FIA EUROPE - NETTING OPINIONS PROJECT

FIA Europe
2nd Floor
36-38 Botolph Lane
London EC3R 8DE

16 February 2015

Dear Sirs,

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

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

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

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

1.1.1 persons which are companies under the Commerce Act[1] (the "**CA**"); and

1.1.2 branches in this jurisdiction of foreign banks and other corporations.

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

1.2.1 Banks and financial institutions licensed under the Credit Institutions Act[2] (the "**CIA**") as set out in Schedule 1;

[1] Promulgated in State Gazette Issue No. 48 of 18 June 1991, effective as of 1 July 1991, as amended and/or supplemented and/or substituted from time to time

1.2.2 Investment firms licensed under the Markets in Financial Instruments Act[3] (the "**MiFIA**") as set out in Schedule 2;

1.2.3 Insurance companies licensed under the Insurance Code[4] ("**IC**") as set out in Schedule 3;

1.2.4 Individuals acting as professional investors as defined in the MiFIA as set out in Schedule 4;

1.2.5 Funds or UCITS under the Collective Investment Schemes and Other Undertakings for Collective Investments Act[5] as set out in Schedule 5;

1.2.6 Sovereign and public sector entities, such as municipalities and municipal ownership companies and enterprises under the Municipal Ownership Act[6], the state and state-owned companies under the State Ownership Act[7], the Bulgarian National Bank under the Bulgarian National Bank's Act[8], etc. as set out in Schedule 6;

1.2.7 Pension insurance entities under the Social Security Code[9] ("**SSC**") as set out in Schedule 7;

1.2.8 Partnerships as defined under the Obligations and Contracts Act[10] and under the Commerce Act as set out in Schedule 8;

1.2.9 Non-profit entities as defined in the Non-profit Legal Persons Act[11] as set out in Schedule 9;and

---

2 Promulgated in State Gazette Issue No. 59 of 21 July 2006, effective as of 1 January 2007, as amended and/or supplemented and/or substituted from time to time

3 Promulgated in State Gazette Issue No. 52 of 29 June 2007, effective as of 1 November 2007, as amended and/or supplemented and/or substituted from time to time

4 Promulgated in State Gazette Issue No. 103 of 23 December 2005, effective as of 1 January 2006, as amended and/or supplemented and/or substituted from time to time

5 Promulgated in State Gazette Issue No. 77 of 4 October 2011, as amended and/or supplemented and/or substituted from time to time

6 Promulgated in State Gazette Issue No. 44 of 21 May 1996, effective 1 June 1996, as amended and/or supplemented and/or substituted from time to time

7 Promulgated in State Gazette Issue No. 44 of 21 May 1996, effective 1 June 1996, as amended and/or supplemented and/or substituted from time to time

8 Promulgated in State Gazette Issue No. 46 of 10 June 1997, effective 10 June 1997, as amended and/or supplemented and/or substituted from time to time

9 Promulgated in State Gazette, Issue No. 110 of 17 December 1999, effective 1 January 2000, as amended and/or supplemented and/or substituted from time to time

10 Promulgated in State Gazette, Issue No. 275 of 22 November 1950, effective as of 1 January 1951 as amended and/or supplemented and/or substituted from time to time

11 Promulgated in State Gazette, Issue No. 81 of 6 October 2000, as amended and/or supplemented and/or substituted from time to time

1.2.10 publicly traded companies, regulated by the Public Offering of Securities Act[12] (the "**POSA**") as set out in Schedule 10.

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

1.4 This opinion covers all types of Transactions.

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

1.6 A person incorporated or organised in this jurisdiction may be a Party to a Clearing Agreement in the capacity of "Firm" (as defined in the FOA Clearing Module) or "Clearing Member" (as defined in the ISDA/FOA Clearing Addendum) or as "Client" (as defined in either of them). Where a person incorporated or organised in this jurisdiction is a Party to a Clearing Agreement as Firm, or as the case may be Clearing Member, our opinion relates only to persons incorporated or organised as banks[13] or investment firms.

1.7 The opinions set out in paragraphs 3.10 and 3.11 are given only in relation to Margin which is located outside this jurisdiction.

1.8 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.

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

1.10 **Definitions**

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

---

[12] Promulgated in State Gazette Issue No. 114 of 30 December 1999, effective as of 31 January 2000, as amended and/or supplemented and/or substituted from time to time

[13] Excluding the Bulgarian National Bank, central bank, international institution or another banking entity that is not a credit institution.

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

1.10.2 "**Insolvency Representative**" means a liquidator, administrator, receiver or analogous or equivalent official in this jurisdiction, such the temporary or permanent insolvency trustee - '*syndic*' (or in Bulgarian Cyrillic „синдик“) as defined in the Commerce Act and the Bank Insolvency Act, or similar piece of special legislation referred to in the respective Schedule hereto; and

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

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

2. ASSUMPTIONS

We assume:

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

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

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

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

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

2.6 That no provision of the FOA Netting Agreement or, as the case may be, the Clearing Agreement, or a document of which the FOA Netting Agreement or, as the case may

be, the Clearing Agreement forms part, or any other arrangement between the Parties, or any Mandatory CCP Provision, constitutes an Adverse Amendment.

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

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

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

3. OPINION

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

3.1 Insolvency Proceedings

The only bankruptcy, composition, rehabilitation (e.g. liquidation, administration, receivership or voluntary arrangement) or other insolvency laws and procedures to which a Party would be subject in this jurisdiction are the insolvency proceedings under the CA, which apply to private and publicly traded general purpose companies registered under the CA.

Accordingly, the Insolvency Proceedings referred to herein apply either in full or partly (subject to certain special provisions derogating partly the general insolvency provisions of the CA) to those of the other parties to which express reference is made to which express reference is made in Schedules 1 through 9 hereto.

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

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 non-exclusively to English law, as appropriate, as the governing law of the FOA Netting Agreement or, as the case may be, of the Clearing Agreement, in determining the contractual validity of the (i) FOA Netting Provision and the FOA Set-Off Provisions or, as the case may be, of the Clearing Module Netting Provision and/or the Addendum Netting Provision, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision, and (ii) the Title Transfer Provisions.

3.3 **Enforceability of FOA Netting Provision**

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

(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 from the point of view of Bulgarian law the FOA Netting Provision would most probably be characterized as a contractual novation, under which the obligations for all payments or deliveries in respect of the terminated Transactions will be extinguished and new obligations pursuant to the FOA Netting Provision will occur in relation to the determined Liquidation Amount for settlement (whether by payment, by set off or otherwise) of the Liquidation Amount. Such novation, based on the freedom of the parties to contract, would be valid subject to, among others, the validity of the (original) novated obligations.

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, except general language provided in Section 2 of Annex 5, which recognizes that the FOA Netting Provision constitutes part of a financial collateral arrangement may be desirable.

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 fulfilment of any further conditions) enforceable in accordance with its terms so that, following (i) a Firm Trigger Event or (ii) a CCP Default, the Parties would be entitled to receive or obliged to pay , in respect of each Cleared Transaction Set, only the net sum of the positive and negative mark-to-market values of the relevant individual Client Transactions that are terminated in accordance with the Clearing Agreement.

We are of this opinion for the same reasons as expressed in the previous section.

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

No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this paragraph 3.4 to apply, except general language provided in Section 2 of Annex 5, which recognizes that the Clearing Module Netting

Provision constitutes part of a financial collateral arrangement which may be desirable.

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

We are of this opinion for the reasons expressed in paragraph 3.3.

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

No amendments to the Addendum Netting Provision are necessary in order for the opinions expressed in this paragraph 3.5 to apply, except general language provided in Section 2 of Annex 5, which recognizes that the FOA Netting Provision constitutes part of a financial collateral arrangement, which may be desirable.

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

In relation to a Clearing Agreement, the opinions expressed at paragraph 3.3 above in relation to the FOA Netting Provision are not affected by the use of the FOA Clearing Module or the ISDA/FOA Clearing Addendum in conjunction with the FOA Netting Agreement. In a case where a Party, who would (but for the use of the FOA Clearing Module or the ISDA/FOA Clearing Agreement) be the Defaulting Party for the purposes of the FOA Netting Agreement, acts as Firm (as defined in the FOA Clearing Module) or Clearing Member (as defined in the ISDA/FOA Clearing Addendum), the question as to whether the FOA Netting Provision will, to the extent inconsistent with the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision, be superseded by the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision would be determined under the governing law of the Clearing Agreement.

3.7 **Enforceability of the FOA Set-Off Provisions**

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

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

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

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

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

Amendments to the General Set-Off Clause and the Margin Cash Set-Off Clause specified in Section 1 of Annex 5 are necessary in order for the opinions expressed in this paragraph 3.7.1 to apply. Following an Event of Default as a result of opening of the Insolvency Proceedings, should Bulgarian law be applied, set-off will be possible only on the terms referred to in paragraph 4.4 below.

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

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

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

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

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

against the Liquidation Amount (where such Liquidation Amount is owed by the Client).

We are of this opinion because, except in the context of insolvency and in respect of claims which cannot be set off without the consent of the creditor, the parties are free to deviate from the regulation of set off under Bulgarian law. Following an Event of Default as a result of opening of the Insolvency Proceedings, should Bulgarian law be applied, set-off will be possible only on the terms referred to in paragraph 4.4 below.

Amendments to the General Set-Off Clause and the Margin Cash Set-Off Clause specified in Section 1 of Annex 5 are necessary in order for the opinions expressed in this paragraph 3.7.2 to apply.

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

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

We are of this opinion because, except in the context of insolvency and in respect of claims which cannot be set off without the consent of the creditor, the parties are free to deviate from the regulation of set off under Bulgarian law. Following an Event of Default as a result of opening of the Insolvency Proceedings, should Bulgarian law be applied, set-off will be possible only on the terms referred to in paragraph 4.4 below.

Amendments to the Clearing Module Set-Off Provision specified in Section 1 of Annex 5 are necessary in order for the opinions expressed in this paragraph 3.8 to apply.

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

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

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

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

would be immediately entitled to exercise its rights under the Addendum Set-Off Provision, and in particular so that, upon the exercise of such rights, in the case of a CM Trigger Event, any Available Termination Amount would be reduced by its set-

off against any cash balance which constitutes a termination amount payable by (or to) the Party which is owed (or owes) the Available Termination Amount, insofar as not already brought into account as part of the Relevant Collateral Value.

We are of this opinion because, except in the context of insolvency and in respect of claims which cannot be set off without the consent of the creditor, the parties are free to deviate from the regulation of set off under Bulgarian law.

Amendments to the Addendum Set-Off Provision specified in Section 1 of Annex 5 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) would 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 questions in relation to the FOA Netting Agreement (with Title Transfer Provisions) or a Clearing Agreement which includes the Title Transfer Provisions, (x) whether Transfers of Margin would be characterised as outright transfers of title or creating a security or other interest, and (y) whether Margin Transferred may be used without restriction, would, under the conflicts of laws rules of this jurisdiction, be determined by reference to the governing law of the FOA Netting Agreement (with Title Transfer Provisions) and a Clearing Agreement which includes the Title Transfer Provisions, and/or by reference to the governing law of the place where the Margin is located.

We are of this opinion because the Bulgarian Financial Collateral Act specifically recognizes the validity and enforceability of both title transfer and security interest financial collateral arrangements and under the assumption that the law applicable to the FOA Netting Agreement (with Title Transfer Provisions) and a Clearing Agreement which includes the Title Transfer Provisions would recognize their validity and enforceability.

Amendments to the Title Transfer Provisions specified in Section 2 of Annex 5 are desirable in order for the opinions expressed in this paragraph 3.10 to apply.

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

In relation:

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

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

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

3.12 **Single Agreement**

Under the laws of this jurisdiction it is necessary that the Transactions, financial collateral arrangements instituted 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**

3.13.1 It is not necessary, but desirable for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provision to ensure the effectiveness of netting under the FOA Netting Agreement in the event of bankruptcy, liquidation, or other similar circumstances, to the extent that a trustee in bankruptcy or, in respect of regulated entities, the relevant regulator or a quaestor appointed by it, may terminate existing Transactions at their discretion and further due to the risk of claw back (except to the extent claw backs are inapplicable due to the protection in the context of insolvency of financial collateral arrangements under the Financial Collateral Act).

3.13.2 It may be problematic for the effectiveness of netting that, under the Clearing Module Netting Provision and the Addendum Netting Provision, termination and liquidation of Client Transactions does not occur automatically upon the opening of Insolvency Proceedings in relation to a Firm, or as the case may be Clearing Member, incorporated or organised in this jurisdiction, for the same reasons express 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 Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision or the Title Transfer Provisions insofar as the laws of this jurisdiction are concerned, except where under the laws of this jurisdiction the laws of such other jurisdiction where netting may not be enforceable would apply.

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**") the Foreign Defaulting Party can be subject to Insolvency Proceedings in this jurisdiction.

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. However where such Transaction is settled through a settlement finality system, it may enjoy additional protections as to its settlement and netting on account of the Bulgarian legislation implementing Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems.

In particular , pursuant to para 4 of Art.78a of the Payment Services and Payment Systems Act the “Imposition of reorganisation measures or opening of a winding up procedure against a participant in a settlement finality system shall not have retroactive effects on the rights and obligations of the participants and may not result in recalculation of receivables and payables of the participant arising from, or in connection with, its participation in a settlement finality system earlier than the moment of imposing the measures or opening of the procedure under paragraph 2 thereof”. This rule shall also apply in respect of the rights and obligations of a participant in an operationally compatible system or a system operator of an operationally compatible system which is not a participant.”

On the basis of the foregoing Art.78e of the Payment Services and Payment Systems Act also provides that the “transfer orders and netting shall be effective and binding on third parties even in the event of reorganisation measures or winding up procedures against a participant in a settlement finality system, provided that the transfer orders are entered into the system before the moment of imposing the reorganisation measures or opening of a winding up procedure.”

The rule also applies in the event of reorganisation measures or opening of a winding up procedure against a participant in a settlement finality system or in an operationally compatible system or to the reorganisation measures or in the event of opening of a winding up procedure against the system operator of an operationally compatible system which is not a participant.

The Bulgarian law also provides that transfer orders entered into a settlement finality system after the moment of imposing the reorganisation measures or opening of the winding up procedure and executed within the same business day, shall be effective and binding on third parties, provided that the system operator can prove that at the moment when the transfer orders became irrevocable the said system operator was not aware, nor has it been obliged to be aware of the opening of such procedure.

The moment of entry of the transfer order into the settlement finality system shall be determined by the rules of the system.

4. QUALIFICATIONS

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

4.1 In respect of paragraph 3.2:

4.1.1 Pursuant to Article 93 of the Bulgarian International Private Law Code ("IPLC"), if all of the elements of the agreement by the time the choice of law is made are linked to the Bulgarian jurisdiction, such choice should not affect the application of the mandatory rules of Bulgarian law which cannot be derogated from by agreement.

4.1.2 According to Regulation (EC) No 593/2008 Regulation of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) the law chosen by the parties to an agreement will govern the performance and discharge of the obligations under such agreement. In case of conflict between the provisions of Bulgarian law and Rome I Regulation, the provisions of the Rome I Regulation will prevail and override the provisions of Bulgarian law

4.1.3 The law chosen by the parties will govern (i) the interpretation, (ii) the performance of the obligations, (iii) within the limits of the powers conferred on the court by its procedural law, the consequences of a total or partial breach of obligations, including the assessment of damages in so far as it is governed by rules of law, (iv) the various ways of extinguishing obligations, and prescription and limitation of actions, (v) the consequences from the invalidity of the contract.

4.1.4 The provisions of a foreign law as the governing law will apply only if the results from their application are compliant with any overriding mandatory provisions of the law of the forum or of the law of the country where the obligations arising out of the contract have to be or have been performed. The application of a provision of the governing law may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum. The provisions of the English law governing the FOA Netting and

Title Transfer Provisions (which are provisions of private and commercial nature) would hardly be incompatible with the Bulgarian rules of public policy (but this should be determined on a case by case basis).

4.2 **In respect of paragraphs 3.3 to 3.9:**

4.2.1 The unilateral valuation or conversion by one of the parties of the value of the obligation of the other party for the purposes of the set off or netting, without reference to a specific, clear and objective valuation, respectively conversion, method (i.e. referring to valuation/conversion parameters determined outside the discretion of the relevant party), may be considered invalid as an unfair clause.

4.3 **In respect of paragraphs 3.3, 3.4 and 3.5:**

4.3.1 As of the date of the court ruling on opening of Insolvency Proceedings[14] under Bulgarian law all monetary obligations of the debtor in foreign currency are converted into BGN as per the official exchange rate of the Bulgarian National Bank as at the date of the court ruling.

4.3.2 As at the moment of the declaration of bankruptcy in addition to the conversion of monetary obligations from other currencies into BGN, all obligations of the debtor become due and payable.

4.3.3 With a 15 days' notice the trustee may terminate any agreement, to which the debtor is a party, which has not been performed in part, or in full. Upon termination of the agreement the other party has the right to an indemnity for any damages suffered. The preservation of the agreement, under which the debtor is obliged to make periodic payments, does not oblige the trustee to make the payments, which have been delayed prior to the date of the decision for the opening of insolvency proceedings.

4.3.4 To the extent that Bulgarian law may be applied to netting (particularly in the context of Insolvency Proceedings), and given that it will most probably be qualified as a novation, such novation will be valid, subject to the validity of the original obligations which have been netted. The novation will be valid if the original obligation is voidable (but not void). If the original obligation is voided after the novation, the new obligation will also be void. If the original obligation is extinguished by limitation, the party, which was the debtor under the original obligation, may also refuse to perform the novated obligation. A severability clause should minimize the risk of these considerations affecting the functioning of netting.

---

[14] Under Bulgarian law a company is insolvent if it is unable to perform a due and payable (i) money obligation arising from or related to a commercial deal (including its validity, performance, non-performance, termination, cancellation, or consequences of termination); or (ii) a public liability to the Bulgarian state or to a Bulgarian municipality related to its commercial activity (business) or (iii) a private obligation to the state. The insolvency of a Bulgarian company is presumed if the company has suspended payments. A company may be insolvent even if it has paid or is able to pay in full or partly only certain claims of part of its creditors. Insolvency proceedings of a Bulgarian company can also be initiated when the company is over-indebted, i.e. its assets are insufficient to cover its monetary liabilities.

4.3.5 Bulgarian law provides that certain transactions executed within certain periods ("**suspect periods**") by the insolvent Defaulting Party that is subject to Insolvency Proceedings under Bulgarian law, are or can be declared null and void by the court upon a request by the insolvency trustee or a creditor of the Defaulting Party. According to Bulgarian insolvency laws, the following can be revoked, among others:

- the performance of a monetary obligation by the debtor before its due date, irrespective of the manner of performance, done after the initial date of insolvency/overindebtedness, but not more than one year before the submission of the bankruptcy petition (or, in the case the creditor was aware at the time of the performance that the debtor is insolvent, two years before the submission of the bankruptcy petition);

- the extinguishing of a monetary obligation which was due and payable, irrespective of the manner of performance, done after the initial date of insolvency/overindebtedness, but not more than six months before the submission of the bankruptcy petition (or, in the case the creditor was aware at the time of the extinguishing that the debtor is insolvent, one year before the submission of the bankruptcy petition).

4.3.6 Knowledge on the part of the creditor is presumed where the debtor and the creditor are related parties[15], or the creditor was aware or was capable of becoming aware of circumstances, on the basis of which one could make a reasonable conclusion that the debtor is insolvent or overindebted. In respect of the second presumption we consider it advisable to review the annual financial statements of the counterparty as soon as they are published in the Bulgarian Commercial Register, in respect of signs that the counterparty is insolvent or overindebted (e.g. the existence of negative equity). It may also be advisable to check before entering into Transactions or at least at regular intervals, whether in the Commercial Register a bankruptcy petition or a decision opening Insolvency Proceedings has been published in the batch of the Bulgarian counterparty.

---

[15] The CA defines "related parties" as:

1. The spouses, relatives of direct lineage without limitation, collateral lineage – up to the fourth degree inclusive, and by marriage – up to the third degree inclusive;
2. An employer and an employee;
3. Persons where one of them participates in the management of the other;
4. The partners/shareholders;
5. A company and a person that holds more than 5 per cent of the voting shares in that company;
6. The persons whose activity is controlled directly or indirectly by a third party;
7. The persons who jointly control directly or indirectly a third party;
8. The persons where one is a commercial agent of the other;
9. The persons where one of them has made a gift in favor of the other;
10. Any other persons which participate directly or indirectly in the management, control or capital of another person or persons, due to which between them can be agreed terms different from those at arm's length.

4.3.7 The claw backs in respect of payment/extinguishing of obligations will not apply where done in the ordinary course of business of the debtor and in consideration of the contemporaneous provision of equivalent goods and/or services to the debtor or within 30 days of the due date of the monetary obligation or where after the payment the creditor has provided to the debtor equivalent goods and/or services.

4.3.8 Voidable on a claim of the trustee in bankruptcy (and in the case of failure of the trustee to file such claim, on a claim by a creditor) would be the following acts and transactions if:

(a) A gratuitous transaction, with the exception of the ordinary donation, to the benefit of a party related to the debtor, done within 3 years prior to the submission of the bankruptcy petition (or, if the debtor is a bank, within 5 years prior to the initial date of insolvency if to the benefit of administrators or shareholders of the bank or third parties related to them);

(b) A gratuitous transaction, to the benefit of a third party, done within 2 years prior to the submission of the bankruptcy petition (or, if the debtor is a bank, within 3 years prior to the initial date of insolvency);

(c) A transaction for consideration where the consideration given significantly exceeds the consideration received done within two years prior to the date of submission of the bankruptcy petition (or, if the debtor is a bank, within two years prior to the initial date of insolvency);

(d) The creation of a form of security, done within one year prior to the date of submission of the bankruptcy petition but not earlier than the initial date of insolvency or overindebtedness, to secure third party obligations (or, if the security taker is a related party, within 2 years prior to the date of submission of the bankruptcy petition).

(e) If the debtor is a bank, the settlement of a monetary obligation by way of the transfer of ownership done within 6 months prior to the initial date of insolvency, if the return of the property would increase the amount, which the creditors would receive;

(f) A transaction done within two years prior to the date of submission of the bankruptcy petition if it damages the creditors and a related party of the debtor is a party to the transaction (or, if the debtor is a bank, an act or transaction done within 5 years prior to the initial date of insolvency with the intent to harm the creditors of the bank).

(g) Where the debtor is a bank any transaction, if done within 2 years prior to the initial date of insolvency, damaging the creditors to which a party is a party related to the bank, an administrator or shareholder, its spouse, relative of direct or collateral lineage up to the sixth degree, or a related party to it;

4.3.9 The claw-backs will not affect the rights which third parties have acquired in good faith for consideration. Acting in bad faith is presumed if the third party is related to the debtor or the person with whom the contract was made.

4.3.10 The above claw backs (4.3.5 – 4.3.9) will not apply to financial collateral arrangements and netting that constitutes part of such arrangements, in the cases discussed in 4.5.10, 4.5.12, 4.5.13, 4.5.14, but subject to the considerations expressed in 4.5.15 below.

4.3.11 A set off by a creditor with an obligation of the debtor if at the time of acquiring the receivable and the obligation to the debtor, the creditor has been aware that the debtor was insolvent or that a petition for bankruptcy has been filed with respect to the debtor, can be declared invalid.

4.3.12 We do not consider that the netting provisions will lead to the occurrence of a set-off, however another creditor may attempt to recharacterise it and require a claw back in cases where it has occurred following knowledge on the part of Non-Defaulting Party that the Defaulting Party is insolvent or that insolvency proceedings have been petitioned. We consider that this risk is low. Please note however, that some of these circumstances are subject to publication in the Bulgarian Commercial Register after which general knowledge is presumed. Please see paragraph 4.3.6 above.

4.3.13 The following, among others, will be considered invalid with respect to the creditors of the bankruptcy estate, if not done in accordance with the proper procedures, following the opening of the insolvency proceedings:

- the performance of an obligation which has occurred prior to the date of the decision for the opening of insolvency proceedings. Any payment made to the Defaulting Party after the date of the court ruling for opening of insolvency proceedings but prior to the registration of this decision in the Bulgarian Commercial Registry shall be valid if the payer (i) was not aware of the opening of the insolvency proceedings or (ii) was aware of the opening of the insolvency proceedings but the paid amounts have entered the insolvency estate; and

- any Transaction with an item or a right included in the bankruptcy estate, if they have been made or entered into after the date of the decision for the opening of insolvency proceedings.

4.3.14 As regards the first hypothesis in paragraph 4.3.13 above, any payment under the netting arrangements will have to be done in compliance with the restrictions imposed in the context of the insolvency proceedings. This should not affect the process in which the calculation itself is made.It should be noted that following the opening of insolvency proceedings, in cases where the Non-Defaulting is the payer, payment can be done only to the appointed trustee and not directly to the insolvent counterparty. In respect of the second and third hypothesis the restrictions and procedure for disposal with assets, part of the bankruptcy estate, would have to be complied with.

4.3.15 Netting may not be fully enforceable if the Defaulting Party is a bank and such bank is placed under special supervision in accordance with the Credit Institutions Act. Please see the additional qualifications in Schedule 1.

4.3.16 A similar compulsory administrative measures regime (including the appointment of *quaestors*) is applicable to insurance companies, pension insurance entities, investment firms, funds (collective investment undertakings), which may restrict the effectiveness of netting. Please see the additional qualifications in Schedules 2, 3, 5 and 7.

4.4 **In respect of Sections 3.7 to 3.9:**

4.4.1 Claims which are not subject to compulsory execution, claims resulting from deliberate illegal acts and claims for taxes cannot be set-off without the creditor's consent.

4.4.2 In the context of insolvency under Bulgarian law:

(a) Creditors may set off their obligations to debtors, provided that prior to the date of the ruling on institution of bankruptcy proceedings both obligations existed and were opposite to each other and of the same type and the receivable of the debtor with which set off is being made was due. Where the receivable has become due in the course of bankruptcy proceedings or as result of a ruling to declare bankruptcy, and also where both obligations have become of same type as a result of such ruling [because all outstanding obligations are converted into cash obligations], creditors may set off only after the receivable becomes due or the receivables become of the same type. It comes from the above that in the context of insolvency, set off provisions under the documentation may not work as envisaged if the obligation of the other party is not due and payable at the time of such purported set off, if it at that time it was of a different kind (e.g. for payment in a different currency, or for delivery instead of payment).

(b) An express statement of a set-off must be sent to the trustee in bankruptcy and, where the debtor is a bank, it must be notarized. Therefore contrary to the provisions of the documentation, the party must make an express statement about the set off under the above rules[16].

(c) The set-off may be declared invalid with respect to the bankruptcy creditors, provided the creditor has acquired the receivable and the obligation to the debtor prior to the date of the ruling on institution of bankruptcy proceedings, but where he knew as of the time of acquiring the receivable or obligation that insolvency or over-indebtedness, as the case may be, has occurred or that an application to institute bankruptcy proceedings has been filed. As regards banks, knowledge is presumed if the receivable or obligation of the creditor have been

[16] Please see paragraph 1 of Annex 5.

acquired after the date on which the decision of the Bulgarian National Bank to withdraw the license of the bank on the grounds of insolvency has been published in the Commercial Register.

(d) The adoption of reorganisation measures or the opening of winding-up proceedings concerning a bank or an insurer shall not affect the right of creditors to demand the set-off of their claims against the claims of the bank or the insurer, where such a set-off is permitted by the law applicable to the bank's or respectively the insurer's claim. This shall not preclude the actions for voidness, voidability or unenforceability laid down under Bulgarian law. In this respect please see additional grounds for relative invalidity provided in respect of local banks, discussed in Schedule 1.

(e) A set-off effected by the debtor after the initial date of insolvency or over-indebtedness, as the case may be, but not earlier than one year prior to filing of the petition to institute insolvency proceedings, shall be invalid in respect of the bankruptcy creditors, except for the part that the creditor may have acquired from distribution of the property converted into cash, regardless of the time when both opposing obligations have arisen.

4.4.3 According to Art. 6 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, the opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim. This shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m) of the Regulation to which the law of the State of the opening of proceedings would apply. However under Art. 13 of the Regulation Article 4(2)(m) shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that: — the said act is subject to the law of an EU Member State other than that of the State of the opening of proceedings, and — that law does not allow any means of challenging that act in the relevant case[17].

4.5 **In respect of Section 3.10:**

4.5.1 The enforceability of the Title Transfer Provisions under Bulgarian law would be dependent on the considerations expressed in paragraph 4.1. – in essence its validity under the law which applies to them, which in our view should be the law applicable to the agreement that contains them, except in cases discussed in paragraph 4.1.4 or the law of the jurisdiction in which the relevant account in which financial collateral is provided is located. There is virtually no case-law under which Bulgarian courts have expressed an opinion as to whether any overriding mandatory provisions of Bulgarian law should apply to title

[17] It must be underlined that very limited local case-law exists on the application of the Regulation, therefore its interpretation is subject to the insolvency court's view in each particular case.

transfer collateral contractually governed by another law. In our view, the application of such law, would not override the possibilities for claw-backs in the context of insolvency (please see 4.3. and the rest of 4.5. in this respect) or the considerations expressed in respect of special supervision/restrictive measures applied by a local regulator to a counterparty that is under its jurisdiction. Should Bulgarian law be considered to apply to the Title Transfer Provision its enforceability would generally be conditional upon the title transfer arrangement being qualified as a financial collateral arrangement.

4.5.2 In this respect, the Financial Collateral Act applies to cases where, both of the parties belong to the categories listed below, or one of the parties is a merchant other than a sole proprietor (i.e. essentially a company or a cooperative) or an unincorporated firm, and the other belongs to one of the following categories:

1. public or local authority, including a public sector body charged with or intervening in the management of public debt, as well as a public sector body authorised to hold accounts for customers;

2. central bank;

3. the European Central Bank, the Bank for International Settlements, the European Investment Bank, the International Monetary Fund, as well as multilateral development banks;

4. credit institution;

5. financial institution;

6. insurer;

7. investment broker;

8. management company;

10. collective investment scheme or a national investment fund;

11. regulated market of securities;

12. central depository;

13. additional social security (pension) company;

14. health security company;

15. special investment purpose company;

16. central counterparty, settlement agent or clearing house, as well as another legal entity of similar activities acting in the futures, options and derivatives markets;

17. a person of a Member State of the EEA, which under its national law has the status of an entity listed in 1, 2, 4-16 above.

4.5.3 Please note that individuals, cannot be a party to a financial collateral arrangement, even where they qualify as professional investors.

4.5.4 A financial collateral arrangement is defined as an arrangement whereby a collateral provider transfers the ownership or all rights in or establishes a pledge in respect of financial collateral to a collateral taker to secure a financial obligation. We consider that the Title Transfer Securities and Physical Collateral Annex, should, subject to the requirements discussed in other paragraphs of this Section, answer this condition.

4.5.5 Financial obligations are defined as the obligations secured by a financial collateral arrangement and which give a right to cash settlement and/or delivery of financial instruments.

4.5.6 To be covered by the Financial Collateral Act, financial collateral must consist of cash, financial instruments and/or credit claims. Financial instruments covered include physical or non-physical securities such as:

1. shares in companies and other securities equivalent to shares in companies and bonds and other forms of debt securities if these are negotiable on the capital market;

2. any other securities which are normally dealt in and which give the right to acquire shares, bonds or other securities under 1 above by subscription, purchase or exchange, as well as those which allow for cash settlement (excluding instruments of payment), including units in collective investment schemes, money market instruments and claims relating to or rights in or in respect of any of the foregoing instruments;

4.5.7 Netting provisions are covered by the Financial Collateral Act to the extent that they are provisions of a financial collateral arrangement or, in the absence of any such provision, any statutory rule of similar effect. Please note that in contrast to Directive 2002/47/EC the Financial Collateral Act does not mention a provision in an arrangement of which a financial collateral arrangement forms part. Therefore, provided that the other requirements above are met, to benefit from the special protection of the Financial Collateral Act in respect of netting:

(a) a financial collateral arrangement must exist between the parties; and

(b) it is recommended that the netting provision should be incorporated at least by reference into the financial collateral arrangement document[18].

4.5.8 Further a netting provision is defined as a provision by which, upon default of the parties:

[18] Please see paragraph 2(a) and 2(b) of Annex 5.

(a) the obligations are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their calculated current value, or are terminated and replaced by an obligation to pay such an amount; and/or

(b) are extinguished to the amount of the smaller of them, and the party from whom the larger amount is due continues to owe to the other party the excess.

4.5.9 For the purposes of the above default is defined as a default on a financial obligation or another similar event agreed between the parties, the occurrence of which according to the financial collateral arrangement or according to the law allows the secured party to realize or acquire the financial collateral or triggers the application of a netting clause. We consider that FOA Netting Provision, the Clearing Module Provision and the Addendum Netting Provision meet the criteria referred to in paras 4.5.8 and 4.5.9.

4.5.10 Under the Financial Collateral Act a netting provision will be applied upon default:

(a) notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider and/or the collateral taker;

(b) notwithstanding any purported assignment or other attachment or other disposition of or in respect of such rights.

4.5.11 Under the Financial Collateral Act, the operation of a netting provision may not be subject to any of the requirements that prior notice of the intention to realise must have been given, the terms of the realisation be approved by any court, public officer or other person, the realisation be conducted by public auction or in any other prescribed manner or any additional time period must have elapsed.

4.5.12 According to the Financial Collateral Act a financial collateral arrangement, as well as the provision of financial collateral under such arrangement, are not invalid, relatively invalid[19] or voidable, and may not be reversed on the sole basis that the financial collateral arrangement has been entered into, or the financial collateral has been provided:

(a) on the day of the commencement of winding-up proceedings or reorganisation measures, but prior to the order or decree making that commencement; or

(b) in a prescribed period prior to, and defined by reference to, the commencement of such proceedings or measures or a period determined by reference to the making of any decision; or

[19] "Relatively invalid" would generally mean invalid so far as the relationship with particular creditors is concerned, but not in respect to all parties.

(c) the taking of any other action or occurrence of any other event in the course of such proceedings or measures.

4.5.13 Where a financial collateral arrangement has been entered into or a relevant financial obligation has come into existence, or financial collateral has been provided on the day of, but after the moment of the commencement of, winding-up proceedings or reorganisation measures, these actions will be legally enforceable and binding on third parties if the collateral taker can prove that he was not aware, nor should have been aware, of the commencement of such proceedings or measures.

4.5.14 The obligation to or the right to provide financial collateral or replacement or additional financial collateral in a financial collateral arrangement which contains:

(a) an obligation to provide financial collateral; or

(b) an obligation to provide additional financial collateral in order to take account of changes in the value of the financial collateral or in the amount of the relevant financial obligations; or

(c) a right to withdraw financial collateral on providing, by way of substitution or exchange, financial collateral of substantially the same value; or

(d) the financial collateral arrangement itself,

will not be considered invalid, relatively invalid or voidable or be grounds for termination rescission of the financial collateral arrangement by reason that:

(i) such provision was made on the day of the commencement of winding-up proceedings or reorganisation measures, but prior to the order or decree making that commencement;

(ii) such provision was made within a legally prescribed period prior to, and defined by reference to, the commencement of winding-up proceedings or reorganisation measures or by reference to the making of any order or decree or the taking of any other action or occurrence of any other event in the course of such proceedings, or measures; or

(iii) the relevant financial obligations were incurred prior to the date of the provision of the financial collateral, additional financial collateral or substitute or replacement financial collateral.

4.5.15 Despite the financial collateral protection extending to netting, we do not consider that this protection makes individual Transactions or elements of netting immune from invalidity and voidability claims both within and outside insolvency. However, we consider that by using a severability clause, even if one or more Transactions or other elements of netting are declared invalid, this will not affect the functioning of the netting mechanism in respect of the remaining Transactions or elements.

4.5.16 The enforceability of the Title Transfer Provision under Bulgarian law may be affected by the considerations expressed above in paragraph 4.3. in respect of netting to the extent that is not part of a financial collateral arrangement or even though it is part of a financial collateral arrangement, the application of any of the claw backs discussed in paragraph 4.3. is not excluded by virtue of the application of the Financial Collateral Act.

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 FIA Europe and members of FIA Europe (other than associate members) and their affiliates which have subscribed to FIA Europe's opinions library and whose terms of subscription give them access to this opinion (as evidenced by the records maintained by FIA Europe and each a "subscribing member").

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

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

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

d) any competent authority supervising a subscribing member in connection with their compliance with their obligations under prudential regulation

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

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

Yours faithfully,

Boyanov & Co.

SCHEDULE 1
Credit Institutions (Banks)/Financial Institutions

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

For the purposes of this Schedule 1 (*Credit Institutions (Banks) and Financial Institutions)*,

"***Credit Institution***" or "***bank***" means, as set out in Art.2 of the Credit Institutions Act, promulgated in State Gazette, Issue No. 59/21.07.2006, effective 1.01.2007 as amended and supplemented ("**CIA**"):

"Art.2 (1) A bank (a credit institution) shall be a legal person engaged in the business of receiving deposits or other repayable funds from the public and granting credits or other financing for its own account and at its own risk.

(2) A bank may also carry on the following activities, provided that they are included in its authorisation (license):

1. provision of payment services in the meaning of the Payment Services and Payment Systems Act;
2. issue and administration of other means of payment (travellers' cheques and letters of credit) as long as these activities are not covered by subparagraph 1;
3. acceptance of valuables on deposit;
4. activity as a depository or trustee institution;
5. financial leasing;
6. guarantee transactions;
7. trading for own account or for account of customers in foreign exchange and precious metals, excluding derivative financial instruments based on foreign exchange and precious metals;
8. trading for own account or for account of customers in transferable securities, participation in securities issues and other services and activities under Article 5, (2) and (3) of the Markets in Financial Instruments Act – i.e. investment services and activities as well as auxiliary services;
9. money brokerage;
10. acquisition of accounts receivable on loans and other type of financing (factoring, forfeiting, etc.);
11. issuing of electronic money
12.acquisition and management of participating interests;
13. safe custody services;
14. collection, provision of information and reference on customer creditworthiness;
15. any other activities as may be specified by an ordinance of the Bulgarian National Bank (BNB). "

The acquisition, registration, settlement, repayment and trading in government securities shall be carried on in accordance with the terms and procedure of the Government Debt Act . Trade in government securities on regulated markets in financial instruments and on multilateral trading facilities shall be carried out under the terms of the Markets in Financial Instruments Act. No bank may, acting on professional basis, carry on any other activities other than those specified in paragraphs 1 and 2, save where this is necessary in connection with the pursuit of the business thereof

or in the process of collection of receivables thereof on credits as granted. A bank may establish or acquire undertakings for the purpose of carrying on ancillary services.

Pursuant to the CIA receiving of deposits or other repayable funds from the public as well as the services under subparagraphs 3 and 4 of paragraph 2 may be carried on solely by:
1. a person which has been granted a bank license (authorisation) by the BNB;
2. a bank whereof the registered office is in a third country, which has been granted a license (authorisation) by the BNB to conduct banking business in the Republic of Bulgaria through a branch;
3. a bank which has been granted a license (authorisation) for conduct of banking business by the competent bodies of a Member State, which provides services directly or through a branch within the territory of the Republic of Bulgaria.

Banks which are authorised to conduct banking business under item 8 above (investment services and activities and auxiliary services) may bid directly on behalf of clients in two-day spot auctions under Article 3, paragraph 3 of Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ, L 302/1 of 18 November 2010), subject to a permit by the BNB. The procedure and the terms for issuance of the permit, the required documents for issuance thereof, as well as the grounds for refusal shall be defined in an ordinance issued by the BNB.

"**Financial Institution**" means as set out in Art.3 of the CIA:

"Article 3. (1) A financial institution shall be a person other than a credit institution whereof the principal business shall be the carrying on of one or more of the activities:
1. specified in subparagraphs 1, 2, 5 – 11 above;
2. acquisition of stakes in credit institutions or other financial institutions;
3. granting of credits with funds which have not been raised from receiving deposits or other repayable funds from the public.
A financial institution shall be also a financial holding company, a mixed-activity financial holding company, a payment institution and a managing company. An insurance holding company and a mixed-activity insurance company shall not be a financial institution.

In order to carry on the following activities:

(i) financial leasing,
(ii) guarantee transactions,
(iii) acquisition of accounts receivable on loans and other type of financing (factoring, forfeiting, etc.),
(iv) acquisition of stakes in credit institutions or other financial institutions and
(v) granting of credits with funds which have not been raised from receiving deposits or other repayable funds from the public

on professional basis, a person not subject to licensing (authorisation) under another law shall be entered into a public register of the BNB if one or more of these activities are significant for the person. The criteria for a significant activity shall be defined in an ordinance issued by the BNB."

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

N/A

2. ADDITIONAL ASSUMPTIONS

N/A

3. MODIFICATIONS TO OPINIONS

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

3.1. Insolvency Proceedings: Credit Institutions (Banks)/Financial Institutions

In relation to the opinions expressed in item 3.1. (*Insolvency Proceedings*) of the Opinion Letter we need to clarify that a special piece of legislation will apply with respect to a Counterparty which is a Credit Institution (bank) - i.e. the Bank Insolvency Act[20] ("**BIA**").

Bank insolvency, however, is normally preceded by the special measures which the Bulgarian National Bank ("**BNB**") may choose to apply to prevent violation of regulatory provisions and deterioration of the financial standing of the bank and the withdrawal of its license.

Such measures may adversely affect the enforceability of the Transactions under the FOA Netting Agreements and/or the Clearing Agreements.

In deviation of the standard Insolvency Proceedings, insolvency commences by withdrawal of the banking license and application filed in court by the BNB[21]. No creditors are constituted and participate in the insolvency proceedings. Neither is a general meeting of the creditors convened.

Instead, the Deposit Guarantee Fund[22] participates in the Insolvency Proceedings. The Insolvency Representative in a bank Insolvency Proceeding has to meet certain special requirements. There are also certain special and mandatory rules in relation to protection of the depositors' interest.

[20] Promulgated State Gazette No. 92/27.09.2002

[21] The Bulgarian National Bank is the Bulgarian central bank in charge of among other things with the supervision of credit institutions and financial institutions in Bulgaria.

[22] The Deposit Guarantee Fund is the entity performing the activities of deposit guarantee scheme in Bulgarian under the Bank Deposits Guarantee Act, promulgated, State Gazette No. 49/29.04.1998

With view of the foregoing we confirm that the events specified in the Insolvency Events of Default Clause adequately refer to the Insolvency Proceedings relating to the counterparties of this Schedule.

4. ADDITIONAL QUALIFICATIONS

4.1. The opinions expressed in items 3.3 (*Enforceability of the FOA Netting Provision*), 3.4 (*Enforceability of the Clearing Module Netting Provision*), 3.5 (*Enforceability of the Addendum Netting Provision*), 3.7 (*Enforceability of the FOA Set Off Provisions*), 3.8 (*Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision),* 3.9 *(Set-Off under a Clearing Agreement with an Addendum Set-Off Provision)* and 3.10 *(Enforceability of the Title Transfer Provisions)* shall each be considered against the risk of compulsory measures imposed by the BNB in case of non-compliance with the bank regulatory requirements.

In particular, the BNB may pursuant to Art.103, para 2 of the CIA (the list is not exhaustive):

(a) restrict the business of the bank, prohibiting it from effecting specified transactions, actions or operations;
(b) restrict the volume of specific types of activities carried on by the bank;
(c) forbid conduct of banking business by a foreign bank through a branch or directly; where a permanent ban on the conduct of banking business by a branch of a bank is imposed, the relevant body of the bank shall take decision on termination of the activity of the branch, settling relationships with the bank's creditors and deletion of the branch from the commercial register;
(d) set additional requirements to the bank in connection with the licensed banking business thereof;
(e) require submission of a rehabilitation plan to be implement by the bank following approval by the BNB;
(f) appoint two or more conservators (quaestors) of the bank for a specified period;
(g) put the bank under special supervision (conservatorship);
(h) withdraw the license for conduct of banking business or another permission or approval thereby granted; by the act of withdrawal of the license the BNB shall mandatorily appoint conservators (quaestors), if such have not been appointed prior to the issuing of the said act.

Each of the supervisory measures referred to above may affect the ability of the Counterparty to enter into or perform the obligations under the FOA Netting Agreement and/or the Clearing Agreement. The measures under Article 103 may impact also the performance of Transactions which have been entered into prior to their imposition. In particular, the special supervisory measures (conservatorship) described in section 4.2 and 4.3 may include temporary suspension of all or part of the payments by a bank with certain exceptions (as described in this Schedule), termination of agreements, etc. They should not prevent the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provision from being enforceable, except to the extent that payment or another performance is provided to be made by the local bank, such performance being suspended on the basis of this provision.

4.2. In case the Counterparty - credit institution is put under conservatorship its capacity and authority to enter into and perform the obligations under the FOA Netting Agreement and/or the Clearing Agreement will be affected. Upon the appointment of conservators (quaestors), all powers vesting in

the bank's Supervisory Board and Management Board or Board of Directors, as the case may be, shall be suspended and shall be exercised by the said conservators, save in so far as the act of appointment thereof does not provide for any limitations.

4.3. In case the Counterparty is put under special supervision by the BNB, the BNB shall appoint conservators (where no conservators have been appointed and shall determine their powers) and shall specify the term and conditions of the special supervision. The period during which conservators are appointed may not exceed 6 months.

The BNB may (pursuant to Art.116 para 2 of the CIA), among other things:

(a) reduce the interest on the bank's liabilities to the average market rate;
(b) suspend for a specified period in full or in part execution of all or part of its obligations;
(c) restrict its activity in full or in part;
(d) stipulate conditions and additional requirements to the procedure for disposal with the bank's property;
(e) remove from office the members of the Board of Directors, the Management Board and the Supervisory Board, as the case may be;

Pursuant to the express provisions of Art.119 of the CIA, "*Any actions and transactions effected by the bank in violation of Article 116 (2) subparagraphs 1–4 (referred to above in items (a) through (d)) shall be void after announcement in the commercial register of the BNB decision*."

Furthermore, in the cases under Article 116 (2) subparagraph 2 execution proceedings, including execution proceedings under the Registered Pledges Act against the property of the bank shall be stopped.

However, in the cases under Article 116 (2) subparagraph 2 the ***following is expressly allowed***:

(a) execution of obligations that have arisen from payment orders accepted for settlement by the bank before putting it under special supervision;
(b) execution of payment orders arising from exercise of rights or performance of obligations under financial collateral agreements where the orders were given before or on the date of putting the bank under special supervision or where the counterparty on the financial collateral arrangement proves that it has not been aware of the fact that the bank was put under special supervision;
(c) execution of netting operations through the payment system;
(d) execution of monetary obligations relating to the bank's support or arisen after the date of the special supervision as a result of legal actions performed by the conservators and necessary for the rehabilitation of the bank.

Pursuant to para 4 of Art.116 of the CIA, "*in the cases under Article 116 (2) subparagraph 2 and for the period in which the BNB has exercised such power it shall be deemed that the bank has not defaulted on the monetary obligations the execution whereof has been stopped*."

The CIA further provides in Art.116 para 5 that "*In the cases under Article 116 (2) subparagraph 2, the bank shall not bear financial liability for non-performance of the obligations whose execution has been stopped by the special supervision. For the term of the special supervision no default interest and penalty shall be charged on the monetary obligations whose execution has been stopped, and contractual interest on such obligations shall accrue but shall be paid after lifting of the special supervision.*"

4.4. The appointed conservators may terminate without any notice agreements concluded before the imposition of the special supervision and the bank shall not be liable to the counterparty to such agreements in the cases where such agreements are unfavourable for the bank and their covenants deviate from the effective market conditions.

4.5. In the case of Insolvency Proceedings vis-à-vis a Counterparty – Credit Institution under the CIA the set off statement shall be made with notary certification of the signature of the Non Defaulting Party and addressed to the Insolvency Representative as required by the BIA.

4.6. In respect of Sections 3.7 to 3.9, effective November 28, 2014 the BIA was amended to read that:

1. Any set off, irrespective of the time when the two counterclaims have occurred, which has been made either by a creditor or by the bank, shall be invalid vis-à-vis the creditors of the estate, except for the part which any such creditors would have received from distribution of the value received from the liquidated estate, if made:

   a. after the initial insolvency date;

   b. after the date of imposition of special supervision which provides the full suspension of payments as a mandatory measure, in case such date precedes the initial insolvency date.

2. On the other hand, para 6 of Art.59 of the BIA reads that in the cases above (i.e. invalidity of set off), the effect of the set off is postponed until completion of the distribution from the distribution account following liquidation of the estate. In case of sale of the bank as enterprise, the set off shall have effect after the approval of the sale by the court.

At the same time CIA, at Art. 144 and Art. 147, implements respectively the provisions of Art. 23 and Art. 30 of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions.

According to the above provisions the adoption of reorganisation measures or the opening of winding-up proceedings concerning a bank shall not affect the right of creditors to demand the set-off of their claims against the claims of the bank, where such a set-off is permitted by the law applicable to the bank's claim. However this shall not preclude the actions for voidness, voidability or unenforceability under Bulgarian law. Nevertheless, the Bulgarian rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole will not apply, where the beneficiary of these acts provides proof that the act detrimental to the creditors as a whole is subject to the law of a Member State other than the home Member State of the bank and that law does not allow any means of challenging that act in the case in point. Where a reorganisation measure decided on by a judicial authority provides for rules relating to the voidness, voidability or unenforceability of legal

acts detrimental to the creditors as a whole performed before adoption of the measure, then the decision of the Bulgarian authorities shall be furthermore effective against the branches of the bank established in other Member States where the beneficiary of these acts provides proof that the act detrimental to the creditors as a whole is subject to the law of a Member State other than the home Member State of the bank and that law does not allow any means of challenging that act in the case in point.

There is virtually no case-law of Bulgarian courts on the application of the above provision, and their interplay with the newly introduced provision above should be decided on a case by case basis, depending on the circumstances of the case.

5. MODIFICATIONS TO QUALIFICATIONS

N/A

SCHEDULE 2
Investment Firms

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

For the purposes of this Schedule 2 (*Investment Firms)*, "***Investment Firm***" means, as set out in Art.5 of the Markets in Financial Instruments Act ("**MiFIA**"):

"*Article 5 (1) An investment firm shall be a person which provides one or more investment services and/or performs one or more investment activities*[23] *as a regular occupation or a business on a professional basis*."

[23] Investment services and activities shall be:

1. reception and transmission of orders in relation to one or more financial instruments, including intermediating for conclusion of transactions in relation to financial instruments;
2. execution of orders on behalf of clients;
3. dealing in financial instruments on own account;
4. portfolio management;
5. provision of investment advice to clients;
6. underwriting of issues of financial instruments and/or placing of financial instruments on the basis of an unconditional and irrevocable commitment to subscribe/acquire the financial instruments on own account;
7. placing of financial instruments without an unconditional and irrevocable commitment to acquire the financial instruments on own account;
8. operation of a multilateral trading facility.

Investment firms may furthermore provide the following ancillary services:

1. safekeeping and administration of financial instruments for the account of clients, including custodianship (holding clients' financial instruments and cash at a depositary institution) and related services, such as cash/collateral management;
2. granting loans for effecting of transactions in one or more financial instruments, subject to the condition that the person granting the loan is involved in the transaction under terms and according to a procedure established in an ordinance;
3. advice to undertaking on capital structure, industrial strategy and related matters, as well as advice and services relating to mergers and the purchase of enterprises;
4. provision of foreign exchange services, insofar as they are connected with the investment services provided;
5. investment research and financial analysis or other forms of general recommendations relating to transactions in financial instruments;
6. services relating to underwriting of issues of financial instruments;
7. under Paragraph 2 and items 1 - 6 in connection with the underlying asset of derivative financial instruments under Article 3, item 2 "d", "e", "f" and "i" insofar as they are connected with the provision of services under items 1 - 6 and Paragraph 2.

Pursuant to Art.6 of the MiFIA, investment services may be provided and investment activities may be performed as a regular occupation or business on a professional basis solely by a joint-stock company or a limited liability company which has its seat and registered office on the territory of the Republic of Bulgaria, has obtained authorisation for conduct of business in an investment-intermediary capacity from the Financial Supervision Commission ("**FSC**"). The provision of one or more investment services and/or the performance of one or more investment activities as a regular occupation or business on a professional basis may be carried out by a bank, which has obtained authorisation for provision of such services and performance of such activities from the Bulgarian National Bank ("**BNB**").

Investment firms (other than credit institutions) may not effect any other commercial transactions as a regular occupation or business on a professional basis, except those referred to below.

Investment firms which provide investment services and perform investment activities such as (i) dealing in financial instruments on own account and (ii) underwriting of issues of financial instruments and/or placing of financial instruments on the basis of an unconditional and irrevocable commitment to subscribe/acquire the financial instruments on own account, may furthermore effect foreign exchange transactions if they have obtained authorisation under the the applicable law.

Investment firms who are entitled to dealing in financial instruments on own account, may bid directly on their own account, while investment intermediaries who are entitled to perform execution of orders on behalf of clients may bid on behalf of clients in two-day spot auctions under the terms and following the procedure of Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302/1, 18 November 2010), upon obtaining authorisation from the Commission issued pursuant to the procedure specified in the law.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

N/A

2. ADDITIONAL ASSUMPTIONS

N/A

3. MODIFICATIONS TO OPINIONS

N/A

4. ADDITIONAL QUALIFICATIONS

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

4.1. The opinions expressed in items 3.3 (*Enforceability of the FOA Netting Provision*), 3.4 (*Enforceability of the Clearing Module Netting Provision*), 3.5 (*Enforceability of the Addendum Netting Provision*), 3.7 (*Enforceability of the FOA Set Off Provisions*), 3.8 (*Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision),* 3.9 *(Set-Off under a Clearing Agreement with an Addendum Set-Off Provision)* and 3.10 *(Enforceability of the Title Transfer Provisions)* shall each be considered against the risk of compulsory measures imposed by the Financial Supervision Commission ("**FSC**") under Part Four, Chapter VII (Compulsory Administrative Measures) of the MiFIA.

In particular, the FSC may pursuant to Art.118 of the MiFIA among other things:

(a) oblige any regulated person to take specific action as may be necessary for prevention and rectification of the violations, of the prejudicial consequences of the said violations or of the jeopardy to the interests of investors within a time limit as the FSC shall set;
(b) discontinue trade in particular financial instruments;
(c) order in writing a supervised person to remove one or more persons authorized to manage and represent the said person, and deprive any such person or persons of the managerial and representative powers held thereby until removal;
(d) appoint conservators in the cases prescribed by the MiFIA (see below);
(e) require distraint on property;
(f) remove financial instruments from trading on a regulated market or from another trading system.

Each of the supervisory measures referred to above (some of which contain a general discretion of the FSC to intervene in specific transactions) may affect the ability of the Counterparty to enter into the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; or to perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions.

4.2. In case the Counterparty – investment firm is put under conservatorship its capacity and authority to enter into and perform the obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or the Transactions will be affected as follows:

The FSC may appoint one or more conservators of an investment firm (a) when imposing a compulsory administrative measure as referred to above (for a period of up to three months) or (b) upon withdrawal of authorization for conduct of business, until appointment by the court of law of a liquidator or a trustee in bankruptcy, as the case may be.

Upon appointment of a conservator, all powers vesting in the supervisory board and the management board or in the board of directors, as the case may be, of the investment firm shall be suspended and shall be exercised by the said conservator, save in so far as the act of appointment thereof does not

provide for any limitations. The conservator shall take all the necessary measures for protection of the interests of investors.

Any acts and transactions, performed and effected by third parties on behalf and for the account of the investment firm under conservatorship, without prior authorisation by the conservator, shall be void.

The FSC may issue mandatory directions to the conservators in connection with their activity as conservators to the investment firm.

4.3. Investment firms are obliged to comply with a number of Ordinances issued by the FSC on their activities.

The activities of the investment firms may be affected by the requirements of Ordinance No 16 on the Terms and Conditions for Undertaking of Margin Purchases, Short Sales and Lending of Financial Instruments, as amended (Ordinance No. 16).

Ordinance No. 16 regulates and imposes certain restrictions on the margin purchases, short sales and lending of financial instruments, as well as requirements to the collateralisation of margin purchases and short sales, when investment intermediaries are obliged to deliver the financial instruments necessary for the settlement of short sales.

With effect from 1 November 2012, Regulation (EU) 236/2012 of the European Parliament and the Council on short-selling and certain aspects of credit default swaps also imposes certain restrictions on short selling and credit default swaps.

5. MODIFICATIONS TO QUALIFICATIONS

N/A

SCHEDULE 3
Insurance companies

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

For the purposes of this Schedule 3 (*Insurance companies),* insurance companies include insurers and reinsurers in the meaning of the IC.

"***Insurer***" means, as set out in Art. 8 (1) of the IC:
"1. *a joint-stock company, a co-operative society or an insurer from a third state through a branch registered under the Commerce Act which has received a licence under the terms, conditions, and procedure specified herein; or*
2. an insurer from another member state under the conditions of the right of establishment or of the freedom to provide services."

"***Reinsurer***" means, as set out in Art. 8 (2) of the IC:
1. a joint-stock company holding a license to pursue inward reinsurance under this Code;
2. a person holding a license to pursue inward reinsurance by seat of business in another member state;
3. a person holding a license to pursue inward reinsurance by seat of business in a third country (a third country reinsurer):
a) through a branch registered under the Commerce Act and holding a licence under this Code [i.e. IC] or
b) from its seat of business or from a branch in a third country subject to the terms and conditions of this Code [i.e. IC].

A license for insurance or reinsurance may also be granted to a person established as a European company (SE). A European company insurer or reinsurer shall be established, shall carry out its activity, transform itself and be wound up in accordance with Council Regulation (EC) No. 2157/2001 on the Statute for a European company (SE) and the IC. In respect of a European company insurer the provisions of the joint-stock insurance companies under IC shall apply.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

N/A

2. ADDITIONAL ASSUMPTIONS

N/A

3. MODIFICATIONS TO OPINIONS

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

3.1. Insolvency Proceedings under the Insurance Code ("**IC**")

The Insolvency Proceeding in relation to insurance companies licensed and operating under the IC imply the application of certain special provisions dealing with the commencement of the proceedings upon withdrawal of the insurance license by the Financial Supervision Commission ("**FSC**") and the treatment of the assets of insurance companies in a manner that would not adversely affect the insurance company's clients.

An insolvency proceeding with respect to an Insurer/Reinsurer may be initiated only by the FSC as the insurance activities regulator.

Simultaneously with entry in the Commercial Register of the opening of the procedure on compulsory liquidation and the court judgment on opening of insolvency procedure, the Registry Agency shall send the court judgment for publication in the Official Journal of the European Union, as well as information about:

(a) the applicable law,
(b) the competent court; and
(c) the appointed liquidator, respectively trustee (Insolvency Representative).

The FSC shall immediately notify the relevant competent authorities in the other EU Member States of the entry of opening a procedure on liquidation or the decision for opening the procedure or bankruptcy proceedings against an Insurer and of its legal effects.

The events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings under this Schedule.

4. ADDITIONAL QUALIFICATIONS

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

4.1. Limitations on transactions in certain assets

Insurers and reinsurers are obliged to maintain technical reserves and cover such technical reserves[24] with certain types of assets.

[24] The types of technical reserves depend on the type of insurances provided. Thus, for insurances under Section 1 to attachment No 1 of the IC the technical reserves which need to be set up are as follows:

1. A provisional fund;

In their activity and in order to provide appropriate coverage of their technical reserves Insurers and Reinsurers are required to invest in certain types of assets within the limits applicable to each asset class.

An insurer shall be obligated to cover the gross amount of technical reserves and of the provisional fund by corresponding assets in accordance with the following rules:
Only the following types of assets are eligible for coverage of the Insurers' technical reserves:
1. Securities admitted for trading on a regulated securities market or a multilateral trading facility (MTF) in the Republic of Bulgaria or in another Member State, as well as shares, qualified bonds and other qualified debt securities, admitted for trade on internationally recognised and liquid regulated securities markets or multilateral trading facilities in a third state;
2. Securities issued or guaranteed by the Republic of Bulgaria or by another Member State, as well as qualified debt securities issued or guaranteed by third states, their central banks or international organisations of which the Republic of Bulgaria or another Member State is a member;
3. Units issued by collective investment schemes, and shares of national investment funds under the Collective Investment Schemes and Other Undertakings for Collective Investments Act, as well as units of collective investment schemes headquartered in another Member State;
4. Property rights in land and buildings;
5. Receivables from reinsurers, including the reinsurers' share in technical reserves, and from special purpose vehicles for alternative insurance risk transfer;
6. Deposits and receivables from assignors;
7. Receivables from insured parties and intermediaries ensuing from insurance and reinsurance contracts;
8. Receivables from loans against life insurance policies;

---

2. An outstanding claims reserve;

3. An unearned premium reserve;

4. A mathematical reserve;

5. Capitalised value of pensions;

6. A reserve for future income contribution;

7. Life insurance investment fund related reserves;

8. A bonuses and rebates reserve;

9. Other reserves approved by the Deputy Chairperson or created under his/her prescription.

For insurances under Section 2 of Attachment 1 of the IC the reserves that need to be set up are as follows:

1. A provisional fund;

2. An outstanding claims reserve;

3. An unearned premium reserve;

4. Reserves for unexpired risks;

5. A bonuses and rebates reserve;

6. Other reserves approved by the Deputy Chairperson or created under his/her prescription

9. Cash in hand and current accounts or deposits with banks with the right to pursue bank operations in the Republic of Bulgaria or in another Member State;
10. Deferred acquisition costs;
11. Indisputably established receivables in relation to tax refunds.

"**Qualified debt securities**" within the meaning above shall be debt securities with an investment rating by an internationally recognised rating agency. All assets shall be valuated in compliance with the prudence concept, accounting for the risk of possible failure to turn these into cash. The amount of receivables recognised as cover for technical reserves shall be calculated observing the prudence concept, accounting for the risk of their possible non-settlement.

Security derivatives, including options, futures and swaps related to activities covering the technical reserves shall be recognised as cover for technical reserves only in case these contribute to the decrease of investment risk or facilitate effective portfolio management. These shall be valued observing the prudence concept and may be taken into consideration in the valuation of the underlying assets.

Receivables from third persons shall be recognised as cover for technical reserves upon deduction of all counter-obligations towards said third parties.

Under extraordinary circumstances, and upon advance reasoned request of the insurer, the Financial Supervision Commission may temporarily allow the utilisation of some other types of assets in order to cover technical reserves provided that the requirements set above have been observed.

On a separate note, when investing in the assets serving as coverage to the technical reserves the Insurers shall also observe the following diversification requirements:
An insurer shall invest the gross amount of technical reserves set up in the assets referred to above in compliance with, among others, the following restrictions:
1. Up to 80 per cent in the securities traded ate regulated markets or MTFs or units in UCITS above (under item 1 and 3) but not more than 30 per cent in assets, other than qualified bonds and other qualified debt securities;
2. Without any restriction whatsoever in securities issued or guaranteed by the Republic of Bulgaria or by another Member State, as well as qualified debt securities issued or guaranteed by third states, their central banks or international organisations of which the Republic of Bulgaria or another Member State is a member;
4. Up to 5 per cent in securities of a single issuer (other than those in the previous item)
5. Up to 50 per cent in bank deposits, but not more than 25 per cent of the gross amount with one bank;
6. Up to 3 per cent in cash in hand and under current accounts;

The maximum amount under Paragraph 1, item 4 may be 10 per cent in case an insurer invests not more than 40 per cent of the technical reserves' gross amount in securities of issuers, the exposure of the above insurer to which exceeds 5 per cent of its assets. The maximum amount under Paragraph 1, item 4 may be 20 per cent in case an insurer invests technical reserves in debt securities issued by a credit institution having its seat of business in a Member State, subject to special supervision, within

the meaning of the law, to the purpose of protecting the holders of such securities. More specifically, contributions received in return for the issuance of securities under sentence two shall be invested, pursuant to the reserves of the law, in assets that throughout the validity period of securities may cover the receivables from such securities and that in the case of issuer insolvency shall be utilised for the preferential satisfaction of the receivables for the principle and the interest accrued. The investment in units and shares in national investment funds cannot exceed 15 per cent of the gross amount of technical reserves, also applying Paragraph 1, Item 4 and certain legal requirements have been observed (namely that the assets shall reflect the specifics of the insurer's operations in such a way, as to guarantee certainty, profitability and liquidity by means of diversification and appropriate distribution).

Most importantly the eligible assets within the limits referred to above which serve as coverage to the technical reserves may not be encumbered (including be subject to financial collateral arrangements).

Assets needed to cover the technical reserves shall be diversified and distributed in such a way, as to ensure that no category of assets, investment market or separate investment has a significant share.

Investment in categories of assets, with a high degree of risk inherent to their nature or the issuer's characteristics, as well as the assets' share needed to cover technical reserves of low liquidity shall be limited to reasonable levels.

Similar requirements for the selection of assets covering technical reserves apply to the asset coverage of the technical reserves of Reinsurers.

Furthermore, Reinsurers are required to adopt (within 1 (one) month of obtaining the reinsurance license) and update annually an investment policy with certain mandatory measures aimed at arranging for risk limitation.

The FSC exercise supervision over the investment policy of the Reinsurer **and may apply compulsory administrative measures under Article 302 of the IC where the Reinsurer, in its investment operations, exposes itself to risks which it is not able to manage effectively.**

Therefore, where the Counterparty to the FOA Netting Agreement and/or Clearing Agreement is an Insurer or Reinsurer, it will need to secure that the assets subject to set off statements and title transfer agreements are not assets serving as coverage of the Insurer’s/Reinsurer’s technical reserves.

Set off statements and title transfer agreements, including financial collateral agreements with respect to assets designated for and serving as coverage for the mandatory technical reserves of an Insurer or Reinsurer shall be null and void due to violation of the express prohibition set out in the IC.

4.2. Limitations related to insolvency of Insurers under the Insurance Code

The opinions expressed in items 3.3 (*Enforceability of the FOA Netting Provision*), 3.4 (*Enforceability of the Clearing Module Netting Provision*), 3.5 (*Enforceability of the Addendum*

Netting Provision), 3.7 (*Enforceability of the FOA Set Off Provisions*), 3.8 (*Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision),* 3.9 *(Set-Off under a Clearing Agreement with an Addendum Set-Off Provision)* and 3.10 *(Enforceability of the Title Transfer Provisions)* are subject to the limitations related to insolvency of Insurers under the Insurance Code.

Own Funds, Solvency Margins and Guarantee Capital

Insurers and Reinsurers are required to maintain own funds higher than the solvency margin and a guarantee capital which is not less than 1/3 of the solvency margin calculated pursuant to the rules of the IC. The solvency margin shall be the minimum amount of the insurer's or reinsurer's own funds, reduced by the intangible assets, and required to ensure the performance of the person's contractual obligations in the long run, in accordance with the total volume of its operations. Additional solvency requirements apply to insurers and reinsurers within a insurances/ reinsurance group and certain intragroup transactions are subject to additional reporting and supervision.

In case as a result of the additional supervision the Deputy Chairperson of the Financial Supervision Commission ("**FSC**") finds out that solvency of the Insurer is at risk, he/she shall apply the following measures:

1. Order the implementation of a recovery plan (a solvency recovery plan and a short term plan and/or a reorganization plan);
2. Impose any of the compulsory administrative measures.

In particular, the FSC may pursuant to Art.302 of the IC, among other things:

(a) determine the structure of assets that would guarantee payments under insurance or reinsurance contracts;
(b) limit or prohibit the free disposal of assets in cases related to coverage of the technical reserves (under Article 72, Paragraph 2, Article 79b, Paragraph 2, Article 86, Paragraph 1 or 2) and upon revocation of the Insurer's or Reinsurer's license;
(c) order the insurer or reinsurer to terminate an agreement for transfer of operations to third parties;
(d) appoint a quaestor (conservator) for up to one year in the cases prescribed by the IC ;
(e) withdraw the license.

Each of the compulsory measures referred to above (some of which contain a general discretion of the FSC to intervene in specific transactions) may affect the ability of the Counterparty to enter into or perform its obligations under the FOA Netting Agreement and/or Clearing Agreement.

The appointment of a quaestor (conservator) shall suspend all powers of the management and control bodies of the Insurer, which shall be exercised by the quaestor to the extent of the restrictions provided for in the its assignment deed. The quaestor shall take all necessary measures for the protection of the interests of the insured persons.

Acts and transactions (including set off or Title Transfer or the entry into an Equivalent Agreement) carried out on behalf and at the expense of the Insurer/Reinsurer without the preliminary authorisation of the quaestor shall be void.

4.3. So far as Bulgarian law is concerned, the imposition of compulsory measures by the FSC, including the appointment of a qauestor or the withdrawal of the license of a Counterparty-Insurer or Reinsurer before the establishment of the financial collateral may limit the capacity of the Counterparty - Insurer or Reinsurer to enter into the FOA Netting Agreement and/or Clearing Agreement. In such a case the secured Counterparty to the FOA Netting Agreement and/or Clearing Agreement would not be able to benefit of the protective provisions applicable to financial collateral arrangements.

4.4. Besides the compulsory measures described above, in certain cases the FSC may apply other measures affecting the ability of the Counterparty which is an Insurer to enter into or perform its obligations under the FOA Netting Agreement and/or Clearing Agreement. For example, the Deputy Chairperson of the FSC may prohibit an Insurer who fails to fulfil its obligations with regard to covering technical reserves to freely dispose of its assets upon advising the competent authorities of the Member States where the risk is situated of his/her intention to do so.

5. MODIFICATIONS TO QUALIFICATIONS

N/A

SCHEDULE 4
Individuals - Professional Clients

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

For the purposes of this Schedule 4 (*Individuals - Professional Clients)*,

"**Individual -Professional Client**" means a natural person (whether a sole trader or not) considered a professional client at his/her request as set out in Section II of the Annex to Art.36 (1) of the Markets in Financial Instruments Act ("**MiFIA**"), namely clients meeting at least two of the following criteria:
(a) in the last year the person has concluded on average 10 large-scale transactions per quarter on a relevant market;
(b) the value of the investment portfolio of the person, which consists of financial instruments and cash deposits, exceeds the lev equivalent of EUR 500,000;
(c) the person works or has worked in the financial sector for at least one year on a position which requires knowledge of relevant transactions or services.

As opposed to the professional clients who are professional and institutional investors by definition, in order to consider an individual a professional client an assessment needs to be made pursuant to the following procedure set out in Section II to the Annex to Art.36 (1) of MiFIA:

The individuals may request treatment as professional clients subject to the following procedure:
(a) the clients shall request in writing from the investment intermediary to be treated as professional clients for all or for specific investment services or transactions or specific types of transactions or investment product;
(b) the investment intermediary shall warn the client in writing that it will not be afforded the relevant degree of protection in providing the services and performing the activities by the investment intermediary and shall not enjoy the right of compensation from the Fund for Compensation of Investors in Financial Instruments;
(c) the client must declare that he is notified of the consequences under "b";
(d) before taking a decision on treatment of the client under Article 37 as professional client the investment intermediary shall take the necessary steps to assure itself that the client meets the identification requirements referred to above.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

N/A

2. ADDITIONAL ASSUMPTIONS

We assume:

2.1. That no restrictions on the personal capacity and ability apply to Counterparty - Individual-Professional Client, and in particular he/she have not been put under guardianship or custody or subject to appointment of a statutory representative under the Persons and Family Act (promulgated in State Gazette, Issue No 182/9.08.1949 as amended and supplemented)

2.2. That a Counterparty—Individual-Professional Client within the sense given thereto in the Bulgarian MiFIA has requested and has been recognized the capacity of professional client in conformity with the Bulgarian MiFIA and that it has been duly warned in writing of the consequences arising thereunder.

3. MODIFICATIONS TO OPINIONS

N/A

4. ADDITIONAL QUALIFICATIONS

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

4.1. So far as Bulgarian law is concerned, a natural person- professional client does not have capacity to enter into financial collateral agreements because he/she do not fall in the categories of persons authorized to enter into such agreements.

4.2. On a separate note, individuals who are not merchants under the Bulgarian law cannot be declared insolvent, and therefore, the qualifications related to insolvency as well as the protections in case of bankruptcy proceedings applicable to financial collateral shall be irrelevant. Assuming that individuals – professional clients enter into the FOA Netting Agreement and/or the Clearing Agreement, the security interest to the extent the Bulgarian law is relevant shall be considered other type of security interest under the general rules of the Bulgarian law. It must be underlined, however, that the provision of title transfer collateral is generally considered invalid outside the Financial Collateral Act and therefore subject to the qualifications expressed in Section 4.1. of the Opinion, should Bulgarian law be applied the Title Transfer Provision may be deemed unenforceable against a natural person professional client..

4.3. A transaction under the FOA Netting Agreements and/or the Clearing Agreement or the security interest granted by a natural person who is not a merchant may only be invalidated on the basis of civil law actions, and in particular - on the basis of the so called "*Actio Pauliana*" under Art.135 of the Obligations and Contracts Act, though we tend to believe that it is quite unlikely that circumstances which would give grounds to the successful conduct of the said action. For completeness of the review and given the existence of theoretical possibility to apply the *Actio Pauliana* for relative invalidity of the transactions under the FOA Netting Agreements and/or the Clearing Agreement you need to consider the following: The creditors to a Counterparty which is an Individual- Professional Client may seek to invalidate a transaction under the Agreements vis-à-vis themselves if the transaction has been harmful to them and if the Individual – Professional Client was aware of the damaging effect at the time of performance. Where an act is for consideration it shall be assumed that the person with whom the debtor negotiated was also aware of the damaging effect. The

law provides however for relative but not absolute invalidity i.e. it shall not prejudice the rights acquired in good faith by third parties for consideration prior to the filing of the petition for invalidation. Where the transaction was performed prior to the arising of the claim it shall be invalid only if it was intended by the debtor and the person with whom he negotiated to harm the creditor. Creditors in whose favour the invalidity is declared shall be satisfied out of the amount received from a public auction prior to the third party, when the latter participates in the distribution with a claim arising from the declaration of invalidity.

4.4. Insolvency Proceedings can be, however, initiated vis-à-vis individuals – professional clients who have the capacity of merchants – "sole traders" in the sense of the Commerce Act. Sole traders are registered in the Commercial Register. In such a case the qualifications related to the applicability of claw back rules will apply as well with respect to individuals.

4.5. an individual – professional client shall not be entitled to the enhanced consumer protection under the applicable consumer protection laws, and in particular under the Bulgarian Distance Marketing of Financial Services Act which transposes the provisions of Directive 2002/65/EC of the European Parliament and of the Council concerning the distance marketing of consumer financial services, including to the cancellation right in case of entry into a financial services agreement by means of distant communication.

5. MODIFICATIONS TO QUALIFICATIONS

N/A

SCHEDULE 5

Collective Investment Schemes and other collective investment undertakings

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

For the purposes of this Schedule 5 (Collective Investment Schemes and other collective investment undertakings), "**Collective investment scheme**" means, pursuant to Article 4 of the Activities of Collective Investment Schemes and Other Undertakings for Collective Investments Act ("**ACIESOUCI**"), a collective investment undertaking which meets the following conditions:

1. its sole objective is collective investment in transferable securities or other liquid financial assets under Article 38, Paragraph 1 of the ACIESOUCI[25] of funds raised through public offering, and which operates on the principle of risk spreading;

[25] **Article 38.** (1) Investments of collective investment schemes may comprise only:
1. transferable securities and money market instruments admitted to or traded on a regulated market under Article 73 of the Markets in Financial Instruments Act;
2. transferable securities and money market instruments traded on a regulated market other than that under Article 73 of the Markets in Financial Instruments Act, in the Republic of Bulgaria or in another Member State, operating regularly, recognised and publicly accessible, as well as securities and money market instruments issued by the Republic of Bulgaria or another Member State;
3. transferable securities and money market instruments admitted to trading on an official market of a stock exchange or traded on another regulated market in a third country, operating regularly, recognised and publicly accessible, which are included in a list approved by the Deputy Chairperson, or which are set out in the statute, the rules of the collective investment scheme respectively;
4. recently issued transferable securities with the conditions of their issue including an obligation to request admission, and within a time limit not exceeding one year from their issue, be admitted to trading on an official market of a stock exchange or another regulated market operating regularly, recognised and publicly accessible, which are included in a list approved by the Deputy Chairperson, or which are set out in the statute, the rules of the collective investment scheme respectively;
5. units of collective investment schemes and/or other collective investment undertakings which meet the conditions of Article 4, Paragraph 1, no matter whether their seat is in a Member State, provided that:
a) the other collective investment undertakings meet the following conditions:
aa) have been granted an authorisation for pursuit of activity by law in accordance with which supervision is exercised over them, which the Deputy Chairperson considers equivalent to the supervision laid down in Community law and cooperation between supervision authorities is sufficiently ensured;
bb) the level of protection of the unit-holders in these, including the rules for distribution of assets, for use and granting of loans for transferable securities and money market instruments, as well as for sale of securities and money market instruments not held by the collective investment undertakings, are equivalent to the rules and protection of the unit-holders of collective investment schemes;
cc) disclose periodically information by preparing and publishing annual and semi-annual reports, providing opportunity for assessment of the assets, liabilities, income and effected operations in the reporting period, and
b) not more than 10 per cent of the assets of collective investment schemes or other collective investment undertakings intended for acquisition may be, in accordance with their instruments of incorporation or their rules, invested in total in units of other collective investment undertakings or in other collective investment schemes;
6. deposits at credit institutions, payable at demand or in respect whereof the right for withdrawal at any time exists, and with maturity date not exceeding 12 months; credit institutions in a third country shall observe rules and shall be subject to supervision as the Deputy Chairperson considers equivalent to those set out in Community law;
7. derivative financial instruments, including equivalent cash-settled instruments traded on regulated markets referred to in items 1 - 3;
8. derivative financial instruments traded on OTC markets, provided that:
a) their underlying assets are instruments under Paragraph 1, financial indices, interest indices, currencies or foreign exchange rates in which the collective investment scheme may invest in accordance with its investment policy set out in the statute, the rules respectively;

2. its units are dematerialised and are subject to redemption, directly or indirectly, based on its net asset value, at a request made by the unit-holders.

The collective investment scheme shall be established as:

1. a common (contractual) fund or
2. as an investment company.

The common fund shall be deemed established upon its registration in the register maintained by the Financial Supervision Commission. It does not have a legal personality.

The investment company shall be a joint-stock company with one-tier management and with a seat in the Republic of Bulgaria, which shall be incorporated only at a constituent meeting. The activity of the Collective Investment Scheme shall only be managed by a management company in accordance with a contract or in accordance with the common fund rules respectively.

For the pursuit of the activities as a Collective Investment Scheme a license for pursuit of business as Investment Company or an authorisation for common fund organization and management shall be granted by Financial Supervision Commission.

The license or authorisation as granted entitles the collective investment scheme to pursue business within the territory of all Member States.

Other collective investment undertakings include:

---

b) the counterparty to the transaction in such derivative financial instruments is an institution subject to prudential supervision, and meeting the requirements approved by the Deputy Chairperson;
c) are subject to reliable and verifiable valuation on a daily basis and, at the initiative of the collective investment scheme, may be sold, liquidated or closed by an offsetting transaction at any time at fair value;
9. money market instruments other than those traded on a regulated market and referred to in § 1, item 6 of the supplementary provisions, if supervision is exercised over the issue or the issuer of such instruments, for the purpose of protecting investors or savings, provided that they are:
a) issued or guaranteed by central, regional or local authorities in the Republic of Bulgaria or in another Member State, by the Bulgarian National Bank, by the central bank of another Member State, by the European Central Bank, by the European Union or the European Investment Bank, by a third country, and in the cases of a Federal State, by one or more of the members of the Federal State, by a public international organisation to which one or more Member States belong;
b) issued by an issuer whose issue of securities is traded on a regulated market under items 1 - 3;
c) issued or guaranteed by a person subject to prudential supervision, in accordance with criteria defined by Community law, or by a person which is subject to and complies with rules adopted by the relevant competent authority, which are at least as stringent as those defined by Community law;
d) issued by issuers other than those referred to in letters "a", "b" and "c", meeting criteria approved by the Deputy Chairperson and ensuring that:
aa) investments in such instruments are subject to investor protection equivalent to that laid down in letters "a", "b" and "c";
bb) the issuer is a company whose capital and reserves amount to at least the lev equivalent of EUR 10,000,000, which presents and publishes annual financial statements in accordance with Fourth Council Directive of 25 July 1978, based on Article 54, § 3, "g" of the Treaty on the annual accounts of certain types of companies (78/660/EEC) or Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of the International Accounting Standards, and is an entity dedicated to financing a group of companies which includes one or several companies admitted to trading on a regulated market, or is an entity dedicated to financing securitisation vehicles which benefit from banking liquidity line.

a) **National investment funds**, which in the meaning of the law shall be open-ended or closed-ended national investment companies having their seats in the Republic of Bulgaria, or national common funds investing in transferable securities or in other liquid financial assets, monetary funds raised by public offering on the risk distribution principle. National investment funds are not collective investment schemes, and the legal requirements for collective investment schemes (specified in Part II of the ACIESOUCI) are applicable to them only if this is explicitly provided for in the law.

A national investment fund of the open-ended type redeems its shares or units upon a request by the shareholders, unit-holders respectively, at a price based on the net asset value. The actions pursued in order to ensure that the stock exchange value of the shares or units does not significantly differ from the value of the net assets are deemed equivalent to such redemption.

A national investment fund is of the closed-ended type where it does not redeem its shares or units, with the exception of redemption of shares of investment companies under the conditions and according to the procedure set out in the Commerce Act.

A national investment company may be established only as a joint stock company with one-tier management system, the only subject of activity of which is investing in transferable securities and in other liquid financial assets, of monetary funds raised by public offering of shares. The investment company may not engage in any other trade activities, unless this is necessary for pursuing the specified activity.

A national common fund shall be an entity of separate property with the purpose of collective investment in transferable securities and in other liquid financial assets, of monetary funds raised by public offering of units.

b) **An alternative investment fund (AIF)** is a collective investment undertaking, including its investment sub-funds, other than a collective investment scheme, which invests funds raised from more than one person[26] in accordance with a specific investment policy[27] and in favour of

[26] It is assumed that the funds are raised from more than one person, if:

1. the collective investment undertaking is not limited by the national legislation, its instruments of incorporation and other regulatively or contractually established requirements to raise funds from more than one person, regardless if actually there is more than one investor.

2. the collective investment undertaking is limited by the national legislation, its instruments of incorporation and other regulatively or contractually established requirements to raise funds from more than one person, provided its only investor invests funds raised from more than one person with the purpose of investing them in favour of these persons.

[27] It is accepted that the collective investment undertaking has a specific investment policy, if at least one of the conditions below is met:

1. the investment policy is determined not later than at the time when the investment in the collective investment undertaking is not subject to withdrawal, this however not including any subsequent redemption or other way of disposing of the investment made;

2. the investment policy is determined in the instruments of incorporation of the collective investment undertaking, or in another document referred to in any of its instruments of incorporation;

3. the collective investment undertaking has the obligation to comply with the investment policy and this obligation is subject to enforced implementation by the investors;

4. the investment policy sets out rules of investment containing one or more of the following criteria:

a) investment is limited to specific categories of assets and/or specific categories of assets are excluded from the permitted investments;

b) investment is compliant with specific strategies;

these persons, whereas the raised funds are invested and the return is realised under the principle of distribution of risk and return among the investors only based on the share of the investments made by them, without establishing investment portfolios of individual investors.

c) **Special investment purpose companies** incorporated under the Special Investment Purposes Companies Act ("**SIPCA**") which are established for the purposes of securitization of receivables or immovable properties are also subject to specific transactions limitations regulated in the SIPCA.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

N/A

2. ADDITIONAL ASSUMPTIONS

N/A

3. MODIFICATIONS TO OPINIONS

The Opinions expressed in 3.1. of the body of the Opinion Letter shall be modified to address the fact that special termination and insolvency provisions apply with respect to Collective Investment Schemes and national investment funds as follows:

3.1. An investment company may be forcefully terminated on the following grounds:
1. upon withdrawal of its license;
2. where within three months from withdrawal of the license, winding-up or declaring in bankruptcy of the management company the investment company has not appointed a new management company or has not restructured itself by consolidation or merger.

A common fund shall be wound up forcefully:
1. upon withdrawal of the authorisation for the common fund's organisation and management;
2.where within three months from withdrawal of the license, winding-up or declaring in bankruptcy of the management company the common fund has not appointed a new management company or the fund is not restructured by consolidation or merger.

After entry into force of the decision on withdrawal of the license of the investment company, the FSC shall send it to the Registry Agency for registration in the Commercial Register and for appointment of a liquidator.

---

c) investment is limited to specific geographic regions;
d) investment is compliant with specific limits for leverage;
e) investment is done subject to specific period of holding of the investments, or
f) investment is subject to other limitations with a view to distribution of risk.

The FSC (Deputy Chairperson in charge) may order the conduct of inspection and may enforce coercive measures until deregistration of the investment company from the Commercial Register and until final settlement of the relationships with the unit-holders.

The terms and procedure for winding-up of an investment company and a common fund shall be set out in a special ordinance.

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

4. ADDITIONAL QUALIFICATIONS

The opinions expressed in items 3.3 (*Enforceability of the FOA Netting Provision*), 3.4 (*Enforceability of the Clearing Module Netting Provision*), 3.5 (*Enforceability of the Addendum Netting Provision*), 3.7 (*Enforceability of the FOA Set Off Provisions*), 3.8 (*Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision),* 3.9 *(Set-Off under a Clearing Agreement with an Addendum Set-Off Provision)* and 3.10 *(Enforceability of the Title Transfer Provisions)* are subject to the following additional qualifications.

4.1. Restrictions in the activity

So far as Bulgarian law is concerned, collective investment schemes and other UCITS (as well as SIPCAs) have restrictions on their activity which may result in a Transaction in securities of a certain type which are not fully paid in being invalidated, including the Netting Provisions, the Set Off Statement and the Title Transfer Provisions under the FOA Netting Agreements and/or the Clearing Agreements insofar as these refer to specific cash or securities assets.

a) Collective investment schemes

A collective investment scheme may not engage in activities other than those set out in its license and Article 38, Paragraph 1 of the ACIESOUCI (as set out in footnote 1), unless these are necessary for the pursuit of the collective investment scheme's activity.

b) National investment funds

A national investment fund established as a national investment company may have as its only subject of activity investing in transferable securities and in other liquid financial assets, of monetary funds raised by public offering of shares. The investment company may not engage in any other trade activities, unless this is necessary for pursuing the activity under the preceding sentence.

c) Special purpose investment companies

A special purpose investment company may not carry out commercial transactions other than those specified below and transactions directly related to them, unless expressly permitted by the SIPCA:
1. raising resources by issuing securities;
2. purchase of real estates and real rights on real estates, carrying out construction and improvements for the purpose of assigning them for management, renting, leasing or leasehold and their sale, or sale-purchase of receivables.

A special purpose investment company may securitize only real estates or only receivables.

4.2. Limitations on certain transactions

The Transactions contemplated in the FOA Netting Agreements and/or the Clearing Agreement cannot be made in violation of the restrictions specified below. Transactions with assets outside the permitted types of investments or which fall in the categories expressly referred to in item 4.2.2. (a) and 4.2.3. (b) below may be considered invalid or relatively invalid.

4.2.1. Restrictions on investments

a) ***Collective investment schemes***

The applicable restrictions to the investments of a collective investment scheme are described in footnote 1 above.

b) ***National investment Funds***

National investment funds may only invest in the following assets:

1. financial instruments without any restrictions as to their type;
2. precious metals certificates;
3. deposits with banks, payable on demand or in respect to which the right of withdrawal at any time exists, provided the bank has its seat in the Republic of Bulgaria or in another Member State, and if it has its seat in a third country - provided it is subject to prudent rules, which the Deputy Chairperson of the FSC considers equivalent to those set out in the EU law;
National investment funds may invest without any restriction their assets in issues of financial instruments issued or guaranteed by the Republic of Bulgaria and other Member States, as well as those issued or guaranteed by third countries included in a list prepared by the Deputy Chairperson.

National investment funds must comply with the following restrictions in investing, determined as a percentage of assets:

1. financial instruments admitted to or traded in a regulated market, issued by single issuer:
a) up to 15 per cent of the assets of an open-ended national investment fund;
b) up to 20 per cent of the assets of a closed-ended national investment fund;
2. financial instruments which are offered publicly or for which there is an obligation to apply for admittance and to be admitted to or traded in a regulated market or another organised market operating regularly, recognised and publicly accessible, issued by a single issuer - up to 15 per cent of the assets of an open-ended national investment fund, respectively up to 25 per cent of the assets of a closed-ended national investment fund;
3. financial instruments which are not offered publicly and for which there is no obligation to be admitted to trading in a regulated market or another organised market operating regularly, recognised and publicly accessible, issued by a single issuer - up to 15 per cent of the assets of the national investment fund whereas the total amount of investments in such financial instruments may be up to

25 per cent of the assets of an open-ended national investment fund, respectively 50 per cent of the assets of a closed-ended national investment fund;
4. shares and units of collective investment undertakings, which are not publicly offered - up to 15 per cent of the assets of an open-ended national investment fund, respectively 30 per cent of the assets of a closed-ended national investment fund;
5. precious metal certificates - in total up to 10 per cent of the assets of an open-ended national investment fund, respectively up to 15 per cent of the assets of a closed-ended national investment fund.

National investment funds may exceed the restrictions to the investment in a single issuer under item 1 above, if they comply with the following restrictions:
1. up to 30 per cent of the assets of an open-ended national investment fund, provided the total value of the investments in issuers, in which the fund has invested more than 15 per cent of its assets each, does not exceed 50 per cent of the fund's assets;
2. up to 40 per cent of the assets of a closed-ended national investment fund, provided the total value of the investments in issuers, in which the fund has invested more than 20 per cent of its assets each, does not exceed 60 per cent of the fund's assets;

National investment funds may not acquire more than:

1. fifteen per cent of the non-voting shares issued by a single entity;
2. fifteen per cent of the bonds or other debt securities issued by a single entity;
3. thirty per cent of the units of a single collective investment scheme, which has authorisation for pursuit of business under Directive 2009/65/EC, and/or another collective investment scheme irrespective if it is having its seat in a Member State or not, provided the prospectus of such a collective investment scheme stipulates that it should not invest more than 10 per cent of its assets in units of other collective investment schemes, irrespective if they have been authorised to pursue a business under Directive 2009/65/EC or not;
4. fifteen per cent of the money market instruments issued by a single entity.

National investment funds may invest their assets in bank deposits in such proportions as are stipulated in their statutes or rules.

In the cases where a management company, or alternative investment fund manager respectively, provides a capital guarantee or a guarantee for the income of unit-holders of a national investment fund, it may invest without any restriction its assets in bank deposits, including deposits with a single bank.

c) ***AIFs***

An AIF manager may invest the assets of an AIF managed thereby in securitisation positions only if the requirements under Article 50 - 56 of Delegated Regulation (EU) No 231/2013 are complied with.

d) ***Special Purpose Investment Companies incorporated under SIPCA***

A special purpose investment company may only invest its free resources in securities, issued or guaranteed by the Bulgarian government, and in bank deposits.
A special purpose investment company for securitization of real estates may invest up to 10 percent of its assets in mortgage bonds.
A special purpose investment company may not acquire interests in other companies except that a special purpose investment company may invest up to 10 percent of its capital in a servicing company.
A special purpose investment company may not participate on the capital market by investing in assets other than those under paragraphs 1 and 2 above. It may carry out buy-back of shares in accordance with the procedure of Article 111 (5) of the Public Offering of Securities Act (i.e. during any calendar year, a public company may not acquire more than 3 per cent of its own voting shares in the event of reduction of capital by cancellation of shares and repurchase save under the terms and according to the procedure of a tender offer. In such a case, the requirements to holders of at least 5 per cent wishing to acquire more than one third of the voting shares shall not apply).
A special purpose investment company may acquire new assets for securitization only if this has been stipulated by its by-laws or in the offering circular.
A special purpose investment company may not acquire real estates or receivables subject to a legal dispute. The real estates acquired by the special purpose investment company shall be located on the territory of the Republic of Bulgaria.

The receivables acquired by the special purpose investment company shall:
1. be from local persons;
2. not be subject to enforcement.

4.2.2. Borrowing Funds

a) Collective investment schemes

The investment company, as well as the management company and the depositary bank which act on behalf of the collective investment scheme my not use loans, except in the cases below:

1. The UCITS may acquire foreign currency through a compensation loan under conditions set out in a special ordinance issued by the FSC.
2. The FSC may grant permit to the UCITS to use a loan of up to 10 per cent of the value of its assets, if the following conditions apply simultaneously: i) the loan is for a term not longer than three months and is necessary to cover the obligations for redemption of the units in the scheme; and ii) the conditions of the loan contract shall not be less favourable than the normal market conditions and the statute and the rules of the collective investment scheme allow the conclusion of such a contract.

The FSC shall issue or refuse to issue the permit above under the terms set out in the law.
The actions committed in violation of the prohibition above 1 shall be void vis-a-vis unit-holders.

b) National investment funds

A national investment fund may not use loans, except with the permission of the Deputy Chairperson of the FSC in the following cases:

1. an open-ended national investment fund may use a loan amounting up to 20 per cent of its assets, provided the loan is extended with a maturity not longer than 12 months, and is needed to cover the fund's obligations for redemption of its units.
2. a closed-ended national investment fund may use a loan amounting up to 30 per cent of its assets, provided the loan is extended with a maturity not longer than 12 months, and if it is needed to acquire assets.

c) ***Special Purpose Investment Companies incorporated under SIPCA***

A special purpose investment company may only:

1. issue debt securities registered for trade on a regulated market;
2. use bank loans for acquisition and commissioning of the assets subject to securitization;
3. use bank loans amounting to 20 percent of the book value of the assets used for payment of interest, if the term of the credit is not more than 12 months.

4.2.3. Lending and Guarantee

a) ***Collective investment schemes***

The investment company as well as the management company and the depositary bank, when acting on behalf of the UCITs, may not grant loans, nor be guarantors of third parties.

The actions committed in violation of the prohibitions above shall be void vis-a-vis unit-holders.

Notwithstanding the restrictions above, the persons above may acquire transferable securities, money market instruments or other financial instruments where their value is not fully paid in the cases expressly provided for in the law.

b) ***Special Purpose Investment Companies incorporated under SIPCA***

A special purpose investment company may not secure third parties' liabilities or grant loans.

4.2.4. Restrictions on other transactions

a) Collective investment schemes

The investment company as well as the management company and the depositary, when acting on behalf of the collective investment scheme, may not conclude contracts for short sales of transferable securities, money market instruments or other financial instruments under Article 38, Paragraph 1, items 5, 7, 8 and 9 of the ACIESOUCI .

4.3. The opinions expressed in items 3.3 (*Enforceability of the FOA Netting Provision*), 3.4 (*Enforceability of the Clearing Module Netting Provision*), 3.5 (*Enforceability of the Addendum Netting Provision*), 3.7 (*Enforceability of the FOA Set Off Provisions*), 3.8 (*Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision),* 3.9 *(Set-Off under a Clearing Agreement with an Addendum Set-Off Provision)* and 3.10 *(Enforceability of the Title Transfer Provisions)* shall each be considered against the risk of compulsory measures imposed by the FSC under Part Four, Chapter 23 (Compulsory Administrative Measures) of the ACIESOUCI.

In particular, the FSC may among other things:

(a) oblige collective investment undertaking to take measures that are necessary to prevent and rectify breaches, the harmful effects therefrom or the threat for the interests of investors within the time limit set thereby;
(b) suspend for a period of 10 consecutive business days or stop finally the sale or execution of transactions in units or shares of the collective investment scheme, or another collective investment undertaking;
(c) appoint conservators (quaestors) in the cases set out in the law (with respect to investment companies and managing companies);
(d) take decision on temporary suspension of redemption of units or shares in a collective investment scheme, or another collective investment undertaking;
(e) request enforcement on property.

Each of the supervisory measures referred to above (some of which contain a general discretion of the FSC to intervene in specific transactions) may affect the ability of the Counterparty to enter into the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; or to perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions.

In case conservators (quaestors) of a Counterparty – investment company or managing company are appointed by the FSC, its capacity and authority to enter into and perform the obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or the Transactions will be affected as follows:

Upon appointment of a conservator (quaestor), all powers vesting in the supervisory board and the management board or in the board of directors, as the case may be, of the Counterparty shall be suspended and shall be exercised by the said conservator (quaestor), save in so far as the act of appointment thereof does not provide for any limitations. The conservator (quaestor) shall take all the necessary measures for protection of the interests of investors.

Any acts and transactions, performed and effected by third parties on behalf and for the account of the investment company or managing company without prior authorisation by the conservator (quaestor) shall be void.

The FSC may issue mandatory directions to the conservators (quaestors) in connection with their activity.

Special purpose investment companies incorporated under SIPCA may be also subject to compulsory measures imposed by the FSC.

5. MODIFICATIONS TO QUALIFICATIONS

N/A

SCHEDULE 6
Sovereign and Public Entities

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

For the purposes of this Schedule 6 (*Sovereign and public entities)*, shall be a generally defined in Art. 3 para 1 of the Financial Collateral Contracts Act:

1. public, central government and local government authority, including public sector bodies charged with or intervening in the management of government or municipal debt, and public sector bodies authorised to hold accounts for customers and
2. a central bank;

Individual legal definitions, requirements and procedures are set out in de Constitution of the Republic of Bulgaria, The Government Debt Act, the International Treaties of the Republic of Bulgaria Act, the Bulgarian National Bank Act, Local Self-Government and Local Administration Act, the State Ownership Act, the Municipal Ownership Act and other special pieces of legislation on the establishment of authorities and public entities providing public services as set out in details in Section 3.

3.1. The State and other state and municipal bodies

Pursuant to the Constitution the Republic of Bulgaria is a parliamentary Republic. No part of the people, political party or any other organization, institution of state, or individual may usurp the exercise of the people's sovereignty. It is a unitary state with local self-government with no autonomous territorial formations. State power shall be divided between a legislative, an executive, and a judicial branch of government.

(a) State and Government Authorities (the Council of Ministers, the Ministers, others established by the Constitution of the Republic of Bulgaria)

The Republic of Bulgaria may enter into international treaties creating financial obligations or providing for international arbitrage or foreign jurisdiction as well as on other matters set out in Art.85 para 1 of the Constitution[28] , subject to approval by the Parliament of Ratification Acts and in

[28] Article 85. (1) The National Assembly shall ratify or denounce by statute the international treaties which:

1. are of a political or military nature;

2. concern the participation of the Republic of Bulgaria in international organizations;

3. provide for a modification of the border of the Republic of Bulgaria;

4. impose financial obligations on the State;

5. provide for participation of the State in arbitration or judicial settlement of international disputes;

6. affect fundamental human rights;

conformity with the provisions of the Constitution and the International Treaties of the Republic of Bulgaria Act[29] . The entering into agreements for state loans require prior approval from the Bulgarian National Assembly before being entered into. The Minister acting on behalf of the Republic of Bulgaria would normally also require specific authorization from the Council of Ministers.

Governmental debt may be assumed only pursuant to the Government Debt Act[30] .

Therefore, to the extent the FOA Netting Agreements and/or the Clearing Agreements fall in the scope of competence of a Government Authority and are subject to approval of a Ratification Act under Art.85 of the Constitution, prior approval by the Bulgarian parliament or Council of Ministers, their validity and enforceability, including the Collateral thereunder will be dependent on the conduct of the respective Parliamentary/Council of Ministers procedures referred to above.

The regime applying to the ownership of state and municipal property is established by special pieces of law and in particular the State Ownership Act and the Municipal Ownership Act.

(b) Municipalities and Municipal Authorities (Councils and Mayors)

The municipality is the basic territorial unit subject to local self-government by Municipal Councils and Mayors whose competence is established in the Local Self-Government and Local Administration Act[31].
Municipal debt may be assumed only pursuant to the provisions and subject to the procedures set out in the Municipal Debt Act[32]

A large number of other public bodies and institutions exist as well which are established pursuant to special pieces of legislation.

All of the above entities and institutions ("**Budgetary Institutions**") operate on the basis of budgets, subject to specific budgetary procedures and are bound to comply with mandatory budgetary laws and regulations.

Assumption of obligations and enforcement of creditors' rights under the various transactions entered into with Budgetary Institutions may be restricted given the express provisions of the Bulgarian Civil Procedure Code[33] which do not admit compulsory enforcement actions vis-à-vis public Budgetary institutions. The said provisions have been successfully challenged before the Constitutional court

---

7. affect the operation of the law or require measures of a legislative nature for the performance thereof;

8. expressly require ratification;

9. (new, SG No. 18/2005) grant the European Union powers arising from this Constitution.

[29] Promulgated in SG, Issue No 97/13.11.2001

[30] Promulgated in SG, Issue No. 93/1.10.2002

[31] Promulgated in SG, Issue No. 77/17.09.1991, effective 17.09.1991, as amended and supplemented

[32] Promulgated in SG No 34/19.04.2005, as amended and supplemented

[33] Promulgated in State Gazette, Issue No. 59/20.07.2007, effective 1.03.2008,as amended and supplemented

with respect to the enforcement immunity particularly of Municipalities and therefore compulsory enforcement is possible against them.

Where enforcement of monetary obligations against government institutions are not admissible, these shall be paid out of the budget designated for the purpose. To this end, the writ of execution shall be presented to the financial authority of the relevant institution. If there are no funds designated in the budget for the payments under the writ of execution, the superior budgetary institution shall undertake the measures necessary for a provision funds in the next budget at the latest.

Similarly, the enforcement against budget-subsidized establishments, and more precisely against any resources on the bank accounts of the establishments subsidized by the budget, which have accrued as a subsidy from the central government budget, shall be inadmissible.

Furthermore, pursuant to Art. 520 (2) of the Civil Procedure Code enforcement is not admissible with respect to EU funds and other international programs and agreements of municipalities.

Therefore, to the extent the FOA Netting Agreements and/or the Clearing Agreements fall in the scope of competence of a State or Municipal Authority their validity and enforceability, including the Collateral thereunder will be dependent on the conduct of the respective municipal and budgetary procedures referred to above.

3.2. Bulgarian National Bank

(a) Status

Pursuant to the Bulgarian National Bank Act, the Bulgarian National Bank ("**BNB**") is the central bank in Bulgaria. It is a legal person which reports on its activity to the Bulgarian National Assembly (the "**Parliament**")

The Bulgarian National Bank shall have the right to carry on:

1. collateralized lending operations;
2. transactions in precious metals;
3. transactions in foreign currencies;
4. transactions in deposit and financial investments;
5. operations related to the turnover of payments;
6. commission transactions;
7. cross-border bank transactions.

The Bulgarian National Bank may also: 1. buy and sell gold specie and bullion or other precious metals;
2. buy, sell or contract transactions in foreign currencies, using to this end all customary means; 3. open and maintain accounts with international financial institutions, central banks and other financial institutions outside Bulgaria; 4. open and maintain accounts or act as a representative or

correspondent of international institutions, central banks and other financial institutions outside Bulgaria.

The Bulgarian National Bank shall act as a fiscal agent and depository of the State pursuant to contracts concluded and under market conditions and at market prices of services.

The BNB is the **fiscal agent and depositary of the State**. In this capacity the BNB:
1. shall execute bank servicing of accounts and payments included in the single account system, in the name and for the account of the Ministry of Finance;
2. shall collect and submit to the Ministry of Finance regular information about the accounts of public-financed enterprises with banks in Bulgaria;
3. shall act as a government debts agent and a government guaranteed debts agent;
4. may perform other activities agreed with the Minister of Finance.

In its capacity as a **government debts agent**, the Bulgarian National Bank shall keep government securities accounts, which shall be registered according to debt transferees. The Bulgarian National Bank may act as an authorized representative of the Council of Ministers for purposes and under conditions established thereby and by the Council of Ministers.

The Bulgarian National Bank **may not extend credits and guarantees** in any form whatsoever, including through **acquisition of debt instruments**, to the Council of Ministers, to any municipalities, as well as to other state and municipal institutions, organizations and enterprises. By way of exception it may provide credits to state owned and municipal-owned banks.

Although as part of its **monetary function** the Bulgarian National Bank may take any action necessary in connection with the acquisition, possession and sale of gross international foreign exchange reserves it shall invest its gross international foreign-exchange reserves in accordance with the principles and practices of prudent investment, with investments in securities limited to liquid debt instruments satisfying the requirements of the law[34].

(b) Limitations

The total amount of the liabilities on loans drawn by the Bulgarian National Bank, which are denominated and payable in a foreign currency, shall not be increased if this increase would result in an amount exceeding 10 per cent of the assets of the Bulgarian National Bank at the date of the last balance sheet.

An important legal protection for the BNB is the provision of the Bulgarian National Bank's Act pursuant to which:

[34] i.e. in debt instruments held by it and issued by foreign States, central banks, other foreign financial institutions or international financial organisations, whose obligations are assigned one of the two highest ratings by two internationally recognised credit rating agencies and which are payable in freely convertible foreign currency with the exception of debt instruments given or received as collatera

Distraints, enforcements and institution of a pledge on any money and securities deposited with the Bulgarian National Bank shall be allowed only if they do not infringe the rights of the Bank related to the said property.

Also pursuant to the express provision of Art.56 of the Bulgarian National Bank's Act, **except in the cases expressly provided for by this law, the Bulgarian National Bank may not:**

1. extend credits or buy securities or any other negotiable instruments;
2. maintain any deposits denominated or payable in leva;
3. maintain any deposits whatsoever with residents.

As a summary of the above the BNB may enter into the above restricted transactions only in performance of its monetary function in relation to the acquisition and maintenance of the state reserves and the obligations as fiscal and debt agent for public debt.

3.3. State – owned and municipal owned companies

Most of the state-owned and municipal owned commercial entities are registered as commercial companies under the Commerce Act. However, there are also state-owned and municipal enterprises which are not commercial companies.

Nevertheless, these are public spenders and as such are obliged to comply with numerous special and restrictive rules when entering into transactions and in particular with the provisions of the Bulgarian Public Procurement Act[35].

Although pursuant to the express provision of Art. 4 item 3 of the Public Procurement Act the financial services in connection with the issue and transfer of securities or other financial instruments; the services provided by the Bulgarian National Bank; the services provided in connection with the taking and management of the government debt; the services provided in connection with the management of the unified account system and the fiscal reserve are excluded from the public procurement regulation and exempt from the necessity to conduct public procurement procedures, the circumstances related to such services will need to be examined on a case by case basis in order to asses whether the respective transaction will not be captured by such proceedings.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

N/A

2. ADDITIONAL ASSUMPTIONS

We assume:

[35] Promulgated, SG No. 28/ 6.04.2004, effective 1.10.2004, as amended and supplemented.

2.1. that a Counterparty which is a sovereign or public entity has complied with the budgetary restrictions on transactions set out in the relevant pieces of legislation and that the Transactions are not made in violation of the said restrictions.

2.2. that a Counterparty which is a sovereign or public entity - Budgetary Institution has provided for in its budget pursuant to the mandatory budgetary rules the funds necessary to perform the obligations under the Transactions.

3. MODIFICATIONS TO OPINIONS

N/A

4. ADDITIONAL QUALIFICATIONS

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

4.1. So far as Bulgarian law is concerned, to the extent the Agreements fall in the scope of competence of a Government Authority and are subject to approval of a Ratification Act under Art.85 of the Constitution, and/or prior approval by the Bulgarian parliament or Council of Ministers, their validity and enforceability, including the Netting Provisions, the Set Off and the Title Transfer or Collateral Provisions thereunder will be dependent on the conduct of the respective Parliamentary/Council of Ministers procedures referred to above.

4.2. So far as Bulgarian law is concerned although the sovereign and public institution (defined above as Budgetary Institutions) have general capacity to enter into the FOA Netting Agreements and/or the Clearing Agreements, both the validity of the entry into the FOA Netting Agreements and/or the Clearing Agreements (including the Netting Provisions, the FOA Set Off Provisions and the Clearing Module Set Off Provisions and the Title Transfer or Collateral Provisions) and the enforcement of the rights thereunder may be prejudiced by the violation of the mandatory procedures of the laws applicable to such institutions, the limitations of their activity, the approval of the entry into the FOA Netting Agreements and/or the Clearing Agreements and the enforcement under the Civil Procedure Code (as set out in Art.519 and 520 thereof).

4.3. So far as Bulgarian law is concerned, the Bulgarian National Bank has capacity and authority to enter into financial collateral transactions only in relation to its monetary function and fiscal and governmental agency functions, subject always to the limitations and budgetary constraints under the Bulgarian National Bank’s Act. The entry into the transactions under the FOA Netting Agreements and/or the Clearing Agreements (including the Netting Provisions, the FOA Set Off Provisions and the Clearing Module Set Off Provisions and the Title Transfer or Collateral Provisions) in violation of the requirements of the Bulgarian National Bank’s Act may result in the risk of invalidation.

5. MODIFICATIONS TO QUALIFICATIONS

N/A

SCHEDULE 7
Pension Insurance Companies

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

For the purposes of this Schedule 7 (*Pension Insurance Companies)*,

"**Pension Insurance Company**" means a joint-stock company licensed in accordance the Social Security Code and registered under the Commerce Act or under the laws of other EU member state. The scope of business of a Pension Insurance Company shall be limited to supplementary retirement insurance. A Pension Insurance Company may not undertake commercial transactions which are not directly related to its licensed activity. It may establish not-for-profit associations for representation of common interests and for implementation of joint projects.

A Pension Insurance Company shall pursue its activity according to the provisions of the Social Security Code and in accordance with its articles of association and the rules of organization and operation of the supplementary retirement insurance fund managed thereby.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

N/A

2. ADDITIONAL ASSUMPTIONS

N/A

3. MODIFICATIONS TO OPINIONS

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

3.1. Insolvency Proceedings: Pension Insurance Companies

The opinions expressed in section 3.1 of the Opinion Letter shall be amended as follows:

Special rules apply under the Social Security Code for the termination and insolvency of Pension Insurance Companies.

Voluntary termination is subject to special permit issued by the FSC.

Forceful termination for violations of the law and the rules of the Social Security Code triggers a special procedure thereunder. Following withdrawal of the license a quaestor is appointed and an

insolvency procedure initiated. The failure of a Pension Insurance Company to perform a payment obligation within a 7 days term shall represent an Insolvency Event (together with the overindebtedness) would trigger the company insolvency of the company.

The FSC is the sole authority entitled to initiate the court bankruptcy proceedings and to seek from the court to declare the bankruptcy.

The insolvency rules of the Commerce Act apply accordingly where no special rule applies.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refers to the Insolvency Proceedings under this Schedule.

3.10. Enforceability of the Title Transfer Provisions

The opinions set out in item 3.10 shall not apply if the relevant Counterparty is a Pension Insurance Company. Financial collateral arrangements with respect to assets designated for and serving as coverage for the mandatory technical reserves of a Counterparty which is Pension Insurance Company or fund shall be null and void due to violation of the express prohibition set out in the Social Security Code.

4. ADDITIONAL QUALIFICATIONS

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

4.1 The opinions expressed in items 3.3 (*Enforceability of the FOA Netting Provision*), 3.4 (*Enforceability of the Clearing Module Netting Provision*), 3.5 (*Enforceability of the Addendum Netting Provision*), 3.7 (*Enforceability of the FOA Set Off Provisions*), 3.8 (*Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision),* 3.9 *(Set-Off under a Clearing Agreement with an Addendum Set-Off Provision)* and 3.10 *(Enforceability of the Title Transfer Provisions)* shall each be considered against the risk of compulsory measures imposed by the Financial Supervision Commission in case of non-compliance with the specific regulatory requirements.

Among others, the FSC is entitled the following compulsory administrative measures which may affect the capacity and authority and the activity of a Counterparty – Pension Insurance Company and performance of its obligations under the FOA Netting Agreements and/or the Clearing Agreements:

1. oblige a Pension Insurance Company which is a supplementary social insurance company to terminate its contractual relationships thereof with a custodian bank, with an investment firm or with a social insurance intermediary if they do not satisfy the eligibility requirements provided for in this Code;
2. revoke a supplementary social insurance fund management authorization;
3. prohibit or restrict an activity of a Pension Insurance Company;
4. prohibit or restrict the cross-border activities of the Pension Insurance Company.

4.2. So far as Bulgarian law is concerned, the imposition of compulsory measures by the FSC, including the appointment of a 'quaestor' or the withdrawal of the license of a Counterparty- Pension Insurance Company or fund **before** the establishment of the financial collateral may limit the capacity of the Counterparty - Pension Insurance Company or fund to enter into the FOA Netting Agreements and/or the Clearing Agreements. In such a case the secured Counterparty to the FOA Netting Agreements and/or the Clearing Agreements would not be able to benefit of the protective provisions applicable to financial collateral arrangements.

4.2. Depending on the particular circumstances in case transactions contemplated in the Agreements are made after an insolvency event has already occurred and an Insolvency Proceeding is already initiated, the validity of transactions contemplated in the FOA Netting Agreements and/or the Clearing Agreements (including the Netting, Set Off, the Title Transfer Provisions and the Collateral) may be affected by the Insolvency and clawed back in conformity with the general claw-back rules of the Bulgarian Commerce Act.

5. MODIFICATIONS TO QUALIFICATIONS

N/A

SCHEDULE 8
Partnerships

Subject to the modifications and additions set out in this Schedule 8 (*Partnerships*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which act through a Partnership (*Grazhdansko druzhestvo* and *Sabiratelno druzhestvo*).

For the purposes of this Schedule 8 (*Partnerships)*,

"**Partnerships**" shall mean:

(i) as defined and provided for in the Obligations and Contracts Act a contract of partnership between two or more persons where they agree to unite their activities for achieving a common business objective. The so created Partnership is not a legal entity. Any rights and obligations arisen are assumed by the partners themselves, who are also liable together for all obligations of the Partnership. The partners contribute in cash or other assets which are owned jointly by them (Civil Partnership);

(ii) as defined and provided for in the Commerce Act is a company formed by two or more persons for the purpose of effecting commercial transactions by occupation under a joint trade name. The partners shall be liable jointly and severally and their liability shall be unlimited. This type of partnership has a legal identity and shall be registered in the Commercial Register (General Partnership).

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

N/A

2. ADDITIONAL ASSUMPTIONS

N/A

3. MODIFICATIONS TO OPINIONS

N/A

4. ADDITIONAL QUALIFICATIONS

4.1. The opinion set out in item 3.1. shall be subject to the following additional qualifications

A Civil Partnership shall be dissolved:

(a) with achieving of the partnership's objective or if the achievement of this objective has become impossible;

(b) with the expiration of the time period for which the partnership was set up;

(c) with the death or placing under judicial interdiction of one of partners, unless otherwise agreed;

(d) by notice from one of the partners made in good faith and in good time if the partnership was established for an unspecified term, if it was not agreed that the partnership would continue with the remaining partners, and

(e) upon a court ruling if there exist grounds for that, when the partnership was set up for a specified term.

Because of its nature no insolvency procedure applies to the Civil Partnership. However such a proceeding may be instituted against any of the partners in it, if they are merchants.

Because of the legal nature of the Civil Partnership and the fact that its rights and obligations are undertaken jointly by the partners the dissolution of the civil partnership should not affect our conclusions as regards the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provision, however depending on the type of entity that the participating partners are, the general or specific qualifications (applicable to the type of entity as which the relevant partner is organized) would apply accordingly. Recovery of any amounts would have to be directed against the partners.

4.2. The opinions expressed in items 3.3 (*Enforceability of the FOA Netting Provision*), 3.4 (*Enforceability of the Clearing Module Netting Provision*), 3.5 (*Enforceability of the Addendum Netting Provision*), 3.7 (*Enforceability of the FOA Set Off Provisions*), 3.8 (*Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision),* 3.9 *(Set-Off under a Clearing Agreement with an Addendum Set-Off Provision)* and 3.10 *(Enforceability of the Title Transfer Provisions)* are subject to the qualification that Civil Partnerships do not fall in the categories of persons entitled to enter into financial collateral arrangements. However their individual partners may be entitled to enter into a financial collateral arrangement.

5. MODIFICATIONS TO QUALIFICATIONS

N/A

SCHEDULE 9
Non-Profit Legal Entities

Subject to the modifications and additions set out in this Schedule 9 (*Non-profit legal entities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Non-Profit Legal Entities.

For the purposes of this Schedule 9 (*Non-profit legal entities)*,

"**Non-profit Legal Entities**" shall mean an entity that does not generate and/or distribute profits which freely determines its goals that can be either of public or private interest. The Non-profit Legal Persons Act[36] (the "**Act**") provides for specific provisions applicable to Non-profit Legal Entities carrying out public interest activity. The law provides for two types of Non-profit Legal Entities – **associations** and **foundations**. **The Non-profit Legal Entities can carry out a business activity only to the extent such activity is in connection to the scope of the non-profit activity of the entity**. The Act does not pose any limitations as to the type of business activity to be carried out.

The organizations pursuing political, trade union and activities that are appropriate to a religious faith as well as and the '*chitalishte*' are governed by separate acts and subject to special legal regimes. These organizations are not covered by this Schedule 9 and our opinion.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

N/A

2. ADDITIONAL ASSUMPTIONS

We assume:

2.1. that a Counterparty which is a Non-profit Legal Entity has a proper registration as such with the relevant Bulgarian regional court where is located its seat, and also has where required a registration with the central register of the non-profit legal entities carrying out public interest activity maintained by the Ministry of Justice;

2.2. that a Counterparty which is a Non-profit Legal Entity has included the subject of its business activity in its Statutes (for associations) or Incorporation Deed (for Foundations), and such business activity is carried out in compliance with the terms and procedures stipulated by the laws regulating the respective business activities;

[36] Promulgated in State Gazette (SG) No. 81/06.10.2000 as further amended and supplemented

2.3. that a Counterparty which is a Non-profit Legal Entity has the obligation to re-invest any profit generated by the business activity in its principal non-profit activity, no profit is allowed to be distributed by Non-profit Legal Entity.

2.4. that a Counterparty which is a Non-profit Legal Entity has a valid registration under the BULSTAT Register Act[37].

3. MODIFICATIONS TO OPINIONS

3.1. Insolvency Proceedings: Non-profit Legal Entity

The opinions expressed in section 3.1 of the Opinion Letter are supplemented as follows:
The Non-profit Legal Persons Act set forth exhaustively the cases where a Non-profit Legal Entity shall be dissolved.

1. upon expiry of the term for which it has been established;
2. by decision of its supreme body;
3. by decision of the district court at the seat of the non-profit legal person, where:
    a. it has not been established in compliance with the legal procedure;
    b. it pursues activities contrary to the Constitution, the laws and good morals;
    c. it has been declared bankrupt.
4. The court decision under Items 1 to 3 shall be issued following a claim of any interested party or the public prosecutor.

The court shall set a term of up to 6 months for the removal of the reason for dissolution and the consequences thereof.

We confirm that the events specified as Insolvency Events of Default adequately refer to all Insolvency Proceedings applicable to the entities covered by this Schedule 9.

4. ADDITIONAL QUALIFICATIONS

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

4.1. The linkage between the non-profit purposes of the Non-profit Legal Entity and the permitted economic activity is difficult to establish. Absent evidence of the fact that there is such a linkage the the FAO Netting Agreements and/or the Clearing Agreements and any associated Transactions may be considered made in circumvention of the law and therefore invalid (i.e. there must be a link to the non-profit purpose substantiating the need of entering into the respective Transaction).

4.2. Non-profit entities are not capable of entering into financial collateral arrangements.

5. MODIFICATIONS TO QUALIFICATIONS

N/A

[37] Promulgated in SG No. 39/10.05.2005 as further amended and supplemented

SCHEDULE 10
Publicly traded companies

Subject to the modifications and additions set out in this Schedule 10 (*Publicly traded companies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of publicly traded companies.

For the purposes of this Schedule 10 (*Publicly traded companies)*,

"**Publicly traded company**" shall mean a joint-stock company having a registered office in the Republic of Bulgaria which:

1. has issued shares under the terms of an initial public offering, or

2. has a share issue recorded in the register of public companies and other issuers of securities for the purpose of trading on a regulated market, or

3. has more than 10,000 shareholders on the last day of two successive calendar years.

In the cases of reorganization of companies, wherein at least one public company is involved, the new company and the acquiring company or companies shall likewise be public companies.

Any company referred to above shall become public as from the recording of the respective company or of the increase of capital thereof in the Commercial Register.

Any company referred to in Item 2 above shall become public as from the decision to register the issue of shares for the purpose of trading on a regulated market.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

N/A

2. ADDITIONAL ASSUMPTIONS

N/A

3. MODIFICATIONS TO OPINIONS

N/A

4. ADDITIONAL QUALIFICATIONS

4.1. The opinions expressed in items 3.3 (*Enforceability of the FOA Netting Provision*), 3.4 (*Enforceability of the Clearing Module Netting Provision*), 3.5 (*Enforceability of the Addendum Netting Provision*), 3.7 (*Enforceability of the FOA Set Off Provisions*), 3.8 (*Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision),* 3.9 *(Set-Off under a Clearing Agreement with*

an Addendum Set-Off Provision) and 3.10 *(Enforceability of the Title Transfer Provisions)* shall be subject to the following qualifications:

4.1. Certain transactions in assets of publicly traded companies are subject to prior corporate authorization in order to be valid. In particular, under Art. 114 para 1 of the POSA the persons authorised to manage and represent the publicly traded company shall not be entitled to enter into transactions without the prior approval of the General Meeting of the Shareholders ("**GMS**") as a result of which, inter alia:

1. the company acquires, transfers, receives or surrenders for use or furnishes as security in any form whatsoever any assets to a value exceeding:

   (a) one third of the lower value of the assets according to the balance sheet of the said company as last audited or as last prepared;

   (b) 2 per cent of the lower value of the assets according to the balance sheet of the said company as last audited or as last prepared, where interested parties[38] participate in the transactions;

2. the company incurs obligations to a single person or to related parties to an aggregate value exceeding the value referred to in letter (a) of Item 1 or, where the said obligations are incurred to interested parties or in favour of interested parties, to an aggregate value exceeding the value referred to in letter (b) of Item 1;

3. the receivables of the company from a single person or from related parties exceed the value referred to in letter (a) of Item 1 or, where interested parties are debtors of the company, over 50 per cent of the value referred to in Littera (b) of Item 1;

4. the company transfers, grants the use of, or grants as collateral for a subsidiary assets whose total value exceeds ten per cent of the lower value of the assets according to the public company's balance sheet as last audited or as last prepared.

Therefore, in case a Transaction under the FAO Netting Agreements and/or Clearing Agreements is of value in excess of the thresholds referred to above a prior authorization shall be given by the GMS of the Counterparty which is a publicly traded company, unless such Transactions fall in the exclusions set out in Art.114, para 9 of the POSA, namely:

---

[38] "Interested parties" shall be the members of the management bodies and supervisory bodies of the public company, the representatives of legal persons that are members of such bodies, the managerial agent of the public company, as well as any persons holding, directly and/or indirectly, at least 25 per cent of the votes in the general meeting of the company or controlling the said company, as well as any parties related thereto when they are:

1. a party, a representative of a party or an intermediary to the transaction, or the transactions or acts are effected in favour of the said persons; or
2. hold, directly and/or indirectly, at least 25 per cent of the votes in the general meeting, or control any legal person which is a counter party, a representative of a party or an intermediary to the transaction, or the transactions or acts are effected in favour of any such legal person;
3. members of management bodies or supervisory bodies, representatives of legal persons, the members of such bodies, or managerial agents of any legal person referred to in items 1 and 2.

(i) if the transaction is made in the course of ordinary business activities of the company, inter alia upon conclusion of contracts of bank credit and provision of security, except where interested parties participate in the said transactions; or

(ii) granting of credit by a holding company and provision of deposits by a subsidiary on terms less favourable than the local market terms; or

(iii) though this does not seem a likely scenario in the context of the transactions envisaged under this Opinion letter – in case of a joint venture agreements which are subject to special regulation under the POSA

Any transactions of a public company involving the participation of interested parties, other than those specified above, shall be subject to preliminary approval by the management body of the public company.

An important consequence of failure of a publicly traded company to comply with the said requirements is the invalidity of the transactions made in violation of the legal provisions, as expressly set out in Art.114, para 10 of the POSA.

Any transactions, which separately fall below the thresholds set above, but in aggregate lead to a change of property exceeding the said thresholds, shall be treated as a single transaction if effected within a period of three calendar years and in favour of a single person or of related parties, or if a single person or related parties are parties to the transactions, as the case may be.

4.2. Certain transactions in assets of companies, which are subsidiaries of publicly traded companies are subject to prior authorization in order to be valid. Persons managing and representing a non-public company which is a public company's subsidiary, including the representatives of any legal person that is a member of that company's management body, may not, without the prior approval of the public company's management body, make transactions as a result of which the subsidiary (inter alia) transfers, grants the use of, or provides as collateral, in any form, fixed assets whose total value exceeds:

(a) one-third of the of the lower value of the assets according to the subsidiary's balance sheet as last audited or as last prepared;
(b) two per cent of the of the lower value of the assets according to the subsidiary's balance sheet as last audited or as last prepared, when the transactions involve the participation of interested parties[39];

[39] For the purposes of this provision "interested persons" are the members of the subsidiary's management and supervisory bodies, the representatives of legal persons that are members of such bodies, the managerial agent of the subsidiary, as well as any persons holding, directly and/or indirectly, at least 25 per cent of the votes in the general meeting of the company other than those of the public company, when they are:

1. a party, a representative of a party or an intermediary to the transaction, or the transactions or acts are effected in favour of the said persons; or
2. hold, directly and/or indirectly, at least 25 per cent of the votes in the general meeting, or control any legal person which is a counter party, a representative of a party or an intermediary to the transaction, or the transactions or acts are effected in favour of any such legal person;
3. members of management bodies or supervisory bodies, representatives of legal persons, the members of such bodies, or managerial agents of any legal person referred to in items 1 and 2.

These restrictions shall not apply in the following cases:

(i) if the transaction is made in the course of ordinary business activities of the company, inter alia upon conclusion of contracts of bank credit and provision of security, except where interested parties participate in the said transactions; or

(ii) granting of credit by a holding company and provision of deposits by a subsidiary on terms less favourable than the local market terms; or

(iii) though this does not seem a likely scenario in the context of the transactions envisaged under this Opinion letter – in case of a joint venture agreements which are subject to special regulation under the POSA

Again, an important consequence of failure of a company to comply with the said requirements is the invalidity of the transactions made in violation of the legal provisions, as expressly set out in Art.114, para 10 of the POSA.

Any transactions, which separately fall below the thresholds set above, but in aggregate lead to a change of property exceeding the said thresholds, shall be treated as a single transaction if effected within a period of three calendar years and in favour of a single person or of related parties, or if a single person or related parties are parties to the transactions, as the case may be.

4.3. The opinions expressed in items 3.3 (*Enforceability of the FOA Netting Provision*), 3.4 (*Enforceability of the Clearing Module Netting Provision*), 3.5 (*Enforceability of the Addendum Netting Provision*), 3.7 (*Enforceability of the FOA Set Off Provisions*), 3.8 (*Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision),* 3.9 *(Set-Off under a Clearing Agreement with an Addendum Set-Off Provision)* and 3.10 *(Enforceability of the Title Transfer Provisions)* shall each be considered against the risk of compulsory measures imposed by the FSC under Part Five, Chapter 19 (Compulsory Administrative Measures) of the POSA.

In particular, the FSC may among other things:

(a) oblige a public company to take measures that are necessary to prevent and rectify breaches, the harmful effects therefrom or the threat for the interests of investors within the time limit set thereby;

(b) suspend for a period of 10 consecutive business days or stop finally the sale or execution of certain transactions in securities;

(c) appoint conservators (quaestors) in the cases set out in the law;

(d) take decision on temporary suspension of redemption of shares of investment company of open ended type, respectively units of common funds.

Each of the supervisory measures referred to above (some of which contain a general discretion of the FSC to intervene in specific transactions) may affect the ability of the Counterparty – public company to enter into the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; or to perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions.

5. MODIFICATIONS TO QUALIFICATIONS

N/A

ANNEX 1
FORMS OF FOA NETTING AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. Professional Client Agreement (2007 Version), excluding Module G (***Margin and Collateral***) but incorporating the Title Transfer Securities and Physical Collateral

Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2007**")

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

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

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

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

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

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

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

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

25. Eligible Counterparty Agreement (2007 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2007**")

26. Eligible Counterparty Agreement (2009 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2009**")

27. Eligible Counterparty Agreement (2011 Version) including Module G (***Margin***) (the "**Eligible Counterparty (with Security Provisions) Agreement 2011**")

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

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

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

Where a FOA Published Form Agreement expressly contemplates the election of certain variables and alternatives, the Agreements listed above shall be deemed to include any such document in respect of which the parties have made such expressly contemplated elections (and have made any deletions required by such elections, where such deletions are expressly contemplated in the event of such election by the applicable FOA Published Form Agreement), provided that any election made does not constitute an Adverse Amendment.

Each of the Agreements listed at items 13 to 30 of this Annex 1 may be deemed to include FOA Netting Agreements identical to the relevant FOA Published Form Agreement, save for the substitution of Two Way Clauses in place of the equivalent terms in the FOA Published Form Agreement, in which case references to the Insolvency Events of Default and FOA Netting Provision in respect of such FOA Netting Agreements shall mean the Insolvency Events of Default and FOA Netting Provision in relation to the Two Way Clauses.

ANNEX 2
LIST OF TRANSACTIONS

The following groups of Transactions may be entered into under the FOA Netting Agreements or Clearing Agreements:

(A) (Futures and options and other transactions) Transactions as defined in the FOA Netting Agreements or Clearing Agreements:

(i) a contract made on an exchange or pursuant to the rules of an exchange;

(ii) a contract subject to the rules of an exchange; or

(iii) a contract which would (but in terms of maturity only) be a contract made on, or subject to the rules of, an exchange and which, at the appropriate time, is to be submitted for clearing as a contract made on, or subject to the rules of, an exchange,

in any of cases (i), (ii) and (iii) being a future, option, contract for difference, spot or forward contract of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof; or

(iv) a transaction which is back-to-back with any transaction within paragraph (i), (ii) or (iii) of this definition, or

(v) any other Transaction which the parties agree to be a Transaction;

(B) (fixed income securities) Transactions relating to a fixed income security or under which delivery of a fixed income security is contemplated upon its formation;

(C) (equities) Transactions relating to an equity or under which delivery of an equity is contemplated upon its formation;

(D) (commodities) Transactions relating to, or under the terms of which delivery is contemplated, of any base metal, precious metal or agricultural product.

(E) (OTC derivatives) Transactions which fall within paragraphs (4) to (10) of Section C of Annex 1 to Directive 2004/39/EC[40], 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.

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

ANNEX 3
DEFINITIONS RELATING TO THE AGREEMENTS

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

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

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

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

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

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

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

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

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

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

"**Clearing Agreement**" means an agreement:

(a) on the terms of the FOA Netting Agreement when used (i) in conjunction with the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum, or (ii) in conjunction with a Clearing Module Netting Provision and/or an Addendum Netting Provision and with or without a Clearing Module Set-Off Provision and/or an Addendum Set-Off Provision;

(b) which is governed by the law of England and Wales; and

(c) which contains an Addendum Inconsistency Provision, a Clearing Module Inconsistency Provision, or another provision with equivalent effect to either of them.

"**Clearing Module Inconsistency Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the FOA Clearing Module) Clause 1.2.1 of the FOA Clearing Module.

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

(a) Clause 5.2 (*Firm Events*), 5.3 (*CCP Default*) and 5.4 (*Hierarchy of Events*) of the FOA Clearing Module; or

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

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

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

(a) Clause 5.5 (*Set-Off*) of the FOA Clearing Module; or

(b) any modified version of such clause provided that it includes at least those parts of paragraph 7 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

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

"**Client**" means, in relation to a FOA Netting Agreement or a Clearing Agreement, the Firm's or, as the case may be, Clearing Member's counterparty under the relevant FOA Netting Agreement or Clearing Agreement.

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

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

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

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

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

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

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

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

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

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

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

"**Core Provision**" means those parts of the clauses or provisions specified below in relation to a paragraph of this opinion letter (and/or any equivalent paragraph in any Schedule to this opinion letter), which are highlighted in Annex 4:

(a) for the purposes of paragraph 3.3 (Enforceability of FOA Netting Provision) and 3.6 (Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to FOA Netting Provision), the Insolvency Events of Default Clause and the FOA Netting Provision;

(b) for the purposes of paragraph 3.4 (Enforceability of the Clearing Module Netting Provision), the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value";

(c) for the purposes of paragraph 3.5 (Enforceability of the Addendum Netting Provision), the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value";

(d) for the purposes of paragraph 3.7 (Enforceability of the FOA Set-Off Provisions), the Insolvency Events of Default Clause, the FOA Netting Provision and either or both of the General Set-off Clause and the Margin Cash Set-off Clause;

(e) for the purposes of paragraph 3.8 (Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision), the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Available Termination Amount", "Disapplied Set-Off Provisions", "Firm/CCP Transaction Value" and "Relevant Collateral Value", the Clearing Module Set-Off Provision and the FOA Set-Off Provisions;

(f) for the purposes of paragraph 3.9 (Set-Off under a Clearing Agreement with Addendum Set-Off Provision), the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "Available Termination Amount", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Addendum Set-Off Provision; and

(g) for the purposes of paragraph 3.10.1 and 3.10.2, (i) in relation to a FOA Netting Agreement, the Insolvency Events of Default Clause, the FOA Netting Provision and the Title Transfer Provisions; and (ii) in relation to a Clearing Agreement, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value" or, as the case may be, the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Title Transfer Provisions;

in each case, incorporated into a FOA Netting Agreement or a Clearing Agreement together with any defined terms required properly to construe such provisions, in such a way as to preserve the essential sense and effect of the highlighted parts.

References to "**Core Provisions**" include Core Provisions that have been modified by Non material Amendments and necessary amendments set out in Section 1 of Annex 5.

"**Defaulting Party**" includes, in relation to the One-Way Versions, the Party in respect of which an Event of Default entitles the Non-Defaulting Party to exercise rights under the FOA Netting Provision.

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

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

"**FOA Clearing Module**" means the FOA Client Cleared Derivatives Module as first published on 9 October 2013 or any subsequent published version up to the date of this opinion letter.

"**FOA Netting Agreement**" means an agreement:

(a) on the terms of the forms specified in Annex 1 to this opinion letter or which has broadly similar function to any of them, when not used in conjunction with the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum and/or a Clearing Module Netting Provision and/or an Addendum Netting Provision;

(b) which is governed by the law of England and Wales; and

(c) which contains the Insolvency Events of Default Clause and the FOA Netting Provision, with or without the FOA Set-Off Provisions, and with or without the Title Transfer Provisions, with no Adverse Amendments.

"**FOA Netting Agreements (with Title Transfer Provisions)**" means each of the Professional Client (with Title Transfer Provisions) Agreement 2007, the Professional Client (with Title Transfer Provisions) Agreement 2009, the Professional Client (with Title Transfer

Provisions) Agreement 2011, the Retail Client (with Title Transfer Provisions) Agreement 2007, the Retail Client (with Title Transfer Provisions) Agreement 2009, the Retail Client (with Title Transfer Provisions) Agreement 2011, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2007, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2009 and the Eligible Counterparty (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1) or a FOA Netting Agreement which has broadly similar function to any of the foregoing.

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

(a) in relation to the terms of the Long Form One-Way Clauses 2007 and the Long Form Two-Way Clauses, Clause 2.2 (***Liquidation Date***), Clause 2.4 (***Calculation of Liquidation Amount***) and Clause 2.5 (***Payer***);

(b) in relation to the terms of the Short Form One-Way Clauses and the Short Form Two-Way Clauses, Clause 2.1 (***Liquidation Date***), Clause 2.3 (***Calculation of Liquidation Amount***) and Clause 2.4 (***Payer***);

(c) in relation to the terms of the Master Netting Agreements, Clause 4.2, Clause 4.4 and Clause 4.5;

(d) in relation to the terms of the Eligible Counterparty Agreements, Clause 10.1 (***Liquidation Date***), Clause 10.3 (***Calculation of Liquidation Amount***) and Clause 10.4 (***Payer***);

(e) in relation to the terms of the Retail Client Agreements, Clause 11.2 (***Liquidation Date***), Clause 11.4 (***Calculation of Liquidation Amount***) and Clause 11.5 (***Payer***);

(f) in relation to the terms of the Professional Client Agreements, Clause 11.2 (***Liquidation Date***), Clause 11.4 (***Calculation of Liquidation Amount***) and Clause 11.5 (***Payer***); or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**ISDA/FOA Clearing Addendum**" means the ISDA/FOA Client Cleared OTC Derivatives Addendum as first published on 11 June 2013, or any subsequent published versions up to the date of this opinion letter.

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

"**Margin**" means any cash collateral provided to a Party and any cash or non-cash collateral comprising Acceptable Margin provided to a Party pursuant to the Title Transfer Provisions which (in either case) has been credited to an account provided by the Party which is the transferee.

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

"**Non-Cash Security Interest Provisions**" means:

(a) the "**Non-Cash Security Interest Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.6 (***Security interest***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.6 (***Security interest***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.7 (***Security interest***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.8 (***Security interest***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.8 (***Security interest***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.9 (***Security interest***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.6 (***Security interest***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.6 (***Security interest***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.7 (***Security interest***); or

(x) any modified version of such clauses provided that it includes at least those parts of paragraph 1 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow; and

(b) the "**Power of Sale Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.11 (***Power of sale***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.11 (***Power of sale***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.11 (***Power of sale***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.13 (***Power of sale***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.13 (***Power of sale***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.13 (***Power of sale***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.11 (***Power of sale***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.11 (***Power of sale***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.11 (***Power of sale***); or

(x) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

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

"**Non-material Amendment**" means an amendment having the effect of one of the amendments set out at Annex 4.

"**One-Way Versions**" means the Long Form One-Way Clauses 2007, the Short Form One-Way Clauses, the One-Way Master Netting Agreement 1997, and the FOA Netting Provision as published in the Retail Client Agreements and the Professional Client Agreements in each case in the form of a FOA Published Form Agreement.

"**Party**" means a party to a FOA Netting Agreement or a Clearing Agreement.

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

"**Rehypothecation Clause**" means:

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

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

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

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

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

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

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

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

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

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

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

ANNEX 4

PART 1
CORE PROVISIONS

For the purposes of the definition of Core Provisions in Annex 3, the wording highlighted in yellow below shall constitute the relevant Core Provision**:**

1. **FOA Netting Provision:**

a) "**Liquidation date:** Subject to the following sub-clause, at any time following the occurrence of an Event of Default in relation to a party, then the other party (the "**Non-Defaulting Party**") may, by notice to the party in default (the "**Defaulting Party**"), specify a date (the "**Liquidation Date**") for the termination and liquidation of Netting Transactions in accordance with this clause.

b) **Calculation of Liquidation Amount:** Upon the occurrence of a Liquidation Date:

i. neither party shall be obliged to make any further payments or deliveries under any Netting Transactions which would, but for this clause, have fallen due for performance on or after the Liquidation Date and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Liquidation Amount;

ii. the Non-Defaulting Party shall as soon as reasonably practicable determine (discounting if appropriate), in respect of each Netting Transaction referred to in paragraph (i), the total cost, loss or, as the case may be, gain, in each case expressed in the Base Currency specified by the Non-Defaulting Party as such in the Individually Agreed Terms Schedule as a result of the termination, pursuant to this Agreement, of each payment or delivery which would otherwise have been required to be made under such Netting Transaction; and

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

c) **Payer:** If the Liquidation Amount is a positive amount, the Defaulting Party shall pay it to the Non-Defaulting Party and if it is a negative amount, the Non-Defaulting Party shall pay it to the Defaulting Party. The Non-Defaulting Party shall notify the Defaulting Party of the Liquidation Amount, and by which Party it is payable, immediately after the calculation of such amount."

2. **General Set-Off Clause:**

"**Set-off:** Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) owed by you to us against any amount (whether actual

or contingent, present or future) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained."

3. **Margin Cash Set-Off Clause:**

"**Set-off upon default or termination:** If there is an Event of Default or this Agreement terminates, we may set off the balance of cash margin owed by us to you against your Obligations (as reasonably valued by us) as they become due and payable to us and we shall be obliged to pay to you (or entitled to claim from you, as appropriate) only the net balance after all Obligations have been taken into account. [The net amount, if any, payable between us following such set-off, shall take into account the Liquidation Amount payable under the Netting Module of this Agreement.]"

4. **Insolvency Events of Default Clause:**

"The following shall constitute Events of Default:

i. a party commences a voluntary case or other procedure seeking or proposing liquidation, reorganisation, moratorium, or other similar relief with respect to itself or to its debts under any bankruptcy, insolvency, regulatory, or similar law or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian, examiner or other similar official (each a "**Custodian**") of it or any substantial part of its assets, or takes any corporate action to authorise any of the foregoing;

ii. an involuntary case or other procedure is commenced against a party seeking or proposing liquidation, reorganisation, or moratorium, or other similar relief with respect to it or its debts under any bankruptcy, insolvency, regulatory, or similar law or seeking the appointment of a Custodian of it or any substantial part of its assets."

5. **Title Transfer Provisions:**

a) **Default:** If a Liquidation Date is specified or deemed to occur as a result of an Event of Default, the Default Margin Amount as at that date will be deemed to be [a gain (if we are the Non-Defaulting Party) or a cost (if you are the Non-Defaulting Party)] [a gain by us] for the purposes of calculating the Liquidation Amount. For this purpose, "**Default Margin Amount**" means the amount, calculated in the Base Currency of the aggregate value as at the relevant Liquidation Date (as determined by us) of the Transferred Margin.

b) **Clean title:** Each party agrees that all right, title and interest in and to any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest which it Transfers to the other party shall vest in the recipient free and clear of any security interest, lien, claims, charges, encumbrance or other restriction. Notwithstanding the use of terms such as "Margin" which are used to reflect terminology used in the market for such transactions, nothing in these provisions is intended to create or does create in favour of either party a

mortgage, charge, lien, pledge, encumbrance or other security interest in any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest Transferred hereunder."

6. **Clearing Module Netting Provision / Addendum Netting Provision:**

a) [Firm Trigger Event/CM Trigger Event]

Upon the occurrence of a [Firm Trigger Event/CM Trigger Event], the Client Transactions in the relevant Cleared Transaction Set will, except to the extent otherwise stated in the [Core Provisions of the] relevant Rule Set, be dealt with as set out below:

(a) each Client Transaction in the relevant Cleared Transaction Set will automatically terminate [upon the occurrence of a Firm Trigger Event] [at the same time as the related CM/CCP Transaction is terminated or Transferred] and, following such termination, no further payments or deliveries in respect of such Client Transaction [as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.22 Section 8(b)(ii)];

(b) the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or the relevant part thereof;

(c) the applicable Cleared Set Termination Amount will be determined by Client on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the date on which the [Firm/CM] Trigger Event occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the day on which the relevant Client Transactions [had all been/were] terminated (in either case, provided that, if [Firm/Clearing Member] gives notice to Client requiring it to determine such amount and Client does not do so within two Business Days of such notice being effectively delivered, [Firm/Clearing Member] may determine the applicable Cleared Set Termination Amount) and, in either case, will be an amount equal to the sum, but without duplication, of (A) the Aggregate Transaction Value, (B) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a

positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (C) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (D) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[or any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributed] [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included [Clauses 5.2.2(c)(4) to 5.2.2(c)(C)] [Sections 8(b)(ii)(3)(A) to 8(b)(ii)(3)(C)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]);

(d) if a Cleared Set Termination Amount is a positive number, it will be due from [Firm/Clearing Member] to Client and if a Cleared Set Termination Amount is a negative number, the absolute value of the Cleared Set Termination Amount will be due from Client to [Firm/Clearing Member], and in each case will be payable in accordance with this [Module/Addendum].

b) CCP Default

Upon the occurrence of a CCP Default, the Client Transactions in the relevant Cleared Transaction Set will, except to the extent otherwise stated in the [Core Provisions of the relevant] Rule Set, be dealt with as set out below*:*

1. each Client Transaction in the relevant Cleared Transaction Set will automatically terminate at the same time as the related [Firm/CM]/CCP Transaction and following such termination no further payments or deliveries in respect of such Client Transaction[as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.3 Section 8(c)];

2. the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or relevant part thereof;

3. the applicable Cleared Set Termination Amount will be determined by [Firm/Clearing Member] on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the date on which the CCP Default

occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the day on which the relevant Client Transactions had all been terminated and, in either case, will be an amount equal to the sum, but without duplication, of (1) the Aggregate Transaction Value, (2) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (3) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (4) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[and any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included in [Clauses 5.3.3(1) to 5.3.3(3)] [Sections 8(c)(iii)(1) to 8(c)(iii)(3)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing member]);

4. if a Cleared Set Termination Amount is a positive number, it will be due from [Firm/Clearing Member] to Client and if a Cleared Set Termination Amount is a negative number, the absolute value of the Cleared Set Termination Amount will be due from Client to [Firm/Clearing Member], and in each case will be payable, in accordance with this [Module/Addendum].

c) Hierarchy of Events

[If Client Transactions are capable of being terminated pursuant to more than one [Clause/Section], then the [clause/section] in respect of which a party first exercises any right to terminate Client Transactions (or, the [clause/section] pursuant to which Client Transactions are otherwise terminated, if earlier) will prevail for the purposes of the relevant Client Transactions.]

Or

[If Client Transactions are capable of being terminated pursuant to more than one [Clause/Section], then the [clause/section] in respect of which a party first exercises any right to terminate Client Transactions (or, the [clause/section]

pursuant to which Client Transactions are otherwise terminated, if earlier) will prevail for the purposes of the relevant Client Transactions.]

Or

[If Client Transactions are capable of being terminated pursuant to more than one [Clause/Section], then the [clause/section] in respect of which a party first exercises any right to terminate Client Transactions (or, the clause pursuant to which Client Transactions are otherwise terminated, if earlier) will prevail for the purposes of the relevant Client Transactions.]

d) Definitions

"**Aggregate Transaction Value**" means, in respect of the termination of Client Transactions of a Cleared Transaction Set, an amount (which may be positive or negative or zero) equal to the aggregate of the [Firm/CM]/CCP Transaction Values for all Client Transactions in the relevant Cleared Transaction Set or, if there is just one [Firm/CM]/CCP Transaction Value in respect of all such Client Transactions, an amount (which may be positive or negative or zero) equal to such [Firm/CM]/CCP Transaction Value.

"**[Firm/CM]/CCP Transaction Value**" means, in respect of a terminated Client Transaction or a group of terminated Client Transactions, an amount equal to the value that is determined in respect of or otherwise ascribed to the related [Firm/CM]/CCP Transaction or group of related [Firm/CM]/CCP Transactions in accordance with the relevant Rule Set following a [Firm/CM] Trigger Event or CCP Default (to the extent such Rule Set contemplates such a value in the relevant circumstance). If the value determined in respect of or otherwise ascribed to the related [Firm/CM]/CCP Transaction(s) under the relevant Rule Set reflects a positive value for [Firm/Clearing Member] vis-à-vis the Agreed CCP, the value determined in respect of such terminated Client Transaction(s) will reflect a positive value for Client vis-à-vis [Firm/Clearing Member] (and will constitute a positive amount for any determination under this [Module/Addendum]) and, if the value determined in respect of the related terminated [Firm/CCP]/CCP Transaction(s), under the relevant Rule Set reflects a positive value for the relevant Agreed CCP vis-à-vis [Firm/Clearing Member], the value determined in respect of [or otherwise ascribed to] such terminated Client Transaction(s) will reflect a positive value for [Firm/Clearing Member] vis-à-vis Client (and will constitute a negative amount for any determination under this [Module/Addendum]). The value determined in respect of or otherwise ascribed to the related [Firm/CM]/CCP Transaction(s) under the relevant Rule Set may be equal to zero.

"**Relevant Collateral Value**" means, in respect of the termination of Client Transactions in a Cleared Transaction Set, the value (without applying any "haircut" but otherwise as determined in accordance with the [Agreement/Collateral Agreement]) of all collateral that:

(a) is attributable to such Client Transactions;

(b) has been transferred by one party to the other in accordance with the [Agreement/Collateral Agreement or pursuant to Section 10(b)] and has not been returned at the time of such termination or otherwise applied or reduced in accordance with the terms of the [Agreement/relevant Collateral Agreement]; and

(c) is not beneficially owned by, or subject to any encumbrances or any other interest of, the transferring party or of any third person.

The Relevant Collateral Value will constitute a positive amount if the relevant collateral has been transferred by Client to [Firm/Clearing Member] and it or equivalent collateral has not been returned at the time of termination or otherwise applied or reduced in accordance with the terms of the [Agreement/Collateral Agreement] and a negative amount if the relevant collateral has been transferred by [Firm/Clearing Member] to Client and it or equivalent collateral has not been returned at the time of termination or otherwise applied or reduced in accordance with the terms of the [Agreement/Collateral Agreement].

7. **Clearing Module Set-Off Provision**

Firm may at any time and without notice to Client, set-off any Available Termination Amount against any amount (whether actual or contingent, present or future) owed by Firm to Client under the Clearing Agreement or otherwise. For these purposes, Firm may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained.

This Clause shall apply to the exclusion of all Disapplied Set-off Provisions in so far as they relate to Client Transactions; provided that, nothing in this Clause shall prejudice or affect such Disapplied Set-off Provisions in so far as they relate to transactions other than Client Transactions under the Agreement.

8. **Addendum Set-Off Provision**

(i) Any Available Termination Amount will, at the option of (A) Client, in the case of an Available Termination Amount due in respect of a CM Trigger Event and without prior notice to Clearing Member, be reduced by its set-off against any other termination amount payable by Clearing Member to Client under the Clearing Agreement at such time ("**CM Other Amounts**"), or (B) either party, in the case of an Available Termination Amount due in respect of a CCP Default, and without prior notice to the other party, be reduced by its set-off against any other termination amount payable by or to X (where "**X**" means, in the case of Section 8(i)(A), Client or, in the case of Section 8(i)(B), the party electing to set off) under the Clearing Agreement at such time ("**EP Other Amounts**" and together with CM Other Amounts, "**Other Amounts**"), provided that in the case of Section 8(i)(A) or Section 8(i)(B), at the time at which X elects to set off, where Clearing Member is X, a CM Trigger Event has not occurred and is not continuing or, where Client is X, an event of default, termination event or other similar event, howsoever described, in respect of Client in the Agreement, has not occurred and is not continuing. To the extent that any Other Amounts are so set off, those Other Amounts will be

discharged promptly and in all respects. X will give notice to the other party promptly after effecting any set-off under Section 8(i)(A) or Section 8(i)(B).

(ii) For the purposes of this Section 8(ii):

(A) all or part of the Available Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other amount is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency;

(B) if any Other Amounts are unascertained, X may in good faith estimate such Other Amounts and set off in respect of the estimate, subject to the relevant party accounting to the other when such Other Amounts are ascertained; and

(C) a "termination amount" may, for the avoidance of doubt, be another Cleared Set Termination Amount or another termination amount due under the Agreement including, in either case, any such amount that has previously been reduced in part by set-off pursuant to this Section 8(e).

(iii) Nothing in this Section 8(e) will be effective to create a charge or other security interest. This Section 8(e) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which Client or Clearing Member is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise), provided that, notwithstanding anything to the contrary in the Clearing Agreement or any related Collateral Agreement, no party may exercise any rights of set-off in respect of Excluded Termination Amounts.

PART 2
NON-MATERIAL AMENDMENTS

1. Any change to the numbering or order of a provision or provisions or the drafting style thereof (e.g., addressing the other party as "you", "Counterparty", "Party A/Party B", using synonyms, changing the order of the words) provided in each case that the plain English sense and legal effect both of each such provision and of the agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.

2. Any change to a provision or provisions for the purposes of correct cross-referencing or by defining certain key terms (e.g., party, exchange, currency, defaulting party or non-defaulting party) and using these terms in large caps throughout the agreement provided in each case that the plain English sense and legal effect both of each such provision and of the agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.

3. A change which provides that the agreement applies to existing Transactions outstanding between the parties on the date the agreement takes effect.

4. Any change to the scope of the agreement clarifying that certain transactions (e.g., OTC derivatives governed by an ISDA Master Agreement) shall not be transactions or contracts for purposes of the agreement.

5. An addition to the list of events that constitute an Event of Default (e.g. without limitation, the failure to deliver securities or other assets, a force majeure, cross default or downgrading event the death or incapacity of a Party or its general partner any default under a specified transaction or a specified master agreement), where such addition may or may not be coupled with a grace period or the serving of a written notice on the Defaulting Party by the Non-Defaulting Party, and such addition may be expressed to apply to one only of the Parties.

6. Any change to an Insolvency Event of Default (i) introducing a grace period for the filing of a petition for bankruptcy proceedings (of e.g. 15 or 30 days), (ii) modifying or deleting any such grace period, (iii) requiring that the filing of the petition is not frivolous, vexatious or otherwise unwarranted or (iv) that the non-defaulting party has reasonable grounds to conclude that the performance by the defaulting party of its obligations under the agreement, Transactions, or both, is endangered.

7. Any change to an Insolvency Event of Default more particularly describing (i) the relevant procedures that would or would not constitute such event of default or termination event (ii) the relevant officers the appointment of which would or would not constitute such Insolvency Event of Default.

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

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

10. In the case of any agreement incorporating the Two-Way Clauses, any change to the Insolvency Events of Default which has the effect of providing that when one or several specified events (which would constitute Insolvency Events of Default) occur in relation to one specified Party, such event shall not constitute an Event of Default under the agreement.

11. Any change to the agreement requiring the Non-Defaulting Party when exercising its rights under the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.

12. Any change modifying the currency of Liquidation Amount, Available Termination Amount, Cleared Set Termination Amount or of any amount relevant to the FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions.

13. Any change to the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision clarifying that (i) any account subject to set-off must be owned by the same party or (ii) the Non-Defaulting Party must, or may, notify the other party of its exercise of rights under such provision or other provision.

14. Any change to the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision (a) clarifying (i) at which time set-off may be exercised by a Party (with or without limitation), (ii) the amounts that may be set-off (with or without limitation, whether in relation to the agreement(s) under which such amounts arise or to the parties from which they are due), (iii) the use of currency conversion in case of cross-currency set-off, (iv) the application or disapplication of any grace period to set-off; or (b) allowing the combination of a Party's accounts.

15. Any change to the FOA Netting Provision adding or taking from the amounts to be taken into account for the calculation of the Liquidation Amount.

16. Any addition to any of the Core Provisions that leaves both the plain English sense and legal effect of such provision unchanged.

17. Any change converting the Core Provisions of the FOA Netting Provision to a 'one-way' form in the style of the One-Way Master Netting Agreement 1997 (in which only the default of one Party is contemplated).

18. Including multiple forms of netting provision in respect of Client Transactions, in any of the following combinations:

    - more than one ISDA/FOA Clearing Addendum or Addendum Netting Provision

    - more than one FOA Clearing Module or Clearing Module Netting Provision

- one or more ISDA/FOA Clearing Addendum or Addendum Netting Provision and one or more FOA Clearing Module or Clearing Module Netting Provision

provided that the agreement specifies unambiguously that only one such netting provision shall apply in respect of any given Client Transaction.

19. Including the Title Transfer Provisions together with provisions which create a security interest over cash and/or non-cash margin, provided that the agreement unambiguously specifies the circumstances in which the security interest or the Title Transfer provisions apply in respect of any given item of margin so that it is not possible for both the security interest and the Title Transfer Provisions to apply simultaneously to the same item of margin.

20. Adding to the definition of "Firm Trigger Event" or, as the case may be, "CM Trigger Event" (or defined terms equivalent thereto) any further events of default in relation to the Firm or, as the case may be, the Clearing Member, including those in the definition of Events of Default appearing in a FOA Published Form Agreement (including as modified in accordance with paragraph 5 above).

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

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

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

PART 3
SECURITY INTEREST PROVISIONS

1. **Security Interest Clause:**

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

2. **Power of Sale Clause:**

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

3. **Client Money Additional Security Clause**

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

4. **Rehypothecation Clause**

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

ANNEX 5
NECESSARY OR DESIRABLE AMENDMENTS

1. Necessary amendments

(a) For the purposes of paragraph 3.7.1, 3.7.2, 3.8 and 3.9:

The following should be added to the FOA Set-Off Provisions, Clearing Module Set Off Provision and the Addendum Set-Off Provision: "For the purposes of the Set-off under this provision, to the extent not already due and payable according to any other provisions hereof, [your/Client's/the] obligations being set off against shall be considered due and payable immediately prior to the making of such Set-Off, and together with any obligations being set off, to the extent not expressed in the Base Currency or another currency determined by insolvency law applicable to [you/the Client/the other Party], shall be converted at the option of the Party initiating the Set-Off into the Base Currency or such other currency at such rate and valuation as determined according to this Agreement."

In the FOA Set-Off Provisions after the words "and without notice to you", Clearing Module Set Off Provision after the words "and without notice to Client" and the Addendum Set-Off Provision "and without prior notice to Clearing Member" the following should be added "(except to extent required by any applicable provision of insolvency law)".

2. Desirable amendments

(a) For the purposes of paragraph 3.3, 3.4 and 3.5:

The following should be added to the FOA Netting Provision, Clearing Module Netting Provision and the Addendum Netting Provision "This and any other netting provisions contained herein, constitute an integral part of the financial collateral arrangement, instituted by [reference to the appropriate documents establishing a financial collateral arrangement]"[41].

(b) For the purposes of paragraph 3.10:

The following should be added to the Title Transfer Provision/s: "This provision, together with the provisions of [reference to the appropriate documents establishing a financial collateral arrangement] establish a financial collateral arrangement between the Parties within the meaning of Directive 2002/47/EC of the European Parliament

[41] This clause should not be used where no financial collateral arrangement has been established that corresponds to the Financial Collateral Act, implementing Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (as amended) and national law implementing this Directive. Please see also paragraph 4.5 for more information on how Bulgarian law defines a financial collateral arrangement and what the parties to it can be.

and of the Council of 6 June 2002 on financial collateral arrangements (as amended) and national law implementing this Directive"[42].

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

None.

4. Additional Events for the purposes of paragraph 3.1

None.

5. Alterations which constitute material alterations

None.

[42] Please see previous footnote