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29 December 2014
File 1029548 SSL/BRA
DOC NO. 21244922-8

Dear Sirs

LEGAL OPINION REGARDING THE ENFORCEABILITY OF CLOSE-OUT NETTING AND THE VALIDITY AND ENFORCEABILITY OF COLLATERAL ARRANGEMENTS UNDER THE EFET MASTER NETTING AGREEMENT AND THE TBMA CROSS-PRODUCT MASTER AGREEMENT UNDER DANISH LAW

We have been asked by the European Federation of Energy Traders ("**EFET**") to provide a legal opinion in respect of matters of Danish law in connection with specific questions detailed in your instruction letter dated 19 August 2014 regarding enforceability of close-out netting provisions under the EFET Master Netting Agreement and the TBMA Cross-Product Master Agreement and the validity and enforceability of collateral arrangements under the EFET Cross-Product Credit Support Annex to the TBMA Cross-Product Master Agreement and the EFET Credit Support Annex to the EFET Form Master Netting Agreement.

The specific questions you have asked us to address are set out in section 3 below in italics followed by our analysis, conclusions and any specific assumptions and qualifications. In addition, we have made the general assumptions set out in section 2 below and our opinion is subject to the general qualifications set out in section 4 below.

Danish law does not provide for specific statutory rules relating to, and there is no specific case law or guidance available on, some of the issues covered by this opinion. Therefore, parts of this opinion represent our view based on Danish general legal principles and on our interpretation of the available preparatory works.

We have not considered any tax, VAT or duty issues.

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1. INTRODUCTION

1.1 Scope of Review

We have reviewed the following documents (printed from www.efet.org):

a) EFET Master Netting Agreement (Version 1.0, published June 2010) (the "**EFET Master Netting Agreement**").

b) CPMA Cross-Product Master Agreement published by The Bond Market Association (TBMA) (Version 1.0, published 16 February 2000) (the "**TBMA Cross-Product Master Agreement**").

c) EFET/IECA Commodities Schedule to the TBMA Cross-Product Master Agreement (Version 1.0, published 23 June 2003) (the "**TBMA Commodities Schedule**").

d) EFET Cross-Product Credit Support Annex to the TBMA Cross-Product Master Agreement (Version 1.0, published 23 June 2003) (the "**CP Credit Support Annex**").

e) EFET Credit Support Annex to the EFET Form Master Netting Agreement (Version 1.0, published February 2011) (the "**MNA Credit Support Annex**").

f) EFET Cross Product Payment Netting Agreement (Version 1, published 20 October 2005) (the "**EFET Payment Netting Agreement**").

(The documents referred to in sub-paragraphs (a)-(b) are hereinafter referred to together as the "**Agreements**". The documents referred to in sub-paragraphs (d)-(e) are hereinafter referred to together as the "**Credit Support Annexes**". The documents referred to in sub-paragraphs (a)-(f), and, as applicable, Netted Agreements and transactions thereunder, Principal Agreements and transactions thereunder, and Uncovered Transactions are hereinafter referred to together as the "**Documents**").

The relevant Agreement provides for the inclusion of some or all of the master agreements described in an appendix to the instruction letter dated 19 August 2014 (and as set out in Appendix B to this opinion), each such master agreement being a Netted Agreement or a Principal Agreement. We have not reviewed any of these master agreements for the purposes of this legal opinion. Accordingly, we render no opinion in relation to these master agreements.

1.2 Summary

This summary does not form part of the opinion and is given for the purposes of convenience only.

Pursuant to the Securities Trading Act (as defined below) contracting parties can agree, with legal and binding effect for third parties (including a bankruptcy estate and other creditors), that financial obligations under a master agreement can be close-out netted upon the occurrence of an event of default, including the commencement of insolvency proceedings. The meaning of "financial obligations" (or in this opinion "Eligible Financial Obligations") depends on whether or not a Financial Entity is a party to the master agreement.

Although the Securities Trading Act is silent on the matter, it is accepted in Danish legal theory that close-out netting between several agreements involving the same two parties can be agreed and will be comprised by the close-out netting rules in Chapter 18a of the Securities Trading Act, provided that all other requirements for such close-out netting have been fulfilled, including that each underlying transaction is separately capable of close-out netting under the Securities Trading Act.

Accordingly, but subject to the assumptions, qualifications and comments set out in this opinion, we are of the opinion, that the termination and close-out netting provisions of the Agreements will be enforceable under Danish law in respect of Eligible Financial Obligations. However, if not all of the underlying transactions/obligations are separately capable of close-out netting under the Securities Trading Act (i.e. such transactions/obligations are not Eligible Financial Obligations), we are of the view, that the entry into of a master netting agreement will not cure the non-eligibility for close-out netting for such transactions/obligations, and that the termination and close-out netting provisions of the Agreements will not be enforceable in respect of such transactions/obligations. The choice of automatic termination would not change the conclusions above

1.3 **Definitions**

Terms defined in the EFET Master Netting Agreement or the TBMA Cross-Product Master Agreement, as applicable, have the same meaning when used in this opinion in relation to the relevant Agreement, unless otherwise stated herein. In section 3.4 (Collateral) below, in addition to the terms in the relevant Agreement or as stated herein, the capitalized terms shall have the same meaning as in the relevant Credit Support Annex.

In addition thereto, and to terms defined elsewhere in this legal opinion, the following definitions are used in this opinion (words denoting the singular include the plural and vice versa):

"**Agreements**" has the meaning set forth in section 1.1;

"**Bankruptcy Act**" means the Danish Bankruptcy Act (*konkursloven)*, Consolidated Act no. 11 of 6 January 2014 as amended;

"**Collateral Directive**" means Directive 2002/47/EC of 6 June 2002 on Financial Collateral Arrangements as amended;

"**Conversion Right**" has the meaning set forth in section 1.6.2.3;

"**Counterparty**" means the Danish Party's counterparty to the Agreement;

"**Credit Support Annexes**" has the meaning set forth in section 1.1;

"**Danish Insolvency Proceedings**" means bankruptcy (*konkurs*) and formal restructuring proceedings (*rekonstruktion*) regulated by the Bankruptcy Act and as described in section 1.6.1;

"**Danish Party**" has the meaning set forth in Appendix A;

"**Documents**" has the meaning set forth in section 1.1;

"**Eligible Danish Collateral**" has the meaning set forth in section 3.4.2;

"**Eligible Financial Obligations**" has the meaning set forth in section 1.6.2.3 and the meaning depends on whether or not a Financial Entity is a Party to the Agreement as further described in section 1.6.2.3;

"**Financial Business Act**" means the Danish Financial Business Act (*lov om finansiel virksomhed*), Consolidated Act no. 928 of 4 August 2014 as amended;

"**Financial Entity**" has the meaning set forth in section 1.6.2.1;

"**FSA**" means the Danish Financial Supervisory Authority (*Finanstilsynet*);

"**Insolvency Representative**" means a trustee (*kurator*) or restructuring administrator (*rekonstruktør*) regulated by the Bankruptcy Act and as described in section 1.6.1.

"**Limitation Day**" means the limitation day (*fristdagen*) as set forth in Section 1 of the Bankruptcy Act, which for the purpose of this opinion is the date of filing a petition for bankruptcy or formal restructuring proceedings with a bankruptcy court (*skifteretten*);

"**MiFID**" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 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, as amended;

"**MiFID Regulation**" means Commission Regulation (EC) no. 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive;

"**MTF**" means a multilateral trading facility (*multilateral handelsfacilitet*)(as defined in Section 5, Subsection 1, no. 22 in the Financial Business Act, implementing Article 4(1)(15) of the MiFID);

"**Parties**" means the Danish Party and the Counterparty;

"**Physically Settled Contracts**" has the meaning set forth in section 1.6.2.2; and

"**Securities Trading Act**" means the Danish Securities Trading Act (*værdipapirhandelsloven*), Consolidated Act no. 831 of 12 June 2014 as amended.

1.4 Types of Danish Parties

This opinion covers Danish Parties which are listed in Appendix A hereto.

With respect to Danish branches of foreign legal entities, see section 3.3.2 below.

Except as specifically stated, this opinion would not change if the Danish Party was a publicly owned Danish legal entity or a Danish public authority, provided that such entity enters into the Agreement in a commercial capacity, but no opinion is rendered on Danish procurement law.

No opinion is rendered on individuals as Danish Parties.

1.5 Product Coverage

This legal opinion covers various types of transactions under the Netted Agreements or Principal Agreements, as applicable, as listed in an appendix to the instruction letter dated 19 August 2014 (and as set out in Appendix C to this legal opinion).

We understand that the transactions consist primarily of forwards, options and swaps or combinations thereof.

Certain categories of transactions mentioned in Appendix C also cover "spot" transactions. There is no statutory definition of a "spot transaction" under Danish law. However, Article 38(2) of the MiFID Regulation excludes "spot contracts" from Article 38(1), and for these purpose defines a "spot contract" as "a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods: (a) two trading days; (b) the period generally accepted in the market for that commodity, asset or right as the standard delivery period". However, a contract is not a spot contract if, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed within the period mentioned in (a) and (b). Accordingly, we are of the view that contracts for the delivery of for example a commodity, emission allowances[1] or Bullion (as defined in Appendix C) which under this test would qualify as spot contracts, would not qualify as a "security" under the Securities Trading Act. Accordingly, such spot contracts will in this opinion be covered by the same conclusions on close-out netting as other Physically Settled Contracts which do not qualify as a security, see section 1.6.2.3.

In respect of FX spot it is our understanding that in the Danish market an FX transaction is considered a spot transaction if it settles within two trading days. Since FX spot is settled with payment of cash, in this opinion such contracts will be covered by the same conclusions on close-out netting as other financially settled derivatives, see further below in section 1.6.2.3.

In respect of settlement, some transactions listed in Appendix C provide for cash settlement, some provide for physical delivery of for example a security, and some provide for physical delivery of for example a commodity, asset or right. As further described in section 1.6.2.2, some transactions qualify as a "security" under the Securities Trading Act and some do not. The qualification is important in respect of the close-out netting eligibility of the particular transaction under Danish law, and therefore we refer to the further analysis in section 1.6.2.2. However, we render no opinion in respect of particular transactions under one or more of the master agreements listed in Appendix B.

1.6 **Background – Relevant Danish Law**

1.6.1 Danish Insolvency Proceedings

Under the Bankruptcy Act, a Danish Party may be subject to the following main insolvency proceedings in Denmark:

a) Bankruptcy proceedings (*konkurs*). Bankruptcy proceedings are initiated by the debtor or a creditor filing a petition with a bankruptcy court. Upon receipt of the petition, the court sets a hearing date and notifies the debtor and any petitioning creditor. If the court is satisfied that the petitioning creditor has a valid claim

[1] Neither the Danish Act on CO2 Allowances (*lov om CO2-kvoter*), Consolidated Act no. 1095 of 28 November 2012 nor any other Danish source of law specifically classifies the legal nature of the CO2 allowance itself under Danish law. Based on an interpretation of *inter alia* a decision from the FSA and the preparatory work of the Danish Act on CO2 Allowances, in our view, a spot transaction regarding physical delivery of emission allowances are not a security in itself within the Securities Trading Act.

against the debtor (applies only if a creditor has filed the petition) and the debtor is "insolvent" (i.e. that the debtor is unable to satisfy its obligations as they fall due, unless the inability to pay is of a temporary nature) the court will issue a bankruptcy order (*konkursdekret)* against the debtor. The bankruptcy order will be made public by an announcement in the Danish Official Gazette (*Statstidende*). The court will then appoint a bankruptcy trustee (*kurator*) to manage the estate. The bankruptcy estate will consist of the assets that belong to the debtor at the time the bankruptcy order is issued, together with any assets that accrue during the bankruptcy proceedings. The assets are realised and the proceeds are distributed among the creditors according to an order of priority set out in the Bankruptcy Act. Secured creditors are not part of this order of priority. Bankruptcy proceedings under Danish law are designed to ensure a high degree of equality of treatment of all creditors, enabling the estate to set aside /avoid (*omstøde*) certain pre-bankruptcy transactions.

b) Formal restructuring proceedings (*rekonstruktion*). Formal restructuring proceedings are initiated by the debtor or a creditor filing for restructuring with a bankruptcy court and are regulated by the Bankruptcy Act. It is a condition for the initiation of a restructuring process that the debtor is "insolvent" (i.e. that the debtor is unable to satisfy its obligations as they fall due, unless the inability to pay is of a temporary nature). The main purpose of the restructuring proceedings is to secure an otherwise healthy debtor's survival through a period of insolvency by way of:

1. a transfer of the debtor's business,
2. a compulsory composition[2] (*tvangsakkord*), or
3. a combination of 1 and 2.

Once initiated, the restructuring proceedings cannot be recalled or otherwise annulled. If the restructuring proceedings do not result in an outcome as described in 1-3 above, adopted by the creditors, the bankruptcy court will immediately commence bankruptcy proceedings over the assets of the debtor. This is the case if a restructuring plan or proposition is voted against by the creditors, and also if the bankruptcy court decides to stop the restructuring proceedings, e.g. due to the debtor's failure to cooperate in good faith or if the restructuring proceedings for some reason prove to be pointless. The restructuring proceedings, however, will stop if the debtor becomes solvent during the proceedings.

When restructuring proceedings are initiated the bankruptcy court immediately appoints a restructuring administrator (*rekonstruktør*) and an accountant

[2] A compulsory composition entails that all claims either are reduced pro rata or annulled. A compulsory composition may furthermore include a suspension of payments.

(*regnskabskyndig tillidsmand*) to oversee and administrate the restructuring proceedings, to work out the restructuring plan and final restructuring proposal and to present these to the creditors.

The bankruptcy court will then announce the restructuring of the debtor in the Danish Official Gazette (*Statstidende*) making the restructuring official. The restructuring administrator encourages all creditors to file their claims in order to build a foundation for the potential restructuring of the debtor. The claims will then be ranked in the same way as in the case of a bankruptcy.

The Bankruptcy Act applies to all types of Danish legal entities, including financial institutions. Financial institutions regulated by the Financial Business Act are subject to certain supplementary provisions and measures (which includes in respect of Danish credit institutions the possibility to transfer of assets and liabilities to the Danish Financial Stability Company (*Finansiel Stabilitet A/S*) or a subsidiary of the Danish Financial Stability Company), which ensure that the FSA be involved during insolvency proceedings related to financial institutions. The FSA is entitled to file a petition for bankruptcy in respect of a financial institution if it becomes insolvent.

Under Danish law, bankruptcy proceedings may be initiated in Denmark in respect of the assets in Denmark of a legal entity incorporated in Denmark. Under Danish law, assets outside Denmark of such Danish entity may also be included, although, in practice whether it is possible to collect such assets will depend on whether the Danish bankruptcy proceedings are recognised in the relevant jurisdiction.

A legal entity incorporated outside Denmark, which does not conduct business from a place in Denmark, cannot be subject to insolvency proceedings in Denmark. If such foreign legal entity has a Danish subsidiary, such Danish subsidiary may be declared bankrupt in Denmark. Under Danish law, a Danish branch of a foreign legal entity does not constitute a separate legal entity, and cannot (as the main rule) be declared bankrupt in Denmark.

The EU Insolvency Regulation 1346/2000 (as amended), which came into force on 31 May 2002, does not apply in Denmark.[3] Under Danish law the only cross-border regulation relevant to consider on a general level is the Nordic Bankruptcy Convention.[4]

Under Danish choice of law rules the application of the law of a foreign jurisdiction to a contractual relationship in case of a Danish bankruptcy depends on whether Danish choice of law rules point to such law or whether the application of such law has been validly agreed. However, it is generally recognised that Danish law aimed at protecting the creditors and/or preserving the debtor's assets, including the mandatory provisions

[3] See preamble 33 of the EU Insolvency Regulation.

[4] Order (*anordning*) no. 251 of 1 September 1934 as amended.

in the Bankruptcy Act concerning set-off/close-out netting and early termination, will prevail over the parties' choice of law.

Accordingly, if a Danish Party[5] (which becomes subject to Danish Insolvency Proceedings in Denmark), has entered into an Agreement governed by the laws of another jurisdiction, the choice of law will in our opinion most likely not be binding for the Danish Party's bankruptcy estate in respect of set-off/close-out netting and early termination, and the Danish Party's bankruptcy estate may modify the laws of the relevant jurisdiction with mandatory creditor protection rules in the Bankruptcy Act. To our knowledge there is no Danish authority on the issue, and it has only been subject to limited discussion in Danish legal literature.

Denmark has implemented the Banks' Winding-up Directive[6] by Executive Order (*bekendtgørelse*) no. 674 of 24 June 2004 (the "Banks' Winding-up Order"), which applies to winding-up of an EU based bank or other credit institution or and issuer of electronic money. Section 19 of the Winding-up Order provides that netting agreements will be governed by the agreed choice of law. We are not aware of any Danish authority concerning the scope of this provision in the Winding-up Order. In the limited Danish legal literature on the topic it is assumed that Section 19 of the Winding-up Order will apply to an agreement concerning close-out netting (*slutafregning*). However, in our view it is not certain that an Insolvency Representative would consider this choice of law provision in Section 19 of the Winding-up Order to be overruling and conclusive in a situation where applying mandatory Danish bankruptcy provisions would lead to a result which is different from the law of the netting agreement.

1.6.2 Close-out Netting

The Collateral Directive has been implemented into Danish law by Act No. 1171 of 19 December 2003 amending the rules on bilateral netting in the Securities Trading Act for agreements entered into on or after 1 January 2004. The rules on bilateral netting are contained in Chapter 18a (Sections 58 to 58m) of the Securities Trading Act.

The main close–out netting provision (Section 58h, Subsection 1 of the Securities Trading Act) provides that parties can agree, with legal effect for third parties (including a bankruptcy estate), that financial obligations under an agreement may be close-out netted upon the occurrence of an event of default or the commencement of insolvency

[5] If a Danish Party is a bank or other credit institution subject to the Banks' Winding-up Directive (see footnote 6) or an insurance company subject to the Directive 2001/17 EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance companies the choice of law shall be interpreted in the context of those Directives and the Danish implementing regulation.

[6] Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions.

proceedings[7] of a party (irrespective of the jurisdiction in which such insolvency proceedings take place). It is a requirement that the netting agreement be in writing or be capable of being documented in another manner legally similar thereto. In addition, it must be clear from the close-out netting agreement which of the present, future, actual or contingent or prospective "financial obligations" are covered by the arrangement.

Although the Securities Trading Act is silent on the matter, it is accepted in Danish legal theory that close-out netting between several agreements involving the same two parties can be agreed and will be comprised by the close-out netting rules in Chapter 18a of the Securities Trading Act, provided that all other requirements for such close-out netting have been fulfilled, including that each underlying transaction is separately capable of close-out netting under the Securities Trading Act.

The term "financial obligations" is defined in Section 58e of the Securities Trading Act. For the purpose of this opinion the relevant definitions are in (i) Section 58e, Subsection 2 of the Securities Trading Act, which applies generally to close-out netting agreements where one or both parties are a Financial Entity, and (ii) Section 58e, Subsection 3 of the Securities Trading Act, which applies if no party to a close-out netting agreement is a Financial Entity. In the first case the term "financial obligations" includes obligations giving the party a right to cash settlement or delivery of securities. In the latter case the term "financial obligations" only includes claims originating from foreign exchange trading, trading in <u>securities</u> (see section 1.6.2.2 below), trading on commodities exchanges, and deposits and advances.

We note that according to Section 58e of the Securities Trading Act, it must appear from a financial collateral agreement and/or close-out netting arrangement which of the Parties' obligations are covered thereby. We interpret this as requiring some clarity as to which financial obligations are covered, please refer to section 3.6.1.1 below.

To the extent that the Netted Agreements and/or the Principal Agreements involve transactions consisting of foreign exchange trading and/or trading on commodities exchanges, such types of transactions may be subject to close-out netting irrespective of whether or not a Financial Entity is a party to the close-out netting agreement. See further section 1.6.2.3 below relating to the definition of "Eligible Financial Obligations" for each of the categories "A Financial Entity is a Party" and "No Financial Entity is a Party".

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[7] As set forth in Section 58h, Section 1 of the Securities Trading Act, which, inter alia, includes bankruptcy, formal restructuring proceedings as well as other Danish or foreign types of liquidation, winding up or reorganisation measures caused by a debtor's insolvency as defined in article 2, no. 1, litra j and k of the Collateral Directive.

The scope of "financial obligations" in Section 58e, Subsection 2 and 3, respectively, differ in particular depending on

- whether or not a Financial Entity is a party to the close-out netting agreement; and
- what constitutes a "security".

Thus, we address the terms "Financial Entity" and "security", before we address the term "financial obligations" and define "Eligible Financial Obligations" for each of the categories "A Financial Entity is a Party" and "No Financial Entity is a Party" (see section 1.6.2.3 below). In section 1.6.2.6 below, we have set forth our conclusions on the application of the close-out netting provisions in Section 58h, Subsection 1 of the Securities Trading Act to agreements involving transactions, which provide for close-out netting.

To the extent the close-out netting provisions in Section 58h, Subsection 1 of the Securities Trading Act do not apply, Danish law on set-off may apply (see section 1.6.3 below).

In respect of Danish regulation of financial collateral arrangements, reference is made to section 3.4.

1.6.2.1 Financial Entity

For the purpose of this opinion the following entities (each a "**Financial Entity**") are Financial Entities[8]:

a) a public authority (excluding publicly guaranteed undertakings unless they, inter alia, fall under (b) to (e) below) including:

   1. public bodies in European Union Member States and countries that the EU has entered into a financial agreement with, which are responsible for, or assist, in public debt management, and

   2. public bodies in European Union Member States and countries that the EU has entered into a financial agreement with, which are authorised to keep accounts for clients;

b) central banks, the European Central Bank, the Bank for International Settlements, any multilateral development bank as defined in Article 1(19) of Directive 2000/12/EC, the International Monetary Fund and the European Investment Bank;

[8] See Section 58b, nos. 1 to 5 of the Securities Trading Act.

c) financial institutions subject to supervision, including:

1. credit institutions as defined in Article 1(1) of Directive 2000/12/EC , including the institutions listed in Article 2(3) of that Directive,

2. investment firms as defined in Article 1(2) of Directive 2004/39/EC,

3. financial institutions as defined in Article 1(5) of Directive 2000/12/EC,

4. insurance undertakings as defined in Article 1(a) of Council Directive 92/49/EEC and a life assurance undertaking as defined in Article 1(a) of Council Directive 92/96/EEC,

5. undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Council Directive 85/611/EEC, and

6. management companies as defined in Article 1a(2) of Directive 85/611/EEC;

d) central counterparties, settlement agents and clearing houses, as defined respectively in Article 2(c), (d) and (e) of Directive 98/26/EC, including similar institutions regulated under national law acting in the futures, options and derivatives markets to the extent not covered by the Directive; and

e) persons, other than natural persons, who act in a trust or representative capacity on behalf of any one or more persons that include any bondholders or holders of other forms of securitised debt or any institution as defined in (a) to (d) above.

Professional wholesale energy traders are not Financial Entities unless they are also a type of entity set out above.

1.6.2.2 Security

For the purposes of the Securities Trading Act, the term "security" is defined in Section 2 thereof. An unauthorised translation of Section 2 into English is attached as Appendix D.

Pursuant to Section 2, Subsection 2 of the Securities Trading Act, the FSA is authorised to decide whether instruments, which are not mentioned in Section 2 of the Securities Trading Act, shall nonetheless be comprised by the Securities Trading Act or parts thereof. Currently, to our knowledge the FSA has not issued any decisions or orders to include other instruments than those covered by the wording of the Securities Trading Act and which is described below.

The term "security" comprises most types of financial instruments, and in particular the categories listed below are relevant for this opinion. However, a spot transaction, see section 1.5, will in our view not qualify as a "security" under the Securities Trading Act. fol

Shares and bonds etc.

Pursuant to Section 2, Subsection 1, no. 1 of the Securities Trading Act, transferable securities which are negotiable on the capital market qualify as "securities". This category includes shares and other securities equivalent thereto, and bonds and other forms of securitised debt.

Money-market instruments and units in collective investment schemes

Money-market instruments and units in collective investment schemes qualify as securities pursuant to Section 2, Subsection 1, nos. 2-3 of the Securities Trading Act.

Financially settled derivatives (settlement by cash or delivery of a security)

Section 2, Subsection 1, no. 4 of the Securities Trading Act
Pursuant to Section 2, Subsection 1, no. 4 of the Securities Trading Act, options, financial-futures, swaps, forward rate agreements, and any other derivative agreement concerning securities, currencies, interest rates or returns, or other derivatives, financial indexes or financial targets which can be subject to physical or cash settlements qualify as "securities".

Section 2, Subsection 1, no. 5 of the Securities Trading Act
Pursuant to Section 2, Subsection 1, no. 5 of the Securities Trading Act, any derivative contract including, inter alia, futures, options and swaps with a commodity as the underlying asset that must be settled in cash or may be settled in cash at the option of one of the parties (other than by reason of a default or other termination event) qualify as a "security" under the Securities Trading Act. Accordingly, to the extent any commodity derivatives transaction may be considered cash settled in accordance with this test, it will qualify as a "security" under the Securities Trading Act.

We note that any transaction which can, according to its own terms, only be settled physically but which is post execution, in fact, cash settled by mutual agreement between the parties thereto, will in our view not meet the test of being cash settled. Instead please refer to "Physically settled derivatives" below.

Section 2, Subsection 1, no. 8 of the Securities Trading Act
Credit derivatives qualify as "securities" pursuant to Section 2, Subsection 1, no. 8 of the Securities Trading Act.

Section 2, Subsection 1, no. 9 of the Securities Trading Act
Contracts for difference qualify as "securities" pursuant to Section 2, Subsection 1, no. 9 of the Securities Trading Act.

Section 2, Subsection 1, no. 10 of the Securities Trading Act
Pursuant to Section 2, Subsection 1, no. 10 of the Securities Trading Act options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances 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), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls qualify as a "security" under the Securities Trading Act.

The second part of this definition of "security" starting with *", as well as any other derivative contracts..."* shall be construed in accordance with Article 38(3) of the MiFID Regulation.

It follows from Article 38(3) of the MiFID Regulation that an instrument must be considered as having the characteristics of other derivative financial instruments if it (a) is settled in cash or able to 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) is traded on a regulated market or an MTF, or (c) meets the criteria of Article 38(1), outlined below.

To the extent these derivatives provide for settlement in cash, including at the option of a party, we consider them financially settled derivatives for the purposes of this opinion. Otherwise, they fall within the category of physically settled derivatives below.

Physically settled derivatives (settlement by delivery of commodity etc.)

Derivative transactions which neither must be settled in cash or delivery of a "security" nor may be settled in cash at the option of one of the parties (other than by reason of a default or other termination event) will in this opinion be referred to as "**Physically Settled Contracts**". In respect of Physically Settled Contracts the following definitions of "security" may be relevant.

Section 2, Subsection 1, no. 6 of the Securities Trading Act
Pursuant to Section 2, Subsection 1, no. 6 of the Securities Trading Act, options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a regulated market (as defined in Section 16, Subsection 1 in the Securities Trading Act, implementing Article 4(1)(14) of the MiFID) and/or an MTF qualify as a "security" under the Securities Trading Act.

Section 2, Subsection 1, no. 7 of the Securities Trading Act

Pursuant to Section 2, Subsection 1, no. 7 of the Securities Trading Act, options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls qualify as a "security" under the Securities Trading Act.

In order for a physically settled derivative contract to qualify as a "security" under this section it must not be "*for commercial purposes*" and must "*have the characteristics of other derivative financial instruments*". These criteria have been further detailed in Article 38(1) of the MiFID Regulation.

It follows from Article 38(1) of the MiFID Regulation that an instrument must be considered as having the characteristics of other derivative financial instruments and not being for commercial purposes if:

a) it meets one of the following sets of criteria:

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

   2. 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; or

   3. it is expressly stated to be equivalent to a contract traded on a regulated market, MTF or such a third country trading facility; and

b) it is cleared by a clearing house or other entity carrying out same functions as a central counterparty, or there are arrangements for the payment or provision of margin in relation to the contract; and

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.

Section 2, Subsection 1, no. 10 of the Securities Trading Act

As mentioned in the paragraph immediately above, certain of the derivatives under no. 10 of Section 2, Subsection 1 of the Securities Trading Act will be considered to be Physically Settled Contracts for the purposes of this opinion, please refer to "Financially settled derivatives" above.

<u>Conclusions on "Physically Settled Contracts which qualify as a security" and "Physically Settled Contracts which do not qualify as a security"</u>

A derivative transaction (excluding a spot) with physical settlement of a commodity etc. would be considered a "security" for the purposes of the Securities Trading Act provided that such transaction:

(i) is traded on a regulated market (as defined in Section 16, Subsection 1 in the Securities Trading Act) and/or an MTF; or

(ii) is not "*for commercial purposes*", and it has the characteristics of other derivative financial instruments (and where "*for commercial purposes*" and "*have the characteristics of other derivative financial instruments*" shall be construed in accordance with Article 38(1) of the MiFID Regulation).

A Physically Settled Contract, which does not fulfil any of these criteria will not be covered by the definition of security in Section 2 of the Securities Trading Act.

1.6.2.3 Scope of Eligible Financial Obligations

Based on the analysis above, we will in this section define "Eligible Financial Obligations" (i.e. obligations which may be subject to close-out netting under Section 58h, Subsection 1 of the Securities Trading Act) for each of the categories "A Financial Entity is a Party" and "No Financial Entity is a Party" (each, as relevant, "**Eligible Financial Obligations**").

<u>(a) A Financial Entity is a Party</u>

According to Section 58e, Subsection 2 of the Securities Trading Act, "financial obligations" means obligations giving the party a right to <u>cash settlement</u> or <u>delivery of securities</u>. According to the preparatory works to Section 58e of the Securities Trading Act, such "financial obligations" include all obligations of payment or delivery of securities arising from customary transactions in the financial markets.

Based on the generic description of the transactions set out in Appendix C in our view obligations of payment or delivery arising from most of the transactions listed in Appendix C, including transactions consisting of foreign exchange trading (also FX spot) or trading on commodities exchanges, will be deemed Eligible Financial Obligations when a Financial Entity is a Party.

However, in respect of Physically Settled Contracts which do not qualify as a security as set out in section 1.6.2.2 above (including spot contracts in relation to a commodity, emission allowances, or Bullion (as defined in Appendix C)) only a money claim under such contracts may be considered a "financial obligation" and thus an "Eligible Financial Obligation" and only provided a Financial Entity is a Party.

In respect of Physically Settled Contracts which do not qualify as a security (see section 1.6.2.2 above) we note that there is limited Danish authority on the interpretation of "financial obligations" in respect of such contracts for delivery of a physical commodity etc. According to the preparatory works to Section 58e of the Securities Trading Act, "financial obligations" include all money claims, including money claims arising from sales agreements to which a Financial Entity is a party.

It is recognised in Danish legal literature that money claims under agreements for physical delivery of for example commodities are "financial obligations". However, obligations for physical delivery of such commodity arising from a Physically Settled Contract will in our view not be deemed obligations arising from delivery of "securities" and accordingly, cannot as such be deemed "financial obligations" and subject to close-out netting under Section 58h, Subsection 1 of the Securities Trading Act.

In our view all money claims under such contracts for physical delivery of for example a commodity which arise prior to Danish Insolvency Proceedings in respect of a Danish Party, including any claim for losses and costs following termination by reason of a termination event which occurred prior to Danish Insolvency Proceedings in respect of a Danish Party (subject to as set out in section 1.6.2.5) are "Eligible Financial Obligations" provided a Financial Entity is a Party.

Such contracts regarding physical delivery of for example a commodity may contain a right for a party to terminate an obligation to physically deliver such commodity or provide for automatic termination of such obligation, and in either case transform such obligation to a money claim (a "**Conversion Right**"), if certain insolvency related events occur. It is not clear in the Securities Trading Act or in its preparatory works whether a money claim in such contracts arising from a Conversion Right triggered by the Danish Party becoming subject to Danish Insolvency Proceedings, will be a "financial obligation" where a Financial Entity is a Party.

The purpose of the Collateral Directive and the close-out netting rules in the Securities Trading Act is to improve the legal certainty of financial arrangements and to ensure that local insolvency law does not prevent bilateral close-out netting. Accordingly, the primary focus of the close-out netting provisions in the Securities Trading Act is exchange of cash (or securities) by both parties and not physical delivery of commodities outside the securities markets. It is in our view unlikely that the right to termination and close-out netting pursuant to Section 58h, Subsection 1 of the Securities Trading Act should be interpreted as being applicable to contracts for physical delivery of for example commodities, which do not qualify as a security under the Securities Trading Act.

In Danish Insolvency Proceedings[9], it is generally deemed a mandatory requirement for exercising a set-off right that both claims are money claims prior to the commencement of the Danish Insolvency Proceedings (i.e. prior to the Limitation Day).

The general set-off requirements are generally applicable and in our view also apply to close-out netting unless and to the extent the close-out netting rules in the Securities Trading Act specifically deviate from such general set-off requirements.

In our view the close-out netting rules in the Securities Trading Act have not deviated from the mandatory set-off requirement in respect of Physically Settled Contracts which do not qualify as a security under the Securities Trading Act. Thus, should a Danish Party to such contract become subject to Danish Insolvency Proceedings, in our view, it is most likely that only claims under such contract which are money claims prior to the Limitation Day will be deemed to be "financial obligations" and only provided a Financial Entity is a Party.

In our view a money claim based on a Conversion Right triggered against a Danish Party becoming subject to Danish Insolvency Proceedings will most likely <u>not</u> be deemed to have arisen prior to the commencement of such Danish Insolvency Proceedings (i.e. prior to the Limitation Day) as the Conversion Right could not be triggered before the commencement of the Danish Insolvency Proceedings.

To our knowledge, there is no authority on whether a Conversion Right which is triggered in case of insolvency related events which occur prior to commencement of Danish Insolvency Proceedings in respect of the Danish Party (e.g. certain of the events described in § 3.1(C)(III) of the EFET Master Netting Agreement) will be deemed to have arisen prior to the commencement of the Danish Insolvency Proceedings. In our view, there is a material risk that a Danish court will consider such Conversion Right to be a circumvention of the mandatory general set-off requirement. Thus, in our view, a claim based on a Conversion Right triggered in case of agreed insolvency related events occurring prior to Danish Insolvency Proceedings, will most likely also <u>not</u> be deemed to have arisen prior to the commencement of the Danish Insolvency Proceedings (i.e. prior to the Limitation Day) for the purpose of the set-off requirements.

Based on the above, in relation to Physically Settled Contracts, which do not qualify as a security under the Securities Trading Act, it is our view that money claims based on a Conversion Right which is triggered in case of the Danish Party's insolvency, commencement of Danish Insolvency Proceedings or other insolvency related events in respect of the Danish Party will most likely <u>not</u> be deemed to be "financial obligations" as

[9] See Section 12g of the Bankruptcy Act, which applies to formal restructuring proceedings, and Section 42, Subsection 1 of the Bankruptcy Act, which applies to bankruptcy proceedings.

such claims were not money claims prior to the insolvency events and may therefore not be deemed a "Eligible Financial Obligation".

(b) No Financial Entity is a party

Pursuant to Section 58e, Subsection 3 of the Securities Trading Act, if none of the parties to a close-out netting agreement is a Financial Party, the definition of financial obligations only includes claims originating from foreign exchange trading, trading in securities, trading on commodities exchanges, and deposits and advances.

Accordingly, based on the generic description of the transactions set out in Appendix C in our view obligations of payment or delivery arising from most of the transactions listed in Appendix C, including transactions consisting of foreign exchange trading (also FX spot) or trading on commodities exchanges, will be deemed Eligible Financial Obligations when no Financial Entity is a Party.

However, in our view no claims originating from trading in Physically Settled Contracts which do not qualify as a security (see section 1.6.2.2 above) will be deemed financial obligations where no Financial Entity is a Party as such claims do not originate from foreign exchange trading, trading in securities or on commodities exchanges, deposits or advances, and therefore no such claims will be deemed an "Eligible Financial Obligation" where no Financial Entity is a Party.

1.6.2.4 Notice of Termination

Section 58h, Subsection 2 of the Securities Trading Act provides that it can be agreed with legal effect towards a bankruptcy estate and creditors that upon the occurrence of an event of default, close-out netting of financial obligations shall occur when the non-defaulting party gives notice to this effect to the defaulting party. The said section further provides that if insolvency proceedings are commenced against the defaulting party, such party may require that close-out netting of financial obligations be effected so that the parties are placed in a position as if close-out netting had occurred without undue delay after such time when the non-defaulting party became, or should have become, aware that insolvency proceedings were commenced against the defaulting party.

1.6.2.5 Restrictions on Close-out Netting

Section 58h, Subsections 3-6 of the Securities Trading Act sets out certain restrictions as to the financial obligations, which may be included in a close-out netting.

According to the Securities Trading Act, Section 58h:

- Subsection 3: Close-out netting, which is carried out after the defaulting Danish Party has commenced formal restructuring proceedings, may include claims that

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arose before the time when the non-defaulting party knew, or should have known, the circumstances occasioning the Limitation Day (*fristdagen*).

- Subsection 4: Close-out netting, which is carried out after the defaulting Danish Party has been declared bankrupt, may include claims that arose before the time when the non-defaulting party knew, or should have known, the circumstances occasioning the Limitation Day (*fristdagen*). A close-out netting balance may not include claims which came into existence after the day the bankruptcy of the Danish Party was announced in the Danish Official Gazette (*Statstidende*).

- Subsection 5: A claim covered by Section 42, Subsections 3 and 4 of the Bankruptcy Act may be included in a close-out netting unless the non-defaulting party knew, or ought to have known, that the defaulting Danish Party was insolvent when the claim against such defaulting Danish Party was acquired or came into existence.

- Subsection 6: A close-out netting is voidable pursuant to Section 69 of the Bankruptcy Act, if the close-out netting covered claims, which could not have been included in an agreed close-out netting in case of the Danish Party's bankruptcy, see Section 58h, Subsections 4-5.

1.6.2.6 Conclusions on Close-out Netting

Based on our analysis in sections 1.6.2.1-1.6.2.3, if an agreement regarding transactions subject to a close-out netting provision is:

a) entered into with a Financial Entity, based on the generic description of the transactions set out in Appendix C in our view obligations of payment or delivery arising from most of the transactions listed in Appendix C will be deemed Eligible Financial Obligations.

However, in respect of Physically Settled Contracts which do not qualify as a security as set out in section 1.6.2.2 above (including spot contracts in relation to a commodity, emission allowances, or Bullion (as defined in Appendix C)) only a money claim under such contracts may be considered an "Eligible Financial Obligation" and thus be subject to close-out netting under Section 58h, Subsection 1 of the Securities Trading Act, but money claims under a close-out netting provision in such Physically Settled Contracts based on a Conversion Right triggered in case of events such as those described in § 3.1(C)(III) of the EFET Master Netting Agreement may most likely not be subject to close-out netting under Section 58h, Subsection 1 of the Securities Trading Act and the general rules in Danish law on set-off and cherry picking (right to step into a contract) may apply to such claims; or

b) entered into between parties where both are <u>not Financial Entities</u>, based on the generic description of the transactions set out in Appendix C in our view obligations of payment or delivery arising from most of the transactions listed in Appendix C will be deemed Eligible Financial Obligations when no Financial Entity is a Party.

However, in respect of Physically Settled Contracts which do not qualify as a security as set out in section 1.6.2.2 above (including spot contracts in relation to a commodity, emission allowances, or Bullion (as defined in Appendix C)) no claims originating from such contracts can be subject to close-out netting under Section 58h, Subsection 1 of the Securities Trading Act and the general rules in Danish law on set-off and cherry picking (right to step into a contract) may apply to such obligations.

1.6.3 General Danish Law on Set-off (*modregning*)

Should a claim not be subject to close-out netting under Section 58h, Subsection 1 of the Securities Trading Act, the general rules in Danish law on set-off will apply. Danish law on set-off is based on case law and general principles of law (see section 1.6.3.1 below). However, in Danish Insolvency Proceedings mandatory set-off provisions in the Bankruptcy Act apply (see section 1.6.3.2 below).

1.6.3.1 Pre-insolvency

Under Danish law, a creditor may generally set-off a claim (the "Principal Claim") against a debtor's claim against the creditor (the "Counterclaim") provided, inter alia, the following requirements are fulfilled:

- each of the Principal Claim and the Counterclaim must be owed between the same two parties (i.e. the creditor and the debtor);
- the Principal Claim must be able to be satisfied with the Counterclaim (fungible) (money claims may be set off even if they are denominated in different currencies provided both claims can be converted into the same currency);
- the claims must be due; and
- if the claims do not arise from the same legal relationship (e.g. from the same agreement), the creditor must give notice of set-off to the debtor (claims arising from the same legal relationship are deemed to be set off without notice).

Parties may agree to deviate from the set-off requirements above but such agreement will not have any effect against third parties, should the debtor become subject to Danish Insolvency Proceedings.

1.6.3.2 Post-insolvency

The Bankruptcy Act contains mandatory provisions which apply to set-off involving a Danish Party subject to Danish Insolvency Proceedings and the right to terminate contracts with such Danish Party subject to Danish Insolvency Proceedings.

Set-off

Pursuant to the Bankruptcy Act, a creditor may set off a claim against a Danish Party subject to bankruptcy with a claim held by such Danish Party against the creditor on the Limitation Day irrespective of whether the creditor's claim is due or not. It is a general set-off requirement that both claims are fungible (in practice both claims should be money claims) on the Limitation Day.

Pursuant to Section 42, Subsection 2 of the Bankruptcy Act, set-off may also take place between two fungible claims both acquired after the Limitation Day but before the date of the bankruptcy order (*konkursdekret)*.

The Bankruptcy Act prevents set-off of a creditor's claim which arose before the Limitation Day with a claim of the Danish insolvency estate which arose after the Limitation Day unless the claims arise from the same agreement.

Section 42, Subsection 3 of the Bankruptcy Act also prevents a claim against a Danish Party in bankruptcy or under formal restructuring proceedings which the creditor acquired from a third party within three months prior to the Limitation Day, from being set-off with a claim of such Danish Party against the creditor which existed at the time the creditor acquired the claim. The same rule applies if the creditor acquired the claim more than three months prior to the Limitation Day and the creditor knew, or ought to have known, at that time that the Danish Party was insolvent.

Further, Section 42, Subsection 4 of the Bankruptcy Act prevents set-off of claims against a Danish Party in bankruptcy or under formal restructuring proceedings acquired by a creditor, if the set-off will constitute a voidable payment. Payment of a debt is voidable if made less than three months prior to the Limitation Day and if:

i) the payment is made using non-customary means; or

ii) the payment is made prematurely (e.g. set-off has been effected before the principal claim matures), or

iii) the payment results in a substantial deterioration of the insolvent Danish Party's financial position.

In each case, the payment will only be voidable if it did not appear ordinary under the given circumstances.

The Bankruptcy Act prevents set-off of certain deferred claims (e.g. interest accrued after the date of the bankruptcy order and liquidated damages to the extent such damages exceed the loss likely to be suffered) unless such claims will be fully paid by the bankruptcy estate.

A bankruptcy estate's right to step in (cherry picking)

According to Section 55, Subsection 1 of the Bankruptcy Act, a Danish Party's bankruptcy estate has the right to step into (cherry pick) (*indtrædelsesret*) any of such Party's agreements (on the terms thereof) provided the agreement has not been materially breached by such Party prior to the commencement of the bankruptcy proceedings for other reasons than the bankruptcy proceedings. Pursuant to Section 58 of the Bankruptcy Act, bankruptcy is not per se deemed a material breach.

Both Sections 55 and 58 of the Bankruptcy Act are mandatory law unless other statutory acts (such as the close-out netting rules in the Securities Trading Act) stipulate otherwise.[10]

To our knowledge, there is no Danish authority on whether a right to terminate an agreement for insolvency based material reasons other than Danish Insolvency Proceedings (such as the events described in (b)-(d) and (f)-(i) of § 3.1(C)(III) of the EFET Master Netting Agreement) may be agreed with effect for a Danish bankruptcy estate. In our view such agreed right may be deemed a circumvention of the bankruptcy estate's rights to step into an agreement and consequently not binding on the bankruptcy estate. However, it is not clear how closely related to the bankruptcy the events must be to be deemed a circumvention of the bankruptcy estate's rights to step into an agreement and it will most likely depend on the specific circumstances of each case whether a Danish court will find that the bankruptcy estate's rights to step into an agreement have been circumvented.

In our view there is a material risk that a Danish Party's bankruptcy estate will have the right to step into any agreement of a bankrupt Danish Party which is not subject to

[10] According to Section 53 of the Bankruptcy Act, Chapter 7 (including Sections 55 and 58) of the Bankruptcy Act does not apply if other statutory acts or the nature of the relationship (*retsforholdets beskaffenhed*) provide otherwise. According to legal literature, the scope of the latter exemption applies to contracts where the personal performance of or connection with the bankrupt Danish Party is material to the Counterparty.

close-out netting, regardless of the fact that the other party has an agreed right to terminate the agreement for certain insolvency related material reasons (such as the events set out in § 3.1(C)(III) of the EFET Master Netting Agreement).

If the bankruptcy estate does not step into an agreement, the other party may terminate the agreement and any claim under the agreement against the bankruptcy estate will rank pari passu with all other unsecured and unsubordinated indebtedness.

If the bankruptcy estate steps into an agreement, the other party's claim under the agreement will be a preferred claim in the bankruptcy estate. Any claim of the bankruptcy estate arising from such agreement will be deemed to have arisen after the Limitation Day. Thus, the Bankruptcy Act will prevent set-off of a creditor's claim which arose before the Limitation Day (e.g. any claims under agreements which the bankruptcy estate has not stepped into) with a claim of the bankruptcy estate under an agreement the bankruptcy estate has stepped into unless the claims arise from the same agreement (i.e. the stepped-into agreement).

Thus, if the close-out netting provisions of Section 58h of the Securities Trading Act do not apply, the bankruptcy estate may most likely be able to step into (cherry pick) any favourable agreements and leave the unfavourable agreements, unless the relevant agreements are deemed to be one agreement.

Single agreement

There is limited Danish authority on whether parties can agree with binding effect for third parties that two or more transactions are a single agreement (a "Single Agreement") with the consequence that a bankruptcy estate be prevented from cherry picking among them.

In our view, provided the agreements are not subject to the close-out netting provisions of the Securities Trading Act, a Single Agreement will not be effective against a bankruptcy estate as it restricts a bankruptcy estate's mandatory right under Section 55, Subsection 1 of the Bankruptcy Act to step into agreements and results in a right of set-off which is not provided for in the Bankruptcy Act. However, in our view, two or more transactions may be deemed a single agreement, if they are in fact one legal relationship (e.g. if one transaction is contingent upon the other).

Thus, even though a Single Agreement has effect inter partes and may support that a bankruptcy estate is prevented from cherry picking, in our view, a Danish bankruptcy estate will be able to cherry pick the individual transactions entered into under a Single Agreement unless (i) the Single Agreement is subject to the close-out netting provisions in the Securities Trading Act or (ii) the individual transactions, based on the circumstances, are in fact one agreement.

2. **ASSUMPTIONS**

This opinion is based on the following assumptions and those additional assumptions set out in section 3 below:

a) two parties enter into the EFET Master Netting Agreement and/or the TBMA Cross-Product Master Agreement and at least one of the parties is incorporated or organised in Denmark (i.e. the Danish Party);

b) the Danish Party is a corporation, financial institution or other entity listed in Appendix A;

c) the relevant Agreement is governed by the laws of Denmark, or in respect of the opinions in sections 3.1-3.3, the relevant Agreement is governed by the laws of Denmark, England, Germany or New York;

d) to the extent that the Documents are governed by any law other than Danish law, that the Documents are legal, valid, binding and enforceable under such law;

e) to the extent that any obligation arising under the Documents will be performed in a jurisdiction outside Denmark, that its performance will not be illegal or ineffective under the laws of such jurisdiction;

f) each of the Parties is duly incorporated or organised and validly existing under the laws of its jurisdiction of incorporation and its place of business;

g) each of the Parties has the capacity, power and authority and has obtained all applicable authorisations and licences under all applicable laws, to enter into and to exercise its rights and to trade and perform its obligations under the Documents and the transactions thereunder, and the Documents are duly authorised, executed and delivered and properly completed by or on behalf of each of the Parties under its constitutional documents and the laws of its jurisdiction of incorporation and its place of business;

h) the relevant Agreement provides for the inclusion of some or all of the master agreements described in Appendix B, each such master agreement being a Netted Agreement or Principal Agreement;

i) on the basis of the terms and conditions of the relevant Agreement and other relevant factors, and acting in a manner consistent with the intentions stated in the relevant Agreement, as applicable, the Parties over time enter into a number of transactions which include some or all of the transactions described in Appendix C;

j) some of the transactions covered by the relevant Agreement provide for an exchange of cash by both Parties and others provide for the physical delivery of shares, bonds or commodities (including emission rights) in exchange for cash;

k) each of the Documents provides for close-out netting and is capable of being terminated and closed-out and having a net settlement amount determined in the manner envisaged by the Agreements under any applicable laws and that such close-out netting provision be enforceable, and that if one or more transactions under such Documents are not capable of close-out netting under Danish law that the remaining transactions are still capable of close-out netting according to such Document (except that this assumption is not made in respect of the provisions in the Agreements we opine on below, where the Agreements are governed by Danish law);

l) each of the Documents (other than the Agreements) is effectively and validly amended under applicable law in the manner envisaged by the applicable Agreement, including by any of the elections made;

m) to the extent that any of the Documents (other than the Agreements) are terminated pursuant to a Close-out Event as set out in the relevant Agreement, that such termination is effective and valid under the terms of the relevant Document and that such termination is legal, valid, binding and enforceable under the laws of the country by which it is governed;

n) no agreement, including the Documents, when entered into between the parties will avoid, rescind, render unenforceable or make contrary to public policy any provision of any (other) Document;

o) the Documents are entered into prior to the commencement of any insolvency proceedings in respect of the Parties and that none of the Parties is or, as at the date of execution or the effective date of the Documents, will be, or, as a result of the transactions effected pursuant to any of the Documents, will become, or will be deemed to be, insolvent or unable to pay its debts under any applicable law, statute, decree, rule, or regulation;

p) each Party is acting as principal and not as agent in relation to its rights and obligations under the Documents and no third party has any right to, or interest in, or claim on any Party's rights or obligations under the Documents;

q) the Documents have been or will be entered into for *bona fide* commercial reasons and on arms-length terms and in good faith by each of the Parties thereto, that no Party has entered into the Documents under duress or on the basis of fraud, and that the terms of the Documents are entered into at arms' length, and involve no element of gift or undervalue from the Danish Party to the Counterparty;

r) all net settlement amounts determined under the Documents are duly determined in accordance with the relevant provisions thereof, and that the Documents do not provide for liquidated damages, which are not a genuine estimate of the loss likely to be suffered;

s) the Documents and the transactions entered into thereunder are entered into on or after 1 January 2004;

t) save for elections or required specifications made in the applicable Election Sheet or Schedule, as applicable, no substantive modifications have been made to any of the Agreements; and

u) no law (other than Danish law) affects the conclusions in this opinion.

3. OPINION AND SPECIFIC QUESTIONS

The specific questions you have asked us to address are set out in this section 3 in italics (amended only to fit in the context) followed by our opinions, answers and any specific assumptions and qualifications. In addition, the general assumptions set out in section 2 and the general qualifications set out in section 4 apply.

3.1 Winding-up, Insolvency or Attachment

Our opinion in this section 3.1 is based on the following additional assumptions:

- The relevant Agreement is governed by the laws of Denmark, England, Germany or New York; and
- After entering into transactions and prior to the maturity thereof, the Danish Party becomes the subject of voluntary or involuntary proceedings under the insolvency laws of Denmark and, subsequent to the commencement of the insolvency proceedings, either the Danish Party or an insolvency official seeks to assume the confirmations representing profitable ("in the money") transactions for the insolvent Danish Party.

3.1.1 *Short overview of Danish Insolvency Proceedings*

We refer to section 1.6.1 above.

3.1.2 *Please discuss and advise on whether the contract types listed in Appendix C 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 EFET Master Netting Agreement or TBMA Cross Product Master Agreement.*

We refer to sections 1.6.2 and 1.6.3 above, and in particular section 1.6.2.6, where it is concluded that if an agreement regarding transactions subject to a close-out netting provision is:

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a) entered into with a Financial Entity, based on the generic description of the transactions set out in Appendix C in our view obligations of payment or delivery of securities arising from most of the transactions listed in Appendix C will be deemed Eligible Financial Obligations.

However, in respect of Physically Settled Contracts which do not qualify as a security as set out in section 1.6.2.2 above (including spot contracts in relation to a commodity, emission allowances, or Bullion (as defined in Appendix C)) only a money claim under such contracts may be considered an "Eligible Financial Obligation" and thus be subject to close-out netting under Section 58h, Subsection 1 of the Securities Trading Act. Money claims arising under a close-out netting provision in such Physically Settled Contracts based on a Conversion Right triggered in case of events such as those described in § 3.1(C)(III) of the EFET Master Netting Agreement may most likely not be subject to close-out netting under Section 58h, Subsection 1 of the Securities Trading Act and the general rules in Danish law on set-off and cherry picking (right to step into a contract) may apply to such claims; or

b) entered into between parties where both are not Financial Entities, based on the generic description of the transactions set out in Appendix C in our view obligations of payment or delivery arising from most of the transactions listed in Appendix C will be deemed Eligible Financial Obligations where no Financial Entity is a Party.

However, in respect of Physically Settled Contracts which do not qualify as a security as set out in section 1.6.2.2 above (including spot contracts in relation to a commodity, emission allowances, or Bullion (as defined in Appendix C)) no claims originating from such contracts can be subject to close-out netting under Section 58h, Subsection 1 of the Securities Trading Act and the general rules in Danish law on set-off and cherry picking (right to step into a contract) may apply to such claims.

Accordingly, if there is a Netted Agreement or a Principal Agreement with an underlying portfolio of transactions, where only some but not all qualify as Eligible Financial Obligations, we are of the view, that close-out netting will still be effective for those obligations which qualify as Eligible Financial Obligations, provided that this is not contrary to the terms of the relevant Agreement, is the intention of the Parties and/or complies with any other requirement under the applicable law. We base this also on the wording of Section 58h, subsection 1 of the Securities Trading Act, which states that the parties can agree (in our translation) that "*the financial obligations comprised by the agreement*" shall be subject to close-out netting. The consequence is, that application of Danish law in case of a Danish Party becoming subject to Danish Insolvency Proceedings may result in a splitting-up or segregation of the portfolios of transactions under the relevant Netted Agreement or Principal Agreement, as applicable, into multiple "netting pools" of disparate treatment, i.e. where some transactions may be subject to close-out netting under the Securities Trading Act and some transactions may not be subject to close-out netting but Danish law on set-off and cherry picking (right to step into a contract) will apply to such transactions/obligations instead (see section 1.6.3.2). However, we note that there are to our knowledge no legal precedents in respect of this question and our view is primarily an interpretation based on general Danish legal principles and the wording of the Securities Trading Act. Accordingly, this view is subject to legal uncertainty.

Although the Securities Trading Act is silent on the matter, it is accepted in Danish legal theory that close-out netting between several agreements involving the same two parties can be agreed and will be comprised by the close-out netting rules in Chapter 18a of the Securities Trading Act, provided that all other requirements for such close-out netting have been fulfilled. Accordingly, we are of the view, that the Agreements will be enforceable under Danish law in respect of Eligible Financial Obligations. However, if not all of the underlying transactions/obligations are separately capable of close-out netting under the Securities Trading Act, we are of the view, that the entry into of a master netting agreement such as the Agreements will not cure the non-eligibility for close-out netting for such transactions/obligations.

Consequently, in our view Danish law may imply that the early termination and close-out netting rights provided for in the Agreements may in case of a Danish Party subject to Danish Insolvency Proceedings only be partially enforceable in case the Parties have entered into all types of transactions listed in Appendix C, since such early termination and close-out netting rights will most likely not be enforceable, when the underlying transactions/obligations are not Eligible Financial Obligations.

3.1.3 *When rendering your opinion, please also advise on whether and how has the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR) been reflected/implemented in the legislation of Denmark, in particular the financial/capital markets and insolvency laws, or other laws relevant for purposes of rendering the present legal opinion. Please advise whether EMIR or relevant national legislation impact, or alter the legal qualification of any transactions under Netted Agreements or Principal Agreements as listed in Appendix C below.*

Since Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (as amended) (the "EMIR Regulation") is directly applicable in the EU member states, the EMIR Regulation together with the regulatory technical standards and implementing technical standards issued thereunder apply directly as part of Danish law without any implementing procedures.

Under Danish law, the FSA is appointed the competent authority for Denmark. Currently, there are no CCPs authorised in Denmark.

As of 1 January 2014 a new provision (section 57f) in the Securities Trading Act entered into force. The purpose of the provision is to ensure that assets and positions recorded in the records and accounts of a CCP as being held for the account of a defaulting clearing member's clients are duly protected in case of a Danish clearing member's default as required by the EMIR Regulation Article 48.

None of the specific Danish rules mentioned above will in our view have any influence on the legal qualification of any transactions listed in Appendix C. We do note, however, that it may have an impact on the assessment of whether or not a Physically Settled Contract qualifies as a security if the contract is cleared by a CCP and subject to regular margin calls, see section 1.6.2.2 above.

3.1.4 *When rendering your opinion on the enforceability of close-out netting in the context of an insolvency proceeding, you should discuss whether the termination of the Netted Agreements or Principal Agreements or the transactions entered into thereunder, the calculation of the Settlements Amounts, the aggregation and offsetting of such Settlement Amounts and the determination of the Final Net Settlement Amount and/or its payment is voidable, challengeable or in any way capable of being invalidated, deleted, frozen, stayed or otherwise retroactively impacted by a liquidator, receiver, other third party or the court. In particular, please clarify whether or not there is a 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 Appendix C would benefit from such provision(s). We would also like to know whether there is publicly available information that would confirm any of the procedural steps mentioned above under (a) through (d) or other solvency related facts (e.g., financial statements, corporate actions, etc.).*

The general voidability rules of the Bankruptcy Act apply in case of a Danish Party becoming subject to Danish Insolvency Proceedings. Accordingly, any action under any of the Agreements, the Netted Agreements, the Principal Agreement, Uncovered Transactions or transactions thereunder may be subject to challenge under (i) Section 72 of the Bankruptcy Act (if such action is taken after the Limitation Day) or (ii) Section 74 of the Bankruptcy Act (if such action is deemed an improper transaction and the Danish Party was, or became, insolvent as a result of the transaction, and the Counterparty knew, or ought to have known, of both the insolvency and of the circumstances which rendered the transaction improper). The mentioned voidability rules do not have any particular relevance in respect of close-out netting but apply generally and will therefore not be addressed further in this section.

In respect of applicability of the close-out netting rules under Danish law we refer to section 3.1.2 above. In our view, an Insolvency Representative may be able to challenge a close-out netting which has been carried out with transactions/obligations which do not qualify as Eligible Financial Obligations.

Pursuant to the Bankruptcy Act, the receipt by the bankruptcy court of the petition for bankruptcy or formal restructuring proceedings will establish the Limitation Day, which will be relevant for set-off pursuant to the Bankruptcy Act, see section 1.6.3.2 (Set-off) and the applicable hardening periods for avoidance (*omstødelse*) of transactions prior to the Danish Insolvency Proceedings.

The initiation of Danish Insolvency Proceedings with the bankruptcy court in respect of a Danish Party may also have an effect on whether and when the Counterparty knew or ought to have known that the Danish Party was insolvent and may, thus, have an effect on (i) when the close-out netting may occur (absent automatic termination) under Section 58h, Subsection 2 of the Securities Trading Act, see section 1.6.2.4, (ii) which financial obligations may be included in a close-out netting, see Section 58h, Subsections 3-6 of the Securities Trading Act, see section 1.6.2.5, and (iii) whether set-off may be challenged under Section 42, Subsections 3 and 4 of the Bankruptcy Act, see section 1.6.3.2 (Set-off).

Apart from the close-out netting rules in the Securities Trading Act which provides for an exception to the mandatory cherry-picking right of the bankruptcy estate of a Danish Party, Danish law does not provide for any "safe harbour"-provision for certain derivatives transactions or categories of derivatives transactions.

In Denmark a search on the status of the Danish Party may be carried out online with the Danish Business Authority (at www.cvr.dk) and it is possible to obtain an on-line transcript. A transcript from the Danish Business Authority is, however, not conclusive evidence of whether or not: (i) a winding up, administration, or formal restructuring order has been issued, (ii) a resolution for winding up has been passed; or (iii) an administrator or liquidator has been appointed. Notice of the matters referred to above may not be filed with the Danish Business Authority immediately and may not be registered immediately. In addition, such transcripts do not report petitions for winding up, administration, or formal restructuring prior to the issuance of the order therefor.

In respect of Danish financial institutions, it may also be relevant to check whether the FSA has published that any measures have been taken towards such institution (at www.ftnet.dk).

Further, it is possible against payment of a fee to obtain a statement from the city court in the area of the seat of the Danish Party confirming that the Danish Party has not filed for its own bankruptcy, as per a specific date.

3.1.5 *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?*

Under Danish law, a right to early terminate is a contractual right set out in an agreement. Such right may, however, be restricted by mandatory rules in the Bankruptcy Act in case of a Danish Party subject to Danish Insolvency Proceedings, please refer to section 1.6.3.

The Danish rules on close-out netting are contained in the Securities Trading Act and only apply to financial obligations (as defined therein) and provided close-out netting has been agreed on the terms set forth in the Securities Trading Act. It is part of the Danish close-out netting regime, that it is possible to agree an early termination of financial obligations also with legal effect towards a bankruptcy estate, in case of insolvency proceedings being commenced against a Danish Party. Please refer to section 1.6.2 for a more in-depth discussion of these concepts.

Under Danish law, set-off is based on general principles of law and the Bankruptcy Act, which apply even if no agreement on set-off has been entered into, please refer to section 1.6.3.

Thus, in our view, early termination, set-off and close-out netting are legally distinct and separate rights under Danish law.

3.1.6 *Assuming the Parties have not specified that Automatic Termination (as defined in § 6.3 of the EFET Master Netting Agreement or "automatic Close Out" as set out in Division I, Part II.C of the TBMA Commodities Schedule) applies, are the provisions of the EFET Master Netting Agreement or TBMA Cross-Product Master Agreement 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 Denmark or is there a risk that (i) the entering into the EFET Master Netting Agreement or TBMA Cross-Product Master Agreement, (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 EFET Master Netting Agreement or Section 2.2 of the TBMA*

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Cross-Product Master Agreement itself could be challenged by a liquidator, administrator, receiver or third party?

A right to early terminate and close-out as set out in § 4 of the EFET Master Netting Agreement or Section 2 of the TBMA Cross-Product Master Agreement operable as the result of an insolvency based Close-out Event, such as certain of the events listed in § 3.1(C)(III) of the EFET Master Netting Agreement[11] (whether by automatic or active termination) will in our view be enforceable against a Danish Party subject to Danish Insolvency Proceedings in respect of Eligible Financial Obligations under the Netted Agreements, Principal Agreements or Uncovered Transactions (including all transactions), and subject to the qualifications and discussions set out elsewhere in this section 3.1, in particular sections 3.1.2 and 3.1.4 above and section 3.1.9 below.

However, in respect of obligations which do not qualify as Eligible Financial Obligations[12] we are of the view that, it is most likely that if the Danish Party becomes subject to Danish Insolvency Proceedings, or should any of the other insolvency based Close-out Events, such as certain of the events listed in § 3.1(C)(III) of the EFET Master Netting Agreement occur, this may not per se be deemed a material default which entitles the Counterparty to early terminate and close-out such obligations which are not Eligible Financial obligations as set out in § 4 of the EFET Master Netting Agreement or Section 2 of the TBMA Cross-Product Master Agreement. The single agreement concept will most likely not be upheld by Danish courts towards a bankruptcy estate (see section 1.6.3.2 *(Single agreement)* above). Instead Danish law on set-off and cherry picking (right to step into a contract) may apply to such obligations, and thereby preventing set-off of the Counterparty's claim under a transaction under any of the Netted Agreements or Principal Agreements and/or the Agreements which the bankruptcy estate has not stepped into with a claim of the bankruptcy estate arising from another transaction under the relevant agreement which the bankruptcy estate has stepped into.

3.1.7 *Assuming the Parties have elected Automatic Termination (or "automatic Close-Out", as applicable) to apply, are the provisions of the EFET Master Netting Agreement or TBMA Cross-Product Master Agreement terminating the Netted Agreements or Principal Agreements including all transactions upon the occurrence of a Close-Out Event described in § 6.3 of the EFET Master Netting Agreement or Division I, Part II.C of the TBMA Commodities Schedule enforceable under the laws of Denmark*

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[11] Under Danish law the reasons listed in (a) and (e) of § 3.1(C)(III) of the EFET Master Netting Agreement will in our view not per se be deemed insolvency based reasons as a dissolution or liquidation may not necessarily be caused by an insolvency related event or result in insolvency proceedings being commenced.

[12] See section 1.6.2.3 above where "Eligible Financial Obligations" is defined for each of the categories "A Financial Entity is a Party" and "No Financial Entity is a Party"..

or is there a risk that the automatic termination could be challenged by a liquidator, administrator, receiver or third party?

The election of Automatic Termination as set out in § 6 of the EFET Master Netting Agreement or "automatic Close Out" as set out in Division I, Part II.C of the TBMA Commodities Schedule would not change the opinions provided in section 3.1.6 above.

3.1.8 *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 EFET Master Netting Agreement) 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 do not make any recommendation on whether the Parties should agree to make automatic termination operative vis-à-vis a Danish Party as the choice of automatic termination would not change the opinions provided above in section 3.1.6. Accordingly, it should be a commercial consideration whether to include a provision on automatic termination which could be triggered without the Terminating Party's knowledge under an automatic termination scenario.

3.1.9 *Are the provisions in § 8 of the EFET Master Netting Agreement and Section 4 of the TBMA Cross-Product Master Agreement providing for the offsetting of all positive and negative Settlement Amounts in determining the Final Net Settlement Amount enforceable under the laws of Denmark or is there a risk that such determination could be challenged by a liquidator, administrator, receiver or third party?*

(a) Eligible Financial Obligations

In respect of claims which are Eligible Financial Obligations, a right to early terminate, close-out net and calculate a Final Net Settlement Amount of such claims under § 8 of the EFET Master Netting Agreement or Section 4 of the TBMA Cross-Product Master Agreement arising as the result of an insolvency of the Danish Party will, in our view, be enforceable under Danish law in accordance with its terms, subject to the qualifications set out below.

Assuming the Parties have not selected Automatic Termination (or "automatic Close-Out", as applicable), Section 58h, Subsection 2 of the Securities Trading Act provides that, with legal effect towards the Danish Party's bankruptcy estate and creditors, it may be agreed that upon the occurrence of an event of default, close-out netting shall occur with respect to Eligible Financial Obligations when the Counterparty gives notice to this effect to the Danish Party. Section 58h, Subsection 2 further provides that, if insolvency proceedings are commenced against the defaulting Danish Party, such Party may require that close-out netting be effected so that the Parties are placed in a position as if the close-out netting had occurred without undue delay after such time when the Counterparty became, or should have become, aware that insolvency proceedings were commenced against the Danish Party.

In addition, Section 58d of the Securities Trading Act provides that the valuation of financial obligations by a non-defaulting party in a close-out netting scenario must be on commercially reasonable terms.

Section 40, Subsection 2 of the Bankruptcy Act provides that any money claims in foreign currency filed in Danish bankruptcy or under formal restructuring proceedings must be converted into Danish Kroner at the exchange rate on the date of the order of such Danish Insolvency Proceedings. There is no legal authority on how Section 40, Subsection 2 of the Bankruptcy Act shall be applied in respect of claims under the Agreements. In our view the requirement for conversion will only relate to the net amount to be filed with the bankruptcy estate or under formal restructuring proceedings (i.e. after close-out netting, to the extent applicable, has been effected), see section 3.1.11 below.

Provisions in the Agreements, Netted Agreements, Principal Agreements and/or Uncovered Transactions providing that certain calculations or determinations will be final, conclusive and binding may not be effective, if such calculations or determinations are incorrect and such provisions will not necessarily prevent judicial inquiry into the merits of such calculations or determinations.

Section 4 of the TBMA Cross-Product Master Agreement provides for a "rolling close-out netting" where each of the underlying master agreements may terminate at different times, but still subject to a master netting arrangement. In our view there is a material risk that this will be considered contrary to Section 58h, subsection 2 of the Securities Trading Act, which in our reading implies that there is only fixed one early termination date.

Restrictions on close-out netting

As set out in section 1.6.2.5 above, a close-out netting or the subsequent calculation and payment of a Final Net Settlement Amount related thereto is voidable or challengeable, should Danish Insolvency Proceedings be commenced in respect of a Danish Party, to the extent:

- A close-out netting, which is carried out after the Danish Party has commenced formal restructuring proceedings, includes claims that arose after the time when the non-defaulting party knew, or should have known, the circumstances occasioning the Limitation Day (*fristdagen*), see Section 58h, Subsection 3 of the Securities Trading Act;
- A close-out netting, which is carried out after the Danish Party has been declared bankrupt, includes claims that arose after the time when the non-defaulting party knew, or should have known, the circumstances occasioning the Limitation Day (*fristdagen*), see Section 58h, Subsection 4, first sentence of the Securities Trading Act;
- A close-out netting includes claims which came into existence after the day the bankruptcy was announced in the Danish Official Gazette (*Statstidende*), see Section 58h, Subsection 4, second sentence of the Securities Trading Act; or
- The Counterparty acquired a claim against the Danish Party within 3 months of the Limitation Day and the Counterparty knew, or ought to have known, that the Danish Party was insolvent when the claim against the Danish Party was acquired or came into existence, see Section 58h, Subsection 5 of the Securities Trading Act.

In additional, we refer to Section 3.1.4 in respect of voidability.

(b) Obligations which are not Eligible Financial Obligations

In respect of obligations which are not Eligible Financial Obligations, a Counterparty will in our view most likely not be able to enforce a right to early terminate, close-out net and calculate a Final Net Settlement Amount arising as the result of an insolvency of the Danish Party under § 8 of the EFET Master Netting Agreement or Section 4 of the TBMA Cross-Product Master Agreement, as such insolvency events may not per se be deemed a material default under Danish law, which entitles the Counterparty to terminate the transactions.

Thus, in our opinion the bankruptcy estate will most likely have a right to cherry pick between obligations which are not Eligible Financial Obligations such transactions and prevent set-off of the Counterparty's claim under a transaction subject to any of the Netted Agreements or Principal Agreements and/or the Agreements which the bankruptcy estate has not stepped into with a claim of the bankruptcy estate arisen from another transaction under the relevant agreement in which the bankruptcy estate has stepped into (cherry picked).

If the bankruptcy estate does not step into a transaction, the Counterparty may terminate the transaction and any claim under the transaction against the bankruptcy estate will rank in right of payment pari passu with all other unsecured and unsubordinated indebtedness.

If the bankruptcy estate steps into a transaction, the Counterparty's claim under such transaction will be a preferred claim in the bankruptcy estate.

We further refer to section 3.1.4 in respect of voidability.

In addition, Section 40, Subsection 2 of the Bankruptcy Act provides that any money claims in foreign currency filed in Danish bankruptcy or under formal restructuring proceedings must be converted into Danish Kroner at the exchange rate on the date of the order of such Danish Insolvency Proceedings.

Provisions in the Agreements, Netted Agreements, Principal Agreements and/or Uncovered Transactions providing that certain calculations or determinations will be final, conclusive and binding may not be effective, if such calculations or determinations are incorrect and such provisions will not necessarily prevent judicial inquiry into the merits of such calculations or determinations.

3.1.10 *Do the laws of Denmark recognize that the Close-Out applies to all transactions? Would we need the single agreement concept (as provided for in § 2.3 of the EFET Master Netting Agreement and, if so selected in Section 10.6 of the TBMA Commodities Schedule) 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 Netted Agreements or Principal Agreements following a previous Partial Close-Out.*

(a) Eligible Financial Obligations

In our opinion, the single agreement concept is not required in order to preserve the enforceability of the termination right and the ability to calculate a net amount under Danish law in relation to Eligible Financial Obligations.

Danish legal literature seems to assume that a close-out netting must always include all transactions covered by the netting agreement in question in order to avoid arbitrary selection among transactions by the parties to the detriment of third parties. However, in our view it must be possible to agree under Danish law that a specific type of transactions, for example cash-settled derivatives relating to emission allowances, can be closed-out and netted even though the remaining transactions between the Parties under the same master agreement are not closed-out and netted. We base this on the reasoning that the Parties are free to enter into one master agreement under which the specified type of transactions are traded and another master agreement under which no such type of transactions are traded. Under such circumstances, a "Partial Close-Out" of only the master agreement where under the specific types of transactions are traded would be the main rule if only that master agreement had been defaulted. As we believe that Danish law will not distinguish between whether there is one or two master agreements so long as it is clear and objective which type of transactions can be subject to a Partial Close-Out (e.g. such that only emission allowances derivatives are closed-out if only emission allowances derivatives have been defaulted due to non-performance or breach of warranty or misrepresentation concerning only one or more emission allowances derivatives), we are of the view that a Partial Close-Out is possible under Danish law, provided that the transactions subject to Partial Close-Out are an objectively defined group and that the Parties are not vested with any discretion to choose which transactions to make subject to such Partial Close-Out. In our view, this will also apply in respect of a Party having a right under the Agreements to close only some, but not all, Netted Agreements or Principal Agreements, as applicable, provided such underlying master agreements can be closed out on its own terms and it is clear and objective which type of transactions are subject to which master agreement and which of the relevant transactions and/or master agreements are subject to the close-out. If the non-defaulting party has any discretion to choose which transactions and/or master agreements are closed-out and netted (save for its right not to close-out at all), thereby contractually allowing a "reverse cherry picking", a Danish bankruptcy court may in our view most likely be able to set aside the whole close-out netting arrangement.

We note that there are to our knowledge no legal precedents in respect of this question, and as such the question remains subject to legal uncertainty under Danish law.

(b) Obligations which are not Eligible Financial Obligations

The single agreement concept will most likely not be upheld by Danish courts towards a bankruptcy estate (see section 1.6.3.2 *(Single agreement)* above). In our opinion it is therefore most likely that a Danish bankruptcy estate will be able to cherry pick the individual transactions entered into under a Netted Agreement or Principal Agreement if such transactions do not qualify as Eligible Financial Obligations unless such individual transactions, based on the circumstances, are in fact one agreement.

3.1.11 *Is the insolvent counterparty's (i.e. the Danish Party's) obligation to pay the Final Net Settlement Amount in Euro, USD or GBP (as agreed between the Parties in the Election Sheet to the EFET Master Netting Agreement or TBMA Commodities Schedule) enforceable under the laws of Denmark or could the calculation or demand of such amount in a foreign currency be challenged by a liquidator, administrator, receiver or third party?*

The enforceability of claims and court decisions ordering the payment of money in a currency other than Danish Kroner against a Danish Party subject to Danish Insolvency Proceedings is subject to the Bankruptcy Act which in general provides for the conversion of such foreign currency debt into Danish Kroner on the date of the commencement of such bankruptcy proceedings (*dekretdag*) or the initiation of formal restructuring proceedings.

There is to our knowledge no Danish legal authority on this point, but in our view the purpose of the close-out netting provisions of the Securities Trading Act as applicable to Eligible Financial Obligations, including the fact that the Securities Trading Act explicitly states that a bankruptcy estate of a Danish Party is bound by a close-out netting agreement (as further discussed under 3.1.6 above) points to the conclusion that a close-out netting would be completed based on such agreed currency and only if the resulting net balance was in favour of the Counterparty, would the Counterparty have to file its claim for such net payment in the bankruptcy estate of the Danish Party in Danish Kroner calculated on the date of the commencement of such bankruptcy proceedings (*dekretdag*). In our view, the same will apply in case of initiation of formal restructuring proceedings, cf. Section 12g of the Bankruptcy Act.

3.1.12 *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?*

Since the scope of Eligible Financial Obligations (which are the financial obligations that can be close-out netted pursuant to Section 58h of the Securities Trading Act) depends on whether or not a Financial Entity is a party to the Agreement, the status of the Parties will in respect of some transactions be important. Reference is made to section 1.6.2.3

3.2 **Non-Insolvency related Material Reasons**

3.2.1 *Please discuss and advise on the issues outlined above under sections 3.1.9, 3.1.10 and 3.1.11 in the context of non-insolvency related Material Reasons, as well as the following question:*

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 EFET Master Netting Agreement or TBMA Cross-Product Master Agreement, irrespective of the insolvency of the Danish Party?

Subject to the qualification below, early termination and Close-Out for material reasons/Close-Out Events other than due to insolvency based events are enforceable *inter partes* under Danish law.

However, provisions of the Agreements providing that certain calculations or determinations will be final, conclusive and binding may not be effective, if such calculations or determinations are incorrect and such provisions will not necessarily prevent judicial inquiry into the merits of such calculations or determinations.

3.3 **Multibranch Parties**

3.3.1 Danish Multibranch Party

Our opinion in this section 3.3.1 is based on the following additional assumptions:

- The relevant EFET Master Netting Agreement or the TBMA Cross-Product Master Agreement is governed by the laws of Denmark, England, Germany or New York and
- The Danish Party has entered into transactions under Netted Agreements or Principal Agreements through offices in Denmark as well as through one or more branches located abroad. After entering into these transactions and prior to the maturity thereof, the Danish Party becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of Denmark.

3.3.1.1 *Would there be any change in the conclusions reached under sections 3.1 or 3.2 above based upon the fact that the Danish Party has conducted business under some or all of the Netted Agreements or Principal Agreements on a multibranch basis prior to its insolvency?*

No, since Danish law does not consider a branch as a separate legal entity. Consequently, Danish bankruptcy proceedings would cover all assets of a Danish Party notwithstanding whether it has entered into transactions under some or all of the Netted

Agreements or Principal Agreements on a multibranch basis prior to its insolvency or not.

3.3.1.2 *Would the EFET Master Netting Agreement and, if so selected in Section 10.6 of the TBMA Commodities Schedule be treated as a single unified agreement by the Danish receiver under the laws of Denmark, regardless of the treatment of the EFET Master Netting Agreement or the TBMA Cross-Product Master Agreement or transactions thereunder by an insolvency official in a country where close-out netting may be unenforceable?*

A bankruptcy estate of a Danish Party would in our opinion be bound by the provisions on close-out netting of the Securities Trading Act as outlined under section 3.1 above, irrespective of any insolvency proceedings against one or more branches of such Danish Party in other jurisdictions, including jurisdictions where close-out netting is unenforceable.

Accordingly, in our opinion, the Agreements would be treated in accordance with our opinions under section 3.1 above in this scenario.

3.3.2 Foreign Multibranch Party

Our opinion in this section 3.3.2 is based on the following additional assumptions:

- The relevant EFET Master Netting Agreement or the TBMA Cross-Product Master Agreement is governed by the laws of Denmark, England, Germany or New York;
- A corporation, a bank, 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 Denmark has 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 Denmark (the "Danish 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.

3.3.2.1 *Would there be separate proceedings in Denmark with respect to the assets and liabilities of the Danish Branch upon the start of the insolvency proceeding for Party F in Country H? Or would the relevant authorities in Denmark defer to the proceedings in Country H, so that the assets and liabilities of the Danish Branch would be handled as part of the proceedings for Party F in Country H? Could local creditors of the*

Danish Branch initiate separate proceedings in Denmark even if the relevant authorities in Denmark did not do so?

A legal entity incorporated outside Denmark cannot be subject to insolvency proceedings in Denmark, unless it is deemed to have its actual place of business in Denmark. In this context, the Danish courts will look to whether the management of the legal entity has its de facto seat in Denmark (notwithstanding the formal registration thereof). If such foreign legal entity has a Danish subsidiary, such Danish subsidiary may be declared bankrupt in Denmark. Under Danish law, a Danish branch of a foreign legal entity does not constitute a separate legal entity, and cannot (as the main rule) be declared bankrupt in Denmark.

Consequently, Danish law would in our opinion defer to the proceedings in Country H, so that the assets and liabilities of the Danish Branch would be handled as part of the proceedings for Party F in Country H.

3.3.2.2 *If there were separate proceedings in Denmark with respect to the assets and liabilities of the Danish Branch, would the receiver or liquidator in Denmark and the Danish 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 the Danish Branch and, if so, would the receiver or liquidator and the Danish courts recognize the close-out netting provisions of the EFET Master Netting Agreement or the TBMA Cross-Product Master Agreement in accordance with their terms? The most significant problem arising would be if a Danish receiver, liquidator or court considering a single EFET Master Netting Agreement or TBMA Cross-Product Master Agreement were to require a counterparty of the Danish Branch of Party F to pay the mark-to-market value of transactions entered into with the Danish Branch to the liquidator or receiver of the Danish 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 EFET Master Netting Agreement or TBMA Cross-Product Master Agreement. In considering this issue, please assume that close-out netting under the EFET Master Netting Agreement or TBMA Cross-Product Master Agreement would be enforced in accordance with its terms in the proceedings for Party F in Country H.*

N/A as there would in our view not be separate proceedings in Denmark, see our answer to question 3.3.2.1 above.

3.3.2.3 *Please consider your answer to the question assuming instead that Party F has no branch located in Denmark, but has assets in Denmark.*

A legal entity incorporated outside Denmark cannot (as the main rule) be subject to insolvency proceedings in Denmark exclusively on the basis of assets located in Denmark.

However, please see section 3.3.2.1 above, concerning the situation where a legal entity has its actual place of business in Denmark.

3.4 **Collateral**

3.4.1 Background - Danish law relating to financial collateral arrangements

As mentioned in section 1.6.2 above the Collateral Directive, including the provisions relating to financial collateral arrangements, was implemented into Danish law as of 1 January 2004.

Section 58 of the Securities Trading Act states that the provisions of Chapter 18a of the Securities Trading Act apply to financial collateral arrangements and to financial collateral after such financial collateral has been provided. Financial collateral shall be regarded as having been provided when the relevant act of perfection has been carried out.

A financial collateral arrangement is an agreement between parties covered by Section 58b of the Securities Trading Act (which includes Danish Parties covered by section 1.4) on the posting of collateral for financial obligations (see section 1.6.2.3 above) in the form of collateral covered by Section 58f of the Securities Trading Act, see below.

"Collateralisation" means provision of financial collateral in the form of transfer of title (*overdragelse af ejendomsret*) as well as charges/pledges (*pant*). According to § 7 of each of the Credit Support Annexes it is contemplated that collateralisation is made by transfer of title.

According to Section 58e of the Securities Trading Act, it must appear from a financial collateral agreement which of the Parties' obligations are covered by the arrangement.

The parties may agree that the value of financial collateral posted under an agreement may be included in a close-out amount calculation in accordance with the provisions on realisation in Section 58j of the Securities Trading Act. In addition, Section 58d of the Securities Trading Act provides that realisation or valuation of financial collateral by a non-defaulting party in a close-out netting scenario to cover financial obligations must be on commercially reasonable terms.

3.4.2 Type of collateral

In each of the Credit Support Annexes it is contemplated that the Eligible Credit Support to be posted will be Cash and/or Letters of Credit.

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Only the following types of collateral are eligible as financial collateral under Section 58f, cf. Section 2, Subsection 1, nos. 1-3 of the Securities Trading Act (together "**Eligible Danish Collateral**"):

1. Cash standing to the credit of an account;
2. Transferable securities (with the exception of instruments of payment (*betalingsinstrumenter*)) which are negotiable on the capital market, including:
   a) shares in companies and other securities equivalent to shares in companies, partnerships and other entities, and depositary receipts in respect of shares;
   b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities; and
   c) any other securities giving the right to acquire or sell such securities as listed under item a) or b) hereof or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;
3. Money-market instruments, including treasury bills, certificates of deposit and commercial papers, excluding instruments of payment;
4. Units in collective investment schemes covered by the Alternative Investment Fund Managers etc. Act or the Investment Associations, etc. Act, as well as holdings in other collective investment undertakings; and
5. Credit claims (*gældsfordringer*), as defined in Subsection 2 of Section 58f, provided both parties are covered by Section 58b, nos. 1-5 of the Securities Trading Act;

except cash deposits which cannot be made subject to legal proceedings, for example client accounts and certain pensions, cf. Section 58f, Subsection 4, or own shares, shares in affiliated undertakings within the meaning of Directive 83/349/EEC, shares in undertakings whose exclusive purpose is to own means of production that are of material significance to the collateral provider's activities or shares in companies with the purpose of owning real property for the use of their shareholders, cf. Section 58f, Subsection 3.

Cash received and credited to the Transferee's account is a type of financial collateral which qualifies as Eligible Danish Collateral.

A letter of credit is not in itself covered by the definition of Eligible Danish Collateral. We have not reviewed any specific Letter of Credit for the purpose of providing this opinion. A Letter of Credit is in accordance with its definition in each of the Credit Support Annexes a standby letter of credit, bank guarantee or similar document issued irrevocably by a commercial bank, and we assume that the Transferee may draw upon each such Letter of Credit in one or more drawings in an aggregate amount (up to the face amount for which the Letter of Credit has been issued) that is equal to all amounts that are due and payable by the Transferor but have not been paid to the Transferee within the time allowed for such payments under the relevant Agreement (including any notice or grace period). As set out in each of the Credit Support Annexes (§ 11 of CP Credit Support Annex and § 12 of the MNA Credit Support Annex) the Transferor's obligations will be discharged in an amount equal to the drawing(s). Accordingly, we assume that the Letters of Credit will in accordance with the Agreements and the Credit Support Annexes and their terms serve as Eligible Credit Support, but in respect of this opinion, the Letters of Credit will not be considered Eligible Danish Collateral and cannot be included in the calculation of one close-out net amount pursuant to the Securities Trading Act. Furthermore, we assume that the Letters of Credit will be issued by the relevant commercial bank to the Transferee directly and accordingly there is no title transfer. Since the questions contained in this section 3.4 relate to financial collateral and title transfer we do not express any view in our responses below in relation to Letters of Credit.

3.4.3 Questions

For the purposes of the opinions relating to section 3.4.3 we have made the following additional assumptions:

- 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) Party A (i.e. the Danish Party) is at all times Transferor under each of the Credit Support Annexes and (ii) that the collateral is owned by Party A or that Party A is authorised and empowered to transfer ownership in the collateral.
- The Parties 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 as Transferee maintained in the jurisdiction of the relevant currency.
- that Party A, when transferring Eligible Danish Collateral under the Agreement, will have full legal title to such Eligible Danish Collateral at the time of transfer, free and clear of any lien, claim, charge or encumbrance or any other interest of Party A or of any third person and that no secondary pledge or similar security interest over the Eligible Danish Collateral will subsequently be created by Party A or by operation of law or otherwise;

3.4.3.1 *Under the laws of Denmark, what law governs the transfer of ownership in the various forms of Eligible Credit Support deliverable under each of the Credit Support Annexes?*

In Denmark questions regarding choice of law in contractual relationships are governed by the Rome Convention of 19 June 1980 incorporated into Danish law by Act No. 188 of 9 May 1984 (now Consolidated Act no. 139 of 17 February 2014). Consequently, the

Parties are in general free to decide on the choice of law in their inter-partes relationship (subject to ordre public).

However, the Convention does not apply to the relationship vis-à-vis third parties. Thus, it is necessary to apply principles of private international law when deciding on the applicable law governing, inter alia, the required act of perfection.

Under Danish private international law the general rule is the principle of lex rei sitae, i.e. that the law of the country where the subject matter is situated at the time of the establishment of the proprietary interest applies. This means as the general rule that a proprietary interest (including transfer of title) in Danish Eligible Collateral[13] located in Denmark will normally be governed by Danish law.

In relation to Cash credited to a bank account under the control of Party B (i.e. the Transferee, which can be a Danish or a foreign party) maintained in the jurisdiction of the relevant currency, we note that under Danish law, such cash is generally considered a receivable against the bank in question. However, the position under Danish private international law in respect of applicable law with regard to proprietary interests in receivables is unclear. We believe that the prevailing view is that the law of the debtor applies although there is a precedent of the Danish Court of Appeal pursuant to which the law of the domicile of the creditor was applied. Although, it remains uncertain which law will apply vis-à-vis third parties in cases where a proprietary interest is granted over contractual rights in receivables, we believe that the prevailing view under Danish law is that Cash credited to a bank account in deemed located at the place of incorporation of the bank holding the account and consequently will be governed by the laws of that jurisdiction.

3.4.3.2 *Would the laws of Denmark 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?*

Under general Danish law, a transfer of title in lieu of the creation of a normal security interest (e.g. a pledge) risks being re-characterised as a pledge where the act of perfection has not been performed (i.e. general Danish law does not generally recognise transfer of title as a way of posting collateral).

[13] For dematerialised securities Section 58n of the Securities Trading Act, implementing *inter alia* Article 9 of the Collateral Directive, provides that certain issues, including proprietary issues, regarding the dematerialised security shall be governed by legislation in the country where the account is maintained.

However, in respect of financial collateral arrangements, Section 58k of the Securities Trading Act recognises that such arrangements may include transfer of title as a valid form of posting financial collateral in relation to the act of perfection and realisation of the collateral. Accordingly, pursuant to Section 58k of the Securities Trading Act a financial collateral arrangement in respect of Eligible Danish Collateral, e.g. Cash credited to an account, under the control of Party B (the Transferee) in the form of title transfer is effective in accordance with the terms of the arrangement in relation to the act of perfection and realisation of the collateral.

We are of the view that § 3 of each of the Credit Support Annexes where delivery of Cash as Eligible Credit Support shall be done by "transferring Cash to the account of the Transferee", provided absolute ownership is thereby transferred, will constitute a transfer of title under Section 58k of the Securities Trading Act and the act of perfection has been carried out when Cash has been credited to the account of Party B (the Transferee).

In relation to the rules on voidability (*omstødelse*) in the Bankruptcy Act, we note that the preparatory works state that Section 58k does not apply in relation to such voidability rules. Accordingly, if a financial collateral arrangement in the form of title transfer is in its substance creating a security interest, it will be characterised as a security interest in respect of the voidability rules. Based on the wording used in each of the Credit Support Annexes, it is our view that Eligible Credit Support provided under each of the Credit Support Annexes will be characterised as being a security interest in substance under Danish law, and therefore each transfer of Eligible Credit Support will be considered a security interest in respect of the voidability rules, see further below in section 3.4.3.7.

3.4.3.3 *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 Denmark 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?*

A financial collateral arrangement must be in writing or be evidenced in an equivalent way in order to be governed by the provisions of Chapter 18a, see Section 58a, Subsection 2 of the Securities Trading Act. In our view, this requirement has been satisfied if the parties have entered into one of the Credit Support Annexes.

Assuming that Party B (the Transferee) has received absolute ownership in the Cash held in an account under the control of Party B (the Transferee) no further actions or requirements are necessary to ensure its title therein pursuant to Danish law.

3.4.3.4 *What is the effect, if any, under the laws of Denmark of the right to substitute collateral pursuant to § 6 of each of the Credit Support Annexes? Does the presence or absence of consent to substitution by Party B have any bearing on this question?*

Pursuant to Section 58m it is possible for the Transferor, upon agreement with the Transferee, to substitute Eligible Danish Collateral with other financial collateral of substantially the same value. If such substitution collateral is provided no later than at the same time as the Transferor regains possession of the substituted collateral, the substitution collateral may only be avoided if the substituted collateral was avoidable, see section 3.4.3.7.

Accordingly, the right of Party A (the Transferor) to substitute Cash pursuant to § 6 of each of the Credit Support Annexes does not affect the validity under Danish law of the unconditional transfer of ownership contemplated by § 7 of each of the Credit Support Annex. Any substitution Cash shall be provided to Party B (the Transferee) no later than at the same time as Party A (the Transferor) regains possession of the substituted Cash. If the value of the substituted Cash is higher than "substantially the same value" as the substitution Cash such excess collateral may be voidable pursuant to the Bankruptcy Act.

As mentioned above, Section 58m requires that the substitution takes place "upon agreement". We are not aware of any guidance under Danish law when such "agreement" shall be made, i.e. whether it is sufficient that there is an agreement from the outset allowing substitution from time to time without further consent or whether there must be a specific consent prior to each substitution. In our view there is a risk that it could be considered contrary to a title of transfer security interest under Danish law if the transferor could dispose over the transferred assets at its sole discretion, and therefore we would generally advise that consent shall be given in respect of each substitution request in order to be certain that there has been an effective transfer of title security interest.

3.4.3.5 *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 TBMA Cross-Product Master Agreement together with § 11 of the CP Credit Support Annex (or similar provision in the EFET Master Netting Agreement together with § 12 in the MNA Credit Support Annex, as applicable). Assuming that Section 4 of the TBMA Cross-Product Master Agreement (or similar provision in the EFET Master Netting Agreement, as applicable) is valid and enforceable in Denmark insofar as it relates to the*

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determination of a Final Net Settlement Amount payable by either Party on the termination of transactions, is § 11 of the CP Credit Support Annex or § 12 of the MNA 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 TBMA Cross-Product Master Agreement (or similar provision in the EFET Master Netting Agreement, as applicable)?

For the purposes of this question we assume that a Close-out Event has occurred and is continuing in respect of one of the parties, that the other party has Closed-Out the Netted Agreements or Principal Agreements, as applicable, and the transactions thereunder in accordance with the relevant provision of the applicable Agreement, that the Terminating Party/Closing-Out Party is calculating the Final Net Settlement Amount in accordance with *Section 4 of the TBMA Cross-Product Master Agreement (or similar provision in the EFET Master Netting Agreement, as applicable)* and that such provision is valid and enforceable in Denmark insofar as it relates to the determination of a final net settlement amount payable by either Party on the termination of the Netted Agreements or Principal Agreements, as applicable, and the transactions thereunder, and that Party B (the Transferee) has received (i.e collateral has been provided) and not yet returned (i.e. not yet transferred back to the Transferor) Cash as Eligible Credit Support in accordance with the relevant Credit Support Annex.

Pursuant to Section 58j of the Securities Trading Act, on collateralisation in the form of cash, realisation may be effected through setting off the value of such financial collateral against the collateralised liabilities or through repayment of said liabilities.

We also note that pursuant to Section 58k, it is possible to agree that in case of an event of default, an obligation to deliver equivalent collateral, which has not been performed by the defaulting party prior to the event of default, can be included in a close-out netting balance.

Accordingly, in our view, it is possible under Danish law to agree that Cash provided as Eligible Credit Support shall in the event of an early termination constitute an amount owing from the Transferee to the Transferor to be included in the determination of a Final Net Settlement Amount in accordance with the close-out netting provisions of the Securities Trading Act described in section 1.6.1 above. Provided that any conversion of Cash into the Base Currency is effected on commercially reasonable terms, we are of the view that each of § 11 of the CP Credit Support Annex and § 12 of the MNA Credit Support Annex is valid to the extent that the wording thereof will be read and construed as providing for the value of the Cash provided to Party B (the Transferee) and not yet returned to Party A (the Transferor) to be included in calculation of the Final Net Settlement Amount payable under the relevant provision of the applicable Agreement.

3.4.3.6 *Are the rights of Party B enforceable in accordance with the terms of the TBMA Cross-Product Master Agreement and the CP Credit Support Annex or the EFET Master Netting Agreement and the MNA Credit Support Annex, as applicable, irrespective of the insolvency of Party A?*

In respect of enforceability of the rights of Party B under one of the Agreements, reference is made to other parts of this opinion where it is also described how it influences on the enforceability, in particular in relation to close-out netting, if Party A as the defaulting party is insolvent.

In our view, a financial collateral arrangement which is properly entered into in accordance with the provisions of Chapter 18a of the Securities Trading Act described in other parts of this section 3.4 is binding on Party A and is also binding on a bankruptcy estate of Party A.

3.4.3.7 *Will Party A (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 relevant 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?*

The voidability rules of the Bankruptcy Act apply generally, also to financial collateral arrangements, unless exceptions are specifically set out in Chapter 18a of the Securities Trading Act.

Of particular relevance in respect of provision of security is Section 70 of the Bankruptcy Act which states that if security (i) is not created prior to or simultaneously with the establishment of the debt which it is securing (i.e. it is securing old debt), or (ii) is not perfected without undue delay after the creation of such debt, such security may be voidable (*omstødelig*) if Danish Insolvency Proceedings are commenced against the Danish Party during the three-month period starting from the date of the act of perfection of such Eligible Danish Collateral. According to case law and legal literature, the terms "simultaneously" and "without undue delay" must be strictly interpreted but taking into account the concrete circumstances relating to the relevant action required for perfection. As we have noted above in section 3.4.3.2, we are of the view that the title transfer arrangement under each of the Credit Support Annexes will be characterised as being a security interest in substance, and therefore each transfer of Eligible Credit Support will be considered a security interest in respect of the voidability rules, including Section 70 of the Bankruptcy Act.

Notwithstanding the above, according to Section 58l, Subsection 1, of the Securities Trading Act a financial collateral arrangement may include a provision to the effect (and therefore not be voidable under Sections 70 or 72 of the Bankruptcy Act, however, in case of the latter unless such provision of financial collateral does not appear ordinary) that the parties are obliged to provide financial collateral or additional financial collateral in order to take account of changes in the value of the collateral or amount of the financial obligation covered by the agreement, provided that the changes have occurred after the agreement was entered into, and provided that the changes were caused by circumstances relating to market conditions, and subject to certain further conditions.

In respect of substitution and voidability, reference is made to section 3.4.3.4 above.

We also note, that in case the entry into of any of the Agreements and the elections made therein change the scope of secured obligations under security documents already provided in respect of the exposure under any of the underlying master agreements, there will be a risk that the change that an existing security interest shall also cover debt already outstanding may be set aside against a Danish Party pursuant to Section 70 during a three-month voidability period after the date of the act of perfection.

Section 72 and Section 74 of the Bankruptcy Act also apply generally, including in respect of financial collateral arrangements, but do not have any particular relevance for such collateral arrangements.

3.4.3.8 *Is each of the Credit Support Annexes 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 Denmark in order to ensure validity of such transfer in each type of Eligible Credit Support created by Party A under the relevant Credit Support Annex? For example, are there any other requirements such as those mentioned under section 3.4.3.2 above?*

In our view each of the Agreements together with the applicable Credit Support Annex constitute a financial collateral arrangement for the purpose of Chapter 18a of the Securities Trading Act in respect of Eligible Financial Obligations (see section 1.5.2.3 above), and accordingly, in our view, under Danish law each of the Agreements together with the applicable Credit Support Annex is in an appropriate form to create a financial collateral arrangement in the form of transfer of title to Cash credited to the account of Party B (the Transferee) for Eligible Financial Obligations.

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

We do not have any other specific recommendations under Danish law.

3.5 **General Enforceability**

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

In our view, subject to the assumptions and qualifications of this opinion, and the comments and responses elsewhere in this section 3 of this opinion, the Agreements and the Credit Support Annexes would be legal, valid, binding and enforceable under Danish law.

However, please note that in general, the validity and enforceability of an agreement may be affected by generally applicable principles of "reasonableness and fairness" (*urimeligt eller i strid med redelig handlemåde*) as set out in Section 36 of the Danish Contracts Act (*aftaleloven*)[14] and "breach of expectations" (*bristede forudsætninger*), but such principles are rarely used on agreements between professional parties.

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

We do not have any other specific recommendations under Danish law.

3.6 **Confirmation Practices**

Below, we have based our opinion on the following additional assumptions:

- As far as the confirmation practice is concerned, when entering into a transaction, the Parties 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).
- Parties may or may not use matching systems (like EFET eCM, MarkitWire or DTTC DS Match) to electronically match and exchange confirmations.

[14] Consolidated Act no. 781 of 26 August 1996 as amended.

3.6.1 Binding transaction

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

As a general rule under Danish law the conclusion of an agreement is not subject to formal requirements. Under Danish law an oral agreement is generally valid and binding, even if not recorded. However, for evidence reasons it is advisable to have promises and agreements in writing. A written agreement is only required if statutory law, trade usage or custom requires such formality.

Under the assumption that no such trade usage or custom exists in the markets for the transactions listed in Appendix C, we are of the opinion that a verbal agreement is sufficient under Danish law to form a legally binding agreement.

It should be noted that under Danish law, agreements on close-out netting (*slutafregning*) and provision of financial collateral pursuant to Chapter 18a of the Securities Trading Act must be in writing or be evidenced in an equivalent way, see Section 58a, Subsection 2 of the Securities Trading Act. In addition, according to Section 58e of the Securities Trading Act, it must appear from a financial collateral agreement which of the Parties' obligations are covered. We interpret this as a requirement of clarity as to which financial obligations can be included under a close-out netting and a financial collateral arrangement pursuant to the Securities Trading Act.

The Agreements contain provisions on close-out netting, and the Credit Support Annexes contain provisions on the financial collateral arrangement and we consider these provisions to be sufficient for the purposes of Section 58a, Subsection 2 of the Securities Trading Act provided, however, that the Agreements and the Credit Support Annexes clearly refer to the financial obligations governed thereby. We believe that this requirement of clarity will be considered fulfilled to the extent the governed master agreements are mentioned explicitly in the Agreements, such as an election of the specific master agreements mentioned in the Election Sheet to the EFET Master Netting Agreement, Part I, § 2.1, the Schedule to the TBMA Cross-Product Master Agreement, Part I, or Division I, Part I.A of the TBMA Commodities Schedule. However, in our view it is possible that a Danish court could find that the clarity requirement was not fulfilled if master agreements and/or transactions were included under the close-out provisions of the Agreements by reference or generic description, such as the "Other Master Trading Agreements" and "Long Form Confirmation Agreements" in Part I, § 2.1 of the Election Sheet to the EFET Master Netting Agreement, the similar provisions in items 15 and 16 of Part I of the Schedule to the TBMA Cross-Product Master Agreement or items 7 and 8 of Division I, Part I.A of the TBMA Commodities Schedule, the "Additional Netted Agreements" defined by category in Part III of the Election Sheet to the EFET Master Netting Agreement, and the "Uncovered Transactions" in Division I, Part I.C of the TBMA Commodities Schedule. In our view, a similar requirement of clarity as to which transactions will be governed by the Netted Agreements or Principal Agreements will apply, see also section 3.6.1.4 below. We note that there are to our knowledge no legal precedents in respect of such requirement of clarity, and as such the scope thereof remains subject to legal uncertainty under Danish law.

As outlined above, the general rule under Danish law is that there are no requirements as to form in connection with the formation of a contract, and, in principle, an agreement can be entered into by electronic exchange of data provided there is a binding and valid offer and acceptance. However, it is a condition that the contract is the outcome of a declaration of intent by the parties.

Where the electronic confirmation matching system reflects the intention of both parties and the parties act in accordance therewith, in our view the use of such electronic systems in the ordinary course of business implies that agreements made thereby are binding on the Parties.

Under Danish law the principle of freedom to submit evidence prevails. Consequently, most digital evidence is admissible but the weight of such evidence is solely at the discretion of the Danish courts.

3.6.1.2 *At what point in time does a transaction agreed upon orally become legally binding or enforceable?*

A transaction agreed upon orally becomes legally binding and enforceable at the time of the oral acceptance.

We note that according to Article 12 of Commission Delegated Regulation (EU) No 149/2013 issued pursuant to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (as amended) (the "EMIR Regulation") certain deadlines apply for exchanging confirmations for OTC derivative contracts (as defined in the EMIR Regulation). In accordance with the publication from the European Commission "EMIR: Frequently Asked Questions", latest update on 10 July 2014, we do not believe that breach of such deadlines will influence on the transactions being legally binding and enforceable under Danish law.

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

As mentioned above, an oral agreement is legally binding. The written confirmation will in this respect merely serve the purpose of evidencing the oral agreement, and, in principle, one party cannot unilaterally amend the oral agreement by including new terms in a confirmation.

However, where two professional parties have entered into an oral agreement, a party who receives a confirmation of the agreement (made in good faith by the other party), which contains incorrect terms, should react in order not to risk being deemed bound by the revised terms through passivity. When a party should react depends on the circumstances, but generally a notification without undue delay will be sufficient in order not to be bound. Accordingly, if a confirmation contains terms, which do not reflect the oral agreement, the recipient should, without undue delay, notify the other party of such discrepancies to avoid risking being deemed bound by the revised terms through passivity.

3.6.1.4 *Is the reference to a Netted Agreement or Principal Agreement sufficient for the inclusion of the transaction in such agreement?*

Under circumstances where express reference has been made to the relevant master agreement when entering into a transaction, in our opinion the master agreement will be part of the contractual relationship relating to that transaction.

If the Parties orally enter into a transaction without any reference to the master agreement between them, but subsequently confirm the transaction in writing a master agreement has in principle not been made part of the contractual relationship of the transaction as such. However, if it can be proven that it was the intention of the Parties to impliedly make the terms of a specific master agreement part of the transaction, e.g. by pointing to a trade usage in the market or between the Parties in question, we are of the opinion that the master agreement will be part of the contractual relationship relating to the transaction.

The exchange of a subsequent confirmation referring to the relevant master agreement (which the other party does not object to) may be an indication of the intention of the Parties, but if the other party can argue that this was not the intention, it may be possible that a Danish court will find that the terms of the master agreement have not been validly included as part of the transaction in question. If there is no reference to a master agreement in the confirmation for the transaction, in particular where a standard confirmation for the transaction in question does not contain such reference, it will probably be more difficult to prove that it was the intention of the Parties to apply the terms of a master agreement.

Although Danish law recognizes that the acceptance of contractual terms may be impliedly agreed, in practice, it is subject to a risk whether such intention can be proven in case of a dispute. In addition, in respect of applying a close-out netting provision and/or a financial collateral arrangement there is a risk, that a party in such situation will not be able to fulfil the requirement of clarity that we believe will apply as to which financial obligations are governed thereby, see section 3.6.1.1. GV

We express no view on any specific master agreement and/or confirmation, and we do not express any view as to transactions entered into through any specific electronic trading or matching system.

3.7 **Means of Evidence**

3.7.1 *Assuming there is a dispute with respect to the existence or the terms or conditions of a transaction, would any or all of the following be eligible for rendering or otherwise properly introducing evidence of the agreed terms of the transaction in court: (i) taped recording; (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?*

As a general matter, any of the above means of evidence are admissible in a Danish court. However, Danish courts will decide on a case-by-case basis the value that it will attribute to any evidence, based on the specific circumstances. Also, a Danish court will not be bound by an agreement to the effect that a specific means of evidence shall be conclusive proof between the Parties, if the evidence is contested in good faith by one of the Parties.

3.8 **Core Provisions**

We have based our opinion in this section 3.8 on the additional assumptions outlined under sections 3.1 and 3.3 above.

3.8.1 *Would any of the elections contemplated by the EFET Master Netting Agreement or the TBMA Cross-Product Master Agreement or the Credit Support Annexes change the substance of your conclusions reached under sections 3.1 - 3.3 (Enforceability of Close-out Netting)? As far as the Credit Support Annexes are concerned, you should in particular discuss the effect of electing to allow substitution with or without consent.*

In our opinion, save as set out below, none of the elections contemplated by the Agreements or the Credit Support Annexes will change the substance of the conclusions reached under sections 3.1 - 3.3 in relation to the enforceability of the close-out netting provisions of the Agreements.

In respect of substitution with or without consent under the Credit Support Annexes, we do however refer to section 3.4.3.4.

3.8.2 *Considering your conclusions reached under sections 3.1 - 3.3 (Enforceability of Close-out Netting), what are the provisions of the EFET Master Netting Agreement or the TBMA Cross-Product Master Agreement that you regard as so essential that a material alteration thereof could affect the conclusions reached under sections 3.1 -*

*3.3 (each such provision a "Core Provision")? EFET believe that the following provisions are Core Provisions: [*left blank in instruction letter*].*

To the extent that the Securities Trading Act permits close-out netting of financial obligations, we consider the following provisions so essential to the relevant Agreement (i.e. to be Core Provisions) that a material alteration thereof could affect the conclusions reached regarding close-out netting in respect of financial obligations which may be subject to close-out netting, see sections 3.1 - 3.3:

In respect of the EFET Master Netting Agreement: § 2.1, § 4, § 5, § 6, § 7, and § 8, and the related Defined Terms contained in Annex 1 to that Agreement.

In respect of the TBMA Cross-Product Master Agreement: Sections 2, 3, and 4, and the related Definitions in Section 1.1 of that Agreement.

3.9 Governing Law, Arbitration and Jurisdiction

We have based our opinion in this section on the following additional assumption:

- The relevant Agreement is governed by the laws of a jurisdiction other than Denmark (including English, German or New York law) and is legal, valid, binding and enforceable under the laws of the jurisdiction which it is governed by.

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

The express choice of either German, English or New York law to govern the Agreements is a valid choice of law subject to Danish public policy and the mandatory rules of the laws of any country with which the transaction has a significant connection, if and in so far as under the laws of that country those rules must be applied notwithstanding the choice of law, cf. Article 3 (3), Article 7 and Article 16 of the Convention on the Law Applicable to Contractual Obligations dated 19 June 1980 (the Rome Convention) as implemented in Denmark by Danish Act No. 188 of 9 May 1984 (now Consolidated Act no. 139 of 17 February 2014), and the submission by the Danish Party to the jurisdiction of the courts of Germany, England or New York, respectively, is valid and binding upon the Danish Party.

The express choice of German, English or New York law to govern non-contractual obligations arising out of or in connection with any of the Agreements may not be upheld by the courts of Denmark as (i) where applicable, Regulation (EC) No. 864/2007 of 11 July 2007 (the "**Rome II-Regulation**") does not apply to Denmark (on account of the general Danish opt-out, (cf. The European Council's Edinburgh Decision of 12 December 1992 and the Protocol to the Treaty of Amsterdam on the position of Denmark)) and (ii) according to Danish principles of private international law, a choice of law agreement in respect of non-contractual obligations entered into before the event giving rise to the damage has occurred may not be enforceable.

A final judgment of a German or an English court, respectively, against the Danish Party in respect of any suit, action or proceeding arising out of or relating to any of the Agreements will be recognised and enforced by the courts of Denmark, subject to and in accordance with the provisions of Council Regulation (EC) No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 22 December 2000, as amended by Commission Regulation (EC) No. 1496/2002 of 21 August 2002 and Commission Regulation (EC) No. 2245/2004 of 27 December 2004 (the "Brussels I-Regulation") and the bilateral agreement in relation thereto between Denmark and the European Community of 19 October 2005 (and any protocol and accession convention in respect thereof) and Danish Act No. 1563 of 20 December 2006 as amended, implementing the Brussels I-Regulation and such bilateral agreement in Denmark.

A final judgment properly obtained in any court of the State of New York or the United States District Court for the Southern District of New York against the Danish Party in respect of any suit, action or proceeding arising out of or relating to any of the Agreements will neither be recognised nor enforced by the Danish courts without re-examination of the substantive matters thereby adjudicated. In connection with any such re-examination, the judgement will generally be accepted as material evidence, but the parties must provide the Danish courts with satisfactory information about the contents of New York (or other applicable) law and, if they fail to do so, the Danish courts may apply Danish law instead.

Subject to the compliance with the 10 June 1958 New York Convention on the Recognition of Enforcement of Foreign Arbitral Awards, an arbitral award obtained against a Danish Party in an arbitration proceeding pursuant to the provisions of any of the Agreements will be enforced by Danish courts without re-examination or re-litigation of the matters thereby adjudicated.

3.10 Other Provisions

3.10.1 *If you have other recommendations that you would like EFET member companies to consider (for example to fully optimize the Agreements for a specific purpose such as to support limited trading between two entities both organized and doing business solely in your jurisdiction), then these types of suggestions may, but need not, be appended as an Annex to the end of your final opinion letter.*

In general, we do not consider that any of the provisions of the Agreements, on which we opine, need to be revised in order to be enforceable in Denmark. In the cases where we have found that a provision was not (or was most likely not) enforceable we have made such conclusion based on mandatory Danish law as set out elsewhere in this opinion.

4. **QUALIFICATIONS**

This opinion is subject to the following additional qualifications:

4.1 This opinion is limited to the issues addressed herein and speaks only as of its date. In particular, it is noted that no opinion is expressed as to the validity and enforceability of any provisions of the Documents other than those to which express reference is made herein.

4.2 This opinion is limited to matters of the laws of Denmark as in effect today and we express no opinion with respect to the laws of any other jurisdiction (including provisions that refer to such laws), nor have we made any investigation as to any laws other than the laws of Denmark.

4.3 This opinion does not result in any obligation on our part to inform you of any changes in law or other developments after the date of this opinion, which would result in an amendment to this opinion.

4.4 The term "enforceable" or "enforceable in accordance with its terms" as used in this opinion means that the obligations referred to are of a type normally recognised and enforced by the courts of Denmark. It does not mean that the obligations will be enforced in all circumstances or that any particular remedy will be available.

4.5 Certain rights and obligations may be qualified or limited by, inter alia, the nature of the remedies available in Danish courts (the availability of the remedies of injunctions and specific performance may be limited), the acceptance by such courts of jurisdiction, the power of such courts to stay proceedings, or Danish public order.

4.6 Claims may become barred under Danish statutes of limitation or principles of passivity or may be or become subject to set-off or counterclaim.

4.7 Enforcement may be limited by insolvency, bankruptcy, formal restructuring proceedings (*rekonstruktion*) or other laws affecting creditors' rights in general pursuant to the Bankruptcy Act, which includes claw back provisions (*omstødelige dispositioner*) which may be used if a creditor has received an otherwise preferential position in the period up to the insolvency proceeding.

4.8 According to Section 58d of the Securities Trading Act, the realisation and valuation of the financial collateral or financial obligations, which are being close-out netted, must be conducted in a commercially reasonable manner.

4.9 With regard to jurisdiction, a Danish court must stay or – if appropriate – dismiss proceedings if concurrent proceedings involving the same cause of action and between the same parties are instituted before the courts of another EU/EEA member state. Similarly, a Danish court may stay or – if appropriate – dismiss the proceedings if related proceedings are instituted in one of these states.

4.10 With regard to the choice of foreign law, if a Danish court is called upon to interpret or decide a matter in accordance with a foreign law, the parties must provide the court with adequate proof of the relevant contents of such law and if they fail to do so, the Danish courts may apply Danish law instead. In addition, the parties may be required to prepare translations into Danish of the relevant documents and foreign law.

4.11 A Danish court may a deliver judgment in a foreign currency, but such judgment can generally only be enforced in Denmark by a Danish enforcement court in Danish Kroner calculated at the rate of exchange as at the date of enforcement.

4.12 The enforceability of claims and court decisions ordering the payment of money in a currency other than Danish Kroner is subject to the Bankruptcy Act which provides for the conversion of such foreign currency debt into Danish Kroner on the date of the commencement of such bankruptcy proceedings (*dekretdag*) or the initiation of formal restructuring proceedings.

4.13 Any claim against a Danish Party on interest accrued after the insolvency order in respect of Danish Insolvency Proceedings regarding the Danish Party will be a deferred claim in the Danish Insolvency Proceedings.

4.14 Provisions in the Documents providing that certain calculations or certificates will be conclusive and binding (or prima facie evidence) may not be effective, if such calculations or certificates are incorrect and such provisions will not necessarily prevent juridical inquiry into the merits of such calculations or certificates.

4.15 There may be circumstances where Danish law will not give effect to provisions in the Documents (i) according to which a Party is vested with discretion or may determine a matter in its opinion or (ii) which may be considered to be unreasonable or contrary to principles of fair dealing (e.g. where a party has waived its rights to put forward any and all defences whatsoever against a claim under an agreement).

4.16 A Danish court may refuse to give effect to undertakings contained in the Documents pursuant to which a party is obligated to pay another party's legal expenses and costs in respect of any action before the Danish courts.

4.17 Any provision in the Documents providing that the terms of the Documents may be amended or varied only by an instrument in writing may be held by a Danish court not to be effective.

4.18 This opinion expresses and describes Danish legal concepts in the English language and not in their original Danish terms; consequently this opinion may only be relied upon on the express condition that the opinion shall be governed by and that all words and expressions used herein shall be construed and interpreted in accordance with Danish law and be subject to the exclusive jurisdiction of the Danish courts, and we express no opinion as to the exact interpretation which would be placed upon any particular wording in the Documents by a court.

This opinion is addressed exclusively to EFET and (i) is for the sole benefit of EFET and its Legal Committee members and any other subscribing entities; (ii) may not be relied upon by, or disclosed to, any other person or legal entity without EFET's and our prior written approval; but (iii) may be disclosed by EFET members to the appropriate regulatory authorities upon their request, provided that (A) such disclosure is for information purposes only and we do not assume any duty or liability to the recipient, and (B) none of such persons to whom this opinion is disclosed may rely on this opinion for its own benefit or for that of any other person.

We are qualified to practise law in the Kingdom of Denmark. This opinion is governed by Danish law and is subject to the exclusive jurisdiction of the Danish courts.

Yours faithfully
Kromann Reumert

Susanne Schjølin Larsen

Appendix A

Types of Danish Parties

A Danish Party is a party to the EFET Master Netting Agreement or the TBMA Cross-Product Master Agreement which is incorporated or organised in Denmark and is a:

- Danish public limited company (*aktieselskab*);
- Danish private limited company (*anpartsselskab*);
- Danish limited partnership (*kommanditselskab*);
- Danish partnership (*interessentskab*);
- Danish association (*forening*);
- Danish financial institution (including banks and other credit institutions, investment firms, insurance companies, investment funds, investment fund management companies, and pension funds);
- Danish municipality (*kommune*);
- Danish region (*region*); and
- Publicly-owned corporations (including state-owned companies (*statslige aktieselskaber*)).

Appendix B

Master Agreements covered by the EFET Master Netting Agreement or the TBMA Cross-Product Master Agreement (provided by EFET)

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

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 Operations 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)

<u>Securities Lending Master Agreements</u>

- 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 Contract Cadre de Prêts des Titres (version 2007), sponsored by the Association Francaise des Professionnels des Titres (AFTI)
- French Contract Cadre de Prêts des Titres (version), sponsored by the Association Francaise 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)

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 Livriée (version 2007), sponsored by the Fédération bancaire française (FBF) [FBF07 REPO]
- French Convention-cadre FBF Relative Aux Opérations de Pensions Livriée (version 2003), sponsored by the Fédération bancaire française (FBF)
- French Convention-cadre Relative Aux Opérations de Pensions Livriée, 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)

Appendix C

Transactions under Netted Agreement or Principal Agreements (provided by EFET)

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).

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.

Appendix D

Section 2 of the Securities Trading Act (Unauthorised translation)

2.-(1) The provisions of this Act with respect to securities shall apply to the following instruments:

1. Negotiable securities (except for payment instruments) that can be traded on the capital market, including

   a) shares in companies and other securities equivalent to shares in companies, partnerships and other businesses, and share certificates,

   b) bonds and other debt instruments, including certificates for such securities, and

   c) any other securities of which securities as mentioned in a) or b) can be acquired or sold, or give rise to a cash settlement, the amount of which is fixed with securities, currencies, interest rates or returns, commodities indexes and other indexes and targets as reference,

2. money market instruments, including treasury bills, certificates of deposits and commercial papers, with the exception of payment instruments,

3. units in collective investment schemes covered by the Alternative Investment Fund Managers etc. Act or the Investment Associations, etc. Act, as well as holdings in other collective investment undertakings,

4. options, financial-futures, swaps, Forward Rate Agreements (FRAs), and any other derivative agreement concerning securities, currencies, interest rates or returns, or other derivatives, financial indexes or financial targets which can be subject to physical or cash settlements,

5. options, futures, swaps, Forward Rate Agreements (FRAs), and any other derivative agreement concerning commodities for cash settlement, or which can be settled in cash if one of the parties so wishes (for other reasons than breach or termination),

6. options, futures, swaps, and any other derivative agreement concerning commodities for physical settlement, if traded on a regulated market or a multilateral trading facility,

7. options, futures, swaps, forward contracts or any other derivative agreement concerning commodities not covered by no. 6 and which can be physically settled, and have no commercial purpose, and which have characteristics similar to other derivative financial instruments, taking into consideration whether they are cleared and settled through acknowledged clearing institutions or are covered by regular determination of a margin,

8. Credit derivatives,

9. financial contracts for difference (CFDs),

10. options, futures, swaps, Forward Interest-Rate Agreements (FRAs) and any other derivative agreement regarding climatic variables, freight rates, emissions allowances or inflation rates, or other official financial statistics for cash settlement, or which can be settled in cash if one of the parties so wish (for other reasons than breach or termination) and any other derivative agreement concerning assets, rights, obligations, indexes and targets not covered by nos. 1 to 9, and which have characteristics similar to other derivative financial instruments, taking into consideration whether they are traded on a regulated market or through a multilateral trading facility, cleared and settled through acknowledged clearing institutions or are covered by regular determination of a margin, and

11. negotiable mortgage deeds on real property or chattels.

(2) The Danish FSA may lay down regulations to the effect that specified instruments not mentioned in subsection (1) be covered by all or part of the regulations on securities of this Act.