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LEGAL OPINION REGARDING MASTER NETTING AND RELATED CROSS-PRODUCT CREDIT SUPPORT DOCUMENTATION

Dear Sirs,

We have been asked by the European Federation of Energy Traders ("**EFET**") to provide a legal opinion in respect of matters of Danish law in connection with specific questions detailed in your instruction letter dated 2 July 2020 regarding enforceability of close-out netting and collateral provisions under the EFET Master Netting Agreement and the TBMA Cross-Product Master Agreement and the validity and enforceability of collateral arrangements under the EFET Cross-Product Credit Support Annex to the TBMA Cross-Product Master Agreement and the EFET Credit Support Annex to the EFET Form Master Netting Agreement.

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

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

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

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1. INTRODUCTION

1.1 Scope of Review

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

1. The Cross Product Master Agreement published in February 2000 by the Bond Market Association (the "**CPMA Form**") as further modified by Version 1.0 of the EFET/ICEA Commodities Schedule published on 23 June 2003 by EFET (the "**Schedule**") (collectively, the CPMA Form as modified by the Schedule is referred to as the Cross Product Master Agreement (the "**CPMA**");
2. The Cross-Product Credit Support Annex (the "**CPMA CSA**") to the CPMA published by EFET on 23 June 2003 (Version 1.0);
3. The Master Netting Agreement published by EFET in June 2010 (Version 1.0) (the "**MNA**") (collectively the CPMA and the MNA are referred to as the "**Master Agreements**"); and
4. The Credit Support Annex to the MNA published by EFET in February 2011 (Version 1.0) (the "**MNA CSA**") (collectively, the CPMA CSA and the MNA CSA are referred to as the "**CSAs**").

The Master Agreements and the CSAs, with the elections as set forth in each of the Model Master Agreements (as defined below) are together referred to as the "**Agreements**".

The relevant Agreement provides for the inclusion of some or all of certain master agreements eligible of election as well as uncovered transactions and additional netted agreements. We have not reviewed any of these master agreements or other transaction documents or agreements for the purposes of this legal opinion. Accordingly, we render no opinion in relation to these agreements, see also section 2.a).

The Agreements, and, as applicable, Netted Agreements and transactions thereunder, Principal Agreements and transactions thereunder, and Uncovered Transactions are hereinafter referred to together as the "**Documents**").

1.2 Summary

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

Pursuant to the Capital Markets Act contracting parties can agree, with legal and binding effect for third parties (including a bankruptcy estate and other creditors), that financial obligations under the Master Agreements can be close-out netted upon the occurrence of an enforcement event. An "enforcement event" may be an event of default or other event agreed between the parties which gives a party the right to terminate and close-out net. Such event can be the commencement of insolvency proceedings of a party. The meaning of "financial obligations", which is the key term for the type of obligations which can be close-out netted, is set out in the Capital Markets Act and depends on the type of parties to the Master Agreements.

When two parties, each being a Financial Entity or a Non-Financial Entity (as defined below, respectively), have entered into a Master Agreement, the scope of "financial obligations" includes the following categories with relevance for this opinion and as further described in this opinion:

- claims originating from trading in "financial instruments",
- claims originating from agreements on energy products;
- claims originating from foreign exchange trading, and
- claims originating from trading on commodities exchanges;

(defined together as "**Eligible Financial Obligations**" in this opinion, subject to the further details in section 1.6.2.2).

Although the Capital Markets Act is silent on the matter, it is accepted in Danish legal theory that close-out netting between several agreements involving the same two parties can be agreed and will be comprised by the close-out netting rules in Chapter 36 of the Capital Markets Act, provided that all other requirements for such close-out netting have been fulfilled, including that each underlying transaction is separately capable of close-out netting under the Capital Markets Act.

Accordingly, we are of the opinion, that the termination and close-out netting provisions of the Master Agreements will be enforceable under Danish law in respect of Eligible Financial Obligations pursuant to the Capital Markets Act.

Therefore, based on the assumptions and subject to the qualifications set out in this opinion, our conclusion is that in respect of a Master Agreement between a Counterparty (being either a Financial Entity or a Non-Financial Entity) and a Danish Party, the early termination, the close-out netting, and the calculation and payment of one final net settlement amount pursuant to a Master Agreement will in our view be enforceable against a bankruptcy estate of a Danish Party in respect of obligations which are Eligible Financial Obligations, and a choice of automatic termination will not change this conclusion.

However, we also note, that if not all of the underlying transactions/obligations are separately capable of close-out netting under the Capital Markets Act (i.e. such transactions/obligations are not Eligible Financial Obligations), we are of the view, that the entry into of a master netting agreement will not cure the non-eligibility for close-out netting for such transactions/obligations, and that the termination and close-out netting provisions of a Master Agreement will then not be enforceable in respect of such transactions/obligations. The choice of automatic termination would not change such conclusion.

1.3 Definitions

Terms defined in the Agreements have the same meaning when used in this opinion, unless otherwise stated herein. In section 3.5 (CSA Specific Permutations) below, in addition to the terms in the Agreements or as stated herein, the capitalized terms shall have the same meaning as in the CSA.

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

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

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

"**Capital Markets Act**" means the Danish Act on Capital Markets (*lov om kapitalmarkeder*), Consolidated Act no. 1767 of 27 November 2020;

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

"**Core Provisions**" has the meaning set forth in section 1.6.3.h);

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

"**Danish BRRD-rules**" means the Danish Consolidated Act no. 24 of 4 January 2019 on restructuring and resolution of certain financial institutions (*lov om restrukturering og afvikling af visse finansielle virksomheder*) as amended (implementing Directive 2014/59/EU);

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

"**Danish Party**" has the meaning set forth in section 1.4;

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

"**Eligible Danish Collateral**" has the meaning set forth in section 1.6.3;

"**Eligible Financial Obligations**" has the meaning set forth in section 1.6.2.2;

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

"**Energy Related Transaction**" has the meaning set forth in Annex A;

"**Energy Transaction**" has the meaning set forth in Annex A;

"**Financial Business Act**" means the Danish Financial Business Act (*lov om finansiel virksomhed*), Consolidated Act no. 1447 of 11 September 2020, as amended;

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

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

"**Limitation Day**" means the limitation day (*fristdagen*) as set forth in Section 1 of the Bankruptcy Act, which for the purpose of this opinion is the date of filing a petition for bankruptcy or formal restructuring proceedings with a bankruptcy court (*skifteretten*), or in respect of credit institutions or certain investment firms that has been subject to resolution measures (*afviklingsforanstaltninger*) under the Danish BRRD-rules, the date of initiation of such measurer by the Danish Financial Stability Company pursuant to the Danish BRRD-rules, provided that the bankruptcy or formal restructuring proceedings have been initiated within 3 months;

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

"**MiFID II Regulation**" means Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, as amended;

"**MiFIR**" means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, as amended;

"**Model CPMA**" means the CPMA with the characteristics set out for the CPMA in paragraph II.H on "EFET/IECA Schedule Template Default Elections" of the instruction letter dated 2 July 2020 (and as set out in Annex B to this opinion);

"**Model MNA**" means the MNA with the characteristics set out for the MNA in paragraph II.H on "EFET/IECA Schedule Template Default Elections" of the instruction letter dated 2 July 2020 (and as set out Annex B to this opinion);

"**Model Master Agreements**" means the Model CPMA and the Model MNA;

"**MTF**" means a multilateral trading facility (*multilateral handelsfacilitet or (MHF)*) as defined in Section 3, no. 3 in the Capital Markets Act, implementing Article 4(1)(22) of MiFID II;

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

"**OTF**" means an organised trading facility (*organiseret handelsfacilitet or (OHF)*) as defined in Section 3, no. 4 in the Capital Markets Act, implementing Article 4(1)(23) of MiFID II;

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

"**Regulated Market**" means a regulated market as defined in Section 3, no. 2 in the Capital Markets Act, implementing Article 4(1)(21) of MiFID II; and

"**Underlying Agreements**" has the meaning set forth in section 2.a).

1.4 Types of Danish Parties

This opinion considers the enforceability of each Master Agreement and CSA against: (i) a corporation registered as a company under the laws of Denmark, which is a Non-Financial Entity, and is either a Danish public limited company (*aktieselskab*) or a Danish private limited company (*anpartsselskab*); (ii) a bank/credit institution (as defined under Article 4(1) of EU Regulation 575/2013, as amended (the "**Capital Requirements Regulation**") licensed in Denmark; and (iii) an investment firm (as defined under Article 4(1) of EU Directive 2014/65 ("**MiFID II**") licensed in Denmark (each such entity, a "**Danish Party**").

1.5 Product Coverage

This opinion covers various types of transactions entered into under the Underlying Agreements as listed in Annex A to the instruction letter dated 2 July 2020 (and as set out in Annex A to this opinion).

Certain categories of transactions mentioned in Annex A also cover "spot" transactions. There is no statutory definition of a "spot transaction" under Danish law. However, Article 7(2) of the MiFID II Regulation excludes "spot contracts" from Article 7(1), and for these purpose defines a "spot contract" as "a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods: (a) two trading days; (b) the period generally accepted in the market for that commodity, asset or right as the standard delivery period". However, a contract is not a spot contract if, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed within the period mentioned in (a) and (b). Accordingly, we are of the view that contracts for the delivery of for example bullion which under this test would qualify as spot contracts, would not qualify as a "security" under the Capital Markets Act nor be an "agreement on energy products". Accordingly, such spot contracts will in this opinion not be Eligible Financial Obligations and not be covered by the Danish close-out netting rules, see section 3.2.3(b).

In respect of FX spot it is our understanding that in the Danish market an FX transaction is considered a spot transaction if it settles within two trading days. Since FX spot is settled with payment of cash, in this opinion such contracts will be covered by the definition of Eligible Financial Obligations as claims originating from foreign exchange trading.

We note that the scope of Eligible Financial Obligations under Danish law is broad any may generally cover most of the transactions listed in Annex B, but we render no opinion in respect of particular transactions under one or more of the master agreements listed in Annex B.

1.6 Background - Relevant Danish Law

1.6.1 Danish Insolvency Proceedings

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

1) Bankruptcy proceedings (*konkurs*). Bankruptcy proceedings are initiated by the debtor or a creditor filing a petition with a bankruptcy court. Upon receipt of the petition, the court sets a hearing date and notifies the debtor and any petitioning creditor. If the court is satisfied that the petitioning creditor has a valid claim against the debtor (applies only if a creditor has filed the petition) and the debtor is "insolvent" (i.e. that the debtor is unable to satisfy its obligations as they fall due, unless the inability to pay is of a temporary nature only) the court will issue a bankruptcy order (*konkursdekret*) against the debtor. The bankruptcy order will be made public by an announcement in the Danish Official Gazette (*Statstidende*). The court will then appoint a bankruptcy trustee (*kurator*) to manage the estate. The bankruptcy estate will consist of the assets that belong to the debtor at the time the bankruptcy order is issued, together with any assets that accrue during the bankruptcy proceedings. The assets are realised and the proceeds are distributed among the creditors according to an order of priority set out in the Bankruptcy Act. Secured creditors are not part of this order of priority. Bankruptcy proceedings under Danish law are designed to ensure a high

degree of equality of treatment of all creditors, enabling the estate to set aside/avoid (*omstøde*) certain pre-bankruptcy transactions.

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

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

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

When restructuring proceedings are initiated the bankruptcy court immediately appoints a restructuring administrator (*rekonstruktør*) and an accountant (*regnskabskyndig tillidsmand*) to oversee and administrate the restructuring proceedings, to work out the restructuring plan and final restructuring proposal and to present these to the creditors.

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

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

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

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

The Bankruptcy Act applies to all types of Danish legal entities, including financial institutions. Financial institutions regulated by the Financial Business Act, are subject to certain supplementary provisions, which ensure that the FSA will be involved during insolvency proceedings related to financial institutions. The FSA is entitled to file a petition for bankruptcy in respect of a financial institution if it becomes insolvent.

Danish BRRD-rules. In addition, failing banks and other credit institutions and certain investment firms may be subject to various recovery and resolution measures pursuant to the Danish BRRD-rules which includes transfer of assets and liabilities to the Danish Financial Stability Company (*Finansiel Stabilitet* - an independent public company) or a subsidiary of the Danish Financial Stability Company), bail-in etc. The implementation of measures pursuant to the Danish BRRD-rules does not qualify as insolvency proceedings as a matter of law and may not qualify as an enforcement event under Section 206 of the Capital Markets Act provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed. Accordingly, the implementation of such measures will not per se entitle a counterparty to terminate, carry out close-out netting, enforce collateral etc.

The Danish Financial Stability Company is under the Danish BRRD-rules granted various additional rights such as rights to terminate or amend terms in contracts of the undertaking subject to resolutions measures if necessary to ensure such measures. Further, the Danish Financial Stability Company may suspend payment and delivery obligations which are due, suspend enforcement in respect of collateral granted, and suspend termination rights under contracts, all valid from the time of publication of such suspensions until the end of the following business day.

If a Danish Party (i.e. a Danish bank or other credit institution, or certain investment firms) becomes subject to measures under the Danish BRRD-rules, this will influence on the Counterparty's rights to terminate and close-out, as such rights may be suspended and/or set aside.

If a credit institution or an investment firm is subject to resolution measures under the Danish BRRD-rules the FSA must consent to insolvency proceedings being initiated.

The EU Insolvency Regulation no. 848/2015, as amended, does not apply in Denmark.[2] Under Danish law the only cross-border regulation relevant to consider on a general level is the Nordic Bankruptcy Convention.[3]

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

Accordingly, if a Danish Party[4] (which becomes subject to Danish Insolvency Proceedings in Denmark), has entered into an Agreement governed by the laws of another jurisdiction, the choice of law will in our opinion most likely not be binding for the Danish Party's bankruptcy estate in respect of set-off/close-out netting and

[2] See preamble 88 of the EU Insolvency Regulation.
[3] Order (*anordning*) no. 251 of 1 September 1934 as amended.
[4] In this context Danish Party does not include banks and other credit institutions subject to the Banks Winding-up Directive, see footnote 6, or insurance companies subject to 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 (Solvency II) (recast),as amended and the choice of law shall be interpreted in the context of those Directives and the Danish implementing executive orders.

early termination, and the Danish Party's bankruptcy estate may modify the laws of the relevant jurisdiction with mandatory creditor protection rules in the Bankruptcy Act or other relevant law. For example, in a recent court case, the Maritime and Commercial Court of Denmark (*Sø- og Handelsretten*) came to the conclusion in a specific case[5] and set aside a governing law clause appointing English law as the applicable law, and the claim raised by the bankruptcy estate in the Danish court could be subject to substantive proceedings in Denmark.

Denmark has implemented the Banks Winding-up Directive[6] by Executive Order (*bekendtgørelse*) no. 721 of 30 May 2017 (the "Winding-up Order"), which applies to winding-up of an EU based bank or other credit institutions. Section 17 of the Winding-up Order provides that as the general rule netting agreements will be governed by the agreed choice of law. We are not aware of any Danish authority concerning the scope of this provision in the Winding-up Order. In our view, it is not certain that this choice of law provision in respect of close-out netting in Section 17 of the Winding-up Order would be overruling and conclusive for a Danish Party's bankruptcy estate in a situation where applying mandatory Danish bankruptcy provisions would lead to a result which is different from the law of the netting agreement.

1.6.2 Danish Rules on Close-out Netting

The Collateral Directive was implemented into Danish law by Act No. 1171 of 19 December 2003 amending the rules on bilateral netting in the Danish Securities Trading Act (*værdipapirhandelsloven*) for agreements entered into on or after 1 January 2004. This Act was replaced by the Capital Markets Act as of 3 January 2018. The rules on bilateral netting in the Capital Markets Act are contained in Chapter 36 (Sections 196 to 209).

The main close–out netting provision (Section 206, Subsection 1 of the Capital Markets Act) provides that parties can agree, with legal effect for third parties (including a bankruptcy estate), that financial obligations under an agreement may be close-out netted upon the occurrence of an enforcement event. An enforcement event (*fyldestgørelsesgrund*) is an event of default or other event agreed by the parties, which gives a party the right to close-out net (Section 5, no. 6 of the Capital Markets Act). Such event can be the commencement of insolvency proceedings (*insolvensbehandling*)[7] of a party (irrespective of the jurisdiction in which such insolvency proceedings take place).

Chapter 36 also contains the Danish rules on financial collateral arrangements implementing the Collateral Directive. These rules are described below in section 1.6.3.

It is a requirement that the close-out netting agreement and financial collateral arrangement be in writing or be capable of being documented in another manner legally similar thereto (see Section 198, Subsection 1 of the Capital Markets Act).

Although the Capital Markets Act is silent on the matter, it is accepted in Danish legal theory that close-out netting between several agreements involving the same two parties can be agreed and will be comprised by the close-out netting rules in Chapter 36 of the Capital Markets Act, provided that all other requirements for

[5] U.2019.69S.
[6] Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions, as amended.
[7] As set forth in Section 5, no. 7 of the Capital Markets Act, "insolvency proceedings" include *inter alia* bankruptcy, formal restructuring proceedings as well as other Danish or foreign types of liquidation, winding up or reorganisation measures caused by a debtor's insolvency. It does not as a matter of law per se include resolution measures of banks and other credit institutions or certain investment firms or Danish branches of such undertakings under the Danish BRRD-rules, see Section 1, Subsection 12 of the Capital Markets Act.

such close-out netting have been fulfilled, including that each underlying transaction is separately capable of close-out netting under the Capital Markets Act.

1.6.2.1 Financial Entities and Non-Financial Entities

Both Financial Entities and Non-Financial Entities may be subject to the Danish rules on close-out netting and financial collateral arrangements.

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

1. a public authority (excluding publicly guaranteed undertakings unless they, inter alia, fall under (b) to (e) below) including:
   a) public bodies in European Union Member States and countries that the EU has entered into a financial agreement with, which are responsible for, or assist, in public debt management, and
   b) public bodies in European Union Member States and countries that the EU has entered into a financial agreement with, which are authorised to keep accounts for clients;
2. central banks, the European Central Bank, the Bank for International Settlements, any multilateral development bank, the International Monetary Fund and the European Investment Bank;
3. financial institutions subject to supervision, including:
   a) credit institutions as defined in Article 3(1)(1) of Directive 2013/36/EU,
   b) investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU,
   c) financial institutions as defined in Article 3(1)(22) of Directive 2013/36/EU,
   d) insurance undertakings as defined in Article 1(a) of Council Directive 92/49/EEC as amended and a life assurance undertaking as defined in Article 1(a) of Directive 2002/83/EC,
   e) undertakings for collective investment in transferable securities (UCITS) with an authorisation under Article 5 of Directive 2009/65/EC,
   f) management companies, and
   g) alternative investment fund managers;
4. central counterparties (CCPs), settlement agents and clearing houses, as defined respectively in Article 2(c)-(e) of Directive 98/26/EC as amended or similar institutions regulated under national law acting in the futures, options and derivatives markets to the extent not covered by such Directive; and
5. legal persons, who act in a trust or representative capacity on behalf of any one or more persons, including bondholders or holders of other forms of securitised debt, or any authority or entity as defined in 1 to 4 above.

For the purpose of this opinion entities (legal persons) which are not a Financial Entity as set out in 1 to 5 above are Non-Financial Entities (each a "**Non-Financial Entity**")[9].

The types of Danish Parties listed in Section 1.4 will be either a Financial Entity or a Non-Financial Entity.

[8] See Section 196, nos. 1-5 of the Capital Markets Act.

[9] See Section 196, no. 6 of the Capital Markets Act.

1.6.2.2 Scope of Financial Obligations

It must be clear from the close-out netting agreement which of the present, future, actual or contingent or prospective "financial obligations" are covered by the agreement (see Section 198, Subsection 2 of the Capital Markets Act).

The term "financial obligations" is defined in Section 5, no. 2 of the Capital Markets Act. For the purpose of this opinion the relevant definitions are in (i) Section 5, no. 2, first sentence, which applies to close-out netting agreements where one or both parties are a Financial Entity, and (ii) Section 5, no. 2, second sentence, which applies if both parties to a close-out netting agreement is a Non-Financial Entity. In the first case (Section 5, no. 2, first sentence) which has the broadest scope the term "financial obligations" includes obligations giving the party a right to cash settlement or delivery of "financial instruments" and "claims originating from agreements on energy products". In the latter case (Section 5, no. 2, second sentence) the scope is narrowed and the term "financial obligations" includes claims originating from foreign exchange trading, trading in "financial instruments", trading on commodities exchanges, "claims originating from agreements on energy products", and deposits and advances.

For the purpose of this opinion we will focus on the scope in Section 5, no. 2, second sentence, since all claims covered hereby will also be covered by Section 5, no. 2, first sentence. Accordingly, the scope of Eligible Financial Obligations (i.e. "financial obligations" which may be subject to close-out netting and financial collateral arrangement under Danish law) which we define below will apply irrespective of whether or not a Financial Entity is a party to the Agreements.

We note that according to Section 198, subsection 2 of the Capital Markets Act, it must appear from a financial collateral agreement and/or close-out netting arrangement which of the Parties' obligations are covered thereby. We interpret this as requiring some clarity as to which financial obligations are covered, please refer to section 3.1.1 below.

We assume that the Underlying Agreements will not involve deposits and advances. Thus, for the purpose of this opinion determining the scope of "financial obligations" will relate to

- claims originating from trading in "financial instruments";
- "claims originating from agreements on energy products"
- claims originating from foreign exchange trading, and
- claims originating from trading on commodities exchanges;

(together the "**Eligible Financial Obligations**").

Accordingly, it is relevant to assess any transaction to be included under a master netting close-out regime whether it qualify as an Eligible Financial Obligation.

First, we refer to section 1.5 above.

Below we address claims originating from trading in "financial instruments" (see section 1.6.2.3 below) and then we address "claims originating from agreements on energy products" (see section 1.6.2.4 below).

Foreign exchange trading and trading on commodities exchanges are not described further in the Capital Markets Act, and will not be described in further detail in this opinion.

1.6.2.3 Claims Originating from Trading in Financial Instruments

"Claims originating from trading in "financial instruments"" may cover various claims arising from the trading relationship between the parties. Financial instruments are defined in the Capital Markets Act (implementing MiFID II, Annex I, Section C) and comprise *inter alia* the instruments described below. The term "financial instrument" as used in the Capital Markets Act is supplemented by the MiFID II Regulation.

The term "financial instrument" comprises most types of financial instruments, and in particular the categories listed below are relevant for this opinion. However, a spot transaction will in our view not qualify as a "financial instrument" under the Capital Markets Act. but as described in section 1.5, certain spot transactions may still be covered as Eligible Financial Obligations.

<u>Section 4, Subsection 1, no. 1 of the Capital Markets Act</u>
Pursuant to Section 4, Subsection 1, no. 1 of the Capital Markets Act, transferable securities which are negotiable on the capital market qualify as "securities". This category includes shares and other securities equivalent thereto, and bonds and other forms of securitised debt.

<u>Section 4, Subsection 1, nos. 2-3 of the Capital Markets Act</u>
Money-market instruments and units in collective investment schemes qualify as securities pursuant to Section 4, Subsection 1, nos. 2-3 of the Capital Markets Act.

<u>Section 4, Subsection 1, no. 4 of the Capital Markets Act</u>
Pursuant to Section 4, Subsection 1, no. 4 of the Capital Markets Act, any derivative contract including, *inter alia*, futures, options and swaps relating to securities, currencies, interest rates or yields, or emission allowances as the underlying asset that may be settled in cash or physically qualify as a "financial instrument" under the Capital Markets Act.

<u>Section 4, Subsection 1, no. 5 of the Capital Markets Act</u>
Pursuant to Section 4, Subsection 1, no. 5 of the Capital Markets Act, any derivative contract including, *inter alia*, futures, options and swaps with a commodity as the underlying asset that must be settled in cash or may be settled in cash at the option of one of the parties (other than by reason of a default or other termination event) qualify as a "financial instrument" under the Capital Markets Act.

<u>Section 4, Subsection 1, no. 6 of the Capital Markets Act</u>
Pursuant to Section 4, Subsection 1, no. 6 of the Capital Markets Act, options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a Regulated Market, an MTF or an OTF (except for wholesale energy products traded on an OTF that must be physically settled) qualify as a "financial instrument" under the Capital Markets Act..

The criteria and requirements for wholesale energy products' physical settlement have been further detailed in Article 5(1) of the MiFID II Regulation.

The delivery methods for the contracts being considered as "physically settled" shall, according to Article 5(7) of the MiFID II Regulation, include at least:

1) physical delivery of the relevant commodities themselves;

2) delivery of a document giving rights of an ownership nature to the relevant commodities or the relevant quantity of the commodities concerned; or

3) other methods of bringing about the transfer of rights of an ownership nature in relation to the relevant quantity of goods without physically delivering them, including notification, scheduling or nomination to the operator of an energy supply network, that entitles the recipient to the relevant quantity of the goods.

<u>Section 4, Subsection 1, no. 7 of the Capital Markets Act</u>
Pursuant to Section 4, Subsection 1, no. 7 of the Capital Markets Act, options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in no. 6 (mentioned above) and not being for commercial purposes, which have the characteristics of other derivative financial instruments, qualify as a "financial instrument" under the Capital Markets Act.

In order for a physically settled derivative contract to qualify as a "financial instrument" under this section it must not be "*for commercial purposes*" and must "*have the characteristics of other derivative financial instruments*". These criteria have been further detailed in Article 7(1) and (4) of the MiFID II Regulation.

<u>Section 4, Subsection 1, no. 8 of the Capital Markets Act</u>
Credit derivatives qualify as "financial instruments" pursuant to Section 4, Subsection 1, no. 8 of the Capital Markets Act.

<u>Section 4, Subsection 1, no. 9 of the Capital Markets Act</u>
Contracts for difference qualify as " financial instruments " pursuant to Section 4, Subsection 1, no. 9 of the Capital Markets Act.

<u>Section 4, Subsection 1, no. 10 of the Capital Markets Act</u>
Pursuant to Section 4, Subsection 1, no. 10 of the Capital Markets Act options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of a default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this section (i.e. Section 4 of the Capital Markets Act), which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a Regulated Market, an OTF or an MTF, qualify as a "financial instrument" under the Capital Markets Act.

In order for a physically settled derivative contract to qualify as a "financial instrument" under this section it must not be "*for commercial purposes*" and must "*have the characteristics of other derivative financial instruments*". These criteria have been further detailed in Article 7(3) and (4) of the MiFID II Regulation.

According to Article 8 of the MiFID II Regulation, a derivative contract will be included under the provisions in Section 4, Subsection 1, no. 10 of the Capital Markets Act, *inter alia* where it relates to any of the following:

1) commodity storage capacity;

2) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means with the exception of transmission rights related to electricity transmission cross zonal capacities when they are, on the primary market, entered into with or by a transmission system operator or any persons acting as service providers on their behalf and in order to allocate the transmission capacity;

3) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources, except where the contract is already within the scope of Section C of Annex I to Directive 2014/65/EU.

<u>Section 4, Subsection 1, no. 11 of the Capital Markets Act</u>
Pursuant to Section 4, Subsection 1, no. 11 of the Capital Markets Act emission allowances consisting of any units recognised for compliance with the requirements of Commission Regulation (EU) no. 1031/2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community qualify as a "financial instrument" under the Capital Markets Act.

1.6.2.4 Claims Originating from Agreements on Energy Products

"Claims originating from agreements on energy products" means according to Section 5, no. 3 of the Capital Markets Act, claims originating from the following contracts and derivatives, including master agreements and close-out netting agreements, irrespective of where and how they are traded, and irrespective of whether they may only be cash-settled by reason of a default or other termination event: Contracts for the supply of or derivatives relating to natural gas, electricity, coal, oil or biofuel or transportation thereof, and CO2 allowances and certificates for energy based on renewable energy (*VE-beviser*).

The scope of these types of financial obligations was introduced in the Capital Markets Act and is a Danish law addition to the scope set out above in section 1.6.2.3 which comes from the Collateral Directive. The scope of financial obligations in Danish law was expanded to cover various contracts related to energy trading. Based on its wording the following criteria should be noted to assess the claims which in our view will be covered:

- claims, i.e. payment of money, and not claims for physical delivery of an energy product,
- the claims may arise from a contract relating to delivery of a physical energy product, either in the ongoing trading relationship or in case of a close-out due to an event of default or other termination event (by notice or by automatic termination),
- such contract may relate to delivery of a physical energy product or be a derivative,
- the traded contract can be part of a master agreement or (other) close-out netting agreement,
- it is not relevant where and how the contract is entered into, and accordingly it can be traded OTC, via broker and/or on a market place,

- the contract relates to one of the following energy products: natural gas, electricity, coal, oil or biofuel or transportation thereof, or CO2 allowances or certificates for energy based on renewable energy (*VE-beviser*), and
- the scope is not directly linked to any EU rules and may as such be interpreted under Danish law.

The scope of "claims originating from agreements on energy products" will in particular be relevant to the extent that an Energy Transaction does not qualify under "claims originating from trading in "financial instruments"" described above; however, claims from certain contracts may be covered by both terms.

For the purpose of this opinion we note that in our view the following may for example be Eligible Financial Obligations due to qualifying as "claims originating from agreements on energy products":

- claims (i.e. payment of money) originating from an Energy Transaction, including a commodity spot, relating to natural gas or power may qualify as a Eligible Financial Obligation under this provision, irrespective of whether it relates to a contract for physical delivery or for cash settlement; and

- claims (i.e. payment of money) originating from an Energy Related Transaction, including a spot, relating to emission allowances[10], may qualify as a Eligible Financial Obligation under this provision, irrespective of whether it relates to a contract for physical delivery or for cash settlement.

As mentioned in section 1.5, the scope of Eligible Financial Obligations under Danish law is broad any may generally cover most of the transactions listed in Annex B, but an individual assessment should be made by the relevant Party as transactions/obligations which are not Eligible Financial Obligations may not be subject to close-out netting, see section 3.2.3(b).

1.6.2.5 Notice of Termination

Section 206, Subsection 2 of the Capital Markets Act provides that it can be agreed with legal effect towards a bankruptcy estate and creditors that upon the occurrence of an event of default or other enforcement event, close-out netting of financial obligations shall occur when the non-defaulting party gives notice to this effect to the defaulting party. The said section further provides that if insolvency proceedings are commenced against the defaulting party, such party may require that close-out netting of financial obligations be effected so that the parties are placed in a position as if close-out netting had occurred without undue delay after such time when the non-defaulting party became, or should have become, aware that insolvency proceedings were commenced against the defaulting party.

1.6.2.6 Restrictions on Close-out Netting

Sections 207 and 208 of the Capital Markets Act set out certain restrictions as to the financial obligations, which may be included in a close-out netting.

According to the Capital Markets Act, Section 207:

[10] Section 5, no. 3 of the Capital Markets Act uses the term CO2 allowances (*CO2 kvoter*) and not the term emission allowances (*emissionskvoter*) as used in the list of financial instruments in Section 4 of the Capital Markets Act. The scope of the term CO2 allowances may potentially be broader than emission allowances, but it is not possible to make this determination only based on the wording of the provision and it is not explained in the preparatory works, but in our interpretation CO2 allowances will at least include Emission Allowances for purposes of this opinion.

- Subsection 1: Close-out netting, which is carried out after the defaulting Danish Party has commenced formal restructuring proceedings, may include financial obligations that arose before the time when the non-defaulting party knew, or should have known, the circumstances occasioning the Limitation Day (*frist-dagen*).
- Subsection 2: Close-out netting, which is carried out after the defaulting Danish Party has been declared bankrupt, may include financial obligations that arose before the time when the non-defaulting party knew, or should have known, the circumstances occasioning the Limitation Day (*fristdagen*). A close-out netting balance may not include financial obligations which came into existence after the day the bankruptcy of the Danish Party was announced in the Danish Official Gazette (*Statstidende*).

According to the Capital Markets Act, Section 208:

- Subsection 1: A financial obligation covered by Section 42, Subsections 3 and 4 of the Bankruptcy Act may be included in a close-out netting unless the non-defaulting party knew, or ought to have known, that the defaulting Danish Party was insolvent when the claim against such defaulting Danish Party was acquired or came into existence.
- Subsection 2: A close-out netting may only be voidable pursuant to Section 69 of the Bankruptcy Act, if the close-out netting covered claims, which could not have been included in an agreed close-out netting in case of the Danish Party's bankruptcy, see Section 208, Subsection 1 and Section 207, Subsection 2.

1.6.3 Danish Rules on Financial Collateral Arrangements

As mentioned above, the Danish rules on financial collateral arrangements, implementing those provisions from the Collateral Directive, entered into force on 1 January 2004, and are today contained in Chapter 36 of the Capital Markets Act.

Section 1, Subsection 10 of the Capital Markets Act states that the provisions of Chapter 36 of the Capital Markets Act apply to financial collateral arrangements and to financial collateral after such financial collateral has been provided. Financial collateral shall be regarded as having been provided when the relevant act of perfection has been carried out.

A financial collateral arrangement is an agreement between parties covered by Section 196 of the Capital Markets Act (which includes Danish Parties covered by section 1.4) on the posting of collateral for financial obligations (cf. Section 5, no. 2 and sections 1.6.2.2-1.6.2.4 above) in the form of collateral covered by Section 197 of the Capital Markets Act, see below. Pursuant to Section 196, Subsection 2, a retail client (as defined in MiFID II, Article 4(1)(11)) cannot be part in a title transfer financial collateral arrangement.

A "financial collateral agreement" can be an agreement on provision of financial collateral in the form of transfer of title (*overdragelse af ejendomsret*) or in the form of charges/pledges (*pant*), cf. Section 5, no.1 of the Capital Markets Act.

According to Section 198, Subsection 2 of the Capital Markets Act, it must appear from a financial collateral agreement which of the parties' financial obligations are covered by the agreement.

The parties may agree that the value of financial collateral posted under an agreement may be included in a close-out amount calculation in accordance with the provisions on realisation in Section 203 of the Capital Markets Act. In addition, Section 201 of the Capital Markets Act provides that realisation or valuation of financial collateral by a non-defaulting party in a close-out netting scenario to cover financial obligations must be on commercially reasonable terms.

1.6.3.1 Type of collateral

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

Only the following types of collateral are eligible as financial collateral under Section 197, cf. Section 4, Subsection 1, nos. 1-3 of the Capital Markets Act (together "**Eligible Danish Collateral**"):

1. Cash standing to the credit of an account;
2. Transferable securities (with the exception of instruments of payment (*betalingsinstrumenter*)) which are negotiable on the capital market, including:
    a. shares in companies and other securities equivalent to shares in companies, partnerships and other entities, and depositary receipts in respect of shares;
    b. bonds and other forms of securitised debt, including depositary receipts in respect of such securities; and
    c. any other securities giving the right to acquire or sell such securities as listed under items (a) or (b) hereof or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;
3. Money-market instruments, including treasury bills, certificates of deposit and commercial papers, excluding instruments of payment;
4. Units in collective investment undertakings; and
5. Credit claims (*gældsfordringer*), as defined in no. 4 of Section 5 of the Capital Markets Act, provided both parties are covered by Section 196, Subsection 1, nos. 1-5 of the Capital Markets Act;

except cash deposits which cannot be made subject to legal proceedings, for example client accounts and certain pensions, cf. Section 197, Subsection 3.

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

A letter of credit is not in itself covered by the definition of Eligible Danish Collateral. We have not reviewed any specific Letter of Credit for the purpose of providing this opinion. A Letter of Credit is in accordance with its definition in each of the CSAs a standby letter of credit, bank guarantee or similar document issued irrevocably by a commercial bank, and we assume that the Transferee may draw upon each such Letter of Credit in one or more drawings in an aggregate amount (up to the face amount for which the Letter of Credit has been issued) that is equal to all amounts that are due and payable by the Transferor but have not been paid to the

Transferee within the time allowed for such payments under the relevant Agreement (including any notice or grace period). As set out in each of the CSAs (§ 11 of CPMA CSA and § 12 of the MNA CSA) the Transferor's obligations will be discharged in an amount equal to the drawing(s). Accordingly, we assume that the Letters of Credit will in accordance with the relevant Agreements and the CSAs and their terms serve as Eligible Credit Support, but in respect of this opinion, the Letters of Credit will not be considered Eligible Danish Collateral and cannot be included in the calculation of one close-out net amount pursuant to the Capital Markets Act. Furthermore, we assume that the Letter of Credit will be issued by the relevant commercial bank to the Transferee directly and accordingly there is no title transfer. Since the questions contained in this opinion relate to financial collateral and title transfer we do not express any view in our responses below in relation to Letters of Credit.

2. ASSUMPTIONS

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

a) Only those designated Principal Agreements/Netted Agreements ("**Underlying Agreements**") and the commodities/financial instruments commonly traded thereunder will be covered by one of the Model Master Agreements (see section 1.6.3 below). On the basis of the terms and conditions of the relevant Master Agreement, the relevant Underlying Agreement (if applicable) and other relevant factors, and acting in a manner consistent with the intentions stated in the relevant Master Agreement and the relevant Underlying Agreement (if applicable) the Parties over time may enter into a number of transactions that are intended to be governed by the Master Agreement either as transactions entered into under the relevant Underlying Agreement or as Uncovered Transactions/Additional Netted Agreements (where such Uncovered Transactions/Additional Netted Agreements will only include long form confirmations incorporating, in substantially their original form, the terms and conditions of the Underlying Agreements identified below in either Division 1, Part 1, Section A of the Template Default Elections of the CPMA or in the Additional Netted Agreement Rider at Part III of the MNA Election Sheet). The transactions entered into may include any or all of the transactions described in section 1.5 to this opinion. We have not for purposes of this opinion considered whether any other agreements, transactions and/or commodities may be included in or covered by one of the Model Master Agreements;

b) Each of the Model Master Agreements upon which we opine contain those elections which is set out in Annex B of this opinion for the specific Master Agreement, and if Parties choose to move away from the model forms upon which this opinion is based, it will be up to them to satisfy themselves (by obtaining their own supplemental opinions or otherwise) that their particular form of Master Agreement and/or relevant CSA is still valid and enforceable;

c) Each of the Model Master Agreements, including with relevant CSAs, and each of the Underlying Agreements and each Uncovered Transaction/Additional Netted Agreement elected in each of the Model Master Agreements, is legal, valid, binding and enforceable in accordance with its own respective terms and conditions under the laws of any relevant jurisdiction. For the avoidance of doubt, we express no opinion on any Underlying Agreement and refer to any relevant industry opinions on the Underlying Agreements (e.g. those available from EFET or the International Swaps and Derivatives Association);

d) Each Close-Out Event specified as applicable pursuant to: (i) in respect of the CPMA, the Election for Division 1, Part II, Section A of the model Schedule; or (ii) in respect of the MNA, the Election for Section

3.1, Part I of the Election Sheet, is an effective and valid event of default under the applicable Underlying Agreement;

e) Each CSA, upon which we opine, only contemplates the use of cash or letters of credit as Eligible Credit Support and the scope of our opinion is limited accordingly. We assume that Eligible Credit Support provided under the each CSA will only take the form of either cash or letters of credit. When addressing any questions relating to the rights of a transferor to retrieve collateral from an insolvent entity, we assume that the transferor is incorporated or organized under the laws of Denmark. For questions relating to the rights of a transferee to hold collateral and apply and use that collateral in a close-out netting event, we assume that the transferee is incorporated or organized under the laws of a jurisdiction other than Denmark. We also assume that cash collateral is denominated in a freely convertible currency and is held under the control of the transferee;

f) Each of the CSAs and Master Agreements are entered into by two entities, one of which is a Danish Party (including a bank or investment firm). Our opinion is not applicable (without additional analysis) to other entities (such as partnerships etc.);

g) For the purposes of addressing the multi-branch issues at section 3.4 below, (i) we assume that a Counterparty is incorporated or organized in Denmark but may have one or more Underlying Agreements or underlying transactions that have been entered into by branches or other duly registered overseas offices in other jurisdictions; and (ii) at sections 3.4.2 and 3.4.3 below, we assume that an overseas Counterparty is incorporated or organized outside Denmark but may have one or more Underlying Agreements or underlying transactions that have been entered into by branches or other duly registered offices in Denmark;

h) We have assumed that no Core Provisions have been amended. To the extent that the Capital Markets Act permits close-out netting of financial obligations, we consider the following provisions so essential to each of the Model Master Agreements (i.e. to be "**Core Provisions**") that a material alteration thereof could affect the conclusions reached regarding close-out netting in respect of financial obligations which may be subject to close-out netting (i.e. Eligible Financial Obligations):

   i) In respect of the MNA: § 2.1, § 4, § 5, § 6, § 7, and § 8, and the related Defined Terms contained in Annex 1 to that Agreement; and

   ii) In respect of the CPMA: Sections 2, 3, and 4, and the related Definitions in Section 1.1 of that Agreement; and

i) any Agreement is governed by the laws of Germany or England and Wales.

In addition to the assumptions above, which follow the standard assumptions set out by EFET in its instruction letter dated 2 July 2020, this opinion is based on the following additional assumptions:

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

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

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

m) each of the Documents provides for close-out netting and is capable of being terminated and closed-out and having a net settlement amount determined in the manner envisaged by the Master Agreements under any applicable laws and that such close-out netting provision be enforceable, and that if one or more transactions under such Documents are not capable of close-out netting under Danish law that the remaining transactions are still capable of close-out netting according to such Document;

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

o) in respect of the CSAs, that the transferor, when transferring Eligible Danish Collateral under the CSAs, will have full legal title to such Eligible Danish Collateral at the time of transfer, free and clear of any lien, claim, charge or encumbrance or any other interest of the transferor or of any third person and that no secondary pledge or similar security interest over the Eligible Danish Collateral will subsequently be created by the transferor or by operation of law or otherwise;

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

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

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

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

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

u) that the Documents are entered into on or after 3 January 2018, or the parties have otherwise agreed in writing that the close-out netting and financial collateral arrangement rules in the Capital Markets Act shall apply;

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

w) that no law (other than Danish law) affect the conclusions in this opinion.

3. OPINION AND SPECIFIC QUESTIONS

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

3.1 Netting / Set-off Absent an Insolvency

Model CPMA / Model MNA

3.1.1 *Your opinion on whether a transaction entered into under an Underlying Agreement or an Uncovered Transaction / Additional Netted Agreement would be validly included in each model Master Agreement, assuming either a choice of English or German law as governing such documents (save of the trading terms and conditions of the 2015 NBP Master which is governed by English law)? Please elaborate if your analysis depends on whether or not the relevant transaction: (i) was concluded before or after the execution of each Master Agreement; or (ii) makes explicit reference to a Master Agreement or the relevant Underlying Agreement.*

We express no opinion on this, as this would be governed by English or German law (as applicable) as the governing law of the Master Agreement.

However, it should be noted that under Danish law, agreements on close-out netting (*slutafregning*) and provision of financial collateral pursuant to Chapter 36 of the Capital Markets Act must be in writing or be capable of being documented in another manner legally similar thereto, see Section 198, Subsection 1 of the Capital Markets Act. In addition, according to Section 198, Subsection 2 of the Capital Markets Act, it must appear from a financial collateral agreement which of the Parties' obligations are covered. We interpret this as a requirement of clarity as to which financial obligations can be included under a close-out netting and a financial collateral arrangement pursuant to the Capital Markets Act.

The Master Agreements contain provisions on close-out netting, and the CSAs contain provisions on the financial collateral arrangement and we consider these provisions to be sufficient for the purposes of Section 198, Subsection 1 of the Capital Markets Act, provided, however, that the Master Agreements and the CSAs clearly refer to the financial obligations governed thereby. We believe that this requirement of clarity will be considered fulfilled to the extent the governed master agreements are mentioned explicitly in the Master Agreements, such as an election of the specific master agreements mentioned in the Election Sheet to the MNA, Part I, § 2.1, or Division I, Part I.A of the TBMA Commodities Schedule to the CPMA. However, in our view it is possible that a Danish court could find that the clarity requirement will not be fulfilled if master agreements and/or transactions were included under the close-out provisions of the Master Agreements by reference or generic description, such as the "Other Master Trading Agreements" and "Long Form Confirmation Agreements" in Part I, § 2.1 of the Election Sheet to the MNA, or items 7 and 8 of Division I, Part I.A of the TBMA Commodities Schedule to the CPMA, the "Additional Netted Agreements" defined by category in Part III of the Election Sheet to the MNA, and the "Uncovered Transactions" in Division I, Part I.C of the TBMA Commodities Schedule to the CPMA. In our view, a similar requirement of clarity as to which transactions will be governed by the Underlying Agreements will apply. We note that there are to our knowledge no legal precedents in respect of such requirement of clarity, and as such the scope thereof remains subject to legal uncertainty under Danish law.

3.1.2 *Your opinion regarding the legality, validity and enforceability of each Model Master Agreement (absent an insolvency of either party) to the netting and set-off of obligations due between the parties:*

- *under one or more physically settling transactions involving the same commodity or product,*
- *under one or more physically settling energy transactions involving two or more different classes or types of commodity or product, and*
- *under a combination of physically and financially settling transactions (transacted under two or more Underlying Agreements);*

In our view, subject to the assumptions and qualifications of this opinion, and the comments and responses elsewhere in this section 3 of this opinion, the close-out netting provisions of the Model Master Agreements (absent an insolvency of either party) would be legal, valid, and enforceable under Danish law..

EMIR and regulations issued under EMIR may impose certain requirement on parties trading in OTC derivatives, but generally, non-compliance will not in itself render a transaction invalid as a matter of law.

Please also note that in general, the legality, validity and enforceability of an agreement may be affected by generally applicable principles of "reasonableness and fairness" (*urimeligt eller i strid med redelig handlemåde*) as set out in Section 36 of the Danish Contracts Act (*aftaleloven*)[11] and "breach of expectations" (*bristede forudsætninger*), but such principles are rarely used on agreements between professional parties.

3.1.3 *An analysis and your opinion regarding the necessity or efficacy of performing any due diligence (i.e., lien searches, filings etc.) prior to a party entering into each Model Master Agreement.*

In general, it would be advisable to check at least the following with respect to a Danish Party:

- That the Danish Party is registered in the register of the Danish Commerce Agency (*Erhvervsstyrelsen*) as a duly incorporated limited liability company;
- That entering into the relevant Model Master Agreement does no run counter to the objects as stated in the Articles of Association (*vedtægter*); and
- That the persons signing the relevant Model Master Agreement are duly authorised to bind the Danish Party.

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

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

[11] Consolidated Act no. 193 of 2 March 2016, as amended.

3.1.4 *A general discussion of, and your opinion regarding, your jurisdiction's laws relevant to the concepts of close-out netting and set-off of claims between parties, combinations of accounts or such other terminology as is employed in your jurisdiction to address such issues.*

We refer generally to the discussion in Section 1.6.

In addition, we note that under Danish law, a right to early terminate is a contractual right set out in an agreement. Such right may, however, be restricted by mandatory rules in the Bankruptcy Act in case of a Danish Party subject to Danish Insolvency Proceedings.

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

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

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

CPMA CSA / MNA CSA

3.1.5 *Your opinion on whether the laws of your jurisdiction characterize each transfer of Eligible Credit Support as effecting an unconditional transfer of ownership in the assets transferred and whether there is any risk that such transfer 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 each CSA. If so, please opine on whether there is any way to minimize such risk and the consequences of such a re- characterization to ensure the valid transfer of each type of Eligible Credit Support created by the providing party under each CSA.*

In Denmark questions regarding choice of law in contractual relationships are governed by the Rome Convention of 19 June 1980 incorporated into Danish law by Act No. 188 of 9 May 1984 (now Consolidated Act no. 139 of 17 February 2014). Consequently, the parties are in general free to decide on the choice of law in their interpartes relationship (subject to ordre public), see below section 3.1.8.

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

Under Danish private international law the general rule is the principle of lex rei sitae, i.e. that the law of the country where the subject matter is situated at the time of the establishment of the proprietary interest applies.

This means as the general rule that a proprietary interest (including transfer of title) in Danish Eligible Collateral[12] located in Denmark will normally be governed by Danish law.

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

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

However, in respect of financial collateral arrangements, Section 205 of the Capital Markets Act recognises that such arrangements may include transfer of title as a valid form of posting financial collateral in relation to act of perfection and realisation of the collateral. Accordingly, pursuant to Section 205 of the Capital Markets Act a financial collateral arrangement in respect of Eligible Danish Collateral, e.g. Cash credited to an account, under the control of the transferee in the form of title transfer is effective in accordance with the terms of the arrangement in relation to the act of perfection and realisation of the collateral.

We are of the view that § 3 of each of the CSAs where delivery of Cash as Eligible Credit Support shall be done by "transferring Cash to the account of the Transferee" provided absolute ownership is thereby transferred will constitute a transfer of title under Section 205 of the Capital Markets Act and the act of perfection has been carried out when Cash has been credited to the account of the transferee.

In relation to the rules on voidability (*omstødelse*) in the Bankruptcy Act, we note that the preparatory works state that Section 205 does not apply in relation to such voidability rules. Accordingly, if a financial collateral arrangement in the form of title transfer is in its substance creating a security interest, it will be characterised as a security interest in respect of the voidability rules. Based on the wording used in each of the CSAs, it is our view that Eligible Credit Support provided under each of the CSAs will be characterised as being a security interest in substance under Danish law, and therefore will each transfer of Eligible Credit Support be considered a security interest in respect of the voidability rules, see further below in section 3.2.12.

3.1.6 *Assuming the transferee receives absolute ownership interest in the Eligible Credit Support, your opinion on whether it will need to take any subsequent action to ensure that its title in the Eligible Credit Support continues. Your opinion should include whether there are any requirements in your jurisdiction necessary or advisable, 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*

[12] For dematerialised securities Section 210 of the Capital Markets Act, implementing *inter alia* Article 9 of the Collateral Directive, provides that certain issues, including proprietary issues, regarding the dematerialised security shall be governed by the legislation in the country where the account is maintained

must be followed or consents or other governmental or regulatory approvals that must be obtained or established, to enforce or continue such ownership interest.

A financial collateral arrangement must be in writing or be capable of being documented in another manner legally similar thereto in order to be governed by the provisions of Chapter 36, see Section 198, Subsection 1 of the Capital Markets Act. In our view, this requirement has been satisfied if the parties have entered into one of the CSAs.

In respect of financial collateral arrangements, Section 205 of the Capital Markets Act recognises that such arrangements may include transfer of title as a valid form of posting financial collateral in relation to act of perfection and realisation of the collateral. Accordingly, pursuant to Section 205 of the Capital Markets Act a financial collateral arrangement in respect of Eligible Danish Collateral, e.g. Cash credited to an account, under the control of the transferee in the form of title transfer is effective in accordance with the terms of the arrangement in relation to the act of perfection and realisation of the collateral.

Assuming that the transferee has received absolute ownership in the Cash held in an account and the Cash remains credited to an account under the control of the transferee, there are no further steps necessary or advisable to enforce or continue such ownership interest.

3.1.7 *Your opinion on the effect, if any, under the laws of your jurisdiction of the right to a providing party incorporated or otherwise organized under your jurisdiction to exchange Eligible Credit Support (for example, by swapping cash for a letter of credit) pursuant to Section 6 of each CSA. Does the presence of consent to substitution by the receiving party have any bearing on this question.*

Pursuant to Section 202, Subsection 1, it is possible for the transferor, upon agreement with the transferee, to substitute Eligible Danish Collateral with other financial collateral, and according to the preparatory works it is a requirement that the substitution collateral is of substantially the same value as the substituted collateral. If such substitution collateral is provided no later than at the same time as the transferor regains possession of the substituted collateral, the substitution collateral may only be avoided if the substituted collateral was voidable, see below section 3.2.12.

Accordingly, the right of the transferor) to substitute Cash pursuant to Section 6 of the CSAs does not affect the validity under Danish law of the unconditional transfer of ownership contemplated by Section 7 of the CSAs. Any substitution Eligible Danish Collateral shall be provided to the transferee no later than at the same time as the transferor regains possession of the substituted Cash. If the value of the substituted Cash is higher than "substantially the same value" as the substitution Cash such excess collateral may be voidable pursuant to the Bankruptcy Act.

As mentioned above, Section 202, Subsection 1 requires that the substitution takes place "upon agreement". We are not aware of any guidance under Danish law when such "agreement" shall be made, i.e. whether it is sufficient that there is an agreement from the outset allowing substitution from time to time without further consent or whether there must be a specific consent prior to each substitution. In our view there is a risk that it could be considered contrary to a title of transfer security interest under Danish law if the transferor could dispose over the transferred assets at its sole discretion, and therefore we would generally advise that consent shall be given in respect of each substitution request in order to be certain that there has been an effective transfer of title security interest.

Because a letter of credit is not Eligible Danish Collateral, a letter of credit and cash cannot be exchanged under the rules set out in Section 202, Subsection 1 of the Capital Market Act, but such exchange will have to follow general Danish law. Under general Danish law, security can generally be exchanged for other security without triggering a risk of voidability if (1) the new security is provided simultaneously with the release of the old security and (2) the new security is not of higher value than the old security.

3.1.8 *Your opinion on whether the parties' agreement on the governing law of each CSA and their submission to jurisdiction would be upheld in your jurisdiction, and what would be the consequences if they were not.*

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

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

In respect of applicable law in respect of a Danish Party's relationship towards a third party, please see section 3.1.5.

A final judgment of a German or an English court, respectively, against the Danish Party in respect of any suit, action or proceeding arising out of or relating to the CSAs will be recognised and enforced by the courts of Denmark, subject to and in accordance with the provisions of Council Regulation (EC) No. 1215/2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 12 December 2012 (the "Brussels I-Regulation") and the bilateral agreement in relation thereto between Denmark and the European Community of 19 October 2005 (and any protocol and accession convention in respect thereof) and Danish Act No. 1563 of 20 December 2006 as amended, implementing the Brussels I-Regulation and such bilateral agreement in Denmark, which, pursuant to the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community dated 24 January 2020 (the "**Transition Agreement**") remain in effect at the date of this opinion, but see the qualification set out in section 4.14 regarding the enforcement of final judgments of English courts after 31 December 2020.

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

3.1.9 *Your opinion as to whether under local law of your jurisdiction, each CSA complies with any mandatory margining requirements applicable under the laws of your jurisdiction.*

There are no mandatory margining requirements under Danish law, save as follows from EMIR.

Each CSA supports the variation margin concept and can be used as basis, with relevant elections etc., to comply with variation margin requirement pursuant to the delegated regulation on margining under EMIR applicable to financial counterparties and non-financial counterparties above the clearing threshold. Any requirement to post initial margin pursuant to the mentioned regulation will require separate documentation.

3.1.10 *Your opinion on whether there are any other local law considerations that a recipient of Eligible Credit Support should consider in connection with taking and realizing upon the Eligible Credit Support from a providing party incorporated or otherwise organized under your jurisdiction.*

We refer to our opinion to question 3.1.6 in respect of the steps necessary or advisable to enforce or continue an ownership interest over Cash. In our view, there are no other general considerations that a recipient of Eligible Credit Support should consider in connection with taking and realizing upon the Eligible Credit Support from a providing party incorporated or otherwise organized in Denmark.

Model CPMA combined with the CPMA CSA / Model MNA combined with the MNA CSA

3.1.11 *The transferee's right in relation to the transferred Eligible Credit Support upon the occurrence of a Close-Out Event will be governed by: (i) in the case of the CPMA, Section 4 of the CPMA (see Section 11 of the CPMA CSA); and (ii) in the case of the MNA, Section 8 of the MNA (see Section 12 of the MNA CSA). Assuming that Section 4 of the CPMA / Section 8 of the MNA is valid and enforceable in Denmark insofar as it relates to the determination of a Final Net Settlement Amount by either party on the termination of Underlying I Agreements, your opinion on whether Section 11 of the CPMA CSA / Section 12 of the MNA CSA is also valid to the extent that it provides for the Base Currency Equivalent of all the Eligible Credit Support provided under each CSA on the Determination Date to be included in the calculation of the Final Net Settlement Amount.*
In other words whether, contractually, the right of a party to apply collateral to a Settlement Amount is enforceable.

For the purposes of this question we assume that a Close-out Event has occurred and is continuing in respect of one of the parties, that the other party has Closed-Out (or Close-Out has occurred automatically, where applicable), the Underlying Agreements, and the transactions thereunder in accordance with the relevant provision of the applicable Master Agreement, that the Closing-Out Party/Terminating Party is calculating the Final Net Settlement Amount in accordance with Section 4 of the CPMA and Section 8 of the MNA, as applicable, and that such provisions are valid and enforceable in Denmark insofar as they relate to the determination of a final net settlement amount payable by either Party on the termination of the Underlying Agreements, and the transactions thereunder, and that the transferee has received (i.e collateral has been provided) and not yet returned (i.e. not yet transferred back to the transferor) Cash as Eligible Credit Support in accordance with the relevant CSA.

Pursuant to Section 203, Subsection 3 of the Capital Markets Act, on collateralisation in the form of cash, realisation may be effected through setting off the value of such financial collateral against the collateralised liabilities or through repayment of said liabilities.

We also note that pursuant to Section 205, Subsection 2, it is possible to agree that in case of an enforcement event, an obligation to deliver equivalent collateral, which has not been performed by the defaulting party prior to the enforcement event, can be included in a close-out netting balance.

Accordingly, in our view, it is possible under Danish law to agree that Cash provided as Eligible Credit Support shall upon the occurrence of a Close-Out Event and an early termination constitute an amount owing from the transferee to the transferor to be included in the determination of a Final Net Settlement Amount in accordance with the close-out netting provisions of the Capital Markets Act described in section 1.6.2 above. Provided that any conversion of Cash into the Base Currency is effected on commercially reasonable terms, we are of the view that each of Section 11 of the CPMA CSA and Section 12 of the MNA CSA is valid to the extent that the wording thereof will be read and construed as providing for the value of the Cash provided to the transferee) and not yet returned to the transferor to be included in calculation of a Final Net Settlement Amount payable under the relevant provision of the applicable Master Agreement.

3.1.12 *Your opinion on whether the opinions that you have expressed on: (i) the CPMA and the CPMA CSA; and (ii) the MNA and MNA CSA would change in the event that the parties agree to place the Eligible Credit Support with an independent third party collateral agent rather than a party to each Master Agreement and relevant CSA.*

Other than mechanical differences (e.g. applicable parties and the different operation of (i) the CPMA and the CPMA CSA; and (ii) the MNA and MNA CSA) our opinions set out herein would not change in the event that the parties agree to place the Eligible Credit Support with an independent third party collateral agent rather than a party to each Master Agreement and relevant CSA.

We assume for these purposes that none of the Parties' other rights are changed.

3.2 Netting / Set-off in the Context of an Insolvency

In answering the following questions, you should assume that after entering into a transaction and prior to its maturity, an entity incorporated in your jurisdiction becomes the subject of voluntary or involuntary insolvency proceedings in Denmark and, subsequent to the commencement of the insolvency proceedings, either that entity or an insolvency official seeks to assume the confirmations representing profitable transactions for the insolvent party and reject the confirmations representing unprofitable transactions for the insolvent party.

Model CPMA / Model MNA

3.2.1 *Assuming the parties have* <u>*not*</u> *selected Automatic Close-Out of each Underlying Agreement (Division 1, Part II, Section C of the Schedule to the CPMA / Section 6.1 of the MNA Election Sheet) and/or none of the Underlying Agreements provide for automatic early termination upon certain insolvency events to apply to the entity incorporated in your jurisdiction, your opinion on whether the provisions of each Model Master Agreement permitting the non-defaulting party to terminate all the Underlying Agreements (including Uncovered Transactions / Additional Netted Agreements, if applicable) and all the transactions done under them upon the insolvency of its counterparty would be enforceable under the laws of your jurisdiction.*

A right to early terminate and close-out as set out in Section 2 of the CPMA or § 4 of the MNA operable as the result of an insolvency based Close-out Event, such as certain of the events listed in § 3.1(C)(III) of the MNA[13] (whether by automatic or active termination) will in our view be enforceable against a Danish Party subject to Danish Insolvency Proceedings in respect of Eligible Financial Obligations under the Underlying Agreements (including Uncovered Transactions / Additional Netted Agreements, if applicable). and subject to the qualifications below and discussions set out elsewhere in this opinion.

Under Section 206, Subsection 1 of the Capital Markets Act, if close-out netting is agreed in each of the Model Master Agreements and relates to Eligible Financial Obligations, each Model Master Agreement and all the Underlying Agreements (including Uncovered Transactions / Additional Netted Agreements, if applicable) need not be deemed a single agreement in order to preserve the enforceability of Early Termination rights and the ability to close-out net under each of the Model Master Agreements (as applicable).

If a Danish Party (i.e. Danish credit institutions or certain Danish investment firms) is subject to measures under the Danish BRRD-rules, this will influence on the enforceability of the Counterparty's Early Termination rights, see section 1.6.1 above.

In addition, the general voidability rules of the Bankruptcy Act apply. Accordingly, the entering into of each of the Model Master Agreements (or an amendment thereto) or any transactions or any other action taken in connection therewith may be subject to challenge under (i) Section 72 of the Bankruptcy Act (if such action is taken after the Limitation Day) or (ii) Section 74 of the Bankruptcy Act (if such action is deemed an improper transaction and the Danish Party was, or became, insolvent as a result of the transaction, and the Counterparty knew, or ought to have known, of both the insolvency and of the circumstances which rendered the transaction improper). See also section 3.2.4.

3.2.2 *Assuming the parties* <u>*have*</u> *selected Automatic Close-Out of each Underlying Agreement (Division 1, Part II, Section C of the Schedule / Section 6.1 of the MNA Election Sheet[14]) and/or* ***all*** *of the Underlying Agreements provide for automatic early termination upon certain insolvency events to apply to the entity incorporated in Denmark, your opinion on whether the provisions of each Model Master Agreements permitting the non-defaulting party to terminate all the Underlying Agreements (including Uncovered Transactions / Additional Netted Agreements, if applicable) and all transactions done under them upon the insolvency of its counterparty would be enforceable under the laws of Denmark.*

[13] Under Danish law the reasons listed in (a) and (e) of § 3.1(C)(III) of the EFET Master Netting Agreement will in our view not per se be deemed insolvency based reasons as a dissolution or liquidation may not necessarily be caused by an insolvency related event or result in insolvency proceedings being commenced.
[14] In the case of the MNA, Automatic Close-Out applies if the parties leave Section 6.1 blank.

The election of Automatic Termination as set out in § 6 of the MNA or "automatic Close Out" as set out in Division I, Part II.C of the CPMA would not change the opinion provided in section 3.2.1 above. It is not a requirement that Danish Parties elect Automatic Termination as set out in § 6 of the MNA or "automatic Close Out" as set out in Division I, Part II.C of the CPMA to preserve close-out netting rights.

3.2.3 *Your opinion on whether the provisions of each Model Master Agreement provide for the calculation of a single Final Net Settlement Amount (see Sections 3 and 4 of the CPMA / Section 7 and 8 of the MNA) upon the insolvency of a counterparty would be enforceable in an insolvency of a party that is organized under the laws of Denmark.*

(a) Eligible Financial Obligations

In respect of claims which are Eligible Financial Obligations, a right to early terminate, close-out net and calculate a Final Net Settlement Amount of such claims under Sections 3 and 4 of the CPMA or Sections 7 and 8 of the MNA arising as the result of an insolvency of the Danish Party will, in our view, be enforceable under Danish law in accordance with its terms, subject to the qualifications set out below.

Assuming the Parties have not elected Automatic Termination or "automatic Close-Out" (as applicable), Section 206, Subsection 2 of the Capital Markets Act provides that, with legal effect towards the Danish Party's bankruptcy estate and creditors, it may be agreed that upon the occurrence of an event of default, close-out netting shall occur with respect to Eligible Financial Obligations when the Counterparty gives notice to this effect to the Danish Party. Section 206, Subsection 2 further provides that, if insolvency proceedings are commenced against the defaulting Danish Party, such Party may require that close-out netting be effected so that the Parties are placed in a position as if the close-out netting had occurred without undue delay after such time when the Counterparty became, or should have become, aware that insolvency proceedings were commenced against the Danish Party.

In addition, Section 201 of the Capital Markets Act provides that the valuation of financial obligations by a non-defaulting party in a close-out netting scenario must be on commercially reasonable terms.

Section 40, Subsection 2 of the Bankruptcy Act provides that any money claims in foreign currency filed in Danish bankruptcy or under formal restructuring proceedings must be converted into Danish Kroner at the exchange rate on the date of the order of such Danish Insolvency Proceedings. There is no legal authority on how Section 40, Subsection 2 of the Bankruptcy Act shall be applied in respect of claims under each of the Model Master Agreements. In our view the requirement for conversion will only relate to the net amount to be filed with the bankruptcy estate or under formal restructuring proceedings (i.e. after close-out netting, to the extent applicable, has been effected), see section 3.2.6.

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

Section 4 of the CPMA provides for a "rolling close-out netting" where each of the underlying master agreements may terminate at different times, but still subject to a master netting arrangement. In our view there is a material risk that this will be considered contrary to Section 206, subsection 2 of the Capital Markets Act, which in our reading implies that there is only fixed one early termination date.

Restrictions on close-out netting

As set out in section 1.6.2.6 above, a close-out netting or the subsequent calculation and payment of a Final Net Settlement Amount related thereto is voidable or challengeable, should Danish Insolvency Proceedings be commenced in respect of a Danish Party, to the extent:

- A close-out netting, which is carried out after the defaulting Danish Party has commenced formal restructuring proceedings, may include financial obligations that arose before the time when the non-defaulting party knew, or should have known, the circumstances occasioning the Limitation Day (*fristdagen*), see Section 207, Subsection 1 of the Capital Markets Act.

- A close-out netting, which is carried out after the defaulting Danish Party has been declared bankrupt, may include financial obligations that arose before the time when the non-defaulting party knew, or should have known, the circumstances occasioning the Limitation Day (*fristdagen*). A close-out netting balance may not include financial obligations which came into existence after the day that the bankruptcy of the Danish party was announced in the Danish Official Gazette (*Statstidende*), see Section 207, Subsection 2 of the Capital Markets Act.

- A financial obligation covered by Section 42, Subsections 3 and 4 of the Bankruptcy Act may be included in a close-out netting unless the non-defaulting party knew, or ought to have known, that the defaulting Danish Party was insolvent when the claim against such defaulting Danish Party was acquired or came into existence, see Section 208, Subsection 1 of the Capital Markets Act.

- A close-out netting may only be voidable pursuant to Section 69 of the Bankruptcy Act, if the close-out netting covered claims, which could not have been included in an agreed close-out netting in case of the Danish Party's bankruptcy, see Section 208, Subsection 1 and Section 207, Subsection 2.

In additional, we refer to Section 3.2.4 in respect of voidability.

(b) Obligations which are not Eligible Financial Obligations

In respect of obligations which are not Eligible Financial Obligations, a Counterparty will in our view most likely not be able to enforce a right to early terminate, close-out net and calculate a Final Net Settlement Amount arising as the result of an insolvency of the Danish Party under Sections 3 and 4 of the CPMA or Sections 7 and 8 of the MNA, as such insolvency events may not per se be deemed a material default under Danish law, which entitles the Counterparty to terminate the transactions.

Thus, in our opinion the bankruptcy estate will most likely have a right to cherry pick between obligations which are not Eligible Financial Obligations and prevent set-off of the Counterparty's claim under a transaction subject to any of the Model Master Agreements and all the Underlying Agreements (including Uncovered Transactions / Additional Netted Agreements, if applicable) which the bankruptcy estate has not stepped into with a claim of the bankruptcy estate arisen from another transaction under the relevant agreement in which the bankruptcy estate has stepped into (cherry picked).

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

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

We also refer to section 3.2.4 in respect of voidability.

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

Provisions in the Model Master Agreements and all the Underlying Agreements (including Uncovered Transactions / Additional Netted Agreements, if applicable) providing that certain calculations or determinations will be final, conclusive and binding may not be effective, if such calculations or determinations are incorrect and such provisions will not necessarily prevent judicial inquiry into the merits of such calculations or determinations.

(c) Master Agreement/Underlying Agreement covering where only some but not all obligations qualify as Eligible Financial Obligations

We note that where a Master Agreement/Underlying Agreement with an underlying portfolio of transactions, where only some but not all qualify as Eligible Financial Obligations, we are of the view, that close-out netting will still be effective for those obligations which qualify as Eligible Financial Obligations, provided that (i) this is not contrary to the terms of the relevant Master Agreement/Underlying Agreement, (ii) is the intention of the Parties and/or (iii) complies with any other requirement under the applicable law. We base this also on the wording of Section 206, subsection 1 of the Capital Markets Act, which states that the parties can agree that "the financial obligations comprised by the agreement" shall be subject to close-out netting. The consequence is, that application of Danish law in case of a Danish Party becoming subject to Danish Insolvency Proceedings may result in a splitting-up or segregation of the portfolios of transactions under the relevant Master Agreement/Underlying Agreement, as applicable, into multiple "netting pools" of disparate treatment, i.e. where some transactions may be subject to close-out netting under the Capital Markets Act and some transactions may not be subject to close-out netting but Danish law on set-off and cherry picking (right to step into a contract) will apply to such transactions/obligations instead. However, we note that there are to our knowledge no legal precedents in respect of this question and our view is primarily an interpretation based on general Danish legal principles and the wording of the Capital Markets Act. Accordingly, this view is subject to legal uncertainty.

Although the Capital Markets Act is silent on the matter, it is accepted in Danish legal theory that close-out netting between several agreements involving the same two parties can be agreed and will be comprised by the close-out netting rules in Chapter 36 of the Capital Markets Act, provided that all other requirements for such close-out netting have been fulfilled. Accordingly, we are of the view, that the Master Agreements will be enforceable under Danish law in respect of Eligible Financial Obligations. However, if not all of the underlying transactions/obligations are separately capable of close-out netting under the Capital Markets Act, we are of the view, that the entry into of a master netting agreement such as the Master Agreements will not cure the non-eligibility for close-out netting for such transactions/obligations.

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

3.2.4 *Your opinion on whether or not early termination, close-out netting or the calculation and payment of a Final Net Settlement Amount under the provisions of each Model Master Agreement are voidable, challengeable or in any way vulnerable to deletion by a liquidator or any third party if insolvency procedures are later opened against a party that is organized under the laws of your jurisdiction.*

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

In respect of applicability of the close-out netting rules under Danish law we refer to section 1.6.2 above. However, in our view, a Danish insolvency representative may be able to challenge a close-out netting which has been carried out with transactions/obligations which do not qualify as Eligible Financial Obligations, see section 3.2.3(b).

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

The initiation of Danish Insolvency Proceedings with the bankruptcy court in respect of a Danish Party may also have an effect on whether and when the Counterparty knew or ought to have known that the Danish Party was insolvent and may, thus, have an effect on (i) when the close-out netting may occur (absent automatic termination) under Section 206, Subsection 2 of the Capital Markets, see section 3.2.3, (ii) which financial obligations may be included in a close-out netting, see Sections 207 and 208 of the Capital Markets Act, see section 3.2.3, and (iii) whether set-off may be challenged under Section 42, Subsections 3 and 4 of the Bankruptcy Act.

3.2.5 *"**Cross Category Netting**" – since the Model Master Agreements contemplates the inclusion of various types of master agreements and other trading documentation covering both physical and financial trading, your* *opinion on any applicable issues that need to be considered as to the enforceability of netting between physical and financial transactions or various categories of physical products (see Annex A for potential categories).*

Your opinion should include a discussion of Danish insolvency laws as they would apply to the close-out and netting via each Model Master Agreement of obligations under different categories or types of traded products, and

a) *if any distinctions are applicable based on whether these products are traded under one or more Underlying Agreements,*

b) *if any distinctions are applicable when attempting to use a Model Master Agreement to net / set-off physically settled transactions when these involve the purchase, sale and/or optioning of different commodity types or categories (e.g. the netting obligations related to gas, power and coal trading) ("**Cross Product Netting**"), and*

c) *if any distinctions are applicable based on whether both financially settled swaps, swaptions and derivative transactions and physically settled forwards and options are traded under one or more Underlying Agreements with respect to each Master Agreement.*

In our opinion and based on the assumption that the Core Provisions in the Model Master Agreements have not been changed,

1. the fact that transactions are traded under one or more Underlying Agreements,
2. the use of a Model Master Agreement to early terminate, close-out and calculate a Final Net Settlement, including for physically settled transactions involving the purchase, sale and/or optioning of different commodity types or categories (e.g. the netting obligations related to gas, power and coal trading), and
3. irrespective of whether both financially settled swaps, swaptions and derivative transactions and physically settled forwards and options are traded under one or more Underlying Agreements with respect to each Model Master Agreement,

does not change the substance of the conclusions reached under sections 3.2.1 and 3.2.2 in relation to the close-out netting provisions of each of the Model Master Agreements in respect of Eligible Financial Obligations.

3.2.6 *Assuming that the parties have selected a Base Currency (Division 1, Part VI of the CPMA Schedule and section 8.3(C) of the MNA Election Sheet) other than the legal currency of your jurisdiction in which the insolvent party is organized, your opinion on whether payment of the Final Net Settlement Amount in that currency would be enforceable under the laws of your jurisdiction.*

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

There is to our knowledge no Danish legal authority on this point, but in our view the purpose of the close-out netting provisions of the Capital Markets Act, including the fact that the Capital Markets Act explicitly states that a bankruptcy estate of a Danish Party is bound by a close-out netting agreement (as further discussed under section 3.2.1 above) points to the conclusion that a close-out netting would be completed based on such agreed currency and only if the resulting net balance was in favour of the Counterparty, would the Counterparty have to file its claim for such net payment in the bankruptcy estate of the Danish Party in Danish Kroner calculated on the date of the commencement of such bankruptcy proceedings (*dekretdag*). In our view, a similar principle will apply in case of initiation of formal restructuring proceedings, cf. Section 12g of the Bankruptcy Act.

3.2.7 *Your opinion on whether the rights of a party are enforceable in accordance with the terms of each Model Master Agreement, irrespective of the insolvency of the entity incorporated in your jurisdiction.*

In our opinion, save for as discussed under sections 3.2.1 and 3.2.2 above, the rights of a non-defaulting Counterparty in respect of close-out netting are enforceable in accordance with the terms of each of the Model Master Agreements, irrespective of the insolvency of the Danish Party.

3.2.8 *Your opinion on whether the parties' agreement on governing law of each Model Master Agreement and submission to jurisdiction will be upheld in Denmark, and the consequences if it were not.*

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

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

A final judgment of a German or an English court, respectively, against the Danish Party in respect of any suit, action or proceeding arising out of or relating to the Model Master Agreements will be recognised and enforced by the courts of Denmark, subject to and in accordance with the provisions of the Brussels I-Regulation and the bilateral agreement in relation there-to between Denmark and the European Community of 19 October 2005 (and any protocol and accession convention in respect thereof) and Danish Act No. 1563 of 20 December 2006 as amended, implementing the Brussels I-Regulation and such bilateral agreement in Denmark.

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

3.2.9 *Your opinion on whether, pursuant to the EU Parliament and Council Regulation No. 2015/848 of 20 May 2017 (the "**EU Insolvency Regulation**") most provisions of which became directly applicable in all Member States as from 26 June 2017, a bankruptcy court in your jurisdiction would apply the laws relevant to close-out netting and set-off of the governing law of each Master Agreement if they differ from the analogous insolvency laws of your jurisdiction (please see paragraph III.B.18.c below where this topic is to be discussed at greater length). In addition, on the assumption that one or more Underlying Agreements is not valid, binding and enforceable in accordance with its own respective terms and conditions, your opinion on whether the close-out netting and/or set-off provisions under each Master Agreement would nevertheless become valid by operation of the EU Insolvency Regulation.*

With respect to the Danish position under the EU Insolvency Regulation, i.e. that the EU Insolvency Regulation is not applicable in Denmark, we refer to section 1.6.1 above. As a consequence, on the assumption that one or more Underlying Agreements is not valid, binding and enforceable in accordance with its own respective terms and conditions, the close-out netting and/or set-off provisions under each Master Agreement would not become valid in Denmark by operation of the EU Insolvency Regulation.

3.2.10 *A general discussion of, and your opinion regarding, whether or not the mere institution of proceedings seeking a judgment of insolvency and/or the opening of the proceedings has any implication on the enforceability or operation of the Model Master Agreement.*

With respect to Danish Insolvency Proceedings, we refer to section 1.6.1. In our opinion, save as for as discussed under sections 3.2.1-3.2.4 above, the mere institution of proceedings seeking a judgment of insolvency and/or the opening of the proceedings has no implication on the enforceability or operation of the close-out netting provisions of each of the Model Master Agreements.

3.2.11 *An analysis and your opinion regarding the advisability in Denmark of using each Model Master Agreement to impose uniform default events across all types and categories of trades (effectively superseding the default terms of underlying master agreements or deal documentation) as opposed to allowing such underlying default provisions to operate for their respective categories of trades even if to do so might permit close-out and set-off of some trades governed by the relevant Master Agreement, but not others.*

The answer to this question is highly dependent on each party's specific preferences, contract types and other risk management techniques used. In our view, Danish law does not provide for specific incentives to choose using each of the Model Master Agreements to impose uniform default events across all types and categories of trades, or not to do that. Rather, we recommend that parties analyse this question in light of their specific circumstances.

CPMA CSA / MNA CSA

3.2.12 *Your opinion on whether an entity duly organized or incorporated under the laws of Denmark (or its administrator, provisional liquidator, receiver, trustee or other similar official) will be able to recover any transfer of Eligible Credit Support made to the transferee during a certain "suspect period" preceding the date of the insolvency that makes the recovery vulnerable to being treated as preferential or otherwise suspect (or other similar treatment) by such official and therefore subject to avoidance. If such a "suspect period" exists, please give your opinion on whether the substitution of Eligible Credit Support by a counterparty during this period would* *invalidate an otherwise valid transfer, assuming that the exchanged assets are of no greater value than the assets that they are replacing. Please also include an analysis of the relevant time-period(s) surrounding the insolvency.*

The voidability rules of the Bankruptcy Act (rules on a "suspect period") apply generally, also to financial collateral arrangements, unless exceptions are specifically set out in Chapter 36 of the Capital Markets Act.

Of particular relevance in respect of provision of security is Section 70 of the Bankruptcy Act which states that if security (i) is not created prior to or simultaneously with the establishment of the debt which it is securing (i.e. it is securing old debt), or (ii) is not perfected without undue delay after the creation of such debt, such security may be voidable (*omstødelig*) if Danish Insolvency Proceedings are commenced against the Danish Party during the three-month period starting from the date of the act of perfection of such Eligible Danish Collateral. According to case law and legal literature, the terms "simultaneously" and "without undue delay" must be strictly interpreted but taking into account the concrete circumstances relating to the relevant action required for perfection. As we have noted above in section 3.1.5, we are of the view that the title transfer arrangement under the CSAs will be characterised as being a security interest in substance, and therefore each transfer of Eligible Credit Support will be considered a security interest in respect of the voidability rules, including Section 70 of the Bankruptcy Act.

Notwithstanding the above, according to Section 202, Subsection 2 of the Capital Markets Act a financial collateral arrangement may include a provision to the effect (and therefore not be voidable under Sections 70 or 72 of the Bankruptcy Act, however, in case of the latter unless such provision of financial collateral does not appear ordinary) that the parties are obliged to provide financial collateral or additional financial collateral in order to take account of changes in the value of the collateral or amount of the claims covered by the agreement, provided that the changes have occurred after the agreement was entered into, and provided that the changes were caused by circumstances relating to market conditions, and subject to certain further conditions.

In respect of substitution and voidability, reference is made to section 3.1.7 above.

We also note, that in case the entry into of any of the Master Agreements with CSA and the elections made therein change the scope of secured obligations under security documents already provided or if there are no security documents in respect of the exposure under any of the Underlying Agreements, there will be a risk that the change that a new security interest shall also cover debt already outstanding may be set aside against a Danish Party pursuant to Section 70 during a three-month voidability period after the date of the act of perfection.

Section 72 and Section 74 of the Bankruptcy Act also apply generally, including in respect of financial collateral arrangement, but do not have any relevance for such collateral arrangement. Reference is made to the general description in section 3.2.4.

3.2.13 Your opinion on whether the transfer of additional Eligible Credit Support pursuant to the mark-to-market provisions of each CSA during any applicable "suspect period" described above is subject to avoidance, either because it will be considered to relate to an antecedent or pre-existing obligation or for some other reason.

Please refer to section 3.2.12 above.

3.2.14 *A general discussion of, and your opinion regarding, whether or not the mere institution of proceedings seeking a judgment of insolvency and/or the opening of the proceedings has any implication on the enforceability or operation of each CSA.*

In our view, a financial collateral arrangement which is properly entered into in accordance with the provisions of Chapter 36 of the Capital Markets Act described in other parts of this section 3.2 and sections 3.1.5-3.1.12 is binding on a Danish Party and is also binding on a bankruptcy estate of a Danish Party, provided the Danish Party is not a credit institution or an investment firm subject to the Danish BRRD-rules, in which case certain modifications apply, please see section 1.6.1 (*Danish BRRD-rules*).

3.2.15 *An analysis of Danish law issues surrounding the insolvency of a recipient of Eligible Credit Support, when the recipient of the Eligible Credit Support is an entity based in Denmark, with the provider of the Eligible Credit Support being an entity based outside Denmark. If title vests in the recipient because of an outright transfer of Eligible Credit Support, is there any way that a bankruptcy court in your jurisdiction can bolster or re- characterize the nature of the providing party's rights to that Eligible Credit Support.*

a) *What rights does the providing party have against such an asset located in your local jurisdiction upon the insolvency of the recipient party?*

b) *Are there other steps that the providing party should be taking to minimize its risk and best protect such an asset?*

With respect to a), we are of the opinion that the providing party has no rights under Danish law against such an asset located in Denmark upon the insolvency of the recipient Danish Party, which the providing party would not otherwise have.

With respect to b), we refer to section 3.1.5.

3.2.16 *An analysis of the rights and obligations of an insolvent party organized in Denmark with respect to Eligible Credit Support held by a recipient party organized outside Denmark. If title vests in the recipient because of an outright transfer of Eligible Credit Support, is there any way that a bankruptcy court in Denmark can undermine or re-characterize the nature of the recipient's rights to that Eligible Credit Support?*

We refer to section 3.1.5.

Model CPMA combined with the CPMA CSA / Model MNA combined with the MNA CSA

3.2.17 *Your opinion on whether the rights of the transferee of Eligible Credit Support would be enforceable in accordance with the terms of: (i) the model CPMA and the CPMA CSA; and (ii) the model MNA and the MNA CSA, irrespective of the insolvency of the providing party incorporated or otherwise organized under your jurisdiction.*

With respect to transferee rights to Eligible Credit Support upon the occurrence of a Close-Out Event, we refer to section 3.1.11.

Subject to the above, we are of the opinion that the rights of the transferee of Eligible Credit Support would be enforceable in accordance with the terms of: (i) the model CPMA and the CPMA CSA; and (ii) the model MNA and the MNA CSA, irrespective of the insolvency of the providing Danish Party.

3.2.18 *A general discussion of, and your opinion regarding, Danish insolvency laws, and any relevant terminology with an emphasis on law and precedent applicable to the concepts of close-out netting and set-off of claims between parties, and:*

a) how generally applicable statutory or common law set-off (or similar) rights could interact with the contractual netting and set-off rights contained in each Master Agreement, each CSA and each Master Agreement as modified by the relevant CSA;

b) applicable law which might have an impact on the respective priorities assigned to such rights by a court in your jurisdiction; and

c) specifically, whether the EU Insolvency Regulation affects local jurisdiction conflict of law rules such as overruling local jurisdiction insolvency laws if the parties to the Master Agreement have opted for a jurisdiction other than the jurisdiction relevant to the insolvent party. In particular, your opinion on whether or not a bankruptcy court in your jurisdiction would apply the EU Insolvency Regulation to close-out netting and/or set-off such that it would apply the governing law of the Master Agreement or CSA as the law applicable to close-out netting and/or set-off or whether it would seek to apply local law in its stead;

d) whether, on the assumption that one or more Underlying Agreements is not valid, binding and enforceable in accordance with its own respective terms and conditions, the close-out netting and/or set-off provisions under each Master Agreement when combined with the relevant CSA would nevertheless become valid by operation of the EU Insolvency Regulation; and

e) *whether the laws of your jurisdiction consider set-off and close-out netting as separate or similar rights.*

We refer to the discussions in sections 1.6.1-1.6.3, section 3.1.4 and section 3.2.9.

3.3 Cross Affiliate Netting and Set-off

Since the versions of the Model CPMA and Model MNA you are reviewing do not address this topic and are not intended for these purposes, but because this issue may be of use to some EFET members, only to the extent that there is established law in Denmark on the subject, a summary of such law and a review of the different risk considerations involved in choosing to add multiple parties to each Model Master Agreement.

There is no established law in Denmark on the subject. We note that the rules on close-out netting and financial collateral arrangements in Chapter 36 of the Capital Markets Act in our reading only applies to bilateral relationships.

3.4 Multi-branch Parties

In the case of a counterparty that has entered into transactions under a Master Agreement as a multi-branch party, it is clearly necessary to obtain enforceability opinions from each country where a branch of that counterparty is located that has entered into one or more transactions under that Master Agreement. In this regard, please provide your opinion on the following:

3.4.1 *whether there would be any change in your conclusions expressed in section 3.2 above concerning the enforceability of close-out netting under each Master Agreement and each Master Agreement combined with the relevant CSA (given the assumption in section 2.g) above);*

We understand this question as relating to a Danish Party which has entered into transactions under Underlying Agreements through offices in Denmark as well as through one or more branches located abroad. After entering into these transactions and prior to the maturity thereof, the Danish Party becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of Denmark.

In our view, there will be no change in our conclusions expressed in section 3.2 above concerning the enforceability of close-out netting under each Master Agreement and each Master Agreement combined with the relevant CSA, since Danish law does not consider a branch as a separate legal entity. Consequently, Danish bankruptcy proceedings would cover all assets of a Danish Party notwithstanding whether it has entered into transactions under some or all of the Underlying Agreements on a multibranch basis prior to its insolvency or not.

3.4.2 *whether separate proceedings could be brought in your jurisdiction with respect to assets and liabilities of the overseas branch located in Denmark of a counterparty organized or incorporated outside Denmark upon the commencement of insolvency proceedings against the counterparty in that outside jurisdiction. Your opinion should include how the relevant authorities in Denmark would treat the proceedings in an outside jurisdiction by, for example, deferring to them so that the assets and liabilities of the branch would be treated as part of the proceedings against the counterparty. Please also include whether or not in your opinion local creditors of the branch would be able to initiate separate proceedings in Denmark even if the relevant authorities did not do so; and*

We understand this question as relating to a Counterparty incorporated in a country other than Denmark which has entered into transactions under Underlying Agreements through its home office outside Denmark as well as through one or more branches, including a branch or office located in Denmark. After entering into these transactions and prior to the maturity thereof, the Counterparty becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of its home country.

A legal entity incorporated outside Denmark cannot be subject to insolvency proceedings in Denmark, unless it is deemed to have its actual place of business in Denmark. In this context, the Danish courts will look to whether the management of the legal entity has its *de facto* seat in Denmark (notwithstanding the formal registration thereof).

If such foreign legal entity has a Danish subsidiary, such Danish subsidiary may be declared bankrupt in Denmark. Under Danish law, a Danish branch of a foreign legal entity does not constitute a separate legal entity and cannot (as the main rule) be declared bankrupt in Denmark.

Consequently, Danish law would in our opinion defer to the proceedings in the country of the Counterparty, so that the assets and liabilities of the Danish branch would be handled as part of the proceedings for the Counterparty in its home country.

3.4.3 *in the event that proceedings are brought in Denmark with respect to the assets and liabilities of the branch located in Denmark, whether or not the administrator, provisional liquidator, receiver, trustee or other similar official and/or the courts in Denmark would include the Counterparty's position under its Underlying Agreements or underlying transactions among the assets of its branch and, if so, recognize their respective close-out and netting provisions in accordance with their terms (you may assume that the close-out netting provisions under the relevant Underlying Agreements or underlying transactions would be enforceable in the proceedings against the counterparty brought outside Denmark).*

Not applicable as there would in our view not be separate proceedings in Denmark, see our answer to question 3.4.2 above.

3.5 CSA Specific Permutations.

In relation to each of the questions in section 3.2 above, the assumption is that the providing party is a counterparty incorporated or otherwise organised in Denmark. Please consider your answer to each question and indicate how your answer would be different, if at all, assuming instead that:

a) The providing party is a branch located in your jurisdiction of a bank organised outside Denmark;

b) The providing party is neither incorporated nor otherwise organised in nor a branch located in Denmark, but has assets in Denmark;

c) None of the above applies to the providing party (that is, it has no connection with Denmark), but the margin was issued by the government of Denmark or comprises cash in the lawful currency of Denmark.

With respect to a): Under Danish law, a Danish branch of a foreign legal entity does not constitute a separate legal entity and cannot (as the main rule) be declared bankrupt in Denmark. Accordingly, any close-out netting and financial collateral related questions would in our view not be governed by Danish law in this situation. We also note that the Danish BRRD-rules expressly do not apply to a Danish branch of a foreign EU/EEA-based credit institution (bank).

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

Accordingly, any close-out netting and financial collateral related questions would in our view not be governed by Danish law in this situation.

With respect to c): This scenario would in our view not be regulated by Danish law.

3.6 General Validity of each Master Agreement and each CSA, Choice of Law and Jurisdiction

3.6.1 *Given your above stated assumptions, are the: (i) CPMA and the CPMA CSA; and (ii) MNA and the MNA CSA legal, valid and binding under the laws of your jurisdiction?*

In our view, subject to the assumptions and qualifications of this opinion, and the comments and responses elsewhere in this section 3 of this opinion, (i) the CPMA and the CPMA CSA; and (ii) the MNA and the MNA CSA are legal, valid and binding under the laws of Denmark.

However, please note that in general, the validity and enforceability of an agreement may be affected by generally applicable principles of "reasonableness and fairness" (*urimeligt eller i strid med redelig handlemåde*) as set out in Section 36 of the Danish Contracts Act (*aftaleloven*)[15] and "breach of expectations" (*bristede forudsætninger*), but such principles are rarely used on agreements between professional parties.

3.6.2 *Are there any applicable limitations on the courts in Denmark with regard to upholding a choice of local law and submission to the jurisdiction of local courts?*

We refer to our response to sections 3.1.8 and 3.2.8.

Danish courts will uphold a choice of Danish law in accordance with and subject to the Rome Convention, and submission to the jurisdiction of the courts of Denmark in accordance with and subject to the Brussels I-Regulation.

3.7 Other Provisions

3.7.1 *Are there any other provisions of either Master Agreement or either CSA that, given a choice of your local law, either:*

a) need to be revised in order to be enforceable in your jurisdiction; or

b) the legal efficacy of which could be materially improved upon or optimized with different wording (given such provision's apparent intent)?

Please provide suggested revisions.

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

4. QUALIFICATIONS

This opinion is subject to the following additional qualifications:

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

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

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

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

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

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

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

4.7 Enforcement may be limited by insolvency, bankruptcy, formal restructuring proceedings (rekonstruktion) or other laws affecting creditors' rights in general pursuant to the Bankruptcy Act, which includes claw back provisions (omstødelige dispositioner) which may be used if a creditor has received an otherwise preferential position in the period up to the insolvency proceeding, or pursuant to the Danish BRRD-rules. Reference is also made to section 1.6.1.

4.8 According to Section 201 in the Capital Markets Act, the realisation and valuation of the financial collateral or financial obligations, which are being close-out netted, must be conducted in a commercially reasonable manner.

4.9 With regard to jurisdiction, a Danish court may stay or - if appropriate - dismiss proceedings inter alia if concurrent proceedings involving the same cause of action and between the same parties are instituted before the courts of another EU/EEA member state, if related actions are pending in the courts of another EU/EEA member state or if the action comes within the exclusive jurisdiction of another court in each case in accordance with the provisions of the Brussels I-Regulation or the Hague Convention.

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

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

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

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

4.14 If, the United Kingdom and the European Union or Denmark have not agreed and implemented arrangements that continue the position with respect to enforcement of final judgments of an English court in Denmark described in section 3.1.8 and have not agreed and implemented other arrangements for the enforcement of final judgments of an English court in Denmark, then a final judgment of an English court against a Danish Party in respect of any suit, action or proceeding arising out of or relating to the Agreements will neither be recognised nor enforced by the Danish courts without re-examination of the substantive matters thereby adjudicated. In connection with any such re-examination, the English judgment will generally be accepted as material evidence, but the parties must provide the Danish courts with satisfactory information about the contents of English law and, if they fail to do so, the Danish courts may apply Danish law instead.

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

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

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

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

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

5. RECENT & PENDING DEVELOPMENTS

Please highlight any recent or anticipated future developments in the laws, rules and/or regulations of your jurisdiction or those of the European Union that may affect the laws of your jurisdiction and any of the opinions that your have provided in respect of each Master Agreement and each CSA. For example, the following developments would be of interest to EFET members:

The effect of Brexit on this opinion – England and Wales only.

The Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) was implemented into Danish law in December 2020, generally with effect from 28 December 2020. The provisions included in the adopted Act to amend the Financial Business Act and the Danish BRRD-rules will in our view not affect conclusions in this opinion.

Otherwise, we are not aware of any recent or anticipated future developments in the laws, rules and/or regulations of Denmark that may affect the laws relevant for this opinion and any of the opinions that we have provided in respect of each Master Agreement and each CSA.

This opinion is addressed exclusively to EFET and (i) is for the sole benefit of EFET and its members who have subscribed to the EFET Legal Module; (ii) 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 our prior written approval; but (iii) may be made available by relevant EFET members to the appropriate regulatory authorities upon their request, provided that (A) such disclosure is for information purposes only, and we do not assume any duty or liability to the recipient, and (B) none of such persons to whom this opinion is disclosed may rely on this opinion for its own benefit or for that of any other person.

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

Yours sincerely,
Kromann Reumert

Susanne Schjølin Larsen
Partner

Andreas Hallas
Partner

ANNEX A

Transactions entered into under the Underlying Agreements[16] (provided by EFET)

A. Energy Transactions

Commodity Transaction. A transaction in which one party agrees to buy from or sell to the other party a specified quantity of commodity (e.g., base metals, gas, oil, electricity, emission rights or freight) in exchange for payment of a specified price, which becomes due on the same day, two days later or on another agreed future date. The transaction may be settled by physical delivery of the quantity of commodity in exchange for the specified price or may be cash settled based on the difference between the market price of the commodities on the settlement date and the specified price.

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

Commodity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic amounts of the same currency based on the price of a commodity, such as base metals, gas, oil, electricity, emission rights or freight, or a futures contract on a commodity (e.g., Brent Crude Futures on the ICE Futures Europe Exchange); all calculations are based on a notional quantity of the commodity.

B. Energy Related Transactions

Emissions Allowance Transaction. A transaction, structured in the form of a swap, cap, collar, floor or some combination thereof, in which one party agrees to buy from or sell to the other party a specified quantity of a right to emit one tonne of carbon dioxide (CO2) or other emissions product such as Nitrogen Oxide ("NOx") or sulfur dioxide ("SOx") during a specified period valid only for the purposes of meeting the requirements of applicable law and which is capable of being transferred from the seller to the buyer under a trading system established pursuant to applicable law.

Renewable Energy Certificates ("RECs") Transaction. A transaction in which one party agrees to buy from or sell to the other party one or more fungible renewable energy certificates, each evidencing the production of 1MWhr of renewable energy and which is capable of being issued, evidenced, traded and redeemed in accordance with international standard practices such as the European Energy Certificate System. .

Weather Transaction. A transaction, structured in the form of a swap, cap, collar, floor, or some combination thereof, between two parties in which the underlying value of the transaction is based on a rate or index pertaining to weather conditions, which may include measurements of heating, cooling, precipitation and wind.

Weather Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation to receive a payment determined by reference to the amount by which a particular release of

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

statistical data on weather conditions, which may include heating, cooling, precipitation and wind either exceeds (in the case of a call option) or is less than (in the case of a put option) a specified strike level.

C. Other Transactions

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

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

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

Forward Rate Transaction. A transaction in which one party agrees to pay a fixed rate for a defined period and the other party agrees to pay a rate to be set on a specified date in the future. The payment calculation is based on a notional amount and is settled based, among other things, on the difference between the agreed forward rate and the prevailing market rate at the time of settlement.

Swap Option. A transaction in which one party grants to the other party the right (in consideration for a premium payment), but not the obligation, to enter into a swap with certain specified terms. In some cases the swap option may be settled with a cash payment equal to the market value of the underlying swap at the time of the exercise.

Total Return Swap. A transaction in which one party pays either a single amount or periodic amounts based on the total return on one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity"), calculated by reference to interest, dividend and fee payments and any appreciation in the market value of each Reference Obligation, and the other party pays either a single amount or periodic amounts determined by reference to a specified notional amount and any depreciation in the market value of each Reference Obligation. A total return swap may (but need not) provide for acceleration of its termination date upon the occurrence of one or more specified events with respect to a Reference Entity or a Reference Obligation with a termination payment made by one party to the other calculated by reference to the value of the Reference Obligation.

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

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

For purposes of Bullion Trades, Bullion Options and Bullion Swaps, "Bullion" means gold, silver, platinum or palladium and "Ounce" means, in the case of gold, a fine troy ounce, and in the case of silver, platinum and palladium, a troy ounce.

Equity Index Transaction. A transaction in which one party agrees to buy from or sell to the other party a specified quantity of shares of an issuer or a basket of shares of several issuers for payment of a specified price for settlement either on a "spot" or two-day basis or a specified future date. The transaction may be settled by physical delivery of the agreed quantity of shares in exchange for the specified price or may be cash settled based on the difference between the index value on the settlement date and the specified index value.

Equity Transaction. A transaction in which one party agrees to buy from or sell to the other party a specified quantity of shares included in an equity index for payment of a specified price for settlement either on a "spot" or two-day basis or a specified future date. The transaction may be settled by physical delivery of the agreed quantity of shares in exchange for the specified price or may be cash settled based on the difference between the market price of the shares on the settlement date and the specified price.

Equity Index Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right to receive a payment equal to the amount by which an equity index either exceeds (in the case of a call) or is less than (in the case of a put) a specified strike price.

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

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

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

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

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

Credit Protection Transaction.[17] A transaction in which one party pays either a single fixed amount or periodic fixed amounts or floating amounts determined by reference to a specified notional amount, and the other party (the credit protection seller) pays either a fixed amount or an amount determined by reference to the value of one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity") upon the occurrence of one or more specified credit events with respect to the Reference Entity (e.g., bankruptcy or payment default). The amount payable by the credit protection seller is typically determined based upon the market value of one or more debt securities or other debt instruments issued, guaranteed or otherwise entered into by the Reference Entity. Credit protection transactions may also be physically settled by payment of a specified fixed amount by one party against delivery of specified Reference Obligations by the other party. A credit protection transaction may also refer to a "basket" of two or more Reference Entities.

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

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

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

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

Economic Statistic Transaction. A transaction, structured in the form of a swap, cap, collar, floor, or some combination thereof, between two parties in which the underlying value of the transaction is based on a rate or index pertaining to statistical data on macro economic conditions, which may include economic growth, retail sales, inflation, consumer prices, consumer sentiment, unemployment and housing.

Economic Statistic Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation to receive a payment determined by reference to the amount by which a particular release of statistical data on macro economic conditions, which may include economic growth, retail sales, inflation, consumer prices, consumer sentiment, unemployment and housing either exceeds (in the case of a call option) or is less than (in the case of a put option) a specified strike level.

Foreign Exchange Transaction. A transaction providing for the purchase of one currency with another currency providing for settlement either on a "spot" or two-day basis or a specified future date. The transaction may be settled by physical delivery of the agreed currency or unit of account in exchange for payment of the agreed other currency or unit of account, or may be cash settled

[17] Some market participants may refer to credit protection transactions as credit swaps, credit default swaps or credit default options.

based on the difference between the market price of the agreed other currency or unit of account on the settlement date and the specified price.

Interest Rate Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an interest rate either exceeds (in the case of a call option) or is less than (in the case of a put option) a specified strike rate.

Interest Rate Swap. A transaction in which one party pays periodic amounts of a given currency based on a specified fixed rate and the other party pays periodic amounts of the same currency based on a specified floating rate that is reset periodically, such as the London inter-bank offered rate; all calculations are based on a notional amount of the given currency.

Repurchase Transaction. A transaction in which one party agrees to sell securities to the other party and such party has the right to repurchase those securities from such other party at a future date.

Securities Lending Transaction. A transaction in which one party transfers securities to a party acting as the borrower in exchange for a payment or a series of payments from the borrower and the borrower's obligation to replace the securities at a defined date with identical securities.

ANNEX B

Elections in each of the Model Master Agreements (provided by EFET)

Underlying Agreements

CPMA: Division 1, Part I, Section A / MNA: Section 2.1, Part I of the Election Sheet – The Underlying Agreements selected shall be the GTMA, EFET Power Agreement (Version 2.1(a)/September 21, 2007), EFET Gas Agreement (Version 2.0(a), May 11, 2007), EECS Certificate Master Agreement (Version 1.0/14 December 2013), ISDA Master Agreement (either the 1992 or the 2002 versions). Each of the Underlying Agreements is governed by either English or German law save in respect of the ISDA Master Agreement which is governed by either English, New York, Irish or French law.

Excluded Agreements

CPMA: Division 1, Part I, Section B / MNA: Section 2.1, Part I of the Election Sheet – There shall be no **Excluded** Agreements.

Uncovered Transactions / Additional Netted Agreements

CPMA: Division 1, Part I, Section C / MNA: Part III of the Election Sheet
- Uncovered Transactions / Additional Netted Agreements should be included but all such transactions will be long form confirmations incorporating, in substantially their original form, the terms and conditions of one of the Underlying Agreements identified above save that an Uncovered Transaction / Additional Netted Agreement shall also include confirmations incorporatingthe short term flat NBP 2015 trading terms and conditions which have not been amended and are therefore not subject to an NBP Master. In respect of the CPMA only, you are requested to confirm whether or not it is necessary to elect that close-out netting applies to Uncovered Transactions (please note that, in respect of the MNA, close-out netting automatically applies to Additional Netted Agreements) given this assumption and to tailor your opinion accordingly.

Close-Out Events

CPMA: Division 1, Part II, Section A / MNA: Section 3.1, Part 1 of the Election Sheet: - 'Close-Out Event' means any events that entitle close-out under the Underlying Agreements. In respect of the CPMA only, given the Assumption in relation to Uncovered Transactions, you are requested to confirm whether or not it is necessary to check all boxes or all boxes save for 'Uncovered Transaction Default' and to tailor your opinion accordingly.

Excluded Events

CPMA: Division 1, Part II, Section B / MNA: Section 3.2, Part 1 of the Election Sheet: - 'Excluded Events' – the first three boxes will be checked.

Automatic Close-Out of Underlying Agreements

CPMA: Division 1, Part II, Section C / MNA: Section 3.2, Part 1 of the Election Sheet: – In respect of the CPMA, assume the box is checked and that the rewrite of this provision contained in the Schedule is operative. In respect of the MNA, assume the box is unchecked.

CPMA: Division 1, Part III / MNA: Section12.1, Part 1 of the Election Sheet: - Additional Acknowledgements and Representations – none.

CPMA: Division 1, Part IV / MNA: Section 12.2, Part 1 of the Election Sheet: - Governing Law - English and German law applies, in the alternative.[1]

CPMA: Division 1, Part VII / MNA: Section 12.2, Part 1 of the Election Sheet: - Assignment. In respect of the CPMA, no election, Section 7 applies but is amended as set out at (a) and (b) of the Election Sheet. In respect of the MNA, Section12.5(A) shall be operative in respect of Party A and Party B.[2]

The following shall apply:

	CPMA: Division 1, Part VIII	**MNA: Election Sheet**
Set-off of Final Net Settlement Amount	10.1	Section 10.1(A)
No Waiver	10.2	Automatically included (see Section 10.8 of the MNA)
Suspension	10.4	Section 10.1(B)
Automatic Early Termination &	10.5	Section 6.4
Adjustment for Bankruptcy		
Benefit of Credit Support	10.7	Section 9.1
Withholding Final Net Settlement Amount	10.8	No equivalent

- **CPMA: Division 1, Part X / MNA:** Part II of the Election Sheet - no additional terms.
- **CPMA only**: Division 2, to apply as set out in the Schedule.