DE PARDIEU BROCAS MAFFEI

AVOCATS

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

Paris, May 4, 2015

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

Dear Sirs:

Reference is made to our legal opinion dated January 1, 2012 which you have requested us to update.

This Opinion (the "**Opinion**"), the scope of which is described in paragraph 1. of this Opinion, will supersede our legal opinion dated January 1, 2012 addressed to the European Federation of Energy Traders ("**EFET**") as to the validity and enforceability under French law of the provisions of the following documents:

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

2. The Cross Product Master Agreement (Version 1) (the "**CPMA**") published on 16 February 2000 by The Bond Market Association;

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

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

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

6. The EFET Cross Product Payment Netting Agreement (Version 1) (the "**CPPNA**") published by EFET on 20 october 2005.

(Together the "**Agreements**")

De Pardieu Brocas Maffei A.A.R.P.I. · 57 avenue d'Iéna - CS 11610 · 75773 Paris Cedex 16
Tél. : +33 (0)1 53 57 71 71 - Fax : +33 (0)1 53 57 71 70 - www.de-pardieu.com
Membre d'une association agréée - Règlement des honoraires par chèque accepté
Siret 393 172 143 00033 · Code APE 6910 Z · N° TVA intracommunautaire : FR 30 393172143 - Palais R 45

We draw your attention to the fact that this Opinion takes into account changes in financial legislation incorporated in the law governing the new French resolution regime which was enacted on July 26, 2013 (Law n° 2013-672 of July 26, 2013 on Separation and Regulation of Banking Activities) (the "**Banking Reform Law**"). Among the changes enacted under the Banking Reform Law, the *Autorité de contrôle prudentiel*'s name has been changed into the *Autorité de Contrôle Prudentiel et de Résolution* ("**ACPR**").

Please, also note that an Ordinance no 2014-158 of 20 February 2014 achieved the implementation under French law of the provisions of the Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms ("**CRD IV**") but the modifications resulting from such implementation should not have an impact on this Opinion.

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

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

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

1. Executive Summary

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

- the close-out netting provisions of the MNA and of the CPMA are effective under the laws of the French Republic including within the framework of the occurrence of:

  ✓ safeguard ("*procédure de sauvegarde*") ("**Safeguard Proceeding**");

  ✓ judicial reorganisation ("*redressement judiciaire*") ("**Judicial Reorganisation Proceeding**"); and

  ✓ judicial liquidation ("*liquidation judiciaire*") ("**Judicial Liquidation Proceeding**");

  ✓ accelerated financial safeguard procedure ("*sauvegarde financière accélérée*") ("**Accelerated Financial Safeguard Proceeding**") introduced by law n° 2010-1249 of October 22, 2010, and implementing decree n°2011-236 of March 3, 2011;

  ✓ accelerated safeguard procedure ("*sauvegarde accélérée*") ("**Accelerated Safeguard Proceeding**") introduced by Ordinance n°2014-326 of March 12, 2014 and implementing decree n°2014-736 of June 30, 2014 (the "**New Safeguard Ordinance**");

✓ ad hoc proceedings ("*mandat ad hoc*") (the "**Ad Hoc Proceedings**") and conciliation proceedings ("*procédure de conciliation*") (the "**Conciliation Proceedings**") which are governed by Articles L. 611-1 through L. 611-16 of Title I of Book VI of the French Commercial Code.

all governed by Titles I, II, III and IV of Book VI of the French Commercial Code (both legislative and regulatory parts) and together referred to as the "**Proceedings**" or each individually as a "**Proceeding**".

The Proceedings and French Insolvency Law (as defined in Exhibit 3) are further presented in Exhibit 3 to this Opinion.

For the purpose of this Opinion, Safeguard Proceeding, Accelerated Financial Safeguard Proceeding, Accelerated Safeguard Proceeding, Judicial Reorganisation Proceeding and Judicial Liquidation Proceeding are collectively defined as the "**Insolvency Proceedings**" and each individually an "**Insolvency Proceeding**".

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

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

all subject to the condition that at least one Party thereto is a Qualifying Party and that the Transactions contemplated thereunder qualify as transactions on financial instruments as defined in Articles L. 211-1 and D. 211-1A of the French Monetary and Financial Code (the "**M&FC**"), see in this respect paragraph 3.1.1.2 below.

Please note that the executive summary does not form part of the opinion and that it is given for the purposes of convenience only.

2. Assumptions set out in the Instruction Letter

In the instruction letter dated 19 August 2014 from EFET, we were requested to make the following assumptions for our Opinion:

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

(ii) The French Counterparty has the legal form of one of the entities listed in Exhibit 6, including without limitation, where relevant, one of the corporate forms listed in paragraph 11 of that Exhibit 6[1];

[1] Although every effort has been made to make that list as comprehensive as possible it is virtually impossible to make that list exhaustive in respect of partnerships which may take the form of a "*société en participation*", informal corporate forms

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

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

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

(vi) On the basis of the terms and conditions of the MNA or CPMA and other relevant factors, and acting in a manner consistent with the intentions stated in the MNA or CPMA, the counterparties over time enter into a number of transactions under the Netted Agreements or Principal Agreements which include some or all of the transactions described in Exhibit 4 (each a "**Transaction**").

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

2.1 Other assumptions

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

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

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

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

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such as de facto corporations ("*sociète de fait*"), foundations etc, all of which may require further due diligence in particular in respect of capacity issues. As the Other Party is assumed to be a Qualifying Party, it is irrelevant that the French Counterparty be a Qualifying Party listed in Exhibit 2.

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

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

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

2.1.7 the Agreements, each Netted Agreement, each Principal Agreement have been properly executed and the Commodities Schedule and the CPCSA's have been properly filled out by both Parties;

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

2.1.9 all Transactions entered into between the Parties qualify as financial contracts or forward financial instruments (*instruments financiers à terme*) within the meaning of Article L. 211-1-III, D. 211-1 A and L 211-36 II of the M&FC (see in this respect paragraph 3.1.1.2 below[2] (the "Qualifying Transactions" subject to limitations/qualifications set out in paragraph 3.1.1.2 below);

2.1.10 at least one of the Parties to the Agreements is a Qualifying Party under the French Netting Law (see in this respect paragraph 3.1.1.2.3 below);

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

2.1.12 after entering into the Transaction and prior to the maturity thereof, a Proceeding has occurred in respect of the French Counterparty and, subsequent to the commencement

2 Exhibit 5 contains a list and a brief description, in general terms, of the types of transactions that may be governed by the Agreements, subject to the condition that such transactions qualify as forward financial instruments, as defined in Articles 211-1 and D.211-1 A and L 211-36 II of the M&FC. In this respect, reference is made to paragraph 3.1.1.2 below.

of the related Proceeding, either the Other Party or an insolvency administrator, receiver and/or liquidator attempts to recognize only the confirmations which represent profitable transactions for the French Counterparty. Unless otherwise mentioned in the Opinion, when the French Insolvency Law (as this term is defined in Exhibit 3) applies, French law is designated as being the *lex concursus*, i.e. the law applicable to the French Counterparty's insolvency situation;

2.1.13 if a Judicial Reorganisation Proceeding or a Judicial Liquidation Proceeding has occurred in respect of a French Counterparty, each Netted Agreement, each Principal Agreement and each Transaction are entered into prior to the formal occurrence of such Judicial Reorganisation Proceeding or Judicial Liquidation Proceeding[3] in respect of the French Counterparty;

2.1.14 if the French Counterparty may be subject to a Judicial Reorganisation Proceeding or a Judicial Liquidation Proceeding, at the time where the Agreement, each Netted Agreement or Principal Agreement are entered into, the Other Party shall not have knowledge of the French Counterparty's insolvency[4];

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

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

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

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

2.1.19 the obligations to pay the Settlement Amount pursuant to each Closed-Out Agreement are legally binding and enforceable and - under all relevant laws other than those of this jurisdiction - capable of being set-off under Section 4 and following of the MNA or the

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[3] There is no Suspect Period with regard to a Safeguard Proceeding, an Accelerated Financial Safeguard Proceeding, an Accelerated Safeguard Proceeding, Ad Hoc Proceedings or Conciliation Proceedings.

[4] An Ad Hoc Proceeding, a Conciliation Proceeding, an Accelerated Financial Safeguard Procedure, an Accelerated Safeguard Proceeding or a Safeguard Proceeding may be opened against a French Counterparty without such Counterparty being insolvent within the meaning of the French Insolvency Law.

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Netted Agreement or Principal Agreements and mutual between the Parties in the sense that they (a) arise between the Parties acting in the same capacity and as principals and not as agents, (b) are not assigned to one of the Parties by a third party and (c) are not assigned, pledged or otherwise encumbered by one of the Parties to a third party or otherwise transferred to a third party;

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

2.1.21 the French Counterparty, when entering into any Transaction with another counterparty, shall comply with applicable French laws and regulations, if any, providing for specific conditions to be complied with by such French Counterparty regarding the conclusion of Transactions. This is in particular the case (but without limitation) if the French Counterparty is:

(i) a French collective investment undertaking ("*organisme de placement collectif*").

The provisions of the M&FC governing the presentation of collective investment undertakings have been substantially modified in the context of implementation of the AIFM Directive. Collective investment undertakings may be organised in the form of either:

1. an undertaking for collective investment in transferable securities ("*organisme de placement collectif en valeurs mobilières*" – "**OPCVM**" or "**UCITS**") licensed in accordance with the Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities[5];

2. a French alternative investment fund ("*fonds d'investisement alternatif*") ("**AIF**")[6] as covered by the Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011. The category of AIFs include:

✓ Funds available to non-professional investors:

a. the investment funds with general purpose ("*fonds d'investissement à vocation générale*")[7],

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5 The regime applicable to OPCVMs is contemplated in Articles L. 214-2 and *seq.* of the M&FC and in Articles D. 214-1 and *seq.* of the M&FC.

6 The concept of an AIF results from the transposition in the French republic of the AIFM Directive by the Ordinance 2013-676 of 27 July 2013. The regime applicable to AIFs is contemplated in Articles L. 214-24 and *seq.* of the M&FC and in Articles D. 214-32 and *seq.* of the M&FC (See Exhibit 6).

7 The investment fund with general purposes is governed by Articles L. 214-24-24 et *seq.* and Articles R. 214-32-9 et *seq.* of the M&FC.

b. the capital venture funds "(*fonds de capital investissement*") category itself subdivided in risk mutual funds ("*fonds commun de placement à risque, FCPR*")[8], innovation mutual funds ("*fonds commun de placement dans l'innovation, FCPI*") and local investment funds ("*fonds d'investissement de proximité, FIP*")[9],

c. the real estate collective investment undertaking ("OPCI") ("*organismes de placement collectif immobilier*")[10],

d. the real property investment partnerships ("*société civile de placement immobilier, SCPI*")[11] and the forestry-linked saving companies ("*societés d'épargne forestière*")[12],

e. the investment companies with fixed capital ("*sociétés d'investissement à capital fixe, SICAF*")[13],

f. the alternative funds of funds ("*fonds de fonds alternatifs*")[14],

✓ Funds available to professional investors:

a. the professional funds with general purpose ("*fonds professionnels à vocation générale*")[15],

b. the professional real estate collective investment scheme ("*OPCI professionnels*")[16],

c. the specialized professional funds ("*fonds professionnels spécialisés*")[17],

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8 The risk mutual funds are governed by Articles L. 214-28 et seq., and R. 214-35 et seq. of the M&FC. The investment in innovation mutual funds is governed by Articles L. 214-30 et seq., R. 214-47 et seq. of the M&FC.

9 The local investment funds are governed by Articles L. 214-31 et *seq.*, R. 214-65 et *seq.* of the M&FC.

10 The real estate investment undertaking is governed by Articles L. 214-33 et *seq.* of the M&FC.

11 The real estate investment company is governed by Articles L. 214-86 et *seq.*, L. 231-8 et *seq.*, R. 214-130 et *seq.* of the M&FC.

12 The forestry-linked saving companies are governed by Articles L. 214-86 et *seq.* and R. 214-130 et *seq.* of the M&FC.

13 The investment company with fixed capital is governed by Articles L.214-127 et *seq.* and R. 214-177 et *seq.* of the M&FC.

14 The alternative funds of funds are governed by Articles L.214-139 et *seq.* and R. 214-183 et *seq.* of the M&FC.

15 The professional funds with general purpose are governed by Articles L. 214-143 et *seq.* et R. 214-187 et *seq.* of the M&FC.

16 The professional real estate investment undertaking is governed by Articles L. 214-148 et *seq.* et R. 214-194 et *seq.* of the M&FC.

17 The specialized professional funds are governed by Articles L. 214-154 et *seq.* et R. 214-202 et *seq.* of the M&FC.

d. the venture capital professional funds ("*fonds professionnels de capital investissement*")[18],

✓ employee saving funds ("*fonds d'épargne salariale*") category itself divided in employee saving common fund ("*fonds commun de placement d'entreprise, FCPE*")[19] and employee saving company with variable capital ("*société d'investissement à capital variable d'actionnariat salarié, SICAVAS*")[20], and

✓ securitization entities, category subdivided in FCT ("*fonds commun de titrisation*" - "***FCT***", formerly "*fonds commun de créances*" - "***FCC***")[21] and "*société de titrisation*".

(ii) a real estate credit company ("*société de crédit foncier*")[22],

(iii) a housing financing company ("*société de financement de l'habitat*")[23],

(iv) a public establishment ("*établissement public*"),

(v) the French State,

(vi) a local government ("*collectivité locale*"),

(vii) the *Caisse de la dette publique* and the *Caisse d'amortissement de la dette sociale*,

(viii) the *Banque de France*,

(ix) the *Institut d'émission des départements d'outre-mer* and the *Institut* d'émission *d'outre-mer*,

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18 The investment capital professional fund is governed by Articles L. 214-159 et *seq.* and R. 214-204 et *seq.* of the M&FC.

19 The employee saving common fund (FCPE) is governed by Articles L. 214-167 et *seq.* and R. 214-211 et *seq.* of the M&FC.

20 The employee saving common fund company with variable capital (SICAVAS) is governed by Articles L. 214-166 et R. 214-215 et *seq.* of the M&FC.

21 The securitization entities are governed by Articles L. 214-180 et R. 214-217 et *seq.* of the M&FC.

22 Real estate credit companies are credit institutions licensed as *"établissement de crédit specialisés"* (specialised credit institution). The regime applicable to real estate credit companies is contemplated in Articles L. 513-2 et *seq.* of the M&FC and in Articles R. 515-2 et *seq.* of the M&FC. While a "*société de crédit foncier*" may enter into Transactions the effectiveness of close out netting provisions contemplated in the Agreements is subject to limitations upon occurrence of insolvency of the "*société de crédit foncier*" as further described in Exhibit 6 paragraph 6.

23 Housing financing companies are credit institutions licensed as *"établissement de crédit specialisé"* (specialised credit institution). The regime applicable to housing financing companies is contemplated in Articles L. 513-28 et *seq.* of the M&FC and in Articles R. 515-15 et *seq.* of the M&FC which have been introduced in the M&FC by the French law n°2010-1249 on banking and financial regulation. While a "*société de financement de l'habitat*" may enter into Transactions the effectiveness of close out netting provisions contemplated in the Agreements is subject to limitations upon occurrence of insolvency of the "*société de financement de l'habitat*" as further described in Exhibit 6 paragraph 7.

(x) an insurance company ("*entreprise d'assurance*"), reinsurance company or a mutual insurance company ("*sociétés d'assurance mutuelles*")[24].

2.1.22 when the French Counterparty is a French mutual or cooperative bank ("*banque mutualiste ou coopérative*")[25], it complies with the specific regulations applicable to it;

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

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

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

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

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

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

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

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

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

25 Mutual and co-operative banks are subject to Articles L. 512-1 et *seq.* of the M&FC and to Articles R. 512-1 et *seq.* of the M&FC. Whereas banks may carry out any banking transactions, mutual or cooperative banks may carry out any banking transactions within the limits of the rules which govern mutual or cooperative banks. It should also be noted that central bodies of mutual or cooperative banks may or may not have the status of a credit institution and may therefore qualify or not qualify as a Qualifying Party. Therefore, the question as to whether an entity which is a member of a network of a category of mutual or cooperative banks or the central body of such a network qualifies as a Qualifying Party must be analysed on a case by case basis.

3. Opinion

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

3.1 Enforceability of Close-out Netting

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

3.1.1 Winding-up, Insolvency or Attachment

For the purpose of Paragraph 3.1.1 we have assumed that:

- the relevant MNA or CPMA is governed by any law (including English, German or New York law) ; and
- after entering into transactions and prior to the maturity thereof, the French Counterparty becomes the subject of voluntary or involuntary proceedings under the French Insolvency Law (as defined in Exhibit 3), and, subsequent to the commencement of the Proceedings, either the French Counterparty or an insolvency official seeks to assume the confirmations representing profitable ("in the money") transactions for the insolvent counterparty.

Paragraph 3.1.1.1 will address a general overview of the Proceedings; Paragraph 3.1.1.2 will review legal provisions applicable to close-out netting under French law. Those are the provisions of Articles L. 211-36 through L. 211-40 of the M&FC[26] (the **French Netting Law**").

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

3.1.1.1 General Overview of French Insolvency Law

(a) **Proceedings**

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

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

(b) Set-off and close-out netting

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

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

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

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

(ii) the purpose of each debt must be a sum of money or a quantity of fungible[27] things;

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

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

(v) each debt must be due and payable.

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

The requirement that the claims be certain, liquid and matured is no longer necessary to set-off so-called "connected" claims.

The concept of "connected" claims is further explained in paragraph 4.2 of Exhibit 3 to this Opinion.

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

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

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

Furthermore, the *compensation conventionnelle* may be subject to voidance if concluded during the Suspect Period[28]. Should a Judicial Reorganisation Proceedings or Judicial Liquidation Proceedings be opened, such *compensation conventionnelle* **will be paralysed on the basis of the French Insolvency Law**[29]**, except for connected claims**[30]. Please see however our analysis of the Insolvency Proceedings Regulation in paragraph 3.1.1.3 below.

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

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

28 See in this respect paragraph 4.5 of Exhibit 3.

29 See in this respect paragraph 4.5 of Exhibit 3.

30 See in this respect paragraph 4.5 of Exhibit 3. It is therefore important that the election to make Section 10.6 apply in the Schedule.

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framework of a Proceeding. The French Netting Law applies for such purposes.

3.1.1.2 The French Netting Law

The French Netting Law is applicable to financial obligations[31] resulting either:

(i) from **transactions on financial instruments** (within the meaning of Article L. 211-1-I of the M&FC), if only one of the parties to the transactions is a Qualifying Party (see in this respect paragraph 3.1.1.2.2 below); or

(ii) from any **contract giving rise to cash settlement or to delivery of financial instruments**, if both parties to the contract are Qualifying Parties (each of the transactions and contracts referred to in (i) and (ii) is referred to as a "**Qualifying Transaction**").

It is worth noting that if both parties to the transaction(s) are Qualifying Parties under the French Netting Law, the scope of Qualifying Transactions is wide as the French Netting Law includes in such case financial obligations which result from any **contract giving rise to cash settlement or to delivery of financial instruments**. Accordingly, all transactions on financial instruments are Qualifying Transactions (i.e. Qualifying Transactions covered by the French Netting Law when only one of the parties to such transaction(s) is a Qualifying Party as contemplated by Article L. 211-36 1° of the M&FC) but also transactions which do not qualify as transactions on financial instruments but otherwise result from any contract giving rise to cash settlement or to delivery of financial instruments[32].

3.1.1.2.1 Transactions on financial instruments

Article L. 211-1 of the M&FC defines financial instruments [33] which include:

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

32 This seems to exclude in particular an exchange of commodities or services which does not give rise to cash settlement or to delivery of financial instruments.

33 The definition of financial instruments corresponds in essence to the definition of financial instruments provided in 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 (the "MIFID"), as supplemented by (i) Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 amending directive 2004/39/EC on markets in financial instruments, as regards certain deadlines, (ii) Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organizational requirements and

1. financial securities which include:

   a) shares and other securities issued by stock companies;

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

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

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

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

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

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

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

4. Options, futures, swaps, and any other forward contracts relating to commodities, that can be physically settled not otherwise mentioned in 3. above and not being for commercial purposes, which have the characteristics of other forward financial instruments[34], having regard to

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operating conditions for investment firms and defined terms for the purposes of that Directive, (iii) Commission Regulation 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive. MIFID has been transposed under French Law by *Ordonnance relative aux marchés d'instruments financiers* n° 2007-544 of April 12, 2007. It should be noted that some of the definitions of financial instruments (including those related to commodities that can be physically settled and OTF traded wholesale energy products) have been modified in Annex 1 C of Directive 2014 /65/EU of the European Parlament and of the Council of May 15 2014 on markets in Financial Instruments and amending MIFID "("**MFID 2**") as supplemented by Regulation (EU) N° 600/2014 of the European Parlaiment and of the Council of May 15 2014 on Markets in Financial Instruments and amending Regulation (EU) N° 648/2012 ("**MIFIR**"). As MIFID 2 is to be transposed into national law by July 3 2016 and that such transposition measures are to become effective on January 3, 2017 this opinion will not take into account those MIFID 2 amendments. MIFIR contains also transitional measures in particular those applying to C6 energy derivative contracts.

[34] According to the first paragraph of Article 38 of EU Regulation n° 1287/2006, other derivative financial instruments and not being for commercial purposes are so characterized when the following conditions are satisfied:

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

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

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

5. Forward contracts for the transfer of credit risk[35];

6. Financial contracts for differences;

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

8. any other forward contract relating to assets, rights, obligations, indices and measures not otherwise mentioned in 1 through 7 above, which have the characteristics of other forward financial instruments[36], having

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an MTF;

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

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

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

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

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

36 According to the third paragraph of Article 38 of EU Regulation n° 1287/2006, in respect of underlying referred to in Section C(10) of Annex I to Directive 2004/39/EC (i.e.: paragraphs 7 and 8 above), the characteristics of other derivative financial instruments are met if one of the following conditions is satisfied:

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

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

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

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

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

Furthermore, Article L. 211-36-II of the M&FC extends the scope of application of the French Netting law to instruments which are not considered as financial instruments under the MIFID[37]. Article L. 211-36-II of the M&FC provides indeed that **for the sole purposes of Articles L. 211-36 and L. 211-36-1 of the M&FC** (i.e.: the French Netting Law), option contracts, futures, swaps and any other forward contracts other than those mentioned in Article D. 211-1 A-I of the M&FC are considered as forward financial instruments, provided that, when such instruments must be settled by physical delivery, they give rise, **in the context of trading, to registration by a recognised clearing house or to periodical margin** calls.

The scope of qualifying transactions has so been broadened by comparison to the MIFID definition of forward financial instruments so as to maintain the regime of Qualifying Transactions in force prior to the transposition into French law of the MIFID Directives so as to maintain consistency with the regime prevailing prior to transposition into French law of MIFID[38].

In respect of the list of transactions appearing in Exhibit 5, attention needs however to be paid to the different types of transactions referred to below:

(a) Spot transactions

Spot transactions the settlement of which occurs on an intra-day basis do not qualify as transactions on forward financial instruments. However, for those of the spot transactions the settlement of which occurs (including for market practice solely) on a date after their date of conclusion, the question arises as

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

"*(a) telecommunications bandwidth;*

(b) commodity storage capacity;

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

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

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

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

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

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

38 By the "*Ordonnance relative aux marchés financiers N° 2007-544 of April 12 2007*" (the "MiFID Ordinance").

to whether such transactions may qualify as transactions on forward financial instruments within the meaning of Article L. 211-1-III of the M&FC.

Whereas spot transactions related to securities (i.e. financial instruments referred to in Article L. 211-1-I, 1° or 2° or 3° of the M&FC) may qualify as transactions on financial instruments and may accordingly benefit from the provisions of the French Netting Law, there remains an area of uncertainty as to whether or not spot transactions relating to other underlying assets (e.g. spot transactions relating to currencies[39]) may be considered as forward financial instruments[40].

It may be noted that under Regulation n° 1287/2006 of August 10, 2006, a "spot contract" is a contract 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**.

While it may be argued that any transaction the settlement of which does not occur at least two trading days after its date of conclusion could not qualify as a transaction on forward financial instruments, it is important to note that the scope of application of such definition is limited as it applies solely to contracts referred to in paragraph 7 of Section C of Annex I of the MIFID, i.e. transactions relating to commodities.

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39 Pursuant to the provisions of Section C of Annex I of the MiFID, "*Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, __currencies__, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled __physically__ or in cash*" qualify as (forward) financial instruments.

As far as over the counter foreign exchange transactions are concerned, the view of the European Commission has been sought on whether such transactions could be considered as transactions on financial instruments under Annex I, Section C, paragraph 4 of the MiFID. In this respect, the Commission answered that "***derivatives on currencies listed in Section C(4) of Annex I of MIFID are financial instruments.*** [...] ***Spot market foreign exchange agreements are not considered to be financial instruments for the purposes of MIFID***". The question and its related answer are available at the following address:

http://ec.europa.eu/ yqol/index.cfm?fuseaction=legislation.showGroup&groupCode=MiFID.

We understand that such views are not shared by the English Treasury and the English Foreign Exchange Joint Standing Committee which consider that MiFID does not apply to foreign exchange transactions.

40 Diverging views seem to be expressed in this respect among certain legal scholars and industry organisations.

Certain legal scholars and practitioners (see Jean-Pierre Mattout, *Droit Bancaire International* (3rd edition), Banque Editeur, n° 414 and 415; H. de Vauplane and J.-P. Bornet, *Droit des Marchés Financiers*, Litec (3rd edition), n° 693) consider that foreign exchange transactions the settlement of which occurs between the same date as of, and two business days subsequent to, their date of conclusion qualify as spot foreign exchange transactions and, as such, are not covered under Articles L. 211-36 and L. 211-36-1 of the M&FC. On the other hand, they consider that foreign exchange transactions in respect of which the settlement date occurs at least three business days subsequent to their date of conclusion qualify as forward foreign exchange transactions and, as such, are covered under Articles L. 211-36 and L. 211-36-1 of the M&FC.

Furthermore, in its technical advice on implementing measures for the MIFID, the Committee of European Securities Regulators (CESR) expressed the view that the above factor "*is only intended to be relevant for the purposes of determining whether a contract falls outside of the scope of* ***Section C(7)*** *and* ***should not be used for other purposes****. It is* ***not intended to constitute a definition of a spot contract***"[41].

As a result, we do not believe that a general conclusion may be drawn from such definition for all transactions which are not related to securities.

We believe that the better view in this respect is that spot transactions which settle on a date subsequent to the date of their conclusion should qualify as transactions on forward financial instruments, provided however that the criteria set out in Article D. 211-1 A of the M&FC are met (e.g. mode of settlement, margin calls, etc.).

Indeed, in our view, the qualification of forward financial instrument under French law does not depend on the nature of the underlying asset of the relevant transaction but rather on the date of settlement of the transaction which occurs after the date of conclusion thereof. However, to the extent this position has not, as far as we are aware, been tested yet before a French court, it remains subject to legal uncertainty.

In any event, spot transactions which are entered into between two Qualifying Parties and which give rise to cash settlement or to delivery of financial instruments would in our view benefit from the provisions of the French Netting Law without having regard to whether they settle on or after the date of their conclusion.

Financial obligations resulting from such spot transactions would indeed qualify as financial obligations resulting from any contract giving a rise to cash settlement or to delivery of financial instruments within the meaning of Article L. 211-36-2° of the M&FC. In the absence of case law in this respect, this matter remains within the scope of judicial discretion.

Article L. 211-17-1 M&FC provides, however, that the seller of financial instruments referred to in Article L. 211-1 I of the M&FC must, as soon as the order is executed, settle financial instruments within less than two trading days as from the date of execution of the order[42]. Such article may therefore impact the delay of two trading days provided in the Commission Regulation n° 1287/2006 of August 10, 2006 as regards "spot contract". Under those circumstances, spot contracts may then be outside the scope of forward financial instruments.

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41 CERS's Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments - 1st Set of Mandates where the deadline was extend and 2nd Set of Mandates - April 2005.

42 That Article has been created by law n°2010-1249 on banking and financial regulation, which has been adopted on October 22, 2010. Derogations from that rule are possible for technical reasons under conditions set by the AMF General regulations. That rule takes effect on the effective date of equivalent harmonisation rules at the European level. We are not aware of any such EU harmonisation rules having been adopted.

It should be noted, however, that in a joint press release dated May 31 2011 the APC and the AMF have taken the view that a rolling spot forex qualifies as a forward financial instrument.

It should be noted that in this context the European Securities and Markets Authority (ESMA) sent on 14 February 2014 a letter to the European Commission asking them to clarify the definition of a derivative or derivative contracts under the European Market Infrastructure Regulation (EMIR), in particular with respect to foreign exchange (FX) forwards and physically settled commodity forwards[43].

The European Commission responded by a letter dated 26 February 2014[44] indicating in particular that the "*delineation between derivative and spot contracts should be clarified*" by considering in particular which delivery periods are appropriate in the FX forward market.

The ESMA recently launched a consultation on this matter in order to adopt guidelines to ensure the consistent classification of certain financial instruments as derivatives[45].

(b) Credit and weather derivative transactions

According to new Article D. 211-1 A of the M&FC, financial contracts for the transfer of credit risk and options, futures, swaps, forward rate agreements and any other forward contracts relating to climatic variables qualify as forward financial instruments.

In our view, it results therefore from such legal recognition that the risk of recharacterisation of credit linked derivative transactions or derivative transactions related to weather conditions as insurance transactions or credit transactions is remote[46].

43 ESMA's letter takes the view that currently this definition is not harmonised across the European Union which could have a detrimental effect on the consistent application of EMIR. The EMIR definition of derivatives cross-refers to the list of financial instruments mentioned in the current Markets in Financial Instruments Directive (MiFID). The different transpositions of MiFID across Member States mean that there is no single, commonly adopted definition of derivative or derivative contract in the European Union, thus preventing the convergent application of EMIR.

44 Markt/G3po/or/2014 s. 510569.

45 ESMA, Consultation paper, *Guidelines on the application of C6 and C7 of Annex I of MiFID*, 29 September 2014 (ESMA/2014/1189).

46 Before the issuance of the MiFID Ordinance and its related decree, the majority of legal scholars and practitioners already considered that credit linked derivative transactions should not be characterised as insurance transactions or as guarantees but do qualify instead as forward financial instruments. See in particular in this respect Thierry Bonneau and France Drummond, *Droit des Marchés Financiers*, 2nd édition, 2005, Economica, n° 168 and following; H. de Vauplane and J.-P. Bornet, op. cit., n° 703 and following; Gilles Kolifrath, *Les dérivés de crédit : vers une approche juridique*, Banque & Droit n° 63, January – February 1999, page 13 and following; Antonin Besse and Alain Gauvin, *Licéité des dérivés de crédit en droit français*, Revue de Droit Bancaire et de la Bourse n° 72, March - April 1999, page 45 and following; Pierre Gissinger, *La qualification juridique des dérivés de crédit*, Banque magazine n° 63, December 2001, page 54 and following. Dissenting views have, however, been expressed: see in this respect Alain Gauvin, *Droit des dérivés de crédit*, Revue Banque Edition, page 26 and following; Alain Gauvin, *La question récurrente de la qualification juridique des dérivés de crédit*, Revue de Droit Bancaire et Financier May-June 2004, page 211 and following.

It should be noted, however, that certain counterparties may be prevented from resorting to credit derivatives or to climatic variables related transactions.

(c) Physically Settled Commodities, Bullion, Emission Allowances

The adoption of the MIFID Ordinance has clarified the status on transactions related to commodities, bullion and Emission allowances which qualify as financial contracts (forward financial instruments), see in this respect paragraph 3.1.1.2.1. above. It should be noted, however, that certain counterparties may be prevented from resorting to commodities or precious metals related transactions.

(d) Economic Statistic Transactions

Whether Economic statistic related transactions may qualify as financial contracts needs to be determined on a case by case basis in view of an analysis of the relevant fact pattern.

(e) Longevity Mortality Transactions

The same remarks as those formulated in respect of Economic Statistic Transaction are expressed in respect of Longevity Mortality Transactions.

(f) Index related Transactions

Article L. 112-1 M&FC provides for a general prohibition of automatic indexation of the price of goods and services unless otherwise provided by law.

Article L. 112-2 provides for a prohibition of contractual provision contemplating indexation based on minimum growth salaries (*salaire minimum de croissance*), the general level of prices or salaries or on the price of goods, products or services where the same have no direct relationship with the purpose of the status or the agreement or the activity of one of the parties That Article provides for some references related to the purposes of an agreement some of which refer to special legislation or decrees.

It should be noted, however, that Article L. 112-3-1 M&FC provides **that notwithstanding any legislation to the contrary, the indexation of debt securities ("*titres de créance*") and of financial contracts (i.e. forward financial instruments) referred to in subparagraph 2 of Paragraph II and in paragraph III of Article L. 211-1 is free**[47]. This is a fairly sweeping exemption which leads us to believe that the possibility to resort to indexation in respect of

In respect of derivative transactions relating to weather conditions, see H. de Vauplane and J.-P. Bornet, op. cit., n° 709-1; Alban Caillemer du Ferrage, *Les dérivés climatiques*, Banque & Droit n° 72, July – August 2000, page 3 and following.

47 Paragraph III of Article L 211-1 M&FC cross-refers the list of financial contracts which correspond to forward financial contracts which is set in Article D 211-1-A of the M&FC. See in this respect subparagraph 2 of paragraph 3.1.1.1. above of this Opinion.

forward financial instruments is fairly wide which has the effect of extending the scope of available index related transactions.

(g) Transactions including a physical delivery of commodities

We would like to draw your attention to the fact that if a Transaction (including Uncovered Transactions) entered into between the Parties is governed by an agreement (which comprise, *inter alia*, a Netting Agreement and Principal Agreement and any provision modifying such Netting Agreement and Principal Agreement (either by way of schedule, annex, confirmation or otherwise)) which only permits physical settlement to occur, such Transaction may not qualify as a transaction on financial instrument and, as such, will not benefit from the provisions of Article L. 211-36 et seq. of the M&FC, if such Transaction is not registered by a clearing house or if such agreement does not provide for periodic margin calls[48]. However, in the absence of periodic margin calls regarding the Transactions contemplated under a Principal Agreement or a Netted Agreement, we believe the better view to be that margin calls under the CPCSA's (even when combined with the MNA or CPMA) may be assimilated to periodic margin calls for purposes of the definition of the concept of forward financial instruments.

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

- the conditions under which a transaction may either be cash settled or physically settled[49]; and

- whether the parties are only required to provide for the possibility to call for margin or whether such margin calls must actually occur[50].

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

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48 It should be noted ,however,that the provisons contained in Annex 1C (7) and 10 of MIFID (*"having regard to whether inter alia they are cleard and settled through recognised clearing houses or are subject to regular margin calls"*) has been deleted from the corresponding provisions of Annex 1C of MIFID 2.This change to be transposed under national law by July 2016 only becomes effective on January 3 2017.

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

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

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

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

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

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

Finally, the question as to whether physically settled forward contracts on commodities which are entered into between two Qualifying Parties may benefit from the provisions of the French Netting Law needs to be addressed. According to the legal department of the *Banque de France*[51], the Collateral Directive Ordinance[52] has introduced into French law a "universal" global netting which is applicable **when both parties to a contract are Qualifying Parties**. Indeed, the legal department of *Banque de France* is of the view that Article L. 211-36 I 2° of the M&FC applies to any contract under which a party is obliged to pay a sum of money or to deliver financial instruments. From a practical perspective, Article L. 211-36 I° 2° of the M&FC would apply to any type of commercial contract (with limited exceptions such as the exchange of goods which do not give rise to cash settlement or delivery of financial instruments). A physically settled forward contract on commodities would then qualify under Article L. 211-36 I 2° of the M&FC, provided however that such contract provides for the payment of a sum of money or the delivery of financial instruments[53]. It is assumed that such contract is between two Qualifying Parties. It should, however be noted that Qualifying Parties contemplated by Article L.211-36 I 2° of the M&FC are of narrower scope than those

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

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

53 Pursuant to Article L. 211-1 of the M&FC, financial instruments are financial securities ("*titres financiers*") and financial contracts ("*contrats financiers*") as defined in 3.1.1.2 above.

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contemplated under Article L.211-36 I 1° of the M&FC (see in this respect paragraph 3.1.1.2.2. for a definition of Qualifying Parties).

Those views are however without prejudice to any specific wording in Transactions documents which may lead a judge to take a different view in light of specific fact patterns. Therefore, transactions may need to be reviewed on a case by case basis in order to express a view.

3.1.1.2.3 Qualifying Parties

(a) Scenario applicable to Transactions on Financial Instruments

In order for the Transactions to qualify under Article L. 211-36 1° M&FC, **at least one of the parties to such Transactions must be a party referred to in Article L. 211-36 1° of the M&FC**[54] (each, a "**Qualifying Party**"), i.e.:

- a credit institution ("*établissement de crédit*"), or a "*société de financement*"[55],
- an investment services provider ("*prestataire à de services d'investissement*"),
- a public establishment ("*établissement public*"),
- a local authority ("*collectivité territoriale*"),
- an institution, firm or an establishment referred to in Article L. 531-2 of the M&FC[56],
- a clearing house ("*chambre de compensation*")[57],
- a non-resident establishment with a comparable status, or
- an international financial organisation or body of which France or the European Community is a member.
- *Caisse des dépôts et consignations*[58].

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

[55] Applicable as of January 1, 2014. Those entities are entitled to provide credit but have a purely national-domestic function and are not entitled to the EU passport. They have been introduced in the French legal corpus by an Ordinance dated June 27th 2013.

[56] Please see the list reproduced in paragraph (e) of Exhibit 2.

[57] Please note in this respect that clearing houses are subject, for the carrying out of their activities, to specific rules set forth *inter alia* in Articles L. 440-1 to L. 442-10 of the M&FC. In particular, a clearing house has to be licensed as a credit institution and its operating rules to be approved by the *Autorité des Marchés Financiers*. It may be further noted that the clearing systems of clearing houses designated as such for purposes of Directive 98/26 of 19 May 1998 on settlement finality in payment and securities settlement systems fall within the scope of the French Netting Law.

[58] While the Caisse des Dépôts et Consignations is listed in neither Article L 211-36 nor L 531-2 M&FC it qualifies as a Qualifying Party in its capacity as an *Etablissement Public Administratif*.

The list of French Counterparties contained in Exhibit 2 are French Counterparties qualifying as Qualifying Parties under the French Netting Law as stated in Article L 211-36 and Article L. 531-2 M&FC.

In this respect, it may be noted that according to Articles L. 511-22, L. 511-23, L. 532-18 and Article L. 532-18-1 of the M&FC, **foreign entities which are licensed in their Home Country which is a Member State of the European Economic Area to carry-out banking transactions or to provide investment services and carrying out their activities in France under the European Passport either by way of a branch or under the principle of freedom to provide services, are assimilated to credit institutions or investment services providers licensed in France for purposes of Articles L. 511-9, L. 211-36 and L. 211-36-1 of the M&FC and, as such, are Qualifying Parties under the French Netting Law.**

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

(b) Cash Settlement and or delivery of financial instruments

As indicated in paragraph 3.1.1.2.1. above, the range of Qualifying Transactions corresponding under the French Netting Law to Transactions giving rise to Cash Settlement and or delivery of financial instruments is wider if both parties to the transaction(s) are Qualifying Parties referred to in Article L. 211-36 1° of the M&FC. **However, it should be noted that in such latter case, certain institutions, firms or establishments referred to in c) to n) of 2° of Article L. 531-2 of the M&FC are specifically excluded as Qualifying Parties (see in this respect Exhibit 2 to this Opinion).**

Under that scenario Qualifying Parties are:

- a credit institution ("*établissement de crédit*"), or a "*société de financement*",
- an investment services provider ("*prestataire de services d'investissement*"),
- a public establishment ("*établissement public*"),
- a local authority ("*collectivité territoriale*"),
- the *Caisse de la dette publique* and the *Caisse d'amortissement de la dette sociale*,
- the *Banque de France*,

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- the *Institut d'émission des départements d'outre-mer* and the *Institut d'émission d'outre-mer*,
- an insurance company ("*entreprise d'assurance*"), reinsurance company or a mutual insurance company ("*sociétés d'assurance mutuelles*")[59],
- a clearing house ("*chambre de compensation*"),
- a non-resident establishment with a comparable status, or
- an international financial organisation or body of which France or the European Community is a member.

In a nutshell, it may be stated that most of forward financial instruments would give rise to cash settlement but any contract giving rise to cash settlement or delivery of a financial instrument is not necessarily within the scope of a a forward financial instrument unless that instrument, where it contemplates physical delivery, only gives rise in the context of trading to registration with a recognized clearing house or periodic margin calls. For instance, a Securities repurchase transaction gives rise to cash settlement or delivery of a financial instrument but does not constitute a forward financial instrument. A commodity transaction which settles by physical delivery may give rise to a characterisation as forward financial instrument if it gives rise in the context of trading to registration with a recognized clearing house or periodic margin calls (see above paragraph 3.1.1.1). The concept of a financial obligation giving rise to cash settlement or delivery of a financial instrument is much wider than the concept of a transaction on forward financial instruments which are from the contractual perspective those contemplated under the Principal Agreement[60].

(c) Special considerations applying in respect of certain Qualifying Parties

Special Considerations may apply in respect of certain Qualifying Parties either because those entities are not susceptible of being subject to Proceedings (i.e. Insolvency Proceedings, Conciliation Proceeding or an Ad Hoc Proceeding) or because in the event certain entities are subject to such proceedings a special regime applies notwithstanding any statutory or regulatory provision to the contrary.

(d) Qualifying Parties not susceptible of being subject to a Proceeding

Pursuant to Articles L. 612-2-1, L. 611-5, L. 620-2, L. 631-2 and L. 640-2 of the French Commercial Code which determines the scope of the French Insolvency Law, its provisions apply to any merchant, craftsman, any farmer, any other individual who carries out an independent business including a professional subject to a statutory or regulatory status or whose title is protected, or any private law legal person.

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

60 See footnote 44.

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In view of the above eligibility provisions contemplated under the French Insolvency Law a certain number of entities or enterprises are excluded from the scope of French Insolvency Law and as a result of eligibility to Proceedings:

(i) Exhibit 6 contains a list of French Counterparties and where special insolvency related considerations may apply in respect of such French Counterparties; reference is made in that Exhibit 6 to such insolvency related considerations where applicable.

(ii) Special insolvency related considerations may apply to <u>entities excluded from eligibility to Proceedings for lack of legal personality.</u>

(iii) <u>The French State, Public entities and arms of the French State are not eligible to Proceedings.</u>

(e) Qualifying Parties susceptible of being subject to a Proceeding but which are subject to a special regime applies notwithstanding any statutory or regulatory provision to the contrary

Those Qualifying Parties subject to such a special regime are in essence:

- Real estate Credit Companies ("*Société de Crédit Foncier*" - SCF);
- Credit institutions licensed as "*société de financement de l'habitat*" SFH.

The status of both the SCF and the SFH being further described in paragraphs 6 and 7 of Exhibit 6 to this Opinion.

Article L. 513-11 2° (formerly Article L. 515-19 2°) of the M&FC provides **that notwithstanding any legislative provision to the contrary (including the provisions of Book VI of the French Commercial Code which governs Proceedings)** in the event a *société de crédit foncier* is subject to an Insolvency Proceedings, as well as a Conciliation Proceeding, the claims related to transactions benefiting from the above priority lien referred to in Article L. 513-2 sub paragraph 2 of paragraph I (i.e. *obligations foncières* and other resources benefiting from the priority referred to in Article L. 513-11 of the CMF) are paid when they fall due (i.e. at their contractual maturity), and with priority over all other claims (interests being included), whether secured or not by a lien or security, whatever their maturity is.

Any claims of the other creditors over the assets and rights of the *société de crédit foncier* are subject to the full discharge of obligations secured by a priority lien, as defined in such Article L. 513-11 of the M&FC.

In our view, the above provisions should be interpreted in such a manner that close-out netting following termination **solely** on the ground of commencement of an Insolvency Proceeding or a Conciliation Proceeding is to be precluded.

However, in our view, other provisions of the French Netting Law continue to apply to a SCF including the provisions governing contractual provisions contemplating termination upon occurrence of a payment or delivery default.

In other words provisions governing posting of collateral, return and redelivery of collateral, substitution of collateral, set-off between collateral posted and discharge of financial obligations secured by that collateral continue to apply.

In case of default under those contractual obligations termination and close-out netting should be possible at that stage to the extent the relevant event of default occurs subsequently to the commencement of an Insolvency Proceeding or of a Conciliation Proceeding and that termination does not occur solely on the ground of commencement of those proceedings.

This has, however, not been tested by case law but we believe the better view to be that this approach should prevail. Further reference is also being made to paragraph 6. of Exhibit 6 of this Opinion.

The observations made in this paragraph 3.1.1.2.3. of this Opinion and related provisions of Exhibit 6 are a summary of otherwise complex principles of company, financial and public law and are by definition not comprehensive. It is recommended that prior to entering into Transactions with such entities the Other Party proceeds with appropriate due diligence in order to appreciate the legal status of each individual institution with whom Transactions are under consideration.

(f) Transactions falling outside the scope of the French Netting Law

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

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

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

Although in the absence of case law to such effect this matter is not free of uncertainty, we believe the better view to be that if a basket of transactions includes both Qualifying and non Qualifying Transactions, the presence of non Qualifying Transactions should not impact the application of the French Netting Law to the Qualifying Transactions leaving non Qualifying Transactions subject to the provisions of Article L. 622-13, L. 631-14 and L. 622-7 of the French

Commercial Code. However, we draw your attention that we are not aware of any French case law on such a question. Therefore, we recommend segregating in independent portfolios Qualifying and non Qualifying Transactions.

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

However, consideration needs to be given to the fact that those transactions may not meet the fungiblity test [61] which is required to be considered for post-insolvency set-off in the context of connexity or related transactions. Furthermore, those segregation arrangements may not be considered as being consistent with the single agreement[62] concept which has traditionally been approached as being part of the close-out netting arrangements permitting the exemption of mandatory provisions of the French Insolvency Law.

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

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

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

3.1.1.3 Netting-Set-off in the Context of a Proceeding

1. Early termination by notice

On the basis of the provisions of paragraph II of Article L. 211-36-1 and of Article L. 211-40 of the M&FC (see in this respect Exhibit 1), we are of the opinion that the provisions

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61 Please refer to paragraph 4.2 of exhibit 3 of this opinion. The exercise of the right of set-off in respect of connected (*connexe*) claims requires mutuality of fungible obligations. According to French Law, fungibility of mutual obligations means obligations which are of the same type and can replace each other. For instance, if a debtor owes money to its creditor and inversely, sums are fungible.

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

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of the MNA and of the CPMA entered into between the French Counterparty and the Other Party entitling the Other Party to early terminate all the underlying Principal Agreements or Netted Agreement and all the Transactions (including Uncovered Transactions) upon the occurrence and continuance of an a Proceeding in respect of the French Counterparty are valid and enforceable under French law, provided however that at least one Party is a Qualifying Party and that the Transactions contemplated thereunder qualify as financial instruments. Reference is made in this respect to paragraph 3.1.1.2. above.

2. Automatic early termination

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

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

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

Accordingly, we believe that the French Netting Law permits the Automatic Termination of all Transactions upon occurrence of a Proceedings with respect to the French Counterparty when the Agreement so provides.

3. Calculation of the Final Net Settlement Amount

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

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

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

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

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

4. Vulnerability of close out netting

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

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

5. Cross Product Netting

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

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

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

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

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

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

6. Base Currency

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

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

Further reference is also made to paragraph 4.7 of Exhibit 3 to this Opinion which states that claims denominated in foreign currencies are to be converted into Euros at the rate prevailing on the date of the Bankruptcy Judgment in the case of a Safeguard Proceeding or a Judicial Reorganisation Proceeding and on the date of the judgment ordering the liquidation in the case of a Judicial Liquidation Proceeding.

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

7. Enforceability of the MNA and CPMA

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

8. Consequences of opening of Proceedings

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

9. Uniform events of default

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

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

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

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

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

10. Accrual of Interest

Pursuant to Article L. 622-28 of the French Commercial Code, interest ceases to accrue as of the date of the Bankruptcy Judgment (as this term is defined in Exhibit 3). This applies to contractual and statutory rates of interest including penalty interest and increase in rates of interest except in case of interest accruing on loans with a maturity of one year or more or in respect of deferred payment terms contracts with a maturity of one year or more.

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

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

3.1.1.4 Specific matters related to close-out

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

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

Please also refer to Exhibit 5 for an assessment of the compliance of each contract types with regard to the concept of forward financial instrument as described above for purposes of the requirements of the French Netting Law.

2. *"When rendering your opinion, please also advise on whether and how 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 repositaries (EMIR) been reflected/implemented in the legislations of France, in particular the financial/capital markets and insolvency laws, or other laws relevant for the purpose of rendering the present legal opinion. Please advise whether EMIR or relevant national legislations impact, or alter the legal qualification of any transactions under Netted Agreements or Principal Agreements as listed in Appendix C below".*

The European Regulation n°648/2012 of July 4, 2012 set forth new rules as regards OTC derivatives, central counterparties and trade repositories. Specifically with regards to confirmations of OTC derivatives, Article 12 of the Commission Delegated Regulation (EU) n°149/2013 approved by the European Commission on December 19, 2012 and published on February 23, 2013 in the Official Journal of the European Union, which supplements Regulation (EU) n°648/2012, establishes that, as a risk mitigation procedure, OTC derivatives must be subject to timely confirmations where available via electronic means. In this regard, the regulation establishes that an OTC derivative contract which is not cleared by a central counterparty shall be confirmed, as soon as possible and at the latest on the deadlines set in the above Commission Delegated Regulation. That Regulation also lays down clearing and bilateral risk management requirements for derivative contracts set out in Annex 1, Section C, points (4) to (10) of the MIFID Directive (as implemented by Articles 38 and 39 of the MIFID Regulation) together with uniform requirements for the performance of activities of central counterparties and trade repositories. Implementation of those requirements is contemplated in stages stretching through 2015 and we do not believe that implementation of those requirements should adversely affect our conclusions in this Opinion.

EMIR being a EU regulation is of direct application in France together with its implementing EU Regulations and and technical standards issued as delegated acts.

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

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

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

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

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

Ad Hoc Proceedings, Conciliation Proceedings remain, however, confidential.

As far as Conciliation Proceedings are concerned, a notice is however published in the legal gazette (and the process therefore becomes public) if and when a court judgment is handed down to formally approve the restructuring agreement reached in the framework of the Conciliation Proceedings.

Even though the proof of claim process has been simplified by the Ordinance dated 12 March 2014 reforming French Insolvency Law, creditors are generally required to file a proof of claim in respect of pre-Bankruptcy Judgement claims within two (2) months from publication of the Bankruptcy Judgement in the *Bulletin Officiel des Annonces Civiles et Commerciales* (*BODACC*). Such time period is extended for a further two (2)-month period in respect of creditors located outside of metropolitan France.

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

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?"*

Reference is made in this respect to paragraph 3.1.1.1 above.

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

or Section 2.2 of the CPMA itself could be challenged by a liquidator, administrator, receiver or third party?"

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

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

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

See paragraph 3.1.1.2 and paragraph 3.1.1.4 (5) above.

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

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

Under the French Netting Law, there is no need to resort to the remedy of Automatic Termination. As long as the conditions under the French Netting Law are satisfied (i.e. Qualifying Transaction Test and Qualifying Party Test (whether involving one Qualifying Party or both counterparties being Qualifying Parties), there is no need for Automatic Termination. Termination may occur post bankruptcy without exposure to cherrypicking or other mandatory insolvency related constraints. Termination should occur in accordance with the agreed contractual terms and the Termination Amount should also be calculated in accordance with those provisions as required by Article L 211-36-1 M&FC. The only constraint, as far as timing is concerned, is imposed by the need to file a proof of claim (see paragraph 4.6. of Exhibit 3 to this opinion). In respect of foreign counterparties such parties must file a proof of claim within 4 months from publication in the BODACC (2 months for counterparties located in metropolitan France plus two months for other parties located outside metropolitan France). Publication in the BODACC occurs generally about one month following the entry of the Bankruptcy Judgement. This period of time provides a creditor counterparty to prepare and organize termination by notice and calculation of the Termination Amount in an organized environment for purposes of preparing the proof of claim which would show the Termination Amount.

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

A "*tierce opposition*" may be filed within 10 days of publication of the Bankruptcy Judgment.

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

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

As an illustration, the Bankruptcy Judgment was issued in the Coeur Defense matter on November 3, 2008[63]. The Judgment on the "*tierce opposition*" was rendered on October 7, 2009[64] and the Court of Appeals reversed the Bankruptcy Judgment on February 25, 2010[65] while the French Supreme Court has overturned the decision of the Court of Appeal on March 8, 2011[66].

The Second Court of appeal (*Cour d'appel de renvoi*) confirmed the opening of a Safeguard Proceeding in 2012[67] and then validated two new safeguard plans for the debtor in 2013[68].

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

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

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

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

67 Versailles, 19 January 2012, n° 11/03519, D. 2012. 433, obs. A. Lienhard.

68 Cour d'appel de Versailles (13e ch.), 28 February 2013. Dalloz 2013. 638.

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

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

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

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

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

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

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

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

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

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

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

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

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

Further reference is also made to paragraph 4.7 of Exhibit 3 to this Opinion which states that creditors' claims denominated in foreign currencies are to be converted into Euros at the rate prevailing on the date of the Bankruptcy Judgment in the case of a Safeguard Proceeding or a Judicial Reorganisation Proceeding and on the date of the judgment ordering the liquidation in the case of a Judicial Liquidation Proceeding.

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

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?*

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

3.1.2 Non- Insolvency related Material Reasons

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

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

Reference is made to the view expressed in paragraph 3.1.1.4 which applies equally outside the scope of a Proceeding.

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

Reference is made to paragraphs 3.1.1.2.3 and 3.1.1.4 (9) and (10) above.

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

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

3.1.2.3 "*Is the insolvent counterparty's obligation to pay the Final Net Settlement Amount in Euro, USD or GBP (as agreed between the Parties in the Election Sheet or EFET/IECA Commodities Schedule) enforceable under the laws of*

France or could the calculation or demand of such amount in a foreign currency be challenged by a liquidator, administrator, receiver or third party?"

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

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

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

3.2 Multi-branch Parties

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

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

3.2.1 French Multibranch Party

For the purpose of Paragraph 3.2.1 we have assumed that:

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

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

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

The head office of a corporation organised under the laws of the French Republic and its unincorporated branches (whether domestic or foreign) are treated as one and the same legal entity. Obligations incurred by an unincorporated branch office (whether domestic or foreign) of a corporation organised under the laws of the French Republic are obligations of such corporation, as one and the same legal entity[69].

Furthermore, French Insolvency Law recognises the principle of the universality of the estate to the extent that the court having jurisdiction in bankruptcy matters would have jurisdiction over all assets of the debtor, whether in France or abroad. This principle would extend to both domestic and foreign branches of a corporation[70].

In respect of a debtor whose centre of main interest is situated within the territory of the French Republic and which is subject to the provisions of the Insolvency Proceedings Regulation, the Insolvency Proceedings Regulation permits secondary proceedings to be opened to run in parallel with the main proceedings. Therefore, secondary proceedings may be opened in the EU Member States where the French insolvent debtor has an establishment. See, in this respect, paragraphs 2 and 3 of Exhibit 3 to this Opinion.

However, as far as credit institutions and insurance companies are concerned, French authorities are the sole authorities empowered to decide on the implementation of reorganisation and winding-up measures in a credit institution or an insurance company licensed in France, including branches established in other EU Member States or in Member States of the European

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

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

Economic Area. Therefore, the opening of secondary proceedings in any other Member State is not permitted[71].

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

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

3.2.2 Foreign Multibranch Party

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

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

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

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

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

[71] See in this respect Article 3.1 of the Winding-up Directive and Article L. 613-31-3 of the M&FC. See also paragraphs 2.3 and 2.4 of Exhibit 3 to this Opinion.

between the branch operating in the French Republic and the Other Party and between the head office of such French Counterparty and its various branches operating outside the French Republic on the one hand and the Other Party on the other hand.

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

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

- the foreign entity is (i) a debtor (other than a credit institution or an insurance company) whose head office is situated within the territory of a Member State of the European Union but is not subject to the provisions of the Insolvency Proceedings Regulation or (ii) a debtor (including a credit institution or insurance company) whose centre of main interests or head office is situated outside the European Economic Area or, as the case may be, the European Union[72]

In the latter case, the opening of a separate proceeding would be possible in the French Republic in the absence of exequatur in the French Republic of the foreign insolvency judgment and assuming that the legal effect of foreign insolvency proceedings is not recognised by treaty.

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

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

Please see also our detailed analysis in paragraphs 2.3 and 2.4 of Exhibit 3.

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

Furthermore, Under the French Insolvency Law, a Judicial Reorganisation Proceeding or a Judicial Liquidation Proceeding[73] may be opened, *inter alia*, at the request of any creditor, whatever the nature of its claim may be[74]. Please note however that a Safeguard Proceeding may be opened only at the request of the debtor[75].

As a consequence, we believe that a French creditor of the French branch of a Party organised or incorporated in a Member State other than France would be able to initiate separate Judicial Reorganisation Proceedings or Judicial Liquidation Proceedings in France against the assets and liabilities of such branch operating in the French Republic[76] if the conditions for the opening of a secondary proceeding in France are satisfied. Please see also our discussions in paragraphs 2.3 and 2.4 of Exhibit 3 to this Opinion.

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

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

"*The provisions of Book VI of the Commercial Code*[77]*, or those governing any similar judicial or amicable proceedings conducted on the basis of foreign laws, do not prevent application of this Section.*"

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

73 See in this respect Exhibit 3 to this Opinion.

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

75 See in this respect Exhibit 3 to this Opinion.

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

77 i.e. Proceedings.

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

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

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

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

3.3 Collateral

For the purpose of Paragraph 3.3 we have assumed that:

- Although it is a bilateral form in that it contemplates that each party may be required to post collateral to the other, we assume that (i) the French Counterparty is at all times Transferor under the EFET Cross Product Credit Support Annex and (ii) that the collateral is owned by the French Counterparty or that the French Counterparty is authorized and empowered to transfer ownership in the collateral; and
- The counterparties agree that Eligible Credit Support will include cash and Letters of Credit. Cash is denominated in a freely convertible currency and is held in an account under the control of Party B maintained in the jurisdiction of the relevant currency.

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

Transfer of ownership in respect of cash occurs by credit of an account in the name of the transferee, such cash being as a result commingled with the treasury of the transferee. In the context of a wire transfer, the transferor would retain title as long as the wire transfer may be revoked[78].

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

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

[78] Articles L. 133-7 and L. 133-8 of the M&FC.

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

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

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

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

II. - When security referred to in I above relates to the financial obligations referred to in paragraphs 2°)[79] and 3°)[80] of Article L. 211-36:

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

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

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

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

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

3.3.3 *"Assuming that Party B receives absolute ownership in the collateral, will it need to take any action thereafter to ensure that its title therein continues? Are there any requirements in France necessary or advisable, including any filing, registration, notification, stamping, notarisation or any other action or the obtaining of any*

[79] Those financial obligations relate to transactions where two parties are Qualifying Parties under the restricted scope (See paragraph 3.1.1.2.3 (b) (Cash settlement and delivery of financial instruments).

[80] Those are financial obligations related to Systems.

governmental, judicial, regulatory or other order, consent or approval? Are there any other procedures that must be followed or consents or other governmental or regulatory approvals that must be obtained or established, to enforce, or continue such ownership interest?"

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

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

On the basis of the provisions of Article L. 211-38 and Article L. 211-40 of the M&FC and assuming that such provisions apply, we are of the opinion that the right for the Transferor to substitute Eligible Credit Support by way of transfer of title to Cash denominated in a currency for Cash denominated in another currency, is effective under the laws of France, provided however that at least one Party is a Qualifying Party and that the Transactions are transactions on financial instruments. Such substitution would not result in a voidable preference[81].

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

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

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

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

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

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

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

This is, however, a matter which remains not free of uncertainty.

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

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

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

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

Posting of Eligible Credit Support by way of providing Letters of Credit should not be subject to voidance. Indeed, Letters of Credit are beyond the scope of application of Article L. 632-1 of the French Commercial Code which provides that certain categories of transactions performed during the Suspect Period are subject to automatic voidance (see in this respect paragraph 4.5 of Exhibit 3).

It is assumed, however, that such a letter of credit would be issued on arms length commercial terms. Reference is also made to footnote 89.

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

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

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

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

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

See paragraph 3.3.5 above.

3.4 General Enforceability

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

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

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

See above.

3.5 Confirmation Practices

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

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

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

3.5.1 Formal requirements and procedure

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

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

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

Board of Directors authorization may be required in respect of a "*Société Anonyme*"[82] in particular when posting of collateral is contemplated. Articles of association need to be reviewed in that respect and advice may need to be sought.

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

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

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

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

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

3.5.2 Formal requirements of Confirmations

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

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

3.5.3 Binding Transactions

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

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

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

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

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

It is our view that the transaction under consideration, being entered in the context of a commercial act, by a merchant[83] does not require any formal act to be binding and enforceable (e.g., execution in writing, signature, registration or notarization).

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

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

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

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

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

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

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

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

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

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

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

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

The European Regulation n°648/2012 of July 4, 2012 set forth new rules as regards OTC derivatives, central counterparties and trade repositories. Specifically with regards to confirmations of OTC derivatives, Article 12 of the Commission Delegated Regulation (EU) n°149/2013 approved by the European Commission on December 19, 2012 and published on February 23, 2013 in the Official Journal of the European Union, which supplements Regulation (EU) n°648/2012, establishes that, as a risk mitigation procedure, OTC derivatives must be subject to timely confirmations where available via electronic means. In this regard, the regulation establishes that an OTC derivative contract which is not cleared by a central counterparty shall be confirmed, as soon as possible and at the latest on the deadlines set in the above Commission Delegated Regulation. That Regulation also lays down clearing and bilateral risk management requirements for derivative contracts set out in Annex 1, Section C, points (4) to (10) of the MIFID Directive (as implemented by Articles 38 and 39 of the MIFID Regulation) together with uniform requirements for the performance of activities of central counterparties and trade repositories. Implementation of those requirements is contemplated in stages stretching through 2015 and we do not believe that implementation of those requirements should adversely affect our conclusions in this Opinion.

3.5.4 Means of Evidence

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

The evidence by a written document is in principle required for any agreement exceeding a sum or value of 1,500 Euros (Article 1341 of the French civil Code). Nevertheless, a written document is not mandatory in matters relating to an agreement concluded among traders ("*commerçants*").

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

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

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

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

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

(i) Taped record

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

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

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

(ii) Witness' statement

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

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

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

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

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

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

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

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

(iv) Facsimile

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

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

3.6 Core Provisions

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

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

thereof, the French Counterparty becomes the subject of a voluntary or involuntary proceeding under the French Insolvency Law.

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

See above.

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

- Transactions need to constitute financial obligations resulting from transactions on financial instruments (where one party is a Qualifying Party) or financial obligations resulting from any contract giving rise to a cash settlement or a delivery of a financial instrument (where both parties are Qualifying Parties in the restricted sense
- .);
- At least one party needs to be a Qualifying Party;
- Transactions contemplated under the Agreement are part of one single global arrangement;
- Upon default debts and claims related to Transactions entered into pursuant the Agreements may be netted among themselves and may give rise to a global settlement amount ;
- Valuation rules are objective, and predetermined and reflect the economic value of transactions at the time of termination.

3.7 Governing Law, Arbitration and Jurisdiction

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

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

3.7.1.1 Choice of law

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

In this respect, it should be noted that the French Supreme Court has held that a French judge implementing a foreign law has to attempt to determine the solution given by such foreign law, as applicable, to the legal issue raised[84].

Moreover, in another case, the French Supreme Court has held that it does not exercise control over the manner in which the French judge applies a foreign law except in circumstances where the scope or content of such foreign law has been distorted[85].

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

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

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

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84 Cass. Civ., November 24, 1998, Dalloz 1999, Jurisprudence, p. 337. The French Supreme Court (Cass. 1ère Civ. June 28, 2005 and Cass. Com. June 28, 2005 (PA December 28, 2005, p. 16 and seq), Cass. Civ. 1ère, January 23, 2007 ; Cass. Com., October 30, 2007 ; Cass. Soc., January 27, 2010 ; Cass. Com. Jyly 10, 2012.) recently confirmed that a French judge acknowledging that a foreign law is applicable has to attempt, either at the request of the parties and with their assistance or *sua sponte*, as the case may be, to give to the issue raised a solution consistent with the solution given under the foreign law. Determination by the Courts of Appeals remain, however, a matter of fact not subject to Supreme Court review.

85 Cass. Civ., March 16, 1999, Dalloz 1999, *Informations rapides*, p.100 (confirmed by Cass.Civ.1ère June 3, 2003 ; Cass. 1ère Civ. December 6, 2005 and by Cass. Civ. 1ère March 23, 2010.

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

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

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

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

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

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

3.7.1.2 Jurisdiction

The submission to the English or to the German courts under the Agreements is valid and a judgment obtained in the English courts or the German courts against the French Counterparty with regard to the performance of its obligations under the Agreements would be enforceable in the French Republic in conformity with the provisions of EU Regulation n° 44/2001 dated December 22, 2000 (the "**EU Judgment Regulation**") which amended and superseded in part[86] the Brussels Convention on jurisdiction and enforcement of judgments (the "**Brussels Convention**") and which came into force as of March 1st, 2002.

In this respect, it should be noted that bankruptcy matters are excluded from the scope of the EU Judgment Regulation[87].

86 The EU Judgment Regulation, as between Member States supersedes the Brussels Convention, except as regards the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from the EU Judgment Regulation pursuant to Article 299 of the Treaty on European Union. Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community,did not participate in the adoption of the EU Judgment Regulation and was therefore not bound by it nor subject to its application.However, by Council Decision 2006 /325/EC the Community concluded an agreement with Denmark ensuring application of the EU Judgment Regulation.

87 Cross border insolvency proceedings within Member States of the European Union are governed by the Insolvency Proceedings Regulation. Such Regulation, which came into force on May 31, 2002. contemplates main and secondary insolvency proceedings. Such Regulation does not apply, however, to insolvency proceedings concerning insurance

Article 23 of the EU Judgment Regulation[88] provides that if the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either (a) in writing or evidenced in writing or (b) in form which accords with practices which the parties have established between themselves or (c) in international trade or commerce, in a form which accords with usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

In the unlikely event where the conditions of Article 23 of the EU Judgment Regulation are not met, the submission to jurisdiction would still be upheld to the extent it meets the conditions of French rules of private international law, when the agreement to the jurisdiction clause is in writing or evidenced in writing[89].

3.7.1.3 Arbitration

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

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

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undertakings, credit institutions and investment undertakings which provide services involving the holding of funds or securities for third parties or to collective investment undertakings. Insolvency issues related to credit institutions are addressed under the Winding up Directive which has been implemented in the French Republic, under the provisions of Articles L. 613-31-1 and following of the M&FC, by ordinance n° 2004-1127 of October 21, 2004.

88 It should be noted that bankruptcy matters are excluded from the scope of Regulation n° 44/2001. Regulation n° 44/2001 has replaced the Brussels Convention since March 1, 2002.

Please note that a new regulation replacing the Council Regulation 44/2001 was published on 12 December 2012 (the Regulation (EU) no 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters). This new regulation will apply from 10 January 2015. It is aimed at substantially simplifying the system under the previous EU Regulation 44/2001, in particular by abolishing the procedure for declaration of enforceability of a judgment in another Member State (i.e., exequatur Art 39)).Furthermore, the revised EU Council Regulation further contemplates a stay of proceedings where exclusive jurisdiction is contemplated by agreement (Art 31(2) of that Regulation).

89 See in this respect Hélène Gaudemet-Tallon: *Les conventions de Bruxelles et de Lugano*, Edition LGDJ 1996, n° 112. Under recent decisions the French Supreme court (*Cour de cassation*) tend to require from the French judge to verify that the clause relating to the prorogation of jurisdiction is contractually accepted by the other party to give it full effect (Cass, com, 13 November 2013, no 13-13.586, Cass, Civ 1, 17 February 201008-12.749).

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

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

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

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

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

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

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

4. Qualifications

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

This Opinion is subject in particular to the following qualifications:

4.1 Certain entities are subject to special regimes which may have the effect of:

✓ reducing the scope of financial instruments susceptible to be entered into by such institutions such as collective investment undertakings, *sociétés de crédit foncier* ("**SCF**"), *sociétés de financement de l'habitat* ("**SCH**"), public entities (the French State, local governments, certain public establishments (*établissements publics*);

✓ excluding their eligibility to be subject to Insolvency Proceedings, Conciliation Proceedings or Ad Hoc Proceedings; and

✓ restricting the ability of a counterparty to exercise close out netting remedies such as is the case for a SCF, SCH or certain public entities;

all as more fully described in Exhibit 6 and Exhibit 7 in paragraph 3.3 and paragraph 4.3 below.

4.2 The provisions of Article L. 2311-1 of the "*Code Général de la Propriété des Personnes Publiques*" provide that the assets ("*biens*") of public entities ("*personnes publiques*") may not be attached.

Prohibition of attachment raises the principle of enforcement mode including the restriction to recourse to the remedy of set-off which often has been assimilated to an enforcement procedure. We do believe, however, that the remedy of set-off should be available to public entities referred to in The Netting Law as the provisions of the French Netting Law which specifically contemplate that public enterprises ("*établissements publics*"), local governments ("*collectivités territoriales*"), the French State, the "*Caisse de la dette publique*" and the "*Caisse d'amortissement de la dette sociale*", *Banque de France*, the "*Institut d'émission des départements d'Outre-Mer*", and the "*Institut d'émission d'Outre-Mer*" are specifically referred in the French netting law as possible counterparties thereunder under the French netting Law Regime. That specific legislation should in our view be construed as a special derogation and prevail over general principles of general application.

4.3 Law n° 2013-672 of July 26, 2013 on separation and Regulation of Banking Activities) (the "Banking Reform Law") contemplates that:

- ✓ when exercising its rights available under the resolution tools vested with it under the Banking Reform Law, the ACPR may order the transfer of one or more business units by operation of law under the regime of universal transfer of patrimony to a third party or of assets, rights and obligations to a bridge institution.
- ✓ **notwithstanding any legal or contractual provision to the contrary, contracts related to transferred activities are continued and no termination or set-off may occur solely as a result of such transfer or assignment.**
- ✓ transactions governed by contracts covered by Article L. 211-36-1 of the M&FC (i.e.: the French Netting Law which covers transactions on financial instruments including derivatives **but also repos** and securities lending transactions) when transferred under the resolution tool regime to a third party or to a bridge institution may only be transferred **as a whole**.
- ✓ Termination rights (i.e. close-out netting) **may not be exercised solely on the ground that a resolution measure has been exercised unless a transfer pursuant to the exercise of the resolution powers does not cover such contracts.**
- ✓ in the exercise of its resolution authority, the ACPR may elect to **suspend the exercise of termination and close remedies under contracts governed by Article L. 211-36-1 of the M&FC in respect of all or part of the relevant contract concluded with the entity under resolution until 17:00 on the business day following publication of the ACPR.**

all as more fully described in Exhibit 7.

4.4 It is a principle of French law that specific remedies, such as specific performance or injunction, other than those culminating in a judgment for the payment of money are not available and that a French court may issue an award of damages where specific performance cannot be ordered or an award of damages is determined adequate.

4.5 Claims may become time-barred under the relevant provisions of French law or may be or become subject to the defense of set-off or counterclaim.

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

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

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

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

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

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

4.9 In an action before a French court, the provisions of the Agreements whereby the certificates and determinations of a party will be conclusive and binding, may be set aside by the French court which could proceed to its own determination.

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

4.11 Notwithstanding the statement made above, the French Insolvency Law provides that creditors' claims denominated in foreign currencies are to be converted into Euro at the rate applicable on the date of the court decision declaring the bankruptcy.

4.12 Any provision contained in the Agreements to the effect that failure to exercise or delay in exercising any right or remedy shall not operate as a waiver of such rights or remedies may not be effective.

4.13 In accordance with the provisions of Article 1134 of the French Civil Code, any agreement must be performed in good faith.

4.14 As a general rule, proxies, mandates, agency agreements and powers of attorneys may be terminated at will (*ad nutum*) at any time notwithstanding that they are expressed to be irrevocable. In order to be valid and binding on the principal, such proxies, mandates and powers of attorneys must have a limited purpose and not be drafted in a general way and in broad terms.

4.16 We express no opinion regarding the enforceability under the laws of the French Republic of the payment of the Settlement Amount referred to in Article 8 of the Agreement[90] in respect of which a Party, against which a Safeguard Proceeding, a Judicial Reorganization Proceeding or a Judicial Liquidation Proceeding has been opened, may be under the duty to pay to the other Party. Once the settlement Amount has been determined in favour of the Non-Defaulting Party such Settlement Amount is indeed likely to constitute an unsecured Claim for which a proof of claim needs to be filed. We express no opinion with respect to any tax law matters arising out of or in connection with the Agreement.

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

4.18 We express no opinion with respect to the effects of Proceedings in any jurisdiction other than the French Republic.

4.20 Where a provision of an agreement is found to be invalid a French Judge may decline to give effect to the stipulations of the agreement providing that such invalidity will not affect the validity of the other provisions of the agreement where the invalid provision is found to be an essential provision of the Agreement.

4.21 Under the provisions of Article 1154 of the French civil code capitalisation of interest is only permitted where interest has accrued for one year.

4.22 Where a public entity is acting as the French Counterparty, the Agreements should be used and executed in their French language version, all in accordance with the provisions of law N° 94-665 dated August 1994 related to the use of the French language.

This Opinion and the matters addressed herein are as of the date hereof, and we undertake no, and hereby disclaim any obligation to advise you of any change in any matter set forth herein occurring after the date hereof.

This Opinion is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated.

This Opinion is for the sole benefit of EFET and its Legal Committee members and any other subscribing entities. This opinion may not be relied upon by, or disclosed to, any other person or legal entity without EFET's or your prior written approval and may be made available by EFET members to the appropriate regulatory authorities.

Very truly yours,

Olivier Hubert

Avocat à la Cour

90 See Exhibit 3.

Exhibit 1

French Netting Law

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

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

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

Paragraph I: Netting and assignment of claims

Article L. 211-36

The provisions of this Paragraph are applicable to:

1°) *Financial obligations resulting from transactions on financial instruments when at least one of the parties to the transaction is a credit institution, a financing company* [société de financement][91], *an investment services provider* [prestataire de services d'investissement], *a public establishment* [établissement public], *a local authority* [collectivité territoriale], *an institution, a person or an entity referred to in Article L. 531-2, a clearing house, a non-resident establishment with a comparable status, an international financial organisation or body of which France or the European Community is a member;*

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

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

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

Article L. 211-36-1

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

[91] As of January 1, 2014

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

Article L. 211-37

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

Paragraph II: Security over financial obligations

Article L. 211-38

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

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

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

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

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

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

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

Equivalent assets or rights shall mean:

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

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

3°) In relation to assets or rights other than those referred to in 1°) and 2°) above, such assets or rights shall be returned.

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

Article L. 211-39

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

Paragraph III: Common Provision

Article L. 211-40

The provisions of Book VI of the Commercial Code[92], or those governing any similar judicial or amicable proceedings conducted on the basis of foreign laws, do not prevent application of this Section."

[Free translation]

French Netting Law

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

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

Paragraphe I: Compensation et cession de créances

92 i.e.: Insolvency Proceedings, Conciliation Proceedings and Ad Hoc Proceedings.

Article L. 211-36

Les dispositions du présent paragraphe sont applicables :

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

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

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

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

Article L. 211-36-1

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

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

Article L. 211-37

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

Paragraphe II : Garantie des obligations financières

Article L. 211-38

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

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

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

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

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

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

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

Par biens ou droits équivalents, on entend :

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

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

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

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

Article L. 211-39

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

Paragraphe III : Disposition commune

Article L. 211-40

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

Exhibit 2

Qualifying Parties under the French Netting Law

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

(a) a credit institution ("*établissement de crédit*") or a financing company ("*société de financement*");

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

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

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

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

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

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

1°

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

(b) the *Banque de France*;

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

2°

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

b) collective investment undertakings enumerated in Article L. 214-1 II of the M&FC as well as the companies entrusted with the management of FIAs (*fonds d'investissement alternatifs, FIA*) contemplated (i) in Paragraph 4 of Sub-section 2 of Chapter IV of Title 1st of Book II of the M&FC (real property investment partnerships ("*sociétés civiles de placement immobilier*") and forestry-linked saving companies ("*sociétés d'épargne forestière*")) and in (ii) Sub-section 5 of Section 2 of Chapter IV of Title 1st of Book II of the M&FC (securitization entities ("*organismes de titrisation*"));

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

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

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

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

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

h) (deleted)

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

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

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

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

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

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

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

(g) a non-resident establishment with a comparable status[93]; or

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

As indicated in paragraph 3.1.2.2 of this Opinion, the French Netting Law is applicable to financial obligations resulting either (i) from transactions on financial instruments, when only one of the parties to such transactions is a Qualifying Party, or (ii) from any contract giving a right to cash settlement or to delivery of financial instruments, if both parties to such contracts are Qualifying Parties other than those referred to in paragraphs (c) through (n) of paragraph (e), 2° above.

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

Exhibit 3

Types of Proceedings - General Insolvency Issues

The main features of French Insolvency Law, which is part of Book VI of the French Commercial Code, may be summarized as follows:

1. Types of Proceedings

1.1 Insolvency Proceedings

The court-monitored composition or reorganisation proceedings to which a French debtor may become subject in the French Republic are:

- ✓ safeguard ("*procédure de sauvegarde*") ("**Safeguard Proceeding**");
- ✓ judicial reorganisation ("*redressement judiciaire*") ("**Judicial Reorganisation Proceeding**"); and
- ✓ judicial liquidation ("*liquidation judiciaire*") ("**Judicial Liquidation Proceeding**");

all governed by Titles II, III and IV of Book VI of the French Commercial Code (both legislative and regulatory parts).

The Judicial Reorganization Proceeding, the Judicial Liquidation Proceeding and the Safeguard Proceeding have been supplemented by:

- ✓ an accelerated financial safeguard procedure ("*sauvegarde financière accélérée*") ("**Accelerated Financial Safeguard Proceeding**") pursuant to law n° 2010-1249 of October 22, 2010, and implementing decree n°2011-236 of March 3, 2011; and
- ✓ more recently by an accelerated safeguard procedure ("*sauvegarde accélérée*") ("**Accelerated Safeguard Proceeding**") introduced by Ordinance n°2014-326 of March 12, 2014 and implementing decree n°2014-736 of June 30, 2014 (the "**New Safeguard Ordinance**").

The Safeguard Proceeding together with the Accelerated Safeguard Proceeding and the Accelerated Financial Proceeding, the Judicial Reorganisation Proceeding and the Judicial Liquidation Proceeding being each defined as an "**Insolvency Proceeding**" and together "**Insolvency Proceedings**".

1.2. Conciliation Proceedings and Ad Hoc Proceedings

In addition to Insolvency Proceedings, a debtor may become subject in the French Republic to *ad hoc* proceedings ("*mandat ad hoc*") (the "**Ad Hoc Proceedings**") and conciliation proceedings ("*procédure de conciliation*") (the "**Conciliation Proceedings**") which are governed by Articles L. 611-1 through L. 611-16 of Title I of Book VI of the French Commercial Code.

Ad Hoc Proceedings and Conciliation Proceedings are flexible, voluntary and to a certain extent confidential proceedings in which the president of the Court appoints an agent to monitor discussions between the debtor and its major creditors.

Those proceedings aim at reaching a workout agreement which sets out terms and conditions for the restructuring of the debt.

Only the debtor can file a petition to the president of the Court to open Ad Hoc Proceedings or Conciliation Proceedings.

Ad Hoc Proceedings are available to solvent debtors only, while Conciliation Proceedings are available to debtors exposed to legal, economic or financial difficulties (actual or foreseeable) provided they are solvent or insolvent for less than 45 days (see paragraph 2 below for the definition of insolvency).

In respect of Ad Hoc Proceedings and Conciliation Proceedings, a new provision (Article L. 611-16) has been inserted in the Commercial Code through the New Safeguard Ordinance which provides that shall be void ("*réputées non écrites*") any provision that modifies the terms under which executory contracts may be assumed and which have the effect of either reducing the rights, or increasing the obligations of the debtor resulting solely from the commencement of Ad Hoc proceedings or the commencement of Conciliation Proceedings, or from the filing for such proceedings.

However, this provision is in our view to be disapplied in the case of a French Counterparty to a Netted Agreement on the ground of Articles L. 211-36 through L. 211-40 of the M&FC relating to the French Netting Law which provide that provisions of Book VI of the French Commercial Code and provisions governing all equivalent judicial or amicable proceedings initiated on the ground of foreign law cannot constitute an obstacle to the above mentioned French Netting Law rules of the M&FC.

In view of the need to involve the main creditors of the debtor in the negotiation process inherent to such Conciliation Proceedings, we believe that it would not be practical for those proceedings to be applied to a credit institution, an investment firm or an insurance company, which are subject to the supervision of the ACPR which is likely to appoint a provisional administrator when difficulties arise (see sections 1.3 and seq. below).

Book VI of the French Commercial Code (legislative and regulatory parts) is hereinafter collectively referred to as the "**French Insolvency Law**".

Proceedings listed in paragraph 1.1 above (and collectively defined as Insolvency Proceedings and individually as an Insolvency Proceeding), Conciliation Proceedings and Ad Hoc Proceedings are hereinafter sometimes collectively referred to as "**Proceedings**" or each individually as a "**Proceeding**".

1.3. The role of the ACPR under the M&FC in respect of insolvency of credit institutions

Credit institutions established in France are subject to the supervision and control of the *Autorité de contrôle prudentiel et de résolution* (previously named "*Autorité de contrôle prudentiel*") (the "**ACPR**")[94].

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

Non-compliance with such requirements is sanctioned in accordance with the provisions of Article L. 612-39 of the M&FC[95]. Such supervisory responsibility is in respect of investment service providers also subject to the supervision exercised by the *Autorité des marchés financiers* regarding compliance with conduct of business rules.

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

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

The ACPR may also designate a liquidator ("*liquidateur*") for a financial institution which has been deleted from the list of credit institutions or investment firms, or when the relevant enterprise carries out banking operations illegally[96]. Such provisional administrator or liquidator may also declare the financial institution's insolvency, if need be, as such administrator or liquidator, as the case may be, is entrusted with all powers of administration, management and representation of the relevant legal entity.

Administrative policy powers vested with the ACPR are further described in Exhibit 7.

It should be noted that the above measures which the ACPR may take are part of the administrative measures the ACPR may take or powers it may exercise pursuant to the authority vested with the ACPR pursuant to the provisions of the M&FC.

Exercise of those powers by the ACPR does not constitute *per se* insolvency events for purposes of the Netted Agreement.

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94 The ACPR combines the former Comité des Etablissements de Crédit et des Entreprises d'Investissement, the Commission Bancaire, the Autorité de Contrôle des assurances et des mutuelles and the Comité des Entreprises d'Assurance.

95 Sanctions referred to in Article L. 612-39 of the M&FC include *inter alia* a warning, a blame, a prohibition to carry out certain operations, deletion from the list of credit institutions or investment firms, suspension or resignation of certain key executive officers, monetary sanctions ...

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

Those administrative policy measures do not interfere or affect close-out netting with the sole exception under circumstances where the ACPR may exercise the powers vested with it under the resolution measures described in Exhibit 7.

1.4. Insolvency Proceedings under the French Insurance Code

Provisions similar to the ones described above in section 1.3 apply in respect of insurance companies. The ACPR (previously named *Autorité de contrôle des assurances et des mutuelles*) which is the supervisory authority in respect of insurance companies[97] licensed as such in the French Republic, may *inter alia* designate one provisional administrator ("*administrateur provisoire*") entrusted with the same powers as the provisional administrator described above[98].

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

It should be noted that the above measures which the ACPR may take are part of the administrative measures the ACPR may take or powers it may exercise pursuant to the authority vested with the ACPR pursuant to the provisions of the French Insurance Code. Exercise of those powers by the ACPR does not constitute per se insolvency events for purposes of the Netted Agreement.

Those administrative policy measures do not interfere or affect close-out netting.

2. Filing of Insolvency Proceedings

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

The court, which has territorial jurisdiction to hear Insolvency Proceedings matters, is the court having jurisdiction in the place where the debtor has its head office (Article R. 600-1 of the French Code of Commerce). French Courts also have jurisdiction over foreign debtors if they have their centre of main interests in France.

Pursuant to the French Insolvency Law, a court order (an "**Insolvency Order**") specifies the date on which the insolvency (*cessation des paiements*) occured, i.e. the date on which the debtor was unable to meet current liabilities out of current assets taking into account credit lines available and debt rescheduling granted by creditors (the "**Insolvency Date**").
In respect of a credit institution, the Insolvency Date is the date at which such credit institution became unable to meet its payments due immediately or in the short-term (*à terme rapproché*)[99].

97 Entities such as insurance or reinsurance companies, mutual insurance companies, pension funds or supplementary pension institutions are under the supervision of the ACPR.

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

99 Article L. 613-26 of the M&FC.

The Insolvency Date (i) may not be earlier than 18 months prior to the date of the Bankruptcy Judgment, it being noted that the Insolvency Date cannot be backdated prior to a court judgment appraising the restructuring agreement in the framework of Conciliation Proceedings and (ii) if not specified in an Insolvency Order, is deemed to be the date on which the Bankruptcy Judgment is rendered (the period between the Insolvency Date and the Bankruptcy Judgment being the "**Suspect Period**").

It is important to note that pursuant to Article 3.1 of Council Regulation (EC) n° 1346/2000 of May 29, 2000 on insolvency proceedings (the "**Insolvency Proceedings Regulation**") which came into force on May 31, 2002, the courts of the member State of the European Union (a "**Member State**") within the territory of which the centre of a debtor's main interests is situated have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary[100].

Article 3.2 of the Insolvency Proceedings Regulation provides that where the centre of a debtor's main interests is situated within the territory of a Member State, the courts of another Member State have jurisdiction to open insolvency proceedings (i.e. secondary proceedings) against that debtor only if it possesses an establishment within the territory of that other Member State[101].

Pursuant to Article 29 of the Insolvency Proceedings Regulation, the opening of secondary proceedings may be requested by (a) the liquidator[102] in the main proceedings or (b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary proceedings is

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

- where a debtor is a subsidiary company whose registered office and that of its parent company are situated in two different Member States, the presumption laid down in the second sentence of Article 3(1) of the Insolvency Proceedings Regulation, whereby the centre of main interests of that subsidiary is situated in the Member State where its registered office is situated, can be rebutted only if factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exists which is different from that which location at that registered office is deemed to reflect. That could be so in particular in the case of a company not carrying out any business in the territory of the Member State in which its registered office is situated. By contrast, where a company carries on its business in the territory of the Member State where its registered office is situated, the mere fact that its economic choices are or can be controlled by a parent company in another Member State is not enough to rebut the presumption laid down by that Regulation. This decision has been confirmed by the Commercial Court of Paris on August 2, 2006 (D. 2006, n° 33, 2329);

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

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

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

requested. The provisions of Article 29 may be applicable for instance in a situation where a company located in a Member State other than France would be subject to a main insolvency proceeding in such Member State and the liquidator in such main proceeding would require that secondary proceedings be opened in France.

The Insolvency Proceedings Regulation does not apply to insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings[103] which provide services involving holding of funds or securities for third parties or to collective investment undertakings. The Insolvency Proceedings Regulation provides in this respect that such undertakings are subject to special arrangements and, to some extent, the national supervisory authorities have extremely wide-ranging powers of intervention (see in this respect paragraphs 3 and 4 above and 5.2 and 5.3 below).

2.1. Safeguard Proceedings

The opening of a Safeguard Proceeding is ordered by the court at the request of the debtor only.

The debtor must be solvent and justify the existence of difficulties which it is unable to overcome.

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

A Safeguard Proceeding is a proceeding leading towards a reorganisation phase approved by a judgment following an appraisal period and, if need be, the set-up of creditors committees and, as the case may be, of one single consolidated bondholders meeting.

During the appraisal period, the debtor remains in possession as it continues to be administered by its managers (*dirigeants*). The Bankruptcy Judgment may, however, appoint one or more judicial administrators ("*administrateur judiciaire*") whose duties are to monitor the debtor in respect of its management or to otherwise assist the debtor in all or part of managerial acts.

Safeguard Proceedings begin with an observation period of up to 6 months which can be extended for 6 months maximum and, in exceptional circumstances, for an additional 6-month period at the public prosecutor's request.

At the end of the observation period, and if possible, the court approves a safeguard plan which can combine a debt-restructuring, the re-capitalisation of the company, sale(s) of assets or a partial sale of the business.

For debtors of a certain size (i.e. those employing at least 150 employees or having an annual turnover of EUR 20 million minimum) and for smaller companies subject to court approval, three "classes" of creditors must be set up during the observation period:

103 Proposed Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and amending certain outstanding EU Directives including *inter alia* Directive 2001/24/EC of April 4, 2001 on the reorganization and winding-up of credit institutions (the "**EU Winding-Up Directive**") (the "**Proposed Directive**") includes language purporting to amend the EU Winding-Up Directive and extending the scope of that directive so as to cover investment firms.

- One class comprising banks, creditors holding debt originally lent by a bank, or creditors having lent money to the debtor by way of a term loan (the "**Bank Class**")[104].

- One class comprising major suppliers holding more than 3% of the total suppliers' claims (the "**Trade Class**").

- One group of bondholders: debt issued in the form of notes or bonds will not form part of the Bank Class, but will form a third separate group (the "**Bond Group**"). All bondholders will, once the plan has been approved by the Bank Class and the Trade Class, vote in one single meeting - regardless of currency, security and seniority.

The classes of creditors are invited to vote on the draft safeguard plan at a two-thirds majority in value for each class.

The draft plan is usually prepared by the debtor assisted by the administrator. However, any member of the Bank Class or of the Trade Class (but not a member of the Bond Group) can submit a competing alternative safeguard plan.

The plan is deemed approved by the classes if the required percentage in each class votes in favour of the plan. The majority is a two-thirds majority in value of the creditors in each class attending or represented at the meeting.

If the plan provides for a debt-equity-swap (or any other operation requiring shareholder approval), shareholders must also be consulted and vote in favour of the plan at a two-thirds majority (no craw-down of shareholders possible in safeguard).

For other creditors (e.g. tax authorities, or social security administration) that are not members of the classes, the plan must be negotiated on a one-to-one basis with each creditor.

Should any of the classes fail to approve the plan, or not be consulted, all creditors must in this situation be consulted on an individual basis.

If creditors consulted individually (either after a failure of the voting process within the classes or when setting up classes is not mandatory) refuse to approve the draft restructuring plan circulated by the debtor, the court can impose a 10-year maximum term-out to dissenting creditors. However, this 10-year maximum term-out is without prejudice to any longer maturity date that was initially agreed upon in the loan agreement.

Consenting creditors benefit from the shorter maturity date, if any, that they would have negotiated.

The court cannot however impose any debt write-off of principal or interest in a term-out scenario, and the yearly instalments under the plan must not, after year three following court approval of the plan, be less than 5% of the total admitted pre-filing liabilities (unless the contract initially provides for a longer maturity date).

[104] There is pending debate as to whether parent or sister companies should participate in the Bank Class for their shareholder/intercompany loans. The cautious view amongst practitioners is to consider that they will vote in the Bank Class.

Once approved by the classes and by the court, a safeguard plan becomes enforceable against all creditors, including the dissenting minority. To supervise the implementation of the plan, the court appoints an agent that is usually the administrator in charge during the observation period.

The Safeguard Proceeding has been supplemented by two sub-proceedings which are:

✓ The Accelerated Safeguard Proceeding enacted by the New Safeguard Ordinance which entered into force on July 1, 2014.

✓ The Accelerated Financial Safeguard Proceeding enacted by law n°2010-1249 of October 22, 2010.

Those proceedings aim at facilitating the negotiation of pre-packaged plans with the ability to cram down dissenting minority creditors through the vote of the creditors' committees and/or the bondholders' assembly.

Under those types of accelerated process, a debtor can petition the Court to convert the Conciliation Proceeding into the Accelerated Safeguard Proceeding or the Accelerated Financial Safeguard Proceeding when it proves to the Court that the restructuring plan which has been prepared in the context of the Conciliation Proceeding (i) ensures the continuity of the business activities and (ii) has received sufficient support from creditors in order to be likely approved, within a short period of time (as set forth below).

To remain consistent with the provisions governing Conciliation Proceedings, an Accelerated Safeguard Proceeding and an Accelerated Financial Proceeding remain available to a solvent debtor or to a debtor meeting the insolvency test to the extent such insolvency test has been met for less than 45 days since the commencement of the relevant Conciliation Proceedings.

Only certain debtors can have access to Accelerated Safeguard Proceedings or Accelerated Financial Safeguard Proceedings.

The debtor's accounts must be certified by statutory auditors or prepared by a chartered accountant, and the debtor shall meet one of the following thresholds, i.e.:

- 20 employees minimum,
- Minimum annual turnover of EUR 3 million (without value added tax), or
- Minimum total balance sheet of EUR 1.5 million.

Those proceedings are also available to debtors which, even though not fulfilling the above criteria, have prepared consolidated accounts in accordance with article L. 233-16 of the French Commercial Code.

When Accelerated Safeguard is opened, classes of creditors, i.e. financial institutions, trade creditors and bondholders if any, will be convened to vote on the draft plan prepared by the company. The plan is deemed approved if a two-thirds majority within each of the classes votes in favor.

Accelerated Safeguard Proceedings must be completed upon within three months maximum from the Bankruptcy Judgment and no extension is possible.

The major differences between Accelerated Safeguard and Accelerated Financial Proceedings is that Accelerated Financial Safeguard Proceedings only have effects vis-à-vis financial creditors, i.e. creditors gathered in the Bank Class and, as the case may be, bondholders.

It follows that other creditors, such as trade creditors, are not affected by the opening of the Accelerated Financial Safeguard Proceedings.

In Accelerated Financial Safeguard Proceedings, the plan must be approved by the court within one month following the opening of the proceedings. This one-month period can be renewed once only.

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

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

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

2.3 Special Considerations applicable to credit institutions and investment firms

As far as Insolvency Events concerning credit institutions are concerned, the European Parliament and the Council of the European Union adopted on April 4, 2001 the Directive 2001/24/EC on the reorganisation and winding up of credit institutions (the "**Directive on the Insolvency of Credit Institutions**"). Such Directive has been implemented into French law by ordinance n° 2004-1127 of October 21, 2004, as ratified by law n° 2004-1343 of December 9, 2004.

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

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

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

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

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

- ✓ Article L. 613-31-3 of the M&FC, implementing Article 3.1 of the Directive on the Insolvency of Credit Institutions, has confirmed[105] the principle of the universality of the estate. Article L. 613-31-3 of the M&FC provides indeed that subject to the provisions of Articles L. 613-31-5 and L. 613-31-6 of the M&FC[106] (see below), French authorities are the sole authorities empowered to decide on the implementation of reorganisation and winding up measures in a credit institution licensed in France (including branches established in other Member States or in member States of the European Economic Area) or in a branch in France of a credit institution whose head office is located outside of the European Economic Area. Such measures are effective on the territory of the other Member States including against third parties in such Member States (Article L. 613-31-3 of the M&FC).

  Although the French implementing legislation of Article 3.2 of the Directive on the Insolvency of Credit Institutions has not specified or stated that such measures shall be applied in accordance with laws, regulations and procedures applicable in the home Member State[107], the prevailing view is, however, that Article L. 613-31-3 of the M&FC, which provides that the reorganisation and winding up measures shall be fully effective on the territory of the other Member States including as against the third parties in such Member States, should be interpreted in light of Article 3.2 of the Directive on the Insolvency of Credit Institutions[108]. As indicated above, French case law has supported the principle of the universality of the estate.

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

- ✓ Article L. 613-31-5 of the M&FC implementing Articles 25 through 27 of the Directive on the Insolvency of Credit Institutions, provides that as an exemption to the provisions of Article L. 613-31-3, the effects of a reorganisation or liquidation measure over *inter alia* netting agreements ("*conventions de compensation*"), agreements relating to temporary transfers of full title to financial instruments ("*conventions portant cession temporaire d'instruments financiers*") and transactions carried out on a regulated market, shall

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

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

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

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

be governed solely by the law of the country which governs such agreements. Article L. 613-31-5 of the M&FC thus contains a special conflict of laws rule applicable in particular in respect of netting agreements and agreements relating to temporary transfers of full title to financial instruments.

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

✓ pursuant to Article L. 613-31-6 of the M&FC implementing Article 23 of the Directive on the Insolvency of Credit Institutions, the adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim. In the present case such law will be French Law which is the governing law of the Netted Agreement.

2.4 Special considerations applicable to insurance companies

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

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

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

Similar provisions apply in respect of Conciliation Proceedings.

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

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

- Paragraph 1 of Article L. 326-20 of the French Insurance Code[109] provides in particular that, unless otherwise provided for in Articles L. 326-21 to 326-29 of the French Insurance Code, reorganisation measures defined in Article L. 323-8 of the French Insurance Code and decisions concerning the opening of winding-up proceedings taken by the competent authorities of a Member State of the European Community other than the French Republic against an insurance company whose head office is situated within the territory of such State shall be fully effective within the territory of the French Republic without any further formalities, including as against third parties, once they become effective in the Member State where they have been taken. Such provisions also apply when reorganisation measures or decisions concerning the opening of winding-up proceedings are taken against a branch of an insurance company whose head office is situated outside the European Community;
- Paragraph 3 of Article L. 326-20 contains the same principle in respect of reorganisation measures and decisions concerning the opening of winding-up proceedings taken by the competent French public authority against (i) an authorised company whose head office is situated in the French Republic or (ii) an authorised branch validly established in the French Republic of a company whose head office is outside the European Community;
- Article L. 326-25 of the French Insurance Code contains a special conflict of laws rule for set-off similar to that of Article L. 613-31-6 of the M&FC in respect of credit institutions.

3. <u>Bankruptcy Judgement</u>

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

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

The Bankruptcy Judgement (except in the case of a Safeguard Proceeding) also determines the Insolvency Date (see above section 2).

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

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

Insolvency Proceedings would extend to branches operating outside of France[110].

The Insolvency Proceedings Regulation[111] has adopted the principle of the universality of the estate subject, however, to the possibility to open secondary proceedings.

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

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

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

(a) The foreign entity is a debtor whose centre of main interests[112] is situated within the territory of a Member State (other than the French Republic) of the European Union and is subject to the provisions of the Insolvency Proceedings Regulation.
Article 16.1 of the Insolvency Proceedings Regulation provides that any judgement opening insolvency proceedings handed down by a court of a Member State which has jurisdiction shall be recognised in all other Member States from the time it becomes effective in the State of the opening of proceedings (i.e. the main proceedings). Article 16.2 of the Insolvency Proceedings Regulation further provides that the recognition of the opening of main insolvency proceedings does not preclude the opening of territorial insolvency proceedings by a court in another Member State. Such latter proceedings shall be secondary proceedings.

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

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

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

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

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

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

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

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

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

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

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

In the absence of exequatur in France, or of a treaty between France and the home jurisdiction, a foreign bankruptcy judgement has no binding effect in France and is not enforceable. It has limited effect, however, in that, for instance, a French court would take into account the foreign bankruptcy judgement in order to determine the powers of the insolvency representative in the home country to represent the insolvent party in France as its authorised representative[113]. In such capacity, such foreign insolvency representative may intervene in proceedings in France and file appeals with respect to French judgements.

Such proceedings in France would be considered as local proceedings in France and the Bankruptcy Judgement would most likely be limited to the sole assets of the debtor located in France[114].

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

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

This was the case for the BCCI matter wherein the court specifically restricted its jurisdiction to the local branches of BCCI in France.

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

Such measures are fully effective on the territory of the other Member States including against third parties in such Member States.

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

4. Effects of the Bankruptcy Judgment

4.1. The Bankruptcy Judgment results in a stay

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

Please note that the New Safeguard Ordinance further provides that all interest (including interest resulting from loans having a maturity of one year or more) can no longer be compounded as of the Bankruptcy Judgment.

4.2. Prohibition of discharge of pre-Bankruptcy Judgment claims

Article L. 622-7 of the French Commercial Code provides that the issuance of the Bankruptcy Judgment has the effect of preventing any payment of any debt arisen prior to the Bankruptcy Judgment, subject to very few exceptions including inter alia in respect of connected claims.

While the exercise of the right of set-off in respect of connected claims requires mutuality of fungible obligations to be set-off, the requirement that the claims be certain, liquid and matured[115] is no longer necessary to set-off connected claims.

The French Supreme Court held that obligations were connected (*connexes*) when resulting from one contract or when carried out pursuant to the same contract that has defined the framework of the business relationship of the parties such as a master agreement, as recognised by the decision of the *Cour de Cassation* of December 12, 1995[116] or when, in the absence of a master agreement, the obligations are carried out pursuant to different contracts which constitute a single global contractual arrangement[117], as contemplated by decisions of the *Cour de Cassation* of April 5, 1994[118], May 9, 1995[119], April 1, 1997[120], March 31, 1998[121], February 18, 2003[122] and March 1, 2005[123]. Connexity remains a matter within the purview of judicial discretion.

Conversely, in the absence of a framework agreement or a single global contractual arrangement, independent services invoiced from time to time do not characterize a connection between the obligations[124].

Connexity remains a matter within the purview of judicial discretion.

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

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

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

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

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

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

120 D. Affaires 1997. 663.

121 BRDA 1998, n° 8, p. 10.

122 Cass. Com., February 18, 2003, no 0013.369; BRDA 2003, no 6, p. 4.

123 Cass. Com., March 1, 2005 no 03-17.954 ; Gaz. Pal. 2006, jur., p. 2297, obs. Bonhomme R.

124 Cass. com., May 6, 1997, no 94-16.133; Bull. civ. IV, no 120, Gaz. Pal. 1998, 2, pan., p. 4. The same negative answer may be given if the obligations are not economically linked (Cass. com., 22 mars 2011, no 09-69.833, Rev. proc. coll. 2011, p. 47).

4.3. Zero-hour Rule

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

4.4. Acceleration

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

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

On the other hand, under Article L. 643-1 of the French Commercial Code, a Judicial Liquidation Proceeding has the effect of accelerating pre-Bankruptcy Judgement claims (either at the date of the Bankruptcy Judgment or, as the case may be, at the date of the judgment approving a sale plan[125]).

4.5. Voidance provisions

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

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

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

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

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

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

5° any deposit or consignment of sums of money made pursuant to Article 2075-1 of the French Civil Code (which governs any deposit or consignment of sums of money

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

ordered by a court as security or as a protection measure) in the absence of a final judgement;

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

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

8° any authorization, exercise and resale of options referred to in Article L. 225-177 and seq. of the French Commercial Code[126];

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

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

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

12° any "*déclaration d'insaisissabilité*" made by the debtor pursuant to article L. 526-1 of the Commercial Code.

Furthermore, the court may void acts without consideration referred to in 1° above which are entered into six months prior to the Insolvency Date (i.e. before the Suspect Period).

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

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

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

4.6. Filing of a proof of claim

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

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

[126] Article L. 255-177 of the French Commercial Code refers to equity options.

The New Safeguard Law has, however, simplified the proof of claim process. For example, in respect of an Accelerated Safeguard Proceeding, this simplified process applies in respect of each creditor which has participated in the Conciliation Proceeding preceeding that Accelerated Safeguard Proceeding. Under that scenario, the debtor establishes a list of such participating creditors which is certified by the statutory auditor ("*commissaire aux comptes*") or is attested by by the relevant accountant and filed with the clerk of the Commercial Court having jurisdiction over the case. Such filing substitutes for the proof of claim where the relevant creditor has not itself filed a proof of claim.

4.7. Conversion

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

4.8 Assumption of contracts

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

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

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

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

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

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

Under Article L. 622-17 of the French Commercial Code, claims arising subsequent to the Bankruptcy Judgment for the purpose of financing the procedure or the appraisal period, or in consideration to a service rendered during such period, are paid as and when they fall due.

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

4.9. Priority rules

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

In the case of a Judicial Liquidation Proceeding, claims arising subsequent to the Bankruptcy Judgment benefit from a priority lien over all other claims, subject to claims referred to in (i) through (iii) of the paragraph above and claims secured by charges over real estate assets.

Exhibit 4

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

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

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

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

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

- Financial Energy Master Agreement (version 2000), sponsored by the Nordic Association of Energy Traders (NAET);
- ISDA 2002 Master Agreement, sponsored by the International Swaps and Derivatives Association, Inc.;
- 1992 ISDA Master Agreement (Multicurrency – Cross Border), sponsored by the International Swaps and Derivatives Association, Inc.;
- 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction), sponsored by the International Swaps and Derivatives Association, Inc.;
- 1987 Interest Rate and Currency Exchange Agreement, sponsored by the International Swaps and Derivatives Association, Inc.;
- Australian version of the 1992 ISDA Master Agreement (Multicurrency – Cross Border), sponsored by the Australian Financial Markets Association (AFMA);
- New Zealand version of the 1992 ISDA Master Agreement (Multicurrency – Cross Border);
- German *Rahmenvertrag für Finanztermingeschäfte* (version 2001), sponsored by the German Banker's Association;
- German *Rahmenvertrag für Finanztermingeschäfte* (version 1994), sponsored by the German Banker's Association;
- Swiss Master Agreement for Over-The-Counter Derivative Instruments (version 2003), sponsored by the *Schweizerische Bankiervereinigung*;
- Swiss Master Agreement for Over-The-Counter Derivative Instruments (version 1994), sponsored by the *Schweizerische Bankiervereinigung*;
- French *Convention-Cadre FBF Relative Aux Operations Sur Instruments Financiers à Terme* (version July 2007), sponsored by the *Fédération Bancaire Française* (FBF) ;
- French *Convention-Cadre FBF Relative Aux Operations Sur Instruments Financiers à Terme* (version August 2001), sponsored by the *Fédération Bancaire Française* (FBF) ;
- French *Convention-Cadre AFB Relative Aux Opérations Sur Instruments Financiers à Terme* (version), sponsored by the Association Française des Banques (AFB) ;

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

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

- Global Master Securities Lending Agreement (GMSLA) (version 2010), sponsored by the International Securities Lending Association (ISLA);
- Global Master Securities Lending Agreement (GMSLA) (version 2000), sponsored by the International Securities Lending Association (ISLA);
- Master Equity & Fixed Interest Stock Lending Agreement (MEFISLA) (version 1996), sponsored by the International Securities Lending Association (ISLA);

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

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

- Global Master Repurchase Agreement (GMRA) (version October 2000), sponsored by The Bond Market Association (TBMA) and the International Securities Market Association (ISMA);
- Global Master Repurchase Agreement (GMRA) (version 1995), sponsored by the Public Securities Association (PSA) and the International Securities Market Association (ISMA);

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

Exhibit 5

Transactions entered into under the Agreements

In order to benefit from the French Netting Law Transactions need to be Transactions on financial instruments if only one of the Parties is a Qualifying Party[127].

For further details, reference is made to paragraph 3.1 (and in particular paragraph 3.1.1.2.) of the Opinion.

Paragraph 3.1.1.2. contains *inter alia* certain considerations regarding:

- Spot Transactions;
- Credit and wheather derivatives;
- Physically settled commodities, Bullion, Emission Allowances;
- Economic Statistic Transactions;
- Longevity Mortality Transactions;
- Index related transactions.

The assessment below is made for general guidance purposes without reference to the specificities of individual Transactions. It should also be noted that, under French law, characterization of transactions is within the scope of judicial discretion and a determination is made based on the applicable statutory and regulatory provisions as well as contractual terms and relevant fact patterns. Neither fact patterns nor contractual terms are available to us other than the forms of the Agreements. Relevant counterparties will, therefore, need to be a final determination in this respect.

It should further be noted that resort to certain derivatives transactions may be limited in respect of certain counterparties as mentioned in Exhibit 6.

Based on the above the following assessment is made with respect of the compliance of the following products with regard to the concept of forward financial instrument as described above for purposes of the requirements of the French Netting Law.

The analysis below does not take into considerations which may be resulting from MIFID 2 which is not yet implemented in France and which will only become effective on January 2017.

127 It should also be noted that certain counterparties may be prevented by the stautory provisions governing such counterparties from entering into certain Transactions. This applies in particular to counterparties authorised to enter into transactions only for hedging peurposes or for purposes related to their activity. For further details in this respect, reference is made to Exhibit 6 of this opinion which describes further considerations to be taken into account in respect of certai counterparties.

Product	Master Agreement and French Netting Law compliance status
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	Yes
Bond Forward. A transaction in which one party agrees to pay an agreed price for a specified amount of a bond of an issuer or a basket of bonds of several issuers at a future date and the other party agrees to pay a price for the same amount of the same bond to be set on a specified date in the future. The payment calculation is based on the amount of the bond 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)	Yes
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 specified amount of 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	Yes
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[128]	Yes provided that those products are: - cash settled;or - give rise, **in the context of trading, to registration by a recognised clearing house or to periodical margin calls**

128 Some restrictions may exist in respect of certain counterparties in respect of those products.(see Exhibit 5).

Product	Master Agreement and French Netting Law compliance status
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	Yes
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 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, and in the case of silver, platinum and palladium, a troy ounce (or in the case of reference prices not expressed in Ounces, the relevant Units of gold, silver, platinum or palladium)	Yes (in respect of contract other than spot contracts)129 provided that those products are: - cash settled; or - give rise, **in the context of trading, to registration by a recognised clearing house or to periodical margin calls**
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)	Yes[130]

129 Subject to the remarks in paragraph 3.1.1.2.1. of the Opinion.

130 Depending on their characteristics Repurchase Transactions, Buy/Sell Back Transactions or Securities Lending Transactions may however not meet the eligibility criteria under the Securities Loan Law and the Repo Law, and would not, under those circumstances, benefit from the tax neutral regime provided for under the Repo Law or under the Securities Loan Law. Indeed, provisions relating to securities loans are codified in Articles L. 211-22 through L. 211-26 of the M&FC (the "**Securities Loan Law**"). In respect of provisions relating to repurchase transactions, such provisions are codified in Articles L. 211-27 through L. 211-34 of the M&FC (the "**Repo Law**").

Product	Master Agreement and French Netting Law compliance status
Cap 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 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)	Yes
Collar Transaction. A collar is a combination of a cap and a floor where one party is the floating rate, floating index or floating commodity price payer on the cap and the other party is the floating rate, floating index or floating commodity price payer on the floor	Yes
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	Yes provided that those products are: - cash settled; or - give rise, **in the context of trading, to registration by a recognised clearing house or to periodical margin calls**
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	Yes provided that those products are: - cash settled; or - give rise, **in the context of trading, to registration by a recognised clearing house or to periodical margin calls**

Product	Master Agreement and French Netting Law compliance status
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	Yes
Contingent Credit Default Swap. A Credit Default Swap Transaction under which the calculation amounts applicable to one or both parties may vary over time by reference to the mark-to-market value of a hypothetical swap transaction	Yes
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	Yes
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) of Reference Entities or may be an index transaction consisting of a series of component Credit Default Swaps	Yes

Product	Master Agreement and French Netting Law compliance status
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	Likely to satisfy the requirements subject to review with reservations regarding "pay as you go" settlements which may be subject to recharacterisation as a gauarntee or surety.
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	Yes
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	Yes
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	Yes
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	Yes

Product	Master Agreement and French Netting Law compliance status
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	Likely subject to fact pattern and review and analysis on a case by case basis of documentation and of the nature of the index provided that those products are cash settled; 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.
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	Yes subject to review of documentation provided that those products are Cash settled; 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.
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 and shares 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)	Yes

Product	Master Agreement and French Netting Law compliance status
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 the case of a call) or is less than (in the case of a put) a specified strike price	Yes
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	Yes
Equity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed or floating 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	Yes
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)	Yes
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	Yes (subject in respect of spot transactions to the qualifications set in paragraph 3.1.1.2.1. of the Opinion.

Product	Master Agreement and French Netting Law compliance status
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 ratc and the prevailing market rate at the time of settlement	Yes
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	Yes subject to review of documentation provided that those products are cash settled; or may be settled in cash at may be settled in cash at the option of one of the parties otherwise than by reason of a default or other termination event.
Fund Option Transaction. A transaction in which one party grants to the other party (for an agreed payment or other consideration) the right, but not the obligation, to receive a payment based on the redemption value of a specified amount of an interest issued to or held by an investor in a fund, pooled investment vehicle or any other interest identified as such in the relevant Confirmation (a "**Fund Interest**"), whether (i) a single class of Fund Interest of a Single Reference Fund or (ii) a basket of Fund Interests in relation to a specified strike price. The Fund Option Transactions will generally be cash settled (where settlement occurs based on the excess of such redemption value over such specified strike price (in the case of a call) or the excess of such specified strike price over such redemption value (in the case of a put) as measured on the valuation date or dates relating to the exercise date)	Yes

Product	Master Agreement and French Netting Law compliance status
Fund Forward Transaction. A transaction in which one party agrees to pay an agreed price for the redemption value of a specified amount of i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests at a future date and the other party agrees to pay a price for the redemption value of the same amount of the same Fund Interests to be set on a specified date in the future. The payment calculation is based on the amount of the redemption value relating to such Fund Interest and generally cash-settled (where settlement occurs based on the difference between the agreed forward price and the redemption value measured as of the applicable valuation date or dates)	Yes
Fund Swap Transaction. 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 based on the redemption value of (i) a single class of Fund Interest of a Single Reference Fund or (ii) a basket of Fund Interests	Yes
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	Yes
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	Yes

Product	Master Agreement and French Netting Law compliance status
Longevity/Mortality Transaction. (a) a transaction employing a derivative instrument, such as a forward, a swap or an option, that is valued according to expected variation in a reference index of observed demographic trends, as exhibited by a specified population, relating to aging, morbidity, and mortality/longevity, or (b) a transaction that references the payment profile underlying a specific portfolio of longevity- or mortality- contingent obligations, e.g. a pool of pension liabilities or life insurance policies (either the actual claims payments or a synthetic basket referencing the profile of claims payments)	Likely subject to fact pattern and review and analysis on a case by case basis of documentation and of the nature of the index provided they have the characteristics of other forward financial instruments[131], having regard to whether, *inter alia,* it is traded on a regulated market or a multilateral trading facility, is cleared and settled through a recognized clearing house **or** is subject to regular margin calls.
Physical Commodity Transaction. A transaction which provides for the purchase of an amount of a commodity, such as oil including oil products, coal, electricity or gas, at a fixed or floating price for actual delivery on one or more dates	No unless the transaction gives rise, **in the context of trading, to registration by a recognized clearing house or to periodical margin calls**
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 or national area	Likely subject to fact pattern and review and analysis on a case by case basis of documentation and of the nature of the index provided they have the characteristics of other forward financial instruments[132], having regard to whether, *inter alia,* it is traded on a regulated market or a multilateral trading facility, is cleared and settled through a recognized clearing house **or** is subject to regular margin calls.
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[133]	No

131 See paragraph 3.1.1.2.1 and footnote 45of the Opinion.

132 See paragraph 3.1.1.2.1 and footnote 45 of the Opinion.

133 While this transaction would qualify under the French Netting law as a transaction on financial instruments, it is unlikely to meet the requirements of the contractual definition of transaction on forward financial instruments under the Master Agreement.

Product	Master Agreement and French Netting Law compliance status
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[134]	No
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	Yes
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	Yes
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	Yes

134 While this transaction would qualify under the French Netting law as a transaction on financial instruments, it is unlikely to meet the requirements of the contractual definition of transaction on forward financial instruments under the Netted Agreement.

Product	Master Agreement and French Netting Law compliance status
Weather Index Transaction. A transaction, structured in the form of a swap, cap, collar, floor 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	Yes subject to review of documentation provided that those products are cash settled; or may be settled in cash at may be settled in cash at the option of one of the parties otherwise than by reason of a default or other termination event.

Exhibit 6

Special considerations applying to certain counterparties in France

The list of French Counterparties being Qualifying Parties is contained in Exhibit 2. Special considerations may apply to the following counterparties (which may or may not be French Counterparties or Qualifying Parties).

It should be noted that the following remarks purport to be general in scope and involve complex and detailed technical requirements to be complied with. The present analysis does not intend to be comprehensive and are provided for general information purposes.

In respect of collective investment undertakings relevant conditions reflect in essence transposition under French Law of the UCITS Directive and the AIFM Directive dated 22 July 2013.

Counterparties are invited to refer themselves to detailed technical conditions contained in both the legal and regulatory part of the M&FC or the French Insurance Code in order to reach an informed judgment of conditions to be satisfied. Compliance with those conditions is essentially the responsibility of relevant French Counterparties.

1. Credit institutions

Credit institutions ("*établissement de crédit*") are incorporated entities licensed by the ACPR pursuant to article L.511-9 of the M&FC.

Under European law, in order to qualify as a credit institution, an entity must meet two cumulative criteria, i.e. granting credits and receiving funds reimbursable from the public.

Under French law, the concept of credit institution used to be broader, as it included entities which only extend credit without receiving deposits or repayable funds from the public.

Due to the entry into force of the CRR regulation[135] which became of direct application in France as a matter of European Law as of 1st January 2014 France was required to modify its definition of credit institutions to reduce its scope in a manner consistent with the CRR Regulation.

Nevertheless, the French authorities have decided to create a new and purely national - domestic status of financial company (*société de financement*) which will apply to the entities duly licensed by the ACPR to perform credit operations, but not receiving repayable funds from the public, and therefore not qualifying as credit institutions. Such financial companies are covered by this Opinion as of January 1st, 2014.

[135] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (capital requirement regulation, CRR).

The purpose of this reform is to ensure that entities currently performing credit operations without receiving deposits from the public and which are currently licensed by the ACPR as credit institutions will remain regulated by the ACPR after January 1st 2014, with a prudential regime similar as much as possible to the one applicable to credit institutions, although financial companies will not benefit from the EU banking passport, except if they qualify as financial institutions.

The new legal framework, resulting from an Ordinance dated June 27th 2013, entered into force on January 1st 2014.

Reference is made to paragraphs 3 (Proceedings under the M&FC) and 5.2. (Special considerations applying to Credit Institutions and Investment Firms) in Exhibit 3 (General Insolvency Issues). Further Reference is made to Exhibit 7 which describes the Resolution Regime applying to Credit Institutions and Investment Firms.

2. Financial Companies (*sociétés de financement*)

Reference is made to paragraph 1 of this Exhibit.

3. Investment Firms

An investment firm ("*entreprise d'investissement*") is an investment firm licensed as such by the ACPR with the exception of the portfolio management company which is licensed by the AMF.

Reference is made to paragraph 5.2. (Special considerations applying to Credit Institutions and Investment Firms) in Exhibit 3 (General Insolvency Issues). Further Reference is made to Exhibit 7 which describes the Resolution Regime applying to Credit Institutions and Investment Firms.

4. Insurance company

Insurance companies ("*entreprises d'assurance*") are incorporated as *société anonyme* or *société d'assurance mutuelle* and licensed pursuant to Article L.321-1 of the French Insurance Code.

4.1 Reference is made to paragraphs 4 (Proceedings under the Insurance Code) and 2.4 of Special considerations applying to Insurance Companies in Exhibit 3 (General Insolvency Issues).

4.2 The following specific considerations may apply in respect of insurance companies:

Pursuant to article R. 332-48 of the French Insurance Code an insurance company may only enter into a financial contract, unless an exemption is expressly granted by ACPR, in the following cases:

✓ the hedging of an existing investment[136];

✓ for the hedging of an anticipated investment[137]; and

[136] Pursuant to article R.332-45 of the French Insurance Code, a insurance company may enter into a financial contract if the financial contract shall not expired or the option shall not be exercised after the expiration of the investment; and the value and the nature of the underlying shall be similar to the investment.

[137] Pursuant to article R.332-46 of the French Insurance Code, an insurance company may enter into a financial contract in anticipation of an investment. In such case, the insurance company shall hold or receive before the expiring date on

✓ for currency and interest hedging in connection with financial debts of the insurance company[138].

For avoidance of doubt, it should be noted that others specifics consideration may apply in respect in respect of a mutual company governed by the French mutual companies code:

It results from the provisions of Articles R. 212-70 *et seq.* of the French mutual companies code that mutual companies may use forward financial instruments only in the situations and under the conditions described in the said code. Otherwise, the express permission of the ACPR may be required.

It should be noted that given the purpose of a mutual company as defined in paragraph I of Article L. 111-1 of the French mutual companies code, we do not believe that a mutual company is a Qualifying Party. This does not prevent a French mutual company from entering into financial contracts but, in doing so, the applicable regime is the one governed by Article L. 211-36 -1° where only one of the Parties is a Qualifying Party.

The above is a succinct summary of complex provisions which need to be analysed on a case by case basis. It may indeed be appropriate to provide language in the Master Agreement schedules to the Master Agreement to the effect that representations and warranties are provided regarding compliance with the limits and restrictions governing insurance companies in respect of concluding financial contracts.

5. Collective Investment Undertakings

5.1. Application of insolvency proceedings to collective investment undertakings

5.1.1 General considerations

Collective investment undertakings may, depending on their characterization, be structured in the form of:

✓ corporate entities such as SICAV; or

✓ as a common funds.

When structured as a common fund (such as an FCP) such undertakings do not have legal personality unlike the SICAVs. They are therefore not eligible to the benefit of a Conciliation Proceeding or an Insolvency Proceeding.

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

Accordingly, the provisions of the Master Agreements entitling the Foreign Bank to early terminate all outstanding Transactions upon the opening of an Insolvency Proceeding or a

account of the financial contract an amount of liquidity at least equal to the notional amount of the contract and the transaction so as reduce the investment risk of the investment.

138 Article R. 332-46 of the French Insurance Code.

Conciliation Proceeding against the Defaulting Party are not applicable to the Transactions entered with the French Counterparty structured in such a manner.

They do, however, apply in respect of termination upon occurrence of other Events of Default.

As a result, the Events of Default contemplated in Article 7 of the Master Agreements should apply to such Common Funds provided however that Articles 7.1.1.6 of each of the Master Agreements and 7.1.1.7 of the AFB Master Agreement and the 2001 FBF Master Agreement should not apply to Common Funds.

Collective Investment Undertakings include now OPCVMs and AIFs all as further described below.

5.1.2 Undertakings for collective investment in transferable securities ("*organisme de placement collectif en valeurs mobilières*" – "*OPCVM*" or UCITS)

OPCVM are licensed in accordance with the Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities[139].

An OPCVM which can take two alternative structures, namely (i) "*société d'investissement à capital variable*" ("**SICAV**") organised either as a "*société anonyme*" (SA) or a "*société par actions simplifiée*" (SAS) or (ii) a "*fonds communs de placement*" ("**FCP**"). A FCP is a co-ownership of financial instruments or deposits without legal personality.

In respect of OPCVM's structured as a FCP reference is made to the remarks above regarding absence of eligibility of FCP's to the benefit of Insolvency Proceedings or Conciliation Proceedings.

5.1.3 Alternative Investment funds (AIFs)

An alternative investment fund (*fonds d'investissement alternatif*, FIA) can take two alternative structures, namely the corporate form (company) and the non corporate form ("*fonds commun de placement*", FCP). A FCP is a co-ownership of financial instruments or deposits without legal personality.

Regarding the **corporate form**, (i) an investment funds with general purpose ("*fonds à vocation générale*"), alternative funds of funds ("*fonds de fonds alternatifs*") and professional funds with general purpose ("*fonds professionnels à vocation générale*") may be organised either as a "*société anonyme*" (SA) or a "*société par actions simplifiée*" ("SAS") and named "*société d'investissement à capital variable*" ("SICAV"). (ii) a real estate investment fund (OPCI) and a professional real estate investment scheme ("*OPCI professionnels*") may be constituted as SPPICAV ("*société de placement à prépondérance immobilière à capital variable*") which may be a SA or a SAS, (iii) a "*société civile de placement immobilier*" (SCPI) and SEF may be constituted as "*societés civiles*", (iv) a "*société d'investissement à capital fixe*" (SICAF) may be constituted as a SA, (v) a specialized professional funds ("*fonds professionnels spécialisés*")

139 The regime applicable to OPCVMs is contemplated in Articles L. 214-2 and *seq.* of the M&FC and in Articles D. 214-1 and *seq.* of the M&FC. French collective investment undertakings can take two alternative structures, namely (i) "*société d'investissement à capital variable*" ("***SICAV***") organised either as a *société anonyme* or *Société par Actions Simplifiée* ("*SAS*") or (ii) "*fonds communs de placement*" ("***FCP***"). A FCP is a co-ownership of financial instruments or deposits without legal personality.

may be constituted either as a SA or a SAS under the form of a Sicav (to be named as "*société d'investissement professionnelle spécialisée*") (vi) an investment capital professional fund ("*fonds professionnel de capital investissement*") may be constituted as a SA or a SAS (specific type of SICAV to be named "*sociétés de capital investissement*") (vii) an employee saving fund ("*fonds d'épargne salariale*") may be constituted as a SA or a SAS under the form of a SICAV (to be named "*société d'investissement à capital variable d'actionnariat salarié*" (SICAVAS), (vii) a French securitization funds may be constituted as a SA or a SAS under the form of a "*société de titrisation*".

Regarding the unincorporated form (common fund, FCP), (i) an investment fund with general purpose ("fonds à vocation générale"), alternative funds of funds ("fonds de fonds alternatifs") and professional funds with general purpose ("fonds à vocation générale") may be organised as FCPs, (ii) a real estate investment fund (OPCI) and professional real estate investment scheme ("OPCI professionnels") may be constituted as FPIs ("fonds professionnel immobilier"), (iii) a specialized professional funds ("fonds professionnels spécialisés") may be constituted as FCP (to be named "fonds d'investissement professionnel spécialisé"),(iv) an investment capital professional funds ("fonds professionnel de capital investissement") may constituted as FCPs, (v) an employee saving funds ("fonds d'épargne salariale") may be constituted as FCPs (to be named "fonds communs de placement d'entreprise", FCPEs) and (vi) a French securitization funds may be constituted as FCT ("fonds commun de titrisation") formerly "fonds commun de créances" (FCC) which is a securitization fund under the form of co-ownership without legal personality.

In respect of FIAs constituted as FCPs, FPIs, fonds d'investissement professionnel spécialisés, fonds professionnels de capital investissement, FCPEs and FCTs reference is made to the remarks above regarding absence of eligibility of FCP's to the benefit of insolvency proceedings.

5.2. Conclusion of transactions on forward financial instruments by the OPCVMs

It should be noted that pursuant to the provisions of paragraph I 5° of Article L. 214-20 M&FC, as far as OPCVMs are concerned, transactions on forward financial instruments may only be concluded under the conditions contemplated in Articles R. 214-15 *et seq.* of the M&FC which provides in particular for restrictions on the type of counterparty with whom Transactions may be concluded, the products covered by such forward financial instruments and for the right of the OPCVM to terminate such forward financial instruments at its option in certain circumstances, all as further contemplated in such Articles and Articles cross-referenced in such Articles.

The conditions contemplated under those provisions reflect in essence the transposition under French law of the provisions of directive 2009/65/EC of the European Parliament and of the Council of July 13, 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) which contemplate *inter alia* that:

- an OPCVM may invest in financial contracts (i.e.: forward financial instruments) either traded on a regulated market or OTC traded financial market using, as underlying asset, financial securities (equity and debt securities, as well as shares in collective investment undertakings), interest rates, financial indices referred to in Article R. 214-16 of the M&FC according to the investments objectives as stated in its fund rules or instruments of incorporation;

- such financial contracts are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction, at any time, at their fair value, at the OPCVM's initiative, such verification of valuation being made by an appropriate third party at appropriate time intervals and in such a manner as the OPCVM may control the same or otherwise by a service of such OPCVM which is independent from operational functions and which is in a position to control the same;

- financial contracts may not use commodities as underlying asset;

- where techniques and instruments are employed relating to transferable securities and money market instruments, such techniques and instruments are used for the purpose of efficient portfolio management which must satisfy the following criteria:

    - ✓ they are economically appropriate;

    - ✓ they must meet one of the following criteria:

        - risk reduction;

        - cost reduction;

        - creation of additional capital or revenue for the OPCVM;

- the counterparty of OTC traded financial contracts shall be a UCITS depository, a credit institution whose head office is located in a OECD country or an investment firm whose head office is located in an EU member state or in a State party to the European Economic Area agreement and which is authorized to carry out the ancillary service of custodian of financial instruments (*tenue de compte conservation)* contemplated by Article L. 321-2 of the M&FC and the amount of its own funds (within the meaning of directive 2000/12/EC of the European Parliament and of the Council of March 20, 2000 relating to the taking up and pursuit of the business of credit institutions) is at least equal to EUR 3,8 millions. Transactions must be governed by an agreement referred to in Articles L. 211-36 and L. 211-36-1 of the M&FC;

- an OPCVM may receive or post collateral contemplated in Article L. 211-38 of the M&FC for purposes of achieving its management objectives. Collateral received must be posted by one of the institutions mentioned in the preceding indent.

In addition, the exposure of the OPCVM to the underlying assets of the forward financial instruments is taken into account for the calculation of the asset ratios of the OPCVM, as addressed in Article R. 214-21 and *seq.* of the M&FC.

Compliance with the afore-mentioned requirements is the responsibility of the OPCVM, or of its Management Company, as the case may be.

It may be appropriate to provide language in the Master Agreement Schedules to the Master Agreement to the effect that representations and warranties are provided regarding compliance with the limits and restrictions governing OPCVM in respect of conclusions of financial contracts.

It should, however, be noted that compliance with such requirements is the responsibility of the OPCVM or of its Management Company, as the case may be. Non-compliance with such requirements may expose relevant entities to potential contractual liability and perhaps also disciplinary action by the AMF. However, particular attention needs to be given to the fact that there are restrictions of counterparties to OTC traded financial contracts (see above). However, to the extent the Foreign Bank is a German licensed credit institution, we believe that no concern should be expressed in respect of the relevant transaction.

Non compliance should in our view not affect the ability to exercise close-out remedies but, to the best of our knowledge, no case law exists in this respect.

5.3. Conclusion of transactions on forward financial instruments by the AIFs

French alternative investment funds ("*fonds d'investisement alternatif*") ("**AIF**")[140] as covered by the Directive 2011/61/EU of the European Parliament and of the Council of June 8, 2011.

The category of AIFs includes:

5.3.1 Funds available to non-professional investors

5.3.1.1 Investment funds with general purpose ("fonds d'investissement à vocation générale")[141]

Investment rules in respect of financial contracts are governed by paragraph I 5° of Article L. 214-24-55 of the M&FC and R 214-32-22 and following of the M&FC. Those conditions are substantially similar to those applying to OPCVMs and therefore the remarks applicable in paragraph (i) above related to OPCVM substantially apply to investment funds with general purpose except that the latter funds may also invest in commodities under conditions set in Article R 214-32-23 of the M&FC.

Please also note that pursuant to Article R. 214-32-18 of M&FC, funds with general purpose are not allowed to invest in precious metals certificate (*certificats représentatifs de métaux précieux*).

5.3.1.2 Capital venture funds "(fonds de capital investissement")

Category itself subdivided in risk mutual funds ("*fonds commun de placement à risque, FCPR*")[142], innovation mutual funds ("*fonds commun de placement dans l'innovation, FCPI*")[143] and local investment funds ("*fonds d'investissement de proximité, FIP*")[144];

The same rules apply in respect of financial contracts entered into by those funds as those which apply in respect of UCITS described in paragraph 4.3.1.1 above. Assets ratios may, however differ.

5.3.1.3 Real estate investment scheme ("OPCI") ("organisme de placement collectif immobilier")[145]

140 The concept of an AIF results from the transposition in the French republic of European Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers (the "**AIFM Directive**") by the Ordinance 2013-676 of 27 July 2013 implementing under French law the AIFM Directive. The regime applicable to AIFs is contemplated in Articles L. 214-24 and *seq.* of the M&FC and in Articles D. 214-32 and *seq.* of the M&FC.

141 The investment funds with general purpose are governed by Articles L. 214-24-24 and *seq.* and Articles R. 214-32-9 and *seq.* of the M&FC.

142 The risk mutual funds is governed by Articles L. 214-35 and *seq.*, and R. 214-38 and *seq.* of the M&FC.

143 The investment in innovation mutual funds is governed by Articles L. 214-30 and *seq.*, R. 214-47 and *seq.* of the M&FC.

144 The local investment funds are governed by Articles L. 214-31 and *seq.*, R. 214-65 and *seq.* of the M&FC.

145 The Real property investment partnership is governed by Articles L. 214-33 and *seq.* of the M&FC.

Pursuant to Articles L 214-36 and L 211-38 M&FC an OPCI may enter into the following financial contracts:

- o Options, futures, swaps, forward rate agreements and any other forward contracts relating to financial instruments, currencies, interest rates, yields, financial indices or financial measures which may be settled physically or in cash;
- o Forward contracts for the transfer of credit risk; and
- o Financial contracts for differences.

An OPCI may invest in financial contracts (i.e. forward financial instruments) in order to safeguard its assets or to achieve its management objectives if the following conditions are met:

- the commitment of the OPCI in respect of forward financial contracts, as defined by Article R. 214-112 of the M&FC, is not superior to the value of its net assets;
- the financial contracts have the following characteristics:
  - ▪ they use, as underlying asset, financial securities (equity and debt securities, as well as shares in collective investment undertakings), interest rates, financial indices referring, as the case may be to real estate prices and meeting ratios set in Article R 214-32-25 of the M&FC.
  - ▪ they are entered into on regulated forward markets appearing on a list set by order of the Minister of Economy or meet the following conditions:
    - ✓ they can be sold, liquidated or closed by an offsetting transaction, at any time, at their fair value, at the OPCI' initiative;
    - ✓ the counterparty of such financial contracts shall be a UCITS depository, a credit institution whose head office is located in a OECD country or an investment firm whose head office is located in an EU member state or in a State party to the European Economic Area agreement and which is authorized to carry out the ancillary service of custodian of financial instruments *(tenue de compte conservation)* contemplated by Article L. 321-2 of the M&FC and the amount of its own funds (within the meaning of directive 2000/12/EC of the European Parliament and of the Council of March 20, 2000 relating to the taking up and pursuit of the business of credit institutions) is at least equal to EUR 3,8 millions;
    - ✓ they are subject to reliable and verifiable valuation by the OPCI which is not only based on market prices given by the counterparty and which meet the following conditions:
      - such valuation is based on an actual market value established in a reliable manner for the instrument, or if such value is not available, on a valuation model using a recognised and suitable method;
      - such valuation is verified by an appropriate third party at appropriate time intervals and in such a manner as the OPCI may control the same or otherwise by a service of such OPCI which is independent from operational functions and which is in a position to control the same;

- except for financial contacts using forward financial instruments based on indexes (complying with the conditions set forth by Article R. 214-32-30 of the M&FC), the underlying investments are taken into account for the calculation of asset ratios (as provided for in Articles R. 214-95 to R. 214-99 of the M&FC).

Collateral posted is constituted by collateral posted pursuant to Article L 211-38 of the M&FC and collateral posted by the OPCI is constituted by financial instruments referred to in subparagraphs 4° to 7° of paragraph I Articles L 214-36 M&FC held by such OPCI or by financial instruments and deposits referred to in subparagraphs 8° and 9° of paragraph 1 of Article L 214-36 held by such OPCI over and above a 5% quota mentioned in paragraph 2° of Article L 214-37 M&FC.

Collateral posted to the OPCI shall be a UCITS or AIF depository, a credit institution whose head office is located in a OECD country or an investment firm whose head office is located in an EU member state authorized to carry out the ancillary service of custodian of financial instruments (*tenue de compte conservation)* contemplated by Article L 321-2 of the M&FC and the amount of its own funds (within the meaning of directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions) is at least equal to EUR 3,8 millions.

5.3.1.4 Real property investment partnerships ("société civile de placement immobilier, SCPI") or forestry-linked saving companies ("societés d'épargne forestière")[146]

Based on regulations applicable to SCPIs and "*sociétés d'épargne forestière*", it does not appear that such AIFs are authorized to conclude financial contracts.

5.3.1.5 Investment company with fixed capital ("société d'investissement à capital fixe, SICAF")[147]

For hedging purposes or to achieve its management objectives, a SICAF may pursuant to Article R. 214-177 of the M&FC enter into financial contracts under the same conditions as those applying to the investment funds with general purpose ("*fonds d'investissement à vocation générale") (see paragraph 4.3.1.1 above).*

5.3.1.6 Alternative funds of funds ("fonds de fonds alternatifs")[148]

Pursuant to Article R. 214-183 of the M&FC unless otherwise specified the same rules apply in respect of forward financial contracts entered into by alternative funds of funds as those applying to the investment funds with general purpose ("*fonds d'investissement à vocation générale (see paragraph 4.3.1.1 above).* Assets ratios may however differ.

5.3.2 <u>Funds available to Professional Investors</u>

5.3.2.1 Funds subject to authorization

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146 The forestry-linked saving company is governed by Articles L. 214-86 et *seq.* and R. 214-130 et *seq.* of the M&FC.

147 The investment company with fixed capital is governed by Articles L.214-127 et *seq.* and R. 214-177 et *seq.* of the M&FC.

148 The alternative funds of funds are governed by Articles L.214-139 et *seq.*and R. 214-183 et *seq.* of the M&FC.

(i) Professional funds with general purpose ("*fonds professionnels à vocation générale*")[149]

Pursuant to Article R. 214-187 of the M&FC unless otherwise specified the same rules apply in respect of forward financial contracts as those applying to the investment funds with general purpose ("*fonds d'investissement à vocation générale*"). Assets ratios may, however, differ *(see paragraph 4.3.1.1. above*);

(ii) Professional real estate investment scheme ("*OPCI professionnels*")[150]

Professional real estate investment scheme may enter into financial contracts under conditions set by their Articles of Association or their regulations as the case may be (Articles R. 214-199 and R. 214-200 of the M&FC).

5.3.2.2 Funds subject to declaration

(i) Specialized professional funds ("*fonds professionnels spécialisés*")[151]

The provisions applicable to the investment funds with general purpose ("*fonds d'investissement à vocation générale*" apply to those specialized professional funds but provisions regarding forward financial contracts are excluded from the scope of the applicable provisions.

As result, rules relating to the conclusion of forward financial instruments by specialized professional funds are freely determined in their Articles of association or in their regulations.

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149 The professional funds with general purpose are governed by Articles L. 214-143 et *seq.*and R. 214-187 et *seq.* of the M&FC.

150 The professional real estate investment scheme is governed by Articles L. 214-148 et *seq.*and R. 214-194 et *seq.* of the M&FC.

151 The specialized professional funds is governed by Articles L. 214-154 et *seq.* and R. 214-202 et *seq.* of the M&FC.

(ii) Investment capital professional funds ("*fonds professionnels de capital investissement*")[152]

Rules applicable to capital venture funds ("*fonds de capital investissement*") apply to investment capital professional funds ("*fonds professionnels de capital investissement")* but provisions regarding forward financial contracts seem to be excluded from the scope of the applicable provisions.

As result, rules relating to the conclusion of forward financial instruments by specialized professional funds are freely determined in their Articles of association or in their regulations.

5.3.3 Employee Saving Funds.

Employee saving funds ("*fonds d'épargne salariale*") may be constituted as employee saving common fund ("*fonds commun de placement d'entreprise, FCPE*")[153] or employee saving company with variable capital ("*société d'investissement à capital variable d'actionnariat salarié, SICAVAS*")[154].

Pursuant to Article R. 214-207 of the M&FC unless otherwise specified the same rules apply in respect of forward financial contracts as those applying to the investment funds with general purpose ("*fonds d'investissement à vocation générale*) *(see paragraph 4.3.1.1 above).*

5.3.4 French securitization mutual funds ("*fonds commun de titrisation*" - "FCT", formerly "*fonds commun de créances*" - "FCC")[155]

Securitisation mutual funds may take the form either of a securitization corporate entity ("*société de titrisation*") or a securitization common fund ("*fonds commun de tirisation*").

The former is established either as a *société anonyme* or a *société par action simplifiée.* Both have legal personality.

The latter takes the form of a securitization common funds which is a co-ownership without legal personality which is not eligible to be subject to Insolvency Proceedings or Conciliation Proceedings as is the case with respect to FCP.

Securitisation mutual funds may enter into financial contracts under conditions set by their Articles of association or their regulations as the case may be.

The maximum loss of such securitization mutual fund resulting from the aggregate of contracts entered into, which are valued at any time taking into account hedging arrangements may not exceed the value of its assets.

152 The investment capital professional funds are governed by Articles L. 214-159 et *seq.* and R. 214-204 et *seq.* of the M&FC.

153 The employee saving common fund (FCPE) is governed by Articles L. 214-167 et *seq.* and R. 214-211 et *seq.* of the M&FC.

154 The employee saving company with variable capital (SICAVAS) is governed by Articles L. 214-166 and R. 214-175 et *seq.* of the M&FC.

155 The securitization mutual funds are governed by Articles L. 214- 180 and R. 214-232 et *seq.* of the M&FC.

6. Real estate credit companies ("*société de crédit foncier*" - SCF)

French *sociétés de crédit foncier* ("**SCF**") are credit institutions licensed as specialised credit institutions (*établissements de crédit spécialisés*)[156], the exclusive purpose of which is:

✓ to grant or purchase secured loans, exposures over public entities, instruments and securities, as defined in Article L. 513-3 through Article L. 513-7 of the M&FC;

✓ to issue *obligations foncières* (i.e. bonds) benefiting from the priority lien referred to in Article L. 513-11 of the M&FC, for the financing of such loans, exposures, instruments and securities.

SCF are governed by Article L. 513-2 through Article L. 513-27 of the M&FC[157] which grant a preferential treatment for creditors of SCF who benefit from the priority lien referred to in Article L. 513-11 of the M&FC[158].

In our view, it results from the provisions of Article L. 513-11[159] of the M&FC that, in the event

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156 Credit institutions may be licensed either as (i) banks, (ii) mutual or cooperative banks, (iii) "*caisses de crédit municipal*", (iv) **financing institutions** ("*sociétés de financement*") or (v) specialized credit institutions ("*établissement de crédit spécialisés*"). As a result of Ordinance 2013-544 dated June 27th 2013, the SCFs, previously characterized as a *société financière* (financial institution) are now characterized as specialised credit institutions by an Ordinance 2013-544 dated June 27th 2013.

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

158 As far as forward financial instruments are concerned, Article L. 513-10 of the M&FC provides that, under certain circumstances, a SCF may enter into forward financial instruments, as defined in Article L. 211-1 of the M&FC.

Article L. 513-10 of the M&FC further provides that amounts due in respect of forward financial instruments entered into by a SCF for hedging its assets and liabilities, after set-off, if need be, benefit from the priority lien referred to in Article L. 513-11 of the M&FC, as well as certain amounts due in respect of forward financial instruments. In accordance with Article R. 515-8 of the M&FC, any contract entered into by a SCF, the purpose of which is to obtain resources benefiting from the priority lien referred to in Article L. 513-11 of the M&FC, must expressly provide that such resources benefit from such priority lien.

159 Article L. 513-11 of the M&FC provides that notwithstanding any legal provisions to the contrary and, in particular, the provisions of Book VI of the French Commercial Code (i.e. Insolvency Law):

1° proceeds from loans or related claims ("*creances assimilees*"), exposures, instruments and securities referred to in Articles L. 513-3 to L. 513-7 of the M&FC (i.e. loans which are part of the loan portfolio of SCF) and financial instruments referred to in Article L. 513-10 of the M&FC (i.e. forward financial instruments entered into for hedging purposes), **after set-off**, if need be, as well as claims resulting from deposits made by SCF with credit institutions, are applied in priority to the payment of "*obligations foncières*" and of any other preferential resources referred to in Article L. 513-2-I, 2° of the M&FC;

2° in the event a SCF is subject to a Conciliation Proceeding, a Safeguard Proceeding, a Judicial Reorganisation Proceeding or a Judicial Liquidation Proceeding, claims related to transactions benefiting from the priority lien referred to in Article L. 513-2-I, 2° of the M&FC (i.e.: "*obligations foncières*" and other resources benefiting from the priority referred to in Article L. 513-11 of the M&FC) (this includes the above derivative transactions) are paid when they fall due (i.e.: at their contractual maturity), and in priority over all other claims (interests being included), whether secured or not by a lien or security, whatever their maturity is. Any claims of the other creditors over the assets and rights of the SCF are subject to the full discharge of obligations secured by a priority lien, as defined in such Article L. 513-11 of the M&FC. It is important to note that Safeguard Proceedings, Judicial Reorganisation Proceedings or Conciliation Proceedings do not result in acceleration of claims on such SCF;

3° the opening of a judicial liquidation of a SCF does not result in acceleration or termination of the "*obligations foncières*" or any other resources benefiting from the priority lien referred to in Article L. 513-11, 1° of the M&FC. The claims related to such transactions are paid when they fall due (i.e.: at their contractual maturity).

the Defaulting Party is a SCF and the Transactions entered into between the Parties benefit from the priority lien referred to in Article L. 513-11 of the M&FC, the provisions of the Master Agreement entitling the Non-Defaulting Party to early terminate all outstanding Transactions upon the opening of Insolvency Proceeding against a SCF or admitting such entity to the benefit of a Conciliation Proceeding may not be invoked against such SCF.

Indeed, it may be noted that the provisions of Article L. 513-11 of the M&FC apply notwithstanding any legal provisions to the contrary, which include, in our opinion, the French Netting Law. **Therefore, while the French Netting Law is, as a matter of principle, applicable to SCF (SCF are credit institutions and, as such, qualify as Qualifying Parties under the French Netting Law – see in this respect exhibit 2 to this Opinion),** we believe that Article L. 513-11 of the M&FC departs from the French Netting law rules and that the provisions of the French Netting Law may not be invoked by the Non-Defaulting Party in order to terminate preferred Transactions upon the opening of Insolvency Proceedings or Conciliation Proceedings against a SCF.
However, the other Events of Default contemplated in the Master Agreement should continue to apply.

A SCF is entitled to enter into forward financial instruments to hedge its loan portfolio and exposures. The *obligations foncières* issued by it and other preferential resources to the SCF benefit from that priority lien referred to in Article L 513-11 M&FC. Other preferential resources are in essence loans.

Article L. 513-10 of the M&FC further provides that amounts due in respect of forward financial instruments, **after set-off**, if need be, benefit from the priority lien referred to in L. 513-11 (of the CMF together with amounts due on account of forward financial instruments entered into by SCF for purposes of management of the hedge of the global risk of such SCF related to their assets, liabilities and off-balance sheet obligations, to the extent so specified in the underlying contract documentation.

Article L. 513-11 2° of the M&FC then provides that notwithstanding any legislative provision to the contrary (including the provisions of Book VI of the French Commercial Code which governs Insolvency Proceedings) in the event a *société de crédit foncier* is subject to a Safeguard Proceeding, a Judicial Reorganisation or a Judicial Liquidation Proceedings ("**Insolvency Proceedings**"), as well as a Conciliation Proceedings, the claims related to transactions benefiting from the above priority lien referred to in Article L. 513-2 sub paragraph 2 of paragraph I (i.e. *obligations foncières* and other resources benefiting from the priority referred to in Article L. 513-11 of the CMF) are paid when they fall due (i.e. at their contractual maturity), and with priority over all other claims (interests being included), whether secured or not by a lien or security, whatever their maturity is.

Any claims of the other creditors over the assets and rights of the *société de crédit foncier* are subject to the full discharge of obligations secured by a priority lien, as defined in such Article L. 513-11 of the M&FC.

In return, the "*obligations foncières*" and any other preferential resources are discharged before any other claims.

The above means in our view that the forward financial instruments together with the "*obligations foncières*" and other preferential resources where so contractually provided benefit from a priority lien over any other obligations not benefitting from that lien and which in fact are unsecured and subordinated.

Payment on account of such subordinated obligations is subject to full discharge of those senior preferred obligations benefitting from that lien.

We believe, however, that discharge of obligations entered into on account of forward financial instruments for hedging purposes are to be discharged *pari passu* with discharge of "*obligations foncières*" and other preferential resources to which the relevant hedges relates (whether specific transactions or a global risk related to the hedge of assets, liabilities and off-balance sheet obligations of the SCF).

The claims related to such transactions are paid when they fall due (i.e. at their contractual maturity). In return, the *obligations foncières* and any other preferential resources (including the forward financial instruments benefitting from the priority lien) are discharged before any other claims.

The assets of the *société de crédit fon*cier are thus allocated with priority to the discharge of obligations under *obligations foncières* or other preferential resources including the forward financial instruments used to pledge those transactions.

Financial obligations have to be discharged at the contractual maturity including in a scenario where the SCF is subject to an Insolvency Proceeding or a Conciliation Proceeding.

Where transactions are margined, return obligations of margin should be applied towards discharge of the secured obligations which purport to hedge an underlying risk.

In our view the above provisions should be interpreted in such a manner that close-out netting following termination **solely** on the ground of commencement of an Insolvency Proceeding or a Conciliation Proceeding is to be precluded.

However, in our view, other provisions of the French Netting Law continue to apply to a SCF including the provisions governing contractual provisions contemplating termination upon occurrence of a payment or delivery default.

In other words, contractual provisions governing posting of collateral, return and redelivery of collateral, substitution of collateral, set-off between collateral posted and discharge of financial obligations secured by that collateral continue to apply. The stay which applies under the common insolvency regime does not apply and obligations need to be discharged notwithstanding the commencement of Insolvency Proceedings.

In case of default under those contractual obligations termination and close-out netting should be possible at that stage to the extent the relevant event of default occurs subsequently to the commencement of the Insolvency Proceeding or the Conciliation Proceeding and that termination does not occur solely on the ground of commencement of those proceedings.

The SCF benefits in fact from an ad hoc regime which the judicial administrator is compelled to apply without cherrypicking. That regime is in fact similar to the one applicable to assumed executory contracts in a standard Insolvency Proceeding. Under that regime the judicial administrator is bound to perform payment obligations in respect of assumed contracts and in case of default the relevant contracts are subject to termination (see paragraph 4.8 of Exhibit 3).

This has, however, not been tested by case law but we believe the better view to be that this approach should prevail.

7. Credit institutions licensed as *société financière* the exclusive purpose of which is to grant or finance loans for housing ("*société de financement de l'habitat*" - SFH)

French *sociétés de financement de l'habitat* ("**SFH**") are credit institutions licensed as *société financière* (financial institution)[160], the exclusive purpose of which is to grant or finance loans for housing (and hold instruments and securities under the conditions defined by the implementation decree).

SFH benefit from a regime substantially similar to the one applicable to a SCF and remarks made in subparagraph (a) above in respect of SCF apply mutatis mutandis to a SFH. Article L. 515-34 of the M&FC does indeed provide that Articles L. 515-17 through L. 515-32-1 of the M&FC apply mutatis mutandis to a SFH subject to the provisions of Article L. 515-34 trough L. 515-38 of the M&FC which do not affect our conclusions in respect of derivative transactions as they apply to a SFC.

8. Specific considerations may apply to the following public entities:

The French State and Public entities may not be subject to ad Hoc Proceedings, Conciliation Proceedings or to Insolvency Proceedings. Indeed, pursuant to Articles L. 620-2, L. 631-2 and L. 640-2 of the Commercial Code which determines the scope of the Bankruptcy Law, its provisions apply to any merchant, craftsman, any farmer, any other individual who carries out an independent business including a professional subject to a statutory or regulatory status or whose title is protected, or any private law legal person.

Accordingly, the provisions of a Master Agreement entitling the Non-Defaulting Party to early terminate all outstanding Transactions upon the opening of an Insolvency Proceeding or a Conciliation Proceeding against the Defaulting Party are not applicable to such types of French Counterparties.

They do, however, apply in respect of termination upon occurrence of other Events of Default.

As a result, Articles 7.1.1.6 of each of the Master Agreements and 7.1.1.7 of the AFB Master Agreement and, the 2001 FBF Master Agreement should not apply to Public Entities.

Furthermore, as far as the provisions of the Agreement entitling a Party to early terminate a Transaction upon occurrence of a Change in Circumstances are concerned, Article 7.2.1.2[161] of the Agreement should not apply to a public entity.

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160 Credit institutions may be licensed either as (i) banks, (ii) mutual or cooperative banks, (iii) "*caisses de crédit municipal*", (iv) financing institutions ("*sociétés de financement*") or (v) specialized credit institutions ("*établissement de crédit spécialisés*").

161 "*7.2.1.2 any merger or demerger affecting such Party or any transfer of assets effected by the latter which results in a substantial and obvious deterioration in its business, its assets or its financial condition.*"

Among those entities the following institutions or type of institutions may be listed:

- **the French State ("*Etat français*")**;
- **territorial authority ("*collectivité territoriale*")**;
- **a public establishment ("*établissement public*")** which includes an "*établissement public à caractère industriel et commercial*" ("*EPIC*") and an "*établissement public administratif*" ("*EPA*");
- **Caisse de Dépôts et Consignations as a EPA;**
- the "***Caisse de la dette publique***" and the "***Caisse d'amortissement de la dette sociale***" which are EPA;
- **the French Central Bank ("*Banque de France*")** which is an ad hoc public establishment "*Etablissement Public Ad Hoc*");
- ***Caisse des dépôts et consignations*** which is an EPA;
- **Municipal banks ("*caisse de crédit municipal*")** are local public lending and welfare institutions. They are credit institutions licensed as a *caisse de crédit municipal the* principal purpose of which is to prevent usury through the granting of loans secured by a pledge over goods. Pursuant to Article L. 514-1 II of the M&FC the municipal banks may freely assign the property, the rights and the obligations associated with their activities other than lending secured by pledge (see in this respect the special consideration described under paragraph 8.3);
- the "***Institut d'émission des départments d'Outre-Mer***", and the "***Institut d'émission d'Outre-Mer***" which are a public establishment governed by Articles L. 711-2 and *seq.* and L. 712-4 and *seq.* of the M&FC. Both are acting on behalf of *Banque de France* in the relevant overseas territories.

It should be noted that the status of public entities is governed by French Administrative law and the respective specific status of each institution. Therefore the developments below are of a general nature and for general information purposes Reference may need to be made to specific provisions governing each institution including inter alia the licences provided if any as is the case for instance in respect of the relevant municipal credit institution including inter alia relevant Articles of Association or charter documents.

8.1 Unavailability of Insolvency Proceedings

Public entities may not be subject to Conciliation Proceedings or to Insolvency Proceedings. Indeed, pursuant to Articles L. 620-2, L. 631-2 and L. 640-2 of the Commercial Code which determines the scope of the Bankruptcy Law, its provisions apply to any merchant, craftsman, any farmer, any other individual who carries out an independent business including a professional subject to a statutory or regulatory status or whose title is protected, or any private law legal person.

Accordingly, the provisions of a Master Agreement entitling the Non-Defaulting Party to early terminate all outstanding Transactions upon the opening of an Insolvency Proceeding or a

Conciliation Proceeding against the Defaulting Party are not applicable to such types of French Counterparties.

They do, however, apply in respect of termination upon occurrence of other Events of Default.

As a result, the Events of Default contemplated in Article 7 of the Master Agreements should apply to such Public Entities, provided that Articles 7.1.1.6 of each of the Master Agreements and 7.1.1.7 of the AFB Master Agreement and, the 2001 FBF Master Agreement should not apply to Public Entities.

Furthermore, as far as the provisions of the Agreement entitling a Party to early terminate a Transaction upon occurrence of a Change in Circumstances are concerned, Article 7.2.1.2[162] of the Agreement should not apply to a public entity.

8.2 The provisions of Article L 2311-1 of the "Code Général de la Propriété des Personnes Publiques" provide that the assets ("biens") of public entities ("personnes publiques") may not be attached.

Prohibition of attachment[163] raises the principle of enforcement mode including the restriction to recourse to the remedy of set-off which often has been assimilated to an enforcement procedure.

We do believe, however, that the remedy of set-off and close-out netting should be available to public entities referred to in the Netting Law as the provisions of the French Netting Law which specifically contemplate that public establishment ("*établissements publics*"), local governments ("*collectivités territoriales*"), the French State, the "*Caisse de la dette publique*" and the "*Caisse d'amortissement de la dette sociale", Banque de France*, Municipal bank ("*caisse de crédit municipal*"), the "*Institut d'émission des départments d'Outre-Mer*", and the "*Institut d'émission d'Outre-Mer*" are specifically referred in the French netting law as possible counterparties thereunder under the French netting Law Regime. That specific legislation should in our view be construed as a special derogation and prevail over general principles of general application.

Although the general principle of exemption for enforcement over property owned by public entities is of public policy (*ordre public*), we believe that a set-off provision contractually provided for would be enforceable against public entities which are Qualifying Parties on the basis that Article L. 211-36 of the M&FC should be construed as specifically derogating from said general principle of administrative law. It is indeed generally considered that only a law might authorize a public entity to waive the principle of exemption for enforcement over its assets. Article L. 211-36 of the M&FC should in our view be construed as an exception to the above prohibition insofar as the right of set-off is concerned. As indicated above Article L. 211-36-1 of the M&FC does indeed clearly provide that debts and claims relating to financial obligations described in I of

162 *"7.2.1.2 any merger or demerger affecting such Party or any transfer of assets effected by the latter which results in a substantial and obvious deterioration in its business, its assets or its financial condition."*

163 The general principle of exemption from enforcement procedures over property owned by public entities has been restated by the French Supreme Court on December 21, 1987 (BRGM v/Lloyd Continental: Bull. Civ. I, n°348) which has held than when property is owned by public entities, the principle of exemption from enforcement procedures over such property prevents creditors from resorting to enforcement proceedings governed by private law.

Article 211-36 may be set-off and are entitled to the benefit of close-out netting when an agreement relating to financial obligations so provides.

Any set-off provision of the Master Agreement should therefore be enforceable against the public entities which are Qualifying Parties and would benefit from the favourable close-out netting regime under the French Netting Law insofar as they meet the requirements of the French netting Law.

Finally, Articles R. 541-1 and following of the Code of administrative justice provide that a creditor may institute summary proceedings before the court having jurisdiction to order a public entity to pay a provisional amount with respect to a payment obligation which is not seriously questionable. Any such action could be taken by the relevant creditor prior to the final determination of the amount owed by the public entity.

8.3 Specific provisions applicable to local authorities or local public establishments

A directive (*Instruction n°IOCB1015077C*) dated June 25, 2010 issued by the Ministry of Finance, the Ministry of the Budget and the Ministry of the Interior and replacing a previous instruction n°92-137-MO dated October 27, 1992) (the "**Instruction**") has specified the legal and regulatory requirements applicable to local governments or local public establishments when they enter into forward financial instruments in order to hedge the interest rate risk they may incur.

Public bodies may only enter into financial contracts that are **aimed at hedging risks** (which exclude financial transactions for arbitration or speculative purposes) and in **the public interest (*intérêt général*).**

The Instruction applies to the legal entities of a public nature such as *communes* (municipalities), *départements* (departments), *régions* (regions), *groupements de collectivités* (local governments groupings) and other local public establishments except for *établissements publics sociaux et medico-sociaux, de santé* and *organismes d'HLM* (which are expressly excluded from the scope of the Instruction).

The Instruction lists in its Schedule 2, without being limited to, the hedging financial instruments in which public bodies may enter into which include *inter alia* forward swap, swaption, contingent swap, swap at a reduced rate (*swap à taux bonifié*), zero-premium collars (*tunnel à prime zéro*), certain caps.

The Instruction provides in addition that, as for public bodies, incurrence of borrowings falls within the authority of the deliberating assembly (*assemblée délibérante*) of the relevant public body but may be delegated under certain conditions and as the case may be, to the mayor, to the standing committee of the department of the region (*commission permanente du department ou de la région*) or the president of the general council of the department (*président du conseil général*) or the president of the regional council (*président du conseil régional*) or to the president of the public body[164].

[164] Page 17 of the Instruction.

Finally, the Banking Reform Law has introduced several articles in the French General Local Authorities Code (*Code général des collectivités territoriales*) and in the French Construction and Housing Code (*Code de la construction et de l'habitation*) with respect to conditions in which local authorities (*collectivités territoriales*) or public bodies may enter into loans with credit institutions. This law provides *inter alia* that a financial contract hedging a loan granted by a credit institution cannot result in a breach of the conditions applying to loans granted to public bodies such conditions contemplating inter alia:

- the loan has to be denominated in Euros (or in a foreign currencies if such loan is fully hedged by a swap and for its entire duration);

- the interest rate has to be a fixed rate (or a variable rate under conditions to be determined by order); and

- indexation formulae related to variable rates has to meet criteria of simplicity and predictability with respect to the charges to which the public body might be exposed (to be further determined by order)[165].

9. **<u>Institutions, firm or establishments referred to in Article L. 531-2 of the M&FC (other than Public Entities, Insurance and Reinsurance Companies and collective investment undertakings addressed above), which includes any of the following</u>:**

Those entities are in essence the entities which are exempted from the MIFID requirements as contemplated by Article 2 of the Directive 2004/19/EC of the European Parliament and of the Council of April 21 2004 on markets in financial instruments.

When France transposed the 93/22/CEE investment services directives in 1996 it did elect to structure the French Netting Law in such a manner so that Qualifying parties include in addition to certain regulated entities[166], the entities which were exempted from the application of MIFID some of which may be unregulated entities.

This approach has been maintained in the context of transposition into French Law of the EU collateral directive and subsequently MFID. Therefore the status of each of the below entities should be analysed in the context of their corporate organizational structure and in terms of the provisions of their Articles of Association.

Those entities are the following:

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

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

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165 Articles L.1611-3-1 of the General Local Authorities Code and L.423-17 of the French Construction and Housing Code.

166 It should be noted that France is among the first countries to have adopted a Netting Statute the first one being adopted by the law of December 31 1993.

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

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

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

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

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

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

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

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

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

10. **Clearing house ("*chambre de compensation*")**: a clearing House need to be licensed in France as a Credit Institution and by the AMF.

11. **Corporate form**

Counterparties other than Public entities or common funds which may act as counterparties in France would be organised as a company organized under the French Commercial Code and having its centre of main interest or its head office in France and one of the following legal forms: *société anonyme (SA), société européenne (SE), société en nom collectif (SNC), société en commandite simple (SCS), société à responsabilité limitée (SARL), société en commandite par actions (SCA) or société par actions simplifiée (SAS)* (a "**Company**"). While such corporate entities, if their charter so permits, may act as counterparties to a Master Agreement, the Articles of Association of that entity need to be reviewed in order to ascertain whether they have the capacity to enter into financial contracts.

Branches of such Companies operating abroad should be able to intervene as counterparties subject to the above caveat assuming that they comply with the law and regulation of the country where the branch is organised.

Branches of foreign entities operating in France would need to be registered with the local commercial registry. Branches in France of regulated entities may, as the case may be, need to be passported in respect of EU entities. Otherwise, local requirements need to be complied with including licensing if need be.

It should be noted that such corporate entities are not per se Qualifying Counterparties.

Exhibit 7

Credit Institution Administrative Policy Regime
Credit Institution Separation and Resolution Regime

The Credit Institution Separation and Resolution Regime has been enacted by Law No. 2013-672 relating to the separation and regulation of banking activities (the "**Separation and Resolution Regime**").

Prior to enactment of the Separation and Resolution Regime, the M&FC contained a set of provisions containing a comprehensive Credit institution Administration Policy Regime together with a credit institution insolvency related Resolution Regime.

Both Separation and Resolution Regime and the Credit institution Administration Policy Regime are described in this exhibit.

1. Credit Institution Administration Policy Regime

Pursuant to the provisions of the M&FC relating to the activity and control of credit institutions, credit institutions established in France are subject to the supervision and control of the ACPR.

The ACPR exercises a supervisory watch in respect of compliance of credit institutions with minimum capital requirements including prudential ratios and the compliance with banking and insurance laws and regulations in general. The ACPR is entrusted with the responsibility to license bank and insurance enterprises. Credit institutions are *inter alia* under the obligation to report to the ACPR modifications in their capital structure. Where the banking license is subject to certain conditions, any modification of such conditions is subject to prior approval of the ACPR.

In the context of its control and supervisory function, the ACPR may either make recommendations to a credit institution to take appropriate measures to strengthen its financial condition and may issue injunctions to the effect of restoring or strengthening its financial condition. The ACPR may issue a formal demand to a credit institution to hold own funds at a certain level as contemplated by regulations and to take measures to that effect within a certain timeframe. Furthermore, the Governor of the *Banque de France*, who chairs the ACPR, may invite shareholders of a credit institution to extend to that institution necessary support if the financial situation of such credit institution so justifies.

The ACPR may also, *inter alia*, designate a provisional administrator (the "*administrateur provisoire*") either at the request of the directors of the financial institution concerned when they believe they cannot exercise their functions under normal conditions or, upon its own initiative, when the management of the relevant financial institution cannot be pursued under normal conditions or when certain key executive officers were temporary suspended.

Such "*administrateur provisoire*" shall manage the activities of the financial institution concerned.

Furthermore, where the situation of the credit institution so justifies, the ACPR may *inter alia*:[167]

- prohibit either temporarily or permanently the carrying out of certain transactions and restrict the carrying out of certain operations;
- either temporarily or permanently suspend certain executives or impose their resignation;
- restrict payment of dividends;
- impose financial sanctions.

The ACP may also designate a liquidator ("*liquidateur*") for a financial institution which has been deleted from the list of credit establishments or investment firms or payment institutions, or when the relevant enterprise carries out illegally banking operations or which otherwise breaches the prohibition referred to in Article L. 511-5 of the M&FC[168] and in Article L. 521-2 of the M&FC[169] (Articles L. 612-41 and L. 613-24 of the M&FC). Such "*administrateur provisoire*" or "*liquidateur*" is entrusted with all powers of administration, management and representation of the relevant legal entity. Those powers include the authority to declare the financial institution insolvent, if need be.

2. Credit Institution Insolvency related Resolution Regime

(i) Guarantee Fund

Credit Institutions licensed as such in France are required to adhere to a guarantee fund established pursuant to the provisions of Article L. 312-4 of the M&FC. Its purpose is to indemnify depositors in case of unavailability of their deposits or of other refundable funds.[170]

The Guarantee Fund is established as a legal entity created under private law. It is managed by a management board operating under supervision of a supervisory board. The Minister of Economy, the Governor of *Banque de France*, President of the ACPR or the President of the Financial Market Authority ("*Autorité des Marchés Financiers*") may request to be heard by such bodies.

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167 Those administrative policy powers vested with the ACPR may also be exercised *vis à vis* insurance companies under ACPR jurisdiction.

168 Article L. 511-5 of the M&FC provides that it is prohibited for any person other than a credit institution to conduct banking operations in the normal course of business.

169 Article L. 521-2 of the M&FC provides that it is prohibited for any person other than a payment service provider to carry out payment services, as defined in Article L. 314-1 II of the M&FC in the normal course of business.

170 Are excluded from such refunds deposits or other funds of credit institutions, payment institutions, insurance companies, collective investments undertakings, pension funds, investment firms or persons referred to in Article L. 518-1 (i.e.: the Public Treasury (*Trésor Public*), *Banque de France*, financial services of *La Poste*, the *Institut d'émission des départements d'Outre-Mer*, the *Institut d'émission d'Outre-Mer*, the *Caisse des dépôts et consignations)* or in 1 of Article L. 312-2 of the M&FC (funds received from partners in a partnership, partners or shareholders holding at least 5% of the share capital, directors, members of a managing board or of a supervisory board or managers or funds related to "*prêts participatifs*" (subordinated loans). Other funds may be excluded by order of the Minister of economy.

Resources of such Guarantee Fund are funded by contributions from its members under conditions set by the Minister of Economy. Such resources accrue interest unless losses of the Guarantee Fund cannot be covered by contributions of its members.

Contributions payable by credit institutions affiliated with a central organ referred to in Article L. 511-30 of the M&FC are paid directly by such central organ[171].

The Guarantee Fund may borrow from its members. For that purpose, it may post or request from its members to post security contemplated by agreement.

Any failure by a member to fund its contributions is subject to the sanctions contemplated by Article L. 612-39 of the M&FC and to payment of penalties.

The Guarantee Fund is triggered upon request from the ACPR where the ACPR has concluded that a relevant credit institution is unable to refund, immediately or in the immediate future, funds received from the public under conditions, statutory, regulatory or contractual governing such refund. Intervention of the Guarantee Fund results in deletion of such credit institution from the list of licensed credit institutions.

The Guarantee Fund is subrogated to the rights of the beneficiaries of its intervention up to the amounts which it has disbursed.

As a preventive measure, upon recommendation of the ACPR, the Guarantee Fund may intervene in respect of a credit institution where its situation gives reasons to believe that in the near future deposits or other reimbursable funds will be unavailable taking into account any support from which it may have benefited.

Where the Guarantee Fund accepts to so intervene as a preventive measure it defines, after having sought the advice of the ACPR, regarding the conditions of its intervention. It may in particular subject its intervention to the assignment, in whole or in part, of the business undertaking ("*fonds de commerce*") of the relevant credit institution or the extinguishment of its activity, including as a result of the assignment of its business undertaking.

Funds so disbursed by the Guarantee Fund in the context of a preventive intervention benefit from a superpriority lien referred to in Article L. 611-11 of the French Commercial Code.[172]

171 Central Organs mentioned in Article L. 511-30 of the M&FC are *Crédit Agricole SA*, the central organ of the "*Caisses d'Epargne et des Banques Populaires*" and the "*Confédération Nationale du Crédit Mutuel*".

172 That provision contemplates that in case of opening of a safeguard proceeding, a reorganization proceeding or a judicial liquidation proceeding following a Conciliation Proceeding which resulted in a Conciliation Plan approved by the President of the Commercial Court contemplating the provision of new money made available to ensure the continuity of the enterprise, that new money benefits from a super priority lien up to the amount of the related claim.

For the purposes of the above, the Guarantee Fund may, upon request of the relevant central organ referred to above, participate in the actions undertaken by such central organ by assuming a portion of the cost to which such central organ has been exposed to guarantee the solvency of the credit institution affiliated with such central organ[173].

For purposes of the above, the Guarantee Fund may acquire the shares of such credit institution or, with the consent of the central organ involved, the shares ("*parts sociales*") of its affiliated entity.

(ii) Administration in the context of an Insolvency Proceeding

Where an institution is subject to Insolvency Proceedings, where the situation has justified the designation of a provisional administrator or liquidator, the ACP may, following advice of the Guarantee Fund, and where the interest of depositors so justify, apply to the lower court ("*Tribunal de Grande Instance*") to seek an order:

- to dispose of the shares of the relevant institution held by one or more executives, the price of the shares to be established following a judicial expertise;
- to transfer to a court appointed agent ("*mandataire de justice*") the power to exercise voting rights in respect of those shares;
- to transfer all other shares other than those above.

The price at which such shares are to be transferred is set based on an evaluation methodology applicable in case of transfer of assets with such adjustments as are appropriate in each case taking into account the value of the assets, profits realized, existence of subsidiaries and prospects and where the shares are listed on an exchange, the listed price of shares on such exchange[174].

3. The Credit Institution Separation and Resolution Regime

The ACP was renamed the Prudential Control and Resolution Authority ("*Autorité de Contrôle Prudentiel et de Résolution*") (the "**ACPR**") following the entry into force of the Law No. 2013-672 relating to the separation and regulation of banking activities (the "**Banking Reform Law**") which broadened the scope of the duties of the ACP entrusting the French banking regulator with the duty of supervising and implementing measures for the prevention and resolution of banking crises.

[173] Pursuant to Article L. 511-31 of the M&FC, a central organ takes all actions as may be required to guarantee the liquidity and the solvency of its affiliated entities and of its network as a whole (*"l'ensemble de son réseau"*). Where the situation so requires, it may also, following information to the ACPR, and where the financial situation of relevant affiliates so justifies, decide to merge one or more affiliates, to assign their business undertaking or to dissolve such relevant affiliates.

[174] Article L. 613-25 of the M&FC.

3.1 Bank Separation

The Banking Reform Law[175] states that French credit institutions, financial companies and mixed financial holding companies are prevented as a matter of principle from carrying out certain activities otherwise than through a subsidiary dedicated to such activities where relevant transactions would exceed exposure thresholds to be defined by decree of the Minister of the Economy.

Such activities are the following:

(a) trading on financial instruments for own account of the aforementioned entities **except for the following activities:**

- provision of investment services to the clients;
- clearing of financial instruments;
- hedging of risks incurred by the credit institution or its group within the meaning of Article L. 511-20 of the M&FC (excluding hedging risks incurred by the dedicated subsidiary);
- market making activities;
- the sound and prudent management of the treasury of the group, and financial transactions between credit institutions, financial companies and mixed financial companies, on the one hand, and their subsidiaries belonging to the same group (as defined by Article L. 511-20 of the M&FC) on the other hand;
- the operations of investment of the group within the meaning of Article L. 511-20 of the M&FC;

(b) any unsecured transaction entered into by the credit institution for its own account with (i) leveraged collective investment schemes, (ii) similar investment vehicles or (iii) collective investment schemes themselves invested or exposed to the vehicles defined in (i) and (ii) above, when such investments or exposures exceed thresholds to be determined by the Ministry of economy.

The Banking Reform Law further specifies the scope of certain of the afore-mentioned exemptions (definition of investment services, risk hedging, market making activities some of which such as the market making activities to be set by order of the Minister of economy).

It should be noted that the dedicated subsidiary which may be constituted by the credit institution to perform the afore-mentioned trading activities must be licensed as investment firm or credit institution, and is not authorised to receive deposits from the public that benefit from the deposit guarantee scheme nor to provide payment services to clients. The Banking Reform Law also specifies, inter alia, that the trading subsidiary must comply with prudential ratios on an individual (or sub-consolidated) basis and that the parent credit institution (or financial company and mixed financial company) must obtain the prior authorisation of the ACPR before subscribing to a share capital increase of the trading subsidiary.

175 Article L. 511-47 of the M&FC.

The trading subsidiaries are prevented from carrying out:

- high frequency trading subject to tax under Article 235 ter ZD bis of the General Tax Code;

- transactions on financial instruments using, as underlying assets, an agricultural commodity.

Both the trading subsidiaries and their parent companies must set objectives and limits and adopt organisation rules, rules of conduct and other professional conduct rules allowing them to comply with the afore-mentioned requirements.

In terms of timetable, the Banking Reform Law states that the credit institutions are required to identify, at the latest on July 1, 2014, the activities to be transferred to the trading subsidiary, and then to transfer such activities to the trading subsidiary by July 1, 2015.

The Banking Reform Law provides that the transfer to the dedicated trading subsidiary will not trigger any termination or modification in any other contract to which the above institutions are a party[176].Transfers of executory contracts whatever their legal characterisation in the context of activities to be transferred does not justify termination, amendments of their provisions or acceleration of debts contemplated by the relevant agreements.

While the separation component of the Banking Reform is inspired by the Liikanen report it diverges from the conclusion of such report in some key areas, including inter alia as far as exclusion of market making activities which is perceived as a key tool to facilitate access to liquidity.

3.2 New regime for the resolution and the recovery of credit institutions

The Banking Reform states that credit institutions and investments firms (other than portfolio management companies) exceeding certain balance sheet thresholds set by decree, which are not subject to consolidated supervision, are required to prepare and submit to the ACPR a preventive plan (*plan préventif de rétablissement*) which contemplates various potential recovery modalities, in the event of occurrence of significant impairment of their financial situation.

The ACPR must also adopt for credit institutions and investment firms (other than portfolio management companies) whose balance sheet exceed a threshold set by decree a preventive recovery plan (*plan préventif de résolution*) including specific recovery measures to be taken.

176 The provisions of the Banking Reform Law imposing mandatory separation of activities do not apply to the run-off mode management of financial instruments portfolios existing at the date of promulgation of that law which is July 27, 2013. Transfer of all rights, obligations and assets linked to the activities mentioned in Article L. 511-48 of the M&FC occurs by operation of law without the need to comply with any formality and this notwithstanding any legislation to the contrary.

Where the relevant institution is found to be in default or where it is determined that a default may not be avoided within a reasonable timeframe, the resolution committee of the ACPR may take one or more measures against such institution as further described below.
A default situation occurs where the institution[177]:

- does not comply with own funds ratio requirements;
- is unable to meet its payment obligations immediately or within the immediate future; or
- needs an exceptional public support.

The recovery measures which may be taken by the resolution committee of the ACPR are notably the following[178]:

- requirement of any person subject to ACPR control of such institution to provide such information as may be necessary by the ACPR to decide the adoption of resolution measures including updating and supplements of information made available in the context of living wills;
- appointment of a provisional administrator;
- dismissal of the senior managers of the institution subject to resolution;
- **transfer or mandatory assignment of one or more business units**;
- **recourse to a bridge institution which is due to receive on a provisional basis all or part of the assets of the institution subject to resolution with a view to dispose of the same under conditions set by the ACPR.**

3.3 The effect of the Banking Reform Law

It should be noted that the Banking Reform Law contemplates that when exercising its rights available under the resolution tools vested with it, the ACPR may order the transfer of one or more business units by operation of law under the regime of universal transfer of patrimony to a third party or of assets, rights and obligations to a bridge institution. **It is specified that notwithstanding any legal or contractual provision to the contrary, contracts related to transferred activities are continued and no termination or set-off may occur solely as a result of such transfer or assignment.**

It is further specified that transactions governed by contracts covered by Article L. 211-36-1 of the M&FC (i.e. the French Netting Law which covers transactions on financial instruments including derivatives **but also repos** and securities lending transactions) when transferred under the resolution tool regime to a third party or to a bridge institution may only be transferred **as a whole** (i.e. all transactions under one contract and not just part of them).

177 See L. 613-31-15 of the M&FC.

178 See L. 613-31-16 of the M&FC.

Termination rights (i.e. close-out netting) **may not be exercised solely on the ground that a resolution measure has been exercised unless a transfer pursuant to the exercise of the resolution powers does not cover such contracts.** Furthermore in the exercise of its resolution authority, the ACPR may elect to **suspend the exercise of termination and close-out remedies under contracts governed by L. 211-36-1 of the M&FC in respect of all or part of the relevant contract concluded with the entity under resolution until 17:00 on the business day following publication of the ACPR.**

From the above the following points need to be highlighted:

- in respect of mandatory separation of activities conducted for own account to be transferred to a dedicated subsidiary, thresholds will be set by decree which at this juncture have not been published;

- resolution measures apply to institutions whose balance sheet exceed a threshold set by decree;

- to the extent transactions on financial instruments are transferred either to a third party or to a bridge institution in the context of exercise of resolution powers by the ACPR, such contracts related to transferred activities may only be transferred as a whole and are continued and no termination or set-off may occur **solely as a result** of such transfer or assignment[179];

- the above restrictions regarding limitations to the exercise of termination rights do not apply if the relevant contracts are not the subject of a transfer in the context of exercise of resolution powers;

- in the exercise of its resolution authority, the ACPR may elect to **suspend the exercise of termination and close remedies under contracts governed by L. 211-36-1 of the M&FC in respect of all or part of the relevant contract concluded with the entity under resolution until 17:00** on the business day following publication of the ACPR.

- cause the deposit and resolution guarantee fund (*fonds de garantie des dépôts et de résolution*) to intervene while ensuring that no contagion effect results from the resolution to other participants of the deposit and resolution guarantee fund;

- transfer to the deposit and resolution guarantee fund or to a bridge institution the shares of the entity subject to resolution;

- depreciate, cancel or convert capital and other liabilities items in order to absorb losses in accordance with the following order of priority:

    - shares or securities evidencing a proportion of equity capital;

179 When contracts have been transferred as stated above within the scope of the exercise by the ACPR of its resolution authority this would in our view permit to exercise termination rights post transfer upon occurrence of an event of default occurring post transfer.

- subordinated debt and other low ranking instruments where issue conditions contemplate absorption of losses, those instruments being either depreciated, cancelled, or converted up to the losses incurred;

- other obligations, the terms of issue of which contemplate reimbursement in case of liquidation only following satisfaction of secured and unsecured obligations such obligations being either depreciated, cancelled or converted up to the losses incurred. Losses are applied pro rata among creditors benefiting from the same order of priority by application to the principal amount or to the outstanding amounts which have matured pro rata to their value;

- require from the institution, subject to resolution, to issue new share capital or other title instruments or equity instruments, including preference shares or conditional convertible instruments;

- impose to the entity under resolution to issue new shares or other equity-own fund instruments;

- issue within a time frame set by decree a prohibition to make any payment on account of liabilities subject to depreciation, cancellation or conversion into capital in order to absorb losses and arising prior to the ACPR decision which prohibition shall apply notwithstanding any legislation to the contrary;

- limit or prohibit the carrying out of certain transactions by the institution under resolution;

- limit or prohibit distribution of dividends;

- **suspend the exercise of termination and close remedies under contracts governed by L. 211-36-1 of the M&FC in respect of all or part of the relevant contract concluded with the entity under resolution until 17:00 on the business day following publication of the ACPR decision under conditions set by decree.**

The ACPR is under the duty to ensure that no shareholder or creditor incurs losses which would be in excess of those which he would incur under a judicial liquidation proceeding.

The preventive recovery plan (*plan préventif de rétablissement*) or the preventive resolution plan (*plan préventif de résolution*) is adopted on a consolidated basis where the group is subject to consolidated supervision.

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