include a provision to the effect that the parties are obliged to provide collateral or additional collateral in order to take account of changes in the value of the collateral or amount of the financial obligations covered by the agreement, provided that the changes have occurred after the agreement was entered into and provided that the changes are caused by circumstances relating to market conditions, for example interest changes and changes in prices of securities and foreign exchange, whereas changes to the creditworthiness of the collateral service provider falls outside the scope of Section 58l. It transpires from Section 58l, Subsection 2 that if the collateral provided pursuant to Section 58l, Subsection 1 has been provided without unnecessary delay after the Firm could demand such collateral to be provided pursuant to the terms of the Agreement, then the collateral cannot be voided pursuant to Sections 70 and 72 in the Danish Bankruptcy Act.

However, the collateral may be voided pursuant to Section 72 of the Danish Bankruptcy Act if the collateral, when taking the circumstances in respect of the collateral into consideration, did not appear ordinary. In this situation "ordinary" means that the provision of the collateral has been made as a normal part of the operations of the Client, and not only with a view to providing further collateral to the Firm in anticipation of the bankruptcy.

If, on the other hand, the collateral is not provided without unnecessary delay after the Firm could demand such Collateral to be provided pursuant to the terms of the FOA Netting Agreement or if the collateral is provided for pre-existing debts, then the collateral will be subject to the voidance rules in Sections 70 and 72 in the Danish Bankruptcy Act. Under these circumstances the occurrence of Insolvency Proceedings may have as a consequence that the posting of additional collateral from the Client to the Firm

be set aside in accordance with Section 70 of the Danish Bankruptcy Act if the act of perfection was taken later than the Relevant Date. If the additional Collateral exceeds the increase in the mark-to-market value, the excess collateral may be subject to being set aside under Section 70 of the Danish Bankruptcy Act.

Section 58l, Subsection 2 of the Securities Trading Act does not limit the scope of Section 74 of the Danish Bankruptcy Act. Section 74 of the Danish Bankruptcy Act is the "general clause" of the Danish voidance rules and stipulates that any disposition which unduly favours a creditor to the detriment of the other creditors, or whereby the debtor's property is prevented from serving the purpose of satisfaction of the creditors, or whereby his debts are increased to the detriment of the creditors, may be declared void if the debtor was or, through the disposition, became insolvent, and the party favoured knew or ought to have known about the debtor's insolvency and the circumstances that made the disposition improper. It is the bankruptcy estate, which must prove that the favoured party knew or ought to have known about the debtor's insolvency and the circumstances that made the disposition improper. If these requirements are met, then the Collateral may be in risk of invalidation.

Right of use:

According to Section 58g, Subsection 1 of the Securities Trading Act, which implemented Article 5 of the Financial Collateral Directive into Danish law, a security transfer financial collateral arrangement may include provisions on rights of use whereby the collateral taker, in accordance with the terms of such security transfer financial collateral arrangement, may transfer the collateral provided to a third party by way of a title transfer or a transfer by way of security. It transpires from Section 58g, Subsection 2 that if a collateral taker has exercised a right to use financial collateral, then the collateral taker must redeliver equivalent collateral at the latest at the point in time where the secured obligations become due. The redelivered collateral is deemed to be provided in accordance with the financial collateral arrangement at the same time as the original collateral which has as a consequence that the redelivered collateral cannot be declared void pursuant to Section 70 of the Danish Bankruptcy Act in case of the security collateral provider's bankruptcy.

Section 58g, Subsection 3 of the Securities Trading Act provides that any redelivery of collateral pursuant to Section 58g, Subsection 2 can only be declared void under the conditions in Section 74 of the Danish Bankruptcy Act. Section 74 of the Danish Bankruptcy

Act is the "general clause" of the Danish invalidation rules and stipulates that any disposition which unduly favours a creditor to the detriment of the other creditors, or whereby the debtor's property is prevented from serving the purpose of satisfaction of the creditors, or whereby his debts are increased to the detriment of the creditors, may be declared void if the debtor was or, through the disposition, became insolvent, and the party favoured knew or ought to have known about the debtor's insolvency and the circumstances that made the disposition improper. It is the bankruptcy estate, which must prove that the favoured party knew or ought to have known about the debtor's insolvency and the circumstances that made the disposition improper.

It transpires from the above that, as a matter of Danish law, the Firm and the Client can agree that the Firm has broad rights with respect to the use of the Collateral, e.g. rehypothecating or pledging the securities without affecting the validity of a validly created and perfected pledge. Any creditor or contracting party must respect such an agreement between the Counterparty and the Firm, provided that the appropriate act of perfection as applicable under Danish principles of lex rei sitae has been complied with.

With the above mentioned modifications, the relevant voidance rules in the Danish Bankruptcy Act have the following content.

The pledge by the Client to the Firm under the FOA Netting Agreement may be set aside (declared void) in accordance with Section 70 of the Danish Bankruptcy Act if the Security Interest was not granted to the Firm when the debt was incurred, or if the act of perfection was effected with unnecessary delay after the creation of the debt, always provided that the act of security was later than a date falling three months before the Relevant Date. Any delay in the perfection of the Security Interest not caused by the processing of the filing of the perfection or any other required act of security will be deemed to constitute an unnecessary delay. The three-month period (or two years if between related partied) preceding the Relevant Date is considered the "Suspect Period" and all transfers of security for pre-existing debts made within that period may be set aside by the liquidator. The applicability of Section 70 is not dependent on the knowledge of the Firm of the impending bankruptcy.

The requirement that the Security Interest must be granted to the Firm when the debt was incurred is unconditional as any unnecessary delay will have the effect that the Security Interest may be subject to be set aside under Section 70 of the Danish Bankruptcy Act.

If title is transferred in accordance with our statements above, a Party shall be entitled to use or invest for its own benefit, without restriction, any margin transferred to it pursuant to the Title Transfer Provisions of an FOA Netting Agreement (with Title Transfer Provisions), however, subject, to what is stated above, and subject to it being clearly stated in the transfer instructions that a transfer of title and not the creation of a security interest is to take place and is registered as such. We note for the sake of good order that the lex rei sitae of Margin will not have any influence on whether the Title Transfer Provisions as such would be recognized under Danish law.

4.7 We note that in respect of porting under the Clearing Agreement the following applies under Danish law:

Subject to Insolvency Proceedings (as described below), Danish law permits the parties to agree that a default by a Clearing Member shall entail that the transactions between the Clearing Member and the CCP may be ported. Such agreement would be binding on the Clearing Member and accordingly neither the Clearing Member nor any other relevant person would be able to successfully claim against CCP of the amount originally due from it.

Upon a Firm Trigger Event derived from Insolvency Proceedings, mandatory rules of the Danish Bankruptcy Act will apply. Section 55(1), cf. section 53 of the Danish Bankruptcy Act provides that the bankruptcy estate has the right to step into mutually binding agreements (in Danish: "gensidigt bebyrdende afaler"), unless otherwise provided by law or due to the nature of the legal relationship (in Danish: "retsforholdets beskaffenhed").

Thus it must be considered whether the right for the bankruptcy estate of an insolvent Clearing Member incorporated in Denmark to step into mutually binding agreements will overrule the ability to "port" (that is, economically transfer) Contracts together with the collateral provided to another clearing member of the Agreed CCP.

Examples where other legislation overrules the above provisions of the Danish Bankruptcy Act include the rules on netting and provision of financial collateral in the Danish Securities Trading Act, however, there is no similar explicit Danish legislation concerning portability.

EU Regulation 648/2012 ("EMIR") provides in preamble 64 that:

> *"For this reason, CCPs should keep updated and easily identifiable records, in order to facilitate the transfer of the*

positions and assets of a defaulting clearing member's clients to a solvent clearing member or, as the case may be, the orderly liquidation of the clients' positions and the return of excess collateral to the clients. The requirements laid down in this Regulation on the segregation and portability of clients' positions and assets should therefore prevail over any conflicting laws, regulations and administrative provisions of the Member States that prevent the parties from fulfilling them."

The body text of EMIR does not contain provisions to the same effect.

A draft version of EMIR contained language to the effect that the CCPs must ensure that it is possible to transfer positions and assets to another clearing member and that the provisions to that effect prevails over any conflicting laws, regulations and administrative provisions of the Member States that prevent the parties from fulfilling them.

The text of the preamble of EMIR is in our view not in itself sufficient authority to override the general rule in the Danish Bankruptcy Act.

However, on balance portability of transactions of an insolvent Clearing Member incorporated in Denmark in respect of the relevant agreement with another clearing member of the Agreed CCP to would in our view most likely be enforceable, provided that the insolvent Clearing Member is economically in the same or better position as a result of the porting of the positions to the Back-up Client Clearing Member as it would have been if the Contracts had been closed-out. We base our view on the following:

The Danish Securities Trading Act (implementing the Financial Collateral Directive) contains specific provisions on the enforceability of close-out netting of transactions (please refer to our opinion in paragraph 3.3 above).

The same arguments that speak in favour of permitting close-out netting of transactions on the bankruptcy of a Clearing Member can be made in favour of portability of such transactions to a Back-up Client Clearing Member. This is underlined by preamble 64 of EMIR.

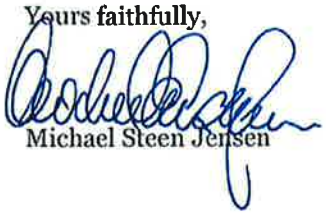
The full purpose of EMIR will not be achieved if enforceability of porting of transactions is not recognised and it would not be meaningful to permit an insolvent entity to step into positions with

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

This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options Association's opinion library (and whose terms of subscription give them access to this opinion). This opinion may not be relied upon by any other person unless we otherwise specifically agree with that person in writing, although we consent to it being shown to such Futures and Options Association members' affiliates (being members of such persons' groups, as defined by the UK Financial Services and Markets Act 2000) and to any competent authority supervising such member firms and their affiliates in connection with their compliance with their obligations under prudential regulation.

Yours faithfully,



Michael Steen Jensen

Schedule 1 – Public Authorities

Subject to the modifications and additions set out in this Schedule 1, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are public authorities. For the purpose of this Schedule 1 "public authorities" means the Danish State and local authorities such as a municipality (in Danish: "kommune") or a region

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 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:

Insolvency Proceedings: Public Authorities

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

The Danish Bankruptcy Act is generally not considered applicable on the Danish State, including ministries and government authorities forming part of the Danish State and such entities cannot be made subject to bankruptcy proceedings in accordance with the Bankruptcy Act.

The Danish Act on Local Government, Consolidation Act No. 971 of 25 July 2013, with later amendments (the "**Local Government Act**"), regulates the activities of Danish municipalities. The Danish Bankruptcy Act does, however, not include any express provisions on whether a Danish municipality may be the subject of bankruptcy proceedings in accordance with the Bankruptcy Act or any other similar proceedings under Danish law.

However, it is the general view among Danish scholars that a Danish municipality cannot become subject to Insolvency Proceedings under the Danish Bankruptcy Act because it forms part of the administrative structure of the Danish State.

2 Additional qualifications

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

Our analysis on the validity and enforceability of the close-out netting provisions, the Set-Off Provisions and the Title Transfer Provisions is subject to the general qualification that it in our opinion is highly unlikely that a Insolvency Event can occur under Danish law with respect to a Danish municipality.

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Schedule 2 – Natural Persons

Subject to the modifications and additions set out in this Schedule 2, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Natural Persons. For the purposes of this Schedule 2, "Natural Persons" comprises both individuals conducting business as a one-man business organised in Denmark under the Act on Undertakings Carrying on Business for Profit and individuals which are not conducting business activities.

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 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:

Insolvency Proceedings: Natural Persons

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

(a) a reconstruction carried out under the supervision and authority of one or more supervisors appointed by the bankruptcy court (in Danish: "rekonstruktion"), and

(b) a full bankruptcy under the supervision and authority of one or more trustees appointed by the bankruptcy court (in Danish: "konkurs").

Natural Persons may, in addition to the above, become subject to the following insolvency proceedings:

(a) the administration of the insolvent estate of a deceased person carried out pursuant to the rules set out in the Danish Act on Administration of Estates of Deceased Persons, Consolidation Act No. 383 of 22 May 1996 as amended, and under the supervision of the bankruptcy court (in Danish: "insolvent dødsboskifte"), and

(b) a debt restructuring carried out under the supervision of the bankruptcy court (in Danish: "gældssanering").

We confirm that the events specified as Events of Default in the FOA Netting Agreement or as the case may be the Clearing Agreement adequately refer to all Insolvency Proceedings, without the need for any additions if supplemented with:

"the administration of the insolvent estate of a deceased person carried out pursuant to the rules set out in the Danish Act on Administration of Estates of Deceased Persons, Consolidation Act no. 383 of 22 May 1996 as amended, and under the supervision of the bankruptcy court ("insolvent dødsboskifte")".

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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.

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Annex 2 – List of Transactions

The following groups of Transactions may be entered into under the FOA Netting 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 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, 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.

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Annex 3 – Definitions relating to 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).

"**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.

"**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.

"**Eligible Counterparty Agreements**" means each of the Eligible Counterparty Agreement (with Security Provisions) Agreement 2007, the Eligible Counterparty Agreement (with Title Transfer Provisions) Agreement 2007, the Eligible Counterparty Agreement (with Security Provisions) Agreement 2009, the Eligible Counterparty Agreement (with Title Transfer Provisions) Agreement 2009, the Eligible Counterparty Agreement (with Security Provisions) Agreement 2011 or the Eligible Counterparty Agreement (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1).

"**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.

"**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***); or

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

"**FOA Published Form Agreement**" means a document listed at Annex 1 in the form published by the Futures and Options Association on its website as at the date of this opinion.

"**FOA Set-off Provisions**" means:

(a) the "General Set-off Clause", being:

(i) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2007 and Professional Client Agreement (with Security Provisions) 2009, clause 15.11 (***Set-off***);

(ii) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2011, clause 15.13 (***Set-off***);

(iii) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2007 and the Retail Client Agreement (with Security Provisions) 2009, clause 15.12 (***Set-off***);

(iv) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2011, clause 15.13 (***Set-off***);

(v) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2007 and the Eligible Counterparty Agreement (with Security Provisions) 2009, clause 14.8 (***Set-off***);

(vi) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2011, clause 14.10 (***Set-off***);

(vii) in the case of the Agreements in the form of One-Way Master Netting Agreement (1997 version), clause 5 (***Set-Off***);

(viii) in the case of the Agreements in the form of Two-Way Master Netting Agreement (1997 version), clause 5 (***Set-Off***); or

(ix) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and/or

(b) the "Margin Cash Set-off Clause", being:

(i) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2007 and the Professional Client Agreement (with Security Provisions) 2009, clause 8.5 (***Set-off on default***);

(ii) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2011, clause 8.4 (***Set-off upon default or termination***);

(iii) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2007 and the Retail Client Agreement (with Security Provisions) 2009, clause 8.7 (***Set-off on default***),

(iv) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2011, clause 8.6 (***Set-off upon default or termination***);

(v) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2007 and the Eligible Counterparty Agreement (with Security Provisions) 2009, clause 7.5 (***Set-off on default***);

(vi) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2011, clause 7.4 (***Set-off upon default or termination***); or

(vii) any modified version of such clauses provided that it includes at least those parts of paragraph 3 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

"**Insolvency Events of Default Clause**" means (in each case subject to any selections or amendments required or permitted to be made on the face of the document in the relevant form referred to in Annex 1):

(a) where the FOA 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 FOA 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.

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

"**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).

"**Master Netting Agreements**" means each of the One-Way Master Netting Agreement 1997 and the Two-Way Master Netting Agreement 1997 (each as listed and defined at Annex 1).

"**Non-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 Agreement (with Security Provisions) Agreement 2007, the Professional Client Agreement (with Title Transfer Provisions) Agreement 2007, the Professional Client Agreement (with Security Provisions) Agreement 2009, the Professional Client Agreement (with Title Transfer Provisions) Agreement 2009, the Professional Client Agreement (with Security Provisions) Agreement 2011 or the Professional Client Agreement (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1).

"**Rehypothecation Clause**" means:

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

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

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

(d) (h) any modified version of such clauses provided that it includes at least those parts of paragraph 4 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

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

"**Short Form One Way-Clauses**" means each of the Short-Form One-Way Clauses 2007, the Short-Form One-Way Clauses 2009 and the Short-Form One-Way Clauses 2011 (each as listed and defined at Annex 1).

"**Short Form Two Way-Clauses**" means each of the Short-Form Two-Way Clauses 2007, the Short-Form Two-Way Clauses 2009 and the Short-Form Two-Way Clauses 2011 (each as listed and defined at Annex 1).

"**Title Transfer Provisions**" means (in each case subject to any selections or amendments required or permitted to be made on the face of the document in the relevant form referred to in Annex 1):

(a) clauses 5 and 7.2 of the Title Transfer and Physical Collateral Annex to the Netting Module (2007 or 2011 Version); or

(b) any modified version of such clauses provided that it includes at least those parts of paragraph 5 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

"**Two Way Clauses**" means each of the Long-Form Two Way Clauses and the Short-Form Two Way Clauses.

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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:

"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:

"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 [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 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.[10]

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

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

party of its obligations under the agreement, Transactions, or both, is endangered.10

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.10

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

9. Any change to an Insolvency Event of Default replacing such event of default with a provision aligned to Section 5(a)(vii) of the 1992 or 2002 ISDA Master Agreement (or relevant part thereof).10

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 a FOA Published Form Agreement (including as modified in accordance with paragraph 5 above).

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

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

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

PART 3 - SECURITY INTEREST PROVISIONS

1. Security Interest Clause:

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

2. Power of Sale Clause:

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

3. Client Money Additional Security Clause

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

4. Rehypothecation Clause

"You agree and authorise us to borrow, lend, appropriate, dispose of or otherwise use for our own purposes, from time to time, all non-cash margin accepted by us from you and, to the extent that we do, we both acknowledge that the relevant non-cash margin will be transferred to a proprietary account belonging to us (or to any other account selected by us from time to time) by way of absolute transfer and such margin will become the absolute property of ours (or that of our transferee) free from any security interest under this Agreement and from any equity, right, title or interest of yours. Upon any such rehypothecation by us you will have a right against us for the delivery of property, cash, or securities of an identical type,

nominal value, description and amount to the rehypothecated non-cash margin, which, upon being delivered back to you, will become subject to the provisions of this Agreement. We agree to credit to you, as soon as reasonably practicable following receipt by us, and as applicable, a sum of money or property equivalent to (and in the same currency as) the type and amount of income (including interest, dividends or other distributions whatsoever with respect to the non-cash margin) that would be received by you in respect of such non-cash margin assuming that such non-cash margin was not rehypothecated by us and was retained by you on the date on which such income was paid.".

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Annex 5 – Necessary or desirable Amendments

1 **Necessary amendments**

None

2 **Desirable amendments**

For the purposes of section 1 of Schedule 2 the Insolvency Events of Default Clause should be supplemented with:

"the administration of the insolvent estate of a deceased person carried out pursuant to the rules set out in the Danish Act on Administration of Estates of Deceased Persons, Consolidation Act no. 383 of 22 May 1996 as amended, and under the supervision of the bankruptcy court ("insolvent dødsboskifte")".

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

None

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