BAHR

NETTING ANALYSER LIBRARY

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6 December 2013

Dear Sirs,

FOA 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 Norway ("**this jurisdiction**") in respect of the enforceability and validity of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision contained in a FOA Netting Agreement or a Clearing Agreement.

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

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

1. TERMS OF REFERENCE AND DEFINITIONS

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

1.1.1 parties which are companies incorporated as Norwegian private limited liability companies (Nw.: *aksjeselskap*), Norwegian public limited liability companies (Nw.: *allmennaksjeselskap*), Norwegian general partnerships (Nw.: *ansvarlig selskap*) and Norwegian limited partnerships (Nw.: *kommandittselskap*) or parties which are Norwegian foundations (Nw.: *stiftelse*);

1.1.2 Guaranteed Institutions incorporated in Norway; and

1.1.3 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 applicable Schedule:

1.2.1 Individuals as defined in Schedule 1 (Schedule 1); and

1.2.2 The Kingdom of Norway (Schedule 2).

1.3 Notwithstanding paragraph 1.1, this opinion does not apply to Norwegian credit institutions whose activity consist of granting or acquiring mortgage loans or public loans and who primarily fund this activity by issuing covered bonds (Nw.: *obligasjoner med fortrinnsrett*) and which therefore are subject to Part IV of Chapter 2 of the Norwegian Financial Institutions Act of 10 June 1988 no. 40 and the Regulation on Credit Institutions that Issue Covered Bonds of 25 May 2007 no. 550.

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

1.5 This opinion covers all types of Transactions which fall within Annex 2, whether entered into on a recognised investment exchange, any other form of organised market place or multilateral trading facility, or over the counter, except:

1.5.1 the spot contracts referred to in item (A) of Annex 2 which neither (i) concern currency or (ii) impose Financial Obligations on its parties;

1.5.2 all Transactions referred to in Annex 2 which relate to commodities and are neither (i) traded on a regulated marked or a multilateral trading facility (as such terms are defined in directive 2004/39/EC) or (ii) cash-settled; and

1.5.3 all Transactions referred to in subitem (v) of item (A) of Annex 2 which are neither Derivatives or impose Financial Obligations on the parties.

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

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

1.7 **Definitions**

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

1.7.1 "**Bankruptcy Proceedings**" means the proceedings referred to under the heading "Bankruptcy Proceedings" in paragraph 3.1 below.

1.7.2 "**CR Act**" means the Norwegian Creditors Recovery Act of 8 June 1984 no 59.

1.7.3 "**Debt Settlement Proceedings**" means the proceedings referred to under the heading "Debt Settlement Proceedings" in paragraph 3.1 below.

1.7.4 "**Date of Filing**" means:

(a) in relation to Bankruptcy Proceedings, the date when a successful petition for the opening of Bankruptcy Proceedings was received by the relevant court;

(b) in relation Debt Settlement Proceedings, the date when the petition for the opening of Debt Settlement Proceedings was received by the relevant court; and

(c) in relation to Public Administration, the date when the Norwegian government resolves that the Guaranteed Institution shall be placed under Public Administration.

1.7.5 "**Derivatives**" means the Financial Instruments referred to in Subsection 5 of Section 2-2 of the Securities Trading Act and Section 2-1 of the Securities Trading Regulation, cf. item 5 of Subsection 5 of Section 2-2 of the Securities Trading Act, corresponding with the financial instruments listed in items 3 to 10 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 as supplemented by articles 38 and 39 of Commission Regulation (EC) No 1287/2006 of 10 August 2006.

1.7.6 "**Financial Collateral**" means cash deposits, Financial Instruments and claims for the repayment of money arising out of a credit institution granting credit to a debtor not being a consumer, cf. Section 2(1)(c) of the Financial Collateral Act.

1.7.7 "**Financial Collateral Act**" means the Norwegian Financial Collateral Act of 26 March 2004 no 17.

1.7.8 "**Financial Collateral Arrangement**" means an agreement regarding the title transfer of Financial Collateral or an agreement creating a security interest in Financial Collateral, in either case for the purpose of securing the fulfilment of Financial Obligations, cf. Section 2(1)(a) of the Financial Collateral Act.

1.7.9 "**Financial Instruments**" means the instruments defined as financial instruments pursuant to Section 2-2 of the Securities Trading Act, this being

(a) transferable securities;

(b) money-market instruments;

(c) units in UCITS and other securities funds; and

(d) Derivatives.

1.7.10 "**Financial Obligations**" means obligations comprised by a Financial Collateral Arrangement which are either settled by cash payments or by physical delivery of Financial Instruments cf. Section 2(1)(b) of the Financial Collateral Act.

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

1.7.12 "**FSAN**" means the Financial Supervisory Authority of Norway;

1.7.13 "**Guaranteed Institutions**" means (i) licensed banks either incorporated as "aksjeselskap", "allmennaksjeselskap" or "sparebank", (ii) licensed insurance companies either incorporated as "aksjeselskap", "allmennaksjeselskap" or "gjensidig forsikringselskap", (iii) the parent company of either a financial conglomerate or a credit institution (other than banks) which are members of The Norwegian Banks' Guarantee Fund (Nw.: *Bankenes sikringsfond*) and (iv) pension funds (Nw: *pensjonskasse*).

1.7.14 "**Guarantee Schemes Act**" means the Norwegian Act on Guarantee Schemes for Banks and Public Administration etc. of Finance Institutions of 6 December 1996 no. 75.

1.7.15 "**Insolvency Act**" means Norwegian Act on debt settlement proceedings and bankruptcy proceedings of 8 June 1984 no. 58;

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

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

1.7.18 "**Insolvency Set-off Limitations**" means the statutory limitations on set-off following the opening of Insolvency Proceedings pursuant to Section 8-1 of the CR Act.

1.7.19 "**Public Administration**" means the proceedings referred to under the heading "Public Administration" in paragraph 3.1 below.

1.7.20 "**Required Party**" means any of the following, cf. Section 1(3) of the Financial Collateral Act:

(a) public authorities, including authorities which are charged with or intervening in the management of public debt or hold accounts for customers;

(b) central banks, the European Central Bank, the Bank for International Settlements, the International Monetary Fund, the European Investment Bank, the International Bank for Reconstruction and Development, the International Finance Corporation,

the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the Council of Europe Resettlement Fund, the Nordic Investment Bank, the Caribbean Development Bank, the European Bank for Reconstruction and Development, the European Investment Fund and the Inter-American Investment Corporation;

(c) financial institutions, pension schemes, investment firms, securities funds and the management company of a securities fund; and

(d) central counterparties, settlement agents, clearing houses and similar regulated institutions that trade in Derivatives or legal persons who acts as trustee or on behalf of one or more persons, for example agents acting on behalf of bondholders or special purpose vehicles established in connection with securitisation.

1.7.21 "**Securities Trading Act**" means the Norwegian Securities Trading Act of 29 June 2007 no 75.

1.7.22 "**Step-in Right**" means the insolvency estate's general right to step into the agreements of the debtor pursuant to Section 7-3 of the CR Act.

1.7.23 the "**opening of Debt Settlement Proceedings**" refers to the time at which a petition for the opening of Debt Settlement Proceedings was received by the district court.

1.7.24 the "**opening of Bankruptcy Proceedings**" refers to the time at which the decision to open Bankruptcy Proceedings was passed.

1.7.25 Financial Collateral will be deemed to have been "**provided**" when applicable perfection requirements have been duly fulfilled.

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

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

2. ASSUMPTIONS

We assume:

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

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

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 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 the obligations assumed under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions are 'mutual' between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owing by it to the other Party and solely entitled to the benefit of obligations owed to it by the other Party.

2.10 That, in relation to a Clearing Agreement, a Party incorporated in this jurisdiction which acts as "Firm" (as defined in the FOA Clearing Module) or "Clearing Member" (as defined in the ISDA/FOA Clearing Addendum) will be (a) a clearing member in respect of any Agreed CCP Service to which the Clearing Agreement relates, and (b) will be a company, bank, investment firm, partnership or insurance company.

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

2.12 That each Party, when transferring margin pursuant to the Title Transfer Provisions, has full legal title to such margin at the time of Transfer, free and clear of any lien, claim, charge or encumbrance or any other interest of the transferring party or of any

third person (other than a lien routinely imposed on all securities in a relevant clearance or settlement system).

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

2.14 That all margin transferred pursuant to the Title Transfer Provision or otherwise is Financial Collateral.

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

3. OPINION

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

3.1 Insolvency Proceedings

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

For a Party that is not a Guaranteed Institution:

Debt Settlement Proceedings

Debt Settlement Proceedings can be requested by debtors who are unable to meet their obligations as they fall due, but who are not necessarily insolvent. Debt Settlement Proceedings consist in negotiations between the debtor and its creditors over either a voluntary settlement or a compulsory composition.

During Debt Settlement Proceedings, the debtor will continue to operate under its management subject to certain restrictions and the supervision of a creditor committee. The debtor retains its assets and remains authorised to contract with third parties, but must obtain the consent of the creditor committee in order to sell assets, grant security, acquiring property or lending out certain important assets. The debtor's mutually obligating contracts which were concluded prior to the opening of the Debt Settlement Proceedings continue to remain in force.

After a petition for Debt Settlement Proceedings has been submitted, Section 16 of the Insolvency Act states that a petition for bankruptcy submitted by creditors of claims arising prior to the opening of Debt Settlement Proceedings cannot be granted until after the petition for Debt Settlement Proceedings has been revoked, denied or cancelled, or after the Debt Settlement Proceedings have been completed. There are however exceptions to this rule, e.g. that the petitions for bankruptcy may be granted three months after the opening of Debt Settlement Proceedings.

The Debt Settlement Proceedings may result in a voluntary settlement (consisting of a payment extension, pro rata reduction of debt, liquidation of all or parts of the debtors

assets or a combination of these measures) or a compulsory composition (consisting of a payment extension, pro rata reduction of debt, liquidation of all or parts of the debtors assets or a combination of these measures). In voluntary settlement proceedings, the adoption of a voluntary settlement requires the consent of all creditors comprised by the proposed settlement. The adoption of a compulsory composition requires the consent of 60% of the creditors if the proposed composition will cover at least 50% of the debtor's debt or 75% of the creditors if the proposed composition will cover less than 50% of the debt. A compulsory composition may however not be adopted unless it will cover 25% of the claims.

Bankruptcy proceedings

Bankruptcy Proceedings may be opened where a debtor, following a petition to the courts from either the debtor or its creditors, is found to be insolvent. Bankruptcy Proceedings may also in certain cases be opened following failed Debt Settlement Proceedings. The purpose of Bankruptcy Proceedings is to liquidate the debtor's assets for the benefit of its creditors and to distribute the proceeds in accordance with the distribution rules set out in Chapter 9 of the CR Act.

The opening of Bankruptcy Proceedings results in the insolvency estate of the debtor being established. The insolvency estate is a legal person separate from the debtor. The insolvency estate is, subject to certain exceptions, entitled to seize the assets of the debtor and to step into the mutually burdening contracts of the debtor pursuant to Section 2-2 and 7-3 of the CR Act.

For a Party that is a Guaranteed Institution:

Public Administration

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Guaranteed Institution could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, is Public Administration pursuant to the Guarantee Schemes Act.

Public Administration will be initiated against a Guaranteed Institution if it is no longer able to pay its debts once they fall due, or if it can no longer meet the capital adequacy requirements set by the Financial Supervisory Authority of Norway the FSAN.

Once Public Administration has been initiated against a Guaranteed Institution, all former bodies of the Guaranteed Institution will be removed. A public administration board appointed by the FSAN (the "**Administration Board**") will replace the Guaranteed Institution's former board. All assets and liabilities of the Guaranteed Institution will form part of an estate similar to a traditional insolvency estate. The purpose of the proceedings is either to determine whether (i) the Guaranteed Institution's business can be carried on in an economically sound way, or (ii) the business can be transferred to other banks, or (iii) the bank should be wound up.

Other than Public Administration, there are rules which apply if a Guaranteed Institution is experiencing financial difficulties. A Guaranteed Institution shall inform the FSAN of a situation where liquidity or solidity problems may arise. Accordingly,

the duty to inform may arise prior to the possible financial issues becoming reality. The FSAN could thereafter initiate several measures, including decreasing the Guaranteed Institution's subordinated capital. The FSAN can, amongst other things, call for general meetings of the Guaranteed Institution, demand that the composition of the managing organs of the Guaranteed Institution be changed, or impose conditions or guidelines which are deemed required in order to ensure that the continued business is carried out in a sound way. Such pre-insolvency measures do not in general affect agreements entered into by a Guaranteed Institution.

The Norwegian government has stated that Norwegian legislation is in line with Norway's obligations under Directive 2001/24/EC on the reorganisation and winding-up of credit institutions, although no particular measures have been taken to implement it.

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

3.2 **Recognition of choice of law**

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

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

There are, however, some matters which are not determined by reference to governing law, but which are mandatory in the forum irrespective of the choice of governing law and when applying English law as the law governing the FOA Netting Agreement or, as the case may be, the Clearing Agreement, the courts of Norway will apply any overriding mandatory provisions of the law of Norway. In our opinion, this includes Norwegian insolvency law determining the effects of the opening of Insolvency Proceedings on the contractual relationships of the debtor, hereunder the Step-in Right, as it is not possible to contract out of such provisions.

3.3 **Enforceability of FOA Netting Provision**

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

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

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

We are of this opinion because:

As regards the situation where neither party is subject to Insolvency Proceedings, Norwegian law does not contain any rules limiting the enforceability of close-out netting provisions. In addition, Section 14-2 of the Securities Trading Act states that a written agreement between two parties providing that the parties' obligations under Derivatives shall be netted at market value following an event of default is enforceable, notwithstanding the Step-in Right and the Insolvency Set-off Limitations. Furthermore, Section 6 of the Financial Collateral Act states that Financial Obligations comprised by a Financial Collateral Arrangement may be netted on the written terms agreed between the parties, notwithstanding the Step-in Right and the Insolvency Set-off Limitations.

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

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

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

We are of this opinion because:

As regards the situation where neither party is subject to Insolvency Proceedings, there are no mandatory provisions limiting the enforceability of close-out netting provisions in accordance with their terms. In addition, Section 14-2 of the Securities Trading Act states that a written agreement between two parties providing that the parties' obligations under Derivatives shall be netted at market value following an event of default is enforceable, notwithstanding the Step-in Right and the Insolvency Set-Off Limitations. Furthermore, Section 6 of the Financial Collateral Act states that Financial Obligations comprised by a Financial Collateral Arrangement may be netted on the written terms agreed between the parties, notwithstanding the Step-in Right and the Insolvency Set-Off Limitations.

In the event that these two referenced pieces of special legislations were deemed to be non-applicable, the enforceability of the Clearing Module Netting Provision would be contingent upon this not being prevented by the Step-in Right or, in the case of Debt Settlement Proceedings, the continuation of contracts pursuant to Section 7-3a of the CR Act. Section 7-3 of the CR Act, which provides the legal basis for the Step-in Right, has the following wording (office translation):

"In the event that the debtor is subject to bankruptcy proceedings, the insolvency estate has the right to step into the mutually obligating agreements which the debtor has concluded. The counterparty may request that the insolvency estate without undue delay determines whether it will exercise its right.

The provisions of the preceding subsection do not affect the counterparty's right to invoke the insolvency as a termination event due to the nature of the agreement. Contractual provisions which give the counterparty a more extensive right to terminate the agreement following the insolvency of the debtor is not binding on the insolvency estate."

Section 7-4 of the CR Act provides for the effects of the exercise of the step-in right as set out in Section 7-3 of the CR Act: The insolvency estate assumes the rights and obligations of the solvent party under the agreement. The solvent party's claim under the transaction becomes a preferred claim.

Subsection 1 of Section 7-3a of the CR Act has the following wording (office translation):

"The debtor's agreements are continued following the opening of Debt Settlement Proceedings. The opening does not in itself give the other party the right to terminate

the agreement with the debtor. The provisions in subsection 7-3 of the CR Act apply correspondingly."

Section 7-4a of the CR Act provides for the effects of the continuation of contracts as set out in Section 7-3a of the CR Act: The rights and obligations of the debtor pursuant to the terms of the agreement remain throughout the Debt Settlement Proceedings. As Section 7-3 and Section 7-3a of the CR Act in our opinion are identical in terms of exemptions, both provisions will be referenced as the Step-in Right for the purposes of this paragraph 3.4.

In the context of derivatives transactions, there has been some discussion in Norwegian legal literature regarding the application of the Step-in Right. Firstly, the discussion has concerned the question of whether the insolvency estate would be entitled to exercise its Step-in Right in relation to some, but not all outstanding transactions, regardless of the existence of a "single agreement clause" in a framework agreement covering all transactions, and thereby enabling the insolvency estate to "cherry-pick" favourable transactions. This depends on whether each transaction is considered as a separate agreement for the purposes of the Step-in Right. Secondly, the discussion has concerned whether the exemption from the Step-in Right is applicable to derivative transactions, this being contingent on the solvent party being entitled to invoke the insolvency as a termination event due to the nature of derivatives transactions.

It is our opinion that there is a significant risk that Norwegian courts would deem each Transaction to be separate agreements in relation to the Step-in Right. Furthermore, there is also a significant risk that the Transactions would not be considered as agreements of a nature which entitles the solvent party to terminate on grounds of insolvency to the detriment of the Step-in Right. This would result in, in the case of Bankruptcy Proceedings, the insolvency estate being able to "cherry-pick" favorable Transactions and, in the case of Debt Settlement Proceedings, the solvent party being unable to terminate Transactions on grounds of the opening of Debt Settlement Proceedings.

However, we are of the opinion that neither the Step-in Right nor the automatic continuation of contracts pursuant to Section 7-3a would in any event bar the Non-Defaulting Party from terminating the Transactions, and the Clearing Module Netting Provision would therefore be enforcebale in accordance with its terms. We are of this view as the Step-in Right only bars the solvent party from terminating its agreements with the debtor on grounds of insolvency. Other than that, the contractual relationship between the insolvency estate and the solvent party is regulated by the same terms as between the debtor and the solvent party. This entails that, in principle, the solvent party is entitled to terminate outstanding transactions in accordance with the terms of the agreement as long as the grounds for termination are not the insolvency of the debtor. As an early termination of outstanding Client Transactions is caused by a Firm Trigger Event, the termination will therefore not be due to the insolvency of the debtor itself. In our opinion, the Clearing Module Netting Provision should therefore be enforceable in respect of providing for the termination of the Client Transactions in the relevant Cleared Transaction Set.

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

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

3.5 **Enforceability of the Addendum Netting Provision**

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

We are of this opinion because:

The same reasoning as set out in paragraph 3.4 applies here (with the modification that any references to "Clearing Module Netting Provision" should be read as "Addendum Netting Provision" and any references to "Firm" should be read as "Clearing Member").

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

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

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

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

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

3.7.1 In relation to an FOA Netting Agreement which includes the FOA Set-Off Provisions, the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their

terms, so that following an Event of Default, the Non-Defaulting Party would be immediately entitled to exercise its rights under either or both of the FOA Set-Off Provisions, and in particular so that, upon the exercise of such rights:

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

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

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

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

We are of this opinion because:

As regards the situation where neither party is subject to Insolvency Proceedings, there are no mandatory provisions limiting the enforceability of set-off provisions in accordance with their terms.

As regards the situation where the rights under the Margin Cash Set-Off Clause are exercised following the opening of any Insolvency Proceedings, the FOA Netting Agreement will constitute an agreement concerning Financial Collateral. This is due to the margin having been transferred by the Defaulting Party to the Non-Defaulting Party for the purposes of securing the payment of the Liquidation Amount. The set-off right will therefore be enforceable. This conclusion is based on Section 3 of the Financial Collateral Act which explicitly states that title transfer arrangements may be created in respect of Financial Collateral, and Section 7 of the same act which states that Financial Collateral provided under a Financial Collateral Arrangement may be realised in accordance with the agreement between the parties, provided that the agreement is in writing.

As regards the situation where the rights under the General Set-Off Clause are the extent to which the FOA Set-Off Provisions exercised following the opening of any Insolvency Proceedings, the Insolvency Set-off Limitations states that a party which at the time of opening of Insolvency Proceedings holds a claim against the debtor that may be filed with the insolvency estate may off-set the claim with its full amount against a claim which at that time is held by the debtor, but forms part of the insolvency estate, *provided* that set-off would not have been prevented due to the nature of the claims if the debtor was still solvent.

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

In addition to the highlighted words, it is necessary that the words shown as underlined in Part 1 of Annex 4 be treated as Core Provisions in order for the opinions expressed in this paragraph 3.7.1 to apply.

3.7.2 In relation to a Clearing Agreement which includes the FOA Set-Off Provisions and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision, the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms, so that following an Event of Default in respect of the Client, the Firm or, as the case may be, the Clearing Member would be immediately entitled to exercise its rights under either or both of the FOA Set-Off Provisions, and in particular so that, upon the exercise of such rights:

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

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

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

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

We are of this opinion because:

The reasoning applied in paragraph 3.7.1 also applies here.

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

In addition to the highlighted words, it is necessary that the words shown as underlined in Part 1 of Annex 4 be treated as Core Provisions in order for the opinions expressed in this paragraph 3.7.2 to apply.

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

3.8.1 In relation to a Clearing Agreement which includes the Clearing Module Set-Off Provision (whether or not the FOA Set-Off Provisions is a Disapplied Set-Off Provisions, insofar as constituting part of the Clearing Agreement), the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that the Firm would be immediately entitled to exercise its rights under the

Clearing Module Set-Off Provision, and in particular, upon the exercise of such rights:

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

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

We are of this opinion because:

The reasoning applied in paragraph 3.7.1 also applies here.

No amendments to the Clearing Module Set-Off Provision are necessary in order for the opinions expressed in this paragraph 3.8.1 to apply.

In addition to the highlighted words, it is necessary that the words shown as underlined in Part 1 of Annex 4 be treated as Core Provisions in order for the opinions expressed in this paragraph 3.8.1 to apply.

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

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

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

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

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

would be immediately entitled to exercise its rights under the Addendum Set-Off Provision, and in particular so that, upon the exercise of such rights, in the case of a CM Trigger Event, any Available Termination Amount would be reduced by its set-off against any cash balance which constitutes a termination amount payable by (or to)

the Party which is owed (or owes) the Available Termination Amount, insofar as not already brought into account as part of the Relevant Collateral Value.

We are of this opinion because:

The reasoning applied in paragraph 3.7.1 also applies here.

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

3.10 **Enforceability of the Title Transfer Provisions**

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

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

3.10.3 The courts of this jurisdiction would not recharacterise transfers of margin under the Title Transfer Provisions of an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions as creating a security interest.

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

We are of this opinion because:

In relation to the opinion expressed in 3.10.1:

Following Section 14-2 of the Securities Trading Act, agreements providing for the close-out netting of the parties' obligations under Derivatives are enforceable, cf. the discussion in paragraph 3.3. Provided that one of the parties is a Required Party and the other is a legal person, the same applies to Financial Obligations. If the close-out amount resulting from the application of Section 14-2 of the Securities Trading Act and/or Section 6 of the Financial Collateral Act is secured by a title transfer of Financial Collateral, this will constitute a Financial Collateral Arrangement. Pursuant to Section 7 of the Financial Collateral Act, Financial Collateral which has been provided may be realised as provided for in a written agreement between the parties. An agreement resulting in the same net result as when taking the Default Margin

Amount into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provisions is thereby enforceable under Norwegian law.

A question related to the above opinion is whether the Non-Defaulting Party's rights in respect of Financial Collateral transferred under a FOA Netting Agreement are affected if margin not being Financial Collateral also is transferred under the FOA Netting Agreement. There is nothing in the Financial Collateral Act that suggests that this will affect the rights of the Non-Defaulting Party in respect of margin that is Financial Collateral. The Non-Defaulting Party will however not be entitled to rely on the provisions of the Financial Collateral Act in relation to transferred margin not being Financial Collateral.

In relation to the opinion expressed in 3.10.2:

The same rationale as set out in relation to 3.10.1 also applies to our opinion in parapgraph 3.10.2.

In relation to the opinion expressed in 3.10.3:

Section 3 of the Financial Collateral Act provides that Financial Obligations may be secured by title transfer of Financial Collateral.

In relation to the opinion expressed in 3.10.4:

It follows from Section 4 of the Financial Collateral Act that the parties to a Financial Collateral Arrangement may agree that the collateral taker in respect of provided Financial Collateral consisting of deposits or Financial Instruments (but not claims for the repayment of money arising out of a credit institution granting credit to a debtor not being a consumer) shall have the right to lend, pledge, sell or reuse the provided collateral in other ways. By exercising its right of reuse, the collateral taker becomes obliged to deliver equivalent collateral to the collateral provider at the latest on the maturity date of the Financial Obligations of the collateral provider. It may be agreed that the obligation to transfer equivalent collateral is settled in other ways, including by setting-off the value of the equivalent collateral against the Financial Obligations.

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

Furthermore, in addition to the highlighted words, it is necessary that the words shown as underlined in Part 1 of Annex 4 be treated as Core Provisions in order for the opinions expressed in this paragraph 3.10 to apply.

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

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

(i) a provision in the form of, or with equivalent effect to, Clauses 4.3 and/or 4.4 of the FOA Clearing Module is used or the agreement otherwise unambiguously specifies the circumstances in which the security interest provisions or the Title Transfer Provisions apply in respect of any given item of margin so that it is not possible for both the security interest provisions and the Title Transfer Provisions to apply simultaneously to the same item of margin; and

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

3.12 **Single Agreement**

Under the laws of this jurisdiction it is not necessary that the Transactions and the FOA Netting Agreement or, as the case may be, the Clearing Agreement are part of a single agreement in order for the termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision to be enforceable provided that the Transactions constitute Derivatives for the purposes of the Securities Trading Act or Financial Obligations for the purposes of the Financial Collateral Act (in this respect, please see our opinions in paragraphs 3.3, 3.4 and 3.5).

We are of this opinion because:

Norwegian law contains two pieces of special legislation that recognise and protect close-out netting provisions. The Securities Trading Act will protect the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision in respect of Transactions which are Derivatives and the Financial Collateral Act will protect the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision in respect of Transactions that are Financial Obligations. The effectiveness of these pieces of special legislation to protect the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision does not depend on the Transactions and the FOA Netting Agreement or, as the case may be, the Clearing Agreement forming part of a single agreement.

3.13 **Automatic Termination**

It is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision and/or the Addendum Netting Provision to ensure the effectiveness of netting under the FOA Netting Agreement or, as the case may be, the Clearing Agreement in the event of bankruptcy, liquidation, or other similar circumstances.

3.14 **Multibranch Parties**

We do not consider that the use of the FOA Netting Agreement or, as the case may be, the Clearing Agreement by a party with branches in a number of different jurisdictions, including some where netting may not be enforceable would jeopardise the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provision, the Clearing

Module Set-Off Provision, the Addendum Set-Off Provision or the Title Transfer Provisions in so far as the laws of this jurisdiction are concerned.

3.15 **Insolvency of Foreign Parties**

Where a Party which is not a Guaranteed Institution 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 Bankruptcy Proceedings and Debt Settlement Proceedings in this jurisdiction, if such Party's centre of business is located in this jurisdiction.

When a Guaranteed Institution 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**"), subject to the below, there can be no separate Insolvency Proceedings in this jurisdiction in relation to the Foreign Defaulting Party and the authorities in this jurisdiction would defer to the proceedings in the Foreign Defaulting Party's home jurisdiction.

The Norwegian Ministry of Finance may decide to place the Norwegian branch of a bank having its main seat in another state under Public Administration if the bank does not honour its payment obligations when due in Norway while at the same honouring such obligations in its home state or measures adopted by the authorities in its home state aiming to ensure the continued operations of the bank are without effect for the Norwegian branch. Where the home state of the branch is another EEA state, the adoption of such decision requires that the Ministry of Finance considers the decision to be a necessary and proportionate measure for securing the attainment of the objectives of the EEA rules corresponding to directive 2001/24/EC of the European Parliament and of the Council.

3.16 **Special legal provisions for market contracts**

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

4. QUALIFICATIONS

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

4.1 The opinions expressed herein are confined to and given on the basis of the laws of Norway as currently in force and applied by the courts of Norway. We have made no investigation of and express no opinions as to matters under or involving the laws of any jurisdiction other than the laws of Norway.

4.2 The opinions expressed in paragraph 3.2 are subject to Norwegian courts not applying foreign law if it would be contrary to public policy. This could *inter alia* apply if

contract terms are deemed as "unfair" pursuant to Section 36 of the Norwegian Act on Contracts, which mandates Norwegian courts to revise or not give effect to such terms.

4.3 The Financial Collateral Act is only applicable where at least one of the parties is a Required Party and the other is a juridicial person, and opinions expressed herein which rely on the Financial Collateral Act will only apply if this is the case.

4.4 Section 14-2 of the Securities Trading Act and Section 6 of the Financial Collateral Act both reference Section 7-3 of the CR Act, which governs the effects of the opening of Bankruptcy Proceedings on the contracts of the debtor, but not also Section 7-3a of the CR Act, which governs the effects of the opening of Debt Settlement Proceedings on the contracts of the debtor. This could be taken to suggest that these two pieces of special legislation do not constitute derogations from Section 7-3a of the CR Act, and that the enforceability of the FOA Netting Provisions, the Clearing Module Netting Provision and the Addendum Netting Provision (as applicable) following the opening of Debt Settlement Proceedings would not be guaranteed by these provisions. However, the preparatory works of Section 14-2 of the Securities Trading Act state that the provision also is to ensure the enforceability of close-out netting provisions following the opening of Debt Settlement Proceedings. [1] The preparatory works of the Financial Collateral Act does not comment on why 7-3a is not mentioned in Section 6. However, the preparatory works assume that Debt Settlement Proceedings constitute 'reorganisation measures' for the purposes of the financial collateral directive (Directive 2002/47/EC as amended by Directive 2009/44/EC).[2] Purusant to Article 7 of that directive, Member States shall ensure that a close-out netting provision can take effect in accordance with its terms notwithstanding *inter alia* the commencement of reorganisation measures. Based on the assumption that Debt Settlement Proceedings being 'reorganisation measures', the directive obliges Norway to ensure the enforceability of close-out netting provision following the opening of Debt Settlement Proceedings. It can therefore be argued that the Norwegian legislature did not intend to exclude Section 7-3a of the CR Act from the scope of the Financial Collateral Act, and that Section 6 of the Financial Collateral Act must be interpreted to also ensure the enforceability of close-out netting provisions following the opening of Debt Settlement Proceedings in order to ensure that Norway complies with its obligations under the financial collateral directive.

Based on the above considerations, our opinion is that both Section 14-2 of the Securities Trading Act and Section 6 of the Financial Collateral Act guarantees the enforceability of close-out netting provisions following the opening of Debt Settlement Proceedings. The fact that neither of the provisions explicitly derogates from Section 7-3a of the CR Act does however result in this conclusion being somewhat uncertain.

4.5 The opinions expressed in 3.3, 3.4, 3.5, 3.7, 3.8, 3.9, 3.10 and 3.12 rely on the FOA Netting Provisions, the Clearing Module Netting Provision and the Addendum Netting Provision (as applicable) being enforceable pursuant to Clause 6 of the Financial Collateral Act. The wording of Section 6 of the Financial Collateral Act does however cause some uncertainty as to which obligations that fall within the

[1] Ot.prp.nr.29 (1996-1997) pp. 141.

[2] Ot.prp.nr.22 (2003-2004) pp. 55.

scope of the provision. As a starting point, due to the definition of Financial Obligations, it seems clear that the scope of the provision is limited to obligations which are settled in cash or by physical delivery of Financial Instruments. However, the definition of a Financial Obligation also requires that the obligation is comprised by a Financial Collateral Arrangement. The definition of a 'relevant financial obligation' contained in Article 2(f) of the financial collateral directive (Directive 2002/47/EC as amended by Directive 2009/44/EC), which the act seeks to implement in Norwegian law, goes even further by reserving this term for obligations that are "secured by a financial collateral arrangement". Having regard to this, the wording of Section 6 of the Financial Collateral Act could be taken to suggest that where an agreement providing for close-out netting contains a unilateral obligation to provide security, the obligations of the collateral taker would not constitute Financial Obligations, and hence be excluded from the scope of the provision.

On the other hand, the directive does not reserve the term 'close-out netting provision' for arrangements where 'relevant financial obligations' are closed out; a close-out netting provision will inter alia be deemed to exist for the purposes of the directive if the provision is part of "an arrangement of which a financial collateral arrangement forms part" and results in the obligations of the parties being accelerated and their estimated current value being netted against each other. If the agreement provides the net amount produced by the operation of a netting arrangement is secured by a financial collateral arrangement, a close-out netting clause could be said to be a "provision ... of an arrangement of which a financial collateral agreement forms part" and thereby qualify as a 'close-out netting provision' for the purposes of the directive. This is also supported by recital 14 of the directive, which indicates that the directive aims to enable participants to manage and reduce their credit exposures arising from all kinds of financial transactions on a net basis. It is apparent that reduction of credit exposures on a net basis is conditional upon the enforceability of close-out netting clauses. Reducing credit exposures to a net basis would however not be to much benefit if this can only be achieved by providing security for gross exposures, as the wording of Section 6 of the Financial Collateral Act may suggest. On the basis of these considerations, our view is that obligations are not required to be 'relevant financial obligations' to form part of a 'close-out netting provision'. If this interpretation of the directive is correct, an interpretation of Section 6 as only ensuring the enforceability of close-out netting provisions to the extent these are Financial Obligations would violate Norway's obligations under the EEA Agreement, as Article 7 of the directive obligates member states to ensure that 'close-out netting provisions' can take effect in accordance with its terms. There is furthermore nothing to suggest that the Norwegian legislature has intended to establish provisions in breach of the EEA Agreement, and in such situations Norwegian courts will generally interpret Norwegian legislation in a manner which is compliant with Norway's obligations under the EEA Agreement. Our opinion is therefore that the FOA Netting Provisions will also be enforceable under Section 6 of the Financial Collateral Act, provided that the FOA Netting Agreement includes the Title Transfer Provision. It should however be pointed out that there is a risk that Norwegian courts will interpret Section 6 of the Financial Collateral Act in a literal manner, thereby making the FOA Netting Provisions, the Clearing Module Netting Provision and the Addendum Netting Provision (as applicable) unenforceable in the absence of other legal bases.

4.6 In the case where the Transactions consist of both (i) Transactions which are Derivatives but not Financial Obligations and (ii) Transactions which are Financial Obligations but not Derivatives, the opinions expressed in paragraphs 3.3, 3.4, 3.5, 3.7, 3.8, 3.9, 3.10 and 3.12 is conditional upon that a FOA Netting Provision providing for the combined netting of Derivatives and Financial Obligations will be enforceable. This question is not addressed in the wording of or the preparatory works to Section 14-2 of the Securities Trading Act and Section 6 of the Financial Collateral Act. It does appear that both pieces of special legislation intend to allow the parties to the Transactions covered by the respective scopes of the two provisions to reduce their net exposure against the counterparty by ensuring the enforceability of netting provisions in the event of Insolvency Proceedings. In our view, it can be argued that this purpose is best advanced by also allowing for the combined netting of Derivatives and Financial Obligations. Furthermore, the effectiveness of the Step-in Right does not offer a weighty argument to the contrary in this situation, as Section 14-2 of the Securities Trading Act and Section 6 of the Financial Collateral Act will both in any event rule out this right, this regardless of whether combined netting is recognised or not. Our best opinion, having regard to the uncertainty caused by the lack of authoritative sources, is that such joint netting would be effective, and that a FOA Netting Provision would be effective in respect of Transactions which are either Derivatives or Financial Obligations, provided that both Section 14-2 of the Securities Trading Act and Section 6 of the Financial Collateral Act are applicable to the agreement.

4.7 The opinions expressed in paragraphs 3.4, 3.5, 3.8, 3.9, 3.10.2 and 3.12 are conditional upon both Section 14-2 of the Securities Trading Act and Section 6 of the Financial Collateral Act ensuring the enforceability of the Clearing Module Netting Provision and the Addendum Netting Provision (as applicable). It is however not completely clear whether these two pieces of special legislation will guarantee the enforceability of provisions that provide for the close-out netting of not all, but only parts of outstanding Transactions.

In relation to Section 14-2 of the Securities Trading Act and Section 6 of the Financial Collateral Act, the wording of both provisions suggest that the provisions are applicable where all outstanding Derivatives or Financial Obligations, as applicable, are terminated. In relation to Section 14-2, this impression is enhanced by the preparatory works of the provision describing close-out netting as involving the termination of all outstanding transactions.[3] The preparatory works of Section 6 give the same impression, as close-out netting is discussed in a manner consistent with the view that this is a provision that is meant to ensure the enforceability of the close-out netting of all outstanding Financial Obligations. On the other hand, it is our view that it is hard to find any convincing reasons for accepting only close-out netting of all outstanding transactions, and that Norwegian courts should find the Clearing Module Netting Provision and the Addendum Netting Provison enforceable. Due to the lack of authority sources, there does however attach some uncertainty to this conclusion.

4.8 In relation to the opinions expressed in paragraphs 3.4 and 3.5, the effects of Sections 7-3 and 7-3a of the CR Act, which govern the effects of Bankruptcy Proceedings and Debt Settlement Proceedings on the contracts of the debtor respectively and are

[3] Ot.prp.nr.29 (1996-1997) pp. 132.

mutually exclusive, are discussed in the event that the enforceability of the Clearing Module Netting Provision is not guaranteed by either Section 14-2 of the Securities Trading Act or Section 6 of the Financial Collateral Act. As Guaranteed Institutions are not subject to Bankruptcy Proceedings or Debt Settlement Proceedings, these provisions are not directly applicable for Guaranteed Institutions. The Guarantee Schemes Act does not contain provisions regarding the effect of Public Administration on the contracts of the Guaranteed Institution. Instead, it follows from section 4-6(1)(e) of the Guarantee Schemes Act that the provisions of the CR Act will "apply accordingly" to Public Administration, but the provision does not specify which sections of the CR Act are relevant. There therefore exists some uncertainty as to whether it is Section 7-3 and 7-3a of the CR Act that will determine the effect of the opening of Public Administration in a Guaranteed Institution.

Neither the Guarantee Schemes Act nor its preparatory works give any firm answer with respect to this issue. However, before the CR Act and the Guarantee Schemes Act were enacted, Public Administration of commercial banks was regulated in the Commercial Banks Act 1961. The Commercial Banks Act stated that Public Administration of with a bank would be subject to chapter 4 and sections 119-122 of the 1863 Bankruptcy Act (which was succeeded by the current Insolvency Act and CR Act in 1984). Chapter 4 of the 1863 Bankruptcy Act regulated to what extent assets could be seized by a insolvency estate (including claw-back rules), and sections 119-122 contained certain provisions relating to rights of set-off, recognition of interest on claims and the rights of guarantors and other parties who were jointly liable with the debtor, in the event of bankruptcy proceedings. When the CR Act was enacted in 1984, the specific reference in the Commercial Banks Act to the above-mentioned sections in the 1863 Bankruptcy Act was replaced with a statement to the effect that "the Creditor's Recovery Act should apply accordingly" to Public Administration. This wording has been preserved in section 4-6(1)(e) of the Guarantee Schemes Act. It is not clear whether the legislator upon implementing this change intended to expand the scope of bankruptcy-related rules applicable to Public Administration of banks, although some statements in the preparatory works seem to imply that this was indeed the case.[4]

When a Guaranteed Institution is placed under Public Administration, no "estate" or other separate legal entity is created as a result thereof. Although the bank's Administration Board will have many tasks similar to those of a bankruptcy administrator, the Administration Board will not be regarded as a separate legal entity, but is a special body appointed to handle the bank's business. It is difficult to reconcile the legal status of an Administration Board with a right to step into the Guaranteed Institution's contracts. Accordingly, when considering whether to apply Section 7-3 or 7-3a of the CR Act to the Public Administration of a Guaranteed Institution, it is our best view that the rule in Section 7-3a should apply and that the Guaranteed Institution's contracts continue uninterrupted while the bank is under Public Administration. This would entail that the views expressed in relation to Section 7-3a in paragraph 3.4 and 3.5 are also applicable to Public Administration, save as modified by the opinions otherwise expressed in this opinion letter.

[4] See Ot.prp.nr.50 (1980-1981) pp. 227

4.9 The effectiveness of the General Set-Off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision (the "**Set-off Provisions**") following the opening of Insolvency Proceedings is conditional upon that the claim of the Defaulting Party which the Non-Defaulting Party seeks to exercise set-off against (the "**claim**") is considered as a claim which was held by the Defaulting Party at the opening of the Insolvency Proceedings.

4.9.1 In the case that the claim is the Liquidation Amount or the Available Termination Amount (as applicable) (the "**Close-out Amounts**"), this condition will be fulfilled if the relevant Close-out Amount has become due and payable prior to this point in time. A greater degree of uncertainty is attached to the question of whether the Close-out Amount will be considered as a claim held by the Defaulting Party at the opening of the bankruptcy proceedings in the event that the Close-out Amount first becomes due and payable following the opening.

On the one hand, there seems to be a consensus among legal commentators that counterclaims arising out of agreements concluded with the debtor prior to the opening of insolvency proceedings are to be considered as being held by the solvent party at the time of opening.[5] Based on this, it could be argued that it would be logical to also view the Close-out Amount as being held by the debtor at this point in time, as the basis for the claim is an agreement entered into prior to this. Under this position, the Close-out Amount is thus viewed as a contingent claim arising at the entry into of an FOA Netting Agreement.

On the other hand, it can be argued that the Norwegian Supreme Court in relation to a similar expression in Section 26 of the Debt Instruments Act concluded that a claim for compensation due to an event of default arises upon the occurrence of that event.[6] If a corresponding position is adopted in relation to Section 8-1 of the CR Act, this would imply that the enforceability of the General Set-Off Clause is contingent upon the relevant Event of Default, Firm Trigger Event, CM Trigger Event (as applicable) (each a "**Termination Event**") being deemed to have occurred prior to the opening of bankruptcy proceedings.

Our opinion is that a Close-out Amount will be deemed to be a claim held by the Defaulting Party at the opening of Insolvency Proceedings, regardless of whether the Termination Event occurs prior to or after the opening. This opinion is based upon that the opposite view would imply that the insolvency estate of a debtor would be unable to seize the claim for the Close-out Amount following a Termination Date occuring after the time of opening, as pursuant to Section 2-2 of the CR Act, only claims belonging to the debtor at the opening of Bankruptcy Proceedings may be seized. This would in our opinion not be a sensible interpretation, as the creditors of the debtor would thereby not benefit from the debtor's claim for the Close-out Amount.

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[5] Arne Tjaum. *Valuta- og renteswapper*. (Universitetsforlaget, 1996) pp. 412-413; Rune Sæbø. *Motregning*. (Fagbokforlaget, 2003) pp. 432-434.

[6] Rt-1992-504.

Furthermore, our view is that Section 8-1 of the CR Act should be interpreted in a manner coherent with Section 2-2. This would again result in the claim for the Close-out Amount being considered as existing at the opening of Insolvency Proceedings.

4.9.2 In the case where the claim is other amounts than a Close-out Amount, the requirement that the claim must have been held by the Defaulting Party at the commencement of the Insolvency Proceedings *inter alia* implies that counterclaims may not be set-off against claims that arise following the activity of the insolvency estate. One question that has been the subject of debate in Norwegian legal literature is whether the insolvency estate's claims under agreements which it has exercised its Step-in Right is to be considered as a claim held by debtor at the time of opening of Bankruptcy Proceedings. While there is no conclusive court precedent or statements in the preparatory works available, the prevailing view in Norwegian legal literature seems to be that, at least generally speaking, claims resulting from the insolvency estate exercising its Step-in Right do not fulfil this condition. This view is to a great extent based upon that giving the solvent party a right to set-off counterclaims against the claims would render the Step-in Right ineffective, rather than considerations as to when a claim technically speaking may be considered as existing.

4.9.3 Among those that hold this view, opinions are however divided in respect of the question of whether the insolvency estate is bound by set-off clauses contained in the agreements to which the Step-in Right is exercised.[7] Those in favour of recognising set-off clauses argue that while a right to set-off functions as a security right, it also has a function as an optional form of settlement of the claim.[8] By allowing the insolvency estate to not respect such clauses, one thereby allows the insolvency estate to not respect the agreed terms of settlement. This in turn does not correspond with the general principle that the insolvency estate is bound by the terms of the agreement forming the basis for the claim. Others argue that the situations of the solvent debtor and the insolvency estate are not comparable. While the debtor in any event will be obligated to honour the counterclaim, the insolvency estate is in principle only obligated to cover the counterclaim as a dividend claim, cf. Section 7-8 of the CR Act. Therefore, recognising agreed set-off clauses involves leaving the insolvency estate worse off than the debtor in a solvent situation.[9]

4.9.4 Our view is consistent with the latter position referred to above, i.e. that the Non-Defaulting Party may not set-off counterclaims against the claims of the insolvency estate resulting from it stepping into the contracts of the debtor. However, having regard to the numerous positions held by Norwegian commentators in relation to this question, this is a somewhat uncertain position.

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[7] In favour of this, see Sæbø *op.cit.* pp. 443-445. For an opposite view, see Tjaum *op. cit.* pp. 421-424.

[8] Sæbø *op.cit.* pp. 444.

[9] Tjaum *op.cit.* pp. 421-422.

4.10 Pursuant to the Insolvency Set-off Limitations, the effectiveness of the General Set-Off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision following the opening of Insolvency Proceedings will be conditional upon that the claim of the Non-Defaulting Party (the "**counterclaim**") is of a type which may be filed with the insolvency estate of the Defaulting Party.

4.10.1 Where the counterclaim is the Close-out Amount and the Close-out Amount has become due and payable prior to the opening of Insolvency Proceedings, the same rationale as set out in paragraph 4.9.1 applies here. Our opinion is that a Close-out Amount will be considered as a claim that may be filed with the insolvency estate of the Default Party, and therefore be set-off against the claims of the insolvency estate, provided that set-off is not precluded by other Insolvency Set-Off Limitations.

4.10.2 Where the counterclaim is amounts other than a Close-out Amount, the requirement that the counterclaim must be a type of claim that may be filed with the insolvency estate will be fulfilled where the counterclaim entitles dividend from the insolvency estate, hereunder claims against the debtor which were due and payable at the opening of the proceedings, as well as claims that at the opening of bankruptcy proceedings have not yet matured or are contingent on events that have not occurred as of that date, cf. Sections 6-1 and 6-2 of the CR Act. Having regard to how broadly the Set-off Provisions are drafted, it is however not possible for us to give a more specific opinion on whether or not a counterclaim will be eligible for set-off against a claim, as this will vary according to the grounds for the claim.

4.11 Pursuant to the Insolvency Set-off Limitations, the effectiveness of the General Set-Off Clause, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision following the opening of Insolvency Proceedings is conditional upon that set-off would not have been prevented due to the nature of the claims if the debtor was still solvent.

4.11.1 The preparatory works of the CR Act states that whether or not this is the case depends on what is agreed between the parties and the non-mandatory rules of law governing set-off.[10] The common position held in Norwegian literature is that if the solvent party pursuant to agreement would have a right of set-off if the debtor was solvent, set-off may be exercised to the same extent towards the insolvency estate of the debtor.[11] The insolvency estate will however not have to respect an agreement which gives the solvent party a wider right of set-off upon the bankruptcy of the debtor.[12] Our position is consistent with this view.

4.11.2 As the General Set-Off Clause applies at all times following the entry into of the agreement, our opinion is that the Non-Defaulting Party will be able to exercise its right of set-off under this clause against the Liquidation Amount.

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[10] NOU 1972:20 pp. 330.

[11] Sæbø *op.cit* pp. 459; Tjaum *op.cit.* pp. 403; Mads Henry Andenæs. *Konkurs* (3rd edn, 2009) pp. 233.

[12] Sæbø *loc.cit*; Andenæs *loc.cit*; Tjaum *loc.cit.*

4.11.3 As the Clearing Module Set-Off Provision and the Addendum Set-Off Provision allows for the set-off against an Available Termination Amount following other events than an Event of Default affecting the Client, such as a Firm Trigger Event or a CCP Default and will in all cases be applicable to the same extent, these provisions do therefore not give the Firm or the Clearing Member (as applicable) any greater rights of set-off following the bankruptcy of the Client. The same rationale applies where the Available Termination Amount has become due following a Firm Trigger Event/CM Trigger Event (as applicable) or a CCP Default. Our opinion is therefore that the Clearing Module Set-Off Provision and the Addendum Set-Off Provisions are enforceable.

4.12 This opinion letter refers to certain rules of the CR Act which attach legal effect to the opening of Debt Settlement Proceedings and Bankruptcy Proceedings. The Guarantee Schemes Act does not provide any guidance as to when this event is deemed to take place when applying the CR Act "accordingly" to Public Administration, cf. the discussion in paragraph 3.4 above. This issue does neither appear to have been addressed in the preparatory works of the act. Section 4-6(1)(e) of the Guarantee Schemes Act does however offer some guidance, by specifying that the "date of filing" for the purposes of the application of the CR Act shall be deemed to be when the Norwegian government resolves that the Guaranteed Institution shall be placed under Public Administration. As the opening of Debt Settlement Proceedings, Bankruptcy Proceedings and other proceedings regulated by the CR Act is never earlier than the "date of filing" corresponding to such proceedings, this indicates that the opening of Public Administration will not be considered to be at an earlier time than the "date of filing" for the Public Administration. It also seems as the most logical to consider this point in time as the opening of Public Administration for the purposes of applying the CR Act to Public Administration. Our opinion is therefore that Norwegian courts when applying the CR Act to Public Administration will most likely construe references to the opening of proceedings as when the Norwegian government resolves that the Guaranteed Institution shall be placed under Public Administration.

4.13 Norwegian banks which are "sparebanks" may not provide its assets as security for the obligations of itself or others. The FSAN may grant exemptions from this prohibition.

4.14 Norwegian banks which are commercial banks (*i.e.* all other banks than "sparebanks") have to notify the FSAN before granting any security. Failure to notify the FSAN has no bearing on the validity or perfection of the security.

4.15 Any asset pledged, transferred or otherwise disposed of by the debtor may be seized by the debtor's insolvency estate unless the perfection requirement(s) applicable to such assets has been observed within applicable deadlines. This applies regardless of when such asset were pledged, transferred or disposed of (as applicable).

4.16 Section 5-9 of the CR Act contains a general rule similar to *actio pauliana*, pursuant to which a transaction which (i) improperly gives preference to one creditor at the expense of the others, (ii) prevents the debtor's assets from being used to cover the creditor's claims, or (iii) increases the debtor's liabilities in a manner which is detrimental to the creditors, may be avoided if the debtor's financial situation was

weak or became seriously weakened by the transaction. The application of the rule is conditional upon that the other party knew or should have known of the debtor's financial difficulties and the circumstances which rendered the transaction improper. The provision applies for transactions completed within the period starting 10 years prior to the Date of Filing.

4.17 Section 5-6(1) of the CR Act provides that the exercise of set-off against the debtor with a counterclaim acquired from a third person within the period starting 3 months prior to the Date of Filing may be avoided if the debtor's claim existed at when the counterclaim was acquired. The same applies regardless of the date of acquisition of the counterclaim if the acquirer knew or should have known that the debtor was insolvent at this date. Section 5-6(2) provides that the exercise of set-off against the debtor may be avoided if exercised (i) within the period starting 3 months prior to the Date of Filing or (ii) at a date on which the creditor knew or should have known that the debtor was insolvent, in both cases provided that set-off following the opening of Debt Settlement Proceedings or Bankruptcy Proceedings would have been barred. The same applies where the counterclaim would have ranked below ordinary claims for dividend.

4.18 Section 5-7 of the CR Act contains a rule pursuant to which the creation of a pledge or other security may be avoided if (a) the pledge or security concerns debt which the debtor incurred prior to the security right was agreed or (b) the security was not perfected without undue delay after the debt was incurred may be subject to claw back, in both cases provided that the security right was perfected within the period starting three months prior to the Date of Filing. For security rights created pursuant to a Financial Collateral Arrangement, the rule is modified by Section 5(2) of the Financial Collateral Act, which states that a security right may not be avoided solely on the basis that it was provided for a Financial Obligation which has already been incurred. As "provided" in the context of Section 5 of the Financial Collateral Act means perfected, cf. Section 2 of the Financial Collateral Act, a security right may nevertheless pursuant to alternative (a) of Section 5-7 of the CR Act be subject to claw-back on the basis that the debt secured was incurred prior to the agreement creating it. In the context of framework agreements whereby the parties undertake to provide security in future scenarios, it has been submitted that a security right should not been considered as being agreed prior to the parties agreeing that a specific asset shall serve as security.[13] The preparatory works of Financial Collateral Act do however presuppose that alternative (a) of Section 5-7 of the CR is not applicable to such security rights, which is the background for the Financial Collateral Act not containing an exemption from this rule.[14] There does therefore seem to be some uncertainty regarding whether margin transferred within the applicable claw-back period may be subject to claw-back, which would affect the ability of the solvent party to (i) exercise its rights under the FOA Set-Off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision and (ii) take such margin into account for the purposes of calculating (A) the Liquidation Amount pursuant to the FOA Netting Provision of an FOA Netting Agreement (with Title Transfer Provisions) or a Clearing Agreement which includes the Title Transfer Provisions where the

[13] Kåre Lilleholt. *Finansiell trygdgjeving*. In: Høivik, Lunde, Truyen, Tørum (eds), *Håkonarmål* (2006) pp. 30.

[14] Ot.prp.nr.22 (2003-2004) pp. 57

Client is a Defaulting Party and (B) the Cleared Set Termination Amount pursuant to a Clearing Agreement.

4.19 When a party to an agreement is vested with a discretion or may determine a matter in its opinion, Norwegian law may require that such discretion is exercised reasonably or that such opinion is based on reasonable grounds and a provision that a certain determination is conclusive and binding will not prevent judicial inquiry into the merits of any claim by an aggrieved party. In particular, Section 8 of the Financial Collateral Act provides that the realisation and valuation of Financial Collateral, as well as the calculation of Financial Obligations shall be carried out on commercially reasonable terms.

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

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

In this opinion, Norwegian legal concepts are described in English terms and not by their original Norwegian terms. The concepts concerned may not correspond to the concepts described by the same English terms as they exist under the laws of other jurisdictions. This opinion may, therefore, only be relied upon on the express condition that any issues of interpretation or liability arising hereunder will be governed by Norwegian law and be brought before a Norwegian court.

Yours faithfully,
Advokatfirmaet BA-HR DA



Arne Tjaum
Attorney

SCHEDULE 1
INDIVIDUALS

Subject to the modifications and additions set out in this Schedule 1 (*Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are individuals. For the purposes of this Schedule 1 *(Individuals)*, "***Individuals***" means physical persons.

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

1. MODIFICATIONS TO OPINIONS

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

1.1 Enforceability of the FOA Netting Provision

As the Financial Collateral Act is not applicable when one of the parties is an Individual, the opinions expressed in paragraph 3.3 will only apply to Transactions which are Derivatives.

1.2 Enforceability of the FOA Set-Off Provisions

Our opinion in paragraph 3.7 regarding the Margin Cash Set-Off Clause relies on Sections 3 and 7 of the Financial Collateral Act. As agreements where an Individual is one of the parties fall outside the scope of the Financial Collateral Act, the enforceability of title transfer financial collateral arrangement in respect of Financial Collateral is not guaranteed by the Financial Collateral Act, as such agreements cannot be Financial Collateral Arrangements *per se*. We are however of the opinion that title transfer financial collateral arrangements will be enforceable also outside the scope of the Financial Collateral Act, *provided* that the asset in question may be subject to the creation of a security interest. This is the case for all assets other than Financial Instruments which are Financial Collateral. This will also apply to Financial Instruments which are registered in a securities register. As the Margin Cash Set-Off Clause only concerns cash margin, this clause should therefore be enforceable outside of the scope of the Financial Collateral Act, and therefore also where an Individual is party to the FOA Netting Agreement.

1.3 Enforceability of the Title Transfer Provisions

Our opinion in paragraph 3.10.1 relies on Section 7 of the Financial Collateral Act. As mentioned in section 1.1 above, this provision is not applicable to Individuals. We are however of the opinion that the Non-Defaulting Party would be entitled to exercise its rights under the Title Transfer Provisions, *provided* that the assets transferred may be subject to the creation of a security interest. This is the case for all Financial Collateral which are assets other than Financial Instruments. This will also apply to Financial Instruments which are registered in a securities register.

Our opinion in paragraph 3.10.3 relies on that Section 3 of the Financial Collateral Act provides that Financial Obligations may be secured by title transfer of Financial Collateral. Outside the scope of this provision, there is some risk that a title transfer collateral arrangement may be recharacterised as a security right, as this has been done by the Norwegian Supreme Court.[15] This has however primarily concerned cases where the title of the asset in question was transferred in order to circumvent a prohibition on the creation of a security interest. In respect of assets other than Financial Instruments which are Financial Collateral, recharacterisation does not pose any particular legal risk, as these assets may also be subject to a security interest. The same applies in respect of Financial Instruments which are registered in a securities register.

If the title transfer collateral arrangement is recharacterised, and the transferred margin is considered as still being owned by the debtor and pledged in favor of the solvent party, there is a risk that Norwegian courts may give effect to Section 6-4 of the Norwegian Pledge Act, which provides that the insolvency estate of a debtor which has pledged any of its assets as security for obligations owed, has a statutory lien over any such pledged assets. The statutory lien has priority over all other liens or security interests in the relevant asset, regardless of whether such other liens or security interests have been created voluntarily or involuntarily. The statutory lien for the insolvency estate is limited to 5% of the value of or sales proceeds for the pledged asset. The insolvency estate may only apply proceeds from the statutory lien (if any) to pay for necessary expenses (Nw.: *nødvendige boomkostninger*).

The opinions above in this section 1.3 and in paragraph 3.10.1 presuppose that the FOA Netting Provision will be enforceable following the opening of Insolvency Proceedings. As stated in section 1.1, these provisions will only be enforceable following the opening of Insolvency Proceedings in an Individual to the extent the Transactions are Derivatives.

2. ADDITIONAL QUALIFICATIONS

The enforceability of the FOA Set-Off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision may be affected by Section 29 of the Norwegian Act on Financial Agreements of 25 June 1999 which states that financial institutions and similar institutions may not exercise set-off against amounts standing to the credit of an account held with such institution, unless (i) the counterclaim is due and payable and has arisen under the agreement concerning the account or (ii) the counterclaim has arisen due to a criminal offence. This provision is non-waivable for persons acting as consumers, which means that the Set-off Provisions would not be effective where the claim is amounts standing to the credit of an account held by a physical person and such account is intended for that person's personal use.

[15] Rt-1916-863.

SCHEDULE 2
THE KINGDOM OF NORWAY

Subject to the modifications and additions set out in this Schedule 2 (*the Kingdom of Norway*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of the Kingdom of Norway. For the purposes of this Schedule 2 (*the Kingdom of Norway*), "**The Kingdom of Norway**" means the Kingdom of Norway.

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 DEFINTIONS

Paragraph 1.6.16 is deemed deleted and replaced with the following:

""Insolvency Proceedings" means the procedures listed in section 2.1 of Schedule 2 (Kingdom of Norway)."

2. 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.

2.1 Insolvency Proceedings: The Kingdom of Norway

There are no Insolvency Proceedings applicable to the Kingdom of Norway. Principles of sovereign immunity are applicable to the Kingdom of Norway. Property and assets of the Kingdom of Norway are not subject to attachment. The opinions expressed regarding enforceability following the opening of Insolvency Proceedings do accordingly not apply.

ANNEX 1
FORMS OF FOA NETTING AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX 2
List of Transactions

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

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

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

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

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

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

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

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

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

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

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

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

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 an FOA Netting Agreement or a Clearing Agreement, the Firm's or, as the case may be, Clearing Member's counterparty under the relevant FOA Netting Agreement or Clearing Agreement.

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

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

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

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

(d) for the purposes of paragraph 3.7.1, the Insolvency Events of Default Clause, the FOA Netting Provision and either or both of the General Set-off Clause and the Margin Cash Set-off Clause;

(e) for the purposes of paragraph 3.7.2, the Insolvency Events of Default Clause, the FOA Netting Provision, either or both of the General Set-off Clause and the Margin Cash Set-off Clause, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision;

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

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

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

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

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

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

References to "**Core Provisions**" include Core Provisions that have been modified by Non-material Amendments.

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

"**Eligible Counterparty Agreements**" means each of the Eligible Counterparty (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 an FOA Netting Agreement or a Clearing Agreement which includes an FOA Clearing Module, the Party providing the services under the relevant FOA Netting Agreement or Clearing Agreement which includes an FOA Clearing Module.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Professional Client Agreements**" means each of the Professional Client Agreement (with Security Provisions) Agreement 2007, the Professional Client (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);

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

"**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):

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

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

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

c) **Payer:** If the Liquidation Amount is a positive amount, the Defaulting Party shall pay it to the Non-Defaulting Party and if it is a negative amount, the Non-Defaulting Party shall pay it to the Defaulting Party. The Non-Defaulting Party

shall notify the Defaulting Party of the Liquidation Amount, and by which Party it is payable, immediately after the calculation of such amount."

2. General Set-Off Clause:

"**Set-off:** Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) owed by you to us against any amount (whether actual or contingent, present or future) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained."

3. Margin Cash Set-Off Clause:

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

4. Insolvency Events of Default Clause:

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

"The following shall constitute Events of Default:

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

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

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

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

"The following shall constitute Events of Default:

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

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

5. Title Transfer Provisions:

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

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

6. Clearing Module Netting Provision / Addendum Netting Provision:

a) [Firm Trigger Event/CM Trigger Event]

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

1. 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)];

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 the relevant part thereof;

3. 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] 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]);

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].

b) CCP Default

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

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]), (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[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. 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.

5. 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.

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

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

8. 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.

9. 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.

10. 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.

11. 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.

12. Any change to the FOA Set-Off Provision, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision (a) clarifying (i) at which time set-off may be exercised by a Party (with or without limitation), (ii) the amounts that may be set-off (with or without limitation, whether in relation to the agreement(s) under which such amounts arise or to the parties from which they are due), (iii) the scope of the provision where a Party acts as agent, (iv) the use of currency conversion in case of cross-currency set-off, (v) the application or disapplication of any grace period to set-off, (vi) the exercise of any lien, charge or power of sale against obligations owed by one Party to the other; or (b) allowing the combination of a Party's accounts.

13. Any addition to any of the Core Provisions that leaves both the plain English sense and legal effect of such provision unchanged.

14. 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.

15. Including the Title Transfer Provisions together with provisions which create a security interest over cash and/or non-cash margin, provided that a provision in the form of, or with equivalent effect to, clauses 4.3 and/or 4.4 of the FOA Clearing Module is used or the agreement otherwise unambiguously specifies the circumstances in which the security interest or the Title Transfer provisions apply in

respect of any given item of margin so that it is not possible for both the security interest and the Title Transfer Provisions to apply simultaneously to the same item of margin.

16. Adding to the definition of "Firm Trigger Event" or, as the case may be, "CM Trigger Event" (or defined terms equivalent thereto) any further events of default in relation to the Firm or, as the case may be, the Clearing Member, including those in the definition of Events of Default appearing in an FOA Published Form Agreement (including as modified in accordance with paragraph 5 above).

17. 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).

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

19. 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:

None.

2. Desirable amendments

(a) For the purposes of paragraph 3:

None.

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

(a) For the purposes of paragraph 3.7.1:

The words "For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained." in the General Set-Off Clause.

The words "as reasonably valued by us" in the Margin Cash Set-off Clause.

(b) For the purposes of paragraph 3.7.2:

The words "For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained." in the General Set-Off Clause

The words "as reasonably valued by us" in the Margin Cash Set-off Clause.

The words "For these purposes, Firm may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained" in the Clearing Module Set-Off Provision.

(c) For the purposes of paragraph 3.8.1:

The words "For these purposes, Firm may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained" in the Clearing Module Set-Off Provision.

(d) For the purposes of paragraph 3.10:

The words "as a result of an Event of Default" in the Title Transfer Provisions.