DE PARDIEU BROCAS MAFFEI

AVOCATS

European Federation of Energy Traders
Amstelveenseweg 998
1081 JS Amsterdam
The Netherlands

Paris, January 1, 2012

Re.: EFET / Master Netting Agreement and Cross Product Master Agreement

Dear Sirs:

We have been requested, as legal advisers to the European Federation of Energy Traders ("**EFET**") to render an opinion (the "**Opinion**") as to the validity and enforceability under French law of the provisions of the following documents:

1. The Master Netting Agreement (Version 1.0) (the "**MNA**") published by EFET in June 2010;

2. The Cross Product Master Agreement (Version 1) (the "**CPMA**") published in February 2000 by The Bond Market Association;

3. The Commodities Schedule to the Cross-Product Master Agreement (Version 1.0) (the "**Commodities Schedule**") published by EFET/IECA on 23 June 2003;

4. The Cross-Product Credit Support Annex to the CPMA (Version 1.0) (the "**CPCSA to the CPMA**") published by EFET on 23 June 2003; and

5. The Cross-Product Credit Support Annex to the Master Netting Agreement (Version 1.0) (the "**CPCSA to the MNA**") published by EFET on 1st February 2011 (together with the CPCSA to the CPMA, the "**CPCSAs**").

(Together the "**Agreements**")

When used in this Opinion, terms defined in the MNA and the CPMA and the related CPCSA's and not otherwise defined herein shall have the same meaning as defined therein.

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We are rendering this Opinion in our capacity as "*Avocat à la Cour de Paris*" and, in such capacity, are familiar with the laws of the French Republic. The opinions herein expressed relate solely to matters of French law as in force at the date hereof and do not consider the impact of any laws (including insolvency laws) other than French law, even in the case where, under French law, any foreign law falls to be applied.

The opinions herein expressed do not take into account legislative or regulatory proposals currently under consideration.

1. Executive Summary

Subject to the assumptions, qualifications and the discussions set forth in this Opinion, our principal conclusions are the following:

- the close-out netting provisions of the MNA and of the CPMA are effective under the laws of the French Republic;

- the provisions of the CPCSA's contemplating the transfer of Eligible Credit Support in favour of one Party are valid and enforceable under French law;

- the close-out netting provisions of the MNA and the CPMA combined with the provisions of the relevant CPCSA related to it contemplating the transfer of Eligible Credit Support in favour of one Party are valid and enforceable under French law,

all subject to the condition that at least one Party thereto is a Qualifying Party and that the Transactions contemplated thereunder qualify as transactions on financial instruments as defined in Articles L. 211-1 and D. 211-1A of the French Monetary and Financial Code (the "**M&FC**"), see in this respect paragraph 3.1.1.2 below. Please note that the executive summary does not form part of the opinion and that it is given for the purposes of convenience only.

2. Assumptions set out in the Instruction Letter

In the instruction letter dated 7 February 2011 from EFET, we were requested to make the following assumptions for our Opinion:

(i) Two counterparties enter into the MNA and/or the CPMA and at least one of the counterparties is incorporated or organized or has its centre of main interest in the French Republic (the "**French Counterparty**", the other party to the MNA and the CPMA being referred to as the "**Other Party**", each party being, a "**Party**");

(ii) The French Counterparty is either a corporation, a partnership, a bank or credit institution, an investment services provider or an investment firm, an insurance company, an investment fund management company, (other financial institution), a municipality or a county, an association of local government, a publicly-owned corporation, a quasi governmental entity;

(iii) The MNA or the CPMA is governed by the laws of England and Wales, Germany or the State of New York or any other law governing such Agreement, as the case may be and such other as may be specified in the relevant election sheet to the MNA or in respect of the CPMA Part IV of the Schedule thereto;

(iv) Each MNA or CPMA, each CPCSA to the MNA or the CPSA to the CPMA are enforceable under the laws of any jurisdiction (other than the laws of France) and each counterparty has duly authorized, executed and delivered, and has the capacity to enter into, each document.

(v) The relevant MNA or CPMA provides for the inclusion of some or all of the master agreements described in Exhibit 4, each such master agreement being a "**Netted Agreement**" or "**Principal Agreement**".

(vi) On the basis of the terms and conditions of the MNA or CPMA and other relevant factors, and acting in a manner consistent with the intentions stated in the MNA or CPMA, the counterparties over time enter into a number of transactions under the Netted Agreements or Principal Agreements which include some or all of the transactions described in Exhibit 5 (each a "**Transaction**").

(vii) Some of the Transactions provide for an exchange of cash by both counterparties and others provide for the physical delivery of shares, bonds or commodities (including emission rights) in exchange for cash.

2.1 Other assumptions

Furthermore, we have, with your permission, assumed the following:

2.1.1 each Party is duly incorporated as a legal entity and organised, validly existing and in good standing (where such concept is legally relevant to their capacity) under the laws of its jurisdiction of incorporation and of the jurisdiction of its place of business;

2.1.2 each Party has the capacity, power and authority under all applicable law(s) to enter into the Agreements, each Principal Agreement and each Transaction, and to perform its obligations thereunder and that each Party has taken all necessary steps validly and lawfully to enter into, execute, deliver and perform the Agreements, each Principal Agreement or Netted Agreement and each Transaction and has duly authorized, executed and delivered the same;

2.1.3 each Party has obtained, complied with the terms of, and maintained, all authorizations, approvals, licenses and consents required to enable it lawfully to enter into and perform its obligations under the Agreements, each Principal Agreement or Netted Agreement and each Transaction and to ensure the legality, validity, admissibility in evidence or enforceability thereof;

2.1.4 the choice of English or German law or such other jurisdiction for which an election has been made to govern the Agreements is a valid choice of law under the laws of England or Germany, or such other law as has been elected, as the case may be;

2.1.5 the Agreements, the Netted Agreements, the Principal Agreements and the Transactions are not or will not result in a breach of any applicable law (other than the laws of the French Republic) or is intended to avoid the applicability or the consequences of any law in a manner that is not permitted thereunder;

2.1.6 the provisions of the Agreements, each Netted Agreement, each Principal Agreement and each Transaction create valid, legal, binding and enforceable obligations for both Parties under all relevant laws (other than those of this jurisdiction) and that they are, as a matter of their governing laws and that of the MNA or CPMA, validly and effectively amended by, and made subject to, the MNA or CPMA, respectively, and are, valid and legally binding between the Parties thereto under all relevant laws (other than those of this jurisdiction) and each Netted Agreement, each Principal Agreement and each Transaction is capable of being terminated, closed out and liquidated in the manner envisaged by the MNA or CPMA, as the case may be and capable of having a Settlement Amount determined;

2.1.7 the Agreements have been properly executed and the Commodities Schedule and the CPCSA's have been properly filled out by both Parties;

2.1.8 save in relation to any non-performance by one Party which leads to the taking of action by the other Party under the termination and close out provisions of the Agreements, each Party duly performs its obligations undertaken under the Agreements and each Principal Agreement and Uncovered Transaction in accordance with its terms;

2.1.9 all Transactions qualify as forward financial instruments (*instruments financiers à terme*) within the meaning of Article L. 211-1 and Article D. 211-1 A of the French Monetary and Financial Code ("**M&FC**") as supplemented, as the case may be, by Articles 38 through 39 of the MIFID Regulation[1]; or otherwise qualify under Article

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1 Commission Regulation 1287/2006 of 10 August 2006 (the "**MIFID Regulation**") implementing Directive 2004/39/EC of the European Parliament and of the Council 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (the "**MIFID**"), as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive as supplemented by (i) Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 amending directive 2004/39/EC on markets in financial instruments, as regards certain deadlines, (ii) Commission Directive

D. 211-1-A II of the M&FC when Transactions consist of options, futures, swaps and any forward contract other than those referred to in paragraph III of Article L. 211-1 of the M&FC where such instruments are to be settled by physical delivery, they give rise to registration by a recognised clearing house or to periodic margin calls (see in this respect paragraph 3.1.1.2 below);

2.1.10 at least one of the Parties to the Agreements is a Qualifying Party under the French Netting Law (see in this respect paragraph 3.1.1.2 below);

2.1.11 Transactions are capable of being terminated under English law, Belgian Law or German law or any other law governing such Agreement, as the case may be, in accordance with the provisions of the relevant Netted Agreement or Principal Agreement;

2.1.12 if the French Counterparty may be subject to Insolvency Proceedings, the Agreements, each Netted Agreement, each Principal Agreement and each Transaction are entered into prior to the formal commencement of any Insolvency Proceedings in respect of such French Counterparty;

2.1.13 no further Transactions will be entered into and no further transfers of Eligible Credit Support will be made between the Parties on or after (i) the date of the bankruptcy judgment of either Party (it being noted that under the laws of this jurisdiction a judgment by which an insolvency is declared has retro-active effect until 00.00 hours of the day of such judgment), or (ii) the date one Party was aware that an insolvency petition in respect of the other Party had been filed;

2.1.14 if the French Counterparty may be subject to Insolvency Proceedings, at the time where the Agreements, each Netted Agreement or Principal Agreement and each Transaction are entered into, the Other Party does not have knowledge of such French Counterparty's insolvency;

2.1.15 the Agreements, each Netted Agreement or Principal Agreement and each Transaction have been entered into for *bona fide* commercial reasons and on arms' length terms by each of the Parties;

2.1.16 each Settlement Amount falling to be determined under a Netted Agreement or Principal Agreement is duly determined in accordance with the provisions thereof;

2.1.17 under all relevant laws (excluding those of this jurisdiction) the close-out netting procedures incorporated in the Netted Agreement or Principal Agreements are valid and enforceable in insolvency proceedings and that the obligation to pay the Settlement Amount calculated under each Netted Agreement or Principal Agreement is legally binding and enforceable against the Parties under its governing law(s) and

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2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

must be deemed to have originated prior to the insolvency of the relevant Party under its governing law(s);

2.1.18 the obligations to pay the Settlement Amount pursuant to each Closed-Out Agreement are legally binding and enforceable and - under all relevant laws other than those of this jurisdiction - capable of being set-off under Section 4 and following of the MNA or the Netted Agreement or Principal Agreements and mutual between the Parties in the sense that they (a) arise between the Parties acting in the same capacity and as principals and not as agents, (b) are not assigned to one of the Parties by a third party and (c) are not assigned, pledged or otherwise encumbered by one of the Parties to a third party or otherwise transferred to a third party;

2.1.19 neither the Agreements, the Netted Agreement or Principal Agreements nor the Transactions are capable of being avoided or otherwise held ineffective (in whole or in part) by reason of fraud, error, misrepresentation, undue influence, illegality or otherwise;

2.1.20 each Party, when entering into any Transaction with the other Party, shall comply with applicable laws and regulations, if any, providing for specific conditions to be complied with by such Party regarding the conclusion of Transactions and/or the posting of Eligible Credit Support. This is in particular the case (but without limitation) if the relevant French Counterparty is a French collective investment undertaking ("*organisme de placement collectif*" – "***OPC***")[2], a French securitization fund ("*fonds commun de titrisation*" - "***FCT***", formerly "*fonds commun de créances*" - "***FCC***")[3], a real estate credit company ("*société de crédit foncier*")[4], a housing financing company ("*société de financement de l'habitat*")[5], a public establishment ("*établissement public*"), the French State, a local government ("*collectivité locale*"), an insurance company or a mutual insurance company[6];

2.1.21 when the French Counterparty is a French mutual or cooperative bank ("*banque mutualiste ou coopérative*")[7], it complies with the specific regulations applicable to it;

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2 The regime applicable to OPCs is contemplated in Articles L. 214-1 and seq. of the M&FC and in Articles D. 214-1 and R. 214-1-1 and seq. of the M&FC. French collective investment undertakings can take two alternative structures, namely (i) "*société d'investissement à capital variable*" ("***SICAV***") or (ii) "*fonds communs de placement*" ("***FCP***").

3 FCTs are governed by Articles L. 212-42-1 and seq. of the M&FC and R. 214-92 and seq. of the M&FC.

4 Real estate credit companies are credit institutions licensed as "*société financière*" (financial institution). The regime applicable to real estate credit companies is contemplated in Articles L. 515-13 and seq. of the M&FC and in Articles R. 515-2 and seq. of the M&FC.

5 Housing financing companies are credit institutions licensed as "*société financière*" (financial institution). The regime applicable to housing financing companies is contemplated in Articles L. 515-34 and seq. of the M&FC and in Articles R. 515-15 and seq. of the M&FC which have been introduced in the M&FC by the French law n°2010-1249 on banking and financial regulation.

6 Insurance companies and mutual insurance companies are governed by the French Insurance Code.

7 Mutual or cooperative banks constitute a category of credit institutions. Credit institutions may be licensed either as (i) banks, (ii) mutual or cooperative banks, (iii) "*caisses de crédit municipal*", (iv) financial companies ("*sociétés financières*") or (v) specialized financial companies ("*sociétés financières*

2.1.22 each Letter of Credit is valid, binding and enforceable in accordance with its own respective terms and conditions;

2.1.23 there exists no other agreement between the Parties amending or otherwise affecting the provisions of the Agreements;

2.1.24 For the purposes of addressing the multi-branch issues in paragraph 3.2.1 below, the French Counterparty has its centre of main interests or its head office in the French Republic and has one or more Principal Agreements or Netted Agreement or underlying Transactions that have been entered into by branches in jurisdictions other than France;

2.1.25 For the purposes of addressing the multi-branch issues in paragraph 3.2.2 below, the French Counterparty does not have its centre of main interests or its head office in the French Republic but has a branch situated in the French Republic and has one or more Netted Agreement or Principal Agreements or underlying Transactions that have been entered into by such branch.

2.1.26 there is nothing in the laws of another jurisdiction that affects the opinions herein expressed.

Where an assumption is stated to be made in this Opinion, we have not made any investigation or enquiry with respect to the matters that are the subject of such assumption and we express no views as to such matters.

For this Opinion, we have not reviewed the terms of any Principal Agreement or Netted Agreement or any Transaction and consequently no opinion is expressed in relation thereto.

We emphasise that a wide variety of Transactions can be entered into, to which special considerations may apply. For this Opinion, we have not reviewed the terms of any Transaction that may be concluded under any Netted Agreement or Principal Agreement and consequently no opinion is expressed in relation to the binding nature and enforceability of any specific Transaction.

3. Opinion

On the basis of the foregoing and subject to the assumptions and qualifications herein set forth, we are of the following opinion:

spécialisées"). Whereas banks may carry out any banking transaction, mutual or cooperative banks may carry out any banking transactions within the limits of the rules which govern mutual or cooperative banks.

3.1 Enforceability of Close-out Netting

Paragraph 3.1.1 below will address termination and close-out based on an event that constitutes a Winding-up, Insolvency or Attachment (as defined in § 3.1 (C) (iii) of the MNA) or a similar insolvency related Close-Out Event and Paragraph 3.1.2 below will address other non-insolvency related Close-Out Events.

3.1.1 Winding-up, Insolvency or Attachment

For the purpose of Paragraph 3.1.1 we have assumed that:

- the relevant MNA or CPMA is governed by any law (including English, German or New York law) ; and

- after entering into transactions and prior to the maturity thereof, the French Counterparty becomes the subject of voluntary or involuntary proceedings under the insolvency laws of France, and, subsequent to the commencement of the Insolvency, either the French Counterparty or an insolvency official seeks to assume the confirmations representing profitable ("in the money") transactions for the insolvent counterparty.

Paragraph 3.1.1.1 will address a general overview of the French insolvency proceedings; Paragraph 3.1.1.2 will review legal provisions applicable to close-out netting under French law. Those are the provisions of Articles L. 211-36 through L. 211-40 of the M&FC[8] (the "**French Netting Law**").

Paragraph 3.1.1.3 will address applicability of the French Netting Law in case of Insolvency and Paragraph 3.1.1.4 will address specific questions as set out in your letter.

3.1.1.1 General Overview of French Insolvency Law

(a) Insolvency procedures

French Insolvency Proceedings are governed by Book VI of the French Commercial Code and are further described in Exhibit 3 to this opinion.

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8 As a result of the entry into force on February 25, 2005 of ordinance n° 2005-171 of February 24, 2005 (the "**Collateral Directive Ordinance**") implementing the EU Directive 2002/47/CE dated June 6, 2002 on financial collateral arrangements (the "**Collateral Directive**"), substantial amendments have been made to the provisions of Article L. 431-7 of the M&FC providing for favourable close-out netting and collateralisation provisions in respect of certain financial transactions, provided that certain conditions are met. Article L. 431-7 of the M&FC has thus been abrogated and replaced by six new articles, i.e. Articles L. 431-7 through L. 431-7-5 of the M&FC. As a result of enactment of the Ordinance, of January 8, 2009 those Articles are now Articles L. 211-36 through L. 211-40 of the M&FC which constitute the French Netting Law.

Such proceedings initiated with a judgement admitting the debtor to the benefit of the Safeguard Proceeding (or Accelerated Safeguard Proceedings or otherwise declaring a debtor insolvent and opening a Judicial Reorganization Proceeding or a Judicial Liquidation Proceeding (the "**Bankruptcy Judgement**").

Pursuant to the French Insolvency Law, a Bankruptcy Judgment ordering the commencement of Judicial Reorganization Proceeding or Judicial Liquidation Proceeding (an "**Insolvency Order**") specifies the date on which the Insolvency (*cessation des paiements*) (i.e. that a debtor is unable to meet current liabilities out of current assets) of an insolvent debtor occurred (the "**Insolvency Date**"), such date being the date determined by the court issuing the Insolvency Order as at the date on which such insolvent debtor became unable to meet its current liabilities out of its current assets. In respect of a credit institution, this is the date at which such credit institution became unable to meet its payments due immediately or in the short-term (*à terme rapproché*). The Insolvency Date (i) may not be earlier than 18 months prior to this Insolvency Order and (ii) if not specified in the Insolvency Order, is deemed to be the date on which the Insolvency Order is rendered (the period between the Insolvency Date and the Bankruptcy Judgment being the "**Suspect Period**").
In case of a Bankruptcy Judgement ordering an Insolvency Proceeding, all creditors whose debts arose before the Bankruptcy Judgement are barred from enforcing their rights against the debtor (Articles L. 622-21, L. 631-14 and L. 641-3 of the French Commercial Code) subject to very few exceptions.

Pursuant to Article L. 622-28 of the French Commercial Code interest ceases to accrue as of the date of the Bankruptcy Judgement. This applies to contractual and statutory rates of interest including penalty interest and increase in rates of interest except in case of interest accruing on loans with a maturity of one year or more or in respect of deferred payment terms contracts with a maturity of one year or more.

Article L. 622-7 of the French Commercial Code provides that the issuance of the Bankruptcy Judgement has the effect of preventing any payment of any debt arisen prior to the Bankruptcy Judgement, except in respect of set-off on account of connected claims.

Article L 622-11 of the French Commercial Code provides that notwithstanding any contractual provision to the contrary no indivisibility, termination or rescission of an ongoing Contract may result from the sole fact that a safeguard or judicial reorganization procedure has been opened.

Title III of Book VI of the French Commercial Code relating to Judicial Reorganization Proceedings contains voidance provisions which are incorporated in Articles L. 632-1 and L. 632-2 of the French Commercial Code, such provisions being also applicable to Judicial Liquidation Proceedings (but not to Safeguard Proceedings).

Creditors are required to file a proof of claim in respect of pre-Bankruptcy Judgement claims within two (2) months from publication of the Bankruptcy Judgement in the *Bulletin Officiel des Annonces Civiles et Commerciales* (*BODACC*). Such delay is extended for a further two (2)-month period in respect of creditors located outside of metropolitan France.

Even a creditor resorting to the remedy of set-off is required to file such a claim when the set-off occurs after the Bankruptcy Judgement.

Under Article L. 622-17 of the French Commercial Code, claims arising subsequent to the Bankruptcy Judgement are paid as and when they fall due.

In the case of a Safeguard Proceeding or a Judicial Reorganization Proceeding, claims arising subsequent to the Bankruptcy judgement benefit from a priority lien over all other claims, subject to (i) a superpriority in favour of claims referred to in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the French Labour Code, (ii) court costs, and (iii) claims benefiting from Article L. 611-11 of the French Commercial Code.

In the case of a Judicial Liquidation Proceeding, claims arising subsequent to the Bankruptcy Judgment benefit from a priority lien over all other claims, subject to claims referred to in (i) through (iii) of the paragraph above and claims secured by charges over real estate assets or by specific security over chattel ("*sûretés mobilières spéciales*") benefiting from a right of retention or liens granted pursuant to Articles L. 525-1 through L. 525-20 of the French Commercial Code relating to purchase money security interests over equipment ("*nantissement de l'outillage et du matériel d'équipement*").

For a short overview of the relevant insolvency proceedings and general insolvency issues, please see Exhibit 3.

(b) Set-off and close-out netting

The equivalent French term for "set-off" is *compensation*.

Compensation is a well-established civil law concept, the scope and conditions of which are set out in Articles 1289 to 1299 of the French Civil Code. Debts may be set-off either automatically by operation of law (*compensation légale*), pursuant to the provisions of an agreement that the law recognises as enforceable (*compensation conventionnelle*), or pursuant to a court order *(compensation judiciaire).*

In order to qualify for the *compensation légale*, debts must fulfil five criteria:

(i) debts must exist between the same parties (**principle of mutuality**);

(ii) the purpose of each debt must be a sum of money or a quantity of fungible[9] things;

(iii) the existence of each debt must be certain;

(iv) each debt must be liquid (i.e the amount of each debt is determined); and

(v) each debt must be due and payable.

When these five conditions are met, Article 1290 of the French Civil Code provides that the *compensation légale* takes place by operation of law, and the two debts are reciprocally extinguished when they both exist at the same time, up to their respective amounts.

The requirement that the claims be certain, liquid and matured is no longer necessary to set-off connected claims (i.e. are part of a single agreement).

9 In the absence of application of the French Netting Law or availability of protection under the Council Regulation (EC) n° 1346/2000 of May 29, 2000 on insolvency proceedings (the "**Insolvency Proceedings Regulation**"); or the Directive 2001/24/EC on the reorganisation and winding up of credit institutions (the "**Winding-Up Directive**"); transactions involving the same commodity or product when physically settled would qualify for set-off under the fungibility requirement. This would not apply when different classes or types of commodities or products need to be considered for set-off. The same would apply in respect of physically and financially settling transactions. While connexity may be available, close-out netting may not be available in an insolvency mode. For definition of connexity, see the last paragraph of this sub-paragraph (b) and footnote 11.

The French Supreme Court has held that obligations were connected when resulting from one contract or when carried out pursuant to one and the same contract which has defined the framework of the business relationship of the parties such as a master agreement, as recognised by the decision of the *Cour de Cassation* of December 12, 1995[10] or when, in the absence of a master agreement, the obligations are carried out pursuant to different contracts which constitute a single global contractual arrangement[11], as contemplated by four decisions of the *Cour de Cassation* of April 5, 1994[12], May 9, 1995[13], April 1, 1997[14] and March 31, 1998[15], Connexity remains a matter within the purview of judicial discretion.

In the case where the debts are not liquid and/or due, a judge may also, at the request of one party, order a *compensation judiciaire* (judicial set-off).

Debts not qualifying for the *compensation légale* may still be set-off if the parties have agreed to do so (*compensation conventionnelle*). The parties may thus agree to set-off debts which do not meet the criteria applicable to the *compensation légale*. However, it should be borne in mind that the principle of mutuality is a fundamental principle under French Law and that no *compensation* may occur if such condition is not met.

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10 Cass. Com. December 12, 1995, Bull. Civ. IV n°293.

11 See in this respect, *Rapport de la Cour de Cassation 1995 : "A propos de la compensation entre dettes connexes", Etude de M. Henri Le Dauphin, Conseiller Référendaire à la Cour de Cassation, p. 163.*

In three decisions (Guibout ès qual c/ CRCAM d'Anjou-Mayenne, JCP E 1998 n° 6, page 205) each dated December 9, 1997, the French Supreme Court further developed its position in respect of contractual set-off on account of connected claims. From such cases, it appears that the French Supreme Court continues to emphasize the need to demonstrate the existence of a single contractual relationship, agreed upon prior to the Suspect Period, which is not merely artificial but whereunder obligations have been discharged in the ordinary course of business through set-off prior to insolvency. In a decision dated October 26, 1999 (RJDA 2000, n° 46), the French Supreme Court held that the prohibition to pay any debt arisen prior to the Bankruptcy Judgement does not prevent the set-off of connected claims provided that the parties have not intentionally created this connexity. Furthermore, in a decision dated June 4, 2003 (Cass. 3e Civ., Revue de Droit Bancaire et Financier, n° 5 – September/October 2003, n°194), the French Supreme Court held that when the obligations are carried out pursuant to different contracts which constitute a single global contractual arrangement, such contracts must be economically linked ("*économiquement liés*") in order to create connected claims.

12 Cass. Com., April 5, 1994, Bull. Civ. IV n° 142.

13 Cass. Com., May 9, 1995, Bull. Civ. IV n° 130.

14 D. Affaires 1997. 663.

15 BRDA 1998, n° 8, p. 10.

Furthermore, the *compensation conventionnelle* may be subject to voidance if concluded during the Suspect Period[16]. Should an Insolvency Proceeding be opened, such *compensation conventionnelle* **will be paralysed on the basis of the Insolvency Law**[17]**, except for connected claims**[18]. Please see however our analysis of the Insolvency Proceedings Regulation in paragraph 3.1.1.3 below.

The consistent usage of the term *compensation* to refer to the related English concepts of set-off and netting in the French versions of various Community legal acts (i.e. the Insolvency Proceedings Regulation, the Collateral Directive and the Winding-up Directive) may imply that the reference to *compensation* covers both set-off and close-out netting. However, from a French law perspective, **close-out netting and set-off appear to be two different concepts**. Close-out netting embraces three stages. The first stage in the close-out process involves termination (*résiliation*), which may be accomplished through explicit termination clauses. The second stage involves valuation (*évaluation*). The third stage involves set-off (*compensation*). **Based on this analysis, the French concept of set-off may not be construed to cover the entire close-out netting procedure**. Nothing prevents, however, to provide for such close-out netting by contract.

While the validity and enforceability of the close out netting provisions of the Agreements under French law based on provisions of the French Civil Code relating to set-off are to be upheld, their enforceability in the framework of Insolvency Proceedings may be confronted with the mandatory provisions of Insolvency Law. However, special legislation does address close-out netting related to financial instruments and their enforceability in the framework of an Insolvency Proceeding. The French Netting Law applies for such purposes.

16 See in this respect paragraph 5.4 of Exhibit 3.

17 See in this respect paragraph 7.2 of Exhibit 3.

18 See in this respect paragraph 7.2 of Exhibit 3. It is therefore important that the election to make Section 10.6 apply in the Schedule.

3.1.1.2 The French Netting Law

In order for the Transactions entered into between the French Counterparty and the Other Party under the Agreements to benefit from the favourable close-out netting and the special margining regime provided for in the French Netting Law, there are two requirements that need to be met under the new regime resulting from the Collateral Directive Ordinance[19] which has implemented in France the Collateral Directive:

(i) the financial obligations which are covered by the French Netting Law must result from Qualifying Transaction(s), (as defined in paragraph 3.1.1.2.1 below), and

(ii) at least one of the parties to such Qualifying Transaction(s) must be a Qualifying Party (as defined in paragraph 3.1.1.2.2 below) under the French Netting Law.

3.1.1.2.1 Financial obligations resulting from Qualifying Transactions

The French Netting Law is applicable to financial obligations[20] resulting either (i) from **transactions on financial instruments** (within the meaning of Article L. 211-1-I and Article D. 211-1A of the M&FC), if only one of the parties to the transactions is a Qualifying Party (see in this respect paragraph 3.1.1.2.2 below) or (ii) from any **contract giving rise to cash settlement or to delivery of financial instruments**, if both parties to the contract are Qualifying Parties (each of the transactions and contracts referred to in (i) and (ii) is referred to as a "**Qualifying Transaction**").

19 Further to the enactment of the Collateral Directive Ordinance, Article L. 211-36 and L. 211-36-1 of the M&FC does not require that transactions on financial instruments be entered into under one or several master agreement(s) meeting the general principles of national or international master agreement(s).

20 The French Netting Law does not define the terms "financial obligations". However, paragraph 1 (f) of Article 2 of the Collateral Directive defines "relevant financial obligations" as the obligations which are secured by a financial collateral arrangement and which give a right to cash settlement and/or delivery of financial instruments. Under those circumstances, the terms "financial obligations" used in the French Netting Law could be construed as referring to obligations which give a right to cash settlement and/or delivery of financial instruments. We note however that this criterium of "giving a right to cash settlement and/or delivery of financial instruments" is used by the French Netting Law to define a type of Qualifying Transactions different from mere "transactions on financial instruments". A combined reading of the French Netting Law and the Collateral Directive is therefore of limited relevance to understand the concept of "financial obligations". Such concept should therefore be construed under French law by reference to the transactions or contracts from which the financial obligations result and could not be restricted to an obligation to pay a sum of money.

It is worth noting that if both parties are Qualifying Parties under the French Netting Law, the scope of Qualifying Transactions is wide as the French Netting Law includes in such case financial obligations which result from any **contract giving rise to cash settlement or to delivery of financial instruments**. Accordingly, all financial obligations resulting from transactions on financial instruments (i.e. Qualifying Transactions covered by the French Netting Law when only one of the parties to such transaction(s) is a Qualifying Party as contemplated by Article L. 211-36 I 1° of the M&FC[21]) are included in the scope of Qualifying Transactions. When both parties are Qualifying Parties, transactions which correspond to financial obligations which do not result from transactions on financial instruments but otherwise result from any contract giving rise to cash settlement or delivery of financial instruments also qualify as Qualifying Transactions.

As far as **transactions on financial instruments** are concerned, Article L. 211-1-I of the M&FC defines:

1. financial securities ("*titres financiers*") which include:

   a) equity securities ("*titres de capital*") issued by stock companies[22];

   b) debt securities[23], other than payment instruments ("*effets de commerce*") and loan notes ("*bons de caisse*") ;

   c) units or shares in collective investment undertakings ("*organismes de placement collectifs*" – "*OPCs*")[24].

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21 Those are the transactions covered by the former Article L. 431-7 (and following) of the M&FC in effect prior to the enactment of the Collateral Directive Ordinance such as qualifying derivative transactions, securities loans and repurchase transactions.

22 Article L. 212-1-A of the M&FC defines equity securities ("*titres de capital*") as shares and other securities that grant or may grant direct or indirect access to capital or voting rights.

23 Debt securities represent each a claim on the legal entity or the securitisation fund which issues those securities (Article L 213-1 A of the M&FC).

24 An undertaking for collective investment referred to in Article L. 214-1 of the M&FC, as amended by Ordinance n° 2009-107 of January 30 2009, includes:

(i) a collective investment undertaking in transferable securities (UCITS) (referred to in France as, an *Organisme de Placement Collectif*, an "*OPC*") (including open-ended investment companies ("*Société d'Investissement à Capital Variable*" (SICAV) and Unit Trusts ("*Fonds Commun de Placement*" (FCP)) ;

(ii) a securitization fund (*organisme de titrisation ou FCT*);

(iii) a *société civile de placement immobilier* (an "*SCPI*" or real estate investment partnership);

(iv) a forestry-linked saving company (a *société d'épargne forestière*);

(v) a real property collective investment undertakings (*organisme de placement collectif immobilier);*

2. financial contracts ("*contrats financiers*"), also known as **forward financial instruments** which are further defined in Article D. 211-1 A of the M&FC.

Financial instruments may only be issued by the State, a legal entity, a "*FCP*", a "*fonds de placement immobilier*" (i.e. a real estate investment fund) or a "*FCT*".

Forward financial instruments are further defined in Article D. 211-1 A of the M&FC.

Under Article D. 211-1 A-I of the M&FC, forward financial instruments include:

1. Options, futures, swaps, forward rate agreements and any other forward contracts relating to financial instruments, currencies, interest rates, yields, financial indices or financial measures which may be settled physically or in cash;

2. Options, futures, swaps, forward rate agreements and any other forward contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties otherwise than by reason of a default or other termination event;

3. Options, futures, swaps and any other forward contracts relating to commodities that can be physically settled provided that they are traded on a regulated market and/or a multilateral trading facility;

4. Options, futures, swaps, and any other forward contracts relating to commodities, that can be physically settled not otherwise mentioned in 3. and not being for commercial purposes, which have the characteristics of other forward financial instruments[25], having regard

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(vi) a fixed capital investment company (*société d'investissement à capital fixe").*

25 According to the first paragraph of Article 38 of Regulation n° 1287/2006, where such a contract is not a spot contract (as defined in paragraph 2 of Article 38 of the Regulation) and is not entered by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network and is necessary to keep in balance the supplies and use of energy at a given time, it has the characteristics of other forward financial instruments when it satisfies the following criteria:

"*(a) it meets one of the following sets of criteria:*

(i) it is traded on a third country trading facility that performs a similar function to a regulated market or an MTF;

(ii) it is expressly stated to be traded on, or is subject to the rules of, a regulated market, an MTF or such a third country trading facility;

(iii) it is expressly stated to be equivalent to a contract traded on a regulated market, MTF or such a third country trading facility;

(b) it is cleared by a clearing house or other entity carrying out the same functions as a central

to whether, *inter alia*, they are cleared and settled through a recognised clearing house or are subject to regular margin calls;

5. Forward contracts for the transfer of credit risk[26];

6. Financial contracts for differences;

7. Options, futures, swaps, forward rate agreements and any other forward contracts relating to climatic variables, freight rates, emission allowances[27] or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties otherwise than by reason of a default or other termination event;

8. any other forward contract relating to assets, rights, obligations, indices and measures not otherwise mentioned in 1 through 7 above, which have the characteristics of other forward financial instruments[28],

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counterparty, or there are arrangements for the payment or provision of margin in relation to the contract;

(c) *it is standardised so that, in particular, the price, the lot, the delivery date or other terms are determined principally by reference to regularly published prices, standard lots or standard delivery dates."*

26 It may be noted that instruments such as credit linked notes are excluded from such paragraph as it relates only to "contracts". Credit-linked notes qualify however as debt instruments referred to in Article L. 211-1-II-2° of the M&FC. It should be noted that, insofar as the Collateral Directive Ordinance has liberalized the documentation related condition, the range of Qualifying Transactions has been significantly expanded. Indeed, prior to the adoption of the Collateral Directive Ordinance, Qualifying Transactions under Article L. 211-36 of the M&FC covered only repurchase transactions (whether or not meeting the requirements of the French repo law), securities loans (whether or not meeting the requirements of the French securities loan law) and most of derivative products insofar as market master agreements were only available for such types of transactions on financial instruments. By reason of deletion of the market master agreement related condition, transactions on financial instruments (which would otherwise not qualify as eligible transactions under such market master agreement) such as issues of debt instruments (e.g. credit-linked notes) may now benefit from the provisions of the French Netting Law.

27 Article L. 229-15 of the French Environmental Code ("*Code de l'Environnement*"), as modified by Ordinance n°2010-1232 of October 21 2010) defines a greenhouse gas emission allowance as movable goods("*biens meubles*") exclusively materialised by recording in the account of its holder in the National Registry referred to in Article L. 229-16 of the French Environmental Code. They may be traded, transferrable by transfer from one account to the other and convey identical rights to their holder. Ownership thereof results from recording in the account of the beneficiary maintained with the National Registry under conditions defined by Decree. In itself, an emission allowance does not qualify as a financial instrument only a forward contract related thereto so qualifies where it must be settled in cash or may be settled in cash at the option of one of the parties otherwise than by reason of a default or other termination event.

28 According to the third paragraph of Article 38 of Regulation n° 1287/2006 (which refers to an underlying referred to (i) in Section C(10) of Annex 1 to Directive 2004/39/EC (i.e. referred to in paragraph 7 and 8 above) or (ii) in Article 39 of the Regulation), those characteristics require that one of the following conditions are satisfied:

having regard to whether, *inter alia,* it is traded on a regulated market or a multilateral trading facility, is cleared and settled through a recognised clearing house or is subject to regular margin calls.

Forward financial instruments also cover the equivalent of the above mentioned instruments under foreign law.

Furthermore, Article L. 211-36 II of the M&FC extends the scope of application of the French Netting law to instruments which are not considered as financial instruments under the MIFID[29]. Article L. 211-36 II of the M&FC provides indeed that **for the sole purposes of Article L. 211-36 et seq. of the M&FC** (i.e. the French Netting Law), options, futures, swaps and any forward contracts other than those mentioned in Article L. 211-1 III of the M&FC (i.e. MIFID qualifying forward financial instruments) are considered as forward financial instruments, provided that, when such instruments must be settled by physical delivery, they give rise, to registration by a recognised clearing house or to periodical margin calls.

Article L. 211-35 specifies that no person may invoke the provisions of Article 1965 of the French Civil Code[30] in order to avoid obligations resulting from forward contracts even in the event such obligations are to be discharged by means of payment of a differential.

"(a) *the contract is settled in cash or may be settled in cash at the option of one or more of the parties, otherwise than by reason of a default or other termination event;*

(b) *the contract is traded on a regulated market or a multilateral trading facility;*

(c) *the conditions laid down in paragraph 1 [of Article 38 Regulation n° 1287/2006] are satisfied in relation to that contract.".*

Article 39 of Regulation n° 1287/2006 refers to derivative contracts meeting the criteria set out in paragraph 3 of Article 38 of Regulation n° 1287/2006 and relating to any of the following assets:

"(a) *telecommunications bandwidth;*

(b) *commodity storage capacity;*

(c) *transmission or transportation capacity relating to commodities, whether cable, pipeline or other means;*

(d) *an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;*

(e) *a geological, environmental or other physical variable;*

(f) *any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;*

(g) *an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation.".*

29 As such instruments do not fall within the scope of application of the MIFID, they cannot benefit from the provisions of the MIFID relating to the so called "European passport".

30 Article 1965 of the French Civil Code denies a cause of action for a gaming debt.

As a result, neither the Agreement nor any of the Transactions may be set aside under gaming laws under French law.

From the above it appears that in order to qualify as Qualifying Transactions options, futures, swaps, and any other forward contracts relating to commodities need either:

- to relate to commodities that must be settled in cash or may be settled in cash at the option of one of the parties otherwise than by reason of a default or other termination event;
- in respect of physically settled commodities:

  (a) to be traded on a regulated market and/or multilateral trading facility;

  (b) for those not otherwise mentioned in (a) to have the characteristics of other forward financial instruments (see in this respect footnote 22), having regard to whether, *inter alia*, they are cleared and settled through a recognised clearing house or are subject to regular margin calls while not being for commercial purposes;

- in respect of any other options, futures, swaps and any other forward contracts related to commodities to give rise, when such instruments must be settled by physical delivery, to registration by a recognised clearing house or to periodical margin calls.

Such options, futures, swaps and any other forward contracts so qualifying as Qualifying Transactions will accordingly benefit from the favourable regime provided for in the French Netting Law which contemplates a bankruptcy proof close-out netting and margining regime.

In this latter case, forward contracts on commodities traded over-the-counter providing only for a possibility to be physically settled are, in our view, likely to benefit from the provisions of Article L. 211-36 et seq. of the M&FC, subject to review of the following:

- those forward contracts give rise to registration by a clearing house in accordance with the rules of such clearing house; or

- they give rise to periodic margin calls in accordance with the relevant agreement or master agreement which contemplates such periodic margin calls in respect of commodities to be physically delivered.

On the basis of the foregoing, we would like to draw your attention to the fact that if a Transaction (including Uncovered Transactions) entered into between the Parties is governed by an agreement (which comprise, inter alia, a Netting Agreement and Principal Agreement and any provision modifying such Netting Agreement and Principal Agreement (either by way of schedule, annex, confirmation or otherwise)) which only permits physically settlement to occur, such Transaction may not qualify as a transaction on financial instrument and, as such, will not benefit from the provisions of Article L. 211-36 et seq. of the M&FC, if such Transaction is not registered by a clearing house or if such agreement does not provide for periodic margin calls. However, in the absence of periodic margin calls regarding the Transactions contemplated under a Principal Agreement or a Netted Agreement, we believe the better view to be that margin calls under the CPCSA's (even when combined with the MNA or CPMA) may be assimilated to periodic margin calls for purposes of the definition of the concept of forward financial instruments.

It should be noted, however, that there are no court decision in this respect and that legal scholars have to the best of our knowledge not opined on this matter. In the absence of case law and legal literature in respect of the definition of "forward financial instruments on commodities" resulting from Article D. 211-1 A-I of the M&FC, the conditions of application of the above criteria remains subject to uncertainty. Indeed, some questions arise and, in particular:

- the conditions under which a transaction may either be cash settled or physically settled[31]; and

- whether the parties are only required to provide for the possibility to call for margin or whether such margin calls must actually occur[32].

We believe, however, that the approach described above related to periodic margin calls occurring at the global level in the context of the CPCSA's would only be sustainable where such periodic margin calls are not merely theoretical but correspond to a reality both in contractual terms and in practice.

In other words, if the operation of the margining provisions were subject to broad discretion or a threshold or minimum transfer amount were to be included at such a level, so that mark to market exposure was not in fact margined at all, or at intervals which appear not to be periodic, the CPCSA may not be considered to provide a true periodic margin call arrangement.

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31 The possibility for a transaction to be cash settled needs to be consistent with real commercial expectation and must not remain theoretical. The parties should not draft their transactions in a way which would practically prevent the parties from opting for a cash settlement.

32 The agreement could indeed provide a threshold amount, the effect of which may be, from a practical point of view, to exempt the parties from any margin transfer.

However, where as a contractual and factual matter, daily valuation results in an amount of collateral being due from a party and a demand is made (as part of the administration of the arrangement) for the provision of additional collateral resulting from such valuation and the collateral is required to be transferred and is in fact posted, this situation would appear to correspond to transactions being subject to a "real" periodic margin call. In our view, weekly margin calls will not allow forward contracts to be qualified as "forward financial instruments on commodities".

In fact under that scenario, periodic margining arrangements will be close or comparable to an exchange margin maintenance regime where demands to supplement collateral are made as a matter of routine on a daily basis

This approach would of course require that all other conditions are satisfied (i.e. forward contract and Qualifying Party) and it should be noted that this approach remains within the scope of judicial discretion in the absence of precedents in this respect.

Finally, the question as to whether physically settled forward contracts on commodities which are entered into between two Qualifying Parties may benefit from the provisions of the French Netting Law needs to be addressed. According to the legal department of the *Banque de France*[33], the Collateral Directive Ordinance[34] has introduced into French law a "universal" global netting which is applicable **when both parties to a contract are Qualifying Parties**. Indeed, the legal department of *Banque de France* is of the view that Article L. 211-36 I 2° of the M&FC applies to any contract under which a party is obliged to pay a sum of money or to deliver financial instruments. From a practical perspective, Article L. 211-36 I° 2° of the M&FC would apply to any type of commercial contract (with limited exceptions such as the exchange of goods which do not give rise to cash settlement or delivery of financial instruments). A physically settled forward contract on commodities would then qualify under Article L. 211-36 I 2° of the M&FC, provided however that such contract provides for the payment of a sum of money or the delivery of financial instruments[35]. It is assumed that such contract is between two Qualifying Parties. It should, however be noted that Qualifying Parties contemplated by Article L.211-36 I 2° of the M&FC are of narrower scope than those contemplated under Article L.211-36 I 1° of the M&FC (see in this respect paragraph 3.1.1.2.2 for a definition of Qualifying Parties).

33 "*Transposition de la directive sur les contrats de garanties financières*", Bulletin de la Banque de France, n° 137, May 2005, p. 52.

34 Former Article L. 431-7-I-2° of the M&FC (now Article L. 211-36 I 2° of the M&FC) which is part of the French Netting law has been introduced into French law by the Collateral Directive Ordinance on February 24, 2005.

35 Pursuant to Article L. 211-1 of the M&FC, financial instruments are financial securities ("*titres financiers*") and financial contracts ("*contrats financiers*") as defined in 3.1.1.2.1 above.

3.1.1.2.2 Qualifying Parties

In order for the Transactions to qualify under the French Netting Law, at least one of the Parties to the Agreements **must be a party referred to in Article L. 211-36 I 1° of the M&FC**[36] (each, a "**Qualifying Party**"), i.e.:

- a credit institution ("*établissement de crédit*"),
- an investment services provider ("*prestataire de services d'investissement*"),
- a public establishment ("*établissement public*"),
- a local authority ("*collectivité territoriale*"),
- an institution, firm or an establishment referred to in Article L. 531-2 of the M&FC[37],
- a clearing house ("*chambre de compensation*")[38],
- a non-resident establishment with a comparable status, or
- an international financial organization or body which France or the European Union is a member of.

It should be noted that the Collateral Directive Ordinance has added new Qualifying Parties under the French Netting Law. Article L. 211-36 I 1° of the M&FC refers indeed to credit institutions, local governments, clearing houses or international financial organizations or bodies which the French Republic or the European Union is a member of, as Qualifying Parties under the French Netting Law. Under the provisions of Article L. 431-7 of the M&FC in effect prior to the Collateral Directive Ordinance, credit institutions which were not licensed to provide investment services (i.e. which were not licensed as investment services providers) were not Qualifying Parties. In the version currently in effect, they are qualifying.

As indicated in paragraph 3.1.1.2.1 above, the scope of Qualifying Transactions under the French Netting Law is wider if both parties are Qualifying Parties referred to in Article L. 211-36 I 1° of the M&FC. **Where Article L. 211-36 I-2° of the M&FC applies, certain institutions, firms or**

[36] The list of Qualifying Parties under the French Netting Law is reproduced in Exhibit 2 to this Opinion.

[37] See in this respect Exhibit 2 to this Opinion.

[38] Please note in this respect that clearing houses are subject, for the carrying out of their activities, to specific rules set forth *inter alia* in Articles L. 442-1 to L. 442-9 of the M&FC. In particular, a clearing house has to be licensed as a credit institution and its operating rules to be approved by the *Autorité des Marchés Financiers*. It may be further noted that the clearing systems of clearing houses fall within the scope of the French Netting Law.

establishments referred to in c) to n) of 2° of Article L. 531-2 of the M&FC are then excluded as Qualifying Parties (see in this respect Exhibit 2 to this Opinion, are excluded institutions, firms and establishments appearing in subparagraph c) through n) of paragraph (e) 2° of that Exhibit).

The following remarks should also be made in respect of "*banques mutualistes ou coopératives*" (mutual or cooperative banks)[39] which constitute a category of credit institutions.

Whereas banks may carry out any banking transaction, mutual or cooperative banks may carry out any banking transactions within the limits of the rules which govern mutual or cooperative banks[40].

Whereas most of the entities composing the network of a category of mutual or cooperative banks are licensed as credit institutions, certain entities such as "*la Confédération nationale du credit mutuel*" may only have supervisory functions and do not purport to conduct banking or financial activities.

Therefore, the question as to whether an entity composing the network of a category of mutual or cooperative banks or the central body of a network qualifies as a Qualifying Party must be analysed on a case by case basis.

3.1.1.2.3 Transactions falling outside the scope of the French Netting Law

If a Transaction does not meet the requirements of Qualifying Transactions, as defined above, provisions of the French insolvency law will apply (see in this respect Exhibit 3 hereafter).

It should be noted that in such a case, Articles L. 622-13 and L. 631-14 of the French Commercial Code *inter alia* will apply. Such Articles provide that notwithstanding any legal or contractual provision to the contrary, no indivisibility, termination or rescission of a contract may result solely from the opening of Safeguard Proceedings or Judicial Reorganization Proceedings (as such terms are defined in Exhibit 3 hereafter).

Furthermore pursuant to Article L. 622-7 of the French Commercial Code, where a Bankruptcy Judgment is rendered, a payment on account of pre-bankruptcy debts is prohibited except in respect of set-off on account of connected claims.

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39 Mutual and cooperative banks include "*les banques populaires*", "*la Banque fédérale des banques populaires*", "*les caisses de crédit agricole mutuel*", "*Crédit Agricole S.A.*" (formerly "*la Caisse nationale de crédit agricole*"), "*les caisses de crédit mutuel*", "*les sociétés coopératives de banque*", "*les établissements de crédit maritime mutuel*", "*les caisses d'épargne*", "*la Caisse nationale des caisses d'épargne et de prévoyance*".

40 Mutual and co-operative banks are subject to Articles L. 512-1 and seq. of the M&FC and to Articles R. 512-1 and seq. of the M&FC.

Although in the absence of case law to such effect this matter is not free of uncertainty, we believe the better view to be that if a basket of transactions includes both Qualifying and non Qualifying Transaction, the presence of non Qualifying Transactions should not impact the application of the French Netting Law to the Qualifying Transactions leaving non Qualifying Transactions subject to the provisions of Article L. 622-13, L. 631-14 and L. 622-7 of the French Commercial Code. However, we draw your attention that we are not aware of any French case law on such a question. Therefore, we recommend segregating in independent portfolios Qualifying and non Qualifying Transactions.

How such segregation may be organized is a practical matter which needs to be addressed by a counterparty in the context of its accounting regime. Consideration needs to be given to the desirability to identify in a special segregation ledger those transactions which may not meet the qualifying transaction test so that, in the context of close-out, those transactions may be contractually carved-out from the close-out netting process. Appropriate provisions may need to be considered from that perspective for introduction in the relevant schedule.

However, consideration needs to be given to the fact that those transactions may not meet the fungiblity test which is required to be considered for post-insolvency set-off in the context of connexity or related transactions. Furthermore, those segregation arrangements may not be considered as being consistent with the single agreement[41] concept which has traditionally been approached as being part of the close-out netting arrangements permitting the exemption of mandatory provisions of the French Insolvency laws.

In the absence of case law precedents, that matter remains subject to uncertainty in an area such as insolvency law where exemptions of mandatory rules should be interpreted narrowly.

In case that approach may be considered, attention should be brought to the need to avoid provisions contemplating automatic termination so that room for discretion should remain available with respect to close-out netting.

For all those reasons, it may be preferable to avoid resorting to those arrangements and segregate those not Qualifying Transactions under a separate master agreement (see paragraph 3.1.1.3. below).

41 See in this respect our observations in paragraph 3.1.1.4. (9) below.

3.1.1.3 Netting-Set-off in the Context of an Insolvency Proceeding

1. Early termination by notice

On the basis of the provisions of paragraph II of Article L. 211-36-1 and of Article L. 211-40 of the M&FC (see in this respect Exhibit 1), we are of the opinion that the provisions of the MNA and of the CPMA entered into between the French Counterparty and the Other Party entitling the Other Party to early terminate all the underlying Principal Agreements or Netted Agreement and all the Transactions (including Uncovered Transactions) upon the occurrence and continuance of an Insolvency Proceeding in respect of the French Counterparty are valid and enforceable under French law, provided however that at least one Party is a Qualifying Party and that the Transactions contemplated thereunder qualify as financial instruments. Reference is made in this respect to paragraph 3.1.1.2. above.

2. Automatic early termination

The provisions of the MNA and CPMA contemplating that all Principal Agreements or Netted Agreement (including Uncovered Transactions) shall close out automatically immediately upon the automatic Close-Out of any one of the Netting Agreements and Principal Agreements, respectively, pursuant to its terms are effective under the laws of France, provided however that at least one Party is a Qualifying Party and that the Transactions contemplated thereunder qualify as financial instruments.

Article L. 211-36-1 of the M&FC provides indeed that the conditions under which the termination may occur are determined by the provisions of the agreement entered into between the parties. Therefore, to the extent automatic termination provisions are contemplated under the MNA, those provisions should be upheld before a French court.

Article L. 211-40 of the M&FC further provides that the provisions of the Insolvency Law do not prevent the application of Articles L. 211-36 and following of the M&FC.

Accordingly, we believe that the French Netting law permits the automatic termination of all Transactions upon occurrence of Insolvency Proceedings with respect to the French Counterparty when the Agreement so provides.

3. Calculation of the Final Net Settlement Amount

We are of the opinion that the provisions of the MNA and of the CPMA entered into between a French Counterparty and the Other Party contemplating the calculation of a Final Net Settlement Amount in accordance with Article 8 of the MNA and 4.4 of the CPMA are valid and enforceable under French law, notwithstanding the opening of Insolvency Proceedings against the French Counterparty, provided that at least one Party is a Qualifying Party and that the Transactions contemplated thereunder qualify as financial instruments.

This opinion is based on the provisions of Article L. 211-36-1 and of Article L. 211-40 of the M&FC which contemplate that:

(i) the parties may provide for the calculation of a single netted settlement amount, **irrespective of whether the financial obligations resulting from transactions on financial instruments are governed by one or several agreements or master agreements;**

(ii) the netting procedure is binding on third parties;

(iii) the provisions of the Insolvency Law do not prevent the application of Articles L. 211-36 and following of the M&FC.

4. Vulnerability of close out netting

We are of the opinion that the close-out netting provisions of the MNA or CPMA are valid and enforceable under French law even in the case where such close-out netting occurs after the Bankruptcy Judgement, provided that at least one Party is a Qualifying Party and that the Transactions contemplated thereunder qualify as financial instruments.

Such opinion is based on the provisions of Article L. 211-40 of the M&FC which contemplate that the provisions of the Insolvency Law do not prevent the application of the French Netting Law.

5. Cross Product Netting

We are of the opinion that the provisions of the MNA and CPMA providing for a cross-product netting mechanism between all physically settled Transactions and all financially settled Transactions governed by one or more Netted Agreements and Principal Agreements (including Uncovered Transactions) are valid and enforceable under the laws of France, irrespective of whether the French Counterparty is subject to Insolvency Proceedings, provided that at least one Party is a Qualifying Party and that the Transactions contemplated thereunder qualify as financial instruments.

This opinion is based on article L. 211-36-1 of the M&FC which:

- contemplates that agreements relating to the financial obligations resulting from transactions on financial instruments may be terminated and the debts and claims relating thereto may be netted among themselves;

- provides that the parties may provide for the calculation of a single netted settlement amount, such financial obligations being governed either by **one or several agreements or master agreements**; and

- does not make any distinction between physically settled transactions and financially settled transactions.

The principle of cross-product netting was already established in the former Article L. 431-7 of the M&FC preceding the version reflecting implementation of the Collateral Directive. Such former version was indeed amended by law n° 2001-420 of May 15, 2001 to establish the principle of cross-product netting.

6. Base Currency

On the basis of the provisions of Article L. 211-36-1 of the M&FC, we are of the opinion that the provisions of the MNA and CPMA contemplating, for the purpose of calculating the Final Net Settlement Amount, the conversion in the Base Currency of any amount denominated in a currency other than the Base Currency are valid and enforceable under French law, provided however that at least one Party is a Qualifying Party.

Conversion in the Base Currency of any amount to be calculated upon termination of Transactions is indeed part of the valuation methods in a close-out netting mode which is supported by paragraph II of Article L. 211-36-1 of the M&FC.

Further reference is also made to paragraph 7.8 of Exhibit 3 to this Opinion which states that claims denominated in foreign currencies are to be converted into Euros at the rate prevailing on the date of the Bankruptcy Judgement in the case of a Safeguard Proceeding or a Judicial Reorganisation Proceeding and on the date of the judgement ordering the liquidation in the case of a Judicial Liquidation Proceeding.

We believe, however, that the provisions of Article L. 211-36 and following of the M&FC should prevail in respect of valuation in so far as Article L. 211-40 of the M&FC provides that the close-out netting provisions apply notwithstanding the provisions of Book VI of the French Commercial Code relating to Insolvency Proceedings.

7. Enforceability of the MNA and CPMA

Subject to the assumptions and qualifications herein set forth, we are of the opinion that the MNA will constitute valid and legally binding obligations of a French Counterparty in accordance with its terms, irrespective of whether such French Counterparty is subject to Insolvency Proceedings, provided however that at least one Party is a Qualifying Party and that the Transactions contemplated thereunder qualify as transactions on financial instruments. Reference is made in this respect to paragraph 3.1.1.2. above.

8. Consequences of opening of Insolvency Proceedings

On the basis of Articles L. 211-36 and following and L. 211-40 of the M&FC, we are of the opinion that the opening of Insolvency Proceedings against the French Counterparty would have no implication of the enforceability or operation of the MNA or CPMA.

9. Uniform events of default

Under the CPMA, each Party is entitled to early terminate a Transaction upon occurrence of a Close-Out Event. A Close-Out Event is, with respect to a particular Principal Agreement, an event in relation to a Party on the basis of which the other Party has the contractual right to Close-Out all the Transactions under such Principal Agreement.

As a result, the MNA does not impose uniform events across all types of Transactions which remain subject to their respective Principal Agreement for the determination of the relevant Close-Out Events applicable to them.

The MNA contemplates the possibility to make elections for Harmonised Default Events (Section 3(2) of the MNA).

We are of the opinion that French law does not impose any uniform default events across all types and categories of Transactions. This opinion is based on the provisions of Article L. 211-36-1 of the M&FC which contemplate that the termination, valuation and netting procedures may be contemplated by **one or more agreements or master agreements**.

The validity of those provisions is essentially a matter of the governing law of the Agreements and it would be advisable to structure those provisions in such a manner so as not to impede the close-out netting process at the global MNA - CPMA level.

10. Accrual of Interest

Pursuant to Article L. 622-28 of the French Commercial Code, interest ceases to accrue as of the date of the Bankruptcy Judgement. This applies to contractual and statutory rates of interest including penalty interest and increase in rates of interest except in case of interest accruing on loans with a maturity of one year or more or in respect of deferred payment terms contracts with a maturity of one year or more.

Therefore, Section 4.5 of the CPMA with regard to interest accruing on the Settlement Amount, Net Set-Off Amounts and Final Net Settlement Amount may not be enforceable in the event of an Insolvency Proceeding of the French Counterparty.

As a result, there is a risk that if interest, accrued after the date on which an Insolvency Proceeding is commenced, is included in the set-off as referred to in Section 4.1 through Section 4.4 of the CPMA, the interest claim for such period may not be capable of being taken into account for set-off purposes.

3.1.1.4 Specific matters related to close-out

1. *"Discuss whether the contract types listed in Exhibit 4 are governed by different rules and whether these rules would result in a splitting-up or segregation of the portfolios of transactions under the relevant Netted Agreements or Principal Agreements into multiple "netting pools" of disparate treatment or whether these rules would otherwise limit or render wholly or partially unenforceable the early termination and close-out netting rights provided for in the MNA or CPMA"*

   For purposes of addressing this matter we refer to paragraphs 3.1.1.2 of this opinion and in particular paragraphs 3.1.1.2.1 and 3.1.1.2.3 thereof. The key question is whether the instruments listed in Exhibit 4 qualify as forward financial instruments under the French Netting law or otherwise qualify for the exceptions contemplated in Article L. 211-36 II of the M&FC.

2. *"Clarify the distinction in time with respect to a creditor's rights between: (a) the filing of proceedings seeking a judgment of insolvency; (b) a bankruptcy court recognizing the filing of proceedings seeking a judgment of insolvency; (c) the date on which a bankruptcy court determines a party first becomes insolvent; and (d) any other stage of the proceedings where a creditor's rights may be affected. We are also interested in whether the insolvency law provides for a "safe harbor" for certain derivatives or other categories of transactions and whether the contract types listed in Exhibit 4 would benefit from such provision(s)".*

   This matter is addressed in paragraph 3.1.1.1 through 3.1.1.3 of this opinion with further reference to Exhibit 3 of this opinion

3. *"We would also like to know whether there is publicly available information that would* confirm *any of the procedural steps elated to the filing of insolvency proceeding or other solvency related facts (e.g., financial statements, corporate actions, etc.)."*

   Upon request made at the Commercial Court Registry one can obtain a certificate verifying the existence or non-existence of insolvency proceedings, along with copies of the resulting decisions

   It should be noted, however, that that information may only be recorded in the Commercial Court Registry several days following the entry of the insolvency judgement.

   Conciliation Proceedings remain, however, confidential.

   Creditors are required to file a proof of claim in respect of pre-Bankruptcy Judgement claims within two (2) months from publication of the Bankruptcy Judgement in the *Bulletin Officiel des Annonces Civiles et Commerciales* (*BODACC*). Such time period is extended for a further two (2)-month period in respect of creditors located outside of metropolitan France.

Further reference is also made to paragraph 3.1.1.1 of this opinion and Exhibit 3 of this Opinion.

4. *"Do the laws of your jurisdiction consider early termination, set-off and close-out netting as legally distinct and separate rights, similar or related rights or do they make no such distinctions between them?"*

Reference is made in this respect to paragraph 3.1.1.1 above.

5. "*Assuming the Parties have not specified that Automatic Termination (as defined in § 6.3 of the MNA or Part II.B of the EFET/IECA Commodities Schedule to the CPMA) applies, are the provisions of the MNA or the CPMA permitting the other Party (the "Terminating Party" or "Closing-Out Party") to terminate the Netted Agreements or Principal Agreements including all transactions upon the occurrence of a Close-Out Event enforceable under the laws of France, or is there a risk that (i) the entering into the MNA or CPMA, (ii) the entering into Netted Agreements or Principal Agreements or transactions thereunder or (iii) the early termination by notice described in § 5.1 of the MNA or Section 2.2 of the CPMA itself could be challenged by a liquidator, administrator, receiver or third party?*"

A judicial administrator or liquidator would be bound by the terms of the MNA or the CPMA provided Transactions are satisfying the requirements of the French Netting Law. See above paragraph 3.1.1.2.

We further believe that termination by notice would be the better approach as compared to Automatic Termination from a French law perspective in the event the French Counterparty becomes insolvent.

6. "*Assuming the Parties have elected Automatic Termination to apply, are the provisions of the MNA or CPMA terminating the Netted Agreements or Principal Agreements including all transactions upon the occurrence of a Close-Out Event described in § 6.3 of the MNA or Part II.B of the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement enforceable under the laws of France, or is there a risk that the automatic termination could be challenged by a liquidator, administrator, receiver or third party?*"

See paragraph 3.1.1.2 and paragraph 3.1.1.4 (5) above.

7. "*Would you recommend to elect Automatic Termination to apply upon a Winding-up, Insolvency or Attachment (as defined in § 3.1(C)(iii) of the MNA) or similar event? If yes, please specify such event or events and indicate whether it would be necessary or advisable to specify, or to refrain from specifying, a certain grace period to provide for optimal timing of such termination under local law? If you are recommending that a grace period be made applicable, what, in your best estimation is the minimum reasonable period of time required by a party whose creditor(s) have instituted an unsubstantiable or otherwise clearly frivolous involuntary bankruptcy proceeding against it in the insolvency courts of your jurisdiction to have that proceeding dismissed or otherwise terminated? If you are recommending that Automatic Termination be made applicable in respect of parties subject to the insolvency laws of your jurisdiction, what is the optimal timing for that Automatic Termination to take effect? In this event, please supply specific recommended language for purposes of customizing the Automatic Termination provisions to implement such optimal termination timing.*"

We would recommend termination by notice as such termination mode provides the flexibility which may be required in order to process an orderly insolvency proceeding as experience has shown.

It is difficult to predict timing needed to obtain dismissal of a safeguard proceeding. The commercial court which has issued the Bankruptcy Judgement is often reluctant to overturn one of its own judgements and third party interveners (" *tiers opposants*") often are found to lack standing to obtain reversal of a decision while they are exercising a right to contest the ruling ("*tierce opposition*").

A "*tierce opposition*" may be filed within 6 days of publication of the Bankruptcy Judgement.

In the Coeur Defense matter the lower court decision granting the opening of a Safeguard Proceeding to the debtor has been overturned by the Court of Appeals which found that there was no ground to open a Safeguard Proceeding in that matter but that decision has subsequently been overturned by the Supreme Court.

This is a process which on the whole has taken in excess of two years.

As an illustration, the Bankruptcy Judgement was issued in the Coeur Defense matter on November 3, 2008[42]. The Judgement on the "*tierce opposition*" was rendered on October 7, 2009[43] and the Court of Appeals reversed the Bankruptcy Judgement on February 25, 2010[44] while the French Supreme Court has overturned the decision of the Court of Appeal on March 8, 2011[45].

8. "*Are the provisions in § 8 of the MNA and Section 4 of the CPMA providing for the offsetting of all positive and negative Settlement Amounts in determining the Final Net Settlement Amount enforceable under the laws of France or is there a risk that such determination could be challenged by a liquidator, administrator, receiver or third party?*"

We believe that such provisions are valid and enforceable as described above. Article L 211-36-1 of the M&FC contemplates that the netting agreements may contemplate a single net settlement amount whether related arrangements are governed by one or several agreements or master agreements.

42 Commercial Court of Paris, November 3, 2008, 1ère Chambre, RG n°2008077997.

43 Commercial Court of Paris, October 7, 2009, 2ème Chambre, RG n° 2008089778.

44 Court of Appeals of Paris, Pôle 5, chambre 9, February 25, 2010, n° 09/22756.

45 Cass. Com. June March 8, 2011 , JurisData n° 2011-002852.

9. *"Do the laws of France recognize that the Close-Out applies to all transactions? Would we need the single agreement concept (as provided for in § 2.3 of the MNA and, if so selected in Section 10.6 of the EFET/ECA Commodities Schedule, in the CPMA in order to preserve the enforceability of the termination right and the ability to calculate a net amount? If the single agreement concept is particularly important in your jurisdiction, please give us your opinion on whether or not, and if so, the degree to which, provisions allowing or providing for the termination of some but not all Netted Agreements or Principal Agreements and some and not all transactions thereunder might impact termination and close out rights generally, as well as subsequent rights to terminate transactions remaining under the General Agreement following a previous Partial Close-Out."*

The single agreement concept has throughout the history of the Netting Laws been a core concept of the close-out netting legislation in France .It was at the very heart of the French close-out netting process since the first French close-out legislation was adopted by law of December 31, 1993 which recognized the close-out process in the context of insolvency proceedings when close-out was agreed by the parties under an industry master agreement meeting the requirements of international or national master agreements.

As mentioned above the requirement to use an industry master agreement was removed in the context of the transposition of the Collateral Directive in 2005.

Whether that modification would also permit to conclude that the single agreement concept has been removed as a result of that modification remains a matter of uncertainty.

It should be noted, however that Article L. 211-36-1 of the M&MC provides:

I. *Agreements relating to the financial obligations referred to in article L. 211-36* ***may be terminated, and the debts and claims relating thereto may be netted among themselves****. The parties may provide for the calculation of a single netted settlement amount, such financial obligations being governed either by one or several agreements or master agreements.*

II. *The termination, valuation and netting procedures of the transactions and obligations referred to in Article L. 211-36 and in I of this Article are binding on third parties.* ***These procedures may be contemplated in particular by agreements or master agreements.*** *Any termination, valuation or netting realized on grounds of civil execution proceedings or exercise*

The wording of the above Article seems to suggest that close-out should cover all transactions but there remains room for interpretation under the principle of party autonomy. This remains, however, a matter fraught with uncertainty.

10. *"Is the insolvent counterparty's obligation to pay the Final Net Settlement Amount in Euro, USD or GBP (as agreed between the Parties in the Election Sheet or EFET/IECA Commodities Schedule) enforceable under the laws of France or could the calculation or demand of such amount in a foreign currency be challenged by a liquidator, administrator, receiver or third party?"*

On the basis of the provisions of Article L. 211-36-1 of the M&FC, we are of the opinion that the provisions of the MNA or CPMA contemplating, for the purpose of calculating the Final Net Settlement Amount, the conversion in the Base Currency of any amount denominated in a currency other than the Base Currency are valid and enforceable under French law, provided however that at least one Party is a Qualifying Party.

Conversion in the Base Currency of any amount to be calculated upon termination of Transactions is indeed part of the valuation methods in a close-out netting mode which is supported by paragraph II of Article L. 211-36-1 of the M&FC.

Further reference is also made to paragraph 7.8 of Exhibit 3 to this Opinion which states that creditors' claims denominated in foreign currencies are to be converted into Euros at the rate prevailing on the date of the Bankruptcy Judgement in the case of a Safeguard Proceeding or a Judicial Reorganisation Proceeding and on the date of the judgement ordering the liquidation in the case of a Judicial Liquidation Proceeding.

We believe, however, that the provisions of Article L. 211-36 and following of the M&FC should prevail in respect of valuation in so far as Article L. 211-40 of the M&FC provides that the close-out netting provisions apply notwithstanding the provisions of Book VI of the French Commercial Code relating to Insolvency Proceedings.

11. *"Please specify, if and as applicable, the degree to which termination and close-out rights in insolvency in your jurisdiction are dependent upon, or otherwise effected by, the status of one or more of the concerned parties falling within a particular category of classification of entity. Specifically, do these rights differ as the result of a party being a financial institution, ordinary corporate entity or any other categorization or regulatory or legal status?*

As mentioned above, it is a requirement of the French Netting Law that at least one of the parties be a Qualifying Party.

The following entities, without such list being exhaustive, may, however, be subject to close-out netting restrictions:

a) *Sociétés de crédit foncier*[46]

French *sociétés de crédit foncier* ("SCF") are credit institutions licensed as *société financière* (financial institution)[47] the exclusive purpose of which is:

- to grant or purchase secured loans, exposures over public entities, instruments and securities, as defined in Article L. 515-14 through Article L. 515-17 of the M&FC;

- to issue *obligations foncières* (i.e. bonds) benefiting from the priority lien referred to in Article L. 515-19 of the M&FC, for the financing of such loans, exposures, instruments and securities.

SCF are governed by Article L. 515-13 through Article L. 515-33 of the M&FC[48] which grant a preferential treatment for creditors of SCF who benefit from the priority lien referred to in Article L. 515-19 of the M&FC[49].

In our view, it results from the provisions of Article L. 515-19[50] of

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46 The legal corpus applicable to *sociétés de crédit foncier* has been recently modernized by order n° 2007-571 of 19 April 2007.

47 Credit institutions may be licensed either as (i) banks, (ii) mutual or cooperative banks, (iii) "*caisses de crédit municipal*", (iv) **financial institutions** ("***sociétés financières***") or (v) specialized financial companies ("*sociétés financières spécialisées*").

48 Such provisions are supplemented by those of Article R. 515-2 through Article R. 515-14 of the M&FC.

49 As far as forward financial instruments are concerned, Article L. 515-18 of the M&FC provides that, under certain circumstances, a SCF may enter into forward financial instruments, as defined in Article L. 211-1 of the M&FC.

Article L. 515-18 of the M&FC further provides that amounts due in respect of forward financial instruments entered into by a SCF for hedging its assets and liabilities, after set-off, if need be, benefit from the priority lien referred to in Article L. 515-19 of the M&FC, as well as certain amounts due in respect of forward financial instruments. In accordance with Article R. 515-8 of the M&FC, any contract entered into by a SCF, the purpose of which is to obtain resources benefiting from the priority lien referred to in Article L. 515-19 of the M&FC, must expressly provide that such resources benefit from such priority lien.

50 Article L. 515-19 of the M&FC provides **that notwithstanding any legal provisions to the contrary** and, in particular, the provisions of Book VI of the French Commercial Code (i.e. Insolvency Law):

1°_ proceeds from loans or related claims ("créances assimilées"), exposures, instruments and securities referred to in Articles L. 515-14 to L. 515-17 of the M&FC (i.e. loans which are part of the loan portfolio of SCF) and financial instruments referred to in Article L. 515-18 of the M&FC (i.e. forward financial instruments entered into for hedging purposes), after set-off, if need be, as well as claims resulting from deposits made by SCF with credit institutions, are applied in priority to the payment of "obligations foncières" and of any other preferential resources referred to in Article L. 515-13-I, 2° of the M&FC;

the M&FC that, in the event the defaulting party is a SCF and the Transactions entered into between the Parties benefit from the priority lien referred to in Article L. 515-19 of the M&FC, the provisions of the MNA or CPMA entitling the non-defaulting party to early terminate all outstanding Transactions upon the opening of Insolvency Proceeding against a SCF or admitting such entity to the benefit of a Conciliation Proceeding should not be enforceable against such SCF.

Indeed, it may be noted that the provisions of Article L. 515-19 of the M&FC apply notwithstanding any legal provisions to the contrary, which include, in our opinion, the French Netting Law. Therefore, while the French Netting Law is, as a matter of principle, applicable to SCF (SCF are credit institutions and, as such, qualify as Qualifying Parties under the French Netting Law – see in this respect exhibit 2 to this Opinion), we believe that Article L. 515-19 of the M&FC departs from the French Netting law rules and that the provisions of the French Netting Law may not be invoked by the non-defaulting party in order to terminate preferred Transactions upon the opening of Insolvency Proceedings or Conciliation Proceedings against a SCF. However, the other Close-Out Events contemplated in the MNA should continue to apply.

b) *Sociétés de financement de l'habitat*

French *sociétés de financement de l'habitat* ("SFH") are credit institutions licensed as *société financière* (financial institution)[51] the exclusive purpose of which is to grant or finance loans for housing (and hold instruments and securities under the conditions defined by the

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2°_ in the event a SCF is subject to a Conciliation Proceeding, a Safeguard Proceeding, a Judicial Reorganisation Proceeding or a Judicial Liquidation Proceeding, claims related to transactions benefiting from the priority lien referred to in Article L. 513-1-I, 2° of the M&FC (i.e. "obligations foncières" and other resources benefiting from the priority referred to in Article L. 515-19 of the M&FC) (this includes the above derivative transactions) are paid when they fall due (i.e. at their contractual maturity), and in priority over all other claims (interests being included), whether secured or not by a lien or security, whatever their maturity is. Any claims of the other creditors over the assets and rights of the SCF are subject to the full discharge of obligations secured by a priority lien, as defined in such Article L. 515-19 of the M&FC. It is important to note that Safeguard Proceedings, Judicial Reorganisation Proceedings or Conciliation Proceedings do not result in acceleration of claims on such SCF;

3°_ the opening of a judicial liquidation of a SCF does not result in acceleration or termination of the "obligations foncières" or any other resources benefiting from the priority lien referred to in Article L. 515-19, 1° of the M&FC. The claims related to such transactions are paid when they fall due (i.e. at their contractual maturity). In return, the "obligations foncières" and any other preferential resources are discharged before any other claims.

51 Credit institutions may be licensed either as (i) banks, (ii) mutual or cooperative banks, (iii) "*caisses de crédit municipal*", (iv) **financial institutions** ("***sociétés financières***") or (v) specialized financial companies ("*sociétés financières spécialisées*").

implementation decree.

SFH benefit from a regime substantially similar to the one applicable to a SCF and remarks made in subparagraph (a) above in respect of SCF apply mutatis mutandis to a SFH. Article L. 515-34 of the M&FC does indeed provide that Articles L. 515-17 through L. 515-32-1 of the M&FC apply mutatis mutandis to a SFH subject to the provisions of Article L. 515-34 trough L. 515-38 of the M&FC which do no affect our conclusions in respect of derivative transactions as they apply to a SFC.

c) *Collective investment undertakings and French public entities*

FCPs (but not SICAVs), FCTs, public establishments ("*établissements publics*"), the French State ("*Etat français*") and local governments ("*collectivités locales*") may not be subject to Conciliation Proceedings or to Insolvency Proceedings.

Indeed, pursuant to Articles L. 620-2, L. 631-2 and L. 640-2 of the French Commercial Code which determines the scope of the Insolvency Law, its provisions apply to any merchant, craftsman, any farmer, any other individual who carries out an independent business including a professional subject to a statutory or regulatory status or whose title is protected, or any private law legal person.

Accordingly, the provisions of the MNA entitling the non-defaulting party to early terminate all outstanding Transactions upon the opening of an Insolvency Proceeding or a Conciliation Proceeding against the defaulting party are not applicable to such types of French Counterparties.

They do, however, apply in respect of termination upon occurrence of other Close-Out Events.

As a result, the Close-Out Events contemplated in the MNA and CPMA should apply to FCPs, FCTs, public establishments, the French State and local governments with some adjustments addressing their specific status.

3.1.2 Non- Insolvency related Material Reasons

The views expressed in respect to subparagraph 7,8 and 9 of paragraph 3.1.1.4 above are further elaborated below for purposes of this paragraph 3.1.2 where issues discussed in those sub-paragraphs may apply in the context of non-insolvency related Material Reasons.

3.1.2.1 *"Are the provisions in § 8 of MNA and Section 4 of the CPMA providing for the offsetting of all positive and negative Settlement Amounts in determining the Final Net Settlement Amount enforceable under the laws of France or is there a risk that such determination could be challenged by a liquidator, administrator, receiver or third party?"*

Reference is made to the view expressed in paragraph 3.1.1.4 which apply equally outside the scope of an Insolvency Proceeding.

3.1.2.2 *"Do the laws of France recognize that the Close-Out applies to all transactions? Would we need the single agreement concept (as provided for in § 2.3 of the MNA and, if so selected in Section 10.6 of the EFET/IECA Commodities Schedule, in the CPMA) in order to preserve the enforceability of the termination right and the ability to calculate a net amount? If the single agreement concept is particularly important in your jurisdiction, please give us your opinion on whether or not, and if so, the degree to which, provisions allowing or providing for the termination of some but not all Netted Agreements or Principal Agreements and some and not all transactions thereunder might impact termination and close out rights generally, as well as subsequent rights to terminate transactions remaining under the General Agreement following a previous Partial Close-Out."*

Reference is made to paragraphs 3.1.1.2.3 and 3.1.1.4 (9) above.

Outside the scope of an Insolvency Proceeding there may of course be a wider scope for party autonomy. However we need to keep in mind that one of the principles set in Article L 211-36 of the M&FC is that the termination and close-out rights are recognized as being binding upon third parties .This is particularly relevant and material in the context of posting of margin collateral. As discussed in paragraph 3.1.1.2, margining may have an impact on the characterization of transactions as forward financial instruments which is a requirement for eligibility under the French Netting Law.

A Party should, however, bear in mind that that ultimate test of an Agreement is to withstand the rigor of an Insolvency Proceeding and we believe that an Agreement should be agreed with that contingency in mind.

3.1.2.3 *"Is the insolvent counterparty's obligation to pay the Final Net Settlement Amount in Euro, USD or GBP (as agreed between the Parties in the Election Sheet or EFET/IECA Commodities Schedule) enforceable under the laws of France or could the calculation or demand of such amount in a foreign currency be challenged by a liquidator, administrator, receiver or third party?"*

The remarks in subparagraph 10 of paragraph 3.1.1.4 apply equally outside the scope of an insolvency proceeding but for the specific references applying to Insolvency Proceedings.

3.1.2.4 *"Are the rights of the Terminating Party or Closing-Out Party to terminate and Close-Out the Netted Agreements or Principal Agreements including all transactions enforceable in accordance with the terms of the MNA or CPMA irrespective of the insolvency of Party A?"*

Reference is made to paragraph 3.1.1.4 and the principles described therein apply equally outside an Insolvency mode.

3.2 Multi-branch Parties

Paragraph 3.2.1 will address circumstances where a Multi-branch Party is incorporated, organized or has its centre of main interest in France and enters into Transactions through a branch located outside of France and Paragraph 3.2.2 will address the context where a Multi-branch Party is incorporated, organized or has its centre of main interest outside of France, but operating through one or more branches in France.

For the purpose of paragraphs 3.2.1 and 3.2.2 below, we will assume that at least one Party to the Agreements is a Qualifying Party and that Transactions relate to transactions on financial instruments and, therefore, that the French Netting Law is applicable (see in this respect paragraph 3.1.1.2 above).

3.2.1 French Multibranch Party

For the purpose of Paragraph 3.2.1 we have assumed that:

- the relevant MNA or CPMA is governed by any law recognizing close-out netting including in an insolvency mode) (including English, German or New York law);
- after entering into transactions and prior to the maturity thereof, the French Counterparty becomes the subject of voluntary or involuntary proceedings under the insolvency laws of France, and, subsequent to the commencement of the Insolvency, either the French Counterparty or an insolvency official seeks to assume the confirmations representing profitable ("in the money") transactions for the insolvent counterparty; and
- the French Counterparty has entered into transactions under Netted Agreements or Principal Agreements through offices in France as well as through one or more branches located abroad. After entering into these transactions and prior to the maturity thereof, the French Counterparty becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of France.

3.2.1.1 *"Would there be any change in your conclusions reached under 3.1.1 or 3.1.2 above based upon the fact that the French Counterparty has conducted business under some or all of the Netted Agreements or Principal Agreements on a multibranch basis prior to its insolvency?"*

The same conclusions would be reached. Indeed, if a French Counterparty becomes insolvent, (i) the judicial administrator or the liquidator, as the case may be, will be bound by the terms of the Agreements, even as regards Transactions entered into by French Counterparty through branches located outside the French Republic and (ii) a court in the French Republic would require the judicial administrator or the liquidator, as the case may be, to give effect to the provisions of the Agreements, in accordance with their terms, not only as between the head office of the French Counterparty incorporated in the French Republic and the Other Party but also between the French Counterparty incorporated in the French Republic and its various branches on the one hand, and the Other Party on the other hand.

The head office of a corporation organised under the laws of the French Republic and its unincorporated branches (whether domestic or foreign) are treated as one and the same legal entity. Obligations incurred by an unincorporated branch office (whether domestic or foreign) of a corporation organised under the laws of the French Republic are obligations of such corporation, as one and the same legal entity[52].

Furthermore, French insolvency law recognises the principle of the universality of the estate to the extent that the court having jurisdiction in bankruptcy matters would have jurisdiction over all assets of the debtor, whether in France or abroad. This principle would extend to both domestic and foreign branches of a corporation[53].

In respect of a debtor whose centre of main interest is situated within the territory of the French Republic and which is subject to the provisions of the Insolvency Proceedings Regulation, the Insolvency Proceedings Regulation permits secondary proceedings to be opened to run in parallel with the main proceedings. Therefore, secondary proceedings may be opened in the EU Member States where the French insolvent debtor has an establishment. See in this respect paragraphs 5.1.2 and 5.4 of Exhibit 3 to this Opinion.

However, as far as credit institutions and insurance companies are concerned, French authorities are the sole authorities empowered to decide on the implementation of reorganisation and winding-up measures in a credit institution or an insurance company licensed in France, including branches established in other EU Member States or in Member States of the European Economic Area. Therefore, the opening of secondary proceedings in any other Member State is not permitted[54].

52 See in this respect Cass. Civ. 1ère, February 20, 1979, JCP 1979, éd. G, II, n° 19147.

53 Proceedings would extend to branches operating outside France (Cass. req., April 18 and 24, 1932, Gaz. Pal. 1932, 2, 147. See also Arlette Martin-Serf: *La Faillite Internationale – Une réalité économique pressante – Un enchevêtrement juridique croissant,* JDI 1995-1, page 31).

54 See in this respect Article 3.1 of the Winding-up Directive and Article L. 613-31-3 of the M&FC. See also paragraphs 5.1.2 and 5.4 of Exhibit 3 to this Opinion.

3.2.1.2 "*Would the MNA and, if so selected in Section 10.6 of the EFET/IECA Commodities Schedule, the CPMA be treated as a single unified agreement by the French receiver under the laws of France, regardless of the treatment of the MNA or CPMA or transactions thereunder by an insolvency official in a country where close-out netting may be unenforceable?*"

Our view is that both the MNA and the CPMA under the above assumptions should be treated as one single unified agreement. We refer to the above paragraph 3.2.1.1 for further details.

3.2.2 Foreign Multibranch Party

For the purpose of this Paragraph 3.2.2, we have assumed that:

- A corporation, a credit institution, an investment services provider, an insurance company, an investment fund management company or any other similar financial institution ("Party F") incorporated, organized or having its centre of main interest in a country ("Country H") other than France as entered under some or all Netted Agreements or Principal Agreements into transactions both through its home office and through one or more branches located in other countries including in each case a branch of Party F located in and subject to the laws of France (the "**France Branch**"); and

- After entering into these transactions and prior to the maturity thereof, Party F becomes the subject of voluntary or involuntary proceedings under the insolvency laws of Country H.

3.2.2.1 "*Would there be separate proceedings in France with respect to the assets and liabilities of the French Branch upon the start of the insolvency proceeding for Party F in Country H? Or would the relevant authorities in France defer to the proceedings in Country H, so that the assets and liabilities of the French Branch would be handled as part of the proceedings for Party F in Country H? Could local creditors of the France Branch initiate separate proceedings in France even if the relevant authorities in France did not do so?*"

If the French Counterparty is an entity incorporated or organised outside the French Republic but operating through a branch in the French Republic and assuming that separate Insolvency Proceedings would be conducted in the French Republic with respect to assets and liabilities of such branch (i) the judicial administrator or the liquidator, as the case may be, will be bound by the terms of the Agreements, even as regards Transactions entered into through the head office of such French Counterparty and through branches of such French Counterparty located outside of the French Republic and (ii) a court of the French Republic would require a judicial administrator or a liquidator, as the case may be, to give effect to the provisions of the Agreements in accordance with their terms in respect of Transactions entered into on a multi-branch basis between the branch operating in the French Republic and the Other Party and between the head office of such French

Counterparty and its various branches operating outside the French Republic on the one hand and the Other Party on the other hand.

French courts would have jurisdiction in insolvency matters in respect of a French branch of a Party to the Agreements incorporated or organised outside the French Republic under the following circumstances:

- the foreign entity is a debtor whose centre of main interests is situated within the territory of a Member State (other than the French Republic) of the European Union and is subject to the provisions of the Insolvency Proceedings Regulation which contemplates the possibility to open secondary proceedings which could only be opened if the conditions under that Regulation are satisfied; or

- the foreign entity is (i) a debtor (other than a credit institution or an insurance company) whose head office is situated within the territory of a Member State of the European Union but is not subject to the provisions of the Insolvency Proceedings Regulation or (ii) a debtor (including a credit institution or insurance company) whose centre of main interests or head office is situated outside the European Economic Area or, as the case may be, the European Union[55].

In the latter case the opening of a separate proceeding would be possible in the French Republic in the absence of exequatur in the French Republic of the foreign insolvency judgement in the absence of which a foreign insolvency proceeding is not recognised. The legal effect of foreign insolvency proceedings may also be recognised by treaty.

Where an exequatur judgement of the foreign insolvency judgement has been rendered in France, French courts are bound to recognise the authority of a foreign judicial administrator and French authorities would not be empowered to open separate proceedings.

As far as credit institutions and insurance companies are concerned, French authorities are not permitted to open secondary proceedings against a credit institution licensed in another Member State of the European Union or, as the case may be, the European Economic Area but are the sole authorities empowered to decide on the implementation of reorganisation and winding up measures in a branch in France of a credit institution whose head office is located outside of the European Economic Area.

Please see also our detailed analysis in paragraphs 5.1.2 and 5.4 of Exhibit 3.

55 This assumes that no exequatur judgement has been issued in France in respect of foreign insolvency proceedings. Should an exequatur judgement be issued, the foreign insolvency proceedings would be recognised in France.

Furthermore, Under the Insolvency Law, a Judicial Reorganisation Proceeding or a Judicial Liquidation Proceeding[56] may be opened, *inter alia*, at the request of any creditor, whatever the nature of its claim may be[57]. Please note however that a Safeguard Proceeding may be opened only at the request of the debtor[58].

As a consequence, we believe that a French creditor of the French branch of a Party organised or incorporated outside the French Republic would be able to initiate separate Judicial Reorganisation Proceedings or Judicial Liquidation Proceedings in France against the assets and liabilities of such branch operating in the French Republic[59] if the conditions for the opening of a secondary proceeding in France are satisfied. Please see also our discussions in paragraphs 5.1.2 and 5.4 of Exhibit 3 to this Opinion.

3.2.2.2 "*If there were separate proceedings in France with respect to the assets and liabilities of the French Branch, would the receiver or liquidator in France and the French courts, based on the facts above, include Party F´s position under the Netted Agreements or Principal Agreements, in whole or in part, among the assets of France and, if so, would the receiver or liquidator and the French courts recognize the close-out netting provisions of the MNAt or CPMA in accordance with their terms? The most significant problem arising would be if a French receiver, liquidator or court considering a single MNA or Cross-Product Master Agreement were to require a counterparty of the French Branch of Party F to pay the mark-to-market value of transactions entered into with the French Branch to the liquidator or receiver of the French Branch, while at the same time forcing the counterparty to claim in the proceedings in Country H for its net value from other transactions with Party F under the same MNA or Cross-Product Master Agreement. In considering this issue, please assume that close-out netting under the MNA or Cross- Product Master Agreement would be enforced in accordance with its terms in the proceedings for Party F in Country H.*"

The provisions of Article L. 211-40 of the M&FC provide as follows:

"*The provisions of Book VI of the Commercial Code[60], or those governing any similar judicial or amicable proceedings conducted on the basis of foreign laws, do not prevent application of this Section.*"

56 See in this respect Exhibit 3 to this Opinion.

57 Articles L. 631-5 and L. 640-5 of the French Commercial Code.

58 See in this respect Exhibit 3 to this Opinion.

59 It may be noted that pursuant to Article 29 of the Insolvency Proceedings Regulation, the opening of secondary proceedings may be requested by (a) the liquidator in the main proceedings or (b) **any other person or authority empowered to request the opening of insolvency proceedings under the law of the member State within the territory of which the opening of secondary proceedings is requested**.

60 i.e. Insolvency Proceedings and Conciliation Proceedings.

This is the key provision of the French Netting law which in fact enshrines an exemption of otherwise mandatory provisions of French insolvency law.

Based on the Article L 211-36 of the M&FC a French court is bound to recognize the effect of the Agreement in accordance with its terms and to apply the close-out netting provisions globally following termination without interference of otherwise mandatory provisions of French insolvency law.

To the best of our knowledge there is, however, no case law in this respect.

3.2.2.3 "*Please consider your answer to your question assuming instead that Party F has no branch located in France, but has assets in France.*"

Where Party F has no branch in France we do not believe that a French court would have jurisdiction to open an insolvency proceeding against a foreign debtor under circumstances where that foreign debtor is holding assets in France without operating a branch in France. In that scenario, attachment procedures against assets located in France would be more appropriate.

3.3 Collateral

For the purpose of Paragraph 3.3 we have assumed that:

- Although it is a bilateral form in that it contemplates that each party may be required to post collateral to the other, we assume that (i) the French Counterparty is at all times Transferor under the EFET Cross Product Credit Support Annex and (ii) that the collateral is owned by the French Counterparty or that the French Counterparty is authorized and empowered to transfer ownership in the collateral; and

- The counterparties agree that Eligible Credit Support will include cash and Letters of Credit. Cash is denominated in a freely convertible currency and is held in an account under the control of Party B maintained in the jurisdiction of the relevant currency.

3.3.1 "*Under the laws of France, what law governs the transfer of ownership in the various forms of Eligible Credit Support deliverable under the EFET Cross Product Credit Support Annex?*"

Transfer of ownership in respect of cash occurs by credit of an account in the name of the transferee, such cash being as a result commingled with the treasury of the transferee. In the context of a wire transfer, the transferor would retain title as long as the wire transfer may be revoked[61].

Absent such credit, the transferee holds merely a claim against the transferor.

61 Articles L. 133-7 and L. 133-8 of the M&FC.

3.3.2 *"Would the laws of France characterize each transfer of collateral as effecting an unconditional transfer of ownership in the assets transferred? Is there any risk that any such transfer would be re-characterized as creating a security interest? If so, is there any way to minimize such risk? What would be the consequences of such a re-characterization?"*

Article L. 211-38 trough Article L. 211-39 of the M&FC provide a single special collateral regime applicable to all financial obligations resulting from Qualifying Transactions referred to in Article L. 211-36-1 of the M&FC.

The relevant provisions of Article L 211-38 of the M&FC do indeed read as follows:

"I. - As security of present or future financial obligations referred to in Article L. 211-36, the parties may provide for the ***transfer of title to financial instruments****, negotiable instruments,* ***claims****, contracts* ***or sums of money****, such* ***transfers being binding on third parties without any formality,*** *or the creation of security interests over such assets or rights, to be subject to the right of foreclosure even if one of the parties is subject to one of the proceedings referred to in Book VI of the Commercial Code or to a similar judicial or amicable proceeding under a foreign law, or to a civil execution proceeding or to the exercise of a right of opposition.*

Debts and claims related to such security and those relating to those obligations may then be set-off in accordance with the provisions of paragraph I of Article L. 211-36-I.

II. - When security referred to in I above relates to the financial obligations referred to in paragraphs 2°) and 3°) of Article L. 211-36:

1°) The creation and perfection of such security shall ***not be conditional upon any formality****. They result from the transfer of the relevant assets and rights, from the collateral provider dispossession or from their control by the beneficiary or a person acting on its behalf;*

2°) Identification of the relevant assets and rights, their transfer, dispossession of the collateral provider or control by the beneficiary ***must be capable of being evidenced in writing;***

3°) Foreclosure over such security is carried out at normal market conditions, by ***set-off, appropriation or sale, without prior notice****, in* ***accordance with the valuation terms agreed upon by the parties, provided that the financial obligations have become due."***

Those provisions should be read in conjunction with those of Article L. 211-40 of the M&FC which contemplate that the effectiveness of the above collateral and the whole close-out netting regime covered by Articles L. 211-36 through L. 211-39 of the M&FC may not be prevented by the provisions of equivalent foreign insolvency law

This would exclude recharacterisation of those collateral arrangements constituted in the form of transfer of title.

3.3.3 "*Assuming that Party B receives absolute ownership in the collateral, will it need to take any action thereafter to ensure that its title therein continues? Are there any requirements in France necessary or advisable, including any filing, registration, notification, stamping, notarisation or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval? Are there any other procedures that must be followed or consents or other governmental or regulatory approvals that must be obtained or established, to enforce, or continue such ownership interest?*"

As mentioned above in paragraph 3.3.2, Article L. 211-38 I of the M&FC contemplates that under the special regime contemplated under the French Netting Law, collateral in the form of transfer of title to financial instruments, cash or claims is perfected without formality, it being binding against third parties without formality.

3.3.4 "*What is the effect, if any, under the laws of France of the right to substitute collateral pursuant to § 6 of the EFET Cross Product Credit Support Annex? Does the presence or absence of consent to substitution by Party B have any bearing on this question?*"

On the basis of the provisions of Article L. 211-38 and Article L. 211-40 of the M&FC and assuming that such provisions apply, we are of the opinion that the right for the Transferor to substitute Eligible Credit Support by way of transfer of title to Cash denominated in a currency for Cash denominated in another currency, is effective under the laws of France, provided however that at least one Party is a Qualifying Party and that the Transactions are transactions on financial instruments. Such substitution would not result in a voidable preference[62].

On the basis of the same provisions, we also consider that the right for the Transferor to substitute Cash for a Letter of Credit is valid and enforceable under French law, provided however that at least one Party is a Qualifying Party and that the Transactions are transactions on financial instruments.

With respect to the substitution of a Letter of Credit for Cash, please refer to our analysis in paragraph 3.3.7 below.

62 The question which arises is whether a substitution of Securities during the Suspect Period could be voidable under the voidance provisions of the French Commercial Code. Of particular interest are the provisions of Articles L. 632-1-2° and 6° of the French Commercial Code. Article L. 632-1-2° of the French Commercial Code provides that are void if performed during the Suspect Period reciprocal agreements ("*contrats commutatifs*") in which the obligations of the debtor substantially exceed those of the other party. Article L. 632-1-6° of the French Commercial Code provides that the granting of a mortgage by agreement or by judicial decision or any pledge constituted over the debtor's assets on account of pre-existing debts are void if granted during the Suspect Period (see Exhibit 3).

3.3.5 *"Party B's right in relation to the transferred collateral upon termination of the relevant master agreement will be governed by Section 4 of the Cross-Product Master Agreement together with §11 of the EFET Cross Product Credit Support Annex. Assuming that Section 4 of the Cross-Product Master Agreement is valid and enforceable in France insofar as it relates to the determination of a Final Net Settlement Amount payable by either Party on the termination of transactions, is § 11 of the EFET Cross Product Credit Support Annex also valid to the extent that it provides for the value of the collateral provided and not yet transferred to be included in the calculation of the Final Net Settlement Amount under Section 4 of the Cross-Product Master Agreement?"* .

As mentioned in paragraph 3.3.1 above, transfer of title to cash is effected by credit of the account of the transferee, pending such credit, the transferee which is Party B holds a claim against the transferor.

To the extent that the value to the collateral provided may be assimilated to a claim of Party B *vis à vis* the French Counterparty we believe that it may be argued that that claim is part of the Collateral provided under the EFET Credit Support Annex. It may be worth considering clarifying this matter in the documentation.

Claims are eligible collateral under Article L. 211-38 of the M&FC to the extent the agreement so provides.

3.3.6 "*Are the rights of Party B enforceable in accordance with the terms of the Cross-Product Master Agreement and the EFET Cross Product Credit Support Annex, irrespective of the insolvency of the French Counterparty?*"

It results from the combination of Articles L. 211-38 and L. 211-40 of the M&FC described above that those rights benefit from a sweeping exemption of French Insolvency law and should be enforceable irrespective of the insolvency of the French Counterparty.

3.3.7 "*Will the French Counterparty (or its receiver or other similar official) be able to recover any transfer of collateral provided to Party B during a certain "suspect period" preceding the date of the insolvency? If so, how long before the insolvency does the suspect period begin? If such a period exists, does the substitution of collateral by a counterparty during this period invalidate an otherwise valid transfer, assuming the substitute assets are of no greater value than the assets they are replacing? Is the transfer of additional collateral pursuant to the mark-to-market provisions of the EFET Cross Product Credit Support Annex during the suspect period subject to avoidance, either because it was considered to relate to an antecedent or pre-existing obligation or for some other reason?*"

It results from the autonomous regime contemplated under the French Netting Law that no obligation arising out of the Agreements, including posting of Eligible Credit Support by way of transfer of title to Cash, the performance thereof or compliance therewith, prior to the institution of any Insolvency Proceedings in respect of the French Counterparty, could be set aside in any such Insolvency Proceedings as a preference, voidable transaction or otherwise under the Insolvency Law, provided however that at least one Party is a Qualifying Party and that the Transactions are transactions on Financial Instruments. Reference is made in this respect to paragraph 3.1.1.2 above.

Posting of Eligible Credit Support by way of providing Letters of Credit should not be subject to voidance. Indeed, Letters of Credit are beyond the scope of application of Article L. 632-1 of the French Commercial Code which provides that certain categories of transactions performed during the Suspect Period are subject to automatic voidance (see in this respect paragraph 7.5 of Exhibit 3).

It is assumed, however, that such a letter of credit would be issued on arms length commercial terms. Reference is also made to footnote 62.

However, it may be noted that pursuant to Article L. 632-2 of the French Commercial Code, any act for consideration ("*actes à titre onéreux*") performed during the Suspect Period are voidable if the person dealing with the debtor had knowledge of the debtor's insolvency. As a result, if a Letter of Credit has been issued by a third party for consideration during the Suspect Period by order and for the account of the insolvent debtor, the validity and enforceability of the guarantor's recourse might be jeopardised in the event the guarantor had knowledge of the French Counterparty's insolvency at the time the recourse agreement was entered into between the guarantor and the debtor as account party. This should, however not affect the rights of Party B as the beneficiary of the letter of credit.

However, determination of the debtor's insolvency lies within the court's discretion and the burden of proof lies on the administrator to demonstrate that the debtor was insolvent. Mere knowledge of insolvency is not sufficient as the test to be met requires actual knowledge of inability to meet current liabilities out of liquid assets.

3.3.8 "*Is the EFET Cross Product Credit Support Annex in an appropriate form to create the intended outright transfer of ownership in the collateral to Party B? Are there any other requirements to be observed in France in order to ensure validity of such transfer in each type of Eligible Credit Support created by Party A under the EFET Cross Product Credit Support Annex? For example, are there any other requirements such as those mentioned under 3.3.1 above?*"

There are no further requirements other than those described in paragraphs 3.3.2 and 3.3.3 above.

3.3.9 "*Do you have other specific recommendations on the subject of collateral that you would like the EFET members to consider?*"

See paragraph 3.3.5 above.

3.4 General Enforceability

3.4.1 *"Are the MNA and the Cross-Product Master Agreement and the EFET Cross-Product Credit Support Annex enforceable under the laws of France in accordance with its own terms? We are especially interested in provisions that you may believe infringe upon the ordre public in France and that may be challenged by the courts in France irrespective of the law that governs the Agreement."*

The Netting Law regime constitutes a sweeping exemption of French mandatory provisions of French Insolvency law which fall within the scope of "*ordre public*" and should therefore be narrowly interpreted.

3.4.2 *"Do you have other recommendations going to the topic of general legal enforceability that you would like EFET members to consider?"*

See above.

3.5 Confirmation Practices

For the purpose of this Paragraph 3.5, we have assumed that:

- As far as the confirmation practice is concerned, when entering into an transaction, the counterparties in each case (i) make oral reference to a Netted Agreement or Principal Agreement when concluding the relevant transaction over the phone or (ii) refer to a Netted Agreement or Principal Agreement when subsequently exchanging confirmations or similar electronic, written or non-verbal means of entering into or confirming transactions (in whichever form, including telex, fax, SWIFT, electronic confirmation or position matching service or other means of electronic transmission); and

- Parties may or may not use matching systems (like EFET ECM, MarketWire or DTTC DS Match) to electronically match and exchange confirmations.

3.5.1 Formal requirements and procedure

We will discuss the formal requirements and procedure in the formation of a legally binding and enforceable transaction and its inclusion in the Netted Agreement or Principal Agreement and the related MNA or CPMA.

Prior to execution of the Agreements including the Netted Agreements and Principal Agreements and MNA and CPMA, it is important to ascertain the corporate capacity and authority of the signatories of those agreements including the corporate authorization, if need be, authorising the signatories to proceed with execution of the documentation.

The capacity in respect of the subject matter of the party entering into the transaction must be ascertained.

Board of Directors authorization may be required in respect of a "*Société Anonyme*"[63] in particular when posting of collateral is contemplated. Articles of association need to be reviewed in that respect and advice may need to be sought.

Particular attention needs to be given to the authority of public entities and their signatories to enter into Transactions. Local authorities have limited authority to enter into derivative transactions which are only possible when the entity is aiming at covering its exposure. Transactions involving speculative features are prohibited. A clear authority of the Deliberating body is required describing in a precise manner the transaction and the resulting exposure for the local government.

Special considerations also apply in respect of collective investment undertakings and insurance companies which are generally subject to certain ratios and are often limited to enter into transactions other than those aiming at covering their exposure excluding speculative transactions.

The Agreements may need to be adjusted in respect of public entities, local governments and certain type of entities such as "*sociétés de crédit foncier*" or "*sociétés de financement de l'habitat*" because either they are not subject to insolvency or otherwise because the ability to close out is restricted (as is the case in respect of a "*société de crédit foncier*" or a "*société de financement de l'habitat*").

The above is provided for illustration purposes and is not exhaustive.

3.5.2 Formal requirements of Confirmations

A Confirmation should comply with the procedural laws of France described below in order to be sufficient to evidence a binding transaction and its inclusion in the agreements.

The same considerations as those described in paragraph 3.5.1 apply in respect of confirmations.

3.5.3 Binding Transactions

aa) Does the formation of a legally binding and enforceable transaction require any formal act (e.g., execution in writing, signature, registration or notarization)?

According to Article 1101 of the French Civil Code four conditions are essential for the validity of an agreement i.e:

- the consent of the party which is incurring obligations;

63 The board of directors' authorization would be from the *conseil d'administration* in a *société anonyme à conseil d'administration* or from the *directoire* in a *société anonyme à directoire et conseil de surveillance*.

- the capacity to contract;
- clear subject matter which is the purpose of the contract; and
- a lawful purpose.

The Agreements are governed by foreign law and therefore the conditions which govern the formation of the contract under the governing law will apply.

According to the principle of consensualism applicable under French law, the contract is formed by the sole consent of the parties. Except for such matters as are contemplated by law, no formality is required.

It is our view that the transaction under consideration, being entered in the context of a commercial act, by a merchant[64] does not require any formal act to be binding and enforceable (e.g., execution in writing, signature, registration or notarization).

The formalism does not concern the validity of the transaction but only the evidence of the transaction (see below paragraph 2).

For capacity and authorization matters we refer to paragraphs 3.5.1. and 3.5.2 above.

Furthermore France applies the lex rei sitae principles with regard to perfection of collateral. Further reference is also made to Article L 211-39 of the M&FC which provides that the rights or obligations of the grantor, the beneficiary or of any third party relating to security over financial securities, as referred to in paragraph I of Article L. 211-38, are determined by the law of the State where the account on which the said securities are transferred or posted as security is located.

bb) At what point in time does an transaction agreed upon orally become legally binding or enforceable?

The point in time when the transaction agreed upon orally becomes legally binding or enforceable depends on the content of the oral agreement. It should also be noted that the principles prevailing under the foreign law governing the agreement should be taken under consideration.

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64 Article L. 121-1 of the French commercial code provides that the merchants (*commerçants*) are the persons who carry out commercial acts (*actes de commerces*) and do it their usual profession.

cc) **Does failure to object to incorrect terms in a received confirmation constitute "acceptance" of those terms? If so, is there a relevant time period?**

Under French law, silence does not in principle constitute acceptance. Nevertheless, between traders ("*commerçants*"), the case law considers that silence to the receipt of a confirmation letter, which contains the proposals reached by the parties after negotiation, implies acceptance of its terms.

Notwithstanding its content, the confirmation should be contested before a jurisdiction by the use of evidence contesting the consent of the objecting party.

To avoid any contest regarding the terms of a confirmation or a transaction, it is recommended that the procedures to contest the terms of the arrangements which have been allegedly concluded be addressed in the Netted Agreement or Principal Agreement.

dd) **Is the reference to a Netted Agreement or Principal Agreement sufficient for the inclusion of the transaction in the Agreement?**

It is our view that an express reference to a Netted Agreement or Principal Agreement is sufficient for the inclusion of the transaction in the Agreement. However, the subject matter of the transaction and its terms must be clearly ascertained and evidenced in the confirmations. This is of course also a matter to be addressed under the governing law.

3.5.4 Means of Evidence

aa) **Assuming there is a dispute with respect to the existence or the terms of the transaction in court: (i) taped record; (ii) witness' statement; (iii) e-mail or other electronic message or transaction entry system; and/or (iv) facsimile? Are there any local requirements or other considerations that are relevant to each form of evidence?**

The evidence by a written document is in principle required for any agreement exceeding a sum or value of 1.500 Euros (Article 1341 of the French civil Code).

Nevertheless, a written document is not mandatory in matters relating to an agreement concluded among traders ("*commerçants*").

In the case at issue, we assume that the transaction is (i) entered into between traders as defined by the French commercial code and (ii) concluded for the purpose of their business.

These assumptions imply that commercial rules are applicable to the transaction under consideration.

Pursuant to Article L. 110-3 of the French commercial Code, commercial instruments ("*actes de commerce*") may be proven by any means unless the law specifies otherwise. This principle means that it is possible to prove by any means including against written document. There is no hierarchy between the different means of evidence although in practice written evidence may be favored.

It should be noted that evidence produced before a court remains subject to the court's discretion.

In addition to evidence in writing, the following means of evidence may be used:

(i) Taped record

The evidence by taped record is not expressly considered as a mean of evidence by the French law. Nevertheless some French jurisdictions have considered that taped records may be treated as a commencement of evidence in writing ("*commencement de preuve par écrit*"). Pursuant to Article 1347 of the French civil Code, is so called any instrument in writing which emanates from the person against whom a claim is brought, or from the person he represents, and which shows the probability of the alleged facts.

This mean of evidence implies that it should be supplemented by others.

Nevertheless, taped record should be admitted as a mean of evidence agreed by the parties into an agreement or a clause in the agreement dealing with evidence. Indeed, French case law admits that an agreement on the evidence is lawful. Such agreement allows *inter alia* to determine which means of evidence should prevail in the relationships between the parties.

(ii) Witness' statement

The witness' statement is admitted as a mean of evidence before a jurisdiction and is subject to conditions relating to form and content of the witness' statement and to the person of the witness. However witness statements tend to be approached with a certain level of circumspection by courts in France.

(iii) E-mail or other electronic message or transaction entry system

Pursuant to Article 1316-1 of the French civil code, a writing in electronic form is admitted as evidence in the same manner as a paper-based writing, provided that the person from whom it proceeds can be duly identified and that it be established and stored in conditions conceived to secure its integrity.

A written evidence should be composed of the two followings elements: a written document and a signature.

First, Pursuant to Article 1316 of the French civil Code "*documentary evidence, or evidence in writing, results from a sequence of letters, characters, figures or of any other signs or symbols having an intelligible meaning, whatever their medium and the ways and means of their transmission may be*". It is our view that an e-mail complies with the abovementioned definition.

Second, pursuant to Article 1316-4 of the French civil Code "*the signature necessary to the execution of a legal transaction identifies the person who signs the document. It makes clear the consent of the parties to the obligations which flow from that transaction. When the signature is delivered by a public officer, it confers authenticity to the document. Where it is electronic, it consists in a reliable process of identifying which safeguards its link with the instrument to which it relates. The reliability of that process shall be presumed, until proof to the contrary, where an electronic signature is created, the identity of the signatory secured and the integrity of the instrument safeguarded, subject to the conditions laid down by decree in Conseil d'État*". The above-mentioned decree requires the use of a specific electronic certificate in order to secure the signing. It is our view that an e-mail does not comply with the requirement of a secured signing within the meaning of the French regulations.

Nevertheless, an e-mail may be considered as a commencement of evidence in writing ("*commencement de preuve par écrit*") (cf. see above paragraph (i)).

In order to avoid any debate on the value of this mean of evidence, the use of an e-mail as an evidence should be foreseen as part of the provisions of the agreement dealing with evidence.

(iv) Facsimile

Under French law, the facsimile is considered as a copy.

The evidentiary value of a copy depends on the original document. The copy has indeed an evidentiary value if the original document subsists and if the copy is in conformity with the original document (Article 1334 of the French civil Code).

3.6 Core Provisions

For the purpose of this Paragraph 3.6, we have assumed that:

- the relevant MNA or CPMA is governed by any law (including English, German or New York law or the laws of France); and

- after entering into transactions and prior to the maturity thereof, the French Counterparty becomes the subject of voluntary or involuntary proceedings under the insolvency laws of France, and, subsequent to the commencement of the Insolvency, either the French Counterparty or an insolvency official seeks to assume the confirmations representing profitable ("in the money") transactions for the insolvent counterparty.

- the French Counterparty has entered into transactions under Netted Agreements or Principal Agreements through offices in France as well as through one or more branches located abroad. After entering into these transactions and prior to the maturity thereof, the French Counterparty becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of France.

3.6.1 "*Would any of the elections contemplated by the MNA or the Cross-Product Master Agreement or the EFET Cross-Product Credit Support Annex change the substance of your conclusions reached under Part 3.1 or 3.2 (Enforceability of Close-out Netting)? As far as the EFET Cross-Product Credit Support Annex is concerned, you should in particular discuss the effect of electing to allow substitution with or without consent.*"

See above.

3.6.2 "*Considering your conclusions reached under Part 3.1 or 3.2. (Enforceability of Close-out Netting), what are the provisions of the MNA or the Cross-Product Master Agreement that you regard as so essential that a material alteration thereof could affect the conclusions reached in that Part C.I or C.II (each such provision a "Core Provision")? We believe that the following principles need to be taken into account in the context of any contemplated alterations of the Agreements:*

- Transactions need to constitute financial obligations resulting from transactions on financial instruments (where one party is a Qualifying Party) or financial obligations resulting from any contract giving rise to a cash settlement or a delivery of a financial instrument (where both parties are Qualifying Parties);

- At least one party needs to be a Qualifying Party;

- Transactions contemplated under the Agreement are part of one single global arrangement;

- Upon default debts and claims related to Transactions entered into pursuant the Agreements may be netted among themselves and may give rise to a global settlement amount ;

- Valuation rules are objective, and predetermined and reflect the economic value of transactions at the time of termination.

3.7 Governing Law, Arbitration and Jurisdiction

For the purpose of this Paragraph 3.7, we have assumed that the relevant Agreement is governed by the laws of a jurisdiction other than France (including English or German law).

3.7.1 "*Would the Parties' agreement on the governing law, submission to arbitration or jurisdiction (§ 12 of the MNA and Section 6 of the Cross-Product Master Agreement) be upheld in France, and what would be the consequence if it were not?*"

3.7.1.1 Choice of law

The choice of the laws of England and Wales, Germany or Belgian, as the case may be, to govern the Agreements is valid and would be given effect in any proceedings brought against the French Counterparty, in a French court having jurisdiction, provided that the relevant content of the laws of England and Wales, Germany or Belgian or any other law governing such Agreement, as the case may be, is duly proved in any such proceedings and that it is not held to be contrary to French "*ordre public*".

In this respect, it should be noted that the French Supreme Court has held that a French judge implementing a foreign law has to attempt to determine the solution given by such foreign law, as applicable, to the legal issue raised[65]. Moreover, in another case, the French Supreme Court has held that it does not exercise control over the manner in which the French judge applies a foreign law except in circumstances where the scope or content of such foreign law has been distorted[66].

65 Cass. Civ., November 24, 1998, Dalloz 1999, Jurisprudence, p. 337. The French Supreme Court (Cass. 1ère Civ. June 28, 2005 and Cass. Com. June 28, 2005 (PA December 28, 2005, p. 16 and seq.) recently confirmed that a French judge acknowledging that a foreign law is applicable has to attempt, either at the request of the parties and with their assistance or *sua sponte*, as the case may be, to give to the issue raised a solution consistent with the solution given under the foreign law.

66 Cass. Civ., March 16, 1999, Dalloz 1999, *Informations rapides*, p.100.

Furthermore, even though under French law there is no positive legal provision (other than the provisions of (i) **Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations** (the "**Rome Regulation**"), which has been ratified by the French Republic, (ii) the Council Regulation (EC) n° 1346/2000 of May 29, 2000 on insolvency proceedings (the "**Insolvency Proceedings Regulation**"); (iii) the Directive 2001/24/EC on the reorganisation and winding up of credit institutions (the "**Winding-Up Directive**"); (iv) the Collateral Directive; all as further discussed below) governing the rules of conflict of law with respect to contracts of the type contemplated under the MNA or CPMA, it is a well-recognized principle under French case law and under the opinions supported by leading scholars that the parties to a contract may freely designate the law applicable to the contract. Moreover, under Article 3.1 of the Rome Regulation "*a contract shall be governed by the law chosen by the parties*".

Furthermore, it should be noted that in the event of Insolvency Proceedings in France, unless otherwise provided, mandatory provisions under the Insolvency Law[67] will prevail to the extent they are inconsistent with the provisions of English, or German or law, as the case may be.

It should further be noted that, pursuant to the provisions of Article 9.3 of the Rome Regulation, a court may give effect to the mandatory rules of another country with which the situation to be adjudicated has a close connection.

Furthermore, Article 9.2 of the Rome Regulation allows that mandatory rules be applied. This would entitle a French judge to apply those provisions of French law which are mandatory.

Finally, Article 12.1 of the Rome Regulation provides that the law determined to be applicable to a contract will govern the interpretation and performance of the contract as well as the consequences of nullity or breach under the statutory limitations as bringing for a breach.

In respect of performance, Article 12.2 of the Rome Regulation refers to the law of the country in which performance takes place in relation to the manner of performance and the steps to be taken in the event of defective performance.

67 French insolvency law, which is part of Book VI of the French Commercial Code, has been substantially amended by the law n° 2005-845 of July 26, 2005 (the "**Safeguard Law**") which became effective as of January 1, 2006. The implementing decree of the Safeguard Law is decree n° 2005-1677 dated December 28, 2005. References in this Opinion to articles of the French Commercial Code are references to the French Commercial Code as so amended. Capitalised terms relating to insolvency proceedings used in this Opinion shall have the meaning ascribed to them in Exhibit 3.

Under Article 12.2 (d) of the Rome Regulation, the law applicable to discharge of obligations should be governed by the law applicable to the transaction. Under French law, set-off is a mode of extinguishment of obligations.

Finally, it should be noted that both Article 4(2)(d) of the Insolvency Proceedings Regulations and Article 25 of the EU Winding-up Directive may apply (see below).

From the above, it appears that subject to the above, the choice of law under the MNA and the CPMA is a valid choice of law and that outside the scope of an Insolvency Proceeding, the exercise of contractual rights of set-off provided thereunder will be determined by the laws of England and Wales, or Germany as the case may be, as the proper law governing the Agreement.

3.7.1.2 Jurisdiction

The submission to the English or to the German courts under the Agreements is valid and a judgement obtained in the English courts or the German courts against the French Counterparty with regard to the performance of its obligations under the Agreements would be enforceable in the French Republic in conformity with the provisions of EU Regulation n° 44/2001 dated December 22, 2000 (the "**EU Judgement Regulation**") which amended and superseded in part[68] the Brussels Convention on jurisdiction and enforcement of judgements (the "**Brussels Convention**") and which came into force as of March 1st, 2002.

In this respect, it should be noted that bankruptcy matters are excluded from the scope of the EU Judgement Regulation[69].

68 The EU Judgement Regulation, as between Member States supersedes the Brussels Convention, except as regards the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from the EU Judgement Regulation pursuant to Article 299 of the Treaty on European Union. Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, is not participating in the adoption of the EU Judgement Regulation and is therefore not bound by it nor subject to its application. Since the Brussels Convention remains in force in relation between Denmark and the Member States that are bound by the EU Judgement Regulation, both the Brussels Convention and the 1971 Protocol continue to apply between Denmark and the Member States bound by the EU Judgement Regulation.

69 Cross border insolvency proceedings within Member States of the European Union are governed by the Insolvency Proceedings Regulation. Such Regulation, which came into force on May 31, 2002, contemplates main and secondary insolvency proceedings. Such Regulation does not apply, however, to insolvency proceedings concerning insurance undertakings, credit institutions and investment undertakings which provide services involving the holding of funds or securities for third parties or to collective investment undertakings. Insolvency issues related to credit institutions are addressed under the Winding up Directive which has been implemented in the French Republic, under the provisions of Articles L. 613-31-1 and following of the M&FC, by ordinance n° 2004-1127 of October 21, 2004.

3.7.1.3 Arbitration

The provision of Section 12.4 (B) and (C) of the MNA providing that, if so specified in the Election Sheet any dispute arising under or related to the MNA shall be referred to and finally resolved by arbitration in accordance with the Rules of the London Court of International Arbitration or the German Institution of Arbitration as specified in the Election Sheet, is valid under the laws of this Jurisdiction.

The validity of the provision of Section 12.4 (B) and (C) of the MNA will be recognised under French law, subject to the remarks below.

International arbitration is defined by Article 1504 of the French civil procedure Code (the "**French CPC**") as arbitration in which international commercial interests are involved. Where the proposed transaction concerns more than one country, the arbitration will be international irrespective of the nationality of the parties, their place of residence, the place of conclusion or performance of the contract.

As far as international arbitration is concerned, the validity under French law of the provision of Section 12.4 (B) and (C) of the MNA is based on the provisions of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "**New York Convention of 1958**") dated June 10, 1958 which came into force in France on September 24, 1959. Article II.1 thereof provides that each contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

The enforceability in France of an arbitral award made in a Member State other than this Jurisdiction is based on Article III of the New York Convention of 1958 which provides that each contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon. Under French law, the arbitral award shall be subject to compulsory enforcement by virtue of an enforceable judgment of exequatur (Article 1516 of the French CPC). The judgment of exequatur will be rendered by the president of the Paris "*Tribunal de Grande Instance*" (Article 1516 of the French CPC) provided that the recognition of the same would not manifestly be contrary to public international policy (Article 1514 of the French CPC).

It is important to note that recognition and enforcement of an arbitral award may be refused in certain limited circumstances. Article V.2 of the New York Convention of 1958 provides that recognition and enforcement of an arbitral award may be refused in particular if the competent authority in the country where recognition and enforcement is sought, finds that (i) the subject matter of the dispute is not capable of settlement by arbitration under the law of that country or (ii) the recognition and enforcement of the award would be contrary to the public policy of that country.

As far as internal arbitration is concerned, the validity under French Law of the provisions of Section 12.4 (B) and (C) of the MNA is based on Article 2061 of the French Civil Code and on Article L. 721-3 of the French commercial Code. Article 2061 of the French Civil Code provides that, except where there are particular statutory provisions, an arbitration clause is valid in contracts concluded by reason of a professional activity. Furthermore, in accordance with Article L. 721-3 of the French commercial Code, an arbitration clause is valid with respect to disputes arising out of, *inter alia*, the liabilities of merchants, credit institutions or between them.

The arbitral award shall be subject to compulsory enforcement by virtue of an enforceable judgment of exequatur from the "*Tribunal de Grande Instance*" in the jurisdiction of which the award was rendered (Article 1516 of the French CPC).

It should be noted that special considerations may apply in respect of public entities which under relevant provisions governing such entities may be prevented or otherwise restricted from resorting to arbitration.

4. Qualifications

This opinion is subject to the following further qualifications:

(a) the terms "enforceable", "enforceability" and "effective" (or any combination thereof) when used in this Opinion mean that the obligations assumed by the relevant Party under the Agreements are of a type which French law generally recognizes and enforces; it does not mean that these obligations will necessarily be enforced in all circumstances in accordance with their terms;

(b) *FCPs*, *FCTs*, public establishments ("*établissements publics*"), the French State ("*Etat français*") and local governments ("*collectivités locales*") may not be subject to Conciliation Proceedings or to Insolvency Proceedings[70]. Accordingly, **the provisions of the MNA or CPMA entitling one Party to early terminate all outstanding Transactions upon the occurrence of Insolvency Proceedings against the other Party are *de facto* not applicable to such types of French Counterparties;**

(c) it is a principle of French law that specific remedies, such as specific performa**nce or injunction, other than those culminating in a judgement for the payment of money** are not available and that a French court may issue an award of damages where specific performance cannot be ordered or an award of damages is determined adequate;

(d) claims may become time-barred under the relevant provisions of French law or may **be or become subject to the defence of set-off or counterclaim;**

(e) **in respect of payment** obligations, a French court has power under Articles 1244-1, 1244-2 and 1244-3 of the French Civil code, taking into account the position of the debtor and the needs of the creditor, to grant time to the debtor or reschedule its debt (in both cases not in excess of two years), or reduce the rate of interest applicable to deferred payments;

(f) French courts have some discretion in the determination of damages which may be allocated to a Party and the enforceability, under French law, of the provisions of the Agreements regarding the indemnification of any Party may be affected by the following:

- the application of Articles 1146 and following of the French Civil Code relating to damages and the indemnification in contractual matters (particularly the rule laid down by Article 1150 of the French Civil Code whereby the debtor, except in the case of material fraud ("*dol*"), shall only be bound to pay the damages that have been provided or could have been foreseen upon the conclusion of an agreement);

- Article 1152 of the French Civil Code whereby a court may reduce or increase the amount due pursuant to a contractual penalty clause ("*clause pénale*") when it is deemed to be excessive or insufficient in light of the respective situation of the parties;

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70 Pursuant to Articles L. 620-2, L. 631-2 and L. 640-2 of the French Commercial Code which determines the scope of the Insolvency Law, its provisions apply to any merchant, craftsman, any farmer, any other individual who carries out an independent business including a professional subject to a statutory or regulatory status or whose title is protected, or any private law legal person ("*tout commerçant, toute personne immatriculée au repertoire des métiers, tout agriculteur, toute autre personne physique exerçant une activité professionnelle indépendante y compris une profession libérale soumise à un statut législatif ou réglementaire ou dont le titre est protégé, toute personne morale de droit privé*").

- the principle whereby indemnity provision entitling one party to recover charges, costs and expenses from another party may be limited to the recovery of such costs and expenses as the French court deems appropriate;

(g) where the Agreements contain a conditional obligation in relation to which the determination as to whether such condition has been satisfied is left to the discretionary power of the obligor or a provision which entitles the obligations to be determined at the discretion of one of the Parties, French courts may invalidate or decline to enforce such condition or provision, in particular on the ground of Articles 1129, 1134 and 1174 of the French Civil Code;

(h) in an action before a French court, the provisions of the Agreements whereby the certificates and determinations of a Party will be conclusive and binding, may be set aside by the French court which could proceed to its own determination;

(i) French courts may, if requested, render a judgement in the foreign currency in which a debt is expressed. However, if a judgement awarded by a French court were to be expressed in Euro, it would normally be expressed by reference to the exchange value of the relevant amount of the said foreign currency at the rate of exchange prevailing on the effective date of payment or on the date of the judgement. It should be noted, that if, after having obtained a judgement from a French court, a Party to the Agreement were to seek a separate judgement on the basis of any clause relating to exchange rate indemnities, the court might hold that such clause did not survive the original judgement;

(j) notwithstanding the statement made above, the Insolvency Law provides that creditors' claims denominated in foreign currencies are to be converted into Euro at the rate applicable on the date of the Bankruptcy Judgement;

(k) documents in a foreign language must be translated into French by an official sworn translator in order to be submitted as evidence in any action or proceedings before a French court or public body or used for any purpose with public bodies;

(l) we express no opinion with respect to the effects of Insolvency Proceedings in any jurisdiction other than the French Republic;

(m) we have not reviewed and therefore we express no opinion as to the validity and enforceability under French law of any agreement or any provision thereof other than the Agreements even if referred to in such Agreements;

(n) we express no opinion in respect of the enforceability under the laws of the French Republic of the provisions of the Agreements in respect of which a Party may be under the duty to pay to the other Party the Final Net Settlement Amount in the context of an Insolvency Proceeding. Indeed, the Insolvency Law prevents a debtor subject to Insolvency Proceedings from making any payment of any debt arisen prior to the Bankruptcy Judgement, except in respect of connected claims.

Exhibit 1

French Netting Law

Articles L. 211-36 through L. 211-40 of the M&FC (Free English translation)

Under French law, provisions addressing close-out netting and margining are provided for in Articles L. 211-36 through L. 211-40 of the M&FC which read as follows:

"*Section 4: Common rules applicable to transactions on financial instruments*

Paragraph I: Netting and assignment of claims

Article L. 211-36

The provisions of this Paragraph are applicable to:

1°) *Financial obligations resulting from transactions on financial instruments when at least one of the parties to the transaction is a credit institution, an investment services provider* [prestataire de services d'investissement], *a public establishment* [établissement public], *a local authority* [collectivité territoriale], *an institution, a person or an entity referred to in Article L. 531-2, a clearing house, a non-resident establishment with a comparable status, an international financial organisation or body of which France or the European Community is a member;*

2°) *Financial obligations resulting from any contract giving rise to a cash settlement or a delivery of financial instruments, to the extent that all parties belong to one of the categories listed in the paragraph above, with the exception of persons listed in paragraphs (c) to (n) of Article L. 531-2 - 2°;*

3°) *Financial obligations resulting from any contract entered into in the context of one of the systems listed in Article L. 330-1.*

II.- *For the purpose of this Article, are also financial instruments option contracts, futures, swaps and any other forward contracts other than those mentioned in III of Article L. 211-1, provided that, when such instruments must be settled by physical delivery, they give rise to registration by a recognised clearing house or to periodic margin calls.*

Article L. 211-36-1

I. – *Agreements relating to the financial obligations referred to in article L. 211-36 may be terminated, and the debts and claims relating thereto may be netted among themselves. The parties may provide for the calculation of a single netted settlement amount, such financial obligations being governed either by one or several agreements or master agreements.*

II. – *The termination, valuation and netting procedures of the transactions and obligations referred to in Article L. 211-36 and in I of this Article are binding on third parties. These procedures may be contemplated in particular by agreements or master agreements. Any termination, valuation or netting realized on grounds of civil execution proceedings or exercise of a right of opposition shall be deemed to have taken place prior to said proceedings.*

Article L. 211-37

The assignment of claims relating to the financial obligations referred to in Article L. 211-36 is binding on third parties upon notice of the assignment to the debtor. The assignment of agreements relating to financial obligations referred to in Article L. 211-36 is binding on third parties upon written agreement between the parties.

Paragraph II: Security over financial obligations

Article L. 211-38

I. - *As security of present or future financial obligations referred to in Article L. 211-36, the parties may provide for the transfer of title to financial instruments, negotiable instruments, claims, contracts or sums of money, such transfers being binding on third parties without any formality, or the creation of security interests over such assets or rights, to be subject to the right of foreclosure even if one of the parties is subject to one of the proceedings referred to in Book VI of the Commercial Code or to a similar judicial or amicable proceeding under a foreign law, or to a civil execution proceeding or to the exercise of a right of opposition.*

Debts and claims related to such security and those relating to those obligations may then be set-off in accordance with the provisions of paragraph I of Article L. 211-36-I.

II. - *When security referred to in I above relates to the financial obligations referred to in paragraphs 2°) and 3°) of Article L. 211-36:*

1°) *The creation and perfection of such security shall not be conditional upon any formality. They result from the transfer of the relevant assets and rights, from the collateral provider dispossession or from their control by the beneficiary or a person acting on its behalf;*

2°) *Identification of the relevant assets and rights, their transfer, dispossession of the collateral provider or control by the beneficiary must be capable of being evidenced in writing;*

3°) *Foreclosure over such security is carried out at normal market conditions, by set-off, appropriation or sale, without prior notice, in accordance with the valuation terms agreed upon by the parties, provided that the financial obligations have become due.*

III. - *The instrument providing for the creation of the security interests referred to in I above may define the conditions upon which the beneficiary of such security interests may use or dispose of the relevant assets or rights, such beneficiary being then under the obligation to return to* *the collateral provider equivalent assets or rights. The relevant security interests then relate to the equivalent assets or rights so returned as if they had been created from the beginning on such equivalent assets or rights. Such instrument may allow the beneficiary to set-off its obligation to return equivalent assets or rights with the financial obligations in respect of which the security interests have been created, when the financial obligations have become due.*

Equivalent assets or rights shall mean:

1°) In relation to sums of money, a sum of the same amount and in the same currency;

2°) In relation to financial instruments, financial instruments issued by the same issuer or debtor, being part of the same issue or category, having the same nominal amount, denominated in the same currency and having the same designation or, other assets, when the parties so provide for, upon occurrence of any event relating to or affecting any financial instruments in respect of which the security interest has been created.

In relation to assets or rights other than those referred to in 1°) and 2°) above, such assets or rights shall be returned.

IV. - *The foreclosure and netting procedures of the security referred to in I and obligations referred to in Article L. 211-36 are binding on third parties. Any foreclosure or netting realised on grounds of civil execution proceedings or exercise of a right of opposition shall be deemed to have taken place prior to said proceedings or to that action.*

Article L. 211-39

The rights or obligations of the grantor, the beneficiary or of any third party relating to security over financial securities, as referred to in paragraph I of Article L. 211-38, are determined by the law of the State where the account on which the said securities are transferred or posted as security is located.

Paragraphe III: Common Provision

Article L. 211-40

The provisions of Book VI of the Commercial Code[71], or those governing any similar judicial or amicable proceedings conducted on the basis of foreign laws, do not prevent application of this Section."

[Free translation]

71 i.e. Insolvency Proceedings and Conciliation Proceedings.

French Netting Law

Articles L. 211-36 through L. 211-40 of the M&FC (French language)

"Section 4: Règles communes applicables aux opérations sur intruments financiers

Paragraphe I: Compensation et cession de créances

Article L. 211-36

Les dispositions du présent paragraphe sont applicables :

1°) *Aux obligations financières résultant d'opérations sur instruments financiers lorsque l'une au moins des parties à l'opération est un établissement de crédit, un prestataire de services d'investissement, un établissement public, une collectivité territoriale, une institution, une personne ou entité bénéficiaire des dispositions de l'article L. 531-2, une chambre de compensation, un établissement non résident ayant un statut comparable, une organisation ou organisme financier international dont la France ou la Communauté européenne est membre ;*

2°) *Aux obligations financières résultant de tout contrat donnant lieu à un règlement en espèces ou à une livraison d'instruments financiers lorsque toutes les parties appartiennent à l'une des catégories de personnes mentionnées à l'alinéa précédent, à l'exception des personnes mentionnées aux alinéas c à n du 2° de l'article L. 531-2 ;*

3°) *Aux obligations financières résultant de tout contrat conclu dans le cadre d'un système mentionné à l'article L. 330-1.*

II. - *Pour l'application de la présente section, sont également des instruments financiers les contrats d'option, contrats à terme ferme, contrats d'échange et tous autres contrats à terme autres que ceux mentionnés au III de l'article L. 211-1, à condition que, lorsque ces instruments doivent être réglés par livraison physique, ils fassent l'objet d'un enregistrement par une chambre de compensation reconnue ou d'appels de couverture périodiques.*

Article L. 211-36-1

I. - *Les conventions relatives aux obligations financières mentionnées à l'article L. 211-36 sont résiliables, et les dettes et les créances y afférentes sont compensables. Les parties peuvent prévoir l'établissement d'un solde unique, que ces obligations financières soient régies par une ou plusieurs conventions ou conventions-cadres.*

II. - *Les modalités de résiliation, d'évaluation et de compensation des opérations et obligations mentionnées à l'article L. 211-36 et au I du présent article sont opposables aux tiers. Ces modalités peuvent être notamment prévues par des conventions ou conventions-cadres. Toute opération de résiliation, d'évaluation ou de compensation faite en raison d'une* *procédure civile d'exécution ou de l'exercice d'un droit d'opposition est réputée être intervenue avant cette procédure.*

Article L. 211-37

La cession de créances afférentes aux obligations financières mentionnées à l'article L. 211-36 est opposable aux tiers du fait de la notification de la cession au débiteur. La cession de contrats afférents aux obligations financières mentionnées à l'article L. 211-36 est opposable aux tiers du fait de l'accord écrit des parties.

Paragraphe II : Garantie des obligations financières

Article L. 211-38

I. - *A titre de garantie des obligations financières présentes ou futures mentionnées à l'article L. 211-36 les parties peuvent prévoir des remises en pleine propriété, opposables aux tiers sans formalités, d'instruments financiers, effets, créances, contrats ou sommes d'argent, ou la constitution de sûretés sur de tels biens ou droits, réalisables, même lorsque l'une des parties fait l'objet d'une des procédures prévues par le livre VI du code de commerce, ou d'une procédure judiciaire ou amiable équivalente sur le fondement d'un droit étranger, ou d'une procédure civile d'exécution ou de l'exercice d'un droit d'opposition.*

Les dettes et créances relatives à ces garanties et celles afférentes à ces obligations sont alors compensables conformément au I de l'article L. 211-36-1.

II. - *Lorsque les garanties mentionnées au I sont relatives aux obligations financières mentionnées aux 2° et 3° de l'article L. 211-36 :*

1° *La constitution de telles garanties et leur opposabilité ne sont subordonnées à aucune formalité. Elles résultent du transfert des biens et droits en cause, de la dépossession du constituant ou de leur contrôle par le bénéficiaire ou par une personne agissant pour son compte ;*

2° *L'identification des biens et droits en cause, leur transfert, la dépossession du constituant ou le contrôle par le bénéficiaire doivent pouvoir être attestés par écrit ;*

3° *La réalisation de telles garanties intervient à des conditions normales de marché, par compensation, appropriation ou vente, sans mise en demeure préalable, selon les modalités d'évaluation prévues par les parties dès lors que les obligations financières couvertes sont devenues exigibles.*

III. - *L'acte prévoyant la constitution des sûretés mentionnées au I peut définir les conditions dans lesquelles le bénéficiaire de ces sûretés peut utiliser ou aliéner les biens ou droits en cause, à charge pour lui de restituer au constituant des biens ou droits équivalents. Les sûretés concernées portent alors sur les biens ou droits équivalents ainsi restitués comme si elles avaient été constituées dès l'origine sur ces biens ou droits équivalents. Cet acte peut permettre au bénéficiaire de compenser sa dette de restitution des biens ou droits* *équivalents avec les obligations financières au titre desquelles les sûretés ont été constituées, lorsqu'elles sont devenues exigibles.*

Par biens ou droits équivalents, on entend :

1° Lorsqu'il s'agit d'espèces, une somme de même montant et dans la même monnaie ;

2° Lorsqu'il s'agit d'instruments financiers, des instruments financiers ayant le même émetteur ou débiteur, faisant partie de la même émission ou de la même catégorie, ayant la même valeur nominale, libellés dans la même monnaie et ayant la même désignation, ou d'autres actifs, lorsque les parties le prévoient, en cas de survenance d'un fait concernant ou affectant les instruments financiers constitués en sûreté.

Lorsqu'il s'agit d'autres biens ou droits que ceux mentionnés aux 1° et 2°, la restitution porte sur ces mêmes biens ou droits.

IV. - Les modalités de réalisation et de compensation des garanties mentionnées au I et des obligations mentionnées à l'article L. 211-36 sont opposables aux tiers. Toute réalisation ou compensation effectuée en raison d'une procédure civile d'exécution ou de l'exercice d'un droit d'opposition est réputée être intervenue avant cette procédure.

Article L. 211-39

Les droits ou obligations du constituant, du bénéficiaire ou de tout tiers relatifs aux garanties mentionnées au I de l'article L. 211-38 portant sur des titres financiers sont déterminés par la loi de l'Etat où est situé le compte dans lequel ces titres sont remis ou constitués en garantie.

Paragraphe III : Disposition commune

Article L. 211-40

Les dispositions du livre VI du code de commerce, ou celles régissant toutes procédures judiciaires ou amiables équivalentes ouvertes sur le fondement de droits étrangers, ne font pas obstacle à l'application des dispositions de la présente section."

Exhibit 2

Qualifying Parties under the French Netting Law

Under the new regime resulting from the Collateral Directive Ordinance, in order for the protection of the French Netting Law to be available, at least one of the parties to Qualifying Transactions must be a party referred to in Article L. 211-36 of the M&FC, i.e.:

(a) a credit institution ("*établissement de crédit*");

(b) an investment services provider ("*prestataire de services d'investissement*") which includes:

- an investment firm ("*entreprise d'investissement*");
- a credit institution authorised to provide investment services;

(c) a public establishment ("*établissement public*") which includes an *établissement public à caractère industriel et commercial* ("*EPIC*") and an *établissement public administratif* ("*EPA*");

(d) a local authority ("*collectivité territoriale*");

(e) an institution, firm or establishment referred to in Article L. 531-2 of the M&FC.

The following are within the scope of Article L. 531-2 of the M&FC:

1°

a) the State, the *Caisse de la dette publique* and the *Caisse d'amortissement de la dette sociale*;

b) the *Banque de France*;

c) the *Institut d'émission des départements d'outre-mer* and the *Institut d'émission d'outre-mer*;

2°

a) insurance and reinsurance companies governed by the French Insurance Code;

b) collective investment undertakings contemplated in Article L. 214-1 of the M&FC (i.e. undertakings for collective investment in transferable securities ("*organismes de placement collectif en valeurs mobilières*"), securitization entities ("*organismes de titrisation*"), real property investment partnerships ("*sociétés civiles de placement immobilier*"), forestry-linked saving companies ("*sociétés d'épargne forestière*"), real property collective investment undertakings ("*organismes de placement collectif immobilier*") and investment companies with fixed capital ("*sociétés d'investissement à capital fixe*"), as well as the companies entrusted with the management of collective investment undertakings contemplated in Article L. 214-1-I, 2° (securitization entities), 3° (real property investment partnerships) and 4° (forestry-linked saving companies) of the M&FC;

c) retirement institutions contemplated in Article L. 370-1 of the French Insurance Code in respect of the transactions contemplated in Article L. 370-2 of the said code, as well as legal entities managing retirement institutions contemplated in Article 8 of Order n° 2006-344 of March 23, 2006;

d) enterprises which solely supply investment services to (i) legal entities controlling such enterprises, (ii) legal entities which the latter control and (iii) legal entities which they control. For purposes of this paragraph d), "control" means a direct or indirect control within the meaning of Article L. 233-3 of the French Commercial Code;

e) enterprises whose investment services activities are restricted to the management of an employee savings system;

f) enterprises whose activities are restricted to operations referred to in paragraph d) and e) above;

g) persons who supply the service of investment advice or the service of reception and transmission of orders for third parties on an ancillary basis and in connection with a non-financial professional activity or a chartered accountant activity, to the extent that such activity is governed by legislative or regulatory provisions or a code of good conduct approved by a public authority which do not prohibit the performance of such services;

h) (deleted)

i) persons who do not provide any investment services or activities other than the service of dealing on own account unless such persons are market makers ("*teneurs de marché*) or deal on own account in an organised, frequent and systematic manner outside a regulated market or a multilateral trading facility, by providing a service accessible to third parties in order to enter into negotiation with such third parties. For purposes of this paragraph i), a "market maker" is a person operating in a continuous manner on financial markets in order to deal on own account and buying and selling financial instruments by using its own funds at prices determined by it;

j) persons dealing on own account in financial instruments, or providing investment services relating forward contracts on commodities or other forward contracts, as specified in a decree, to the clients of their main business, provided that this is an ancillary activity to their main business, when such main business is considered on a group basis within the meaning of Article L. 511-20 III of the M&FC, and that main business is not the provision of investment services or the carrying out of banking operations, or the provision of means of payment;

k) financial investment advisers, under the conditions and within the limits contemplated in Chapter I of Title IV of the M&FC;

l) persons other than financial investment advisers, providing investment advice in the course of providing another professional activity not covered by Title III of Book V of the M&FC, provided that the provision of such advice is not specifically remunerated;

m) persons whose main business consists of dealing on own account in commodities and/or commodity derivatives, except in the case where such persons are part of a group within the meaning of Article L. 511-20 III of the M&FC, the main business of which is the provision of other investment services or the carrying out of banking operations or the provision of means of payment;

n) enterprises which provide investment services consisting exclusively in dealing on own account on markets in forward financial instruments or on cash markets for the sole purpose of hedging positions on derivatives markets, or which deal for the account of other members of those markets or make prices for them, and which are guaranteed by a participant of a clearing house, when such participant may be held liable in respect of the agreements entered into by such enterprises;

(f) a clearing house ("*chambre de compensation*");

(g) a non-resident establishment with a comparable status[72]; or

(h) an international financial organisation or body which France or the European Community is member of.

As indicated in paragraph 3.1.1.2 of this Opinion, the French Netting Law is applicable to financial obligations resulting either (i) from transactions on financial instruments, when only one of the parties to such transactions is a Qualifying Party, or (ii) from any contract giving a right to cash settlement or to delivery of financial instruments, if both parties to such contracts are Qualifying Parties other than those referred to in paragraphs (c) through (n) of paragraph (e), 2° above.

72 Foreign investment providers carrying out their activities in France under the European Passport, either by way of a branch or under the principle of freedom to provide services, are Qualifying Parties.

Exhibit 3

Types of Proceedings - General Insolvency Issues

French insolvency law, which is part of Book VI of the French Commercial Code, has been substantially amended by the *Loi de Sauvegarde des Entreprises* dated 26 July 2005 (the "**Safeguard Law**") which became effective as of January 1, 2006. References in this Opinion to articles of the French Commercial Code are references to the French Commercial Code as so amended.

1. Insolvency Proceedings under the Insolvency Law

The only insolvency, composition or reorganisation proceedings to which a French counterparty may become subject in the French Republic are the safeguard proceeding ("*procédure de sauvegarde*") ("**Safeguard Proceeding**"), judicial reorganisation ("*redressement judiciaire*") ("**Judicial Reorganisation Proceeding**") and judicial liquidation ("*liquidation judiciaire*") ("**Judicial Liquidation Proceeding**") governed by Titles II, III and IV of Book VI of the French Commercial Code and implementing decrees n° 85-1388 of December 27, 1985 (as amended) and n° 2005-1677 of December 28, 2005 and decree n° 2009-160 of February 12, 2009. Pursuant to the new safeguard bill n°2010-1249 of October 22, 2010, as of March 1, 2011, the judicial reorganization proceeding, the judicial liquidation proceeding and the safeguard proceeding will be supplemented by an "accelerated financial safeguard procedure" ("*sauvegarde financière accélérée*") ("**Accelerated Financial Safeguard Proceeding**") and implementing decree n°2011-236 of March 3, 2011.

These proceedings are collectively referred to as "**Insolvency Proceedings**".

2. Conciliation Proceedings

In addition to Insolvency Proceedings, a French counterparty may become subject in the French Republic to *ad hoc* proceedings[73] and conciliation proceedings ("*procédure de conciliation*") (the "**Conciliation Proceedings**") which are governed by Articles L. 611-1 through L. 611-15 of Title I of Book VI of the French Commercial Code[74].

Book VI of the French Commercial Code together with decree n°2011-236 of March 3, 2011, decree n° 2009-160 of February 12, 2009, decree n° 2005-1677 dated December 28, 2005

73 Under this procedure, a "*mandataire ad hoc*" is designated by the president of the Commercial Court at the request of the debtor. This proceeding is totally confidential and does not seem to be covered as an Event of Default under the Agreements.

74 Pursuant to Article 165 I of the Safeguard Law, any reference in any law or regulation to a "*règlement amiable*" (amicable settlement) proceeding is substituted by a reference to "*procédure de conciliation*" (conciliation proceeding).

and decree 85-1388 of December 27, 1985 (as amended) are hereinafter collectively referred to as the "**Insolvency Law**".

3. Proceedings under the M&FC

Credit institutions established in France are subject to the supervision and control of the *Autorité de contrôle prudentiel* (previously named "*Commission Bancaire*") (the "**ACP**"). **The ACP combines the former** *Comité des Etablissements de Crédit et des Entreprises d'Investissement*, **the *Commission Bancaire*,** the *Autorité de Contrôle des assurances et des mutuelles* and the *Comité des entreprises d'Assurance.*

Pursuant to Article L. 612-1 and L. 612-2 of the M&FC, the ACP is also entrusted with the responsibility to ensure compliance by investment services providers (other than "*sociétés de gestion de portefeuille*", i.e. asset management companies), by members of regulated markets, by participants in clearing houses and by entities authorised to conduct activities related to custody and administration of financial instruments, with legal and regulatory requirements contemplated under the M&FC or under such laws and regulations which otherwise specifically provide for such responsibility.

Non-compliance with such requirements is sanctioned in accordance with the provisions of Article L. 612-39 of the M&FC[75]. Such supervisory responsibility is in respect of investment service providers also subject to the supervision exercised by the *Autorité des marchés financiers* regarding compliance with conduct of business rules.

Under Article L. 612-34 of the M&FC, the ACP may, *inter alia*, designate a provisional administrator ("*administrateur provisoire*") either at the request of the directors of the financial institution (i.e. an entity mentioned in the preceding paragraph) concerned or upon its own initiative when the management of the relevant financial institution cannot be pursued under normal conditions or when certain key executive officers were temporary suspended.

Such provisional administrator shall manage the activities of the financial institution concerned.

The ACP may also designate a liquidator ("*liquidateur*") for a financial institution which has been deleted from the list of credit institutions or investment firms, or when the relevant enterprise carries out banking operations illegally[76]. Such provisional administrator or liquidator may also declare the financial institution's insolvency, if need be, as such administrator or liquidator, as the case may be, is entrusted with all powers of administration, management and representation of the relevant legal entity.

75 Sanctions referred to in Article L. 613-39 of the M&FC include *inter alia* a warning, a blame, a prohibition to carry out certain operations, deletion from the list of credit institutions or investment firms, suspension or resignation of certain key executive officers, monetary sanctions ...

76 See Article L. 613-24 of the M&FC.

4. Proceedings under the French Insurance Code

Provisions similar to the ones described above apply in respect of insurance companies. The ACP (previously named *Autorité de contôle des assurances et des mutuelles*) which is the supervisory authority in respect of insurance companies[77] licensed as such in the French Republic, may *inter alia* designate one provisional administrator ("*administrateur provisoire*") entrusted with the same powers as the provisional administrator described above[78].

Such provisional administrator shall manage the activities of the insurance company concerned.

5. Filing of Insolvency Proceedings

5.1. Procedural issues

French Insolvency Proceedings are initiated with a judgement admitting the debtor to the benefit of the Safeguard Proceeding or otherwise declaring a debtor insolvent and opening a Judicial Reorganisation Proceeding or a Judicial Liquidation Proceeding (the "**Bankruptcy Judgement**").

The court, which has territorial jurisdiction to hear Insolvency Proceedings matters, is the court having jurisdiction in the place where the debtor has its head office (Article R. 600-1 of the French Code of Commerce).

Pursuant to the French Insolvency Law, a Bankruptcy Judgment ordering the commencement of Judicial Reorganization Proceeding or Judicial Liquidation Proceeding (an "**Insolvency Order**") specifies the date on which the Insolvency (*cessation des paiements*) (i.e. that a debtor is unable to meet current liabilities out of current assets) of an insolvent debtor occurred (the "**Insolvency Date**"), such date being the date determined by the court issuing the Insolvency Order as at the date on which such insolvent debtor became unable to meet its current liabilities out of its current assets. In respect of a credit institution, this is the date at which such credit institution became unable to meet its payments due immediately or in the short-term (*à terme rapproché*). The Insolvency Date (i) may not be earlier than 18 months prior to the date of the Insolvency Order and (ii) if not specified in the Insolvency Order, is deemed to be the date on which the Insolvency Order is rendered (the period between the Insolvency Date and the Bankruptcy Judgment being the "**Suspect Period**").

77 Entities such as insurance or reinsurance companies, mutual insurance companies, pension funds or supplementary pension institutions are under the supervision of the *Autorité de Contrôle Prudentiel* (previously named *Autorité de contrôle des assurances et des mutuelles).*

78 See Article L. 612-34 of the M&FC.

5.1.1. Safeguard Proceedings ("*procédure de sauvegarde*")[79]

Pursuant to the provisions of Articles L. 620-1 and following of the French Commercial Code which, pursuant to the Safeguard Law, became effective on January 1, 2006, a new proceeding entitled "*procédure de sauvegarde*" has been introduced.

The opening of a Safeguard Proceeding is ordered at the request of the insolvent debtor.

Such proceeding is available on demand to a debtor justifying the existence of difficulties which it is unable to overcome and which may lead to its insolvency.

Such proceedings are aimed at facilitating the reorganisation of the enterprise leading to the continuation of its business, jobs preservation and discharge of its liabilities.

A Safeguard Proceeding is a proceeding leading towards a reorganisation phase approved by a judgement following an appraisal period and, if need be, the creation of two creditors committees pursuant to the provisions of Articles L. 626-29 and L. 626-30 of the French Commercial Code. During the appraisal period, the debtor remains in possession as it

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79 The amicable proceedings have been renamed Conciliation Proceedings and a Safeguard Proceeding has been introduced pursuant to the "*Loi de Sauvegarde des Entreprises*" which was promulgated on July 27, 2005 as law n° 2005-845 and became effective on January 1, 2006 (the "**Safeguard Law**"). The implementing decree of the Safeguard Law is decree n° 2005-1677 dated December 28, 2005. While the occurrence of an amicable settlement proceeding is contemplated as an Event of Default under the Agreement, the question arises as to whether Conciliation Proceedings [i.e. Composition Proceeding – "*procédure de conciliation*"] are covered under the concept of amicable settlement proceedings used under the AFB Master Agreement and the 2001 FBF Master Agreement. A further question arises as to whether the "*procédure de sauvegarde*" is covered under circumstances where the occurrence of "*redressement judiciaire*", "*liquidation judiciaire*" or any other equivalent proceedings constitute an Event of Default under the AFB Master Agreement and the 2001 FBF Master Agreement. Specific reference to Conciliation Proceeding and to the "*procédure de sauvegarde*" is made in the 2007 FBF Master Agreement.

We believe that the language "or any equivalent proceedings" used in the definition of events or default should capture the "*procédure de sauvegarde*" and the "*procédure de conciliation*" the occurrence of which would constitute an Event of Default under the AFB Master Agreement and the 2001 FBF Master Agreement. Our views are supported by (i) legislative history of the Safeguard Law which refers to the lawmakers' intention to consider that such new proceedings should be seen as equivalent to current ones, (ii) Article 165-I of the such law which provides that any reference in any law or regulation to a "*règlement amiable*" is substituted by a reference to a "*procédure de conciliation*", and (iii) Article 165-II of such law which provides that any reference in any legislative or regulatory provision other than those of Book VI of the French Commercial Code (Book VI of the French Commercial Code relates to insolvency) to a judicial reorganisation proceeding ("*redressement judiciaire*") is substituted by a reference to a "*procédure de sauvegarde ou de redressement judiciaire*".

It may further be noted that the consensus view which seems to be emerging within the *Fédération Bancaire Française* is that, in view of the above, the introduction of the two new insolvency related proceedings does not require, at this stage, a modification of the AFB Master Agreement and the 2001 FBF Master Agreement in respect of the master agreements which are currently in place. The standard form of 2007 FBF Master Agreement contains a reference to the "*procédure de conciliation*" and the "*procédure de sauvegarde*". Within that framework, clarification language in respect of the insolvency-related events of default of the AFB Master Agreement and the 2001 FBF Master Agreement may be considered.

continues to be administered by its managers (*dirigeants*). The Bankruptcy Judgement may, however, appoint one or more judicial administrators ("*administrateur judiciaire*") whose duties are to monitor the debtor in respect of its management or to otherwise assist the debtor in any managerial acts.

The Accelerated Financial Safeguard Procedure will allow a debtor to reach a voluntary restructuring agreement with its primary financial creditors (financial institutions and bond holders). This procedure will enable a debtor to move from the conciliation procedure into the accelerated safeguard procedure when it proves to the Commercial Court that the restructuring plan (i) ensures the continuity of the company and (ii) has a good chance of being approved, within a short period of time (as set forth below). The restructuring plan must be adopted by a majority of two-thirds of the claims in the committee (consisting of banks and financial institutions) and in the bondholders' general meeting, if any. This procedure is shorter than the ordinary safeguard procedure and shall last one month from the opening of the procedure with a possible extension of one further month only.

5.1.2 Judicial Reorganisation Proceedings ("*redressement judiciaire*") and Judicial Liquidation Proceedings ("*liquidation judiciaire*")

Under Article L. 631-4 and Article L. 640-4 of the French Commercial Code, the opening of Judicial Reorganisation Proceedings or Judicial Liquidation Proceedings, as the case may be, is to be requested by the insolvent debtor within 45 days of the date of Insolvency ("*cessation des paiements*"), provided it has not applied for the opening of Conciliation Proceedings within that period.

The Commercial Court has also jurisdiction to order Judicial Reorganisation Proceedings or Judicial Liquidation Proceedings upon its own initiative or at the request of the public prosecutor or a creditor.

It is important to note that pursuant to Article 3.1 of Council Regulation (EC) n° 1346/2000 of May 29, 2000 on insolvency proceedings (the "**Insolvency Proceedings Regulation**") which came into force on May 31, 2002, the courts of the member State of the European Union (a "**Member State**") within the territory of which the centre of a debtor's main interests is situated have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary[80].

[80] It is important to note that Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, is not participating in the adoption of the Insolvency Proceedings Regulation and is therefore not bound by it nor subject to its application.

In a decision dated May 2, 2006 (decision n° C-341/04), the European Court of Justice ruled that:

- where a debtor is a subsidiary company whose registered office and that of its parent company are situated in two different Member States, the presumption laid down in the second sentence of Article 3(1) of the Insolvency Proceedings Regulation, whereby the centre of main interests of that subsidiary is situated in the Member State where its registered office is situated, can be rebutted only if factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exists which is different from that which location at that registered office is deemed to reflect. That could be so in particular in the case of a company not carrying out any business in the territory of the Member State in which its registered office is

Article 3.2 of the Insolvency Proceedings Regulation provides that where the centre of a debtor's main interests is situated within the territory of a Member State, the courts of another Member State have jurisdiction to open insolvency proceedings (i.e. secondary proceedings) against that debtor only if he possesses an establishment within the territory of that other Member State[81].

Pursuant to Article 29 of the Insolvency Proceedings Regulation, the opening of secondary proceedings may be requested by (a) the liquidator[82] in the main proceedings or (b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary proceedings is requested. The provisions of Article 29 may be applicable for instance in a situation where a company located in a Member State other than France would be subject to a main insolvency proceeding in such Member State and the liquidator in such main proceeding would require that secondary proceedings be opened in France.

The Insolvency Proceedings Regulation does not apply to insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving holding of funds or securities for third parties or to collective investment undertakings. The Insolvency Proceedings Regulation provides in this respect that such undertakings are subject to special arrangements and, to some extent, the national supervisory authorities have extremely wide-ranging powers of intervention (see in this respect paragraphs 3 and 4 above and 5.2 and 5.3 below).

As far as the insolvency proceedings concerning credit institutions are concerned, the European Parliament and the Council of the European Union adopted on April 4, 2001 the Directive 2001/24/EC on the reorganisation and winding up of credit institutions (the

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situated. By contrast, where a company carries on its business in the territory of the Member State where its registered office is situated, the mere fact that its economic choices are or can be controlled by a parent company in another Member State is not enough to rebut the presumption laid down by that Regulation. This decision has been confirmed by the Commercial Court of Paris on August 2, 2006 (D. 2006, n° 33, 2329);

- the main insolvency proceedings opened by a court of a Member State must be recognised by the courts of the other Member States, without the latter being able to review the jurisdiction of the court of the opening State. If an interested party, taking the view that the centre of the debtor's main interests is situated in a Member State other than that in which the main insolvency proceedings were opened, wishes to challenge the jurisdiction assumed by the court which opened those proceedings, it may use, before the courts of the Member State in which they were opened, the remedies prescribed by the national law of that Member State against the opening decision. This decision has been confirmed by the French Supreme Court (Cass. Com. June 27, 2006, Bull. IV, n° 149).

81 According to Article 3.3 of the Insolvency Proceedings Regulation, such secondary proceedings must be liquidation proceedings. As far as French law is concerned, French courts would open Liquidation Proceedings (see in this respect Annex B to the Insolvency Proceedings Regulation, as modified by Regulation 694/2006 of 27 April 2006 amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to the Insolvency Proceedings Regulation).

82 Pursuant to the Insolvency Proceedings Regulation, the liquidator is defined as any person or body whose function is to administer or liquidate assets of which the debtor has been divested or to supervise the administration of his affairs.

"**Directive on the Insolvency of Credit Institutions**"). Such Directive has been implemented into French law by ordinance n° 2004-1127 of October 21, 2004, as ratified by law n° 2004-1343 of December 9, 2004.

As to the insolvency proceedings concerning insurance undertakings, the European Parliament and the Council of the European Union adopted on March 19, 2001 the Directive 2001/17/EC on the reorganisation and winding up of insurance undertakings (the "**Directive on the Insolvency of Insurance Undertakings**"). Such Directive has been implemented into French law by ordinance n° 2004-504 of June 7, 2004, as ratified by law n° 2004-1343 of December 9, 2004.

5.2. Special consideration applicable to credit institutions and investment firms

Under Article L. 613-27 of the M&FC, a Safeguard Proceeding[83], a Judicial Reorganisation Proceeding or a Judicial Liquidation Proceeding may only be opened against a credit institution or an investment firm by a Commercial Court having jurisdiction following advice by the ACP which is the supervisory authority for credit institutions and investment firms.

Likewise, a Conciliation Proceeding may only be opened against a credit institution or an investment firm following the advice of the ACP.

Articles R.613-14 and following of the M&FC have set the mode under which such advice is to be given.

It follows from the above that French banking supervisory authorities should have adequate advance warning of the difficulties encountered by a French counterparty to the master agreement which is either a credit institution or an investment firm in this Jurisdiction.

Under the provisions introduced into the M&FC as a result of the implementation into French law of the Directive on the Insolvency of Credit Institutions, the following principles should be noted:

- Article L. 613-31-3 of the M&FC, implementing Article 3.1 of the Directive on the Insolvency of Credit Institutions, has confirmed[84] the principle of the universality of the estate. Article L. 613-31-3 of the M&FC provides indeed that subject to the provisions of Articles L. 613-31-5 and L. 613-31-6 of the M&FC[85] (see below), French authorities are the sole authorities empowered to decide on the implementation of reorganisation

83 Pursuant to the provisions of Article 165 of the Safeguard Law, any reference in any law or regulation (other than those of Book VI of the French Commercial Code) to a "*redressement judiciaire*" (Judicial Reorganisation Proceeding) is substituted by a reference to a "*procédure de sauvegarde ou de redressement judiciaire*" (Safeguard Proceeding or Judicial Reorganisation Proceeding).

84 The principle of the universality of the estate was recognised by French courts prior to the adoption of the Directive on the Insolvency of Credit Institutions. Such principle has been confirmed by the French Supreme Court in its decisions dated November 19, 2002 (Cass. 1ère Civ., Bull. I, n° 275) and March 21, 2006 (Cass. Com, Bull. IV, n° 74).

85 Articles L. 613-31-5 and L. 613-31-6 of the M&FC contain a special conflict of laws rule for certain agreements such as netting agreements or agreements relating to temporary transfers of full title to financial instruments or set-off.

and winding up measures in a credit institution licensed in France (including branches established in other Member States or in member States of the European Economic Area) or in a branch in France of a credit institution whose head office is located outside of the European Economic Area. Such measures are effective on the territory

of the other Member States including against third parties in such Member States (Article L. 613-31-3 of the M&FC).

Although the French implementing legislation of Article 3.2 of the Directive on the Insolvency of Credit Institutions has not specified or stated that such measures shall be applied in accordance with laws, regulations and procedures applicable in the home Member State[86], the prevailing view is, however, that Article L. 613-31-3 of the M&FC, which provides that the reorganisation and winding up measures shall be fully effective on the territory of the other Member States including as against the third parties in such Member States, should be interpreted in light of Article 3.2 of the Directive on the Insolvency of Credit Institutions[87]. As indicated above, French case law has supported the principle of the universality of the estate.

Furthermore, the court which has territorial jurisdiction to hear Insolvency Proceedings matters is the court having jurisdiction in the place where the debtor has its head office (Article R. 600-1 of the French Code of Commerce).

- Article L. 613-31-5 of the M&FC implementing Articles 25 through 27 of the Directive on the Insolvency of Credit Institutions, provides that as an exemption to the provisions of Article L. 613-31-3, the effects of a reorganisation or liquidation measure over *inter alia* netting agreements ("*conventions de compensation*"), agreements relating to temporary transfers of full title to financial instruments ("*conventions portant cession temporaire d'instruments financiers*") and transactions carried out on a regulated market, shall be governed solely by the law of the country which governs such agreements. Article L. 613-31-5 of the M&FC thus contains a special conflict of laws rule applicable in particular in respect of netting agreements and agreements relating to temporary transfers of full title to financial instruments.

  Although it is difficult in the absence of case law in this respect to express with certainty an opinion of the interpretation to be given to the special conflict of laws rule provided by the combination of Articles L. 613-31-3 and L. 613-31-5 of the M&FC, the provisions of such Articles should be analyzed as meaning that in the event a credit institution incorporated in France is subject to reorganisation or liquidation measures,

[86] Article 3.2 of the Directive on the Insolvency of Credit Institutions provides that the reorganisation measures shall be applied in accordance with the laws, regulations and procedures applicable in the Home Member State, unless otherwise provided in the Directive. They shall be fully effective in accordance with the legislation of that Member State throughout the Community without any further formalities, including as against third parties in other Member States, even where the rules of the host Member State applicable to them do not provide for such measures or make their implementation subject to conditions which are not fulfilled. The reorganisation measures shall be effective throughout the Community once they become effective in the Member State where they have been taken.

[87] David Robine : "*Transposition de la directive assainissement et liquidation des établissements de crédit, Ordonnance du 21 octobre 2004*", Dalloz, 2004, n° 44, p. 3202.

the effects of such measures shall be as contemplated under the law governing such agreements as this rule is also an exception to the rule that in respect of credit incorporated in the French Republic which is subject to reorganization or liquidation measures shall be fully affective on the security of the Member States.

- pursuant to Article L. 613-31-6 of the M&FC implementing Article 23 of the Directive on the Insolvency of Credit Institutions, the adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim. This rule is also an exception to the rule that in respect of credit incorporated in the French Republic which is subject to reorganization or liquidation measures shall be fully affective on the security of the Member States.

5.3. Special considerations applicable to insurance companies

As regards insurance companies, it should be noted that Article L. 310-25 of the French Insurance Code provides that a Safeguard Proceeding[88], a Judicial Reorganisation Proceeding or a Judicial Liquidation Proceeding may be opened against an insurance company only at the request ("*à la requête*") of the *Autorité de contrôle prudentiel (*previously named *Autorité de contrôle des assurances et des mutuelles*).

Furthermore, such proceedings may also be opened by a Commercial Court having jurisdiction, either at its own initiative or upon request of the public prosecutor, following conforming advice ("*avis conforme*") by the of the *Autorité de contrôle prudentiel (*previously named *Autorité de contrôle des assurances et des mutuelles*).

Similar provisions apply in respect of Conciliation Proceedings.

From the above, it appears that the of the *Autorité de contrôle prudentiel (*previously named *Autorité de contrôle des assurances et des mutuelles*) should have advance warning in respect of a party to a master agreement who has become insolvent to the extent such party is an insurance company.

Under the provisions introduced into the French Insurance Code as a result of the implementation into French law of the Directive on the Insolvency of Insurance Undertakings, the following principles should be noted:

- Paragraph 1 of Article L. 326-20 of the French Insurance Code[89] provides in particular that, unless otherwise provided for in Articles L. 326-21 to 326-29 of the French Insurance Code, reorganisation measures defined in Article L. 323-8 of the French Insurance Code and decisions concerning the opening of winding-up proceedings

88 Pursuant to the provisions of Article 165 of the Safeguard Law, any reference in any law or regulation (other than those of Book VI of the French Commercial Code) to a "*redressement judiciaire*" (Judicial Reorganisation Proceeding) is substituted by a reference to a "*procédure de sauvegarde ou de redressement judiciaire*" (Safeguard Proceeding or Judicial Reorganisation Proceeding).

89 Article L. 326-20 of the French Insurance Code has been incorporated in the French Insurance Code by ordinance n° 2004-504 of June 7, 2004 implementing the Directive on the Insolvency of Insurance Undertakings into French law.

taken by the competent authorities of a Member State of the European Community other than the French Republic against an insurance company whose head office is situated within the territory of such State shall be fully effective within the territory of the French Republic without any further formalities, including as against third parties, once they become effective in the Member State where they have been taken. Such provisions also apply when reorganisation measures or decisions concerning the opening of winding-up proceedings are taken against a branch of an insurance company whose head office is situated outside the European Community;

- Paragraph 3 of Article L. 326-20 contains the same principle in respect of reorganisation measures and decisions concerning the opening of winding-up proceedings taken by the competent French public authority against (i) an authorised company whose head office is situated in the French Republic or (ii) an authorised branch validly established in the French Republic of a company whose head office is outside the European Community;
- Article L. 326-25 of the French Insurance Code contains a special conflict of laws rule for set-off similar to that of Article L. 613-31-6 of the M&FC in respect of credit institutions.

5.4. Bankruptcy Judgement

The Bankruptcy Judgement designates *inter alia* a judicial administrator ("*administrateur judiciaire*") and a representative of the creditors ("*mandataire judiciaire*"), and defines the scope of the judicial administrator's duties. The Bankruptcy Judgement further designates a court-appointed judge ("*juge commissaire*") under whose supervision Insolvency Proceedings are conducted in order to ensure compliance thereof with the statutory requirements of the Insolvency Law.

The court-appointed judge ("*juge commissaire*") may further designate up to five controllers ("*contrôleurs*") among the creditors requesting such appointment. Such controllers' duty is to assist the representative of the creditors ("*mandataire judiciaire*") and the court-appointed judge ("*juge commissaire*") in the performance of their respective duties.

The Bankruptcy Judgement (except in the case of a Safeguard Proceeding) also determines the date upon which the debtor has become insolvent. The date of insolvency ("*date de cessation des paiements*") is the date upon which the debtor has been unable to meet its current liabilities[90] out of its current assets as determined by the court. Such date may be set at a date up to eighteen (18) months prior to the date of the Bankruptcy Judgement (the period between these two dates then being the "**Suspect Period**"). In case of Conciliation Proceedings, such date may not be earlier than the date of the court order confirming the amicable agreement.

90 The French Supreme Court (Cass. Com., April 28, 1998, D. Affaires, 1998, 1487) has held in this respect that the debtor's liabilities must be due and effectively requested ("*passif exigible et exigé*") by the relevant creditor. This extended principle has not been retained by the Safeguard Law.

A special insolvency test related to credit institutions is provided for under Article L. 613-26 of the M&FC and is defined as the inability to meet payments either immediately or in the immediate future ("*à terme rapproché*").

French courts apply the principle of universality of the estate to the extent that the court having jurisdiction in bankruptcy matters would have jurisdiction over all the assets of the debtor wherever located, whether in France or abroad.

Insolvency Proceedings would extend to branches operating outside of France[91].

The Insolvency Proceedings Regulation[92] has adopted the principle of the universality of the estate subject, however, to the possibility to open secondary proceedings.

Article L. 613-31-3 of the M&FC, implementing Article 3.1 of the Directive on the Insolvency of Credit Institutions, has also adopted the principle of the universality of the estate. As indicated in paragraph 5.2 above, Article L. 613-31-3 provides indeed that, subject to the provisions of Articles L. 613-31-5 and L. 613-31-6 of the M&FC, French authorities are the sole authorities empowered to decide on the implementation of reorganisation and winding up measures in a credit institution licensed in France, including branches established in other Member States or in member States of the European Economic Area. Such measures are effective on the territory of the other Member States including against third parties in such Member States.

Provisions similar to those described above in respect of the insolvency of credit institutions have been provided for under Articles L. 326-20 and following of the French Insurance Code in respect of insurance companies.

French courts would also have jurisdiction in insolvency matters in respect of a French branch of a party to the master agreement incorporated or organised outside the French Republic under the following circumstances:

(a) The foreign entity is a debtor whose centre of main interests[93] is situated within the territory of a Member State (other than the French Republic) of the European Union and is subject to the provisions of the Insolvency Proceedings Regulation.

Article 16.1 of the Insolvency Proceedings Regulation provides that any judgement opening insolvency proceedings handed down by a court of a Member State which has jurisdiction shall be recognised in all other Member States from the time it becomes effective in the State of the opening of proceedings (i.e. the main proceedings). Article 16.2 of the Insolvency Proceedings Regulation further provides that the recognition of the opening of main insolvency proceedings does not preclude

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91 Cass. Req. April 18 and 24, 1932, Gaz. Pal. 1932, 2, 147. *See also Arlette Martin-Serf: "La faillite internationale : une réalité économique pressante, un enchevêtrement juridique croissant", JDI 1995-1, p. 31.*

92 The Insolvency Proceedings Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of his main interests. These proceedings have universal scope and aim at encompassing all the debtor's assets. However, to protect the diversity of interests, the Insolvency Proceedings Regulation permits secondary proceedings to be opened to run in parallel with the main proceedings. Secondary proceedings may be opened in the Member State where the debtor has an establishment.

93 Pursuant to Article 3.1 of the Insolvency Proceedings Regulation, in the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary.

the opening of territorial insolvency proceedings by a court in another Member State. Such latter proceedings shall be secondary proceedings.

Article 3.2 of the Insolvency Proceedings Regulation provides in this respect that where the centre of a debtor's main interests is situated within the territory of a Member State, the courts of another Member State have jurisdiction to open insolvency proceedings against that debtor only if he possesses an establishment within the territory of that other Member State. The effect of those proceedings (i.e. secondary proceedings) is restricted to the assets of the debtor situated in the territory of the latter Member State.

Article 3.4 of the Insolvency Proceedings Regulation further provides that secondary proceedings may be opened prior to the opening of main insolvency proceedings only:

(i) where main insolvency proceedings cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or

(ii) where the opening of territorial insolvency proceedings is requested by a creditor who has his domicile, habitual residence or registered office in the Member State within the territory of which the establishment is situated, or whose claim arises from the operation of that establishment.

As indicated above (see paragraph 5.1), the Insolvency Proceedings Regulation does not apply to insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving holding of funds or securities for third parties or to collective investment undertakings.

(b) The foreign entity is (i) a debtor (other than a credit institution or an insurance undertaking) whose head office is situated within the territory of a Member State of the European Union but is not subject to the provisions of the Insolvency Proceedings Regulation or (ii) a debtor (including a credit institution or an insurance company) whose centre of main interests or head office is situated outside the European Economic Area or, as the case may be, the European Union.

Article R. 600-1 of the French Code of Commerce determines the jurisdiction of French courts in respect of a French branch of a foreign entity.

A French court has, pursuant to such article, jurisdiction in bankruptcy matters in respect of the principal centre of interest in France ("*le centre principal de ses intérêts en France*") of an entity whose head office is outside the territory of the French Republic.

In the absence of exequatur in France, or of a treaty between France and the home jurisdiction, a foreign bankruptcy judgement has no binding effect in France and is not enforceable. It has limited effect, however, in that, for instance, a French court would take into account the foreign bankruptcy judgement in order to determine the powers of the insolvency representative in the home country to represent the insolvent party in France as its authorised representative[94]. In such capacity, such foreign insolvency representative may intervene in proceedings in France and file appeals with respect to French judgements.

94 Cass. Com., April 11, 1995, Bull. Civ. IV n° 126 – *the so-called BCCI case*.

Such proceedings in France would be considered as local proceedings in France and the Bankruptcy Judgement would most likely be limited to the sole assets of the debtor located in France[95]. This was the case for the BCCI matter wherein the court specifically restricted its jurisdiction to the local branches of BCCI in France.

As far as credit institutions are concerned, Article L. 613-31-3-2° of the M&FC provides in particular that, subject to the provisions of Articles L. 613-31-5 and L. 613-31-6 of the M&FC, **French authorities are the sole authorities empowered to decide on the implementation of reorganisation and winding up measures in a branch in France of a credit institution whose head office is located outside of the European Economic Area**. Such measures are fully effective on the territory of the other Member States including against third parties in such Member States.

In respect of insurance undertakings, paragraph 3 of Article L. 326-20 of the French Insurance Code provides in particular that reorganisation measures and decisions concerning the opening of winding-up proceedings **taken by the competent French public authority against** [...] **an authorised branch validly established in the French Republic of a company whose head office is outside the European Community** shall be fully effective within the territory of all other Member States of the European Community, unless otherwise provided for under the laws of such Member States, as provided for by the Directive on the Insolvency of Insurance Undertakings.

6. Conciliation Proceedings

Only companies exposed to financial or economic difficulties or, as the case may be, insolvent for less than 45 days are eligible to such Conciliation Proceedings which are otherwise not available to insolvent companies (see paragraph 5.4 above for the definition of insolvency).

It should be noted that, unlike under the former "*règlement amiable*" regime, the President of the Commercial Court may not order a temporary stay in order to facilitate the conclusion of a conciliation. Such stay may now only be ordered upon ratification by the Commercial Court of the conciliation which has been reached by the debtor and its main creditors.

In view of the need to involve the main creditors of the debtor in the negotiation process inherent to such Conciliation Proceedings, we believe that it would not be practical for those proceedings to be applied to a credit institution, an investment firm or an insurance company, which are subject to the supervision of the ACP which is likely to appoint a provisional administrator when difficulties arise.

95 See Michel Vasseur sub. Court of Appeals of Paris, July 8, 1992, Dalloz 1992, p. 476.

7. Effects of the Bankruptcy Judgement

7.1. The Bankruptcy Judgement results in a stay

In case of a Bankruptcy Judgement ordering an Insolvency Proceeding, all creditors whose debts arose before the Bankruptcy Judgement are barred from enforcing their rights against the debtor (Articles L. 622-21, L. 631-14 and L. 641-3 of the French Commercial Code) subject to very few exceptions. Pursuant to Article L. 622-28 of the French Commercial Code interest ceases to accrue as of the date of the Bankruptcy Judgement. This applies to contractual and statutory rates of interest including penalty interest and increase in rates of interest except in case of interest accruing on loans with a maturity of one year or more or in respect of deferred payment terms contracts with a maturity of one year or more.

7.2. Prohibition of discharge of pre-Bankruptcy Judgement claims

Article L. 622-7 of the French Commercial Code provides that the issuance of the Bankruptcy Judgement has the effect of preventing any payment of any debt arisen prior to the Bankruptcy Judgement, except in respect of set-off on account of connected claims.

The French Supreme Court has held that obligations were connected when resulting from one contract or when carried out pursuant to one and the same contract which has defined the framework of the business relationship of the parties such as a master agreement, as recognised by the decision of the *Cour de Cassation* of December 12, 1995[96] or when, in the absence of a master agreement, the obligations are carried out pursuant to different contracts which constitute a single global contractual arrangement[97], as contemplated by four decisions

96 Cass. Com. December 12, 1995, Bull. Civ. IV n°293.

97 See in this respect, Rapport de la Cour de Cassation 1995 : "A propos de la compensation entre dettes connexes", Etude de M. Henri Le Dauphin, Conseiller Référendaire à la Cour de Cassation, p. 163.

In three decisions (Guibout ès qual c/ CRCAM d'Anjou-Mayenne, JCP E 1998 n° 6, page 205) each dated December 9, 1997, the French Supreme Court further developed its position in respect of contractual set-off on account of connected claims. From such cases, it appears that the French Supreme Court continues to emphasize the need to demonstrate the existence of a single contractual relationship, agreed upon prior to the Suspect Period, which is not merely artificial but whereunder obligations have been discharged in the ordinary course of business through set-off prior to insolvency. In a decision dated October 26, 1999 (RJDA 2000, n° 46), the French Supreme Court held that the prohibition to pay any debt arisen prior to the Bankruptcy Judgement does not prevent the set-off of connected claims provided that the parties have not intentionally created this connexity. Furthermore, in a decision dated June 4, 2003 (Cass. 3e Civ., Revue de Droit Bancaire et Financier, n° 5 – September/October 2003, n°194), the French Supreme Court held that when the obligations are carried out pursuant to different contracts which constitute a single global contractual arrangement, such contracts must be economically linked ("économiquement liés") in order to create connected claims.

of the *Cour de Cassation* of April 5, 1994[98], May 9, 1995[99], April 1, 1997[100] and March 31, 1998[101].

While the exercise of the right of set-off in respect of connected claims requires mutuality of fungible obligations to be set-off, the requirement that the claims be certain, liquid and matured[102] is no longer necessary to set-off connected claims.

Connexity remains a matter within the purview of judicial discretion.

7.3. Zero-hour Rule

Pursuant to Article R. 621-4 of the French Code of Commerce, the Bankruptcy Judgement enters into effect on the date when such judgement is rendered in public hearing. This has the effect of implementing such judgement as of 00:00 a.m. of such date of entry.

7.4. Absence of acceleration under Safeguard Proceedings and Judicial Reorganisation Proceedings

Article L. 622-29 and L. 631-14 of the French Commercial Code provides that the Bankruptcy Judgement opening Safeguard Proceeding or Judicial Reorganisation Proceeding does not have the effect of accelerating claims which are unmatured as of the date of the Bankruptcy Judgement.

Article L. 622-13 and L. 631-14 of the French Commercial Code further provides that notwithstanding any legal or contractual provision to the contrary, no indivisibility, termination or rescission of a contract may result solely from the introduction of a Safeguard Proceeding or a Judicial Reorganisation Proceeding.

On the other hand, under Article L. 643-1 of the French Commercial Code, a Judicial Liquidation Proceeding has the effect of accelerating pre-Bankruptcy Judgement claims[103].

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98 Cass. Com., April 5, 1994, Bull. Civ. IV n° 142.

99 Cass. Com., May 9, 1995, Bull. Civ. IV n° 130.

100 D. Affaires 1997. 663.

101 BRDA 1998, n° 8, p. 10.

102 This requirement is provided for under Article 1291 of the French Civil Code. See in this respect Note David Ammar, sub. Cass. Com., February 8, 1994, JCP 1995 Ed. E, N° 31-35.

103 Note that if the Court orders a temporary continuation of business activities in liquidation in order to sell all or part of the business, pre-bankruptcy claims are accelerated on the date of the judgement ordering the sale.

7.5. Voidance provisions

Title III of Book VI of the French Commercial Code relating to Judicial Reorganisation Proceedings contains voidance provisions which are incorporated in Articles L. 632-1 and L. 632-2 of the French Commercial Code, such provisions being also applicable to Judicial Liquidation Proceedings (but not to Safeguard Proceedings).

Article L. 632-1 of the French Commercial Code provides, *inter alia*, that the following transactions are void if performed during the Suspect Period:

1° transfer of property without consideration ("*à titre gratuit*") relating to movable or immovable assets;

2° reciprocal agreements ("*contrats commutatifs*") in which the debtor's obligations substantially exceed those of the other party;

3° any payment, in whatever form, made on account of debts unmatured as of the date of payment;

4° any payment on account of matured debts made otherwise than through a cash payment, negotiable instrument, bank transfer, assignment under law n° 81-1 of January 2, 1981 or through any other means of payment commonly used in business transactions;

5° any deposit or consignment of sums of money made pursuant to Article 2075-1 of the French Civil Code (which governs any deposit or consignment of sums of money ordered by a court as security or as a protection measure) in the absence of a final judgement;

6° granting of a mortgage by agreement or by judicial decision or any pledge ("*droit de nantissement ou de gage*") constituted over the debtor's assets on account of pre-existing debts;

7° any protection measure ("*mesure conservatoire*") unless its registration or the attachment occurred prior to the date of the start of the Suspect Period;

8° any authorization, exercise and resale of options referred to in Article L. 225-177 and seq. of the French Commercial Code[104];

9° any transfer of assets or rights to a fiduciary patrimony unless such transfer occurred in order to secure debts arising concurrently therewith;

10° any amendment to a *fiducie* agreement relating to rights or assets already transferred in a fiduciary patrimony in order to secure pre-existing debts;

11° when the debtor is an individual entrepreneur with limited liability, any disposal or modification in the disposal of an asset, subject to the payment of the revenues referred to in article L. 526-18, the result of which was a decrease in the patrimony subject to the procedure to the benefit of another patrimony of such entrepreneur.

104 Article L. 255-177 of the French Commercial Code refers to equity options.

Furthermore, the court may void acts without consideration referred to in 1° above which are entered into six months prior to the Insolvency Date.

Voidance pursuant to the provisions of Article L. 632-1 of the French Commercial Code is automatic.

Pursuant to Article L. 632-2 of the French Commercial Code, any payment for matured debts and any act for consideration ("*actes à titre onéreux*") performed during the Suspect Period are further voidable if the beneficiary had knowledge of the debtor's insolvency.

The determination of knowledge of the debtor's insolvency lies within the courts' discretion and such knowledge needs to be proven.

7.6. Filing of a proof of claim

Creditors are required to file a proof of claim in respect of pre-Bankruptcy Judgement claims within two (2) months from publication of the Bankruptcy Judgement in the *Bulletin Officiel des Annonces Civiles et Commerciales* (*BODACC*). Such delay is extended for a further two (2)-month period in respect of creditors located outside of metropolitan France.

Even a creditor resorting to the remedy of set-off is required to file such a claim when the set-off occurs after the Bankruptcy Judgement.

7.7. Period of appraisal

In respect of a Safeguard Proceeding or a Judicial Reorganisation Proceeding, a period of appraisal starts from the date of the Bankruptcy Judgement. Pursuant to Article L. 621-3 and Article R. 621-9 of the French Commercial Code, such appraisal period is limited to six (6) months but may be extended once for a period not exceeding six (6) months and, under exceptional circumstances, at the request of the public prosecutor, may be extended for another final period not exceeding six (6) months. During such period, a safeguard plan or a reorganisation plan, as the case may be, is prepared by the judicial administrator ("*administrateur judiciaire*") appointed in the Bankruptcy Judgement.

Such plan contemplates the continuation of the activities of the debtor and, as the case may be, the termination, the addition or the assignment of one or several activities (provided that such assignment is subject to the provisions relating to Judicial Liquidation Proceedings).

At any time during the appraisal period, the court may order, upon application of the debtor, the judicial administrator ("*administrateur judiciaire*"), the representative of the creditors ("*mandataire judiciaire*"), the controller, the public prosecutor or *sua sponte*, the partial closed down of the business.

The court may further convert (i) the Safeguard Proceeding into a Judicial Reorganisation Proceeding if the debtor meets the insolvency test or (ii) the Safeguard Proceeding or the Judicial Reorganisation Proceeding, as the case may be, into a Judicial Liquidation Proceeding if otherwise the reorganisation of the debtor appears to be manifestly impossible or if otherwise the assignment of its assets is contemplated either as a whole or separately.

At or prior to the expiry of the appraisal period, the court either approves a plan or declares the judicial liquidation of the debtor.

The judicial liquidation may be ordered without the benefit of a prior appraisal period when the relevant business has ceased its operations or when a judicial reorganisation appears to be manifestly impossible. A liquidator is then appointed.

7.8. Conversion

Claims denominated in foreign currencies are to be converted into Euros at the rate prevailing on the date of the Bankruptcy Judgement in the case of a Safeguard Proceeding or a Judicial Reorganisation Proceeding and on the date of the judgement ordering the liquidation in the case of a Judicial Liquidation Proceeding.

7.9. Assumption of contracts

Under Article L. 622-13 of the French Commercial Code, the judicial administrator ("*administrateur judiciaire*") is vested with the authority to require performance of outstanding contracts. In the absence of assumption of a contract by the judicial administrator ("*administrateur judiciaire*"), the creditor may demand performance under said contract. In the case where a demand for assumption, which is to be addressed to the judicial administrator ("*administrateur judiciaire*"), remains unanswered during a period in excess of one (1) month or such lesser or greater period (not to be in excess of two months) as the court may determine, and in the case of rejection of the contract by the judicial administrator ("*administrateur judiciaire*"), the contract is automatically terminated.

In the event the contract contemplates the payment of a sum of money, the judicial administrator ("*administrateur judiciaire*") is required to ensure himself, on the basis of projections available at the time assumption of the contract is requested, that adequate cash resources are available.

Term contracts assumed by the judicial administrator ("*administrateur judiciaire*") may be terminated if it appears that insufficient resources will be available to the judicial administrator ("*administrateur judiciaire*") to discharge the next following term obligations.

In the case of assumption of a contract, obligations under such contract have to be discharged, notwithstanding pre-Bankruptcy Judgement defaults. Claims resulting from pre-Bankruptcy Judgement defaults only entitle the creditors to file a proof of claim in respect thereof.

In the case of default under an assumed contract, and in the absence of the co-contractor's consent to pursue the contract, the contract is automatically terminated. In such instance, the prosecutor, the judicial administrator ("*administrateur judiciaire*"), the representative of the creditors ("*mandataire judiciaire*") or a controller may file a petition with the court in order to request termination of the appraisal period.

In the case of rejection of a contract by the judicial administrator ("*administrateur judiciaire*"), the creditor is entitled to resort to the termination remedies contemplated under the contract and to file a proof of claim for damages, the amount of which would be subject to judicial review.

Under Article L. 622-17 of the French Commercial Code, claims arising subsequent to the Bankruptcy Judgement are paid as and when they fall due.

It should be noted that indemnities and penalties payable upon termination of contracts assumed pursuant to the provisions of Article L. 622-13 of the French Commercial Code are excluded from the benefit of Article L. 622-17 of the French Commercial Code.

7.10. Priority rules

In the case of a Safeguard Proceeding or a Judicial Reorganisation Proceeding, claims arising subsequent to the Bankruptcy judgement benefit from a priority lien over all other claims, subject to (i) a superpriority in favour of claims referred to in Articles L. 143-10, L. 143-11, L. 742-6 and L. 751-15 of the French Labour Code, (ii) court costs, and (iii) claims benefiting from Article L. 611-11 of the French Commercial Code.

In the case of a Judicial Liquidation Proceeding, claims arising subsequent to the Bankruptcy Judgment benefit from a priority lien over all other claims, subject to claims referred to in (i) through (iii) of the paragraph above and claims secured by charges over real estate assets or by specific security over chattel ("*sûretés mobilières spéciales*") benefiting from a right of retention or liens granted pursuant to Articles L. 525-1 through L. 525-20 of the French Commercial Code relating to purchase money security interests over equipment ("*nantissement de l'outillage et du matériel d'équipement*").

Exhibit 4

Master Agreements covered by the EFET Master Netting Agreement or the TBMA Cross Product Master Agreement

1. ***Energy Trading Master Agreements:***

- European General Agreement Concerning the Delivery and Acceptance of Electricity (version 2007), sponsored by the European Federation of Energy Traders (EFET);
- European General Agreement Concerning the Delivery and Acceptance of Electricity (version 2000), sponsored by the European Federation of Energy Traders (EFET);
- European General Agreement Concerning the Delivery and Acceptance of Natural Gas (version 2007), sponsored by the European Federation of Energy Traders (EFET);
- European General Agreement Concerning the Delivery and Acceptance of Natural Gas (version 2003), sponsored by the European Federation of Energy Traders (EFET);
- UK Grid Trade Master Agreement (version June 2004), sponsored by the Futures and Options Association (FOA);
- NBP Amendment Agreement for natural gas settled through the National Balancing Point (NBP) based on the Short Term Flat NBP Trading Terms and Conditions 1997;
- ZBT Amendment Agreement for natural gas settled through the Belgian Zeebruegge hub based on the Zeebruegge Terms and Conditions 2004;
- ZBT Amendment Agreement for natural gas settled through the Belgian Zeebruegge hub based on the Zeebruegge Terms and Conditions 2001;
- International Emissions Trading Master Agreement (version 2010/2011), sponsored by the International Emissions Trading Association (IETA);
- Emissions Trading Master Agreement for the EU Scheme (version 2008), sponsored by the International Emissions Trading Association (IETA);
- Emissions Trading Master Agreement for the EU Scheme (version 2005), sponsored by the International Emissions Trading Association (IETA);
- Emissions Trading Master Agreement for the EU Scheme (version 2002), sponsored by the International Emissions Trading Association (IETA);
- US Master Power Purchase & Sale Agreement (version 2000), sponsored by the Edison Electric Institute;

- US General Terms and Conditions Base Contract for Sale and Purchase of Natural Gas (version 2002), sponsored by the North American Energy Standards Board, Inc (NAESB);
- US General Terms and Conditions Base Contract for Sale and Purchase of Natural Gas (version 2006), sponsored by the North American Energy Standards Board, Inc (NAESB);
- Canadian Base Contract for Short-term Sale and Purchase of Natural Gas (version 2005), sponsored by GasEDI;
- Canadian Base Contract for Short-term Sale and Purchase of Natural Gas (version 2000), sponsored by GasEDI.

2. ***Derivatives Master Agreements:***

- Financial Energy Master Agreement (version 2000), sponsored by the Nordic Association of Energy Traders (NAET);
- ISDA 2002 Master Agreement, sponsored by the International Swaps and Derivatives Association, Inc.;
- 1992 ISDA Master Agreement (Multicurrency – Cross Border), sponsored by the International Swaps and Derivatives Association, Inc.;
- 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction), sponsored by the International Swaps and Derivatives Association, Inc.;
- 1987 Interest Rate and Currency Exchange Agreement, sponsored by the International Swaps and Derivatives Association, Inc.;
- Australian version of the 1992 ISDA Master Agreement (Multicurrency – Cross Border), sponsored by the Australian Financial Markets Association (AFMA);
- New Zealand version of the 1992 ISDA Master Agreement (Multicurrency – Cross Border);
- German *Rahmenvertrag für Finanztermingeschäfte* (version 2001), sponsored by the German Banker's Association;
- German *Rahmenvertrag für Finanztermingeschäfte* (version 1994), sponsored by the German Banker's Association;
- Swiss Master Agreement for Over-The-Counter Derivative Instruments (version 2003), sponsored by the *Schweizerische Bankiervereinigung*;
- Swiss Master Agreement for Over-The-Counter Derivative Instruments (version 1994), sponsored by the *Schweizerische Bankiervereinigung*;

- French *Convention-Cadre FBF Relative Aux Operations Sur Instruments Financiers à Terme* (version July 2007), sponsored by the *Fédération Bancaire Française* (FBF) ;
- French *Convention-Cadre FBF Relative Aux Operations Sur Instruments Financiers à Terme* (version August 2001), sponsored by the *Fédération Bancaire Française* (FBF) ;
- French *Convention-Cadre AFB Relative Aux Opérations Sur Instruments Financiers à Terme* (version), sponsored by the Association Française des Banques (AFB) ;
- Spanish *Contrato Marco De Operaciones Financieras* (*versión* 1997), sponsored by the *Asociación Española de Banca Privada* (AEB);
- Dutch *Raamovereenkomst voor Financiële Derivaten* (RFD), sponsored by the *Nederlandse Vereniging van Banken* (NVB);
- Japanese Bond Option Agreement, sponsored by the Japan Securities Dealers Association (JSDA);
- Mexican *Contrato Marco para Operaciones Financieras Derividas*;
- Mexican *Contrato Normativo para la realización de las operaciones de Intercambio*;
- Mexican Master Agreement for Entering into Dollar against Mexican Peso Forward Transactions;
- US Master Securities Forward Agreement (version 1996), sponsored by The Bond Market Association (TBMA);
- US Master OTC Options Agreement (version 2000), sponsored by The Bond Market Association (TBMA);
- US OTC Option Transactions – U.S. Treasury Securities Master Dealer Agreement (version August 1989), sponsored by the Public Securities Association (PSA);
- UK International Currency Options Market Agreement (ICOM) sponsored by the British Bankers' Association (BBA);
- UK Foreign Exchange and Options Master Agreement (FEOMA), sponsored by the British Bankers' Association (BBA);
- UK International Foreign Exchange Master Agreement (IFEMA), sponsored by the British Bankers' Association (BBA);
- The 1994 International Bullion Master Agreement (IBMA) (version June 1994), sponsored by the London Bullion Market Association and the Foreign Exchange Committee;
- European Master Agreement for Financial Transactions (EMA) (edition January 2004), sponsored by the Banking Federation of the European Union (FBE);
- European Master Agreement for Financial Transactions (EMA) (edition January 2001), sponsored by the Banking Federation of the European Union (FBE);

3. ***Securities Lending Master Agreements:***

- Global Master Securities Lending Agreement (GMSLA) (version 2010), sponsored by the International Securities Lending Association (ISLA);
- Global Master Securities Lending Agreement (GMSLA) (version 2000), sponsored by the International Securities Lending Association (ISLA);
- Master Equity & Fixed Interest Stock Lending Agreement (MEFISLA) (version 1996), sponsored by the International Securities Lending Association (ISLA);
- Master Gilt Edged Stock Lending Agreement (GESLA) (version 1996), sponsored by the International Securities Lending Association (ISLA);
- Overseas Securities Lender's Agreement (OSLA) (version 1995), sponsored by the International Securities Lending Association (ISLA);
- Overseas Securities Lender's Agreement (OSLA) (version October 1994), sponsored by the International Securities Lending Association (ISLA);
- Overseas Securities Lender's Agreement (OSLA) (version February 1994), sponsored by the International Securities Lending Association (ISLA);
- US Master Securities Loan Agreement (version 2000), sponsored by The Bond Market Association (TBMA);
- US Master Securities Loan Agreement (version May 1993), sponsored by the Public Securities Association (PSA);
- Canadian Securities Loan Agreement, sponsored by the Investment Dealers Association of Canada (IDAC);
- German Rahmenvertrag für Wertpapierleihgeschäfte;
- German Rahmenvertrag für Wertpapierdarlehen (version 1999);
- French *Contrat Cadre de Prêts des Titres* (version 2007), sponsored by the *Association Française des Professionnels des Titres* (AFTI);
- French *Contrat Cadre de Prêts des Titres* (version), sponsored by the *Association Française des Professionnels des Titres* (AFTI);
- Australian Master Securities Lending Agreement (version November 2003), sponsored by Australian Securities Lending Association Ltd. (ASLA);
- Australian Master Securities Lending Agreement (version December 2002), sponsored by Australian Securities Lending Association Ltd. (ASLA);
- Australian Master Securities Lending Agreement (version April 1997), sponsored by Australian Securities Lending Association Ltd. (ASLA);

- New Zealand Master Repurchase Securities Lending Agreement;
- Japanese Basis Agreement Concerning Stock Lending Transactions, sponsored by the Japan Securities Dealers Association (JSDA);

4. ***Repurchase Master Agreements:***

- Global Master Repurchase Agreement (GMRA) (version October 2000), sponsored by The Bond Market Association (TBMA) and the International Securities Market Association (ISMA);
- Global Master Repurchase Agreement (GMRA) (version 1995), sponsored by the Public Securities Association (PSA) and the International Securities Market Association (ISMA);
- Global Master Repurchase Agreement (GMRA), sponsored by the Public Securities Association (PSA) and the International Securities Market Association (ISMA) (version November 1992);
- US Master Repurchase Agreement (MRA) (version September 1996), sponsored by The Bond Market Association (TBMA);
- US Master Repurchase Agreement (MRA) (version 1987);
- Canadian Repurchase/Reverse Repurchase Transaction Agreement;
- Australian version of the Global Master Repurchase Agreement (GMRA) (version 1995), sponsored by the Australian Financial Markets Association (AFMA);
- New Zealand version of Global Master Repurchase Agreement (GMRA) (version 1995);
- German *Rahmenvertrag für Wertpapierpensionsgeschäfte* (version 2005);
- German *Rahmenvertrag für Wertpapierpensionsgeschäfte* (version 2002);
- German *Rahmenvertrag für echte Pensionsgeschäfte* (version 1997);
- French *Convention-cadre FBF Relative Aux Opérations de Pensions Livrée* (version 2007), sponsored by the *Fédération bancaire française* (FBF) [FBF07 REPO];
- French *Convention-cadre FBF Relative Aux Opérations de Pensions Livrée* (version 2003), sponsored by the *Fédération bancaire française* (FBF);
- French *Convention-cadre Relative Aux Opérations de Pensions Livrée*, sponsored by the *Association du Forex et des Trésoriers de Banque* (AFTB) ;
- Japanese Bond Lending Agreement, sponsored by the Japan Securities Dealers Association (JSDA);
- Japanese Basic Agreement Concerning Gensaki Transactions of Bonds, Japan Securities Dealers Association (JSDA).

Exhibit 4

Transactions entered into under Principal Agreements[105]

1. Basis Swap. A transaction in which one party pays periodic amounts of a given currency based on a floating rate and the other party pays periodic amounts of the same currency based on another floating rate, with both rates reset periodically; all calculations are based on a notional amount of the given currency.

2. Bond Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a bond of an issuer, such as Kingdom of Sweden or Unilever N.V., at a specified strike price. The bond option can be settled by physical delivery of the bonds in exchange for the strike price or may be cash settled based on the difference between the market price of the bonds on the exercise date and the strike price.

3. Bullion Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified number of Ounces of Bullion at a specified strike price. The option may be settled by physical delivery of Bullion in exchange for the strike price or may be cash settled based on the difference between the market price of Bullion on the exercise date and the strike price.

4. Bullion Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency or a different currency calculated by reference to a Bullion reference price (for example, Gold-COMEX on the COMEX Division of the New York Mercantile Exchange) or another method specified by the parties. Bullion swaps include cap, collar or floor transactions in respect of Bullion.

5. Bullion Trade. A transaction in which one party agrees to buy from or sell to the other party a specified number of Ounces of Bullion at a specified price for settlement either on a "spot" or two-day basis or on a specified future date. A Bullion Trade may be cash settled by physical delivery of Bullion in exchange for a specified price or may be cash settled based on the difference between the market price of Bullion on the settlement date and the specified price.

   For purposes of Bullion Trades, Bullion Options and Bullion Swaps, "Bullion" means gold, silver, platinum or palladium and "Ounce" means, in the case of gold, a fine troy ounce, (or in the case of reference prices not expressed in Ounces, the relevant Units of silver, platinum or palladium).

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105 Some of the transactions provide for an exchange of cash by both parties and others for the physical delivery of commodities, shares or bonds in exchange for cash.

6. Buy/Sell-Back Transaction. A transaction in which one party purchases a security (in consideration for a cash payment) and agrees to sell back that security (or in some cases an equivalent security) to the other party (in consideration for the original cash payment plus a premium).

7. Cap Transaction. A transaction in which one party pays a single or periodic fixed amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified floating rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap) in each case that is reset periodically over a specified per annum rate (in the case of an interest rate cap), rate or index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap).

8. Collar Transaction. A collar is a combination of a cap and a floor where one party is the floating rate or floating commodity price payer on the cap and the other party is the floating rate or floating commodity price payer on the floor.

9. Commodity Forward. A transaction in which one party agrees to purchase a specified quantity of a commodity at a future date at an agreed price and the other party agrees to pay a price for the same quantity to be set on a specified date in the future. The payment calculation is based on the quantity of the commodity and is settled based, among other things, on the difference between the agreed forward price and the prevailing market price at the time of settlement.

10. Commodity Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified quantity of a commodity at a specified strike price. The option can be settled either by physically delivering the quantity of the commodity in exchange for the strike price or by cash settling the option, in which case the seller of the option would pay to the buyer the difference between the market price of that quantity of the commodity on the exercise date and the strike price.

11. Commodity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic amounts of the same currency based on the price of a commodity, such as natural gas or gold, or a futures contract on a commodity (e.g., West Texas Intermediate Light Sweet Crude Oil on the New York Mercantile Exchange); all calculations are based on a notional quantity of the commodity.

12. Contingent Credit Default Swap. A Credit Default Swap Transaction in which the credit protection seller pays an amount determined by reference to the value of a hypothetical swap transaction.

13. Credit Default Swap Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to enter into a Credit Default Swap.

14. Credit Default Swap. A transaction in which one party pays either a single fixed amount or periodic fixed amounts or floating amounts determined by reference to a specified notional amount, and the other party (the credit protection seller) pays either a fixed amount or an amount determined by reference to the value of one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity") upon the occurrence of one or more specified credit events with respect to the Reference Entity (for example, bankruptcy or payment default). The amount payable by the credit protection seller is typically determined based upon the market value of one or more debt securities or other debt instruments issued, guaranteed or otherwise entered into by the Reference Entity. A Credit Default Swap may also be physically settled by payment of a specified fixed amount by one party against delivery of specified obligations ("Deliverable Obligations") by the other party. A Credit Default Swap may also refer to a "basket" (typically ten or less) or a "portfolio" (eleven or more) or Reference Entities or may be an index transaction consisting of a series of component Credit Default Swaps.

15. Credit Derivative Transaction on Asset-Backed Securities. A Credit Default Swap for which the Reference Obligation is a cash or synthetic asset-backed security. Such a transaction may, but need not necessarily, include "pay as you go" settlements, meaning that the credit protection seller makes payments relating to interest shortfalls, principal shortfalls and write-downs arising on the Reference Obligation and the credit protection buyer makes additional fixed payments of reimbursements of such shortfalls or write-downs.

16. Credit Spread Transaction. A transaction involving either a forward or an option where the value of the transaction is calculated based on the credit spread implicit in the price of the underlying instrument.

17. Cross Currency Rate Swap. A transaction in which one party pays periodic amounts in one currency based on a specified fixed rate (or a floating rate that is reset periodically) and the other party pays periodic amounts in another currency based on a floating rate that is reset periodically. All calculations are determined on predetermined notional amounts of the two currencies; often such swaps will involve initial and/or final exchanges of amounts corresponding to the notional amounts.

18. Currency Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified amount of a given currency at a specified strike price.

19. Currency Swap. A transaction in which one party pays fixed periodic amounts of one currency and the other party pays fixed periodic amounts of another currency. Payments are calculated on a notional amount. Such swaps may involve initial and or final payments that correspond to the notional amount.

20. Economic Statistic Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency by reference to interest rates or other factors and the other party pays or may pay an amount or periodic amounts of a currency based on a specified rate or index pertaining to statistical data on economic conditions, which may include economic growth, retail sales, inflation, consumer prices, consumer sentiment, unemployment and housing.

21. Emissions Allowance Transaction. A transaction in which one party agrees to buy from or sell to the other party a specified quantity of emissions allowances or reductions at a specified price for settlement either on a "spot" basis or on a specified future date. An Emissions Allowance Transaction may also constitute a swap of emissions allowances or reductions or an option whereby one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which the specified quantity of emissions allowances or reductions exceeds or is less than a specified strike. An Emissions Allowance Transaction may be physically settled by delivery of emissions allowances or reductions in exchange for a specified price, differing vintage years or differing emissions products or may be cash settled based on the difference between the market price of emissions allowances or reductions on the settlement date and the specified price.

22. Equity Forward. A transaction in which one party agrees to pay an agreed price for a specified quantity of shares of an issuer, a basket of shares of several issuers or an equity index at a future date and the other party agrees to pay a price for the same quantity of shares of an issuer to be set on a specified date in the future. The payment calculation is based on the number of shares and can be physically-settled (where delivery occurs in exchange for payment) or cash-settled (where settlement occurs based on the difference between the agreed forward price and the prevailing market price at the time of settlement).

23. Equity Index Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an equity index either exceeds (in case of a call) or is less than (in case of a put) a specified strike price.

24. Equity Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) shares of an issuer or a basket of shares of several issuers at a specified strike price. The option may be settled by physical delivery of the shares in exchange for the strike price or may be cash settled based on the difference between the market price of the shares on the exercise date and the strike price.

25. Equity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency or a different currency based on the performance of a share of an issuer, a basket of shares of several issuers or an equity index, such as the Standard and Poor's 500 Index.

26. Floor Transaction. A transaction in which one party pays a single or periodic amount and the other party pays periodic amounts of the same currency based on the excess, if any, of a specified per annum rate (in the case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in the case of a commodity floor) over a specified floating rate (in case of an interest rate floor), rate or index level (in the case of an economic statistic floor) or commodity price (in case of a commodity floor).

27. Foreign Exchange Transaction. A transaction providing for the purchase of one currency with another currency providing for settlement either on a "spot" or two-day basis or a specified future date.

28. Forward Rate Transaction. A transaction in which one party agrees to pay a fixed rate for a defined period and the other party agrees to pay a rate to be set on a specified date in the future. The payment calculation is based on a notional amount and is settled based, among other things, on the difference between the agreed forward rate and the prevailing market rate at the time of settlement.

29. Freight Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency based on a fixed price and the other party pays an amount or periodic amounts of the same currency based on the price of chartering a ship to transport wet or dry freight from one port to another; all calculations are based either on a notional quantity of freight or, in the case of time charter transactions, on a notional number of days.

30. Interest Rate Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an interest rate either exceeds (in the case of a call option) or is less than (in the case of a put option) a specified strike rate.

31. Interest Rate Swap. A transaction in which one party pays periodic amounts of a given currency based on a specified fixed rate and the other party pays periodic amounts of the same currency based on a specified floating rate that is reset periodically, such as the London inter-bank offered rate; all calculations are based on a notional amount of the given currency.

32. Physical Commodity Transaction. A transaction which provides for the purchase of an amount of a commodity, such as coal, electricity or gas, at a fixed or floating price for actual delivery on one or more dates.

33. Property Index Derivative Transaction. A transaction, often structured in the form of a forward, option or total return swap, between two parties in which the underlying value of the transaction is based on a rate or index based on residential or commercial property prices for a specified local, regional and national area.

34. Repurchase Transaction. A transaction in which one party agrees to sell securities to the other party and such party has the right to repurchase those securities (or in some cases equivalent securities) from such other party at a future date.

35. Securities Lending Transaction. A transaction in which one party transfers securities to a party acting as the borrower in exchange for a payment or a series of payments from the borrower and the borrower´s obligation to replace the securities at a defined date with identical securities.

36. Swap Deliverable Contingent Credit Default Swap. A Contingent Credit Default Swap under which one of the Deliverable Obligations is a claim against the Reference Entity under an ISDA Master Agreement with respect to which an Early Termination Date (as defined therein) has occurred.

37. Swap Option. A transaction in which one party grants to the other party the right (in consideration for a premium payment), but not the obligation, to enter into a swap with certain specified terms. In some cases the swap option may be settled with a cash payment equal to the market value of the underlying swap at the time of the exercise.

38. Total Return Swap. A transaction in which one party pays either a single amount or periodic amounts based on the total return on one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity"), calculated by reference to interest, dividend and fee payments and any appreciation in the market value of each Reference Obligation, and the other party pays either a single amount or periodic amounts determined by reference to a specified notional amount and any depreciation in the market value of each Reference Obligation.

A total return swap may (but need not) provide for acceleration of its termination date upon the occurrence of one or more specified events with respect to a Reference Entity or a Reference Obligation with a termination payment made by one party to the other calculated by reference to the value of the Reference Obligation.

39. Weather Index Transaction. A transaction, structured in the form of a swap, cap, collar, floor, option or some combination thereof, between two parties in which the underlying value of the transaction is based on a rate or index pertaining to weather conditions, which may include measurements of heating, cooling, precipitation and wind.

(o) French Insolvency Law prohibits discharge of pre-Bankruptcy Judgement claims except in the form of set-off where debts are found to be connected. Set-off is a mean of discharge of obligations under French law. Section 10.1 of each of the MNA and the CPMA contemplate the possibility to set-off the Final Settlement Amount or part thereof against any payment obligation of the Closed-Out Party under any agreement instrument or undertaking between the Parties.

The better view is, however, that the effectiveness of those provisions should be upheld under the terms of Article 6 of the Insolvency Proceedings Regulation to the extent that such set-off is permitted under the laws governing the Agreements.

This Opinion and the matters addressed herein are as of the date hereof, and we undertake no, and hereby disclaim any obligation to advise you of any change in any matter set forth herein occurring after the date hereof.

This Opinion is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated.

This Opinion is for the sole benefit of EFET and its Legal Committee members and any other subscribing entities. This opinion may not be relied upon by, or disclosed to, any other person or legal entity without EFET's or your prior written approval and may be made available by EFET members to the appropriate regulatory authorities.

Very truly yours,

Antoine Maffei
Avocat à la Cour