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LEGAL OPINION REGARDING THE ENFORCEABILITY OF CLOSE-OUT NETTING AND THE VALIDITY AND ENFORCEABILITY OF COLLATERAL AGREEMENTS, AND OTHER RELATED ISSUES, UNDER THE EFET GENERAL AGREEMENT CONCERNING THE DELIVERY AND ACCEPTANCE OF NATURAL GAS

HUNGARY

1 January 2019

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

EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas

Dear Sirs,

We have been asked to give an opinion on the enforceability of close-out netting provisions of the EFET General Agreement Concerning the Delivery and Acceptance of Natural gas ("**General Agreement**") and the validity and enforceability of collateral provided under the EFET Credit Support Annex to the EFET General Agreement ("**Credit Support Annex**") as well as other related issues outlined in your instruction letter ("**Instruction Letter**"). These issues include the validity and enforceability of other provisions of the EFET General Agreement in respect of issues such as Limitation of Liability and Force Majeure and their respective consequences ("**General Enforceability**"), the conditions that have to be met for an Individual Contract to fall within the scope of the netting provisions of the relevant EFET General Agreement and for a Confirmation or other non-written documentation to be eligible for evidencing a legally binding Individual Contract ("**Confirmation Practices**"), the validity and enforceability of the EFET General Agreement and how this may be affected when certain provisions are modified by the parties ("**Core Provisions**"), the enforceability of the elections made with respect to governing law, arbitration and jurisdiction, especially if a foreign law has been chosen ("**Governing Law, Arbitration and Jurisdiction**"), and the existence of specific licensing requirements or currency exchange control laws that might impact the enforceability of Individual Contracts entered into under the relevant EFET General Agreement ("**Regulatory Regime**").

This opinion (the "**Opinion**") discusses the issues outlined above in substantially the same order as shown in the Instruction Letter.

The Opinion does not relate to any Individual Contract under the General Agreement and does not give an opinion on any tax, accounting, regulatory or related matters other than to the extent we express an opinion hereunder.

TABLE OF CONTENTS

EXECUTIVE SUMMARY 6

A. DOCUMENTS CONSIDERED 9

B. SCOPE OF REVIEW 10
B.I ASSUMPTIONS 10
B.II LIMITATIONS 11
B.III POTENTIAL PARTIES 14
B.IV PRODUCT COVERAGE / COMMODITY TRANSACTIONS 15

C. ISSUES AND ADDITIONAL ASSUMPTIONS 16
C.I ENFORCEABILITY OF CLOSE-OUT NETTING 16
C.II MULTIBRANCH PARTIES 51
C.III COLLATERAL 56
C.IV GENERAL ENFORCEABILITY 64
C.V CONFIRMATION PRACTICES 66
C.VI CORE PROVISIONS 69
C.VII GOVERNING LAW, ARBITRATION AND JURISDICTION 70
C.VIII REGULATORY REGIME 71
C.IX OTHER PROVISIONS 76

D. ADDRESSEES, FORM AND TENOR, EXECUTIVE SUMMARY AND OTHER ISSUES 77
D.I ADDRESSEES 77
D.II EXECUTIVE SUMMARY 77

SUMMARY ON THE MOST IMPORTANT LEGISLATIVE CHANGES SINCE 1 AUGUST 2016 (DATE OF THE PREVIOUS OPINION)

Below is a brief summary of the most important changes in the laws of Hungary since 1 August 2016, the date of the previous legal opinion regarding the enforceability of close-out netting and the validity and enforceability of collateral agreements, and other related issues, under the EFET General Agreement concerning the delivery and acceptance of natural gas.

This summary does not intend to be comprehensive and shall not be read as such; it only highlights the most significant legislative changes.

All capitalized terms not otherwise defined herein shall have the meaning ascribed to same in the Opinion.

Please note that the below changes do not have material effect on the core conclusions. Those amendments in question, however, indicate the proper modification of the current opinion.

1. RELEVANT CHANGES OF THE INSOLVENCY ACT

With the adoption of the new EU Insolvency Regulation the Insolvency Act has been amended with new provisions regarding cross-border insolvency proceeding under the EU Insolvency Regulation. The Insolvency Act also amended – among others – definitions and procedural details in connection with the insolvency practitioners, procedural deadline (e.g. deadline for reviewing the creditor's claims and challenging the contracts by the liquidator).

2. RELEVANT CHANGES OF FINANCIAL REGULATIONS

As from 3 January 2018 several financial regulations changed including the Investment Firms Act, the Capital Market Act and the Banking Act, in order to ensure compliance with MiFID II.

The Investment Firms Act implemented most of the MiFID II provisions. Therefore, the scope and the exemptions from the scope of the Investment Firms Act changed in line with MiFID II. The Investment Firms Act implemented the so called ancillary activity exemption, consequently the Investment Firms Act shall not apply to persons or bodies dealing on own account, including market makers, in commodity derivatives or emission allowances or derivatives thereof if those activities are ancillary activities to their main business and comply with further requirements detailed below. This means that if a potential counterparty's main business activity is trading with financial instruments such as emission allowances or commodity derivatives, the potential counterparty will fall under the scope of the Investment Firms Act and its activity will require a banking licence from the HNB. If this trading activity is ancillary only, then the potential counterparty may apply for an exemption from the HNB and then the banking license is not necessary. Notwithstanding the above mentioned exemption, the regulations regarding limits in commodity derivatives, position, as well as management control mechanism and certain reporting obligations (if they operate on MTF or OTF) shall be applied to exempted persons or entities.

The Investment Firms Act also implemented the "REMIT Carve Out" rule (Annex 1 Section C (6) of MiFID II. The REMIT Carve Out is an exemption regarding options, futures, swaps and any other derivative contracts related to wholesale energy products traded on organized trading facility (OTF) that must be physically settled. These transactions shall not be qualified as financial instruments and consequently do not require banking license.

The definition of financial instruments also changed in line with Annex I Section C of MiFID II. Due to these changes emission allowances now are qualified as financial instruments.

In order to ensure the regulation of trading venues, MiFID II introduced a new trading platform organized trading facilities (OTF). OTF is a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract. The Investment Firms Act also has been amended with the regulations on the licensing and operation of organised trading facilities (OTF). Wholesale energy products traded on OTF that must be physically settled are not subject to MiFID II.

3. RELEVANT CHANGES OF ENERGY-RELATED REGULATION

3.1 Energy law requirements

3.1.1 Changes of the eligibility criteria for trading activities

Due to the changes of the Electricity Act as well as the Gas Act in 22 December 2016, the eligibility criteria for obtaining a natural gas trading licence changed slightly. Pursuant to the amendments, not only business associations (corporations, co-operations, etc.) but also natural persons (sole practitioners) have become entitled to apply for a trading licence.

Another relevant change may be that the text of the Gas Act as well as of the Electricity Act has been amended in a way that for the application of a full-scale electricity/gas trading licence the establishment of a local company or branch office in Hungary is no longer required. It means that EU/EEA entities are now entitled to obtain a full-scale trading licence without establishing a Hungarian branch or company.

The Electricity and Gas Act distinguish between a so-called full-scale electricity trading licence, which entitles its holder to directly supply customers, and a limited trading licence, which entitles its holder to wholesale (trader to trader) trading activity only.

The Gas Act and the Electricity Act was also impacted by MiFID II. Pursuant to the implementation of MiFID II the options, futures and any other derivative contracts relating to commodities shall constitute to be financial instruments. Therefore, the Gas Act as well as the Electricity Act were amended with a regulation which states that on the regulated electricity and natural gas market (i.e. exchanges) only spot transactions within the meaning of Article 7(2) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive may be concluded. This means that commodity transactions relating to derivative contracts may not be concluded on the regulated electricity and natural gas market. This change entered into force as of 3 January 2018.

The above legislative changes may not have a relevant impact on the main conclusion of the Opinion, however, the amendment of the Opinion (with special regard to point C.VIII.1) may be necessary according to the above.

3.2 Harmonisation with EU-level capacity allocation mechanisms

Further changes have been inserted into the Hungarian gas and electricity legislation within the framework of the implementation of EU-level rules on capacity allocation mechanisms and congestion management.

* * *

EXECUTIVE SUMMARY

On the basis of the assumptions and subject to the limitations set out in this Opinion, and particularly in point B (page 10), this is an executive summary of the opinions expressed in this Opinion. This executive summary does not form part of this Opinion and is provided for ease of reference only, and in no circumstances may be interpreted or read as amending, affecting or having and interpretative effect on the opinions in this Opinion.

Enforceability of Close-out Netting

(a) Although there has been several changes regarding the financial regulations due to MiFID II entering into force, these modifications have not changed the main conclusion of the Opinion regarding the enforceability of close-out netting since the enforceability of close-out netting is, in most cases, still dependent on whether (i) the respective transaction falls under the Capital Market Act's close-out netting definition, (ii) who were the parties and (iii) when the netting has been carried out.

(b) Close-out netting in a pre-insolvency scenario is generally enforceable (please refer to points C.I and C.I.2 of this Opinion on pages 16 and 48).

(c) Early termination by notice in the event of insolvency will in most cases be upheld by the Hungarian courts (please refer to point C.I.1.1 (a) on page 19). Early termination with regard to automatic termination will in most cases be upheld by the Hungarian courts, but specific considerations apply in this respect (please refer to points C.I.1.1 and C.I.1.3 of this Opinion on page 24). It is important, however, that even if subject to the referred additional considerations Automatic Termination could trigger the termination of the Agreement, this would not necessarily result in the enforceability of the netting provisions. Beyond the scope of close-out netting agreements defined by the Capital Market Act the effects of netting could be achieved through set-off, which is, however, not automatic. The net claim can only be made due and payable once notified to the debtor (liquidator). Therefore, regardless of the effectiveness of the termination, the effect of the netting (and thus its enforceability) depends on the delivery date of the netting (set-off) statement, as further discussed below.

(d) Enforceability of the netting provisions of the EFET General Agreement (the netting of all positive and negative Settlement Amounts in determining the Termination Amount) in the event of insolvency depends on the (i) categorization (legal nature) of the Individual Contract (Commodity Transaction) under the EFET General Agreement; and (ii) the date of delivery of the netting (set-off) statement (please refer to point C.I.1.4 of the Opinion on page 28).

(1) In bankruptcy proceedings, if the Individual Contracts are eligible for inclusion in a close-out netting agreement defined by the Capital Market Act, and at least one of the contracting parties is an institutional counterparty, the netting provision of the EFET General Agreement will generally be enforceable (please refer to point C.I.1.4 (a)(1) of this Opinion on page 28). In any other case the netting provisions of the EFET General Agreement will only be enforceable if the netting (set-off) statement is delivered to the other Party before the commencement date of the bankruptcy proceedings (please refer to point C.I.1.4(a)(1) of this Opinion on page 28).

(2) In liquidation proceedings, if the Individual Contracts are eligible for inclusion in a close-out netting agreement defined by the Capital Market Act, the netting provision of the EFET General Agreement will generally be enforceable, provided that the relevant settlement date is earlier than the expiry of the 40-day deadline set for the notification of creditors' claims (please refer to point C.I.1.4 (a)(1)) of this Opinion on page 28). In any other case the netting provisions will only be enforceable if the netting (set-off) statement is delivered to the other Party before the commencement date of the insolvency proceedings. Following the commencement date of the liquidation proceedings the creditor will not be entitled to report (and the liquidator will not be obliged to enforce) the net claim, since this right (obligation) is only recognized by the Insolvency Act in respect of close-out netting agreements within the definition of the Capital Market Act (please refer to point C.I.1.4(b)(2)) of this Opinion on page 31).

(e) Termination rights (whether by notice or automatic) and thus close-out netting will not be enforceable under the special liquidation regime applicable to economic operators of strategic importance (please refer to point C.I.1.73.2(f) of this Opinion on page 44).

(f) The fact that a Hungarian Party A has conducted business under the EFET General Agreement on a multibranch basis prior to its insolvency would not change our conclusions regarding the Enforceability of Close-out Netting (please refer to point C.II.1 of this Opinion on page 51). Based on the Hungarian legal concepts governing Hungarian branches of foreign entities, we understand that the enforceability of the Foreign Multibranch Party structure will be limited to cases where the Hungarian Branch of Party F is a financial branch (please refer to point C.II.2 of this Opinion on page 52).

Collateral

(a) Pursuant to the previously applicable rules of the Civil Code, any clause on the transfer of ownership, other right or claim for the purpose of securing a pecuniary claim was null and void, with the exception of the collateral arrangements provided for in the Collateral Directive. The amendment of the Civil Code, however, has abolished the above prohibition of establishing fiduciary collateral arrangements in business-to-business relations. Due to this change, the nullity of fiduciary collateral arrangements only applies in the event that the fiduciary collateral is provided by a consumer. According to the above, it is now allowed in the future in business-to-business commercial relationships under the laws of Hungary to establish fiduciary collateral arrangements in a form differing from those defined in the Collateral Directive (with regard to the generally applicable constraints of the civil law). This change of Section 6:99 of the Civil Code is effective as from 1 July 2016. Transfer of Cash as a security deposit is also a viable alternative, however, in this case the enforceability of the collateral in an insolvency scenario may be limited (please refer to point C.III.2.1 of this Opinion on page 57).

(b) The validity of the assignment of bank guarantees may not necessarily be upheld by Hungarian courts, the transferability of a guarantee is subject to the wording of the respective guarantee. If a Letter of Credit is issued directly for the benefit of Party B, then such Letter of Credit will be valid and enforceable according to its terms and conditions regardless of the commencement of any insolvency proceeding concerning Party A (please refer to point C.III.2.2 of this Opinion on page 59).

General Enforceability and Core Provisions

Based on the assumptions and subject to the limitations and opinions set out in this Opinion, we understand that

(a) the documents listed in point A are generally enforceable under the laws of Hungary (please refer to point C.IV.1 of this Opinion on page 65); and

(b) none of the elections as suggested in the EFET General Agreement or any of the above Annexes (including the EFET Credit Support Annex) would change the substance of our conclusions reached in respect of the Enforceability of Close-out Netting (please refer to point C.VI of this Opinion on page 69).

A. DOCUMENTS CONSIDERED

For the purpose of this Opinion the following documents were considered in accordance with the Instruction Letter.

- EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0(a), published 11 May 2007);
- EFET Credit Support Annex to the General Agreement (Version 2.0, published May 2010);
- EFET Allowances Appendix (Gas) ("Phase IV (Gas) Appendix") to General Agreement Concerning the Delivery and Acceptance of Gas Version 2.0 (a)/May 11, 2007 (Version 4.0/February 28, 2018);
- EFET Allowances Appendix (Gas) to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 3.0, published 3 April 2012);
- EFET Sample Amendment Agreement to § 14 (VAT and Taxes), the definition of "Other Tax" and "Zero-Rated" in Annex 1, and the Election Sheet to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published July 2007);
- EFET Sample Amendment Agreement to § 8 (Remedies for Failure to Deliver and Accept the Contract Quantity) of the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published October 2005);
- EFET GasPool Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas Version 2.0/January 6, 2003 and Version 2.0(a)/May 11, 2007 (Version 1.1(a), published 1 March 2012);
- Change Letter to amend § 14 (VAT and Taxes) of the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 16 December 2013)

For the purpose of Part C.V (Confirmation Practices) only:

- EFET Electronic Confirmation Agreement (published 28 June 2005);
- Confirmation of Allowance Transactions (including AEUA, EUA, Eligible Kyoto Unit Transactions) (Fixed Price, Third Compliance Period (Phase 3) and Fixed Price, Second Compliance Period (Phase 2) to the Allowances Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 3 April 2012);

For the purpose of Part C.VI (Core Provisions) only:

- EFET Cross Product Payment Netting Agreement (Version 1, published 20 October 2005);
- EFET Master Netting Agreement (Version 1.0, published June 2010);

- CPMA Cross-Product Master Agreement (Version 1.0, published 16 February 2000) as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement (Version 1.0, published 23 June 2003);
- EFET Cross-Product Credit Support Annex to the CPMA Cross-Product Master Agreement (Version 1.0, published 23 June 2003);
- EFET Credit Support Annex to the Master Netting Agreement (Version 1.0 published February 2011);
- EFET Individual PRISMA Gas Capacity Contract (version 2.0, published 15 October 2014);
- EFET Individual PRISMA Gas Capacity Contract (version 1.0, published 7 May 2014); and
- Guidance Notes for the Individual PRISMA Gas Capacity Contract (published 14 May 2014).

B. SCOPE OF REVIEW

B.I ASSUMPTIONS

B.I.1 General Assumptions

The general assumptions on which the Opinion is based are the following, in accordance with the Instruction Letter.

- Two counterparties enter into the EFET General Agreement and at least one of the counterparties is incorporated or organised or has its centre of main interest in Hungary ("**Party A**").
- Party A is a corporation, financial institution or other entity as further described in Appendix A.
- The relevant EFET General Agreement is governed by the laws of Hungary.
- Each EFET General Agreement and of the above Annexes (including the Credit Support Annex) is enforceable under the laws of any jurisdiction (other than the laws of Hungary) and each counterparty has duly authorised, executed and delivered, and has the capacity to enter into, each document.
- On the basis of the terms and conditions of the EFET General Agreement and other relevant factors, and acting in a manner consistent with the intentions stated in the EFET General Agreement, the counterparties over time enter into a number of Individual Contracts which include all of the Individual Contracts described in Appendix B.
- The Individual Contracts provide for the physical delivery of commodities, certificates or emission rights in exchange for cash. All products, with the exception of emission allowances and derivatives thereon, may only be settled physically and are traded an OTF (former non-MTF). In accordance with the Instruction Letter additional assumptions are set forth in the relevant part of the Opinion in relation to the specific issue analysed.

B.I.2 Further assumptions

In addition to the assumptions given in the Instruction Letter, the opinions in this Opinion are given on the basis of the assumptions and are subject to the limitations set out under this point below in each case in their entirety. The opinions given in this Opinion are strictly limited to the matters expressly stated under point C (*Issues and Additional Assumptions*, page 16) below and do not extend to any other matters.

The opinions set out in this Opinion have been made on the assumptions:

(a) That the EFET General Agreement and the Individual Contracts are legally binding and enforceable against both Parties under the laws by which they are expressed to be governed, if not the laws of this jurisdiction and that none of the opinions expressed below will be affected by the laws (including, without limitation, the insolvency laws and the public policy) of any jurisdiction outside Hungary.

(b) That no Material Reason for termination as outlined in § 10.5 (Definition of Material Reason) with respect to a Party has occurred and is continuing when entering into this EFET General Agreement.

(c) That the EFET General Agreement and any Individual Contracts under it are entered into prior to the formal commencement of any insolvency proceedings against either Party.

(d) That both Parties have all licenses, authorisations, consents and approvals required by any applicable laws to enter into the EFET General Agreement and any Individual Contracts and that the EFET General Agreement and any Individual Contracts comply with the natural gas and financial sector legislation and regulations in all relevant jurisdictions.

(e) That the EFET General Agreement and Individual Contracts are mutual between the Parties in the sense that each is personally and solely liable for its own account as regards obligations owing by it and is the sole beneficial owner of obligations owed to it.

(f) That the EFET General Agreement and all Individual Contracts under it were entered into, and each delivery and payment made thereunder were made at arm's-length so that no element of gift or undervalue from one Party to the other Party is involved and without any intention of a Party to prefer the other Party in the event of its insolvency.

B.II LIMITATIONS

The opinions set out in this Opinion are subject to the following limitations:

B.II.1 Limitations regarding the enforceability of claims

(a) In this Opinion "enforceable" means that an obligation is of a type which the Hungarian courts enforce. It does not mean that those obligations will be enforced in all circumstances in accordance with the terms of the relevant Agreement. In particular:

(1) enforcement of the obligations under an Agreement may be limited by the general principle of good faith. Courts may not grant enforcement in the event they take the view that a right has not been exercised in good faith or that it has been exercised in such a manner as to constitute an abuse of rights (in Hungarian: "*joggal való visszaélés*");

(2) enforcement may be limited by the provisions of Hungarian law applicable to agreements held to have been frustrated by events happening after their execution;

(3) enforcement may be further refused by Hungarian courts, if the recognition of the enforceability of the obligation would manifestly be contrary to Hungarian public policy (in Hungarian: "*közrend*"), or it would be irreconcilable with an earlier judgement rendered by Hungarian courts in a dispute between the same parties on the same basis; or if the jurisdiction of the other court rendering the judgement the enforcement of which is sought in Hungary is in conflict with Hungarian rules pertaining to special or exclusive jurisdiction; and

(4) claims may become barred under statutory limitations or may be or become subject to a defence of set-off or counterclaim.

(b) A party to an agreement may be able to avoid its obligations under that agreement (and may have other remedies) where it has been induced to enter into that agreement by a misrepresentation and the Hungarian courts will generally not enforce an obligation if there has been fraud.

(c) Under the laws of this jurisdiction, where any Party is vested with discretion or may determine a matter, the laws of this jurisdiction may require that such discretion is exercised or determination made reasonably. Any provision in the EFET General Agreement providing that any calculation or certification is to be conclusive and binding will not be effective if such calculation or certification is fraudulent, incorrect, arbitrary or shown not to have been given or made in good faith and will not necessarily prevent judicial enquiry into the merits of any claim by any Party thereto. The courts of this jurisdiction may regard any calculation, determination or certification as no more than *prima facie* evidence of the matter calculated, determined or certified.

(d) Under the laws of this jurisdiction, unless the agreement stipulates otherwise, a party to an agreement is not entitled to terminate it upon default by the other party of obligations or covenants which are merely accessory or complementary to the main payment and/or delivery obligations or upon the occurrence in respect of the other party of any event other than an event which may adversely and materially affect the creditworthiness of such other party or its ability to comply with its obligations under the relevant agreement.

B.II.2 Other limitations

(a) We express no opinion as to matters of fact.

(b) We express no opinion as to the validity and enforceability of any provisions of any master trading agreements other than the EFET General Agreement. We express no opinion as to the validity and enforceability of any provisions of the EFET General Agreement other than those to which express reference is made in this Opinion.

(c) We express no opinion as to whether the method for settling the claims arising from the Individual Contracts under the EFET General Agreement is acceptable and recognised on the market for transactions set out in Appendix B to the Instruction Letter and this Opinion, or whether it is eligible for recognition for risk-reducing or other similar purposes.

(d) Based on the Instruction Letter we were not requested to analyse, and therefore we do not express opinion on the application of the terms of the EFET General Agreement if termination is triggered by insolvency of a Party's Credit Support Provider.

(e) If a Party to an Agreement is controlled by or otherwise connected with a person (or is itself) resident in, incorporated in or constituted under the laws of a country which is the subject of United Nations, European Community or Hungarian sanctions implemented or effective in Hungary, or is otherwise the target of any such sanctions, then the obligations of the other Party to that Party under the EFET General Agreement may be unenforceable or void.

(f) The opinions given in this Opinion are governed by and relate only to Hungarian law as applied by the Hungarian courts as at today's date. We express no opinion on and consider the impact or application of any laws and regulations other than Hungarian law (as applicable), even where, under Hungarian law, any foreign law falls to be applied. In this Opinion Hungarian legal concepts are expressed and described in the English language rather than in their original form and such expressions and/or descriptions may not be fully identical in their meaning to the underlying Hungarian law concepts. Therefore, this Opinion is issued and may only be relied upon the express condition that any issues of interpretation or liability arising hereunder will be governed by and construed in accordance with Hungarian law and all disputes in relation to this Opinion will be brought before the courts of Hungary.

(g) According to Act CLXXVII of 2013 on the temporary provisions relating to the entering into force of the Civil Code, contracts that existed at the time of entering into force of the Civil Code on 15 March 2014 shall be governed by the laws effective prior to the entering into force of the Civil Code, unless the contracting Parties agree that their contract shall be governed by the Civil Code. Also, the provisions of the Civil Code on pledges (including security deposits) shall apply to those pledges that are created by a contract concluded after the entry into force of the Civil Code. Thus, the opinions in this Opinion which are based on civil law concepts (e.g. under points C.III, C.IV and C.V on pages 56, 64 and 66 respectively) shall apply in respect of contracts entered into following the entry into force of the Civil Code. In respect of contracts entered into before 15 March 2014, the former version of the Opinion dated 1 March 2013 shall remain valid.

(h) We express no opinion regarding financial instruments with the exception of emission allowances.

(i) We express no opinion regarding the application of Directive 98/29/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities.

B.III POTENTIAL PARTIES

At this section we aim to provide a short overview of the potential parties listed in Appendix A.

Trading in natural gas (that is for-profit business operations involving the purchase and sale of natural gas for purposes other than own use, as defined by the Gas Act) is an activity subject to licence in Hungary. From a corporate law viewpoint this limits the scope of potential counterparties to those types of entities (corporations) which are eligible for obtaining the necessary licence (please refer to point C.VIII (*Regulatory Regime*), on page 71). With respect to this some of the types of parties listed in Appendix A are already excluded from the scope of potential parties (i.e. municipalities, counties, associations of local government, and quasi-governmental entities) (publicly-owned corporations are principally treated in the same way as ordinary corporations).

The other group of potential parties is defined on the basis of the specific activity pursued by the corporation (e.g. banks, financial service providers, etc.). These types of potential parties (as well as the types of transactions envisaged in Appendix B) apparently go beyond the traditional meaning of pursuing physical trading (delivery and acceptance) of natural gas. The Investment Firms Act states, in accordance with the MiFID II, that its provisions do not apply to *"persons or bodies dealing on own account, including market makers in commodity derivatives or emission allowances or derivatives thereof, excluding persons or bodies who deal on own account when executing client orders, provided that: (i) for each of those cases individually and on an aggregate basis this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Act or the provision of financial service activities under the Banking Act, or acting as a market maker in relation to commodity derivatives; (ii) those persons or bodies do not apply a high-frequency algorithmic trading technique, and (iii) those persons or bodies notify annually the HNB that they make use of this exemption and upon request report to the HNB the basis on which they consider that their activity under this Paragraph is ancillary to their main business."* However, provisions on the energy regulatory side are missing. The Gas Act does not specify any exemptions from its scope with respect to the provisions of the Investment Firms Act (traders trading in natural gas or its derivatives). The lack of clear allocation of regulatory (including licensing) competences between the two regulatory sectors might cause practical difficulties, for instance, in view of the limitations on the scope of activities which financial institutions and similar entities may engage in, as prescribed by the financial regulatory rules.

Finally, it is important to emphasise that further to the General Assumptions it is possible that Party A is not an entity incorporated under the laws of Hungary but only has its main centre of interest in Hungary. Moreover, as further detailed under point C.VIII (*Regulatory Regime*, page 71), foreign entities may engage in trading in natural gas in Hungary without having any permanent establishment in Hungary. Therefore, potential parties may also be entities incorporated under a foreign law, in which case we are not in the position to give any opinion respectively.

Based on the above, please refer to Appendix A regarding the potential parties to the Agreement.

B.IV PRODUCT COVERAGE / COMMODITY TRANSACTIONS

We were required to assume that the Parties enter into such types of Commodity Transactions under the EFET General Agreement as described under Appendix B.

By way of introduction, without identifying or analysing the nature of these Commodity Transactions under the laws of Hungary, we are of the view that the transactions described in Appendix B go beyond the scope of traditional physical trading in natural gas, for which purpose the EFET General Agreement was originally drafted. The conclusion of such transactions under the EFET General Agreement would require significant amendments to the EFET General Agreement, which might strain the original scope of the Agreement. Certainly, we were not required to opine on the likelihood of entering into such types of transactions under the EFET General Agreement. However, further to our informal and non-representative enquiry, Hungarian traders are apparently not keen on entering into such transactions under the EFET General Agreement's regime, but rather prefer to use standard financial master agreements for these purposes.

Notwithstanding the above, under this point we analyse whether the transactions listed in Appendix B could be covered by the definition of close-out netting of the Capital Market Act and if the other requirements under the Insolvency Act are fulfilled, could enjoy special treatment under the Insolvency Act. Section 2 (15) and Section 2 (21) of Act CCXVII of 2012 on the participation in the Union emission trading scheme of greenhouse gas emission allowances and the implementation of the decision on the effort of Member States to reduce their greenhouse gas emissions define emission allowance (including allowance for aviation) as a *"valuable right allowing to emit one tonne of carbon dioxide equivalent within a specified period in order to comply with the obligations under this Act"*, and Section 28 provides that allowances may be freely transferred between persons (natural or legal persons) seated in a Member State of the EEA, and between persons (natural or legal persons) in third countries where such allowances are recognised.

In line with Annex 1, Section C of the MiFID II, Section 6 (l) of the Investment Firms Act emission allowances are financial instruments. Accordingly, *"green house gas emission allowance units and other rights of emission air polluting substances consisting of any units recognized for compliance with the requirements of Act CCXVII of 2012 on Participating in the Scheme for Greenhouse Gas Emission Allowance Trading Within the Community and in the Implementation of the Decision on Effort Sharing"* are defined as financial instruments.

Previously the Capital Market Act defined emission allowances as commodities. We however, note that under, either commodities or financial instruments could be covered by close-out netting definition if those relate to a transaction specified in the definition (C.I). Furthermore, if one of the Parties qualifies as financial institution or investment firm the Resolution Act could also be applied to their agreement which could result in further protection in respect of the Parties' agreement (seeC.I.1.7 3.2(b)).

The following transactions are listed in Appendix B: Commodity Forward, Commodity Option, Commodity Swap and Physical Commodity Transactions.

Based on the definition of close-out netting in the Capital Market Act (please refer to point C.I on page 16), which allows for the inclusion in a netting agreement *"some other similar transactions involving commodities [...] concluded outwith stock exchanges"* and does not exclude physical commodity transactions per se (as defined in Appendix B), according to the literal interpretation of the provisions it may be concluded that physical commodity transactions as OTC commodity spot transactions are eligible for inclusion in a netting agreement and are enforceable transactions under the close-out netting provisions of the EFET General Agreement (provided that the other preconditions of close-out netting are fulfilled). At the same time, based on a contextual (integrated) and/or purposive approach it may also be argued that the Capital Market Act is not to regulate bilateral commodity transactions between classic commodity traders, unless they fall under the scope of the financial regulations, such as EMIR. Indeed, the changes to the Capital Market Act, including the definition of close-out netting, were introduced by an act which aimed at introducing the necessary changes in the financial laws of Hungary in relation to implementation of EMIR, which does not cover energy spot transactions.

We are of the view that based on the amended definition of close-out netting the eligibility of commodity spot transactions for inclusion in a netting agreement can be reasonably argued. However, given the lack of precedent and relevant legal commentary, there is a level of legal uncertainty regarding the classification of commodity spot transactions and the courts' approach to this question.

The other Commodity Transactions listed in Appendix B (Commodity Forward, Commodity Option and Commodity Swap) could also fall within the rather broad and vague class of *"other similar transactions involving commodities [...] concluded in a stock exchange, outwith stock exchanges"* referred to above. Also, they may also classify as "derivatives" for the purpose of the close-out netting definition of the Capital Market Act.

Since MiFID II entered into force, the definition of financial instruments considerably enlarged. This means that transactions listed in Appendix B may be qualified as financial instruments and could fall under the Capital Market Act's close-out netting definition.

Transactions concerning emission allowances, certificates and capacity rights shall be qualified as financial instruments under the Investment Firms Act. Commodity Forward, Commodity Option and Commodity Swap transaction concerning natural gas shall not be construed as financial instruments under the Investment Firms Act if the natural gas traded on an OTF and must be physically settled. However, if cash settlement is an option at the transaction, the transaction shall be qualified as financial instrument.

C. ISSUES AND ADDITIONAL ASSUMPTIONS

On the basis of the assumption and subject to the limitations respectively set out in point B.I (page 10), we are of the following opinion.

C.I ENFORCEABILITY OF CLOSE-OUT NETTING

The enforceability of the netting provisions of the EFET General Agreement under the laws of Hungary depends on (i) the categorization (legal nature, i.e. whether covered by the Capital Market Act's close-out netting definition) of the transaction (ii) the relevant time of close-out netting and (iii) the type of contracting party. (please refer to B.III). Since for the purpose of this part the meaning of close-out netting is of core importance, prior to the detailed analysis it is essential to define this notion under the laws of Hungary.

It is to be noted that there is no general definition for netting in the Civil Code or in other legislation of general nature. Beside the Resolution Act only the Capital Market Act contains a definition for close-out netting. This definition of the Capital Market Act is in fact expressly referred to by the Insolvency Act (although specifically only in relation to bankruptcy proceedings).

According to Section 5 (1) 107 of the Capital Market Act *"**close-out netting** shall mean the conversion of liabilities and receivables from a spot foreign exchange or securities transaction, a derivative, repurchase agreement or reverse repurchase agreement, securities lending and/or borrowing, from any other arrangement for financial collateral or other form of security, or some other similar transaction involving commodities or financial instruments concluded in a stock exchange, outwith stock exchanges as a single net liability or receivable by any settlement method recognized in the market of the transaction in question, executed under agreement by the parties in the event of non-performance of the contract or upon the occurrence of any event stipulated by the parties serving grounds for termination, in consequence of which the liability or receivable shall represent only the resulting net amount".*

The term of "commodities" is defined in the Investment Firms Act, which refers to Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive. According to the regulation commodity means *"any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity".*

We note that the Resolution Act's netting agreement definition seems to be broader than that of the Capital Market Act referred to above in the sense that it does not specify the type of transactions from which claims and obligations to be netted need to arise. Further to Section 3 47 of the Resolution Act, *"netting arrangement means an arrangement under which a number of claims or obligations can be converted into a single net claim, including close-out netting arrangements under which, on the occurrence of an enforcement event defined by law or by the parties' agreement the obligations of the parties are accelerated so as to become immediately due or are terminated, and in either case are converted into or replaced by a single net claim".*

Notwithstanding this, considering the fact that Insolvency Act refers to the definition of the Capital Market Act, moreover the Resolution Act regulates the resolution of specific objects (please refer to point C.I.1.73.2(b) on page 34), we understand that this definition could only be relevant (if at all) in respect of those potential parties in Appendix A, which fall under the scope of the Resolution Act (i.e. credit institutions and investment firms). Under Resolution Act HNB is entitled to terminate, modify or transfer agreements (see C.I.1.73.2(b) on page 34) for the efficient resolution of financial institution. However HNB may not exercise such right in respect of certain rights and obligations of netting agreements and close-out netting agreements. Therefore, close-out netting agreement are granted certain privileges under the Resolution Act (please see point C.I.1.73.2(b) on page 34 in this respect).

With respect to the above, and following a more conservative approach, if products/transactions under a framework agreement do not fall within the categories of transactions specified in the close-out netting definition of the Capital Market Act above, the framework agreement as well as the transactions entered into under it cannot benefit from any preferential treatment granted to close-out netting agreements under Hungarian law (and the restrictions stated in the Resolution Act could still be applicable to them). In this case, similar effects may be achieved on a general civil law basis, to the extent permitted by law. As to the detailed classification of products/transactions referred to in Appendix B, please refer to points B.IV (page 15).

From civil law perspective close-out netting practically consist of two actions: (1) the termination of the framework agreement and the transactions entered into under it; and (2) the settlement between the parties. Particularly, in respect of the EFET General Agreement and the Individual Contracts this means the following actions:

Action (1) Termination of the Agreement (EFET General Agreement as well as all Individual Contract under it) by which all further payments and performance in respect of the Individual Contracts are released (§ 10.3 (b)).

Action (2) Settlement which consists of:

(a) the calculation by the Terminating Party of all Settlement Amounts for all Individual Contracts plus any and all other amounts payable between the Parties under and in connection with the Agreement (§ 11); and

(b) the set-off of the obligations, which means that the Terminating Party includes those of his claims due form the other Party to set off his debt by a statement addressed to the other Party, which will result in a single payment obligation for one Party (§ 10.3 (c)). Set-off is only completed when statement is delivered to the other Party.

Subject to the limitations set out in the Opinion and as further detailed below, the civil law interpretation of close-out netting enables the Parties to the Agreement to enforce the netting provisions of the Agreement against each other under the laws of Hungary.

SPECIFIC QUESTIONS

For the purpose of this section we have made the following additional assumptions in accordance with the Instruction Letter:

The relevant EFET General Agreement is governed by any law (including English or German law or the laws of Hungary).

After entering into the Individual Contracts and prior to the maturity thereof, Party A becomes the subject of voluntary or involuntary proceedings under the insolvency laws of Hungary and, subsequent to the commencement of the insolvency, either Party A or an insolvency official seeks to assume the confirmations representing profitable ("in the money") Individual Contracts for the insolvent counterparty.

Since Party A is a party incorporated, organized or having its centre of main interest in Hungary, the courts of Hungary will have jurisdiction to open insolvency proceedings and will proceed in accordance with the Hungarian insolvency laws. Provisions of the EU Insolvency Regulation or of a foreign law will have any relevance if the proceedings involve a "foreign element" (e.g. a foreign creditor).

We further assumed that Party A is not classified as a major economic operator of preferential status for strategic consideration by government decree since in this case a special regime would apply to the liquidation of Party A, as detailed under point C.I.1.73.2(f) of this Opinion on page 44.

C.I.1.1 ***Assuming you recommend Automatic Termination to apply, are the provisions of the EFET General Agreement terminating the EFET General Agreement (including all Individual Contracts) upon the occurrence of a Material Reason described in § 10.5(c) of the EFET General Agreement (adjusted as necessary pursuant to the laws of your jurisdiction) enforceable under the laws of Hungary or is there a risk that the automatic termination could be challenged by a liquidator, receiver or third party?***

According to the Civil Code, parties to an agreement are free to determine conditions upon which their agreement terminates. However, incomprehensible or inconsistent terms are null and void.

We are of the opinion that the insolvency-based Material Reasons as set out in § 10.5 (c) of the EFET General Agreement mostly do not qualify as illegal, except for automatic termination triggered by the fact that the debtor initiated bankruptcy proceedings (please refer to C.I.1.3 of this Opinion on page 24). Also, we are of the view that as some of the conditions set out in § 10.5 (c) of the EFET General Agreement cannot be interpreted under Hungarian law, these might qualify invalid as incomprehensible conditions. This could result in (partial) invalidity, which may be claimed by anybody without a time limit.

In addition to the above the following has to be noted. Hungarian courts will probably treat events triggering the Automatic Termination of the Agreement as conditions subsequent, the occurrence of which result in the termination of the agreement's effect. The Civil Code expressly provides that as long as a condition is pending, neither party is entitled to do anything that would infringe or violate the other party's rights upon the occurrence (or frustration) of the condition, and the party who has actionably caused the occurrence (or frustration) of a condition is not entitled to establish any right thereupon. This means in practice that if, for instance, the institution of insolvency proceedings is defined as a condition subsequent, and one of the Parties submits a petition for insolvency proceedings against itself, based on the above it could be argued that the occurrence of the condition subsequent is a result of that Party's conduct, in which case it should be deemed as the condition has not occurred, and accordingly the Agreement remained in effect. This practically means that the desired effect of Automatic Termination would not be triggered. We are of the view that the Parties' contractual will can override the above interpretation, in particular view of the fact that in the present case the occurrence of the conditions subsequent practically serves the benefit of the non-acting Party (who has not caused the occurrence of the condition), and upholding any interpretation to the contrary would adversely affect the non-insolvent party.

C.I.1.2 ***Assuming you recommend not to elect Automatic Termination (as defined in § 10.4 of the EFET General Agreement) upon the occurrence of an event described in § 10.5(c) of the EFET General Agreement:***

C.I.1.2.1 ***Would it be necessary or recommendable to modify the scope of termination (e.g., by (i) deleting or modifying some of the events listed in § 10.5(c) which would permit the Terminating Party to terminate and/or (ii) adding other Material Reasons upon the occurrence of which it should be entitled to terminate)?***

We would not recommend to elect Automatic Termination because it could be interpreted as a provision circumventing the applicable laws and therefore could be qualified as an illegal provision which is null and void (see section C.I.1.3 on page 24). We recommend to modify the scope of the events listed in § 10.5(c) with the same events listed in C.I.1.3 on page 24. With respect to the modifications to the events listed in § 10.5(c) please refer to section C.I.1.3 on page 24.

C.I.1.2.2 ***Are the provisions of the EFET General Agreement permitting the Terminating Party to terminate the Agreement (including all Individual Contracts) upon the occurrence of a Material Reason described in § 10.5(c) of the EFET General Agreement (adjusted as necessary pursuant to the laws of your jurisdiction) enforceable under the laws of Hungary or is there a risk that (i) the entering into the EFET General Agreement, (ii) the entering into Individual Contracts thereunder or (iii) the termination by notice itself could be challenged by a liquidator, receiver or third party?***

(a) Enforceability of termination rights

The provisions of the EFET General Agreement permitting the Terminating Party to terminate the Agreement upon an insolvency-based Material Reason in most cases will be enforceable under the laws of Hungary, as under the Civil Code, the Parties to an agreement are free to determine the content of their agreement, including those events which trigger the right to terminate the agreement, unless their agreement breaches a mandatory legal requirement. As regards liquidation proceedings, neither the Civil Code nor the Insolvency Act contains any limitation regarding the termination of agreements by one party upon the insolvency of the other party. However, in respect of bankruptcy proceedings Section 11 (2) h) of the Insolvency Act provides that a contract concluded with the debtor may not be avoided, and it may not be terminated on the grounds that the debtor has initiated bankruptcy proceeding (for further limitations on termination rights in bankruptcy proceedings please refer to point C.I.2.4 on page 50).

Notwithstanding the above, we note that in some cases the insolvency related events listed in § 10.5 (c) of the EFET General Agreement are difficult to interpret in the light of the definition of the commencement date of the insolvency proceedings under the Insolvency Act. This is because none of the listed events cover expressly (if at all) the Hungarian insolvency law meaning of the commencement date of the insolvency proceedings.

- The event specified in § 10.5 (c) (i) occurs definitely much later, in fact, when the insolvent party is dissolved (in Hungarian law interpretation this means that the party ceases to exist) no claims can be enforced at all against such (non-existing) party.

- Events specified in § 10.5 (c) (ii), (iii) and (vii) of the EFET General Agreement are rather vague and do not necessarily mean the occurrence of insolvency proceedings under the laws of Hungary. Moreover, those appear to be rather enforcement or closer related events. In addition, events specified in § 10.5 (c) (ii) more reflect a threatening or already insolvent financial status of a party, without however requiring any official step taken concerning the initiation of any insolvency proceedings.

- Events set out in § 10.5 (c) (iv) are partly the other end of the scale, when someone institutes a procedure seeking judgement of insolvency (liquidation), which under the Hungarian insolvency law may be initiated at any time without any immediate adverse effect on the parties (filing of a petition for liquidation will have relevance only in respect of the liquidator's right to challenge contracts as detailed in C.I.1.2.2 (b) below, if finally the court orders the opening of the liquidation proceedings).

- Additional events specified in § 10.5 (c) (iv) and (v) of the EFET General Agreement reflect situations that could be matched to Hungarian bankruptcy proceedings (in Hungarian: "*csődeljárás*") and liquidation proceedings (in Hungarian: "*felszámolási eljárás*"). We note however that these provisions to some extend overlap each other, whereas in other cases those refer to consecutive events in the same insolvency proceeding. This may give rise to disputes or even to different termination dates depending on which provision or which part thereof is referred to by the terminating party.

- Events specified in § 10.5 (c) (vi) describe occurrences that are not necessarily insolvency related matters (e.g. the company court may also appoint an officer in order to bring the company's operation back into a lawful manner; also the government may appoint an officer to take over the company's management (in case of disasters)).

With respect to the above, although termination rights triggered by insolvency-based (or other) events are generally permitted and enforceable under the laws of Hungary with the exception referred in relation to bankruptcy proceedings, since some of the above events cannot be directly linked to any Hungarian insolvency law concept, it cannot be excluded that the termination is challenged on the grounds that the trigger event (i.e. Material Reason) has not in fact occurred and accordingly the termination was unlawful. Nevertheless we believe that this is a remote risk and is not directly related to the fact whether termination is triggered by an insolvency-based or any other event.

(b) Right to challenge contracts

The Insolvency Act does not grant additional rights to the administrator to challenge the debtor's contracts which have been entered into prior to the commencement of the bankruptcy proceedings.

Based on the assumption that the Agreement was entered into, and each payment and delivery made thereunder was made at arm's-length so that no element of gift or undervalue from the insolvent debtor Party A to the other party is involved and without any intention of the insolvent debtor Party A to prefer the other party in the event of its insolvent liquidation, the liquidator will not have the right to challenge the entering into the Agreement.

The above assumption is necessary, because in the event of liquidation proceedings Section 40 of the Insolvency Act regulates the grounds on which certain contracts can be avoided.

(1) Accordingly, in liquidation proceedings any creditor, or the liquidator on behalf of the debtor, may within 120 days from becoming aware, but in any event within one year of the publication of the liquidation order, challenge before the court:

(i) any agreement entered into or commitment made by the debtor within 5 years preceding the filing of the liquidation petition or any time thereafter, if the result of the agreement or statement was a decrease in the debtor's assets and the debtor's intention was to defraud other creditors and the other party knew or should have known of such intent;

(ii) any agreement entered into or commitment made by the debtor within 3 years preceding the filing of the liquidation petition or at any time thereafter, if the subject of the agreement or commitment was the transfer of the debtor's assets without any compensation or a commitment at the expense of any part of debtor's assets without any consideration, or any transaction with a third party where the consideration paid to the debtor was at a gross undervalue;

(iii) any agreement entered into or commitment made by the debtor within 90 days preceding the filing of the liquidation petition or at any time thereafter, if the subject of the agreement or commitment was to prefer a creditor, including, in particular, the amendment of a pre-existing contract in favour of the creditor or the provision of security in favour of an unsecured creditor;

(iv) any agreement entered into or commitment made by the debtor within 3 years preceding the filing of the liquidation petition or at any time after, if the subject of the agreement or commitment was transfer of ownership for security purposes or the assignment of rights or receivables for security purposes or exercising option right for security purposes, where the beneficiary exercised such acquired right by failing to fulfil his obligation of accounting toward the debtor, or did so improperly, and/or failed to pay the amount remaining after the secured claim is satisfied; if the right-holder did not have the acquisition of ownership, or the assignment of rights or receivables for security purposes registered in the collateral register, or his option right in the land register, the conditions for lodging a contest shall be presumed to exist.

In addition, the liquidator on behalf of the debtor may, within 120 day of becoming aware, but in any event within one year of the publication of the liquidation order, reclaim before the court:

(v) any service provided by the debtor within a 60-day period preceding the filing of the liquidation or at any time thereafter, if the result of the service was to prefer a creditor and it was not within the ordinary course of business. A preference includes, in particular, the settlement of a debt before its maturity.

(2) For the purpose of subparagraphs (i) and (ii) above, bad faith and the lack of consideration must be presumed where the debtor entered into an agreement with an entity in which it holds a majority influence. The debtor is deemed to have a majority influence if it holds more than 50 per cent of the total votes in the company, if it is entitled to appoint or recall the majority of the board of directors or the supervisory board, or of it can alone exercise voting rights in respect of more than 50 per cent of the total votes in the company as a result of an agreement with the other members or shareholders. When calculating the majority influence, indirect influence must also be taken into account. Indirect influence must be calculated by multiplying the vote percentage in an intermediary by the intermediary's vote percentage in the subordinate company. If it holds more than 50 per cent of the votes in an intermediary, this intermediary's holding must be taken into account as whole. Bad faith and the lack of consideration must also be presumed if the debtor entered into an agreement with its member, shareholder, officer or a family member of any of them, or with an entity controlled or influenced by the same person who controls or influences the debtor. However, such related parties may rebut this presumption by proving that they acted in good faith and that appropriate compensation was provided.

(3) Notwithstanding the above, Section 40 (4) (a) and (b) of the Insolvency Act provides that the challenging and reclaiming rights referred to above in subparagraph (1) (iii) and (iv) may not be exercised in relation to:

(i) netting under a close-out netting arrangement; and

(ii) the substitution of the pledged property (security deposit) with equivalent collateral and the provision of top-up collateral.

The above means that the pure fact of closing-out transactions, which fall within the scope of the close-out netting definition of the Capital

Market Act, and calculating the net claim (or debt) accordingly cannot be regarded as an act exposed to being challenged under subparagraph (1)(iii) and (iv).

(4) If the liquidator becomes aware of any transaction set out in subparagraph (1) above within the 120-day period referred therein, the liquidator must promptly inform the creditors' committee (in Hungarian: *"hitelezői választmány"*), creditors representative or the creditors and send them evidence of the transaction. Within 15 days of receipt of the notice the creditor may challenge the agreement event if the deadline referred to above has already elapsed or less than 15 days remain until the end of the deadline for the challenge. The forfeit deadline, however, also applies in this case.

C.I.1.3 ***Would you recommend to elect Automatic Termination to apply upon a Material Reason described in § 10.5(c) of the EFET General Agreement or upon other events not specified therein? If yes, would it be necessary or recommendable to modify the scope of Automatic Termination (e.g. by (i) deleting or modifying some of the events listed in § 10.5(c) which would trigger the termination and/or (ii) adding other Material Reasons upon the occurrence of which Automatic Termination should also apply and/or (iii) by limiting those insolvency events specified in § 10.5(c) which would trigger the Automatic Termination) or to specify, or to refrain from specifying, a certain grace period as contemplated in § 10.5(c)(iv) of the EFET General Agreement?***

We do not recommend to elect Automatic Termination to apply upon a Material Reason as currently described in § 10.5(c). We particularly do not recommend opting the operation of Automatic Termination with retrospective effect to a date/time prior to the actual occurrence of the event specified as a Material Reason under § 10.5(c). We are of the view that such a condition is solicitous, and could be interpreted as a provision aiming at evading the applicable legal regulations, and as such, could qualify as illegal and consequently null and void. In the latter case the condition could not trigger the desired effect and could affect the validity of the entire condition.

Should the parties wish to elect Automatic Termination to apply, we are of the view that the Material Reasons upon which Automatic Termination is triggered need to be further specified in order to cover those events which are relevant from a Hungarian insolvency law viewpoint. These are the following: if a Party

(i) passes a resolution on its voluntary dissolution (as mentioned under point D.II.1.1(c) (page 86), the institution of such proceedings does not have direct adverse effect on creditor's right, but creditors will likely prefer to ensure the satisfaction of their claim without risking that the voluntary proceedings turn into liquidation proceedings);

(ii) passes a resolution on the application for liquidation (as mentioned above under point C.I.1.2.2 (a) (page 20), the mere fact of initiating bankruptcy proceedings cannot serve as a lawful ground for termination and based on this we are of the view that linking Automatic Termination to passing a resolution on the application for bankruptcy would be a circumvention of this prohibition and thus would be void);

(iii) fails to settle or contest his previously uncontested or acknowledged contractual debts within 20 days of the due date, and fails to satisfy such debt upon receipt of the other party's written payment notice;

(iv) fails to satisfy its debts stated in a final and binding court resolution or order for payment within the period set in the court's resolution or payment order;

(v) a petition is presented for its liquidation, and is not withdrawn, dismissed, discharged, stayed or restrained within such period as specified in the Election Sheet.

We note, however, that even if the Automatic Termination was linked to the above specified events, and thus was enforceable, this would not necessarily result in the enforceability of the netting provisions of the Agreement, since set-off cannot be automatic, and in this respect – as further detailed in points C.I (page 16) and C.I.1.4 (page 28) – the type of the transaction and the entering into effect of netting (i.e. the date on which the netting statement is delivered to the other party) have decisive importance. Some corporate documents are publicly available (e.g. financial statements, deed of foundations, etc.), corporate decisions are available for the public only if their content affects the public data of the company registry, and thus are required by law to be submitted to the court of registry (corporate decisions referred in (ii) do not fall within this scope). Therefore, it might happen that a party only becomes aware of the occurrence of a termination event and thus the termination of the Agreement once a court order on the opening of bankruptcy or liquidation proceedings against its counterparty has been published in the Company Gazette, in which case delivering the netting statement might be too late to ensure the enforceability of the netting provisions if the Agreement does not fall within the statutory definition of close-out netting provided in the Capital Market Act. In such a case the creditor would not have the right to notify the net claim (since this right is only recognised and acknowledged in respect of close-out netting agreements falling within the definition of the Capital Market Act), and the liquidator could challenge the creditor's conduct and the contract as granting preferential treatment (please refer to point C.I.1.2.2 (b), page 22). The creditor thus could instead enforce its claims through simple set-off, which however cannot be automatic, and thus the net claim can only be made due and payable once notified to the debtor (i.e. by delivering a netting statement) (please also refer to point C.I.1.4(b)(2) of this Opinion on page 31). Any rather artificial mechanisms contrary to this may be deemed an attempt to avoid the consequences of liquidation and prefer a creditor.

Finally we note that the provisions of the Insolvency Act effective as of 1 January 2013 provide for the maintenance by the National Office for the Judiciary (in Hungarian: *"Országos Bírósági Hivatal"*) an electronic register on petitions for the opening of bankruptcy or liquidation proceedings pending final decision, and on requests for proceedings pending final decision on opening. In the register inquiries can be made by the registered number of the economic operators (or court registration number of those bodies whose incorporation is not mandatory). The register contains the economic operator's name, registered number (or court registration number of those bodies whose incorporation is not mandatory), the date of receipt of the petition or notice initiating the proceedings, the case number and the type of the proceedings. Upon receipt of notice from the acting court on the refusal – by final decision – of the petition for bankruptcy or request for liquidation the economic operator affected shall be removed from the register, also if the ruling ordering the opening of bankruptcy or liquidation proceedings has become final and enforceable. While this registry could provide useful information to contracting parties, according the relevant provision of the Insolvency Act access to the data and information (current and deleted) contained in the register is available electronically only for the court, the public prosecutor and the investigating authority in criminal proceedings for the purpose of gaining knowledge of requests for proceedings pending final decision on opening. Thus it is generally not available for the public. According to the available wording, economic operators falling under the scope of the Insolvency Act may only obtain information regarding themselves by requesting the Office to issue (upon payment of an administrative fee) a certificate of not being affected by any request pending for the opening of bankruptcy or liquidation proceedings, or of not being affected by any not yet final ruling ordering its liquidation.

Besides the above mentioned, pursuant to Article 24 of the EU Insolvency Regulation an insolvency register shall be established by the Member States. The insolvency register is publicly available and shall contain at least the date of the opening of insolvency procedure, the court opening insolvency proceeding and the case reference number, type of the procedure, debtor's name, registration number, contact details of the insolvency practitioner, the time limit for lodging a claim, the date of closing main insolvency proceeding (if any) and the court before the resolution on the proceeding can be challenged. This registry also contains the information regarding (i) the opening and closing of avoidance actions brought in connection with the debtor's assets, the name of the court hearing such action and the case number; (ii) the opening and closing of actions brought against the debtor's directors, former directors, against the debtor's members, owners with legal personality, for declaration of their liability for conduct in breach of the interests of creditors, the name of the court hearing such action and the case number; (iii) in the case of simplified liquidation proceedings, an indication thereof; (iv) the electronic mail address of the debtor, the administrator and the liquidator that is considered official under the Act CCXXII of 2015 on the General Rules for Trust Services for Electronic Transactions. The insolvency register contains publicly available details in connection with insolvency procedures which are subject to the EU Insolvency Regulation and commenced on 26 June 2018 or later.

The above mentioned registries may provide several information to the (potential) debtors, however, we have to note that the requests or motions for the opening the insolvency procedure are not available in these registries either. Information is available in connection with the procedures only as of the date of the decision of the court regarding the commencement of the insolvency procedure.

If you are recommending that a grace period be made applicable in respect of §10.5(c)(iv), 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?

In the event of bankruptcy proceedings, no grace period may effectively apply, as bankruptcy proceedings may be initiated only by the debtor, and upon the debtor's submission to court of the petition to commence bankruptcy proceedings either the debtor is granted an automatic preliminary moratorium or the petition is rejected.

As regards liquidation proceedings, as mentioned under point C.I.1.2.2 (a) (page 20) above, the mere institution of proceedings seeking judgement of insolvency (liquidation) prior to the opening of the proceedings does not give any clear indication on the solvency of the party against whom liquidation proceedings have been initiated. Therefore, if a Material Reason for termination is simply linked to the submission of a petition for the liquidation of party, even frivolous applications may trigger the termination. The reason for this is that although the minimum content of a petition to institute liquidation proceedings is set out in the Insolvency Act, nothing prevents anybody to file a petition to this end, even if later on the unfounded application lacking the statutory minimum content is rejected by the court. A grace period regulated for those events when petition is submitted by third parties may reduce, but not eliminate the risk of terminating the Agreement on the basis of a frivolous application. Although as we described above, we have concerns regarding the efficiency and added-value of Automatic Termination in general, when determining the grace period the following needs to be taken into account.

In the event of liquidation proceedings, the Insolvency Act provides that following receipt of the petition the court will check whether the petition complies with the mandatory requirements. Section 25 of the Insolvency Act provides that the court must reject the petition outright (without investigating into its merit), if

(i) it was filed by a person without proper entitlement;

(ii) it was filed during the period of moratorium;

(iii) the petition was returned due to incomplete information and it is not rectified within 8 days, or if re-submitted with deficiencies, hence rendering evaluation impossible;

(iv) there is no agreement between the debtor, the petitioner and the trade unions or workers' council;

(v) the creditor's written notice requesting the debtor's performance following the due date is not dispatched to the debtor before the petition is received by the court or it does not contain the mandatory elements prescribed in the Insolvency Act (please refer to the relevant section of point D.II.1.1(b) on page 83);

(vi) the deadline specified in the final court decision did not expire at the time the petition was received by the court.

Although the above conditions might be suitable for straining off frivolous petitions, the Insolvency Act does not specify any deadline for the court to pass such a decision. If liquidation proceedings were requested by a creditor and the court has not rejected the petition on the above grounds, it will notify the debtor forthwith by sending a copy of the petition, to which the debtor must respond within 8 days of receipt. If the debtor fails to respond to the court within the above-specified deadline his insolvency will be presumed. In any case, the court must decide on the petition for liquidation within 60 days of receipt of the petition. In lack of any deadline for the preliminary assessment of the petition, it is difficult to specify an appropriate grace period thus we only assume that a 15-working day grace period might be acceptable.

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?

Please refer to the first part of this point C.I.1.3 (page 24) above. As detailed thereunder, further to the referred provisions of the Civil Code, conditions subsequent take effect upon their occurrence. While it might be acceptable to set a later effective date (e.g. on the next business day following the occurrence of the Material Reason triggering Automatic Termination), Automatic Termination shall in no event take effect retrospectively (e.g. at 23:59pm on the day before the occurrence of the Material Reason triggering Automatic Termination).

C.I.1.4 ***Are the provisions in § 11 of the EFET General Agreement providing for the netting of all positive and negative Settlement Amounts in determining the Termination Amount enforceable under the laws of Hungary or is there a risk that such determination could be challenged by a liquidator, receiver or third party?***

The enforceability of the netting provisions of the EFET General Agreement under the laws of Hungary both in bankruptcy and liquidation proceedings depend on (i) the categorisation (legal nature) of the transaction covered by the Individual Contracts under the EFET General Agreement (please refer to point D.II.1.2 of this Opinion on page 87) and the type of contracting party (in the case of bankruptcy proceedings); and (ii) the date on which the statement on netting (set-off) is delivered to the other party (please refer to points C.I and D.II.1.2 of this Opinion on pages 16 and 87).

(a) Close-out netting in bankruptcy proceedings

(1) If the transactions under the Agreement qualify as derivatives or otherwise fall within the scope of the close-out netting definition of the Capital Market Act (please refer to point C.I of this Opinion on page 16), netting provisions will be enforceable against the Party even during its moratorium, provided that the Agreement and each transaction under it was entered into prior to the commencement of the moratorium, and at least one of the parties is an institutional counterparty. Further to Section 11 (3) of the Insolvency Act, the institutional counterparty may be one of the following:

(i) a public sector entity in accordance with 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, and according to the national laws of EEA Member States on the transposition of Article 1(2)a) of the Collateral Directive;

(ii) the Hungarian National Bank, other central banks of the EEA Member States, the European Central Bank, the Bank for International Settlements, or a financial institution specified in Schedule 1 to the Banking Act;

(iii) a credit institution established in any EEA Member State, including the bodies governed by the national laws of EEA Member States on the transposition of Article 2 of the Capital Requirements Directive;

(iv) an investment firm established in any EEA Member State and governed by the national laws of EEA Member States on the transposition of the MiFID;

(v) a financial enterprise established in any EEA Member State and governed by the national laws of EEA Member States on the transposition of the Capital Requirements Directive;

(vi) an insurance company established in any EEA Member State and governed by the national laws of EEA Member States on the transposition of Council Directive 92/49/EEC and Council Directive 2002/83/EC;

(vii) an undertaking for collective investment in transferable securities (hereinafter referred to as "UCITS") established in any EEA Member State and governed by the national laws of EEA Member States on the transposition of Council Directive 85/611/EEC;

(viii) a management company engaged in the management of UCITS; or

(ix) a central counterparty or body authorized to engage in clearing and settlement operations and central depository services established in any EEA Member State, governed by the national laws of EEA Member States on the transposition of Article 1 (2) d) of the Collateral Directive.

Notwithstanding the above, we have to note the following. The Insolvency Act recognises close-out netting agreements within the meaning of the definition of the Capital Market Act (please refer to point C.I of this Opinion on page 16). The latter allows the transformation into one single net debt or claim of debts and claims arising from specific transactions. Therefore, in a narrow sense, while on the one hand calculating all positive and negative Settlement Amounts of Individual Contracts which are eligible for inclusion into close-out netting may be enforceable under the provisions of the Insolvency Act, on the other hand, including *"any and all other amounts payable between the Parties under or in connection with the Agreement"*, as provided in § 11 of the EFET General Agreement (e.g. indemnification for VAT misrepresentation under the VAT Annex), apparently goes beyond the scope defined by the Capital Market Act. Therefore, in lack of any specific provisions of the Capital Market Act giving effect to the inclusion of other amounts which do not fall within the statutory definition of close-out netting, the enforceability of their netting into the Termination Amount in an insolvency scenario is uncertain. Regarding the discretion to enter into replacement transactions please also refer to point C.IV.2 of this Opinion on page 66.

(2) If the transactions under the Agreement do not qualify as derivatives or do not otherwise fall within the scope of the close-out netting agreement defined in subparagraph (1) above, then close-out netting provisions may be enforceable on a civil law basis, if the netting (set-off) statement is delivered to the other Party before the commencement of bankruptcy proceedings. In this case the netting (set-off) is deemed to have occurred prior to the commencement of the bankruptcy proceeding and the Terminating Party will be entitled to claim the net amount (if any) from the other Party.

If the netting (set-off) statement is delivered following the commencement of the bankruptcy proceedings, the netting provisions of the Agreement will be deemed to have occurred after the commencement of the bankruptcy proceeding and thus will not be enforceable, and the Terminating Party will not be entitled to claim the net amount, since according to the Insolvency Act this right of the creditors is only recognised in respect of close-out netting agreements within the meaning of the Capital Market Act, and set-off of claims against the debtor during the moratorium is prohibited.

Without prejudice to the above, in application of the EU Insolvency Regulation, the restriction on set-off in bankruptcy proceedings may be overridden by a foreign law provision applicable in accordance with Article 9 of the EU Insolvency Regulation, which provides that the *"opening of insolvency proceedings shall not affect the rights of creditors to demand set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim"*. This, however, shall not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

(b) Close-out netting in liquidation proceedings

(1) If the transactions under the Agreement qualify as derivatives or otherwise fall within the scope of the close-out netting definition of the Capital Market Act (please refer to point C.I of this Opinion on page 16), close-out netting provisions will be enforceable subject to the following restrictions on the settlement date.

Section 36 (2) of the Insolvency Act provides that in relation to an agreement made for close-out netting prior to the commencement date of liquidation, the creditor must report the net claim to the liquidator as the creditor's claims and the liquidator must enforce the debtor's net claim (as the case may be, depending on which party is in-the-money). Accordingly, we are of the view that the liquidator or the court will have to accept that the creditor files its net claim calculated pursuant to the close-out netting mechanism. That is, the liquidator or the court may not require the creditor to file the aggregate value of its in-the-money transactions first which could only be set off against out-of-money transactions in accordance with the restrictions of the Insolvency Act (please refer to point D.II.1.2(b) of this Opinion on page 88). The referred provision of the Insolvency Act only provides for a limitation in respect of the relevant settlement date, when it provides that the applicable value date must be specified in the parties' agreement, but this date must in any event be earlier than the expiry of the 40-day (or in relation to financial institutions, 60-day) deadline set for the notification of creditors' claims.

As for the enforceability of netting of *"any and all other amounts payable between the Parties under or in connection with the Agreement"*, we refer to the last paragraph of point C.I.1.4(a)(1) (page 28) above. Regarding the discretion to enter into replacement transactions please also refer to point C.IV.2 of this Opinion on page 66.

(2) If the transactions under the Agreement do not fall within the scope of the close-out netting agreement defined in the Capital Market Act, the date of delivery of the netting (set-off) statement is decisive regarding the effect (and thus regarding the enforceability) of the netting provisions of the Agreement. If the netting (set-off) statement is delivered to the other party before the commencement date of the liquidation proceedings, then the set-off is deemed to have occurred and the Terminating Party will be entitled to claim the net amount (if any) from the other Party. If following the delivery of the netting (set-off) statement the commencement date of the liquidation occurs, the liquidator of the insolvent Party will have to rank the net claim of the Terminating Party as set out in the Insolvency Act and pay the net claim (if it has sufficient funds) in line with the statutory rank of the creditors. On the other hand, the liquidator will have to enforce the net debt against the Terminating Party.

If the netting (set-off) statement is delivered following the commencement of the liquidation proceedings, the netting provisions of the Agreement will be deemed to have occurred after the commencement of the liquidation proceedings and thus will not be enforceable, and the netting statement will be deemed invalid. We note, however, that the invalidity of the netting statement will not affect the validity of the rules of the EFET General Agreement on the calculation of the Settlement Amount of each Individual Contract. Therefore, even if the liquidator of the insolvent Party refuses the netting statement (report of the net claim), subject to the correctness of the calculation, it will be obliged to rank the claims of the Terminating Party arising from each Individual Contract in line with the calculation method set out in § 11 of the EFET General Agreement, and to enforce against the Terminating Party its claims (if any) arising from the termination of each Individual Contract in the amount as calculated in accordance with § 11 of the EFET General Agreement.

The above practically means that if the Individual Contracts do not meet the requirements to be eligible for close-out netting and the commencement date of liquidation occurs prior to the delivery of the netting statement, the creditor will not be entitled to report the net claim, but will have to file the aggregate of the claims under Individual Contracts with positive Settlement Amounts (in the money) and have them confirmed with the liquidator. In this case, when the liquidator enforces the negative Settlement Amounts (out of money) against the creditor, the creditor will be able to set off its claims against the claims of the liquidator in accordance with the provisions of Section 36 (1) of the Insolvency Act as described in point D.II.1.2(b) (page 88) of this Opinion.

C.I.1.5 ***Do the laws of Hungary recognize that the close-out netting provisions in §§ 10 to 11 of the EFET General Agreement apply to all Individual Contracts or could it be challenged by a liquidator, receiver or third party? Would we need the single agreement concept 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 elaborate in a detailed and circumstantiated manner on whether or not, and if so, the degree to which, provisions allowing or providing for the termination of some Individual Contracts but not all Individual Contracts under the EFET General Agreement might impact termination and close out rights generally, as well as subsequent rights to terminate Individual Contracts remaining under the EFET General Agreement following a previous Partial Close-Out.***

According to Section 47 (1) of the Insolvency Act, the liquidator may terminate any of the contracts entered into by the debtor. As an exception from the liquidator's so-called *"cherry-picking"* right in Section 47 (1), Section 47 (3) of the Insolvency Act provides that contracts under an agreement on close-out netting or framework contracts may only be rescinded or terminated all at one time. This rule gives effect to the single agreement clause set out in § 1 of the EFET General Agreement in respect of close-out netting agreements within the meaning of the Capital Market Act. If Individual Contracts under the EFET General Agreement are not eligible for inclusion in the definition of close-out netting in accordance with the definition of the Capital Market Act, even then the single agreement concept of the EFET General Agreement might be also given effect on the basis of the reference in this provision of the Insolvency Act to *"framework contracts"*. Although the Insolvency Act does not define framework contracts, we are of the view that based on the single agreement concept in § 1 of the EFET General Agreement, the one-off termination right will most likely prevail, and the liquidator will not have the right to *"cherry-pick"* the Individual Contracts it wishes to terminate while preserving the continuation of the other Individual Contracts. Notwithstanding this, even if the one-off termination right in respect of framework contracts is upheld, we are of the view that this will not necessarily entitle creditors to claim and will not oblige the liquidator to enforce the net claim/debt, since this is only acknowledged expressly by the Insolvency Act in respect of close-out netting agreements complying with the definition of the Capital Market Act.

As regards the effects of Partial Close-Out on subsequent termination and close out rights, we are of the view that the enforceability of netting under an EFET General Agreement in an insolvency scenario will be weakened by an earlier Partial Close-out under the same Agreement. This is because even though the close-out netting definition of the Capital Market Act does not expressly exclude the possibility of partial close-out, its wording rather suggests that netting of claims and debts shall be effected at once when the event specified by the Parties in respect of the involved transactions has occurred.

Finally, in respect of the liquidator's termination rights we also refer to the particular provisions of the Gas Act. According to Section 45 (5) of the Gas Act the liquidator may not exercise the termination right specified in Section 47 (1) of the Insolvency Act *"with respect to the natural gas supply contracts concluded by the licensed trader, being the debtor, with its customers, and the contracts required for the contractual performance of the prior"*. The detailed regulations concerning the termination rights are to be governed by Government Decree 296/2015. (X.13.) on last resort natural gas supply and the applicable procedure in case of circumstances where customers' natural gas supply is endangered due to inoperability of natural gas traders. Although this government decree regulates several aspects of the last resort supply for the purpose of ensuring continuity of supply to customers, the government decree does not concern these rights of the liquidator.

C.I.1.6 ***Is the insolvent counterparty obligation to pay the amount of any compensation claim in Euro, USD or GBP (as agreed between the parties in the Election Sheet) enforceable under the laws of Hungary or could the calculation in a foreign currency be challenged by a liquidator, receiver or third party?***

According to the CCR Act the parties are basically free to determine the currency they wish to apply in their contractual relationship. Also, we have not found any provision in the Insolvency Act that would prevent Party B to request the insolvent debtor Party A to pay the amount of any compensation claim in Euro, GBP, and USD (as agreed between the parties under the Agreement). Furthermore, no specific provisions are set out by the Insolvency Act according to which the calculation or demand of such amount in a foreign currency could be challenged by a liquidator, administrator, receiver or third party.

Nevertheless, according to the Government Decree No. 225/2000. (XII. 19.) on the accounting tasks during the liquidation and the Accounting Act, foreign currency liabilities (along with other receivables or obligations denominated in foreign currencies) are to be indicated in the accounting records at their Forint value converted at the foreign exchange rate with effect of the day when recognized or on the date of contractual performance, with certain exceptions. The detailed rules of the conversion method are set out in the Accounting Act. Most probably this is why liquidators usually recognise and reconfirm foreign currency claims in Hungarian Forints (HUF). However, we understand that these accounting obligations may not eliminate the right of Party B to have its claim registered and, if possible, satisfied in foreign currency. This view is further supported by 38/2009 (VIII.31.) IRM Decree (Ministry of Justice) on the mandatory form and content requirements of information of creditors under Section 40 of Council Regulation (EC) No 1346/2000 of 29 May 2000, which states that creditors must equally state their claims in HUF, as exchanged on the exchange rate issued by the Hungarian National Bank on the date of commencement of the proceedings (i.e. publication of the order on the opening of proceedings in the Company Gazette). The calculation of the claim's HUF equivalent should anyway be necessary for the purposes of vote distribution and determination of the creditor's share.

Accordingly, we understand that if the liquidator rejects to register the foreign currency nominated claim submitted in its original currency, and converts it to Hungarian Forints, then this procedure of the liquidator may be deemed as partial rejection of the creditor's claim. For the consequences of the rejection of creditor's claim by the liquidator during liquidation proceedings, please refer to point D.II.1.1(b) (page 83). Please note, however, that we are not aware of any such court precedent, thus we are not able to opine on how the court would approach such disputes.

C.I.1.7 ***Please specify, if and as applicable, the degree to which termination and close-out rights in case of opening of insolvency proceedings, against a party based in your jurisdiction are dependent upon, or otherwise affected 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?***

(a) General provisions

Under the laws of Hungary, municipalities or counties, associations of local government and quasi governmental entities are generally not subject to insolvency proceedings regulated under the Insolvency Act.

Based on Appendix A, the following entities are not subject to bankruptcy proceedings, and accordingly, a moratorium may not be ordered in connection with them:

(i) a credit institution (including a bank);

(ii) an investment firm;

(iii) an insurance company organised as a company limited by shares, a cooperative or a branch office, a mutual insurance association.

Beneficial treatment of close-out netting agreements in bankruptcy proceedings where at least one of the parties is an institutional counterparty are further detailed in point C.I.1.4(a)(1) (page 28) of this Opinion.

As regards the special rules applicable in relation to branches of credit institutions and insurance companies seated in another EU Member State, please also refer to point C.II.2.1(b) (page 54).

(b) Special procedure under the Resolution Act

The Resolution Directive sets up the framework of the recovery and resolution of credit institutions and investment firms. The Resolution Directive has been implemented by the Resolution Act in Hungary.

While financial institutions are not subject to bankruptcy proceedings, the Resolution Act has introduced a special regime for the reorganisation and recovery of certain financial institutions, in accordance with the Resolution Directive.

The following institutions may be subject to resolution measures under the Resolution Act:

(i) a credit institution (including a co-operative credit institution) having its seat in Hungary;

(ii) an investment firm having its seat in Hungary;

(iii) a financial holding company, a mixed financial holding company or a mixed-activity holding company having its seat in Hungary;

(iv) a financial enterprise having its seat in Hungary, but only if it is a subsidiary of a Hungarian credit institution or investment firm and subject to supervision on a consolidated basis; and

(v) a Hungarian branch of a credit institution or investment firm which credit institution or investment firm is seated outside of the EEA.

If the criteria set out in the Resolution Act are met, NBH acting in its capacity as the resolution authority may apply a resolution tool which may be any of the following:

(i) the sale of business tool;

(ii) the bridge institution tool;

(iii) the asset separation tool; and

(iv) the bail-in tool.

These resolution tools may be applied individually or in any combination, except for the asset separation tool, which may only be applied in conjunction with another resolution tool only.

In its resolution order, HNB acting in its capacity as the resolution authority may order the transfer of assets and/or liabilities in whole or in part and/or to reduce or write down the liabilities of an institution (including claims and liabilities in respect of the Transactions). HNB acting in its capacity as the resolution authority may amend provisions of agreements to which the institution under the resolution is a party.

The Resolution Act establishes restrictions regarding the termination right of the parties in case of a resolution measure is applied by HNB. The restrictions aim to protect the institution under resolution (including its group entities) from the termination or suspension of its agreements concluded with other parties or the exercising of netting provisions solely on the ground that resolution measure has been applied. If the institution under resolution provided guarantee or other support to its group entity so as the group entity may fulfil its obligation, then the contractual counter party of the group entity may not terminate the agreement concluded with the entity on the ground that resolution measure has been applied to the institution that provided support. The Resolution Act also restricts termination and suspension right and the exercising of netting provisions in case of contracts containing termination right in case of non-performance concluded with the institution's group entity. These restrictions may apply only if the substantive obligations under the respective agreement, including payment and delivery obligations and the provision of collateral continue to be performed. The application of a resolution measure and such related events will not affect any contractual right of the relevant institution. These provisions only apply if the parties continue to perform their main obligations under the relevant agreement. Please note that the aforementioned provisions are mandatory in Hungary, the choice of foreign law on the EFET General Agreement, or the Credit Support Annex may not affect them, if the insolvent counterparty is a Hungarian entity[1].

HNB acting in its capacity as the resolution authority may order the suspension of:

(i) the performance (i.e. payments and transfers) under agreements to which the institution under resolution is a party; and/or

(ii) termination rights (including close-out rights) under such agreements; and/or

(iii) the enforcement of collateral provided by the institution under resolution.

The suspension applies from the publication of the order of HNB until midnight on the next business day. In respect of liabilities transferred to another entity (such as a private sector purchaser, a bridge bank or an asset management vehicle) where the termination rights have been suspended, the counterparty may only exercise its termination right if the event of default is continuing at the private sector purchaser, the bridge bank or the asset management vehicle for at least three days or it occurs.[2] If the right and obligations covered by the contract remain with the institution under resolution and HNB acting in its capacity as resolution authority has not applied the bail-in tool to that contract, the termination right may be exercised in accordance with that contract on the expiry of suspension.

HNB may not order the partial transfer of claims and obligations in respect of netting agreements or collateral arrangements. HNB may also not use its ancillary power to amend such agreements. The netting provision is deemed as a contractual provision which transforms claims into a single claim, including a close-out netting provision meaning the acceleration of the parties' claims upon an event of default in the course of which the claims become immediately due or are extinguished and transformed into, or replaced by, a single claim. This prohibition applies regardless of the governing law of the agreement. This is to ensure that claims subject to netting or collateral arrangements may only be transferred all at once.

This safeguard only applies if the parties are entitled to exercise such netting rights against each other. This provision is, however, ambiguous, and it is not clear whether this safeguard can be applied to an agreement which contains a close-out netting provision, but Parties do not exercise close-out netting because the relevant resolution authority or resolution legislation may not allow

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[1] Overriding mandatory provision in accordance with Art. 9. of Rome I.

[2] The above referred sec. 91(5) of the Resolution Act implements Article 71(5)(a) of the Resolution Directive in Hungary. Accordingly, the term „event of default", as set out in the above sentence is to be interpreted in accordance with Article 2(1)(l) of the Collateral Directive and should refer to: „... an event of default or any similar event as agreed between the parties on the occurrence of which, hinder the terms of a financial collateral arrangement or by operation of law, the collateral taker is entitled to realize or appropriate financial collateral or a close-out netting provision comes into effect".

the application of the close-out netting at the course of the resolution in certain circumstances, or simply because a Material Reason has not occurred. We believe that the correct interpretation is that the safeguard is afforded to all agreements containing a netting provision. This is because section 100 (2) of the Resolution Act is a verbatim implementation of Article 77 (1) paragraph 2 of the Resolution Directive, which must be read together with Article 76 (2)(d) of the Resolution Directive and which requires Member States to ensure that there are adequate protection in respect of netting arrangements. The Resolution Act has not implemented Article 76 (2)(d) of the Resolution Directive. Nothing in the Resolution Act indicates that the Hungarian legislator intended to limit the application of this safeguard. Recital 95 of the Resolution Directive makes it clear that the intention of this provision is to prevent the splitting of linked liabilities, rights and contracts. EU law requires a Hungarian court to interpret the Resolution Act in the light of the wording and the purpose of the Resolution Directive. For this reason, we are of the view that a Hungarian court would protect a close-out netting provision in the course of the resolution of a Hungarian institution. Also, the Resolution Act provides that in case of a partial transfer, the creditor with a claim which is left behind in the insolvent institution may not be worse off than it would have been had the bank been subject to insolvent liquidation. In our view this calculation must take into account the application of the close-out netting provision.

Under section 73(1) of the Resolution Act derivative transactions may only be subject to the application of the bail-in tool after such transactions have been closed out.

Collateral arrangements are also subject to safeguards under the Resolution Act. Under section 101(1) of the Resolution Act HNB may not:

(i) transfer the collateral or the security interest without transferring the underlying secured obligations;

(ii) transfer the secured obligations without transferring the collateral; or

(iii) amend the collateral arrangement in a way which would cause the security to be extinguished.

Secured liabilities are exempted from the bail-in tool up to the value of the collateral.

If a Hungarian institution is part of a group, a group-level resolution scheme is recognized and enforceable in Hungary. However, any group-level resolution scheme will take the form of a joint order of the relevant resolution authorities, therefore the approval of HNB is required for a group-level resolution scheme to be applied to a Hungarian institution. In acceding to the group-level resolution scheme HNB will be required to apply the safeguards in respect of close-out netting and collateral arrangements.

Resolution measures taken by an EEA authority would, in general, be enforceable in Hungary by HNB in accordance with the principles of mutual recognition of such resolution measures within the EEA. HNB must generally recognize a resolution measure of an authority outside of the EEA, and may make resolution orders in connection with assets located in Hungary or governed by Hungarian law and may suspend the close-out rights and the right to collateral arrangements if this is necessary for the implementation of the resolution measure. However, HNB may only recognize the resolution measure of a country outside of the EEA to the extent that the resolution measure complied with Hungarian law.

(c) Specific provisions applicable to financial institutions

Chapter IV of the Banking Act regulates the liquidation proceedings of financial institutions. The main provisions are as follows.

The Metropolitan Court of Budapest has exclusive jurisdiction in conducting proceedings in connection with the liquidation of financial institutions. The court shall forthwith notify the HNB of the opening of any liquidation proceedings that were not initiated by HNB.

HNB has exclusive powers to initiate liquidation proceedings against a financial institution or the branch of a third-country financial institution. HNB shall initiate liquidation proceedings:

- if the financial institution's authorization is withdrawn on the grounds that it has failed to pay any of its undisputed debts within 5 days of the date on which they are due or no longer possesses sufficient own funds (assets) for satisfying the known claims of creditors or it has failed to pay any of its debts from undisputed deposits within 5 days of the date on which they are due and the repayment is not expected afterwards;
- upon receipt of notice from the receiver in which he concludes on the basis of the adjusted opening balance sheet for dissolution that the assets of the financial institution undergoing voluntary dissolution are insufficient to cover creditors' claims, and the members, owners failed to procure the funds lacking within 30 days;
- in the case of branches, if insolvency proceedings have been opened against the non-resident financial institution that is operating a branch in Hungary.

The court shall order liquidation, without having to establish the insolvency:

- of a financial institution operating in the form of a limited company or set up as a cooperative society;
- of a non-resident financial institution operating a branch.

The court shall adopt a decision concerning a request for liquidation within 8 days of the submission thereof. The decision ordering the liquidation shall be enforceable irrespective of any appeal. If HNB appoints a supervisory commissioner before the request for liquidation proceedings is submitted, the appointment shall remain in effect until the court appoints the liquidator in its decision to order liquidation.

HNB may order a full ban of payments from the submission of the application for liquidation until the decision on liquidation is published in the Company Gazette.

During the liquidation of a financial institution, the creditors must present their claims within 60 days of the publication of the court order on the liquidation.

In the course of liquidation proceedings, the liquidator or, upon the National Deposit Insurance Fund's justified request, HNB may grant the financial institution in liquidation temporary authorization to pursue specific financial services. The HNB's permission is required for approval of any composition during the composition process if it is conditional upon the further operation of the financial institution as a credit institution or a financial enterprise.

Special provisions on the liquidation of credit institutions apply:

- to credit institutions that operate branches in other Member States of the EU or provide cross-border services;

- to the branches of third-country credit institutions if the credit institution has branches in at least two Member States of the European Union.

As regards the legal ramifications of any liquidation of a credit institution established in any Member State of the EU, the laws of the Member State in which the credit institution is established apply. The decisions adopted in such proceedings shall be recognized without any further proceeding.

The Hungarian branch of a credit institution established in another Member State of the EU shall not be liquidated under Hungarian law.

The rights attached to securities that are to be registered or kept in an account as a prerequisite for transfer are subject to the laws of the Member State in which the register or account is kept.

HNB shall inform of the proceedings and the ramification thereof the supervisory authorities of the Member States of the EU where the credit institution under liquidation operates any branches or provides cross-border services. Following publication of the court order on liquidation in the Company Gazette, HNB shall forthwith publish the contents of the order in the Official Journal of the European Union and also in two national daily newspapers in the country where the branch is set up or where cross-border services are provided. Any creditor whose permanent residence or corporate domicile is located in another Member State of the EU shall file its claim within 60 days following the publication in the Official Journal of the European Union. The effect of the court order applies to the entire territory of the European Union.

The provision of the Insolvency Act on the challenge of contracts (please refer to point C.I.1.2.2 (b)(1) of this Opinion on page 20) shall not apply in case the party acquiring any right through a contract is able to verify that the contract in question falls within the scope of the law of another Member State of the EU and such law does not allow the contract to be contested.

The liquidator's right to challenge contracts on the grounds specified in 20(b)(1) (iii) and (iv) (on page 20) shall not apply to the transfer of the shares, other assets, rights or liabilities of a financial institution under resolution as provided for in the Resolution Act to another entity based on the decision of the HNB to apply a resolution tool for transactions conducted in compliance therewith.

The liquidator is required to inform the known creditors whose registered office, place of business or normal place of residence is located in another Member State of the EU of the content of the court order and the legal consequences attached to specific deadlines immediately upon receiving the court order. The liquidator is required to regularly inform the HNB and the creditors on the status of the liquidation proceedings.

Where a liquidation proceeding is opened against a branch of a third country, HNB shall notify the supervisory authorities of the Member States of the EU in which the credit institution whose branch is undergoing liquidation has any branches that are listed in the register published annually in the Official Journal of the European Union. The HNB, the court ordering liquidation and the liquidator shall collaborate with the competent authorities of the countries concerned in order to coordinate their actions.

(d) Specific provisions applicable to investment firms

Chapter XXII of the Investment Firms Act regulates the liquidation proceedings of investment firms. The main provisions are as follows.

The Metropolitan Court of Budapest has exclusive jurisdiction in conducting proceedings in connection with the liquidation of investment firms.

HNB shall initiate the liquidation of an investment firm if:

- the investment firm's authorization to engage in investment services is withdrawn on the grounds that the investment firm has failed to pay any of its undisputed debts within 5 days of the date on which they are due and its holdings (assets) do not provide cover for satisfying the known claims of creditors;

- in the case of a branch, if insolvency proceedings have been opened against the investment firm in the state where established.

In these cases the court shall order the liquidation regardless of whether or not the investment firm or the investment firm incorporated as a branch is declared insolvent. The court shall decide on the petitions for liquidation within 8 days. The court order on the liquidation may be enforced, whether or not an appeal is lodged.

HNB freezes all outgoing payments as of the day of filing the petition for liquidation, if it is of the opinion that this is necessary to ascertain that the assets available are handled lawfully, to best serve the interests of creditors and clients.

If HNB appoints a supervisory commissioner before the petition for liquidation proceedings is submitted, the appointment shall remain in effect until the court appoints the liquidator in its decision to order liquidation.

The financial instruments and funds deposited by clients with the investment firm, the financial instruments and funds held for or belonging to clients, and assets to which the contract to provide commodity exchange services pertains shall not comprise a part of the assets of the investment firm. If any part of the financial instruments and funds held for or belonging to clients, or assets to which the contract to provide commodity exchange services pertains cannot be returned to the clients for any reason, these claims shall be satisfied from the investment firm's assets following settlement of liquidation charges.

The liquidator's right to challenge contracts on the grounds specified in C.I.1.2.2 (b)(1) (iii) and (iv) (on page 20) shall not apply to the transfer of the shares, other assets, rights or liabilities of an investment firm under resolution as provided for in the Resolution Act to another entity based on the decision of HNB to apply a resolution tool for transactions conducted in compliance therewith.

A representative of the Investor Protection Fund shall attend composition negotiations held in connection with the liquidation of an investment firm in the capacity of a creditor concerning the claims and the extent of coverage insured by the Fund, and shall be entitled to make any concessions in order to achieve a composition agreement. A composition agreement shall be approved under the liquidation of an investment firm subject to HNB's consent, where a composition agreement is required to continue the activities subject to authorization under the Investment Firms Act.

(e) Specific provisions applicable to insurance companies

Part XIV of the Insurance Act regulates the liquidation proceedings of insurance companies. The main provisions are as follows.

The Budapest-Capital Regional Court has exclusive jurisdiction concerning the liquidation of insurance companies, with the exception of small mutual associations.

HNB has exclusive jurisdiction to initiate the opening of liquidation proceedings against an insurance company. However, HNB is not entitled to move for the liquidation of the Hungarian branches of insurance companies established in other Member States of the EU.

HNB may adopt a decision on the initiation of liquidation proceedings if the insurance company's authorisation has been withdrawn.

The court shall adopt a decision concerning a request for liquidation within 30 days of the submission of the motion. The court shall order the liquidation upon the request of the HNB without having to examine the insurance company's solvency.

If the liquidation of an insurance company was initiated by an entity other than the HNB, after refusing the request the court shall forthwith notify the HNB. Upon receipt of notice, the HNB shall investigate without delay as to whether liquidation should be initiated.

With respect to the commencement of liquidation proceedings and the legal effects of these proceedings, the HNB shall inform the supervisory authorities of the Member States of the EU.

Following publication of the final court ruling ordering liquidation in the Companies Gazette the HNB shall forthwith publish the contents of the ruling in the Official Journal of the European Union.

At the time of the opening of liquidation insurance contracts shall be terminated, with the exception of those in the process of being transferred. In order to ensure the successful portfolio transfers of the insurance company ordered by HNB, HNB specifies those portfolios' contracts which shall not be terminated. Insurance premiums due for the period ending at the time of termination may be collected in connection with terminated insurance contracts.

Within 5 days following publication of the final court ruling ordering liquidation, the liquidator is required to publish a notice in its own website, the insurance company's website and the HNB's website about:

- the opening of liquidation proceedings;
- the termination of insurance contracts, including the date of termination and the legal effects thereof;
- the contents of the ruling on liquidation;
- the legal consequences attached to specific deadlines connected to liquidation;
- the sequence of satisfaction as per the provisions of the Insurance Act;
- the means of accessing the information about the state of the liquidation procedure electronically.

The liquidator shall publish the above mentioned notice in two nation wide daily newspapers. Within 30 days following the publication of the final court ruling ordering liquidation, the liquidator is also required to inform individually all policyholders, insured persons and known creditors who have their normal places of residence, head offices or branches in other Member States of the EU with a notice containing the above mentioned details.

The creditors must present their claims within 60 days of the publication of the final court ruling ordering liquidation. This deadline shall apply with prejudice.

The liquidator shall be required to inform the HNB on the status of the liquidation procedure at the times prescribed by the HNB. At the request of the supervisory authorities of other Member States of the EU, the HNB is required to provide information concerning the status of the liquidation proceedings. The liquidator shall publish information on a regular basis, or at least once in a six-month period, for policyholders, insured persons and other creditors on the HNB's website, the insurance company's website and on his own website as well.

The provisions of the Insolvency Act on the challenge of contracts shall not apply in cases where the party acquiring any right through a contract is able to verify that the contract in question falls within the scope of the law of another Member State of the EU and such law does not allow the contract to be contested.

As regards the legal ramifications of liquidation or equivalent proceedings of an insurance company established in another Member State of the EU, the laws of the country in which the insurance company is established shall apply. The decisions adopted in such proceedings shall be recognized without any further proceeding.

As regards the legal aspects of any contract pertaining to the use or acquisition of a real estate property that is involved in reorganization or liquidation proceedings, the laws of the country in which the property is situated shall apply.

As regards the law of reorganization or liquidation proceedings with respect to a real estate property, ship or an aircraft subject to the obligation of the insurance company's registration in a public register shall be governed by the law of the Member State under whose authority the register is kept.

The rights attached to securities that are to be registered or kept in an account as a prerequisite for establishing or for the transfer such right shall be subject to the laws of the Member State in which the register or account is kept.

The liquidator shall satisfy the insurance company's underwriting liabilities arising from insurance contracts after the liquidation costs and secured liabilities as specified in the Insolvency Act, excluding the assets relating to insurance contracts with natural persons for insurances based investment products. Insurance companies shall meet their underwriting liabilities from insurance contracts in the following order:

- as regards underwriting liabilities in connection with personal injury, accident or sickness, (i) liabilities covered by health insurance policies or health related risks covered by insurance policies, and (ii) liabilities covered by accident insurance policies or accident related risks covered by insurance policies, and (iii) settlements from liability insurance policies, or liability related risks covered by insurance policies where personal injury is involved and the insured event took place before the date of the opening of liquidation proceedings, including annuity benefits payable to the injured party or to a family member whom the injured party is liable to support (excluding the claims which are due to the Claims Guarantee Fund, the Compensation Fund and to the National Bureau);

- liabilities from life assurance policies, and liabilities from liability insurance policies (excluding the liabilities referred to in the section) above and the claims which are due to the Claims Guarantee Fund, the Compensation Fund and the National Bureau);

- settlements approved on the basis of losses which took place before the date of the opening of liquidation proceedings, excluding benefits referred to above (excluding the claims which are due to the Claims Guarantee Fund, the Compensation Fund and to the National Bureau);

- liabilities to the National Bureau, the Claims Guarantee Fund and the Compensation Fund in respect of the settlements they have provided;

liabilities to refund insurance premiums paid in advance, which are considered unearned premiums.

(f) Specific provisions applicable to economic operators of strategic importance

Chapter IV of the Insolvency Act regulates a special regime applicable to the insolvency proceedings of major economic operators of strategic importance. In such insolvency proceedings the only entity entitled to act as administrator or liquidator is the wholly-state-owned entity designated by the government in a decree. As economic operators operating in the energy sector may also classify as 'major economic operator of preferential status for strategic considerations' whom the special regime applies to, below we summarise the main provisions of this Chapter of the Insolvency Act.

(1) Major economic operator of preferential status for strategic consideration

According to Section 65 (3) of the Insolvency Act, 'major economic operator of preferential status for strategic considerations' shall mean any economic operator

- that operates in fields that may be construed to be of national importance for reasons of national security, defence, law enforcement, military, energy safety, energy supply, industrial safety, disaster relief and emergency response, nature preservation, environmental protection, public health, public utility, infrastructure development, cultural heritage, public information, communications, transport, transportation safety, research and development and public health considerations, or as related to basic public functions or to ensuring basic food supplies to the general public, as well as for reasons of national and international trade and employment, or for reasons of supplying district heat and other public utility services to the general public;

- that is involved in, or undertook the implementation of projects given priority for national economy consideration;

- that is involved in discharging public functions conferred by law nation-wide;

- that received large amounts of state aid for restructuring, credit guarantees, surety facilities or export credit insurance, or that is engaged in the pursuit of, or undertook to carry out concession-bound activities, and is therefore engaged under contract with the State or specific public bodies (including the State-owned economic operators established for carrying out the aforesaid functions) in connection with the above; or

- that is engaged in the pursuit of activities considered to carry strategic importance for national economy purposes, other than those referred above.

The government may classify – by means of a decree – as major economic operators of preferential status for strategic considerations those economic operators specified above to whom the following criteria applies:

- settlement of the debts of such operators, composition with creditors or reorganization is in the interests of the national economy or is of particular common interest; or

- the liquidation of such operators without succession – where the lack of funding and insolvency cannot presumably be resolved – in a simplified, transparent and standardized procedure is given priority due to economic considerations.

The government shall publish the decree on the classification:

- in the case of bankruptcy proceedings, within 30 days from the time of the opening of bankruptcy proceedings;

- in the case of liquidation proceedings, within 365 days from the time of the opening of liquidation proceedings;

- in the case of economic operators under majority state ownership, and in the case of associations and foundations where founder's rights and members' voting rights are exercised by a central budgetary agency or any other public entity: (i) by the time a composition agreement is reached in bankruptcy proceedings; (ii) by the time a composition agreement is reached if a composition conference is held in liquidation proceedings, in the absence of a composition agreement, before the final balance sheet is submitted to the court;

- in the case of economic operators of preferential status for reasons of disaster management, nature conservancy or environmental protection, by the time indicated in the above point

(2) Special regime in bankruptcy proceedings

Apart from the mandatory appointment of the administrator the special regime does not include any other specific rules with respect to the bankruptcy proceedings of entities of a strategic importance.

(3) Special regime in liquidation proceedings

As the declared purpose of this special regime is to provide enhanced protection for such companies and to speed up their liquidation, certain procedural deadlines have been decreased under the special regime. For instance,

- the deadline for notification of creditors' claims resulting in forfeiture is 120 days (instead of 180 days, as according to the general rules);
- the deadline for the liquidator to review the claims is 40 days and the liquidator must submit the disputable ones for judgement to the court within 10 days (instead of 45 days and 15 working days, as according to the general rules);
- the term open for the beneficiary of a security deposit to enforce such deposit outside the liquidation is 2 months (instead of 3 months, as according to the general rules).

Where a major economic operator of preferential status for strategic considerations or the facilities it operates are placed under protection for national security reasons, or if providing a public service of international or national importance for reasons of defence, law enforcement, military and energy supply considerations, or providing public utility services of strategic importance to the general public, significantly different procedural rules apply as compared to the general rules, which also affect the enforceability of termination rights and close-out netting.

In liquidation proceedings of economic operators of strategic importance (initiated either by the debtor or the creditor) by publication of the order in the Company Gazette the debtor is granted an extraordinary moratorium within one working day after the court receives the petition for liquidation.

The purpose of the extraordinary moratorium is to keep the debtor operational on a temporary basis. The extraordinary moratorium has the following effects:

- The debtor may only make any payments with the approval of the administrator.
- The administrator and the debtor have joint right of disposal of the debtor's bank accounts.

- The administrator approves such payments which become due during the extraordinary moratorium and are necessary to maintain the operations of the debtor. The resources of such payments are to be made freely available and separated for such purpose by the debtor's director from the debtor's assets and the use of such funds is to be monitored by the administrator.

- The licences necessary for the debtor's operation are extended until the end of the extraordinary moratorium.

- During extraordinary moratorium contracts concluded with the debtor may not be terminated or withdrawn by the other party, and such contracts shall not terminate on account of the debtor's insolvency or stemming from the extraordinary moratorium.

If the petition for liquidation is filed by the debtor, the court reviews the petition within 5 days. The time limit for remedying deficiencies is 5 days. If the court decided to refuse the debtor's petition without any examination of its merits, or dismisses the proceedings, or declares the proceedings to be conducted in the form of a territorial proceeding, the special moratorium terminates upon publication of the final ruling thereof in the Company Gazette, except if the court has published another ruling on the special moratorium in another proceeding opened upon the petition for liquidation.

If the liquidation is initiated by a creditor, the court holds a hearing concerning the creditor's petition within 8 days of receipt of the petition in order to establish the insolvency of the debtor, and invites the creditor initiating the liquidation as well as the extraordinary administrator. The parties are required to present their statements relating to the petition during the hearing at the latest. Where additional documents and/or statements are required for making a decision on insolvency, the court sets another hearing within not more than 5 days. In that hearing the debtor is required to provide a statement to indicate whether the funds at its disposal are considered sufficient to cover the payment obligations incurred or scheduled to fall due during the period of extraordinary moratorium. If the debtor fails to make such statement or indicates that the funds are insufficient, the court adopts a ruling in priority on terminating the extraordinary moratorium. The ruling may be appealed separately and the court will have to decide on the appeal within 15 days. The court publishes the final ruling in the Company Gazette without delay.

In proceedings opened at the creditor's request the court adopts a decision on the debtor's insolvency during the hearing, or within 15 days after the first hearing. In the ruling the court extends the extraordinary moratorium for a period of 90 days from the publication of the final ruling in the Company Gazette.

The effects of the moratorium basically do not change after the extension thereof. Consequently, the debtor's counterparts are still not entitled to terminate the agreements (or have them terminated by automatic termination); however, the rights granted to the liquidator by the general provisions are not affected by the extended moratorium. Thus the liquidator may terminate any contract of the debtor and also challenge such contracts under certain circumstances.

The procedural rights granted to the creditors (being statutory guarantees to ensure the transparency of the liquidation proceedings) under the general liquidation provisions are limited by the special regime in certain cases. For instance, the liquidator may refuse the request of the creditors' committee to provide it with information about, amongst others, the financial and economic situation of the debtor during the liquidation proceedings, the conclusion of any arrangements by the liquidator or the termination of the existing contracts, if the liquidator believes that the provision of such information would jeopardize the achievement of the purpose of the special regime (the actual content of which reasoning is rather unclear). Also, in respect of possible set-off, instead of the time of the opening of liquidation the date of publication of the extraordinary moratorium applies to determine whether creditors' claims may or may not be set off.

In addition, as far as the sale of the debtor's assets is concerned, the liquidator may decide to refrain from the public forms of the sale (which would otherwise be mandatory) if it believes that the public sale would jeopardize the achievement of the purpose of the special regime. In this case, the liquidator is not obliged to inform the creditors in advance about such decision. However, it must ensure that the reasons for its decision, as well as the received bids are incorporated in a notarial deed.

It is also possible to reach a composition agreement in liquidation proceedings under the special regime, in which case the simple majority of the creditors in each creditors' group (i.e. not only in the secured-unsecured classes) approval is necessary, provided that the aggregate amount of the claims of the consenting creditors exceeds at least the 50% of the aggregate amount of the claims of the creditors entitled to vote.

C.I.2 Non-insolvency related Material Reasons

The opinions expressed under this section C.I.2 regarding the specific questions below relate to termination for non-insolvency related Material Reason in a non-insolvency scenario. In case of termination for non-insolvency related Material Reason in an insolvency scenario, unless otherwise provided in relation to a specific question, the same shall apply as expressed under point D.II.1 (page 80).

As introduced under C.I and subject to the limitations set out in the Opinion and as further detailed below, the civil law interpretation of close-out netting enables the Parties to the Agreement to enforce the netting provisions of the Agreement against each other under the laws of Hungary. The netting effect is achieved through the application of a civil law set-off.

According to Sections 6:49 – 6:52 of the Civil Code, an obligor is entitled to set-off its due and payable claim of the same type against its debt by a statement addressed to the obligee or issued in the course of court proceedings. Obligations cease to exist up to the value of the set-offs.

No set-offs can be made against claims for support, life annuity, or accident benefits, with the exception of overpayment, as well as for compensation for wilfully caused damages. The obligees shall not be entitled to include claims that cannot be enforced in court; they may, however, set off their lapsed claims if they have not yet lapsed by the time the counterclaim comes into existence. Only claims originating from the same legal title can be set off against claims which are exempt from execution. Only counterclaims of the same nature or those incorporated in a public document can be set off against claims established by a writ of execution or by composition.

Notwithstanding the above restrictions, the general requirements for two claims to be set off against each other are that both claims must be of the same type (in Hungarian: *"egynemű"*) and must be matured, due and payable (in Hungarian: *"lejárt"*). Furthermore, set-off occurs by delivering the set-off (netting) statement to the other party. No set-off can occur without such statement being delivered; this is a precondition to the effectiveness of the set-off.

Based on the principle of freedom of contract, we are of the view that in a non-insolvency scenario the parties may agree on contractual provisions that provide for the termination of their relationship and acceleration of their mutual claims, thus partly waive of these requirements. With respect to this and the above, we are of the view that the provisions of the Agreement providing for set-off of claims between the Parties arising out of such Agreement will be enforceable in a non-insolvency scenario.

Similarly, the set-off of claims between the Parties arising outside the EFET General Agreement contractually provided for in an amendment to the EFET General Agreement will be enforceable under the laws of Hungary in a non-insolvency scenario. However, in our view, the set-off of claims between Affiliates or Credit Support Providers of Parties contractually provided for in an amendment to the EFET General Agreement will not be enforceable, and courts will render largely unenforceable bilateral triangular (cross-affiliate) set-off provisions that provide for set-off among different entities in corporate groups. This is because set-off generally requires the mutuality of the claims (i.e. that they are due to and from the same person). Set-off may be used only in respect of counterclaims between the same parties (i.e. the Parties to the Agreement) and third party claims (i.e. claims of Affiliates) could be included in the set-off only with the prior consent of the third party (which practically means the assignment of the claim of the Party's Affiliate to the Party concerned). Contracting Parties could resort instead to multilateral agreements, which may provide the necessary mutuality.

C.I.2.1 ***Please discuss and advise on the issue outlined under point C.I.1.5 in the context of non-insolvency related Material Reason.***

The laws of Hungary recognize that the netting provisions in sections §§ 10 to 11 of the EFET General Agreement apply to all Individual Contracts subject to the single agreement concept as described in § 1 of the EFET General Agreement. The single agreement concept is necessary in order to preserve the enforceability of the termination right and of the ability to calculate the net amount under the Agreement. In lack of any express provision to this end, any default under (or other event in respect of) an individual transaction entered into under a framework agreement would not result in the termination of the framework agreement as well as of all other individual transactions under thereof.

On a contractual civil law basis the Parties may agree on exceptions from the single agreement concept by precisely specifying those transactions and/or events which break through the veil of uniformity. Nevertheless, in our view this goes against the general single agreement concept.

Finally, in our view the exact wording of provisions allowing partial close-out is of high importance. From a legal drafting viewpoint we believe that it would be more appropriate if the possibility (if any) of partial close-out was regulated together with the single agreement concept (and not in an annex in which way possible inconsistencies could be better avoided) for instance with an additional wording in § 1.1 of the EFET General Agreement as follows:

"*All Individual Contracts and this General Agreement shall form a single agreement between the Parties (collectively referred to as the "Agreement". Notwithstanding the aforesaid, the Parties shall have the right, without however prejudice to the force and validity of the remaining Individual Contracts and of the General Agreement to terminate solely [type of individual contract] for those special material reasons that are set out as ground for partial close-out in the [type of individual contract].*"

C.I.2.2 ***Please discuss and advise on the issue outlined under point C.I.1.6 in the context of non-insolvency related Material Reason.***

As noted under point C.I.1.6 (page 33), according to the CCR Act the parties are basically free to determine the currency they wish to apply in their contractual relationship. Therefore, we believe that in the context of non-insolvency related Material Reasons under the laws of Hungary nothing prevents the Parties to the EFET General Agreement to pay the amount of any compensation claim in Euro, USD, GBP (or as agreed between the Parties in the Agreement) and further to seek enforcement of such provision.

C.I.2.3 ***Please discuss and advise on the issue outlined under point C.I.1.7 in the context of non-insolvency related Material Reason.***

According to the Civil Code, the parties to an agreement are free to determine upon which their agreement terminates. There are no specific provisions regarding credit institutions, investment firms and insurance companies which may restrict the termination right of these entities in non-insolvency related Material Reason.

C.I.2.4 ***Are the rights of the Terminating Party to terminate and close-out the EFET General Agreement enforceable in accordance with the terms of the EFET General Agreement, irrespective of the insolvency of Party A?***

The rights of the Terminating Party in the context of non-insolvency related Material Reason are principally enforceable, based on the principle of freedom of contract under the Civil Code. Notwithstanding this, termination rights of a Party triggered by the Non-

Performance of the other Party are restricted during the moratorium in the bankruptcy proceedings in relation to the other Party as follows.

During the moratorium in bankruptcy proceedings the right of a party to terminate an agreement due to the debtor's failure to pay is restricted, since as a general rule the legal consequences of non-payment or late payment do not apply during the moratorium (please refer to point D.II.1.1(a) on page 80). This means that pursuant to Section 11 (2) h) of the Insolvency Act, the main rule in bankruptcy proceedings is that the creditor is not entitled to terminate the agreement for reason of payment default.

To some extent the Insolvency Act provides for an exemption in relation to close-out netting agreements within the scope of the definition of the Capital Market Act, when it provides that the payment moratorium does not affect the enforceability of close-out netting agreements entered into prior to the commencement date of the bankruptcy proceeding, provided that at least one of the parties is an institutional counterparty (please refer to point C.I.1.4(a) on page 28). Notwithstanding this, it is important to note that Section 11 (3) of the Insolvency Act refers to the enforceability of the close-out netting agreement, but not specifically to the termination right for non-payment. Although one may conclude from the structure of the relevant Section that while subparagraph (2) regulates the principle rules and subparagraph (3) provides for a general exemption for netting agreements, we are of the view that arguments to the contrary may also be brought up, claiming that the exemption only allows the party of a close-out netting agreement to enforce a net claim against the debtor during the moratorium to the extent that netting was triggered by an event other than the debtor's non-payment (or the fact of the bankruptcy procedure, as referred to in point C.I.1.2.2 (a) on page 20). As the Insolvency Act does not provide further guidance in relation to this interpretational issue, this risk cannot be excluded.

C.II MULTIBRANCH PARTIES

According to the Instruction Letter, under this section we make a distinction between (1) a Multibranch Party incorporated, organized or having its centre of main interest in Hungary (*Hungarian Multibranch Party*) and (2) a Multibranch Party incorporated, organized or having its centre of main interest <u>outside</u> Hungary, but operating through one or more branches in Hungary (*Foreign Multibranch Party*).

C.II.1 Hungarian Multibranch Party

For the purpose of this section (*Hungarian Multibranch Party*) our opinion is based, in accordance with the Instruction Letter, on the following additional assumption:

Party A has entered into Individual Contracts under the EFET General Agreement through offices in Hungary as well as through one or more branches located abroad. After entering into these Individual Contracts and prior to the maturity thereof, Party A becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of Hungary.

C.II.1.1 ***Would there be any change in your conclusions reached under C.I or C.I.2 above based upon the fact that Party A has conducted business under the EFET General Agreement on a multibranch basis prior to its insolvency?***

We are of the view that the fact that Party A has conducted business under the EFET General Agreement on a multilateral branch basis prior to its insolvency would not change our conclusions under points C.I and C.I.2 above (page 16 and 48).

According to the Insolvency Act all fixed assets and current assets, as defined under accounting laws concerning the company, must be subject to the insolvency proceedings. In our view this includes assets held by the branch of Party A outside Hungary, since Hungarian law treats branches of Hungarian business entities as part of that business entity. Accordingly, we believe that the Hungarian liquidator will seek to collect, as far as possible and practicable, all assets of Party A worldwide. Certainly there will be limitations arising under either the EU Insolvency Regulation or the principles of private international law (including international treaties or state of reciprocity) on the ability of the Hungarian liquidator to recover assets located outside Hungary. If the branch(es) is (are) located within the territory of the EU (other than Denmark), territorial insolvency proceedings may be initiated further to the EU Insolvency Regulation, whose effects will be restricted to the assets of the debtor situated in the territory of the Member State where the branch is located.

C.II.1.2 ***Would the EFET General Agreement be treated as a single unified agreement by the Hungarian receiver under the laws of Hungary, regardless of the treatment of the EFET General Agreement or Individual Contracts by an insolvency official in a country where close-out netting may be unenforceable?***

Based on our conclusion under point C.II.1.1 (page 52), we are of the view that the EFET General Agreement will be likely treated as a single unified agreement by the Hungarian receiver under the laws of Hungary.

C.II.2 Foreign Multibranch Party

For the purpose of this section (*Foreign Multibranch Party*) our opinion is based, in accordance with the Instruction Letter, on the following additional assumptions.

*A corporation, a bank, an investment service provider, an insurance company, an investment fund management company or any other similar financial institution ("**Party F**") incorporated, organised or having its centre of interest in a country ("**Country H**") other than Hungary has entered under the EFET General Agreement into Individual Contracts both through its home offices 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 Hungary ("**Hungarian Branch**").*

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

C.II.2.1 ***Would there be separate proceedings in Hungary with respect to the assets and liabilities of the Hungarian Branch upon the start of the insolvency proceeding for Party F in Country H? Or would the relevant authorities in Hungary defer to the proceedings in Country H, so that the assets and liabilities of the Hungarian Branch would be handled as part of the proceedings for Party F in Country H? Could local creditors of the Hungarian***

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

Bankruptcy proceedings in Hungary cannot be initiated with respect to the Hungarian Branch. As for liquidation proceedings, please be advised as follows.

(a) Party F being an ordinary corporation

If Party F is an *"ordinary"* (i.e. not financial) corporation, we are of the view that the Hungarian Branch cannot enter into transactions under the EFET General Agreement between Party F and a third party, and thus the multibranch operation structure will not be enforceable.

According to the Branch Office Act the branch office of a foreign company is an organisational unit of the foreign company, registered as branch of the foreign business entity at the Court of Registration in Hungary, with individual trading capacity. Although the branch does not have own legal personality and is only a part of the foreign business, it has legal capacity, and according to the Hungarian laws applicable to branches in Hungary, the operation of the Hungarian branch and the foreign business must be clearly segregated. Section 10 (2) of the Branch Office Act provides that the foreign business entity may only dispose of the assets acquired and liabilities assumed under the name of the branch office when the branch is dissolved or becomes subject to insolvency proceedings, or when proceedings have been commenced in connection with such assets or liabilities abroad. Assuming that Party F terminated all transactions (including those entered into by the Hungarian Branch) under the EFET General Agreement entered into with a third party and effects the netting, Party F in fact deals with certain assets/liabilities of the Hungarian Branch while the Branch is still in operation, which is not allowed under the Branch Office Act.

If it is the Hungarian Branch that entered into the EFET General Agreement and each Individual Contract thereunder, our conclusions in C.I would apply appropriately, since the specific provisions of the Branch Office Act on the liquidation proceedings of branches do not affect the relevant provisions of the Insolvency Act.

Without prejudice to the above, according to the general rules of the Branch Office Act, if main insolvency proceedings were initiated against Party F in Country H, the Hungarian Branch would be required to report that to the Court of Registration within 8 days of the commencement of such proceedings and to make a publication on the Company Gazette's website about the key elements of the resolution on opening the foreign insolvency procedure and – if there is – the foreign court's or authority's decision on the appointment of insolvency practitioner. This publication should contain information in particular an indication and address of the foreign court opening the main insolvency proceeding; the foreign insolvency practitioner's name and contact information; the deadlines for filing the creditors claims; legal consequences stipulated in connection with the deadlines; an indication, contact information of bodies or authorities entitled to receive creditors claim. Main insolvency proceedings initiated against Party F in Country H shall only apply to the Hungarian Branch apart from the cases falling within the scope of the EU Insolvency Regulation if there is state of reciprocity between Hungary and the foreign state where main insolvency proceeding had been opened. If the branch office is not involved in the main insolvency proceedings initiated against the foreign entity abroad under the laws of that country the court competent according to the registration of the Hungarian Branch must order the liquidation of the branch ex officio on the basis of notification by the court of registry. This means that assuming that the Hungarian Branch could enter into Individual Contracts under an EFET General Agreement concluded between Party F and a third Party (which we understand is not the case), separate proceedings could be conducted against the Hungarian Branch in Hungary.

(b) Party F being a financial institution or other specific type of entity

If Party F is a bank, an investment service provider, an insurance company, an investment fund management company or any other similar financial institution as listed below and is seated in the EEA, the exceptional rule of the Branch Office Act regarding the so-called *"financial branches"* will apply. According to the Branch Office Act, a branch qualifies as a financial branch if the foreign entity is a foreign credit institution, financial enterprise, insurance company, insurance agency company, insurance advising company, or where the Hungarian branch of the foreign entity provides investment or supplementary investment services or carries on commodity exchange, investment fund management, clearing house, exchange or public warehousing activities. In respect of financial branches Section 24 (3) of the Branch Office Act provides that the financial branch of a foreign entity registered in any EEA Member State may act – without special authorization – in the name and on behalf of the foreign entity, acting as a representative of such, in which case the limitations in Section 10 (1) (2) of the Branch Office Act (described above in point C.II.2.1(a) on page 53) do not apply. The fact that the financial branch is acting as a representative of its founder shall be clearly indicated in its standard service agreement, and also on documents made out when acting under its corporate name and during its activities. This means that if Party F meets the above requirements and is seated in the EEA, its Hungarian Branch may enter into Individual Contracts under an EFET General Agreement between Party F and a third party (if Party F does not have its registered seat in the EEA, then the conclusions in point C.II.2.1(a) on page 53 apply), provided that the branch's representation right is clearly indicated in the contracts (e.g. by phrasing the contracting parties section as follows: *"Party F through the Hungarian Branch"* or *"Hungarian Branch in the name and on behalf of Party F"*). In this event, Party F may include in the calculation of the Termination Amount assets acquired and liabilities assumed through the Hungarian Branch.

In respect of credit institutions and insurance companies having their seat in an EU Member State, the Banking Act and the Insurance Act respectively states, in line with the Winding-up Directive, that the legal effects of the bankruptcy, liquidation or voluntary dissolution proceedings conducted in relation to them will be governed by the laws of the Member State in which the credit institution or insurance company has its seat. Resolutions made in such proceedings must be recognised without any further procedure. A Hungarian Branch of a credit institution or insurance company seated in the EU cannot be voluntarily dissolved or liquidated in separate proceedings in Hungary. As a result, the Hungarian authorities or creditors cannot initiate separate proceedings in Hungary in relation to the Hungarian Branch of Party F being a credit institution or an insurance company seated in the EU. In such circumstances, all assets and liabilities must be handled as part of the proceedings for Party F in Country H. In relation to branches of third-country financial institutions the HNB has exclusive powers to initiate the liquidation of the branch.

The Investment Firms Act does not contain such exceptional rules for the liquidation of an investment firm operating in the form of a branch, in fact, it provides that the competent financial regulator authority must initiate the liquidation of the branch if insolvency proceedings have been opened against the investment firm in the state where established.

C.II.2.2 ***If there were separate proceedings in Hungary with respect to the assets and liabilities of the Hungarian Branch, would the receiver or liquidator in Hungary and the Hungarian courts, based on the facts above, include Party F's position under the EFET General Agreement, in whole or in part, among the assets of Hungary and, if so, would the receiver or liquidator and the Hungarian courts recognize the close-out netting provisions of the EFET General Agreement in accordance with their terms? The most significant problem arising would be if a Hungarian receiver, liquidator or court considering a single EFET General Agreement were to require a counterparty of the Hungarian Branch of Party F to pay the mark-to-market value of Individual Contracts entered into with the Hungarian Branch to the liquidator or receiver of the Hungarian Branch, while at the same time forcing the counterparty to claim in the proceedings in Country H for its net value from other Individual Contracts with Party F under the same EFET General Agreement. In considering this issue, please assume that close-out netting under the EFET General Agreement would be enforced in accordance with its terms in the proceedings for Party F in Country H.***

As described above in point C.II.2.1 (page 52) above, we are of the view that entering into Individual Contracts under the EFET General Agreement as a Multibranch Party is only enforceable if the Hungarian Branch is a financial branch as defined in the Branch Office Act. In this case, some specific provisions of the applicable laws, such as the Banking Act and the Insurance Act, expressly exclude the possibility of separate proceedings in relation to the Hungarian Branch. In other cases, for instance for investment firms, the Investment Firms Act does not contain such a prohibition on separate proceeding, in fact, it provides to the contrary, without however providing any further guidelines regarding the details of such proceedings. Even in the case of separate proceedings in respect of an investment firm operating in the form of a branch, if the branch qualifies as a financial branch defined by the Branch Office Act, it can be argued that according to the exceptional rules of Section 24 (3) of the Branch Office Act it proceeds in the name and on behalf of its founder, and thus the Hungarian liquidator will not have the right to dispose of the Individual Contracts entered into by the Hungarian Branch. The enforceability of this argumentation is however uncertain.

C.II.2.3 ***Please consider your answer to your question assuming instead that Party F has no branch located in Hungary, but has assets in Hungary.***

If Party F only has assets in Hungary but does not have a branch or establishment in Hungary, no insolvency proceedings may be opened in Hungary. The mere fact that

Party F has assets in Hungary does not serve sufficient basis for the opening of insolvency proceedings in Hungary.

If Country H, where Party F has at least its main centre of interest, is in the EU (other than in Denmark), according to the EU Insolvency Regulation, the main proceedings opened in relation to Party F under the jurisdiction of Country H will have universal effect in accordance with the EU Insolvency Regulation. If Country H is not an EU Member State, or the EU Insolvency Regulation does not apply, insolvency proceedings in relation to Party F will be governed by the laws of Country H subject to international treaties and state of reciprocity.

C.III COLLATERAL

For the purpose of this section (*Collateral*), we based our opinion on the following additional assumptions provided in the Instruction Letter:

Although it is a bilateral form in that it contemplates that each party may be required to post collateral to the other, we assume that (i) Party A is at all times Transferor under the EFET Credit Support Annex and (ii) that the collateral is owned by Party A or that Party A is authorised and empowered to transfer ownership in the collateral.

The counterparties agree that Eligible Credit Support will include cash, Letters of Credit and Parent Company Guarantee (PCG). 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.

Furthermore, in order to be able to provide more explicit answers and eliminate ambiguity to the extent possible, we further assumed the following:

Letters of Credit may have the form of a (a) bank guarantee (in Hungarian: *"bankgarancia"*), as described in Section 6:431 *et seq.* of the Civil Code and also regulated by the Uniform Rules for Demand Guarantees (URDG 758); (b) standby letter of credit (in Hungarian: *"akkreditív"*) as regulated in Section 47 of the MNB Decree 35/2017 and pursuant to the Uniform Customs and Practice for Documentary Credits (UCP 600). Furthermore, we understand that among Eligible Credit Supports a distinction is to be made under the laws of Hungary between the transfer of Cash and the Letters of Credit. Therefore, the answers to the questions of the present point are, where necessary or practicable, split accordingly.

C.III.1 *Under the laws of Hungary, what law governs the transfer of ownership in the various forms of Eligible Credit Support deliverable under the EFET Credit Support Annex?*

The law chosen by the Parties in the Credit Support Document (or later) shall govern the transfer of the ownership over the Eligible Credit Support under the EFET Credit Support Annex. Further to Rome I, the parties are free to choose the governing law applicable to their contractual agreements. However, if at the time of the choice all other elements relevant to the situation are located in Hungary (i.e. in a country other than the country whose law has been chosen), then according to Article 3 (3) of the Rome I, the choice of the parties shall not prejudice the application of provisions of the laws of Hungary which cannot be derogated from by agreement. Beyond the scope of the Rome I, the Parties choice of law will be upheld in Hungary on the basis of the IPL Act, if there is a foreign element in the dispute.

We understand that both under the Rome I and the IPL Act, the law applicable to the EFET General Agreement will also govern the EFET Credit Support Annex in the absence of an explicit and clear choice of law in the Credit Support Documents (or later) by the Parties. The reason for this is the accessory nature of the EFET Credit Support Annex to the EFET General Agreement. If the Parties have not either chosen the law applicable to the EFET General Agreement, the international private law rules of the court investigating the EFET General Agreement and the EFET Credit Support Annex will determine which law the EFET General Agreement and thus, the EFET Credit Support Annex is governed by.

C.III.2 *Would the laws of Hungary 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?*

C.III.2.1 Cash

Pursuant to the previously applicable rules of the Civil Code, any clause on the transfer of ownership, other right or claim for the purpose of securing a pecuniary claim was null and void, with the exception of the collateral arrangements provided for in the Collateral Directive. Further to this, we understand that the provisions of the Civil Code on security deposits (in Hungarian: *"óvadék"*) also allowed for an exception from the above prohibition. This latter means that the beneficiary of the security deposit on Cash (i.e. the Transferee) acquired ownership of the deposited Cash (Sections 5:95 (1) a), 5:106 (2), 5:138 (1) and 6:367 of the Civil Code) notwithstanding the above general prohibition.

The above rules, which were effective until 30 June 2016, meant that the Civil Code generally prohibited the outright transfer of ownership for security purposes unless the relevant agreement fell under the scope of the Collateral Directive or another exemption regulated in the Civil Code. Such could be the institution of security deposit on Cash, in which case we understood that the transfer of ownership was acknowledged.

Accordingly, under these earlier rules of the Civil Code, any clause on the transfer of ownership, other right or claim for the purpose of securing a pecuniary claim, unless one of the above exemptions applied, was invalid and thus unenforceable. Permitted fiduciary collateral arrangements (i.e. those where one of the above exemptions applied) were not rendered invalid by the mentioned rules of the Civil Code and thus we understand that they were enforceable. We nevertheless note that restrictions (apart from the generally applicable restrictions of civil law) may have applied in respect of the enforceability of such arrangements as described in this Opinion. It is to be noted though that this conclusion was without prejudice to the classification of security deposits as security interests, and thus restrictions may have applied in respect of their enforceability in an insolvency scenario as described below.

According to the Civil Code, fiduciary collateral arrangements in business-to-business relations can be established, which is line with the Collateral Directive. The nullity of fiduciary collateral arrangements only applies in the event that the fiduciary collateral is provided by a consumer, irrespective whether the beneficiary of such fiduciary collateral is a business or another consumer. Accordingly to the above, it is allowed in business-to-business commercial relationships under the laws of Hungary to establish fiduciary collateral arrangements in a form differing from those defined in the Collateral Directive (with regard to the generally applicable constraints of the civil law), and thus we understand that such allowed arrangements would be enforceable.

Concerning the bankruptcy of Party A, as also described in point C.III.6.1(a) (page 60) of this Opinion, during the payment moratorium granted under such bankruptcy proceedings, the Transferee (i.e. Party B) cannot enforce the security deposit held by it, unless it has been provided before the opening of bankruptcy and at least one of the parties is an institutional counterpart listed in point C.I.1.4(a)(1) (page 28) of this Opinion. In respect of resolution, please see point C.I.1.7(b).

Unlike in the event of bankruptcy proceedings, during the liquidation of Party A, Party B can seek satisfaction from the Cash directly, even if it is looked as security deposit, within 3 months following the commencement of the liquidation procedure. If Party B fails to exercise this right within the above deadline, it may seek satisfaction of the security deposit according to regulations applicable to pledges. Furthermore, if liquidation proceedings have commenced, and if the Transferee (i.e. Party B) is under the debtor's (i.e. Party A) majority control, it shall release the security deposit to the liquidator upon the commencement of the liquidation anyway. The liquidator shall then proceed according to the security deposit arrangement and shall pay the Transferee following the lapse of applicable deadline for filing of contests, provided that the arrangement between the Transferee and the debtor (Party A) has not been contested.

If there is no insolvency procedure initiated against Party A, the general provisions of the Civil Code shall be applicable in respect collateral security, if provided in connection with

(i) cash;

(ii) payment account balances, or

(iii) securities traded on the stock exchange or

(iv) any other securities whose market price is listed publicly, or

(v) securities embodying pecuniary claims whose market price can be determined at that time independent from the parties under conditions fixed in the securities

Party B shall be entitled to acquire ownership - by way of unilateral statement addressed to the Party A - of the pledged property up to the amount of the secured claim at the effective date of his right to satisfaction, or, if it was acquired previously, may terminate his obligation to transfer assets of the same type and amount as the collateral security received to the Party A.

Party B shall settle accounts in writing with Party A immediately after exercising direct right to satisfaction and to pay the amount remaining after the secured claim is satisfied to the Party A. To that end, money and payment account balances shall be taken into account at their nominal value, whereas securities shall be taken into account at market value.

We understand that cash as collateral under the EFET Credit Support Annex could be re-characterized as security interest under the Civil Code and the Collateral Directive, which means that the above mentioned limitations of the Insolvency Act regarding the satisfaction shall be applied to the transferred cash.

C.III.2.2 Letters of Credit

Our below analysis is based on the assumption that Letters of Credit under the EFET Credit Support Annex are without exception issued for the benefit of the Transferee with respect to the uncovered exposure concerned of the Party B and the provision of a Letter of Credit cannot be effected by way assignment of an (in favour of the Transferor) already issued Letter of Credit.

(a) Bank guarantee

As a principle, the creditor may not transfer the right of enforcement of the guarantee without the guarantor's consent, however, he shall be entitled to designate a person to whom payment is to be made by the guarantor. If the wording of the bank guarantee contains that the guarantee is freely transferable, assignable, the transfer of ownership is valid. Further to this, we have to note that under the Civil Code and the Collateral Directive bank guarantee shall not constitute to be security interest.

(b) Standby letter of credit

We understand that the laws of Hungary characterize the transfer of a standby letter of credit as effecting an unconditional transfer of ownership, please note that the standby letter of credit does not qualify as security interest, it is a payment instrument in accordance with the respective MNB Decree. Further to this, we have to note that under the Civil Code and the Collateral Directive bank letter of credit shall not constitute to be security interest.

(c) Parent Guarantee

As a principle, the creditor may not transfer the right of enforcement of the guarantee without the guarantor's consent, however, he shall be entitled to designate a person to whom payment is to be made by the guarantor. If the wording of the parent guarantee contains that the guarantee is freely transferable, assignable, the transfer of ownership is valid. Further to this, we have to note that under the Civil Code and the Collateral Directive parent guarantee shall not constitute to be security interest.

C.III.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 Hungary necessary or advisable, including any filing, registration, notification, stamping, notarisation or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval? Are there any other procedures that must be followed or consents or other governmental or regulatory approvals that must be obtained or established, to enforce, or continue such ownership interest?***

Basically no further steps appear to be required under the laws of Hungary to ensure that the ownership title of Party B in the collateral continues.

C.III.4 ***What is the effect, if any, under the laws of Hungary of the right to substitute collateral pursuant to § 6 of the EFET Credit Support Annex? Does the presence or absence of consent to substitution by Party B have any bearing on this question?***

According to 5:107 (3) of the Civil Code, if the pledgor offers to the pledgee any asset, which has the same value as or higher value than the subject of the pledge/security deposit and the exchange does not jeopardize the pledgee's enforcement rights, the pledgee is obliged to accept the new asset and return the original asset (being subject to the pledge/security deposit) to the pledgor. Consequently, it might occur that the Hungarian courts would not recognize the right of the Transferee to refuse the replacement of any Eligible Credit Support.

C.III.5 ***Party B's right in relation to the transferred collateral upon termination of the relevant master agreement will be governed by § 11 of the EFET General Agreement together with §11 of the EFET Credit Support Annex. Assuming that § 11 of the EFET General Agreement is valid and enforceable in Hungary insofar as it relates to the determination of a net amount payable by either Party on the termination of Individual Contracts, is § 11 of the EFET 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 a net amount payable under § 11 of the EFET General Agreement as "other amounts payable"?***

We understand that assuming that § 11 of the EFET General Agreement is valid and enforceable in Hungary insofar as it relates to the determination of a net amount payable by either Party on the termination of Individual Contracts, § 11 of the EFET Credit Support Annex will also be valid and enforceable to the extent that it provides for the value of the collateral provided (and received as further detailed in point C.III.2 above on page 57, i.e. the title transfer has occurred) to be included in the calculation of a net amount payable under § 11 of the EFET General Agreement as "other amounts payable". As such are already provided and transferred by Party A, we understand that those will be deemed as negative item of Party B in the netting, that will practically decrease the claim of Party B. Without prejudice to the above, please also consider our conclusions under point C.III.2 (page 57) regarding Letters of Credit above.

We understand that the term *"collateral provided and not yet* transferred*"* in this question refers to *"Eligible Credit Support demanded but not received"* as set out in § 3.1 of the EFET Credit Support Annex. Further to § 3.1 of the EFET Credit Support Annex this collateral shall be deemed to be held by the demanding Party. We are of the view that although this assumptions appears to support the title transfer nature of the collateral, such a collateral which does not exist (because it has not been transferred) cannot be included in the calculation of the net amount payable under § 11 of the EFET General Agreement as "other amounts payable". As to the detailed analysis of close out netting, please refer to point C.I.1.4 (page 28) of this Opinion.

C.III.6 ***Are the rights of Party B enforceable in accordance with the terms of the EFET General Agreement and the EFET Credit Support Annex, irrespective of the insolvency of Party A ?***

C.III.6.1 Bankruptcy proceedings

(a) Cash

If the outright transfer of ownership over Cash is per se recognised by the laws of Hungary, and the Eligible Collateral has already been provided (i.e. creation of title and handover has occurred prior to the commencement date of the bankruptcy proceedings), basically, the insolvency of Party A shall have no effect on the rights of Party B.

If bankruptcy proceeding is commenced against Party A and the transfer of Cash is characterized by a Hungarian court as a security deposit, Party B, as a general rule, may not seek satisfaction during the payment moratorium as described in point C.III.2.1 (page 57) above. As an exceptional rule, satisfaction from the security deposit may be sought if the agreement on the creation of the security deposit meets the requirements of close-out netting agreements in point C.I.1.4(a)(1) (page 28) (i.e. entered into prior to the commencement date of bankruptcy proceedings between parties of which one is an institutional counterparty).

(b) Letter of Credit

We understand that this question is partially redundant in light of the amended wording of § 11 of the EFET Credit Support Annex, Version 2.0, where the primary intention is rather not to include those Eligible Credit Supports that were provided in the form of Letter of Credits for the purpose of determining the Termination Amount under § 11 of the EFET General Agreement by the Valuation Agent. Still, we cannot exclude that Party A will draw against Letter of Credits which it was provided with, in which case Party B should be discharged in an amount equal to such drawings pursuant to § 11 of the EFET Credit Support Annex.

Notwithstanding the generality of the foregoing, we are of the view that in general if a Letter of Credit is issued directly and expressly for the benefit of Party B as beneficiary (under the EFET Credit Support Annex), then under Hungarian law this will constitute a direct legal relationship between the issuing party and Party B. Accordingly, we understand that such Letter of Credit will be valid and enforceable according to its terms and conditions regardless of the commencement of any bankruptcy proceeding concerning Party A.

(1) Bank guarantee

The insolvency of Party A will have no effect to the rights of Party B, if the bank guarantee has already been transferred.

(2) Standby letter of credit

The insolvency of Party A will have no effect to the rights of Party B, if the Standby letter of credit has already been transferred.

(3) Parent Guarantee

The insolvency of Party A will have no effect to the rights of Party B, if the bank guarantee has already been transferred.

C.III.6.2 Liquidation proceedings

(a) Cash

If the outright transfer of ownership over Cash is per se recognised by the laws of Hungary and the Eligible Collateral has already been provided prior to the commencement date of the liquidation proceeding, basically the insolvency of Party A will have no effect on the rights of Party B.

If the transfer of Cash is characterized by a Hungarian Court as a security deposit, Party B may equally seek direct satisfaction as further described in point C.III.2.1 (page 57) above.

In the case of collateral security, if provided in connection with cash, payment account balances, or securities traded on the stock exchange or any other securities whose market price is listed publicly, or securities embodying pecuniary claims whose market price can be determined at that time independent from the parties under conditions fixed in the securities, the pledgee shall be entitled to acquire ownership - by way of unilateral statement addressed to the pledgor - of the pledged property up to the amount of the secured claim at the effective date of his right to satisfaction, or, if it was acquired previously, may terminate his obligation to transfer assets of the same type and amount as the collateral security received to the pledgor.

The pledgee shall settle accounts in writing with the pledgor immediately after exercising direct right to satisfaction and to pay the amount remaining after the secured claim is satisfied to the pledgor. To that end, money and payment account balances shall be taken into account at their nominal value, whereas securities shall be taken into account at market value.

(b) Letter of Credit

We understand that this question is partially redundant in light of the amended wording of § 11 of the EFET Credit Support Annex, Version 2.0, where the primary intention is rather not to include those Eligible Credit Supports that were provided in the form of Letter of Credits for the purpose of determining the Termination Amount under § 11 of the EFET General Agreement by the Valuation Agent. Still, we cannot exclude that Party A will draw against Letter of Credits which it was provided with, in which case Party B should be discharged in an amount equal to such drawings pursuant to § 11 of the EFET Credit Support Annex.

Notwithstanding the generality of the foregoing we are of the view that in general if a Letter of Credit is issued directly and expressly for the benefit of Party B as beneficiary (under the EFET Credit Support Annex), then under Hungarian law this will constitute a direct legal relationship between the issuing party and Party B. Accordingly, we understand that such Letter of Credit will be valid and enforceable according to its terms and conditions regardless of the commencement of any insolvency proceeding concerning Party A.

(1) Bank guarantee

The insolvency of Party A will have no effect to the rights of Party B, if the bank guarantee has already been transferred.

(2) Standby letter of credit

The insolvency of Party A will have no effect to the rights of Party B, if the Standby letter of credit has already been transferred.

C.III.7 ***Will Party A (or its receiver or other similar official) be able to recover any transfer of collateral provided to Party B during a certain "suspect period" preceding the date of the insolvency? If so, how long before the insolvency does the suspect period begin? If such a period exists, does the substitution of collateral by a counterparty during this period invalidate an otherwise valid transfer, assuming the substitute assets are of no greater value than the assets they are replacing? Is the transfer of additional collateral pursuant to the mark-to-market provisions of the EFET 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?***

C.III.7.1 Bankruptcy proceedings

The Insolvency Act does not grant additional rights to Party A or to the administrator to challenge contracts existing at the commencement date of bankruptcy proceedings.

C.III.7.2 Liquidation proceedings

Please see our detailed analysis in point C.I.1.2.2 (b)(1)-(3) above (page 22).

Additionally, the receiver shall not be entitled to challenge the underlying agreements or reclaim the Eligible Credit Support provided even if the Cash transfer is characterized as the provision of a security deposit as discussed above, if (i) equivalent collateral is provided in replacement of the previously provided financial collateral under Section 5:107 (3) of the Hungarian Civil Code; or (ii) additional financial collateral is supplied under Section 5:107 (4) of the Civil Code.

C.III.8 ***Is the EFET 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 Hungary in order to ensure validity of such transfer in each type of Eligible Credit Support created by Party A under the EFET Credit Support Annex? For example, are there any other requirements such as those mentioned under C.III.3 above?***

To the extent permitted by the provisions of the Civil Code, we understand that the EFET Credit Support Annex is basically in an appropriate form to create the intended outright transfer of ownership in the collateral to Party B. Apart from those expressly referred to here above, there are no further requirements to ensure the validity and effect of the transfer.

C.III.9 ***Do you have other specific recommendations on the subject of collateral that EFET and its members need to be aware of ? If yes, please provide detailed answer.***

We note that the provisions of the EFET Credit Support Annex pertaining to the Independent Amounts under Section § 5 Subpar. 3 could not necessarily be enforceable, if the Independent Amount is apparently disproportionate (i.e. significantly higher compared) to the Exposure that it intended cover. Additionally, during the liquidation of Party A other creditors of Party A or the liquidator have the right to challenge such agreements within 120 days as its acknowledgement, but not later than 1 year as of the commencement of the liquidation. For further details regarding such claims, please refer to points C.III.7.2 (page 63) and C.I.1.2.2 (b)(1) (page 22) above.

Under the Civil Code and the Collateral Directive the transfer of cash for security purposes is seen as a security interest. In order to achieve the classification of cash collateral under the EFET Credit Support Annex as an enforceable "*security deposit*" (in Hungarian: "*óvadék*") under Hungarian law, we suggest that § 7.3 (*No Security Interest*) of the EFET Credit Support Annex or § 7 of the EFET Credit Support Annex is replaced or supplemented (as applicable) as set out below.

(a) Replacement: If the parties only transfer cash under the EFET Credit Support Annex.

"3. Security Interest: This Annex is intended to create or does create in favour of either party a security deposit (in Hungarian: "óvadék") pursuant to Sections 5:95; 5:106; and 6:367 of Act V of 2013 on the civil code in any cash transferred by one Party to the other Party under this Annex."

(b) Supplement: If the parties transfer other properties or provide Letters of Credit to the other party under the EFET Credit Support Annex, Cash should be carved out from § 7 of the EFET Credit Support Annex by inserting a new point therein as follows.

"§ 7 Transfer of Title, Representation and No Security Interest

[...]

3. No Security Interest: Nothing in this Annex is intended to create or does create in favour of either Party any mortgage, charge, lien, pledge, encumbrance or other security interest in any property transferred by one Party to the other Party under this Annex.

4. Exemptions from § 7.3: Notwithstanding the above, this Annex is intended to create or does create in favour of either party a security deposit (in Hungarian: "óvadék") pursuant to Sections 5:95; 5:106; and 6:367 of Act V of 2013 on the civil code in any cash transferred by one Party to the other Party under this Annex."

C.IV GENERAL ENFORCEABILITY

Is the EFET General Agreement and any of the mentioned Annexes (including the EFET Credit Support Annex) enforceable under the laws of Hungary in accordance with its own terms? We would like you to specifically discuss, in a detailed and circumstantiated manner the provisions on (i) non-performance due to Force Majeure (§ 7 of the EFET

General Agreement), (ii) remedies for non-performance (§ 8 of the EFET General Agreement) and (iii) limitation of liability (§ 12 of the EFET General Agreement) and any other provisions which in your opinion need to be commented on according to the law of Hungary, including whether these provisions could and/or need to be further 'expanded' and/or 'strengthened' under the laws of your jurisdiction. We are especially interested in provisions that you may believe, for example infringe upon the order public in [jurisdiction] and that may be challenged by the courts in [jurisdiction] irrespective of the laws that governs the EFET General Agreement.

Based on the assumptions and subject to the limitations and opinions set out in this Opinion, the documents listed in point A are generally enforceable under the laws of Hungary.

C.IV.1 Non-performance due to Force Majeure (§ 7 of the EFET General Agreement)

Even though the Civil Code does not define force majeure, it is widely used in contractual relations. Under Hungarian law the Parties are free to agree on the terms of their agreement, and may depart from the provisions relating to their rights and obligations with mutual consent, unless prohibited by the Civil Code. Thus, the Parties may agree that a *force majeure* occurrence will result in release from certain obligations and therefore we are of the opinion that § 7 of the General Agreement is valid and enforceable under Hungarian law.

We note that the Civil Code regulates the *"impossibility of performance"*, a concept similar to force majeure. According to Section 6:179 of the Civil Code *"[I]f the performance of the agreement becomes impossible, the agreement shall terminate. The party learning of the impossibility of performance shall immediately notify the other party thereof. The party failing to give notification shall be liable for damages originating therefrom"*. The reason of the impossibility must occur after the conclusion of the agreement and has to make the performance impossible finally. The reason of impossibility can be a legal one (e.g. change of law), a physical reason (e.g. a network is destroyed by an earthquake), or other (e.g. an unexpected fundamental change of circumstances of any of the Parties which makes the performance extraordinary difficult to such an extent that cannot be reasonably expected). If performance has become impossible for a reason that cannot be attributed to either of the parties, the monetary value of the services provided before the time when the contract was terminated shall be compensated. If the other party did not compensate the monetary consideration provided for services already performed, the money shall be refunded. If performance has become impossible for a reason attributable to one of the parties, the other party shall be relieved from the obligation of contractual performance, and may demand damages for loss caused by non-performance of an obligation. If performance has become impossible for a reason attributable to both parties, the contract shall be terminated and the parties may demand damages from one another in the proportion to their responsibility.

We understand that Force Majeure provisions in § 7 of the EFET General Agreement are deviations from the referred provision of the Civil Code based on the Parties' freedom of contract.

Naturally, when negotiating the Force Majeure clause it is advisable for the contracting Parties to take into account the force majeure provisions applied by the relevant Network Operator, in view of the Transportation Failure definition of the EFET General Agreement (for instance, the Hungarian transmission system operator's general terms of business and standard terms of contract also contain a force majeure clause, which generally applies in the contractual relations with the transmission system operator).

C.IV.2 Remedies for non-performance (§ 8 of the EFET General Agreement)

Considering the fact that § 8 of the EFET General Agreement regulates the contractually agreed consequences of delivery and acceptance failures on mutual grounds for the benefit of both parties with the same remedy and compensation method, we are of the view that § 8 of the EFET General Agreement, and claims based thereon, will be most likely enforceable and upheld by Hungarian courts.

The Civil Code introduced express provision on replacement contracts. Section 6:141 acknowledges the right of a party, when he withdrew or terminated the contract, to enter into a replacement contract to achieve the objective of the original contract and to demand from the other party the difference between the contract price and the price quoted in the replacement contract and the costs arising in connection with the conclusion of the replacement contract in accordance with the rules of compensation for damages. The referred Section of the Civil Code is silent about a party's right to recover any price difference in the absence of actually entering into replacement transactions and no relevant court precedence is available yet. However, under the former Civil Code there was precedent for the acknowledgement of a party's right to recover the difference between the price fixed by the contract and the market price (as well as further damages recoverable), if the product had market price. In any case, such a practice could only be upheld to the extent that it is in compliance with a Party's general duty to mitigate damages and the prohibition to profit on damages.

C.IV.3 Limitation of liability (§ 12 of the EFET General Agreement)

According to the Civil Code, any contract term limiting or excluding liability for damages caused intentionally or for breach of contract damaging life, physical integrity or health shall be null and void. Since the existing wording of § 12.4 of the EFET General Agreement does not fully correspond to the relevant provisions of the Civil Code, we suggest supplementing this section in the Election Sheet by reference to breach of contract damaging life, physical integrity or heath.

C.IV.4 Please indicate any recommendations you have and which you are of the opinion EFET and its members need to be made aware of regarding the general enforceability, from a legal stand point, of the EFET General Agreement and its Credit Support Annex.

We do not have other recommendations.

C.V CONFIRMATION PRACTICES

For the purpose of this point, the following additional assumptions were given in the Instruction Letter.

As far as the Confirmation practice is concerned, when entering into an Individual Contract, the counterparties in each case (i) make oral reference to the EFET General Agreement when concluding the relevant Individual Contract over the phone or (ii) refer to the EFET General Agreement when subsequently exchanging confirmations or similar electronic, written or non-verbal means of entering into or confirming Individual Contracts (in whichever form, including telex, fax, SWIFT, electronic confirmation or posting matching service or other means of electronic transmission).

Parties may or may not (i) use the EFET Electronic Confirmation Matching System (EFET eCM) to electronically match and exchange Confirmations or (ii) enter into EFET Electronic Confirmation Agreement.

C.V.1 Binding Individual Contract

C.V.1.1 ***Does the formation of a legally binding and enforceable Individual Contract require any formal act (e.g., execution in writing, signature, registration or notarization) under the laws of your jurisdiction?***

As a general rule, Hungarian law does not require any specific form of communication for entering into an agreement. Therefore, agreements can be concluded either orally or in writing. Moreover, the intent to conclude a contract may also be expressed by conduct that implies such intent. Nevertheless, irrespectively of the form of the agreement, the Parties are obliged to agree on all essential terms of the relevant transaction.

Following from the general principle that there are no formality requirements regarding the conclusion of Individual Contracts, the signature is also not necessary.

In lack of any mandatory formality requirement of Hungarian law the Individual Contract shall be deemed concluded at the time when the Parties reached the agreement on the essential terms, thus a Confirmation is not necessary. This rule is in accordance with § 3.2 of the EFET General Agreement which provides that a written Confirmation shall not constitute a requirement for a legally valid Individual Contract.

Notwithstanding the above, the following has to be noted. Full scale licence holders have to prepare general terms and conditions in accordance with the implementation decree of the Gas Act. Nevertheless, the implementation decree of the Gas Act does not require from full-scale licence holders to conclude in writing the agreements. Traders holding restricted licence are exempted from the requirement to submit general terms and conditions to the HEO.

Putting the Individual Contract/Confirmation in writing is, in any case, advisable in order to avoid later disputes regarding the content of the agreement. Similarly, a signature (electronic or otherwise) may help to demonstrate the authenticity and integrity of the agreement and could serve as evidence in case of a dispute.

Finally we note that, although in our view the following goes beyond the original scope of the EFET General Agreement, financial regulatory laws also prescribe formality requirements. The Investment Firms Act provides as a general rule that all contracts between investment firms and their clients must be fixed in writing, however, agreements for the execution of orders on behalf of a client under portfolio management services relating to financial instruments shall not be executed in writing if placed under an existing framework agreement, if such framework agreement is executed in writing and the investment firm records the order electronically.

C.V.1.2 ***At what point in time does an Individual Contract agreed upon orally become legally binding or enforceable under the laws of your jurisdiction?***

An Individual Contract agreed orally becomes legally binding and enforceable as from the time the essential terms of the agreement have been concluded (either over telephone or face-to-face or through any other verbal communication).

C.V.1.3 ***Does failure to object to incorrect terms in a received Confirmation constitute "acceptance" of those terms per the laws of your jurisdiction ? If so, is there a relevant***

time period per the laws of your jurisdiction that could potentially override the governing law of the EFET General Agreement, and permit the parties to object still?

As a general rule, silence or inactivity shall be construed as a legal statement only where expressly provided for by the parties.

Notwithstanding the above, Section 6:67 (2) of the Civil Code provides that a legal statement expressing assent shall be considered acceptance even if it contains additional or differing conditions which do not affect any material issues. Said additional or different terms shall become part of the contract, unless the offer expressly limits acceptance to the terms of the offer, or the offeror objects to the additional or different terms without undue delay. Moreover, Section 6:67 (3) of the Civil Code provides that if the contract is concluded by means other than in writing, and either party executes the contract without delay in writing after the conclusion of the contract, with additional or different contract terms which do not materially alter the terms of the offer, and sends this contract to the other party, these terms shall become part of the contract if the other party fails to object without undue delay. Of course, the acceptance of a proposal with contents that deviate from the vital points of the offer shall be deemed a new offer.

With respect to the above, failure to object to incorrect terms in a received Confirmation may constitute "acceptance" of those terms if the terms concerned are not material. The objection is to be communicated without undue delay, the actual meaning of which is to be assessed by the courts on a case-by-case basis taking into account all relevant circumstances.

C.V.1.4 ***Is the reference to the relevant EFET General Agreement made in the relevant written confirmation exchanged (post trade) between the parties sufficient for the inclusion of the Individual Contract in the EFET General Agreement?***

We are of the opinion that a reference to the relevant EFET General Agreement entered into between the Parties is sufficient for the inclusion of the Individual Contract in the Agreement. This is supported by Section 6:63 (5) of the Civil Code which provides that all customs the parties have agreed on in earlier business dealings and any practice they have established between themselves shall become part of their contract. Furthermore, the parties shall be bound by customs which would be considered generally applicable and widely known in the given sector by parties to similar contracts, unless such customs and practices are likely to conflict with contract terms which have been previously negotiated between the parties.

Notwithstanding the above, we note that where a contract in writing includes a term stating that the document contains all contract terms agreed upon by the parties, any prior agreements which are not contained in the document do not form part of the contract. Prior statements of the parties may be used for the interpretation of the contract.

C.V.2 Means of Evidence

Assumed there is a dispute with respect to the existence or the terms and conditions of an Individual Contract, would any or all of the following be eligible for rendering or otherwise properly introducing evidence of the agreed terms of the Individual Contract in front of a court in your jurisdiction: a (i) taped recording, (ii) witness' statement, (iii) e-mail or other

electronic message or transaction entry system, and/or (iv) facsimile? Are there any local requirements or other considerations that are relevant to each form of evidence?

Under the general rules of Hungarian civil procedures, on the one hand, there is no restriction on admissible means of evidence, and the Parties may use any means of evidence which they deem suitable for proving their claim. On the other hand, none of the means of evidence has a pre-determined value or decisive importance in the evidentiary procedure since the court is obliged to evaluate the evidence as whole. Consequently, any of the listed means of evidence may be eligible for rendering evidence of the agreed terms of the Individual Contract. We further note that the above rules of evidence cannot be modified by agreement of the Parties.

Certain types of documentary evidence have increased probative value. Public documents (both paper form and electronic documents) issued by the court, public notary or other authority within their scope of competence in a standard form have direct and primary evidentiary status and probative value. As such, a public document is a true record of the measures, resolutions, facts or declarations asserted or recorded within. Presenting evidence against public documents is limited to the extent permitted by law. Public documents are presumed valid until evidence to the contrary is presented. Private documents with full probable force fully prove that the issuer of the document has made or accepted the declaration contained therein or accepted to be bound by it, as long as the contrary is not evidenced. In order for a document to qualify as a private document with full probable force it needs to meet certain formality requirements (e.g. the document issued by a business association within the scope of its business activity is duly signed by its representatives; signature of the issuer is notarized; the electronic document is signed by a qualified electronic signature). Thus, for instance, a facsimile of a Confirmation duly signed by the authorised representative of a party may qualify as a private document with full probable force.

We note that recording telephone conversations is deemed a collection of personal data for the purpose of the data protection law, which requires the prior permission of the person concerned. Furthermore, according to the Civil Code, any abuse relating to voice recording is considered an infringement of personal rights.

C.VI CORE PROVISIONS

Would any of the selections contemplated by the EFET General Agreement or any of the mentioned Annexes (including the EFET Credit Support Annex) change the substance of your conclusions reached under Part C.I or C.II. (Enforceability of Close-out Netting) above? As far as the EFET Credit Support Annex is concerned, you should in particular discuss the effect of electing to allow substitution with or without consent. Based on the assumptions and subject to the limitations and opinions set out in this Opinion, we understand that none of the elections as suggested in the EFET General Agreement or any of the above Annexes (including the EFET Credit Support Annex) would change the substance of our conclusions reached under parts C.I or C.II (Enforceability of Close-out Netting). As far as the EFET Credit Support Annex is concerned, the potential effect of electing to allow substitution with or without consent of Party is indicated in point C.III.4 (page 60) above.

Considering your conclusions reached under Part C.I or C.II. (Enforceability of Close-out Netting) above, what are the provisions of the EFET General 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 provisions are Core Provisions: § 1, § 10.3(a), the second sentence of § 10.3(b), § 10.3(d), § 10.5(c)(iv), § 11 and the related definitions contained Annex 1 to the EFET General

Agreement. We agree that § 1, § 10 and § 11 of the EFET General Agreement are so essential that a material alteration thereof could affect our conclusions reached in respect of the Enforceability of Close-out netting. Beyond this, we believe that § 4 and § 5 determining the subject of the Agreement and the primary rights and oblations of the Parties to the Agreement are also essential, and material alteration thereof could affect our conclusions reached in this Opinion.

Would the inclusion of the General Agreement in the EFET Cross Product Payment Netting Agreement, the Master Netting Agreement or in the CPMA Cross-Product Master Agreement (as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement) change the substance of your conclusions reached under Part C.I or C.II?

The inclusion of the EFET General Agreement in the referred master netting agreements would not change the substance of the conclusions reached under Parts C.I and C.II, for the following reasons. If we assume that the master netting agreement is a valid contract which meets the requirements set out in the Capital Market Act for close-out netting agreements, then our conclusions reached in Parts C.I and C.II will apply appropriately. If the master netting agreement does not meet the referred requirements, then the unenforceability (invalidity) of the master netting agreement itself will not affect the validity of the EFET General Agreement (except to the extent the master netting agreement so provides, e.g. in last sentence of § 2.3 of the EFET Master Netting Agreement, which practically excludes the possibility of partial invalidity). In this case although the netting of the net amounts owed under the EFET (and other type of master) agreements may not be enforced, similar effects may be achieved through the application of the simple set-off rules with the limitations described under points D.II.1.2(b) and C.I.1.4(b)(2) on pages 88 and 31).

Due to the lack of any relevant court precedent relating to close-out netting agreements we are not in the position to opine whether or not the referred master netting agreements would qualify for the protection of the Insolvency Act. However, based on the wording of the master netting agreement which suggest that it intends to operate as an umbrella agreement over other master trading agreements, we are of the view that the master netting agreement itself would not qualify as a close-out netting agreement defined by the Capital Market Act, as it rather provides technical rules to join the provisions of the included master trading agreement instead of creating its own close-out netting rules.

C.VII GOVERNING LAW, ARBITRATION AND JURISDICTION

For the purpose of the opinions under this point, we have made the following assumption further to the Instruction Letter.

The relevant EFET General Agreement is governed by the laws of a jurisdiction other than Hungary (including English or German law).

Would the Parties' agreement on the governing law, submission to arbitration or jurisdiction (§ 22 of the EFET General Agreement) be upheld in Hungary, and what would be the consequences if it were not?

Further to Rome I the parties are free to choose the governing law applicable to their agreements. If the choice is made expressly or is clearly demonstrated by the terms of the contract or the circumstances of the case, we are of the opinion that the choice of law will be upheld in Hungary, with the following limitation.

Upholding the Parties' choice of law does not restrict the application of the overriding mandatory provisions of the law of the forum. Overriding mandatory provisions are defined by the Rome I as provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisations, to such extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract.

Furthermore, if at the time of the choice all other elements relevant to the situation are located in Hungary (i.e. in a country other than the country whose law has been chosen), then according to Article 3 (3) of the Rome I, the choice of the parties shall not prejudice the application of provisions of the law of Hungary which cannot be derogated from by agreement.

Beyond the scope of the Rome I, the Parties choice of law will be upheld in Hungary on the basis of the IPL Act, if there is a foreign element in their legal relationship.

The Parties' agreement on the submission to arbitration or jurisdiction will be upheld in Hungary. The resolutions of foreign courts and arbitration tribunals (foreign resolution) are executed on the basis of and to the extent provided by law, international convention or reciprocity, including the provisions of Judicial Enforcement Act, the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), and 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 judgements in civil and commercial matters.

C.VIII REGULATORY REGIME

Are there any exchange control laws or license requirements (under, e.g., any banking, securities trading or energy law) that may affect the enforceability of the relevant EFET General Agreement or the Individual Contracts?

Regarding the uncertainties of the applicable regulatory regime please also refer to point B.III (page 14) of this Opinion.

C.VIII.1 Energy law requirements

As mentioned above in point B.III (page 14) of this Opinion, trading in natural gas, that is for-profit business operations involving the purchase and sale of natural gas for purposes other than own use according to the Gas Act is an activity subject to licence in Hungary. As of 1 January 2013, similarly to the Electricity Act, for licensing purposes the Gas Act distinguishes between a full scale natural gas trading licence, which entitles its holder to directly supply customers, and a so-called restricted natural gas trading licence, which entitles its holder only to wholesale trading with other licence holders. Both full-scale and restricted natural gas trading licences may be obtained by natural persons who are nationals of any Member State of the EU or EEA and engaged in the supply of natural gas in their country of nationality, business associations (sole practitioners, companies, co-operations, SEs) domiciled in Hungary, as well as by business associations (sole practitioners, companies, co-operations, SEs) domiciled in a Member State of the EU or the EEA that are lawfully pursuing natural gas trading activity, comply with the implementation decree of the Electricity Act and may provide evidence about the satisfaction of the requirements and represent themselves in Hungary at least through a service agent. Hungarian branch office of a foreign company is entitled to obtain full-scale natural gas trading license.

The holder of a full-scale trading licence does not need to have a permanent establishment in Hungary (either in the form of a subsidiary or a branch, it is sufficient to have only a delivery agent in Hungary.

Entering into Individual Contracts for the sale and purchase of natural gas within Hungary without the contracting parties holding the necessary licence from the HEO could principally result in administrative sanctions imposed by the HEO (e.g. fine). Moreover, further to the Civil Code, a contract which is incompatible with the law or that was concluded by circumventing the law may also be null and void if the relevant legislation stipulating another legal consequence (i.e. the Gas Act providing for fines) specifically declares that, or if the purpose of the law is to prohibit the legal effect pursued by the contract. Although the Gas Act does not specifically provide for the invalidity of contracts entered into without the necessary licence, in the absence of relevant court practice on the application of the second part of the referred provision of the Civil Code, we cannot exclude the possibility that entering into a contract for the performance of an activity subject to licence in lack of the relevant licence could also result in the invalidity of the contract. Moreover, there is a remote risk that the enforcement of a foreign judgement with respect to the Agreement might be refused by the Hungarian courts on the grounds that the entering into the Agreement in violation of the Gas Act is in contravention of fundamental Hungarian laws and thus is against the public order.

C.VIII.2 Financial regulatory requirements

In order to carry out investment services in Hungary, the investment service provider shall comply with certain corporate (organization) and capital requirements under the Investment Firms Act.

C.VIII.2.1 Corporate (Organizational) requirements

Investment and financial services may only be provided in Hungary by certain types of entities. According to the Investment Firms Act investment firms may only operate in the form of company limited by shares (in Hungarian "*részvénytársaság*") or branches, and commodity dealers may only operate in the form of companies limited by shares, limited liability companies (in Hungarian "*korlátolt felelősségű társaság*"), cooperative societies or branches which are duly licensed by HNB to carry out investment services.

C.VIII.2.2 Capital requirements:

Besides the above mentioned organizational requirements, the Investment Firms Act prescribes capital requirements in respect of investment firms. The capital requirement of investment firms is determined based upon the respective investment services carried out by them. To perform all the investment services listed in the Investment Firms Act, the investment firms shall posses as initial capital at least seven hundred and thirty thousand euros.

Investment firms which are not licensed to carry out dealing on own account and placement of financial instruments, including a commitment for the purchase of assets (financial instruments), but may have license to perform receiving and transmitting client orders, execution of orders on behalf of their clients or portfolio management, and the investment firm is allowed to hold the financial instruments and funds of clients, the initial capital must be at least one hundred and twenty-five thousand euros, if not, the initial capital must be at least fifty thousand euros.

If the investment firm has license to carry out receiving and transmitting client orders or investment advise, and it is not allowed to carry out safekeeping and administration of financial instruments for the account of clients and safe custody services relating to securities for the account of clients, including the safekeeping and administration of printed securities for the account of clients, with the exception of maintaining securities accounts at the top tier level (central maintenance service) under Point 2 of Section A of the Annex to Regulation 909/2014/EU or to hold client financial instruments and client funds, the initial capital shall be at least fifty thousand euros, or it must have professional indemnity insurance covering the whole territory of the EEA Member States, representing at least one million euros applying to each claim and in aggregate one million five hundred thousand euros per year for all claims.

HNB may issue the license within 3 months from the receiving of the application. We would like to note that investment firms may also provide commodity exchange services (e.g. options, futures and any other derivative contracts relating to greenhouse gas emission allowance units and other rights of emission of air polluting substances). However, commodity exchange services may also be provided by commodity dealers. The initial capital requirements for commodity dealers is at least twenty million forints if incorporated as companies limited by shares or branches or at least ten million forints if incorporated as limited liability companies or set up as cooperative societies. Commodity exchange services may be carried out with HNB license.

C.VIII.2.3 Exemptions from the Investment Firms Act

Undertakings dealing with financial instruments do not need to comply with all requirements of the Investments Firms Act (such as the above mentioned corporate and capital requirements) with the exception of position management control mechanism, reporting obligations and position limits. As partly mentioned in point B.III (page 14) above, the Investment Firms Act does not apply to:

(i) any person or entity, dealing on own account in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emission allowances or derivatives thereof unless such persons:

- are market makers;
- are members of a regulated market or an MTF or have direct electronic access to a trading venue, excluding non-financial entities engaged in executing transactions on that trading venue in derivatives which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial entities or their groups;
- apply a high-frequency algorithmic trading technique;
- deal on own account when executing client orders;

(ii) any person or entity which provides investment services exclusively for its parent company, subsidiary or for other subsidiaries of its parent company;

(iii) any person or entity which provides investment services consisting exclusively in the administration of employee-participation schemes;

(iv) any person or entity which provides investment services:

- exclusively for its parent company, for its subsidiary or for other subsidiaries of its parent company; and
- consisting exclusively in the administration of employee-participation schemes;

(v) any person or entity providing investment advice in the course of providing another professional activity not covered by the Investment Firms Act provided that the provision of such advice is not specifically remunerated;

(vi) any person or entity dealing on own account, including market makers, in commodity derivatives or emission allowances or derivatives thereof except if this person or entity deals on own account when executing client orders provided that:

- for each of those cases individually and on an aggregate basis this is an ancillary activity to its main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of the Investment Firms Act or the provision of financial service activities under the Banking Act, or acting as a market maker in relation to commodity derivatives;
- this person or entity does not apply a high-frequency algorithmic trading technique; and
- this person or entity notifies annually the HNB that it applies this exemption and upon request report to the HNB the basis on which he considers that his activity under the Investment Firms Act is ancillary to its main business;

(vii) any person or entity providing investment services, other than dealing on own account, in commodity derivatives or emission allowances or derivatives thereof to the customers or suppliers of his main business activity, provided that:

- for each of those cases individually and on an aggregate basis this is an ancillary activity to his main activity, when considered on a group basis, and that main business is not the provision of investment services within the meaning of the Investment Firms Act or the provision of financial service activities under the Banking Act, or acting as a market-maker in relation to commodity derivatives;
- this person or entity does not apply a high-frequency algorithmic trading technique; and
- this person or entity notifies annually the HNB that it applies this exemption and upon request report to the HNB the basis on which he considers that his activity under the Investment Firms Act is ancillary to its main business.

i. investment services companies providing investment service activities where that service is provided in an incidental manner in the course of a professional activity under the conditions set out in Article 4 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;

ii. operators provided for in Act CCXVII of 2012 on Participating in the Scheme for Greenhouse Gas Emission Allowance Trading Within the Community and Implementation of the Decision on Effort Sharing who, when dealing in emission allowances, do not execute client orders and who do not provide any investment services or perform any investment activities other than dealing on own account, except if they apply a high-frequency algorithmic trading technique;

iii. transmission system operators as defined in the Electricity Act when carrying out their tasks under Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No. 1228/2003 ("Regulation 714/2009/EC") or business and trading codes or guidelines provided for in the EEA and adopted pursuant to Regulation 714/2009/EC, any persons acting service providers on their behalf to carry out their tasks under those legislative acts, and any operator or administrator of an energy balancing mechanism and electricity network to keep in balance the supplies and uses of electricity when carrying out such tasks;

iv. transmission system operators as defined in the Gas Act when carrying out their tasks under Regulation (EC) No. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005 ("Regulation 715/2009/EC") or business and trading codes or guidelines provided for in the Natural Gas Act and adopted pursuant to Regulation 715/2009/EC, any persons acting as service providers on their behalf to carry out their tasks under those legislative acts, and any operator or administrator of an energy balancing mechanism and natural gas network to keep in balance the supplies and uses of natural gas when carrying out such tasks;

v. the central securities depository, except where they provide investment service activities and ancillary services under the Investment Firms Act as provided for in Article 73 of Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositaries and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012.

An investment firm having its seat in an EEA country may also provide cross-border services without a licence from HNB provided that it is licensed by the supervisory authority of the jurisdiction where it is seated to provide such services. In order to be able to provide cross-border investment services in Hungary, the foreign investment firm must notify its own competent supervisory authority.

If the representatives of an entity which is not authorised to provide investment or financial services were deemed to be carrying out such services in Hungary, they could incur criminal liability (punishable by imprisonment of up to three years). Also, Act CIV of 2001 on Criminal Measures Applicable Against Legal Entities provides that when crimes are committed for the benefit of legal entities (other than states and authorities), these entities may be dissolved, their activities may be limited and/or a fine may be imposed on them (up to 300% of the benefit realised or sought to be realised, but at least HUF 500,000 (approximately EUR 1,700)).

C.IX OTHER PROVISIONS

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

We do not have other recommendations.

D. ADDRESSEES, FORM AND TENOR, EXECUTIVE SUMMARY AND OTHER ISSUES

D.I ADDRESSEES

This Opinion is addressed exclusively to EFET and is for the sole benefit of EFET and its Legal Committee members and any other subscribing entities, and may not be relied upon by, or disclosed to, any other person or legal entity without the prior written approval of EFET or Wolf Theiss Faludi Erős, and may be made available by EFET members to the appropriate regulatory authorities. Furthermore, this Opinion be made available by each EFET member to the professional chartered auditor engaged by that EFET member, but exclusively on a non-reliance basis, hence this Opinion may not be relied upon by any such auditor.

D.II EXECUTIVE SUMMARY

Please refer to page 6 of this Opinion.

* * *

Yours faithfully,

dr. Zoltán Faludi
Wolf Theiss Faludi Erős

DEFINED TERMS AND INTERPRETATION

Unless otherwise specified in the Opinion, terms defined in the General Agreement and in the Instruction Letter have the same meaning in this Opinion and for the purpose of this Opinion:

"**Accounting Act**" means Act C of 2000 on Accounting.

"**Banking Act**" means Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises.

"**Branch Office Act**" means Act CXXXII of 1997 on Hungarian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies.

"**Capital Market Act**" means Act CXX of 2001 on the Capital Market.

"**Capital Requirements Directive**" means 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

"**CCR Act**" means Act XCIII of 2001 on the cancellation of currency restrictions and the amendment of other connected acts.

"**Civil Code**" means Act V of 2013 on the Civil Code.

"**Collateral Directive**" means Directive 2002/47/EC of the European Parliament and of the Council on financial collateral agreements.

"**Companies Registration Act**" means Act V of 2006 on Public Company Information, Court Registration Proceedings and Voluntary Dissolution Proceedings.

"**Electricity Act**" means Act LXXXVI of 2007 on Electric Energy.

"**EMIR**" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

"**EU Insolvency Regulation**" means Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings.

"**Gas Act**" means Act XL of 2008 on Natural Gas Supply.

"**HEO**" means the Hungarian Energy and Public Utility Regulatory Authority.

"**HNB**" means the Hungarian National Bank.

"**Insolvency Act**" means Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings.

"**Insurance Act**" means Act LXXXVIII of 2014 on the Business of Insurance.

"**Investment Firms Act**" means Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities.

"**IPL Act**" means Act XXVIII of 2017 on International Private Law.

"**Judicial Enforcement Act**" means Act LIII of 1994 on Judicial Enforcement.

"**MiFID II**" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

"**MNB Decree**" means Decree of the Hungarian National Bank No. 35/2017 (XII. 14) on the arrangement of money transfers.

"**Multibranch Party**" means a Party which operates for the purpose of the General Agreement with two or more branches and in two or more jurisdictions.

"**Party**" means a party to the Agreement.

"**Resolution Act**" shall mean Act XXXVII of 2014 on the improvement of the institutions strengthening the security of certain members of the financial system.

"**Resolution Directive**" means Directive 2014/59/EU of the European Parliament and of the Council of 15 may 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council.

"**Rome I**" means EC Regulation No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

"**Third Gas Directive**" means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/55/EC.

"**Winding-up Directive**" means Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on reorganisation and winding up of credit institutions.

INSOLVENCY APPENDIX

Overview of Insolvency Proceedings

D.II.1 Winding-up, Insolvency or Attachment

General Overview

D.II.1.1 *Short overview of the relevant insolvency proceedings, laws and terminology*

Unless otherwise specified, this point D.II.1 describes the relevant insolvency proceedings, laws and terminology applicable to Party A, which is incorporated or organised or has its main centre of interest in Hungary.

The rules governing the insolvency proceedings under Hungarian law are primarily regulated in the EU Insolvency Regulation and in the Insolvency Act. The EU Insolvency Regulation applies if a Party is not an insurance undertaking, credit institution, investment firm and other firm, institution and undertaking to the extent that they are covered by the Winding-up Directive, or a collective investment undertaking, and its centre of main interest is in a Member State of the EU (save for Denmark). Additional specific provisions applicable in the event of insolvency of financial institutions, investment firms/service providers, insurance companies, investment funds and natural gas traders are provided respectively in the Banking Act, Investment Firms Act, Insurance Act, Capital Market Act, Resolution Act and in the Electricity Act. These specific rules are further discussed under point C.I.1.7 (page 34) of this Opinion.

The Insolvency Act regulates two types of insolvency proceedings as also listed in Annex A of the EU Insolvency Regulation. Accordingly, the terms *"insolvency"* or *"insolvency proceedings"*, as used in this Opinion, refer to bankruptcy and liquidation proceedings as regulated under the Insolvency Act.

(a) Bankruptcy proceedings (in Hungarian: *"csődeljárás"*)

The Insolvency Act defines the bankruptcy proceeding as a procedure when the debtor is granted a moratorium (stay of payment) in an attempt to seek composition, or attempts to have a composition arrangement concluded. The bankruptcy proceeding may be initiated by the debtor itself. Legal representation for the debtor is mandatory with regard to the submission of the application.

The debtor may not file an application for bankruptcy if already adjudicated in bankruptcy, or if a request for its liquidation has been submitted, and a decision has already been adopted in the first instance for the debtor's liquidation. The debtor may not file another petition for bankruptcy (i) before the satisfaction of any creditor's claim that existed at the time of ordering the previous bankruptcy proceedings or that was established by such proceedings; (ii) within a period of two years following the time of publication of the final and definitive conclusion of the previous bankruptcy proceedings, or (iii) if the court ex officio refused the debtor's request for the previous bankruptcy proceedings and one year has not elapsed since the publication of the final order.

Upon the debtor's submission to court of the petition to commence bankruptcy proceedings, provided that it is not rejected outright, the debtor is granted an automatic preliminary moratorium effective as from the time of publication of the court order. The court must publish the petition and the order granting the automatic preliminary moratorium in the form of a display posted on the official website of the Company Gazette (in Hungarian: *"Cégközlöny"*, www.cegkozlony.hu) at 00.00 hours, updated on a daily basis (i.e. the first business day following the receipt of the debtor's petition). This order may not be appealed separately.

If at the time of or subsequent to the submission of the application for the opening of bankruptcy proceedings a petition is filed for the debtor's liquidation, the court sets such petition aside until the time of ordering or refusing the petition for the opening of the bankruptcy proceedings. If prior to the petition for the opening of bankruptcy proceedings a request for the liquidation of the debtor is also filed, however, the decision for the declaration of insolvency and for ordering the debtor's liquidation is pending in the first instance, the court postpones its decision on such request until the time of ordering or refusing the petition for opening of the bankruptcy proceedings.

Upon arranging for the publication of the debtor's petition, within 5 working days of receipt of the debtor's petition, the court must verify whether the request is in conformity with the requirements set out in Sections 7 and 8 (1)-(3) of the Insolvency Act. These requirements concern the form and content of the application (e.g. approval of the supreme body of the debtor, declarations of the debtor's executive officer, other mandatory data, etc.) and the timing of the submission (if the debtor is not already adjudicated in bankruptcy, etc. as referred to above). If the petition is deficient, the court shall return it for having the deficiencies remedied within 5 working days. The court shall refuse the debtor's petition for the opening of bankruptcy proceedings if:

- the deficiencies are not remedied within the prescribed time limit of 5 working days, or if re-submitted with deficiencies still remaining;
- prior consent of the supreme body is not available;
- a claim which already existed at the time of opening or arose in the course of previous bankruptcy proceedings has not yet been satisfied;
- a two-year period has not elapsed since the publication of the final and definitive conclusion of the previous bankruptcy proceedings;
- the debtor is adjudicated in bankruptcy in another court in Hungary;
- the debtor is undergoing liquidation proceedings, and a decision for ordering the debtor's liquidation has already been adopted;
- before the petition for the opening of bankruptcy proceedings the debtor has submitted another such request within one year, that was refused by the court ex officio and one year has not yet elapsed from the time of publication of the final order thereof.

If the court did not refuse the request for the opening of bankruptcy proceedings, it provides within 15 days for the opening of bankruptcy proceedings, and consequently provides for having the order published in the Company Gazette and for having the indication *"cs. a."* (i.e. under bankruptcy proceedings) entered in the register of companies next to the company's name. The court ex officio appoints an administrator (in Hungarian: *"vagyonfelügyelő"*) from the register of liquidators in its order on the bankruptcy proceedings. There is no remedy against this order except other laws provide that.

The commencement date of a bankruptcy proceeding is the day when the court order is published. From this time on the debtor is allowed a moratorium with respect to the pecuniary claims which were due before the commencement date of the moratorium or becoming due thereafter. The moratorium expires at 0:00 hours on the second working day after a 120-day period following the time of publication, but it may be extended for a maximum period of 240 or 365 days from the time of opening of the bankruptcy proceeding if simple or two third majority of creditors (separately both in respect of secured and unsecured claims) give their consent to the extension.

The objective of the moratorium is to preserve the assets of the debtor under bankruptcy protection with a view to reaching a composition with creditors, during which the debtor, the administrator, the financial institutions maintaining their accounts and creditors are liable to refrain from taking any measure contradictory to the objective of the moratorium. Accordingly, during the moratorium the debtor may not make any payment under any debt outstanding at the time of the commencement of the bankruptcy proceedings (subject to some exceptions, such as salaries, and electricity supply fees, however, the latter in our opinion only relates to fees payable by consumers under a rather utility type of contract) and the legal consequences of payment default (non-payment or late payment) do not apply. Subject to the exemption further detailed in point D.II.1.2(a) (page 87) in relation to close-out netting agreements, during the moratorium creditors may not terminate or withdraw from agreements with the debtor due to the debtor's petition for bankruptcy or the debtor's failure to pay during the moratorium its debts incurred prior to the preliminary moratorium, and creditors may not set off claims against the debtor. During the moratorium the debtor is allowed to undertake any new commitment subject to the consent of the administrator, and payments may be made from the debtor's assets subject to authorization by the administrator.

The administrator appointed by the court may challenge before the court any agreement or transaction entered into or made by the debtor and may recover payments made during the moratorium in violation of the restrictions applicable during the moratorium, and may initiate proceedings for the restoration of the situation that existed previously.

The debtor shall call a meeting of creditors within a 60-day period following the commencement date of bankruptcy proceedings for composition conference, and shall invite the administrator and all known creditors directly, while other creditors shall be invited by way of a public announcement in two daily newspapers of national circulation.

A composition agreement may be concluded if the debtor was able to secure the majority of the votes for the agreement from the creditors holding voting rights (i.e. who have notified their claims within 30 days of the opening of the bankruptcy procedure, have paid the registration fee and the claim has been registered as acknowledged or non-disputed), in respect of secured and unsecured claims alike.

The composition agreement shall be concluded under the principle of good faith, and it may not contain provisions and conditions which are clearly and manifestly unfavourable or unreasonable from the point of view of creditors on the whole or certain groups of creditors. Such conditions shall include where the ratio of satisfaction provided for the claims of creditors on the whole is deemed abnormally low relative to the debtor's divisible assets, or if the claims of a particular group of creditors are satisfied at an abnormally lower ratio or under unreasonably discriminative conditions by comparison to another group of creditors.

A composition agreement also applies to non-consenting creditors who are otherwise entitled to participate in the composition agreement, or failed to take part in the conclusion of the composition agreement in spite of having been properly notified, and to the creditors whose contested claims had to be secured by provisions or by way of guarantee.

In the event the creditor fails to notify his claim within the prescribed period, he is not entitled to participate in the composition agreement and, consequently, he will not be covered by the agreement. In such a case the creditor is not able to demand satisfaction from the debtor; however, he is be able to notify those claims which have not yet become time-barred in liquidation proceedings initiated by others.

The debtor shall notify the court about the outcome of the composition conference within 5 working days, and shall enclose a copy of the composition agreement where applicable, as well as the minutes, agreements and statements verifying compliance with the statutory requirements set out in Sections 19-21 of the Insolvency Act. If the composition arrangement is in conformity with the relevant statutory requirements, the court grants approval by way of an order and declares the bankruptcy proceedings dismissed. If no composition is arranged, or if the arrangement fails to comply with the said statutory requirements, the court dismisses the bankruptcy proceedings and consequently declares the debtor insolvent ex officio in the liquidation proceedings, and orders the liquidation of the debtor.

(b) Liquidation proceedings (in Hungarian: *"felszámolási eljárás"*)

According to the definition of the Insolvency Act, liquidation means a proceeding aimed at satisfying the creditors of an insolvent debtor upon its dissolution and termination of its corporate existence without legal succession.

Liquidation proceedings shall be conducted in the event of insolvency of the debtor:

- ex officio, if in a bankruptcy proceeding no composition is arranged, or if the arrangement fails to comply with the said statutory requirements and the court dismisses the bankruptcy proceedings and consequently declares the debtor insolvent;

- upon request by the debtor, the creditor or the receiver (in Hungarian: *"végelszámoló"*) in which case legal representation is mandatory; or

- on the basis of a notice by the court of registry if the court has initiated the liquidation of the company; or

- on the basis of a notice by a criminal court (if the enforcement procedure aiming for the collection of a fine imposed upon a legal person has failed).

When liquidation is ordered on grounds other than a request by the debtor, the creditor or the receiver, the court does not investigate the insolvency of the debtor and orders liquidation ex officio. In this case the court order on liquidation may not be appealed (otherwise the deadline for the appeal is 15 days).

In other cases the court investigates the insolvency of the debtor. If requested by the debtor, the court may allow a maximum period of 45 days for the debtor to settle his debt, except if the liquidation proceedings had been opened after the dismissal of bankruptcy proceedings. In the absence of the debtor's statement to that effect, settlement of the debt shall not be construed as an admission of the debt, and it shall not preclude the filing of a civil action to recover it.

If the court finds that the debtor is insolvent, it will order the liquidation of the debtor. According to Section 27 (2) of the Insolvency Act, the court declares the debtor insolvent:

- upon the debtor's failure to settle or contest his previously uncontested and/or acknowledged contractual debts within 20 days of the due date, and failure to satisfy such debt upon receipt of the creditor's written payment notice; or

- upon the debtor's failure to settle his debt within the deadline specified in a final and binding court decision or order for payment;

  in both cases provided that the amount of the claim (not including interest and similar charges) is over HUF 200,000.

- if the enforcement procedure against the debtor was unsuccessful;

- if the debtor did not fulfil his payment obligation as stipulated in the composition agreement concluded in bankruptcy or liquidation proceedings; or

- if it has declared the previous bankruptcy proceedings terminated; or

- if the debtor's liabilities in proceedings initiated by the debtor or by the receiver exceed the debtor's assets, or the debtor was unable and presumably will not be able to settle its debt(s) on the date when they are due, and in proceedings opened by the receiver the members (shareholders) of the debtor fail to provide a statement of commitment – following due notice – to guarantee the funds necessary to cover such debts when due.

In the first case, contest by the debtor applies if the debtor disagrees with the payment obligation as to grounds, existence, due date, rate or amount, and the payment notice must indicate, among others, the legal title and amount of the claim, and the due date. The payment notice shall also specify the final deadline after which the creditor plans to open the liquidation proceedings in the event of non-compliance, or to enforce its claim through other legal channels. The debtor may file his contest in writing by the last day preceding the day of receipt of the creditor's payment notice. If the debtor did not file the said contest in time, payment of the debt by the debtor shall not be considered acknowledgment of the debt, and it shall not preclude the filing of civil action to have it recovered.

The debtor shall not be liquidated in connection with any claim that the creditor failed to notify in the bankruptcy proceedings by the 30-day (or in the case of claims arising after the time of opening the bankruptcy proceeding, 8-day) deadline.

The court has to decide on the liquidation within 60 days (in relation to the liquidation of financial institutions, 8 days) of receipt of the petition for the liquidation proceedings. The commencement date of liquidation proceedings is the date of publication of the final and binding order of liquidation. Publication in the Company Gazette takes place in the form display on the official website of the Company Gazette updated on a daily basis.

The public announcement shall contain, among others, the notice to the creditors (including lien holders, holder of the subordinated liens, the lien holder's agent – as regards the latter also in the case if said claim is not accrued, or not exclusively accrued to the lien holder's agent – as well as the right-holders affected by any collateralized option to buy or the assignment of a right or claim by way of a guarantee, registered in the collateral register or the land register and the holders of contingent claims) to report their known claims – other than the ones already notified and registered during bankruptcy proceedings conducted immediately before the liquidation proceedings – to the liquidator (in Hungarian: *"felszámoló"*) within 40 days (or, in relation to the liquidation of financial institutions, 60 days) of publication of the court order for liquidation.

The rights of the member(s) (shareholder(s)) of the insolvent debtor cease as of the time of the opening of liquidation proceedings, and only the liquidator is authorized to make any legal statements in connection with the assets of the insolvent debtor.

Creditors of the insolvent debtor are obliged to report their claims to the liquidator within 40 days of publication of the court order. The liquidator also registers claims against the debtor which are notified after the 40-day period, but within 180 days of publication of the court order. Except for a composition agreement, these claims will be satisfied only if sufficient funds remain following the settlement of the debtor's prioritised and duly notified debts. These deadlines and rules appropriately apply in respect of claims incurred in the course of the liquidation proceedings, which do not qualify as liquidation expenses. Failure to report the claims within 180 days of the opening of the liquidation proceeding (or thereafter, of the occurrence of the claim) results in forfeiture. The registration of the claims is contingent upon the payment of the registration fee by the creditor (being 1 per cent of the principal sum of the claim, but minimum HUF 5,000 and maximum HUF 200,000).

The liquidator reviews the claims within 45 days of the notification deadline, based on the outcome conciliates with the stakeholders, if necessary and informs the creditors within 15 days about their registered claims and the claims which could not be registered. The liquidator submits the claims – except for the claims arising from labour disputes – disputable to the court ordering the liquidation for judgement within 15 working days and records the outcomes to the interim balance sheet.

The court terminates the liquidation proceedings if all registered debts, recognized or uncontested, of the insolvent debtor had been satisfied, and if the debtor provides guarantees for contested claims and for the liquidator's fee.

As a principal rule, following a period of 40 days subsequent to the publication of the opening of liquidation proceedings, the creditors and the insolvent debtor may, at any time, conclude a composition agreement before the final liquidation balance sheet is submitted. Anyone who did not register as creditor in the liquidation proceedings may not enforce their claims, in the event of a composition agreement, subsequent to the closing of the proceedings. If a composition agreement is made by the parties, the court confirms the agreement by order.

At the end of the proceedings, based on the final liquidation balance sheet and the proposal for the distribution of assets the court rules, among others, on bearing the costs, on the liquidator's fee, on satisfaction of the claims of creditors in accordance with the statutory order and on the closing of current accounts, furthermore, it orders the liquidator to take the measures yet required. Simultaneously, the court resolves the conclusion of liquidation and the dissolution of the debtor, and the dissolution of any subsidiary of the debtor.

(c) Voluntary dissolution proceedings (in Hungarian: *"végelszámolási eljárás"*)

Voluntary dissolution proceedings of a solvent entity are regulated in the Companies Registration Act. The purpose of such proceedings is to satisfy the creditors before dissolving the solvent entity upon the voluntary decision and request of the members of the entity. Since voluntary dissolution proceedings do not qualify as insolvency proceedings in the meaning of the EU Insolvency

Regulation, we do not further discuss this procedure in the context of this Opinion.

Although the initiation or institution of voluntary dissolution proceedings does not have direct adverse effect on creditors' rights, for practical reasons we are of the view that it is advisable to link early termination right also to the occurrence of voluntary dissolution proceedings. In this way creditors can better ensure the satisfaction of their claim without risking that the voluntary proceedings turn into liquidation proceedings. This happens if in the course of the voluntary dissolution proceedings it turns out that the company's assets are insufficient to cover creditors' claims, and the members fail to supply the necessary funds. In this case the receiver must submit a request for liquidation without delay, and thus the voluntary dissolution proceedings turn into liquidation.

D.II.1.2 *Insolvency law interpretation of close-out netting and application of the insolvency laws to the Commodity Transactions*

As discussed under point C.I (page 16) above, irrespective of the specific nature of the Commodity Transactions entered into under the Agreement, the civil law interpretation of close-out netting enables the Parties to the Agreement to enforce the netting provisions of the Agreement. However, since the right of creditors to report the net claim (and the obligation of the liquidator to enforce the net debt), as further detailed below, is only recognised by the Insolvency Act in respect of close-out netting agreements within the meaning given in the Capital Market Act, the netting provisions of the Agreement may be enforced on a civil law basis only up until the opening of insolvency proceedings, provided that all actions (both Action (1) and Action (2), including phase (a) and (b) as described under point C.I of this Opinion on page 16) have been completed prior to the commencement date of the insolvency proceedings (that is the publication date of the relevant court order as described under point D.II.1.1 of this Opinion on page 80).

(a) Specific rules for close-out netting of eligible transactions

Following the commencement date of the insolvency proceedings only close-out netting agreements complying with the requirements set out in the definition of the Capital Market Act (please refer to point C.I of this Opinion on page 16) qualify for the "safe harbour" protection of the Insolvency Act as further discussed under point C.I.1.4 (page 28) of this Opinion.

The above means that for Commodity Transactions to be eligible for the beneficial treatment of close-out netting agreements under the Insolvency Act, they need to fall within one of the types of transactions listed in the close-out netting definition of the Capital Market Act. As for the classification of the Commodity Transactions in Appendix B please refer to point B.IV of this Opinion on page 15.

There is no objection to *"cross-product netting"*, provided that such products/transactions are specified in the definition of the Capital Market Act.

Finally, it is a question of fact whether the settlement method provided in the EFET General Agreement *"is recognized in the market of the relevant* *transaction"*, as required by the Capital Market Act definition of close-out netting, and we cannot opine on such fact.

(b) Simple set-off rules

Set-off rules applicable in the event of a non-insolvency scenario are discussed under point C.I.2 (page 48) of this Opinion.

Without prejudice to the enforceability of the close-out netting agreements as described above in point D.II.1.2(a) (page 87), the Insolvency Act limits the possibility of civil law set-offs, when in Section 36 (1) it provides that in the course of liquidation proceedings *"the right of set-offs may be exercised regarding only such claims which have been registered by the liquidator as acknowledged claim and have not been assigned to any third party beneficiary subsequent to the date when the court received the petition for opening the liquidation, or if the claim has arisen following such date, after the date it has arisen"*. The Section further provides that "*if the performance occurs after the commencement date of the liquidation the creditor may not exercise its right to set-off in respect of the debts assumed, debt undertaken and the performances undertaken before two years of the date when the court received the request for opening the liquidation or subsequently*". Furthermore, according to this Section *"executive officers and executive employees of the debtor, their close relatives and their domestic partners, furthermore, any member (shareholder) of the economic operator with majority control over the debtor or the economic operator in which the debtor has majority control, (or the member in the case of single-member companies, or the foreign owner of Hungarian branches) may not set off their claims against the debtor"*.

According to the above, the two preconditions to any set-off exercised by any creditor of the insolvent debtor are the following:

- the acknowledgement of the claim by the liquidator; and
- the underlying claim was not assigned or transferred to any third party (by assignment, novation, transfer, factoring or otherwise) before the date when the court received the request for the opening of liquidation proceeding.

As regards the first requirement, if the liquidator finds a reported claim disputable, it first will have to conciliate with the stakeholders if necessary, and in lack of resolution, it will have to refer the disputable claim for judgement to the court, as described in point D.II.1.1(b) (page 83). If the court's binding decision renders the claim justified, the claim will be deemed acknowledged and set-off may be enforced, provided that the other requirement is also met.

Contractually agreed set-off of claims between the Parties arising outside of the EFET General Agreement will be enforceable in an insolvency scenario if the above requirements are met. Contractually agreed set-off between the Parties with claims of Affiliates or Credit Support Providers will not be enforceable under the laws of Hungary in an insolvency scenario (please also refer to point C.I.2, page 48).

However, where the EU Insolvency Regulation is applicable, set-off may be enforceable beyond the above described scope if such set-off is permitted by the law applicable to the insolvent debtor's claim. This is because according to Article 9 of the EU Insolvency Regulation, the opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such a set-off is permitted by the law applicable to the insolvent debtor's claim (which means, in the event of a contractual set-off agreement, the law governing the agreement from which the claims concerned arise).

Finally, we note that the debtor (liquidator) is not entitled to set-off claims in the course of the liquidation proceedings, but is obliged to enforce its claims though civil or other procedures. If the debtor (liquidator) brings proceedings against the creditor, the creditor may enforce his claims existing at the time of the opening of the liquidation proceedings against the economic operator as a set-off claim (procedural set-off), provided that the beneficiary of the claim was the same creditor at the time of the opening of the liquidation proceedings.

APPENDIX A

Types of Counterparties

The Instruction Letter required us to base our opinion on the assumption that Party A is an entity of the following types:

- Corporations (e.g., a limited liability company, stock corporation)
- Partnerships (e.g., a general or limited partnership)
- Banks/Credit Institutions
- Investment Service Providers/Investment Firms
- Insurance Companies
- Investment Fund Management Companies[3]
- Other Financial Institutions
- Municipalities or Counties
- Associations of Local Government
- Publicly-owned Corporations
- Quasi Governmental Entities

As further analysed in point B.III (*Potential Parties*, page 14) of this Opinion, based on the Electricity Act's broad definition of trading in electricity, which does not narrow the scope solely to physical trading in natural gas, we can conclude that any type of trading in natural gas, let it be physical or cash-settled, requires the trading licence from the HEO. Consequently, the scope of potential parties is limited to those parties, who are eligible for obtaining the natural gas trading licence. As further detailed under point C.VIII.1 (*Regulatory Regime, Energy law requirements*, page 71) these include the following type of entities:

- corporations (business associations) with legal entity, namely general partnership (in Hungarian: "*közkereseti társaság*"), limited partnership (in Hungarian: "*betéti társaság*"), limited liability company (in Hungarian: *"korlátolt felelősségű társaság"*) or a private limited company (in Hungarian: *"részvénytársaság"*);
- Hungarian registered branch of a company having its registered seat in a Member State of the EU or the EEA;

[3] In this legal opinion the term Investment Fund Management Companies shall be construed as collective investment undertakings as defined in Article 2 para 2 of the EU Insolvency Regulation.

- non-resident economic operator duly incorporated in a Member State of the EU or the EEA;
- sole practitioners.

The Electricity Act does not principally prevent the licence holders (traders) from engaging in activities other than trading in natural gas. Therefore, on the one hand, from an industry regulatory viewpoint, licence holders may pursue other specific activities such as (ancillary) investment or financial services, as a result of which they would qualify as banks, investment firms, insurance companies, etc. On the other hand, from a financial regulatory viewpoint, although the relevant laws governing the status of financial institutions and similar entities do not explicitly exclude the possibility of engaging in natural gas trading, they do list the activities which may be pursued by such entities. And in our opinion it would be difficult to argue that trading in natural gas, and particularly, entering into physical spot transactions, fall within the scope of (ancillary) investment/financial services. This practically means that on the one hand, from a financial regulatory viewpoint they would not be entitled to obtain a natural gas trading licence that is, on the other hand, from an industry regulatory viewpoint, necessary for conducting trading in natural gas.

Due to the above described legislative gap we cannot opine on the potential parties from the viewpoint of the particular scope of activity they pursue, but only from the viewpoint of their legal form that is decisive in respect of the ability to obtain a natural gas trading licence.

Summarising the above, this Opinion is solely given in respect of

- corporations incorporated, organised or established in Hungary in accordance with the laws of Hungary in the form of a general partnership, limited partnership, limited liability company or private limited company;
- Hungarian branches of foreign entities (which are specifically dealt with under point C.II.2 (*Foreign Multibranch Party*) of this Opinion on page 52).

APPENDIX B

Transactions under the EFET General Agreement

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.

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 call) or sell (in the case of 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.

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 or an exchange-traded futures contract on a Commodity (e.g., the EEX EU Carbon Future); all calculations are based on a notional quantity of the commodity. The swap may either be settled by physical delivery of the quantity of Commodity or it may provide for cash settlement.

Physical Commodity Transaction

A transaction which provides for the purchase of an amount of a Commodity at a fixed or floating price for actual delivery on one or more dates.

Commodity means natural gas, emission allowances, certificates or capacity rights.