OPINION LETTER ISSUED IN CONNECTION WITH THE EUROPEAN FEDERATION OF ENERGY TRADERS' GENERAL AGREEMENT CONCERNING THE DELIVERY AND ACCEPTANCE OF NATURAL GAS

May 2019 update

EXECUTIVE SUMMARY

On the basis of the Limitations of Opinion/Scope of Review and Assumptions in Sections A and B respectively, and subject to the Reservations set out in Section D, this is an executive summary of the Opinions expressed in Section C. This executive summary does not form a 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 any interpretative effect on this Opinion which is the only document which shall prevail and be relied upon.

Terms defined in the main body of this Opinion shall have the same meanings in this Executive Summary.

(1) The provisions of the General Agreement permitting the non-defaulting party to terminate the General Agreement (irrespective whether the Parties have selected Automatic Termination or not) and all the Individual Contracts entered into thereunder upon the insolvency of the counterparty will be enforceable under the laws of Spain to the extent that either (a) the requirements in order for Royal Decree Law 5/2005, of 11 March (the "**RDL 5/2005**") to apply have been met; or (b) Article 205 of Law 22/2003, of 9 July (the "**Insolvency Law**") is found to encompass close-out netting and not only genuine set-off and the General Agreement is governed by a foreign law allowing for such close-out netting. It should be pointed out that agreements entered into between two ordinary corporates do not benefit from the special regime provided by RDL 5/2005.

It should be noted that:

(i) as a matter of fact, Spanish municipalities (*ayuntamientos*) and provinces (*provincias*) are unlikely to have capacity to enter into the Individual Contracts; and

(ii) quasi-governmental entities (*organismos autónomos* and *entidades públicas empresariales*) cannot be subject to insolvency proceedings. Therefore, the conclusions in the Opinion may not apply where a quasi-governmental entity is a party to the General Agreement.

(2) The provisions of the General Agreement providing for the calculation and payment of a Termination Amount will be enforceable under the laws of Spain to the extent that: either (a) the requirements in order for RDL 5/2005 to apply have been met; or (b) Article 205 of the Insolvency Law is found to encompass close-out netting and not only genuine set-off and the General Agreement is governed by a foreign law allowing for such close-out netting.

(3) Assuming that the requirements in order for RDL 5/2005 to apply have been met, the Termination Amount in a currency other than Euro will be recognized in a Spanish insolvency proceeding.

(4) To the extent that the requirements in order for RDL 5/2005 to apply are met, the mere institution of proceedings seeking a judgment of insolvency and/or the opening of the proceedings will have no implication on the enforceability or operation of the General Agreement and/or any Individual Contract other than the following:

(i) Individual Contracts "detrimental to the insolvency estate" entered into by the insolvent party within the two-year period preceding the adjudication of the bankruptcy can be avoided under Article 71 of the Insolvency Law;

(ii) any disposition of the insolvent party's property made after the opening of insolvency proceedings can be avoided under Article 40 of the Insolvency Law unless it has been approved or authorized by the insolvency representatives; and

(iii) pursuant to Article 61.2 of the Insolvency Law, the insolvency representatives are entitled to ask the relevant insolvency court to order the early termination of any outstanding bilateral contracts (such as the General Agreement) where such early termination proves beneficial for the insolvency estate.

(5) It has been widely debated whether or not the set-off protection in Article 9 of the EU Insolvency Regulation (and, accordingly, in Article 205 of the Insolvency Law) can be interpreted to encompass close-out netting. In this regard, we are of the view that, unless the European Court of Justice were to find that Article 9 of the EU Insolvency Regulation encompasses close-out netting, the Spanish courts would be likely to interpret that Article 205 of the Insolvency Law does not cover close-out netting as the term set-off (*compensación*) does not encompass the first phase of the full process of close-out netting, *i.e.*, the termination of the relevant agreement.

(6) No insolvency proceedings can be instituted in Spain against any credit institution, investment services company or insurance undertaking authorized in another EEA State (irrespective whether or not such a credit institution, investment services company or insurance undertaking has a branch in Spain), the administrative or judicial authorities of such other EEA State having exclusive jurisdiction for the opening of such insolvency proceedings.

(7) Where the counterparty is not an EEA credit institution, EEA investment services company or EEA insurance undertaking and the centre of its main interests is in a third country, the Spanish courts will have no jurisdiction to implement insolvency

proceedings, except in a case where the foreign party has an establishment in Spain and whether or not the relevant authorities in any other jurisdiction have initiated proceedings in respect of that foreign party. Pursuant to Article 10.3 of the Insolvency Law, any such insolvency proceeding will be a secondary proceeding (*procedimiento territorial*), the scope of which will be limited to those assets of the foreign party located in Spain (including any claims of such foreign party against the Spanish party).

(8) The choice of the substantive law of the Federal Republic of Germany, the law of England or the law of any other jurisdiction other than Spain to govern the General Agreement will be recognized in Spain subject to, and in accordance with, Rome I.

May 2019

To: The European Federation of Energy Traders (EFET)
Amstelveenseweg 998
1081 J S Amsterdam

Dear Sirs,

The European Federation of Energy Traders General Agreement concerning the Delivery and Acceptance of Natural Gas

A. LIMITATIONS OF OPINIONS/SCOPE OF REVIEW

1. TERMS OF REFERENCE

We have been asked, as legal advisers to the European Federation of Energy Traders ("**EFET**") to give an opinion letter in respect of the laws of the Kingdom of Spain ("**this jurisdiction**") in relation to a number of issues and questions raised by EFET in respect of the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas versions 2.0 and 2.0(a) (each, the "**General Agreement**") as published by EFET on 6 January 2003 and 11 May 2007, and the Credit Support Annex to the General Agreement dated 5 April 2002 (the "**CSA**").

Terms used in this Opinion and not otherwise defined herein shall have the meanings ascribed to them in the General Agreement.

2. DEFINED TERMS AND INTERPRETATION

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

(a) "**Agreement**" means an agreement on the terms of the General Agreement (including its Annexes) which, together with the Individual Contracts made under it, is governed by Spanish law;

(b) "**Foreign Law Agreement**" means an agreement on the terms of the General Agreement (including its Annexes) which, together with the Individual Contracts made under it, is governed by a law other than Spanish law;

(c) "**Foreign Party**" means a Party other than a Spanish Party;

(d) "**Insolvency Proceedings**" means any of the procedures identified as such in Section C.1.1.1 herein;

(e) "**Insolvency Representative**" means an *administrador concursal, interventor, comisario, juez* or analogous or equivalent official in this jurisdiction;

(f) "**Insolvent Party**" means a Spanish Party which is or which becomes subject to an Insolvency Proceeding;

(g) this "**Opinion**" means this letter and the opinions expressed therein, as the context requires;

(h) a "**Party**" is a party to an Agreement (or, where relevant, a Foreign Law Agreement);

(i) reference to a "**§**" or "**§§**" are to §§ of the General Agreement and reference to a "Section" are to a "**Section**" of this Opinion (except where the context otherwise requires);

(j) "**Solvent Party**" means, where a Party is an Insolvent Party, the other Party;

(k) "**Spanish Company**" means any of the entities identified in paragraphs (i) to (vi) of Section A.7 herein and duly registered in Spain in accordance with Spanish law;

(l) a "**Spanish Party**" or "**Party A**" means a Spanish Company, a Spanish insurance undertaking or a Spanish collective investment scheme which is a Party to an Agreement (or, where relevant, a Foreign Law Agreement); and

(m) headings are for case of reference only and shall not affect the interpretation of this Opinion.

3. SCOPE OF REVIEW

We have been asked to opine on the basis of the following scenarios:

(a) where the Agreement is governed by Spanish law;

(b) for certain insolvency and default related matters, where Spanish law or another law is chosen to govern the Agreement and where a Party to the Agreement which is incorporated, or has a branch, in Spain is insolvent; and

(c) where the Foreign Law Agreement is governed by the substantive law of the Federal Republic of Germany, the law of England and Wales or the law of any other jurisdiction other than Spain.

Unless otherwise specified, this Opinion deals with scenario (a) above.

Scenario (b) above is dealt with in Section C.1 of this Opinion, which considers the enforceability of the termination and close-out netting provisions of an Agreement or Foreign Law Agreement against a Spanish Company.

Scenario (c) above is addressed in Section C.8.l of this Opinion, which considers the enforceability of a Foreign Law Agreement by the Spanish courts.

4. DOCUMENTS REVIEWED

For the purposes of issuing this Opinion we have reviewed:

(i) the General Agreement together with its Annexes (Defined terms; Election Sheet to the General Agreement; Confirmation Forms for Fixed Price and Floating Price, Call Options and Put Options; Cross Border Annex and version 1.0 of the VAT Annex published on November 2005); and

(ii) the CSA.

In addition, we have reviewed:

(i) for the purposes of Section C.6 (Confirmation Practices) of this Opinion only, the EFET Electronic Confirmation Agreement, published on 28 June 2005; and

(ii) for the purposes of Section C.7 (Core Provision) of this Opinion only, version 1 of the EFET Cross Product Payment Netting Agreement, published on 20 October 2005, and version 1.0 of the CPMA Cross-Product Master Agreement, published on 16 February 2000, as amended by version 1.0 of the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement, published on 23 June 2003.

5. SPANISH LAW AND JURISDICTION

This Opinion relates to Spanish law only as applied by the Spanish courts as at today's date. We express no opinion in this Opinion on the laws of any other jurisdiction, even where, under Spanish law, a foreign law falls to be applied.

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

6. ASSUMPTIONS AND RESERVATIONS

The opinions given in this Opinion are given on the basis of the assumptions set out in Section B below (*Assumptions*) and are subject to the reservations set out in Section D (*Reservations*) of this Opinion. The opinions herein are strictly limited to the matters expressly stated in Section C (*Opinions*) and do not extend to any other matters.

7. POTENTIAL PARTIES

The opinions herein are given in respect of:

(i) partnerships or companies formed and registered under either the Commercial Code 1885, or the Spanish Royal Legislative Decree 1/2010, dated 2 July, on Limited Liability Companies (*Ley de Sociedades de Capital*) (or one of their predecessors) and having their registered office in Spain which are professional wholesale energy traders and/or suppliers;

(ii) financial institutions (*i.e.*, credit institutions and investment services companies);

(iii) Spanish insurance undertakings;

(iv) Spanish investment fund management companies (*sociedades gestoras de instituciones de inversion colectiva*) acting on behalf of Spanish collective investment schemes (*instituciones de inversión colectiva*);

(v) publicly-owned companies (*sociedades mercantiles públicas*); and

(vi) quasi-governmental entities (*organismos autónomos* and *entidades públicas empresariales*).

Spanish municipalities (*ayuntamientos*) and provinces (*provincias*) can enter into derivative transactions for the specific purpose of hedging interest rate risk and exchange rate risk (as per Article 48 of the Revised Text of the Law on Local Finance, approved by Royal Legislative Decree 2/2004, dated 5 March). Although we are of the (untested) view that Spanish municipalities and provinces can also enter into any derivative transactions for hedging purposes related to any other risks they are exposed to (inflation, for instance), we have not considered the possibility of Spanish municipalities or provinces acting as counterparties since, as a matter of fact, they are unlikely to be exposed to any of the risks that may be hedged by the Individual Contracts.

As regards publicly-owned companies and quasi-governmental entities, it is worth noting that:

(a) publicly-owned companies (*sociedades mercantiles públicas*) are treated in the same way as ordinary corporations, therefore our conclusions in this Opinion would not change if a Spanish Party were a publicly-owned company;

(b) as for quasi-governmental entities (*organismos autónomos and entidades públicas empresariales*), as a matter of Spanish law, they cannot be subject to Insolvency Proceedings and can be dissolved only by means of a law. Therefore, our conclusions in Section C.1.1 would not apply where a quasi-governmental entity is a party to an Agreement or a Foreign Law Agreement. Whilst the obligations of quasi-governmental entities might be affected by a moratorium or standstill, it is not possible to determine the effects of such moratorium on the relevant Agreement or Foreign Law Agreement as such moratorium must be declared or imposed by means of a specific law, which will regulate those effects on a case-by-case basis; and

(c) finally, there are no hard and fast rules on status and authority of publicly-owned companies (*sociedades mercantiles públicas*) and quasi-governmental entities (*organismos autónomos and entidades públicas empresariales*).

In principle, publicly-owned companies (*sociedades mercantiles públicas*) are treated in the same way as ordinary corporates. However, it must be noted that most of them are created by means of a law, such laws sometimes providing for specific rules on authority.

As for quasi-governmental entities (*organismos autónomos and entidades públicas empresariales*), they are always created by means of a law, its status and authority being specifically tailored in such laws. There are, however, some general rules, including, *inter alia*, the following ones:

(i) those assets of any quasi-governmental entity which are linked to the provision of public services or public uses together with shareholdings in publicly-owned companies (*sociedades mercantiles públicas*) enjoy immunity from attachment; and

(ii) submission by *organismos autónomos* to foreign law, jurisdiction of foreign courts or arbitration in connection with financial contracts will usually require the relevant agreement to be executed by the Chairman (*Presidente*) of the relevant entity.

B. ASSUMPTIONS

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

1) That the General Agreement, the CSA and 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 Spain.

2) That each Party has the capacity, power and authority under all applicable law(s) to enter into the General Agreement, the CSA and Individual Contracts; to perform its obligations under the General Agreement, the CSA and Individual Contracts; and that each Party has taken all necessary steps to execute, deliver and perform the General Agreement, the CSA and Individual Contracts.

3) That each Party has obtained, complied with the terms of and maintained all authorizations, approvals, licenses and consents required to enable it lawfully to enter into and perform its obligations under the General Agreement, the CSA and Individual Contracts and to ensure the legality, validity, enforceability or admissibility in evidence of the General Agreement, the CSA and Individual Contracts in this jurisdiction.

4) That the General Agreement has been properly executed and the Election Sheet has been properly completed by both Parties, and that no amendments have been made to § 22 of the General Agreement (*Governing Law and Jurisdiction*).

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

6) That the General Agreement, the CSA and any Individual Contracts thereunder are entered into prior to the formal commencement of any Insolvency Proceedings against either Party, for bona fide commercial reasons and on arm’s length terms.

7) That both Parties have all government licenses, consents and approvals required by any applicable laws to enter into, and perform its obligations under, the General Agreement and any Individual Contracts and that the General Agreement and any Individual Contracts comply with the hydrocarbon or other relevant sectors legislation and regulations in all relevant jurisdictions.

8) Each of the parties is personally liable as principal for its obligations under the General Agreement and any Individual Contracts entered into thereunder and is beneficially entitled to its benefits under the General Agreement and any Individual Contracts entered into thereunder (in other words, there is full mutuality between the parties), and that no third party (an Intervener) has any interest in any right of either party under the General Agreement or any Individual Contracts entered into thereunder or, if that is not the case, that no party has notice, on or prior to entry into the General Agreement and any Individual Contracts entered into thereunder, of the existence of any Intervener that has an interest in any right of the other party. The principal types of Intervener are an assignee, a chargee holding a crystallised floating charge, an attaching creditor, an agent, an undisclosed principal, an undisclosed beneficiary and a subrogated creditor.

9) That the "centre of the debtor's main interest" (within the meaning in Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (the "**EU Insolvency Regulation**") and in the Insolvency Law) of any Spanish Party other than a credit institution, investment services company or insurance undertaking is located in Spain.

10) That no transfer of Eligible Credit Support is made after the opening of an Insolvency Proceeding.

11) That the CSA has been entered into simultaneously to the execution of the General Agreement and the first Individual Contract thereunder.

In accordance with the Instruction Letter, we have made additional assumptions in Sections C.1, C.2.1, C.2.2, C.3, C.5 and C.8 below.

C. OPINIONS

On the basis of the assumptions and subject to the reservations respectively set out in Section B and Section D herein, we are of the following opinions.[1]

1. ENFORCEABILITY OF CLOSE-OUT NETTING

For the purposes of this Section C.1, and as per the Instruction Letter, we have made in addition to the assumptions made in Section B above (*Assumptions*), the following additional factual assumptions:

(i) The relevant General Agreement is governed by any law (including English or German law or the laws of Spain); and

(ii) After entering into the Individual Contracts and prior to the maturity thereof, Party A becomes the subject of either voluntary or involuntary proceedings under the insolvency laws of Spain 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.

1.1. Winding-up, Insolvency or Attachment

1.1.1. Overview of relevant insolvency proceedings

The only bankruptcy, composition, rehabilitation (e.g., liquidation, administration, receivership or voluntary arrangement) or other insolvency laws or reorganization procedures to which a Party could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this Opinion, are the following:

(i) *concurso* (bankruptcy proceedings for individuals and legal companies) under Law 22/2003, of 9 July (*Ley 22/2003, de 9 de julio, concursal*, hereinafter, the "**Insolvency Law**");

(ii) *intervención administrativa* (*i.e.*, governmental administration) under: (i) in relation to utilities, Law 34/1998, of 7 October, on Hydrocarbon Commodities (hereinafter, the "**Law 34/1998**"); (ii) in relation to credit institutions, Law 10/2014, of 26 June, on discipline, supervision and solvency of credit institutions; (iii) in relation to investment service companies, Royal Decree 4/2015 of October 23, approving the consolidated text

[1] The content of this section follows the order of the questions set out in Section C of the "Legal Opinion regarding the Enforceability of Close-Out Netting and the Validity and Enforceability of Collateral Arrangements, and Other Related Issues, under the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas" (the "**Instruction Letter**").

of the Securities Market Law (the "**RD 4/2015**"); (iv) in relation to Spanish insurance undertakings, Law 20/2015, of 14 July, on the management, supervision and solvency of insurers and reinsurers (the "**Law 20/2015**") and (v) in relation to Spanish collective investment schemes, Law 35/2003, 4 November, on collective investment undertakings;

(iii) *liquidación administrativa* (administrative winding-up) of Spanish insurance undertakings under the Law 20/2015;

(iv) recovery and resolution proceedings ("**Resolution Proceedings**") in respect of credit entities and investment services companies under Law 11/2015, of 18 June, on recovery and resolution of credit institutions (the "**Law 11/2015**") (which implements in Spain the provisions of 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 services companies (the "**BRRD Directive**")); and

(v) the Fourth Additional Provision of the Insolvency Law contemplates also a pre-insolvency proceeding (each, a "**Refinancing Proceeding**") since it allows for the possibility of refinancing agreements (broadly close to the English schemes of arrangement) entered into by the debtor and certain creditors to be approved by the Court (*homologación judicial de acuerdos de refinanciación*), such refinancing agreements being then binding on all of the financial creditors of the debtor.

The above laws and procedures are together respectively called "**Insolvency Laws**" and "**Insolvency Proceedings**".

We confirm that, in our view, the events described in § 10.5(c) of the General Agreement refer to all Insolvency Proceedings. However, it is important to note that:

(i) interpretation of contractual clauses is ultimately vested on Spanish courts, which may have a different view; and

(ii) where the General Agreement is governed by the laws of any jurisdiction other than Spain, such confirmation can only be provided by counsel in the relevant jurisdiction.

It must be also noted that the purpose of the Insolvency Proceedings varies to a significant extent in each case:

(i) the purpose of *concurso* is to achieve an agreement for the rescheduling of the liabilities of the Insolvent Party and, failing it, to realize its entire estate in order to seek payment of all its creditors; whilst

(ii) *intervención administrativa* (governmental appointment of directors or administrators) is a proceeding aimed at the replacement of the board of directors of the relevant company by new directors appointed by the Government (or, as the case may be, by the regional authorities) or to the appointment by the Government of an official (*interventor*) to supervise and approve the operation of the affected entity. It is worth noting that proceedings under the Law 34/1998will take place only in extreme scenarios where the supply of natural gas in the Spanish market is at risk because of, for instance, the insolvency or illiquidity of a utility, irregular management of a utility that may result in an interruption of the natural gas supply *etc*. Moreover, *intervención administrativa* should not affect *per se* the rights and remedies of the creditors of the Insolvent Party (including any close-out netting or set-off rights).

Finally, as a matter of law, Spanish collective investment schemes organised as a fund cannot be subject to Insolvency Proceedings, as they do not have a legal personality.

1.1.2. Analysis of the contract types listed in Appendix B to the Instruction Letter

Under the Insolvency Law, there is no special treatment for any of the contract types listed in Appendix B to the Instruction Letter (being commodity forwards, commodity spots, commodity options and commodity swaps).

Notwithstanding the above, there is no certainty that commodity transactions which are spot trades fall within the concept of commodity derivatives for the purposes of Royal Decree Law 5/2005, of 11 March (the "**RDL 5/2005**", a specific piece of legislation providing for close-out netting recognition in relation to certain netting agreements, and in connection to which we refer you to Section 1.1.3 below).

In the event that any Individual Contracts (in particular, spot trades) are found not to amount to "commodity derivatives" for the purposes of the RDL 5/2005, there may be two scenarios:

(i) that the relevant court excludes those Individual Contracts from the netting under § 10 and 11 of the General Agreement; and

(ii) that the relevant court finds that the inclusion into an Agreement (or Foreign Law Agreement) of Individual Contracts outside the scope of the RDL 5/2005 jeopardises the ability of such Agreements or Foreign Law Agreement (and, therefore, of all Individual Contracts entered into thereunder) to benefit from the RDL 5/2005.

In this respect we believe that, even if the literal wording of the RDL 5/2005 allows for the second of the above two scenarios, both the rationality of the RDL 5/2005 and good practice considerations play in favour of the first scenario. However, we cannot give a conclusive opinion on this issue, since no cases have been brought before Spanish courts relating to the interpretation of the RDL 5/2005 (or former equivalent legal provisions).

A clear way to mitigate this risk would be by means of documenting spot trades under a different Agreement (or Foreign Law Agreement) to that including forward and option transactions. Another (although riskier) possibility would consist of using only one Agreement or Foreign Law Agreement for both spot and forward trades and including in such Agreement or Foreign Law Agreement a contractual provision providing for the exclusion from the close-out netting calculations of those Individual Contracts which be deemed by the relevant Court to fall outside the scope of the RDL 5/2005.

1.1.3. Enforceability of close-out netting

Two different scenarios must be distinguished depending on whether or not the relevant Agreement (or Foreign Law Agreement) falls within the scope of Article 16 of the RDL 5/2005. Besides this, Agreement and/or Foreign Law Agreements where the Insolvent Party is a Spanish credit institution and/or a Spanish investment services company merit some specific considerations:

(i) Agreements (or Foreign Law Agreements) falling within the scope of the RDL 5/2005:

Article 16 of the RDL 5/2005 provides that:

"*The declaration of early termination. rescission, cancellation, enforcement or equivalent effect of the financial transactions entered into under a contractual netting agreement or in relation to it, shall not be limited, restricted or affected in any manner by the opening of bankruptcy proceedings or administrative winding-up proceedings [...]"; and that*

"In the event that one of the parties of the relevant contractual netting agreement is subject to a bankruptcy proceeding or an administrative liquidation proceeding, only the net sum of the transactions entered into thereunder, calculated in accordance with the provisions of such agreement, will be included, as a claim or as applicable, as a debt in the estate of such party".

Moreover, the First Additional Provision of Royal Decree-law 11/2014 of 5 September, on urgent measures on insolvency matters provides that any measures under Article 5 *bis* and/or the Fourth Additional Provision of the Insolvency Law shall amount to a reorganization measure for the purposes of the application of the RDL 5/2005.

The above amounts to recognizing the validity and enforceability of the acceleration of any payment and/or delivery obligation of either party following the institution of an Insolvency Proceeding with respect to the other party, without the Insolvency Representatives being entitled to challenge or object such acceleration (other than a Resolution Proceeding, in which respect we refer you to subparagraph (iv) below).

It should be noted that Article 16 only applies to financial transactions entered into under a contractual netting agreement which meets the requirements set forth in Articles 4 and 5 of the RDL 5/2005. Such requirements are as follows:

1) that one of the parties to the relevant contractual netting agreements is either:

   (a) a public authority;

   (b) the European Central Bank, the Bank of Spain, a central bank of any Member State of the European Union, a central bank of any third States, the Bank for International Settlements, a multilateral development bank, the International Monetary Fund and the European Investment Bank;

   (c) a credit institution, an investment services company, an insurance undertaking, an undertaking for collective investment scheme or a management company thereof, a securitization fund (*fondo de titulización*) or a management company thereof, a pension fund, or any other financial institutions as defined in Article 4(5) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006, relating to the taking up and pursuit of the business of credit institutions (recast); or

   (d) a governing body of a secondary exchange, a governing body of a clearing and settlement system, or a central counterparty, a settlement agent or a clearing house as defined in Law 41/1999, of 12 November, on payment and securities settlement systems, or a similar institution acting in the futures, options and derivatives markets and the members and participants of those markets infrastructures where acting in such capacity;

(together, the "**Qualifying Parties**")

2) that the relevant netting agreement "*provides for the creation of one single legal obligation which encompasses all of the financial transactions entered into under such agreement and by virtue of which, where there is an early termination, the parties will only have the right to claim the net sum of the terminated transactions*".

   In this regard, we are of the opinion that § 1.1 of the General Agreement (in connection with § 11) satisfies this requirement.

3) that each of the transactions entered into under the relevant netting agreement is a transaction of one of the following types (the "**Qualifying Transactions**"):

   (a) spot sales of negotiable securities listed in an EU exchange or multilateral trading facility;

(b) those financial instruments contemplated in paragraphs second to eight of Article 2 of the RD 4/2015, including credit derivatives, commodity derivatives (including bullion derivatives), spot FX transactions, allowance derivatives, or any combination of them, and irrespective of whether they are cash settled or physically settled[2]; and

(c) repurchase transactions and buy and sell back transactions.

In light of the above, we are of the opinion that discretionary termination rights, close-out netting and the calculation and payment of a Termination Amount under §§ 10.3 and 11, will be enforceable upon the occurrence of a Winding-up, Insolvency or Attachment where the relevant Agreement (or Foreign Law Agreement) meets the requirements set forth in Articles 4 and 5 of the RDL 5/2005.

Whilst to the best of our knowledge, no cases have been brought before our Supreme Court relating to the interpretation of Article 16 of the RDL 5/2005 (or its predecessors), we believe that the better view is that Article 16 allows for the Termination Amount to be calculated in the manner prescribed in § 11 of the General Agreement, *i.e.*, taking into account not only the sum of all Settlement Amounts but also all other amounts payable between the Parties under the General Agreement (in particular, deferred amounts relating to the price of energy/allowances already delivered).

(ii) Agreements (or Foreign Law Agreements) falling outside the scope of the RDL 5/2005:

Where an Agreement (or Foreign Law Agreement) falls outside the scope of the RDL 5/2005, the exercise of termination rights by the Solvent Party is subject to the general provisions set forth in the Insolvency Law.

Pursuant to Article 61.2 of the Insolvency Law, bilateral agreements which are yet to be performed, in whole or in part, by both parties cannot be terminated by the Solvent Party upon the insolvency of the other party, it being for the receivers of the Insolvent Party (and not for the Solvent Party) to decide on the termination or continuation of such agreements. Notwithstanding this, said agreements could be terminated by the Solvent Party after the insolvency of the other party following a valid Termination Event for non-insolvency related Material Reasons (in which regard we refer you to Section C.1.2.1.2 below).

Pursuant to Article 61.3 of the Insolvency Law, those contractual provisions providing for the automatic termination of a contract or for the right of the Solvent Party to terminate a contract

[2] OTC PVB transactions fall within the scope of RDL 5/2005.

upon the insolvency of the other party will be null and void (which nullity will affect, however, only the Automatic Termination provision).

Furthermore, close-out netting provisions are not generally enforceable in Spain, since such netting is regarded as an infringement of the general principle of equal treatment of creditors (the background for this being the fact that, pursuant to the Spanish Contract Law, set-off is regarded as a specific type of payment). This is why Article 58 of the Insolvency Law provides that no set-off can take place in relation to claims owed to and by an insolvent party unless the requirements in order for set-off to operate have been meet prior to the adjudication of the bankruptcy. Accordingly, as a general rule, no creditor of a Spanish Party is entitled to exercise any rights of set-off once that such Spanish Party has become bankrupt.

In light of the above, we are of the opinion that discretionary termination rights, close-out netting and the calculation and payment of a Termination Amount under §§ 10.3 and 11 discretionary termination rights, will not be enforceable upon the occurrence of a Winding-up, Insolvency or Attachment where the relevant Agreement (or Foreign Law Agreement) fails to meet the requirements set forth in Articles 4 and 5 of the RDL 5/2005.

(iii) Foreign Law Agreements entered into by a Spanish credit institution or a Spanish investment services company:

Article 8.1.e) of Law 6/2005 of 22 April, on the clean-up and liquidation of credit institutions (the "**Law 6/2005**"), which implements the provisions of the Directive 2001/24/EC of 4 April on the reorganization and winding up of credit institutions (the "**Banks Winding-Up Directive**") (the Law 6/2005 having been amended, as requested by Article 117 of the BRRD Directive, by the Law 11/2015 in order for it to apply also to investment services companies), provides that the effects of an insolvency proceeding or reorganization measure on a netting agreement (*acuerdo de compensación contractual*) entered into by a Spanish credit institution or investment services company shall be determined in accordance with the law applicable to that agreement.

It is worth noting that the Law 6/2005 does not define the term "netting agreement" (*acuerdo de compensación contractual*). In this regard, we are of the opinion that:

(a) although neither the Banks Winding-Up Directive nor the Law 6/2005 contains a definition of the term "netting agreement", we are of the opinion that this omission should be filled by resorting to the definition contained in the BRRD Directive;

"*Netting agreement*" is defined in the BRRD Directive as "*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 (however or wherever defined) 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, including 'close-out netting provisions as defined in point (n)(i) of Artic/e 2(1) of Directive 2002/47/EC and 'netting' as defined in point (k) of Article 2 of Directive 98/26/EC*".

In turn, the definition of close-out netting arrangements can be found in Article 5 of the RDL 5/2005, which implements the provisions of the Directive 2002/47/EC of 6 June 2002 on financial collateral arrangements (the "**Financial Collateral Directive**"), pursuant to which a "netting agreement" is defined as "*any agreement which provides for the creation of a single legal relationship comprising all transactions entered in/o thereunder and by virtue of which. upon the occurrence of a termination event thee parties will only have the right to claim the net sum arising from the acceleration or termination of those terminated transactions*"; and

(b) any Foreign Law Agreement is, therefore, a netting agreement for the purposes of the Law 6/2005.

In light of the above, it may well be argued that close-out rights under a Foreign Law Agreement must be enforceable upon the insolvency of the Spanish credit institution or investment services company to the extent that they are enforceable under the foreign law governing such agreement and irrespective whether the relevant Foreign Law Agreement falls or not within the scope of the RDL 5/2005.

It must be however noted that there may be also room to argue that Article 8.1.e) of the Law 6/2005 shall only apply to those netting agreements relating to those instruments referred to in Section C of Annex I to 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, no cases having yet been brought before the European Court of Justice or the Spanish courts in relation to questions of interpretation of, respectively, the Banks Winding-Up Directive or Article 8.1.e) of the Law 6/2005.

(iv) Resolution Proceedings in respect of Agreements or Foreign Law Agreements entered into by a Spanish credit institution and/or a Spanish investment services company.

On the other hand, the Law 11/2015 contains various provisions which might affect the effectiveness of the exercise of close-out netting rights under any Agreement (or Foreign Law Agreement) entered into by a Spanish credit institution or investment services company.

In particular and without limitation:

(i) pursuant to Article 66.1 of the Law 11/2015 (broadly following Article 68 of the BRRD Directive), the application of an early intervention or resolution tool or the exercise of an early intervention or resolution power shall not in itself permit anyone to exercise any right to terminate, accelerate or declare a default under any contract, provided that such Article will not affect the termination rights of a person where those rights arise by virtue of any event other than the early intervention or resolution measure or an event directly linked to such measure; and

(ii) pursuant to Article 70.5 of the Law 11/2015 (which follows Article 71 of the BRRD Directive), Spanish resolution authorities have powers to suspend the termination rights of any counterparty under a contract with a failing institution from the publication of the exercise of the power until no later than midnight on the business day following that publication, provided that a person may exercise a termination right under a contract before the end of the suspension period if that person receives notice from the resolution authority that the rights and liabilities covered by the contract shall neither be transferred to another entity nor subject to write-down or conversion on the application of the bail-in tool (a "**Notice**"), and further provided that where a resolution authority exercises the above mentioned suspension power to suspend termination rights any person who has not received a Notice from the resolution authority may exercise its termination rights on the expiry of the suspension period only (a) if the rights and liabilities covered by the contract have been transferred to another entity and on the occurrence of any continuing or subsequent enforcement event by the recipient entity; or (b) if the rights and liabilities covered by the contract remain with the failing entity and the resolution has not applied the bail-in tool contract.

1.1.4. Voidability

The effectiveness of the close-out netting may be affected where the General Agreement or any Individual Contract thereunder constitutes a transaction "detrimental to the insolvency estate" and can be avoided under Article 16.3 of the RDL 5/2005 in connection with Article 71.1 of the Insolvency Law or could otherwise be rescinded under Royal Decree of 24 July 1889 that publishes the Civil Code (the "**Spanish Civil Code**"):

(i) Suspect Period

Under Article 16.3 of the RDL 5/2005 in connection with Article 71.1 of the Insolvency Law, the courts can set aside any acts (including payments) made by the Insolvent Party within the two-year period preceding the adjudication of the bankruptcy (the "**Suspect Period**") if the Insolvency Representatives can prove that such transaction was "detrimental to creditors".

In this regard, it should be noted that:

(a) Spanish legislation does not provide for a concept of "detrimental" to this effect nor have Spanish courts formulated yet a test for this purpose. However, it is clear that both transactions at an undervalue and transactions intended to constitute a preference fall within the scope of Article 15.5 of the RDL 5/2005 in connection with Article 71 of the Insolvency Law; and

(b) conversely, Article 71.5 of the Insolvency Law prevents Spanish insolvency courts from setting aside any transactions entered into by the Insolvent Party within the Suspect Period in the ordinary course of its business and on normal conditions.

(ii) Rescission under the Spanish Civil Code

Pursuant to Articles 1,111, 1,291 and l,297 of the Spanish Civil Code, the courts may, on the application of any creditor of a company (even if the company is not subject to an Insolvency Proceeding), set aside a fraudulent transaction entered into by the company within the 4-year period preceding the application. Transactions entered into on arm's length terms and at the then prevailing market rates are unlikely to constitute fraudulent transactions. However, the matters referred to in the last sentence are questions of fact in each case.

Notwithstanding the above, it should be noted in connection with Foreign Law Agreements that pursuant to Article 16 of the EU Insolvency Regulation and Article 208 of the Insolvency Law, no act governed by a foreign law can be set aside pursuant to the abovementioned Spanish legal provisions where the beneficiary of that act proves that such foreign law does not allow any means of challenging that act in the case in point (provided that: (i) in respect of any Foreign Agreements entered into by a Spanish credit institution or investment services company and governed by the laws of an EEA Member State, references herein to Article 208 of the Insolvency Law and Article 16 of the EU Insolvency Regulation must be read as references to Article 8.1.g) of the Law 6/2005 and to Article 30 of the Banks Winding-Up Directive, respectively, and (ii) in respect of any Foreign Agreements entered into by a Spanish insurance undertaking and governed by the laws of an EEA Member State, references herein to Article 208 of the Insolvency Law and Article 16 of the EU Insolvency Regulation must be read as references to Article 80 of the Law 20/2015 (in connection with Article 205 of the Insolvency Law) and to Article 290 of the Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (the "**Insurance Directive**"), respectively).

1.1.5. Time at which termination rights may be exercised

It is immaterial whether the Solvent Party exercises its rights under §§ 10.3 and 11 at any of: (a) the filing of proceedings seeking a judgment of insolvency; (b) a bankruptcy court recognizing the filing of proceedings seeking a judgment of insolvency; (c) the date on which a bankruptcy court determines a party first becomes insolvent; and (d) any other stage of the proceedings (provided that such rights are enforceable in accordance with the RDL 5/2005, in which regard we refer you to our considerations in Section C.1.1.3 above).

1.1.6. Analysis of the existence of any "safe harbour" for the contract types listed in Appendix B to the Instruction Letter

Please see Section C.1.1.3 above.

1.1.7. Publicity of bankruptcy

In case of a Spanish Party or the Spanish branch of a Foreign Party being declared bankrupt, bankruptcy will be published:

(i) in the Spanish Official Gazette (*Boletín Oficial del Estado*, which can be accessed on-line at www.boe.es); and

(ii) in the Public Registry on Bankruptcy (*Registro Público de Resoluciones Concursales*, which can be accessed on-line at www.publicidadconcursal.es).

In addition, in retrieving an extract from the Mercantile Registry one could then see such adjudication of bankruptcy once it has been registered.

1.1.8. Set-off

1.1.8.1. Set-off in an insolvency scenario

(a) Set-off of claims between Parties arising under the General Agreement

Without prejudice to the enforceability of the close-out netting agreements meeting the requirements set forth in Articles 4 and 5 of the RDL 5/2005, Article 58 of the Insolvency Law provides that no set-off can take place in relation to claims owed to and by an insolvent party unless the requirements in order for set-off to operate have been met prior to the adjudication of the bankruptcy (subject to Article 9 of the EU Insolvency Regulation, Article 205 of the Insolvency Law, Article 8.2.c) of the Law 6/2005, Article 23 of the Banks Winding-Up Directive, Article 80 of the Law 20/2015 and Article 288 of the Insurance Directive). Article 9 of the EU Insolvency Regulation, Article 205 of the Insolvency Law, Article 8.2.c) of the Law 6/2005, Article 23 of the Banks Winding-Up Directive, Article 80 of the Law 20/2015 and Article 288 of the Insurance Directive shall be jointly referred to as the "**Legal Set-Off Provisions**"), regarding which we refer you to our considerations in Section C.1.1.9 below.

Pursuant to the Spanish Civil Code, the requirements in order for two claims to be set-off against each other "by operation of law" (*compensación legal*) are as follows:

(i) both claims must be mutual;

(ii) claims must be homogeneous;

This means that both debts must be either cash claims or claims for the redelivery of the same type of fungible assets;

(iii) both claims must be due and payable (*i.e.*, matured); and

(iv) both claims must be liquid (*liquidas*).

This means that the amount of both claims must be certain. The Spanish Civil Code does not specify what are the requirements for the amount of a claim being deemed to be certain, *i.e.*, whether the calculations made by the relevant creditor are sufficient or whether obtaining a prior judgment from a court is required. However, according to Law 1/2000, of 7 January, on civil procedure (the "**Spanish Civil Proceedings Act**"), the determination made by a creditor is not sufficient for the amount claimed by it being deemed to be liquid and certain unless such amount is clearly established in the relevant agreement (e.g., the principal of a loan) or can be calculated pursuant to a simple mathematical operation in accordance with the provisions of the relevant agreement (e.g., the fixed-rate interest accrued under a loan); otherwise, a debt judgement must be previously obtained from a court or, if Article 572 of the Spanish Civil Proceedings Act applies, a notarial certificate of the accuracy of the calculations made by the creditor must be obtained from a Spanish Notary. In order for Article 572 to apply, the following requirements must be satisfied:

(a) the secured obligations must arise from an agreement executed before a Spanish Notary Public;

(b) the secured creditor must have been served prior notice of the amount claimed by the secured creditor; and

(c) the parties must expressly provide for the application of Article 572 in the relevant agreement.

Notwithstanding the above, parties may freely agree on contractual provisions waiving any of the requirements provided for in the Spanish Civil Code in order for set-off by operation of law to apply. In such a case, the relevant requirements for the purposes of the application of Article 58 of the Insolvency Law are likely to be only those agreed by the parties (to the extent that such parties have provided for contractual set-off to operate automatically or, otherwise, a set-off notice has been served prior to the opening of the relevant Insolvency Proceeding).

(b) Set-off of claims between Parties arising outside the General Agreement

Again, we are of the opinion that set-off of claims arising outside the General Agreement will be enforceable only in an insolvency scenario where:

(i) in accordance with Article 58 of the Insolvency Law, the requirements in order for set-off to operate have been met prior to the adjudication of the bankruptcy (in which regard we refer you to our considerations in Section C.1.1.8.1(a) above); or

(ii) the conditions for Article 8.2.c) of the Law 6/2005, Article 167.5 e) of the Law 20/2015 or Article 9.1 of the EU Insolvency Regulation and Article 205 of the Insolvency Law to apply are met. *i.e.* where such set-off is permitted by the Law applicable to the Insolvent Party's claim.

(c) Set-off between Affiliates or Credit Support Providers

We are of the opinion that any contractual provision whereby the amount payable to the Insolvent Party can be reduced by its set-off against any amounts payable to the Solvent Party or any Affiliate or Credit Support Provider of the Solvent Party by the Insolvent Party or any Affiliate or Credit Support Provider of the Insolvent Party will not be enforceable in Spain in an insolvency scenario.

1.1.8.2. Set-off in a non-insolvency scenario

(a) Set-off of claims between Parties arising under the General Agreement

The provisions in an Agreement (or Foreign Law Agreement) providing for set-off between Parties of claims arising out of such Agreement (or Foreign Law Agreement) will be valid and enforceable in a non-insolvency scenario.

(b) Set-off of claims between Parties arising outside the General Agreement

The provisions in an Agreement (or Foreign Law Agreement) providing for set-off between Parties of claims arising outside such Agreement (or Foreign Law Agreement) will be valid and enforceable in a non-insolvency scenario.

(c) Set-off between Affiliates or Credit Support Providers

We are of the opinion that any contractual provision whereby the amount payable by one of the parties (the "**Payer**") to the other party (the "**Payee**") can be reduced by its set-off against any amounts payable to the Payer by any Affiliate or Credit Support Provider of the Payee will be enforceable in Spain in a non-insolvency scenario.

Conversely, any contractual provision whereby the amount payable to the Payee under the Agreement (or Foreign Law Agreement) can be reduced by its set-off against any amounts payable by the Payee to any Affiliate or Credit Support Provider of the Payer will be valid and enforceable in a non-insolvency scenario only to the extent that the relevant Affiliates and/or Credit Support Providers have given their consent to such provision.

1.1.9. Difference between set-off and close-out netting

Whilst from a scholar standpoint it can be debated whether set-off and close-out netting are similar rights, the laws of this jurisdiction make a distinction between the concepts of set-off and close-out netting, close-out netting encompassing two different phases: (i) termination of the relevant transactions (close-out) and (ii) set-off of the market values of the terminated transactions. Moreover, the Law 6/2005 deals with set-off and close-out netting in different provisions.

In addition, whilst pursuant to Article 7.2 (e) of the EU Insolvency Regulation, the law of the State of the opening of the proceedings shall determine "*the effects of insolvency proceedings on current contracts to which the debtor is a party*", Article 9.1 of the EU Insolvency Regulation provides that "*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*" and has been implemented by Article 205 of the Insolvency Law, which language is the same than that of Article 9.1.

It has been widely debated whether or not the set-off protection in Article 9 of the EU Insolvency Regulation (and, accordingly, in Article 205 of the Insolvency Law) can be interpreted to encompass close-out netting.

We are of the view that, unless the European Court of Justice were to find that Article 9 of the EU Insolvency Regulation encompass close-out netting, the Spanish courts would be likely to interpret that Article 205 of the Insolvency Law does not cover close-out netting as the term set-off (*compensación*) does not encompass the first phase of the full process of close-out netting, *i.e.*, the termination of the relevant agreement.

Finally, attention must be paid that, in those cases where the Close-out Netting Provisions are not enforceable in Spain because of the Foreign Law Agreement failing to meet the requirements set out in Article 4 and 5 of the RDL 5/2005, the aggregation and set-off of amounts of terminated Individual Contracts may be implemented under the Legal Set-Off Provisions.

Thus, where the General Agreement is governed by a foreign law (references to such foreign law being references to its insolvency laws) which permits set-off of unmatured debts, the claims relating to the price payable in relation of property transferred before the commencement of the Insolvency Proceeding could be set-off against each other.

1.1.10. Enforceability of 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 where the Parties have not specified Automatic Termination to apply

Where the Parties have not specified that Automatic Termination applies, the provisions of the General Agreement permitting the Terminating Party to terminate the Agreement (or Foreign Law Agreement) (including all Individual Contracts) upon the occurrence of a Material Reason described in § 10.5(c) of the General Agreement would be enforceable under the laws of this jurisdiction where the relevant Agreement (or Foreign Law Agreement) meets the requirements set forth in the RDL 5/2005.

1.1.11. Enforceability of 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 where the Parties have specified Automatic Termination to apply

Our considerations in Sections C.1.1.10 above will also apply under an Automatic Termination scenario, since (as discussed above) pursuant to Article 61.3 of the Insolvency Law those contractual provisions providing for the automatic termination of a contract upon the insolvency of either of the parties are null and void (which nullity will, however, affect only the Automatic Termination provision).

Accordingly, two scenarios shall be distinguished:

(a) where the relevant Agreement (or Foreign Law Agreement) falls within the scope of the RDL 5/2005 (in which regard we refer you to Section C.1.1.3 above), it is not necessary for the Parties to agree to an automatic, rather than an optional, termination. Therefore, if Automatic Termination is not specified as applying to a Party in the Schedule to the General Agreement, the Solvent Party would still be able to terminate all outstanding Individual Contracts between the Parties upon the insolvency of its counterparty and such termination would be enforceable under the laws of this jurisdiction.

    If Automatic Termination is, however, specified as applying to a Party in the Schedule to the General Agreement, such termination would be enforceable under the laws of this jurisdiction; and

(b) where the relevant Agreement (or Foreign Law Agreement) does not fall within the scope of the RDL 5/2005, the election of Automatic Termination will be found by a Spanish insolvency court to be null and void pursuant to Article 61.3 of the Insolvency Law.

1.1.12. Election of Automatic Termination

We would not recommend electing Automatic Termination to apply. As stated in Section C.1.1.10:

a) where the relevant Agreement (or Foreign Law Agreement) falls within the scope of the RDL 5/2005, it is not necessary for the Parties to agree to an automatic, rather than an optional, termination; and

b) where the relevant Agreement (or Foreign Law Agreement) does not fall within the scope of the RDL 5/2005, early termination rights will be not enforceable upon the opening of an Insolvency Proceeding, whether by automatic or active termination.

1.1.13. Inclusion of a grace period for the purposes of Automatic Termination

Please see Section C.1.1.12 above.

1.1.14. Enforceability of 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

Please see Section C.1.1.4 above.

1.1.15. Single agreement concept

As discussed in Section C.1.1.3 above, discretionary termination rights and close-out netting will be enforceable upon the occurrence of a Winding-up, Insolvency or Attachment only where the relevant Agreement (or Foreign Law Agreement) meets the requirements set forth in Articles 4 and 5 of the RDL 5/2005, one of those requirements being precisely that the relevant netting agreement provides for the creation of "one single legal obligation". Accordingly, the single agreement concept (§ 1.1) is required in order to preserve the enforceability of discretionary termination rights and close-out netting under Article 16 of the RDL 5/2005.

Since neither Spanish law defines the concept of "single legal obligation" nor have the courts formulated any test to this effect, we are of the view that it is uncertain whether Individual Contracts can be severed from the General Agreement and still preserve the single agreement concept.

1.1.16. Enforceability of the insolvent counterparty's obligation to pay the amount of any compensation claim in Euro or in a foreign currency

Pursuant to Article 16 of the RDL 5/2005, the Termination Amount determined by the Solvent Party will be recognized in a Spanish Insolvency Proceeding to the extent that it has been calculated in accordance with the provisions of the General Agreement. Furthermore, in accordance with Article 1,170.1 of the Spanish Civil Code, a debtor is bound to pay in the agreed currency unless this is legally or factually impossible, in which case it may discharge its obligation by tendering the equivalent amount in the Spanish legal currency.

The above notwithstanding, Insolvency Proceedings must be conducted in Euro, as Article 88.1 of the Insolvency Law provides that all claims will be converted into Euros at the official exchange rate on the date of adjudication of bankruptcy "*for the sole purposes of quantifying the liabilities, without such process resulting in a conversion or modification of the claim*" of the Insolvent Party. In this regard, we are of the opinion that:

(a) the Termination Amount will have further to be converted into Euro in order for it to be included in the relevant Insolvency Proceeding but only for the purposes of quantification of the liabilities of the Insolvent Party;

(b) therefore, the Termination Amount will have to be paid by Insolvency Representatives, in accordance with the legal order of priority of payments, in the currency originally specified by the Solvent Party.

In this regard, please note that there is no case law as to the way in which Article 88.1 must be interpreted. Therefore, we cannot fully discard the risk that Spanish courts may not uphold our interpretation of Article 88.1 (even if supported by scholars) and find that the Termination Amount must be paid in Euro (by using the official exchange rate on the date of adjudication of bankruptcy).

1.2. Non-insolvency related Material reasons

1.2.1. Enforceability of close-out netting

1.2.1.1. In the absence of an Insolvency Proceeding

Discretionary termination rights, close-out netting and the calculation and payment of a Termination Amount under §§ 10.3 and 11 will be generally enforceable following a valid Early Termination for non-insolvency related Material Reasons, subject to the following considerations:

(i) with respect to Non-Performance, Spanish courts have ruled that a party to a contract is not entitled to terminate it upon default by the other party of obligations, covenants or undertakings which are merely accessory or ancillary to the main payment and/or delivery obligations under the relevant contract; and

(ii) with respect to Breach of Representation or Warranty, Spanish courts enjoy a discretionary power in order to evaluate whether an incorrect or misleading representation or warranty shall entail, on the basis of its significance, the early termination of an agreement.

1.2.1.2. After the opening of an Insolvency Proceeding

Discretionary termination rights, close-out netting and the calculation and payment of a Termination Amount under §§ 10.3 and 11 will be generally enforceable in Spain following a valid Termination Event for non-insolvency related Material Reasons, subject to those considerations made in Section C.1.2.1.1 above.

Notwithstanding this, it should be noted that pursuant to Article 62.3 of the Insolvency Law, the bankruptcy court may, attending to the interest of the bankruptcy, oppose to such termination and close-out. Should that be the case, the agreement will continue in its terms, and the amounts owing by the bankruptcy estate will be paid by the bankruptcy estate, being classified as credits against the estate (*créditos contra la masa*)[3].

1.2.2. Analysis of the issues outlined above under Sections 1.1.14, 1.1.15 and 1.1.16 in the context of non-insolvency related Material Reasons

Our conclusions in Sections C.1.1.14, C.1.1.15 and C.1.1.16 will remain unchanged.

1.2.3. Enforceability of the rights of the Terminating Party to terminate and close-out the Agreement irrespective of the insolvency of Party A

Please see our considerations in Section C.1.2.1 above.

2. MULTIBRANCH PARTIES

In this Section 2 we deal with the issues raised in part C.2 of the Instruction Letter, where you asked us to distinguish between:

(i) a Multibranch Party incorporated, organized or having its centre of main interest in Spain; and

(ii) a Multibranch Party incorporated, organized or having its centre of main interest outside Spain, but operating through one or more branches in Spain.

[3] Being treated as credits against the estate means that said payments will not be subject to the effects of insolvency in terms of eventual haircuts or rescheduling, and will rank senior to any pre-insolvency liabilities. Under insolvency, the pre-insolvency liabilities of the relevant debtor are categorized as: (i) privileged credits, (ii) ordinary credits, or (iii) subordinated credits. Ordinary credits are subordinated to privileged credits, and subordinated credits are subordinated to ordinary credits.

2.1. Spanish Multibranch Party

For the purposes of this Section C.2.l, and as per the Instruction Letter, we have made in addition to the assumptions made in Section B above (*Assumptions*), the following additional factual assumption: Party A has entered into Individual Contracts under the General Agreement through offices in Spain 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 Spain.

2.1.1. Analysis of the conclusions under Sections 1.1 or 1.2 above if Party A has conducted business under the EFET General Agreement on a multibranch basis prior to its insolvency

There would be no change in our conclusions reached under Sections C.1.1 or C.1.2, subject to our considerations in Section C.2.1.2 below.

2.1.2. Treatment of the EFET General Agreement as a single unified agreement by a receiver of this jurisdiction under the laws of Spain, 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

As a general rule, Spanish Insolvency Representatives would be required to defer to the jurisdiction of the insolvency officer appointed in another country the claims of the Insolvent Party against the Solvent Party where the centre of main interests of the Solvent Party is in another country and there are secondary proceedings under the EU.

Insolvency Regulation or the Insolvency Law in respect of the Insolvent Party in that third country, as those claims would be deemed under the EU Insolvency Regulation and the Insolvency Law to be situated outside the jurisdiction of the Spanish Insolvency Representatives.

It is not certain, however, the way such general rule must be applied in relation to close-out netting agreements. Whilst we are of the view that, on balance, Spanish Insolvency Representatives will treat any close-out netting agreement as a single agreement and will defer to the jurisdiction of the insolvency official of such third party only the net amount owing to the Spanish Party (if any), no conclusive opinion can be provided on this issue.

2.2. Foreign Multibranch party

For the purposes of this Section C.2.2, and as per the Instruction Letter, we have made in addition to the assumptions made in Section B above (*Assumptions*), the following additional factual assumptions:

(i) a corporation, a bank, an investment services provider, an insurance undertaking, an investment fund management company or any other similar financial institution ("**Party F**") incorporated, organized or having its centre of main interest in a country other than Spain ("**Country H**") has entered under the EFET General Agreement into Individual Contracts both through its home office and through one or more branches located in other countries including in each case a branch of Party F located in and subject to the laws of Spain (the "**Spanish Branch**"); and

(ii) 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.

2.2.1. Possibility of the existence of separate preceding in Spain with respect to the assets and liabilities of the branch in Spain upon the start of the insolvency proceeding for Party F in a Country H

In this regard, a distinction must be drawn between EEA credit institutions, EEA investment services companies and EEA insurance undertakings and any other corporates.

2.2.1.1. Spanish branches of forcing corporates other than EEA credit institutions, investment services companies or insurance undertakings

There can be Insolvency Proceedings in this jurisdiction with respect to any Party (other than an EEA credit institution, EEA investment services company or EEA insurance undertaking) whether or not the relevant authorities in any other jurisdiction have initiated proceedings in respect of that Party.

Pursuant to Article 10.3 of the Insolvency Law, any such Insolvency Proceeding will be a secondary proceeding (*procedimiento territorial*), the scope of which will be limited to those assets located in Spain (including any claims of Party F against the Spanish Party).

In this regard, it is worth noting that:

(i) no legal provision provides for the effects of such secondary proceedings being limited to the liabilities of the relevant establishment (the Spanish branch of Party F); and

(ii) there is no legal, judicial or academic guidance as to the way in which Article 10.3 must be applied in connection with transactions entered into by the Spanish Branch of a foreign party under a master agreement. Therefore, no conclusive opinion can be provided on this matter, although we believe that the better view is that the Insolvency Representatives should refer this issue to the courts of the jurisdiction of the "*center of the main interests*" (within the meaning in the EU Insolvency Regulation and the Insolvency Law) of PartyF.

2.2.1.2. Spanish branches of EEA credit institutions, investment services companies or insurance undertakings

Pursuant to the Law 6/2005, which has implemented the Banks Winding-Up Directive and the Law 20/2015, which has partially implemented the Insurance Directive, no Insolvency Proceedings can be instituted in Spain against any credit institution, investment services company or insurance undertaking authorized in another EEA State (irrespective whether or not such a credit institution, investment services company or insurance undertaking has a branch in Spain), the administrative or judicial authorities of such other EEA State having exclusive jurisdiction for the opening of such insolvency proceedings.

2.2.2. Possibility of the inclusion of Party F's position under the EFET General Agreement, in whole or in part, among the assets of Spain if there were separate proceedings in Spain with respect to the assets and liabilities of the branch in Spain and recognition of close-out netting provisions of the EFET General Agreement in accordance with their terms

Please see our responses in Section C.2.2.1 above.

2.2.3. Analysis of the foregoing issues assuming instead that Party F has no branch located in this jurisdiction, but has assets in this jurisdiction

No Insolvency Proceedings may be conducted in Spain in relation to a Party which does not have an establishment in Spain.

3. COLLATERAL

For the purposes of this Section C.3, and as per the Instruction Letter, we have made in addition to the assumptions made in Section B above (*Assumptions*), the following additional assumptions:

(i) that the Spanish Party is at all times the Transferor under the CSA and the collateral is owned by the Spanish Party or the Spanish Party is authorized and empowered to transfer ownership in the collateral; and

(ii) that Eligible Credit Support will only include Cash and Letters of Credit. Cash will be denominated in a freely convertible currency and will be held in an account under the control of the non-Spanish Party maintained in the jurisdiction of the relevant currency.

3.1. Law governing the transfer of ownership in the various forms of Eligible Credit Support deliverable under the EFET Credit Support Annex

Transfer of ownership will be governed by the law of the place in which the Eligible Credit Support is deemed to be located (*lex situs*).

3.1.1. Characterization of each transfer of collateral as effecting an unconditional transfer of ownership in the assets transferred. Risk of recharacterization of a transfer as security interest.

As a general rule, Spanish law does not recognize the enforceability of transfer of title by way of security.

Notwithstanding this, the laws of Spain will characterize each transfer of Eligible Credit Support as effecting an unconditional transfer of ownership in the assets transferred (and there will be no risk that such transfers would be re-characterized as intending to create or creating in favour of either party any mortgage, charge, lien, pledge, encumbrance or other security interest in any Eligible Credit Support transferred from one party to the other under the CSA) to the extent that those transfers of Eligible Credit Support meet the requirements set forth for these purposes in the RDL 5/2005, which implements the Financial Collateral Directive.

Those requirements are as follows:

(a) that one of the parties to the relevant CSA is a Qualifying Party (in which regard we refer you to Section C.1.1.3 above);

(b) that Eligible Credit Support consists only of:

 (i) cash; and /or

 (ii) transferable securities (*valores negociables*) and other financial instruments, as defined in the RD 4/2015.

 (together, the "**Qualifying Collateral**").

 In this regard, we assume that a Letter of Credit which is to be used as Eligible Credit Support will be issued directly to the Transferee as opposed to being issued to the Transferor and then transferred or pledged to the Transferee. Therefore, there is no need to address a "transfer" of a Letter of Credit and, accordingly, the term "Eligible Credit Support" as used in this Opinion is limited to Cash.

 Furthermore, the inclusion into a collateral arrangement of collateral provided by third parties and falling outside the scope of the RDL 5/2005 does not jeopardise the ability of Qualifying Collateral provided under such arrangements to benefit from the RDL 5/2005.

(c) that the relevant CSA is evidenced in writing;

(d) that the CSA is found to have been entered into for the purposes of securing a "relevant financial obligation" (*obligación financiera principal*), such term being defined in Article 6.4 of the RDL 5/2005 (following Article 2.1 (f) of the Financial Collateral Directive) as any "*obligations which give a right to cash payment under/or delivery of financial instruments*" (we duly note that the English version of the Financial Collateral Directive uses the term "settlement" rather than "payment"). In this regard, please note as follows:

(i) years ago some scholars argued that the RDL 5/2005 only applied to collateral agreements entered into in connection with payment and/or delivery obligations arising from OTC derivative transactions but not to payment obligations arising under any other types of contracts (such as loan agreements), that position being then followed by some Lower Courts (*Juzgados de Primera Instancia*);

(ii) both we and most scholars supported a literal interpretation of the wording of RDL 5/2005 and opined that the RDL 5/2005 also applies to collateral agreements entered into in connection with any payment obligation (including those arising under loan agreements);

(iii) in 2008 the Barcelona Appeal Court (*Audiencia Provincial*) supported the literal interpretation of the wording of the RDL 5/2005, stating that "*the terms of the RDL 5/2005, with respect to the scope of application of financial collateral arrangements, are clear (although, for a sector, open to criticism) and is not expressly restricted to the security of obligations related with the settlement of financial instruments, whether cash-settled or physically-settled, in the same way that it is not so restricted in the European [Collateral] Directive*" (Judgment of the Barcelona Appeal Court dated 30 September 2008, such Appeal Court being reputed as the leading Appeal Court in insolvency issues);

(iv) following the abovementioned judgment, our opinion was that the risk of our Supreme Court holding a view different from the literal interpretation of the wording of the RDL 5/2005 was very low;

(v) moreover, we believe that nowadays such risk is even more remote in light of the following considerations:

(a) to the best of our knowledge, no cases on this issue have been decided by our Supreme Court (our Supreme Court dismissed the appeal of the Judgment of the Barcelona Appeal Court dated 30 September 2008 but such dismissal is mainly based on formal defects of the appeal rather than on a full analysis of the issue at stake) and the sole later judgment known to us rendered on this matter by an Appeal Court (Judgment of the Tarragona Appeal Court dated 13 October 2009) follows the Judgment of the Barcelona Appeal Court;

(b) to the best of our knowledge, the number of cases in Lower Courts have materially decreased in last years (which, in our view, shows that counsel to borrowers are aware of the unlikelihood of the "literal construction" being rejected);

(c) to the best of our knowledge, we believe that Lower Courts are also following the "literal interpretation" of the Courts of Appeal (for instance, judgment of Ninth Lower Court of Madrid of 26 March 2010), although we obviously cannot track each and all of the cases heard in Lower Courts; and

(d) the RDL 5/2005 has been amended three times in the last six years (by means of Law 16/2009, of 13 November, Law 7/2011, of 11 April and Law 11 /2015) and no change has been made to the definition of "relevant financial obligation" (*obligación financiera principal*). Although we acknowledge that this fact can be interpreted in different ways, the prevailing view among scholars (bearing in mind that, pursuant to the Recitals to Law 7/2011, it was intended to, *inter alia*, sort out some legal uncertainties) is that it amounts to an "implied" confirmation of the "literal construction" followed by the Courts of Appeal; and

(vi) where the relevant Agreement (or Foreign Law Agreement) meets the requirements set forth in Article 4 and 5 of the RDL 5/2005 (in which we refer you to Section C.1.1.3(i) above), the related CSA will always be deemed to have been entered into for the purposes of securing a relevant financial obligation (irrespective whether either the literal or the restrictive construction of this term is applied).

Notwithstanding the above, it must be noted that:

(i) pursuant to Article 8.1 of the EU Insolvency Regulation (or, as applicable, Article 8.2.a) of the Law 6/2005 in respect of credit institutions and investment services companies and Article 286 of the Insurance Directive in respect of insurance undertakings) the adjudication of bankruptcy of a Spanish debtor shall not affect the rights *in rem* of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – belonging to the Spanish debtor which are situated within the territory of other EU Member State other than Denmark (or other EEA Member State in respect of credit institutions, investment services companies and insurance undertakings). Pursuant to Article 8.2 of the EU Insolvency Regulation, the *in rem* rights referred to in Article 8.1 shall comprise:

(a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;

(b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

(c) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled; and

(d) a right *in rem* to the beneficial use of assets.

Whilst we duly note that any Cash is provided on a "title of transfer" basis, we believe that, in the absence of case law of the EU Court of Justice to the contrary, the courts of this jurisdiction are likely to regard any Cash provided as Eligible Credit Support by the Transferor as an asset of the Transferor for the purposes of the application of the above mentioned legal provisions.

(ii) Pursuant to Article 201 of the Insolvency Law, the effects of the adjudication of bankruptcy of a Spanish debtor on the rights *in rem* of creditors or third parties in respect of tangible or intangible, moveable or immoveable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – belonging to the Spanish debtor which are situated within the territory of Denmark or a non-EU Member State (or, in respect of credit institutions, investment services companies and insurance undertakings, within the territory of a non-EEA Member State) at the time of the adjudication of the bankruptcy shall be solely governed by the laws of such other state. In this regard, it may well happen that, where cash Collateral has been transferred by the Spanish Insolvent Party to a foreign account in any such states in the name of a foreign Solvent Party, the Spanish court conducting the relevant Insolvency Proceeding may apply the relevant foreign law to decide this issue, irrespective whether the relevant Agreement or Foreign Law Agreement falls or not within the scope of the RDL 5/2005.

Pursuant to the Insolvency Law, where a company incorporated in this jurisdiction has an establishment (within the meaning in the Insolvency Law) in any jurisdiction other than any EU Member State other than Denmark (a "**foreign jurisdiction**"): (i) the opening of secondary proceedings by such foreign jurisdiction limited to the assets of the Counterparty situated or deemed to be situated in that foreign jurisdiction will be recognized in Spain provided that the requirements established in Article 220 of the Insolvency Law are met; and (ii) in such a case, such secondary proceedings will be governed by the laws of the relevant foreign jurisdiction.

3.1.2. Actions that need to be taken by Party B to ensure its title to the collateral assuming that it has received absolute ownership in the collateral

On the assumption that the relevant CSA meets the requirements set forth in order for the RDL 5/2005 to apply (in which we refer you to our opinions in Section C.3.1.1 above), we are of the opinion that:

(a) there is no need to take any subsequent action to ensure that its title in the Eligible Credit Support continues, except that any transfer of Cash as Credit Eligible Support under the CSA must be evidenced in writing (or by electronic means); and

(b) there are no requirements in Spain necessary (including any filing, registration, notification, stamping, notarization or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval together with any 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, except that transfers of Eligible Credit Support which take the form of Cash exceeding EUR 3,000,000 made by a Foreign Party into a Spanish account held by a Spanish Party may require the prior obtaining from the Bank of Spain of a Financial Operation Number (*Número de Operación Financiera or NOF*).

    Moreover, as discussed in Section C.3.1.1 above, it may well happen that, where cash Collateral has been transferred by the Spanish insolvent Party to a foreign account in the name of a foreign Solvent Party, the Spanish court conducting the relevant Insolvency Proceeding may apply the relevant foreign law to decide this issue, irrespective whether the relevant Agreement or Foreign Law Agreement falls or not within the scope of the RDL 5/2005.

3.1.3. Substitution of collateral pursuant to § 6 of the EFET Credit Support Annex

Substitution of Eligible Credit Support under Section 6 of the CSA will be valid and enforceable in Spain to the extent that it meets the requirements in order for the RDL 5/2005 to apply (in which we refer you to our opinions in Section 3.1.1 above).

Please note that consent from the Transferee will be always required as provided by Section 6 of the CSA.

3.1.4. Validity of § 11 of the EFET Credit Support Annex 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"

§ 11 of the CSA would be valid to the extent that the CSA falls within the scope of the RDL 5/2005. Please note that § 11 of the CSA to a Foreign Law Agreement could be enforceable pursuant to the Legal Set-off Provisions (even if outside the scope of the RDL 5/2005).

3.1.5. Enforceability of the rights of Party B in accordance with the terms of the EFET General Agreement and the EFET Credit Support Annex, irrespective of the insolvency of Party A

The rights of Party B would be valid and enforceable in Spain irrespective of the insolvency of Party A, to the extent that the CSA falls within the scope of the RDL 5/2005.

In this respect it must be noted that:

(i) pursuant to Article 5 *bis* of the Insolvency Law, the communication by a company to the competent Court that it has commenced negotiations for the refinancing of its debt will prevent: (i) any creditors from enforcing any security interest (which term must be deemed to comprise the enforcement of any collateral agreement, including title transfer collateral arrangements such as the CSA) over those assets which are necessary for the continuation of the business of the debtor, or (ii) any financial creditors from enforcing any security interest (which term must be deemed to comprise the enforcement of any collateral agreement, including title transfer collateral arrangements such as the CSA) over any assets of the debtor but only to the extent that the commencement of negotiations have been approved by financial creditors holding at least 51% of the financial indebtedness of the debtor.

 Those "stays" will last until four months have elapsed since the communication to the Court or, if earlier, a scheme of arrangement has been approved by the court or the debtor has been declared insolvent; and

(ii) however, to the extent that the CSA falls within the scope of the RDL 5/2005, the abovementioned stays shall not apply to the CSA as per the exemption afforded by the First Additional Provision of Royal Decree-law 11/2014 (pursuant to which measures arising from the application of Article 5 *bis* and/or the Fourth Additional Provision of the Insolvency Law shall amount to reorganization measures for the purposes of the application of the RDL 5/2005).

3.1.6. Voidability of transfers of collateral

To the extent that Spanish law is applicable:

(i) Our considerations in Section C.1.1.4 will apply; and

(ii) The question whether any transfers of Eligible Credit Support made by the Spanish Party within the Suspect Period can be recovered by the Insolvency Representatives under Article 15.5 of the RDL 5/2005 in connection with 71.1 of the Insolvency Law must be analyzed by distinguishing two different scenarios:

(a) where the CSA has been entered into and the first transfer of Eligible Credit Support has been made on a date prior to the commencement of the Suspect Period:

Pursuant to Article 10 of the RDL 5/2005, the transfer of additional collateral shall be deemed to have been made on the date on which the first transfer of collateral was made where such additional collateral has been posted in order to take account of changes in the value of the collateral or in the amount of the secured obligations.

Accordingly, in this scenario no transfers of Eligible Credit Support made by the Spanish Party within the Suspect Period in accordance with the provisions of the CSA can be recovered by the Insolvency Representative on the grounds of Article 15.5 of the RDL 5/2005 in connection with 71.1 of the Insolvency Law (as pursuant to Article 10 of the RDL 5/2005, those transfers will be deemed for these purposes to have been made prior to the Suspect Period).

(b) where the CSA has been entered into within the Suspect Period:

In this scenario, transfers of Eligible Credit Support (including the transfer of Eligible Credit Support representing the Independent Amount) made within the Suspect Period can be recovered by the Insolvency Representative on the grounds of Article 15.5 of the RDL 5/2005 in connection with 71.1 of the Insolvency Law only if the Insolvency Representative can prove that such transfers were "fraudulent" (*en fraude de acreedores*).

(iii) Furthermore, pursuant to Articles 1,111, 1,291 and 1,297 of the Spanish Civil Code, the courts of Spain may, on the application of any creditor of a company (even if the company is not subject to an Insolvency Proceeding), set aside a fraudulent transaction entered into by the company within the 4-year period preceding the application.

Finally please note that, pursuant to Article 16 of the EU Insolvency Regulation and Article 208 of the Insolvency Law, transfers of Eligible Credit Support governed by a foreign law cannot be set aside pursuant Article 15.5 of the RDL 5/2005 and Article 71.1 of the Insolvency Law where the beneficiary of that act proves that such foreign Law does not allow any means of challenging that act in the case in point (provided that: (i) in respect of any Foreign Agreements entered into by a Spanish credit institution or a Spanish investment services company and governed by the laws of an EEA Member State, references herein to Article 208 of the Insolvency Law and Article 16 of the EU Insolvency Regulation must be read as references to Article 8.1.g) of the Law 6/2005 and to Article 30 of the Banks Winding-Up Directive, respectively, and (ii) in respect of any Foreign Agreements entered into by a Spanish insurance undertaking and governed by the laws of an EEA Member State, references herein to Article 208 of the Insolvency Law and Article 16 of the EU Insolvency Regulation must be read as references to Article 80 of the Law 20/2015 (in connection with Article 205 of the Insolvency Law) and to Article 290 of the Insurance Directive, respectively.

3.1.7. Analysis of any other requirements to be observed in Spain 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

Please see our considerations in Section C.3.1.1 above.

3.1.8. Other specific recommendations on the subject of collateral

Except as stated herein, there are no other material local law considerations that a recipient of Eligible Credit Support should consider in connection with taking and realizing upon the Eligible Credit Support provided by a Spanish Party.

4. PARENT COMPANY GUARANTEE

The two questions below concern the enforceability of a Credit Support Document (as defined in the General Agreement), which is a Parent Company Guarantee, based on the following Assumptions:

(i) With respect to a Party (the “**Principal Obligor**”), the parent company of that party (the “**Guarantor**”) undertakes to pay when and if the Principle Obligor fails to pay any amounts when due pursuant to the terms of the General Agreement (including any applicable grace period) (“**Default**”).

(ii) The other, non-defaulting Party and the beneficiary under the guarantee (the “**Beneficiary**”) may demand payment from the Guarantor of any outstanding amount pursuant to Section 1 above, immediately upon the occurrence of the Principal Obligor's Default without having to first take any action against the Principal Obligor, in particular, without having to:

- make any demand to the Principal Obligor, other than issuing the initial invoice in accordance with the terms of the General Agreement;
- take any legal action against the Principal Obligor; or
- file any claim in the Principal Obligor's insolvency.

(iii) Upon the receipt of the Beneficiary's demand, a copy of the unpaid invoice and any breakdown of any additional outstanding amounts due to the Beneficiary, such as late payment interest, the Guarantor shall promptly pay the amount specified in the demand to the Beneficiary.

(iv) The liability of the Guarantor under the guarantee is limited to that of the Principal Obligor under the General Agreement and any cap set out in the guarantee document.

(v) The guarantee is provided in the form of a written document signed by an authorized representative of the Guarantor.

(vi) The guarantee is governed by Spanish law and any disputes in connection with or claims under the guarantee are to be referred to and resolved by the courts of Spain.

(vii) The Guarantor has provided an address that the Guarantor can be served at in Spain but is not necessarily established in Spain.

4.1. Are there any specific statutory formalities that should be (or recommendable as good practice for the benefit of the Beneficiary) complied with in order to create a valid guarantee document?

No.

4.2. Are there any specific statutory provisions that should be expressly set-aside, varied or referred to, or any specific statement/wording based on any such statutory provisions that should be expressly included, in the document of the guarantee in order to increase the chances of an effective enforcement of the guarantee as may be expected by the Beneficiary based on the assumptions?

Yes, as follows:

(i) on the one hand, it must be expressly agreed in the document of guarantee that: “neither the obligations of the Guarantor nor the rights, powers and remedies conferred in respect of the Guarantor upon the Beneficiary by this Guarantee or by law will be discharged, impaired or otherwise affected by the winding up, dissolution, administration or reorganization of the Principal Obligor, including, for the purposes of Article 135 of the Spanish Insolvency Law (*Ley Concursal*) or, as applicable, the Fourth Additional Provision (*Disposición Adicional Cuarta*) of such Law, where the Beneficiary has voted in favour of the relevant composition (“*convenio*”) or, as applicable, entered into the relevant refinancing agreement (“*acuerdo de refinanciación*”)”.

Otherwise, the Guarantor will benefit from any write-down or extension contained in an eventual composition between the insolvency estate of the Principal Obligor and their creditors;

(ii) on the other hand, if it is wished that the Guarantor may not rise any defenses against the Beneficiary arising from the contractual relationship between the Beneficiary and the Principal Obligor, the document of guarantee must be expressly drafted as first demand abstract guarantee.

Otherwise the document of guarantee must just provide that the guarantee is granted on a "joint basis" (*solidaria*) and that the guarantor waives it's right of "*excusión*" under Articles l ,830 et seq. of the Spanish Civil Code; and

(iii) finally, it is advisable to include a language to the effect that the Guarantor agrees that, so long as the Principal Obligor is under any actual or contingent obligations to the Beneficiary, the Guarantor shall not exercise any rights which the Guarantor may at any time have by reason of performance by it of its obligations under the guarantee to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary.

5. GENERAL ENFORCEABILITY

5.1. Enforceability of the EFET General Agreement and any of the Annexes (including the EFET Credit Support Annex) under the laws of Spain

Subject to the assumptions, qualifications and other comments of this Opinion, the General Agreement, the Annexes and the CSA would be legal, valid, binding and enforceable under the laws of this jurisdiction.

5.2. Particular consideration of 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)

(i) Non-performance due to Force Majeure

We are of the opinion that § 7 of the General Agreement (*Non-Performance Due to Force Majeure*) is valid and enforceable under Spanish law (and will not infringe the public order in Spain).

Force majeure (*fuerza mayor*) is contemplated by Article 1,105 of the Spanish Civil Code, pursuant to which, unless the parties otherwise agree, no party to a contract shall be liable to the other party for failing to perform its obligations due to the occurrence of an event which it could not have reasonably avoided or overcome and which makes it impossible for such party to comply with its contractual obligations.

Moreover, pursuant to case law, frustration of a contract may occur where there is an unexpected and fundamental change of circumstances which strikes at the root of a contract. In the event of frustration, outstanding obligations may be terminated.

(ii) Remedies for non-performance

We are of the opinion that § 8 of the General Agreement (*Remedies for Failure to Deliver and Accept*) is valid and enforceable under Spanish law (and will not infringe the public order in Spain).

(iii) Limitation of liability

(a) Enforceability of Exclusion of Liability (§ 12.2)

Article 1,102 of the Spanish Civil Code provides that liability arising from wilful misconduct (*dolo*) cannot be excluded by contract, being null and void the waiver of the right to enforce it. This notwithstanding, most scholars take the view that the same rule applies to liability based on gross negligence (*culpa grave*) and therefore they consider null and void any waiver of the right to enforce the liability arising from gross negligence. With the abovementioned exceptions, contractual exclusion of liabilities provisions is valid and enforceable.

Since the General Agreement does not include in § 12.2 (*Limitation of Liability*) liability arising from wilful misconduct or gross negligence, we are of the opinion that it will be enforceable in accordance with its terms.

(b) Enforceability of Limitation of Consequential Damages and similar types of liabilities (§ 12.3, § 12.4)

The limitation of consequential damages and similar types of liabilities will be enforceable in accordance with its terms unless the relevant liability arises from wilful misconduct or gross negligence.

(c) Enforceability of Duty to Mitigate (§ 12.5)

Pursuant to Article 1,255 of the Spanish Civil Code, parties are free to enter into any contractual agreement with any other party, unless such agreement is contrary to any legal provision or to the general concept of public policy (*orden público*).

As the Duty to Mitigate cannot be found to be contrary to any law or the general concept of public policy, we are of the opinion that § 12.5 of the General Agreement will be valid and enforceable under Spanish law (so that failure by the non-defaulting party to comply with such a duty should give rise to a reduction in the compensation for losses and damages to be awarded by the Spanish courts to the non-defaulting party).

5.3. Any other recommendations regarding general legal enforceability

The limitations set out in § 12 of the General Agreement are already very wide and we do not envisage any manner in which they could be expanded or strengthened materially.

6. CONFIRMATION PRACTICES

For the purposes of this Section C.6, and as per the Instruction Letter, we have made in addition to the assumptions made in Section B above (*Assumptions*), the following additional assumptions:

(i) 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 General Agreement when concluding the relevant Individual Contract over the phone or (ii) refer to the 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 position matching service or other means of electronic transmission); and

(ii) 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 the EFET Electronic Confirmation Agreement.

6.1. Distinction between (1) the formal requirements and procedure in the formation of a legally binding and enforceable Individual Contract and its inclusion in the Agreement and (2) the format requirements a Confirmation should comply with under the procedural laws of Spain in order to be sufficient for all purposes to evidence a binding Individual Contract and its inclusion in the Agreement

(i) Perfection

As a general rule, Spanish Contract Law does not require any written confirmation as a perfection requirement for any contract, so long as the essential terms of the relevant transaction have been agreed. Accordingly, Individual Contracts agreed upon over the telephone will be fully binding on the parties and enforceable against them, even if a written confirmation is not subsequently issued by either party.

(ii) Evidence

Electronically transmitted confirmations will be admissible as evidence before the Spanish courts for the purpose of determining the existence and/or terms of Individual Contracts (without prejudice to any other evidence available to the relevant court).

6.2. Binding Individual Contract

6.2.1. Formal requirements

There is no formal requirement for a signature, registration or notarization in order to create a binding Individual Contract under the laws of this jurisdiction. However, a signature (electronic or otherwise) may help to demonstrate the authenticity and integrity of a Confirmation in respect of an Individual Contract and it is admissible in evidence in this respect (without prejudice to any other evidences available to the relevant court).

6.2.2. Point at which an Individual Contract agreed upon orally and later confirmed in writing becomes legally enforceable

In accordance with the principles set out in Section 5.1 above, Individual Contracts agreed upon over the telephone will be fully binding on the Parties and enforceable against them as from the time at which a verbal agreement was reached.

6.2.3. Deemed acceptance in case counterparty fails to object to incorrect terms in a received Confirmation

In principle, failure to object to incorrect terms in a received confirmation will not constitute acceptance of those terms. However, this matter will always be assessed by the courts on a case-by-case basis in light of all relevant circumstances, there being neither hard and fast rules on this nor a specific time period.

6.2.4. Sufficiency of the reference to the relevant EFET General Agreement for the inclusion of the Individual Contract in the Agreement

In our view, an Individual Contract concluded orally which the Parties intend to be included in the General Agreement would be so included. Moreover, an Individual Contract entered into through an electronic trading or matching system would be also included in the General Agreement to the extent that (i) such inclusion is not inconsistent with the regulations and operational procedures of the relevant system and (ii) a bilateral contract has been validly entered into between both Parties.

6.3. Means of Evidence

Taped Recording

Telephone conversation recordings shall be analyzed from two different perspectives:

(a) Secrecy of communications

Article 18 of the Spanish Constitutional Law (*Constitución española*) provides that secrecy of communications and, in particular, of postal, telegraphic and telephone communications, shall be guaranteed unless otherwise provided by means of a judicial resolution.

Notwithstanding the above, no Spanish provision prevents a party from recording a telephone conversation without the consent of the counterparty provided that the recording entity is a party to the relevant telephone conversation. Investment services companies and credit institutions must, however, let their clients know that that their conversations (if related to trading) are being recorded (pursuant to article 33 of Spanish Royal Decree 217/2008, of 3 May).

(b) Data Protection

Spanish data protection rules apply only to personal data. In this regard, the name and title/position of an individual provided in the course of a telephone conversation does not amount to personal data.

(c) Witness Statements

Witness statements will be admissible as evidence before the Spanish courts.

E-mail or other electronic message or transaction entry system

Pursuant to Article 24 of Law 34/2002 dated July 11, 2002 on Services of the Information Society and E-Commerce (*Ley de Servicios de la Sociedad de la Información y Comercio Electrónico*) agreements entered into by electronic means will be admissible as evidence before the Spanish courts for the purpose of determining the existence and/or terms of the relevant agreement (without prejudice to any other evidence available to the relevant court).

It is worth noting that the Directive on electronic signatures (1999/93/EC) has been implemented in Spain by means of Law 59/2003, dated 19 December.

Facsimile

Facsimile will be admissible as evidence before the Spanish courts for the purpose of determining the existence and/or terms of the relevant agreement (without prejudice to any other evidence available to the relevant court).

7. CORE PROVISIONS

7.1. Impact of any of the elections contemplated by the EFET General Agreement or any of the Annexes (including the EFET Credit Support Annex) in the conclusions reached under Sections C.1 or C.2 (Enforceability of Close-Out Netting)

Under the laws of this jurisdiction none of the elections contemplated under the General Agreement or any of the Annexes (including the CSA) would change the substance of our conclusions in Sections C.1 and C.2.

As regards the effect of electing in the CSA to allow substitution with or without consent, Spanish law provides that substitution, to be enforceable, must be expressly provided for in the agreement. Whilst it could be argued that no right has been provided for where exercise of such right is subject to consent by the other party, we are of the view that such argument is not correct and that accordingly there is no difference between electing to allow substitution with or without consent.

7.2. Provisions of the EFET General Agreement that are essential, and which material alteration could affect the conclusions reached in Part C.1 or C.2

In this regard and to the extent that the “single agreement” concept is relevant (in which we refer you to our conclusions in Section C.1 and C.2 herein), we believe the following provisions to be regarded as so essential that a material alteration thereof could affect the conclusions reached in Sections C.1 and C.2: §§ 1.1, 11, and the related Defined Terms contained in Annex 1 to the General Agreement.

7.3. Analysis of the inclusion of the General Agreement in the EFET Cross Product Payment Netting Agreement or in the CPMA Cross Product Master Agreement (as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement) (the “CPMA”) in the conclusions reached under Part C.1 or C.2

The inclusion of the General Agreement in the EFET Cross Product Payment Netting Agreement or in the CPMA would not change the conclusions reached under Part C.1 or C.2.

8. GOVERNING LAW, ARBITRATION AND JURISDICTION

For the purposes of this Section C.8, and as per the Instruction Letter, we have made in addition to the assumptions made in Section B above (*Assumptions*), the following additional assumptions:

That the General Agreement will be governed by the substantive law of the Federal Republic of Germany, by the law of England or by the law of any other jurisdiction other than Spain.

8.1. Enforceability in Spain of the Parties' Agreement to the governing law and submission to arbitration (§ 22 of the EFET General Agreement)

We are of the opinion that the choice of the substantive law of the Federal Republic of Germany, of the law of England or of the law of any other jurisdiction other than Spain to govern the General Agreement will be recognized in this jurisdiction, subject to, and in accordance with, Regulation (EC) No. 593/2008 of the European Parliament and the Council, dated 17 June 2008 on the law applicable to contractual obligations (“**Rome I**”).

When applying the substantive law of the Federal Republic of Germany, the law of England or the law of any other jurisdiction other than Spain as the law governing the General Agreement, the courts of competent jurisdiction of Spain, if any, by virtue of Rome I:

(a) may give effect to the overriding mandatory provisions of the law of the country where the obligations arising out of the General Agreement have to be or have been performed, insofar as those overriding mandatory provisions render the performance of the General Agreement unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application;

(b) will apply the overriding mandatory provisions of the law of Spain. Provisions of Spanish laws and regulations on the natural gas sector indicated in Section 8 as well as those relating to Insolvency Proceedings shall be considered as mandatory rules irrespective of the law otherwise applicable to the General Agreement;

(c) may refuse to apply English, German law or the law of any other jurisdiction other than Spain in relation to the General Agreement if such application is manifestly incompatible with the public policy (*orden público*) of Spain. In this regard, we are of the view that none of the provisions set out in the General Agreement is *prima facie* manifestly incompatible with the Spanish public policy, except for:

   (i) those provisions in the Agreement (or Foreign Law Agreement) (if any) to the effect that any unilateral calculation, determination or certification will be conclusive and binding;

   (ii) those provisions in the Agreement (or Foreign Law Agreement) (if any) which require any defaulting party thereto to pay any penalty which does not constitute a genuine and reasonable pre-estimate of the damage likely to be suffered by the other party as a result of the default in question (the background for this being that (i) all damages are subject to judicial review; and (ii) there should be a correlation between the amount paid and the damage suffered as a result of the default);

(iii) any indemnity in the Agreement (or Foreign Law Agreement) for legal costs incurred by an unsuccessful litigant;

(iv) those provisions in the Agreement (or Foreign Law Agreement) (if any) which provide that, in the event of any invalidity, illegality or unenforceability of any provision of such Agreement, the remaining provisions thereof shall not be affected or impaired;

(v) any provision of the Agreement (or Foreign Law Agreement) which allows any party to terminate such Agreement as a result of technical defaults which do not materially affect the interests of such party or which violates Article 61 of the Spanish Insolvency Law (in which we refer you to Section C.1.1.3 above); and

(vi) any provision in the Agreement (or Foreign Law Agreement) stating that any representation or communication shall be deemed to have been made or delivered; and

(d) shall have regard to the law of the country in which performance takes place in relation to the manner of performance and the steps to be taken in the event of defective performance.

Furthermore, Spanish courts may require evidence of the English or, as applicable, German law in accordance with Article 281 of the Spanish Civil Proceedings Act.

Finally, we are also of the opinion that the arbitration provisions of § 22.1 will be recognized in this jurisdiction.

9. REGULATORY REGIME

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

(a) An exchange contract (which in our view, includes the General Agreement and any Individual Contract under that General Agreement) is unenforceable in this jurisdiction if (i) it involves the currency of any member of the International Monetary Fund and (ii) it is contrary to the exchange control regulations of any member of the International Monetary Fund maintained or imposed consistently with the International Monetary Fund Agreement. In our opinion the General Agreement is not contrary to any exchange control regulations maintained or imposed by this jurisdiction. Further, there is inconsistent authority on what amounts to an “exchange contract" for these purposes. It is not clear whether the term encompasses any contract which in any way affects a country's exchange resources or only a contract for the exchange of one currency for another, although the better view is probably that the latter (narrow) interpretation is correct.

(b) A Party intending to trade gas natural with a counterparty organized in this jurisdiction will be subject to the following:

(i) Sales of gas by Spanish Parties:

Gas sales by Spanish counterparties to purchasers located outside Spain are not subject to any license, permit or approval. Notwithstanding this, Article 101 of Law 34/1998 entitles the government to require prior administrative consent for gas exportations where there is a gas shortage or the safety of the gas installations and network is at risk.

Conversely, gas sales by Spanish counterparties to purchasers located in Spain amount to carrying out gas trading activities in Spain which are subject to the prior communication of the initiation of the gas trading activity to the competent Administration (Article 80 of Law 34/1998). Once the relevant communication has been made, no further license, permit or approval is required in order to enter into any Individual Contract.

(i)

(ii) Purchase of gas by Spanish Parties:

According to Article 61 of Law 34/1998, natural gas may only be incorporated into the gas system by: (a) gas traders; (b) gas direct consumers in the market (*consumidores directos en mercado*) for their own consumption; (c) transmission operators for the minimum LNG filling level, transmission gas pipelines, storage and distribution networks, and for all other functions determined by the Government that do not have gas supply as final purpose; (d) the technical system operator, for all functions determined by the Government that do not have gas supply as final purpose; and (e) the Spanish oil stockholding agency (CORES, *for Corporación de Reservas Estratégicas de Productos Petrolíferos*). Please note that gas trading by a Spanish or a EU entity is subject to the prior communication before initiating the trading activity for the first time (Article 80 of Law 34/1998). Once the relevant communication has been made, no further license, permit or approval is required in order to enter into any Individual Contract.

As for purchases of gas by Spanish parties in order for the gas to be on-sold outside Spain, they are not subject to any license, permit or approval.

D. RESERVATIONS

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

1. INSOLVENCY LAWS

1.1. The validity and enforceability of the obligations of the Parties under the General Agreement are subject to the laws governing insolvency or liquidation proceedings and to other laws of general application relating to or affecting the enforcement of creditors' rights and remedies.

1.2. In an Insolvency Proceeding under the laws of this jurisdiction, any dispositions of the Insolvent Party's property made after the opening of Insolvency Proceeding can be avoided under Article 40 of the Insolvency Law unless it has been approved or authorized by the Insolvency Representatives. Individual Contracts validly entered into after the opening of an Insolvency Proceeding will be capable of inclusion in the netting calculations under the Close-out Netting Provisions (to the extent that the Close-out Netting Provisions are enforceable in this jurisdiction as to which we refer you to Section C.1.1.3 above). Conversely, Individual Contracts entered into after the opening of the Insolvency Proceeding without the consent or approval of the Insolvency Representatives can be avoided and, accordingly, might not be capable of inclusion in the netting calculations under the Close-out Netting Provisions but this would not impair the effectiveness of the Close-out Netting Provisions in respect of Individual Contracts entered into before the opening of such Insolvency Proceedings or otherwise authorized and approved by the Insolvency representatives.

1.3. The Law 11/2015: suspension of enforcement of security interest and bail-in

1.3.1. Article 70.4 of Law 11/2015 (which follows Article 70 of the BRRD Directive) grants the Spanish resolution authorities the power to restrict secured creditors of an institution under resolution from enforcing security interests in relation to any assets of that institution from the publication of the exercise of the power until midnight on the business day following that publication.

1.3.2. Pursuant to Article 48.4 of Law 11 /2015 (implementing the provisions in Article 49 of the BRRD Directive) liabilities arising from derivative transactions can be subject to the write-down and conversion powers of the Spanish resolution authorities, provided that: (i) upon entry into resolution, the Spanish resolution authorities shall be empowered to terminate and close out any derivative contract for that purpose and (ii) where derivative transactions are subject to a netting agreement, the Spanish resolution authorities or an independent value shall determine as part of the valuation under Article

5 the liability arising from those transactions on a net basis in accordance with the terms of the agreement.

1.4. Application of Article 8 of the Law 6/2005

Pursuant to the literal wording of Article 2 thereof, the Law 6/2005 is only applicable to those credit institutions which provide services in other EU Member State either by means of an establishment or on a purely cross-border basis. This notwithstanding, we believe that: (i) such principle is actually intended to apply only in relation to those provisions in the Law 6/2005 dealing with issues relating to mutual recognition of reorganization measures and insolvency proceedings and the related communications between EU authorities, and that (ii) the better view is that the conflict of law rules set out in Article 8 of the Law 6/2005 are applicable in any Insolvency Proceedings in respect of any credit institution irrespective whether it provides or not services in other EU Member State (although please note that this view has not been tested before the Spanish courts).

1.5. Insurance undertakings

Pursuant to Article 179.1 of the Law 20/2015:

"*the claims of the insured, beneficiaries and third injured parties referred to in Article 73 of Law 50/1980, of 8 October, on Insurance Contract, will have absolute priority over any other claims against the insurance undertaking will respect to the assets which, representing technical provisions, are recorded into the investment registry*".

While there is a wide consensus among Spanish scholars that such priority right should not prevail over the close-out netting right foreseen in the RDL 5/2005, no full certainty can be provided on this issue as there is no case law in this regard.

1.6. Application of the RDL 5/2005 to Agreements with a single Individual Contract

Enforceability of the close-out netting provisions in any Agreement or Foreign Law Agreement requires it to benefit from the application of the RDL 5/2005. Although the judgment of the Supreme Court of 2 September 2014 confirmed that the RDL 5/2005 is applicable to these close-out netting master agreements comprising only one (1) transaction, the recent judgment of the Supreme Court of 18 November 2015 has cast some doubts on this conclusion. Whilst we believe that the position in the judgement of

2 September 2014 is the correct one, we cannot fully discard the risk of the Supreme Court taking an opposite view in the future.

2. PROCEDURAL LAW

2.1. In accordance with general principles of Spanish procedural law, the rules of evidence in any judicial proceeding cannot be modified by agreement of the parties, and consequently any provisions of an Agreement (or Foreign Law Agreement) in which determinations made by the Parties are to be deemed conclusive in the absence of manifest error, may not be upheld by Spanish courts.

2.2. Any enforcement of the Agreement before the Spanish Courts will be subject to the rules of civil procedure as applied by the Spanish Courts, which may require the translation of any foreign language documents into the Spanish language; service of process for any proceedings before the Spanish Courts must be performed in accordance with Spanish laws of civil procedure; the taking of concurrent proceedings in more than one jurisdiction in which the Regulation (EU) No. 1215/2012 of the European Parliament and the Council, of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements on civil and commercial matters (recast) is applicable may be precluded by the provisions of that Regulation; as regards jurisdiction generally, the Courts have powers to stay proceedings if concurrent proceedings are brought elsewhere.

3. ENFORCEABILITY OF CLAIMS

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

(a) enforcement of the obligations under an Agreement (or Foreign Law 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 (*abuso de derecho*);

(b) the power of a Spanish court to order specific performance of an obligation or other equitable remedy is discretionary and accordingly, a Spanish court might make an award of damages where specific performance of an obligation is sought;

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

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

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

3.3. Under the laws of this jurisdiction, where any Party is vested with a 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 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.

3.4. Under the laws of this jurisdiction, 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.

4. DEFAULT INTEREST AND INDEMNITIES BETWEEN PARTIES

4.1. There is some possibility that a Spanish court would hold that a judgment in respect of an Agreement (or Foreign Law Agreement) would supersede such Agreement (or Foreign Law Agreement) so that any obligations relating to the payment of interest after judgment would not be held to survive judgment.

4.2. Under Spanish law, interest imposed upon a Party by an Agreement (or Foreign Law Agreement) might be held to be irrecoverable to the extent that it accrues on an unsecured debt after the commencement of an Insolvency Proceeding in respect of the Party liable to pay such interest.

4.3. Any provision of an Agreement (or any communication issued pursuant thereto) purporting to require a Party to indemnify another person against the costs or expenses of proceedings in the Spanish courts is subject to the discretion of the court to decide whether and to what extent a party to such proceedings should be awarded the costs or expenses incurred by it in connection therewith.

5. COLLATERAL TRANSFERRED BY PUBLIC ADMINISTRATIONS

Pursuant to the second paragraph of Article 135.1 of the Spanish Constitution, payment of interest and principal of "public debt of the Administrations" will enjoy absolute priority (hereinafter, the holders of any such public debt will be referred to as "**Priority Creditors**").

Whilst there is not full consensus as to the meaning of the term "public debt" for these purposes, it is likely that it does not comprise claims under the Agreement, so that the Solvent Party would not be regarded as a Priority Creditor. Should the Solvent Party not be treated as a Priority Creditor, the transfer of Cash as Eligible Credit Support would be contrary to Article 135 of the Spanish Constitution, it being unclear whether it would be either fully null and void or, conversely, unenforceable against any Priority Creditors. Moreover, even if the Solvent Party were to be treated as a Priority Creditor, it is debatable whether Article 135 of the Spanish Constitution is intended or not to provide for a pari passu rule among all of the Priority Creditors, there being theoretical arguments to support both positions.

Please note that Article 135 of the Spanish Constitution does not apply to all Public Authorities but only to those which are within the scope of the term "*Administraciones Públicas*". Such term comprises:

i. the Kingdom of Spain;

ii. the Spanish Regional Governments (*Comunidades Autónomas*);

iii. any Spanish municipalities (*ayuntamientos*) and provinces (*provincias*); and

legal entities incorporated by any of the foregoing as a public body under Public Law within the scope of Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts.

6. OTHER QUALIFICATIONS

6.1. We express no opinion as to matters of fact.

6.2. We express no opinion as to the validity and enforceability of any provisions of the General Agreement other than those to which express reference is made in this opinion.

6.3. If a Party to an Agreement or a Foreign Law 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 Union or

Spanish sanctions implemented or effective in Spain, or is otherwise the target of any such sanctions, then the obligations of the other Party to that Party under the General Agreement may be unenforceable or void.

6.4. This letter expresses and describes certain Spanish legal concepts in English and not in their original Spanish terms; therefore, this opinion is issued and may be only relied upon on the express condition that it shall be governed by, and that all words and expressions used herein shall be construed and interpreted in accordance with, the laws of Spain.

This opinion is addressed exclusively to EFET, the members of EFET Legal Committee and any other entity who has subscribed to EFET for one or more of the country opinions, is for their sole benefit and may not be relied upon by any other person, entity or corporation whatsoever and may not be disclosed to any other persons without EFET's and CMS's prior written approval.

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