WHITE & CASE

MEMORANDUM
ISSUED IN CONNECTION WITH THE EFET MASTER NETTING AGREEMENT AND THE TBMA CROSS PRODUCT MASTER AGREEMENT

December 10, 2014

White & Case
Na Příkopě 14
110 00 Prague 1
Czech Republic

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

Re: EFET Master Netting Agreement and TBMA Cross-Product Master Agreement

Dear Sirs:

1. INTRODUCTION

1.1 Subject matter of this Memorandum

1.1.1 You have asked us to express our views in respect of the laws of the Czech Republic on certain provisions of:

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

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

(EFET Master Netting Agreement and Cross-Product Master Agreement together the "**Master Agreements**" and each of them a "**Master Agreement**");

(c) EFET Cross-Product Credit Support Annex to the Cross-Product Master Agreement (Version 1.0, published 23 June 2003) ("**CSA to Cross-Product Master Agreement**");

(d) EFET Cross-Product Credit Support Annex to the Master Netting Agreement (Version 1.0, published 1 February 2011) ("**CSA to EFET Master Netting Agreement**")

(CSA to Cross-Product Master Agreement and CSA to EFET Master Netting Agreement together the "**Credit Support Annexes**" and each of them a "**Credit Support Annex**" or "**CSA**"); and

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

(together, the "**EFET Documents**").

1.2 Terms of Reference

1.2.1 Matters relating to Czech tax law (including any published general practice of the Czech revenue authorities) are outside the scope of this memorandum (this "**Memorandum**") and we express no views on such matters herein.

1.2.2 The EFET Documents (if governed by Czech law) as well as this Memorandum expresses and describes Czech legal concepts in the English language rather than in their Czech form and such expressions and/or descriptions may not be fully identical in their meaning to the underlying Czech law concepts. Any issues of interpretation arising in respect of any EFET Document which is in the English language or this Memorandum will be determined by the Czech courts in accordance with Czech law and we express no views on the interpretation that the Czech courts may give to any such expressions or descriptions.

1.3 Definitions

1.3.1 The phrase "**this jurisdiction**" and words of similar import, in this Memorandum, refer to the Czech Republic.

1.3.2 Terms defined or given a particular construction in the Master Agreements have the same meaning in this Memorandum (except where the context otherwise requires).

1.3.3 A reference to a "**Netted Agreement**" shall mean any of the transactions entered into under Master Agreements listed in Annex II to this Memorandum and falling within the scope of the EFET Master Netting Agreement.

1.3.4 A reference to a "**Principal Agreement**" shall mean any of the transactions entered into under Master Agreements listed in Annex II to this Memorandum and falling within the scope of the Cross-Product Master Agreement.

1.3.5 Terms defined in the plural shall have the same meanings when used in the singular and *vice versa*.

1.3.6 A reference to a "**Clause**" is to a section (§) of EFET Master Netting Agreement or clause of Cross-Product Master Agreement and a reference to a "Paragraph" is to a paragraph of this Memorandum (except where the context otherwise requires).

1.3.7 The following terms and expressions shall have the meanings specified below:

(a) A reference to any person being "**insolvent**" shall mean that person being insolvent (in Czech, *v úpadku*) within the meaning set forth in Section 3 of the Insolvency Act (Act No. 182/2006 Coll., on Insolvency and the Procedures of Resolving Insolvency, as amended, hereinafter the "**Insolvency Act**") or subject to insolvency proceedings or moratorium within the meaning of Sections 2(a) or 115 et seq. of the Insolvency Act or any equivalent proceedings in any foreign jurisdiction;

(b) A reference to any person being "**solvent**" shall mean that person being neither insolvent nor subject to any Czech insolvency proceedings or any equivalent proceedings in any foreign jurisdiction.

1.4 Scope of Review

For the purpose of issuing this Memorandum we have reviewed only the versions of the EFET Documents referred to in Paragraph 1.1 of this Memorandum. This Memorandum does not relate to any tax, accounting or regulatory matters except to the extent expressly referred to in this Memorandum. This Memorandum does not relate to any individual transactions under the Netted Agreements or Principal Agreements. We express no opinion as to any provisions of the EFET Documents, other than those to which express reference is made in this Memorandum except insofar as such provision relates to the effectiveness of the Netting Provisions (as defined in Paragraph 4.1.5(b) below).

1.5 Applicable Law

The views given in this Memorandum are governed by and relate only to Czech law as applied by the Czech courts as at today's date, excluding the European Union laws to the extent not being fully implemented in Czech law. We have also assumed that all laws of the Czech Republic applicable for the purposes of this opinion are in compliance with the Czech constitutional laws. We express no views on the laws of any other jurisdiction, even where, under Czech law, a foreign law would be applicable.

1.6 Assumptions and Qualifications

The views expressed in this Memorandum are given on the basis of the assumptions and qualifications set out in this Memorandum, including, but not limited to, those set forth in Paragraph 3 (Assumptions) and Paragraph 5 (Qualifications) below, in each case in their entirety. The views expressed in this Memorandum are strictly limited to the matters expressly stated under Paragraph 4 (Conclusions) below and do not extend to any other matters.

2. SUMMARY OF CONCLUSIONS

In this Paragraph 2 we summarize the most important conclusions expressed in this Memorandum. This summary, however, should be read in conjunction with the remaining parts of this Memorandum and is subject to all assumptions and qualifications set out in this Memorandum.

(a) *Termination against solvent Czech parties*. Prior to a Party becoming insolvent, nothing contained in Czech law should render unenforceable the provisions of the relevant Master Agreement entitling the other Party to terminate all Netted Agreements, Principal Agreements and transactions thereunder upon the occurrence of a Close-Out Event with respect to such Party.

(b) *Termination against insolvent Czech parties.* Nothing contained in Czech law should render unenforceable against a Party the provisions of the relevant Master Agreement providing for the close-out netting of termination values arising from Netted Agreements, Principal Agreements and transactions thereunder upon the occurrence of an Early Termination, resulting in a single Final Net Settlement Amount payable by such Party to the other Party, irrespective of whether such Party is subject to Czech insolvency proceedings, <u>subject in each case</u> to certain reservations expressed in respect of certain instruments outlined in Paragraph 4.1.5(b)(ii). As described in more detail in that Paragraph, there are strong arguments which support the characterization of such transactions as investment instruments, particularly if they are collateralized by a Credit Support Annex. These arguments have been further supported by recent interpretative statement of the Czech National Bank. In view of the traditionally formalistic approach of Czech courts, no assurance can, however, be given that a Czech court would not adopt a more restrictive interpretation of relevant legislation and exclude such transactions from the scope of close-out netting arrangements under Section 193 of the Capital Markets Act. Such restrictive interpretation would result in such transactions not being eligible for close-out netting.

(c) *Partial Close-Out.* There is some uncertainty under Czech law as to whether a Partial Close-Out can be effected so that only part of (but not all) receivables subject to the relevant Close-out Arrangement be terminated ("**Partial Close-Out**"). Section 193 of the Capital Markets Act refers to mechanism where obligations included in the Close-Out Arrangement are terminated and replaced by a "single obligation". Although this wording does not explicitly rule out the possibility for partial close-outs, a convincing argument could be presented on the literal interpretation of Section 193 of the Capital Markets Act that a Close-Out Arrangement providing for a Partial Close-Out is not one contemplated by Section 193 of the Capital Markets Act, would not be qualified as close-out netting arrangement and as such, would not enjoy the protections (described in this Memorandum) afforded to close-out arrangements under Czech law.

(d) *Automatic Early Termination.* If elected, there are important arguments that nothing contained in Czech law should render unenforceable the Automatic Early Termination provisions of the relevant Master Agreement upon the occurrence of an insolvency-related Close-Out Event with respect to a Party, subject to certain reservations expressed in Paragraph 4.1.3.

(e) *Credit Support Annexes*. Credit Support Annexes are in appropriate form to be recognized by Czech insolvency laws if they are (i) governed by a foreign law and (ii) valid and enforceable under such foreign law. In case of a Credit Support Annex governed by Czech law, we would recommend number of drafting changes to adjust the relevant Credit Support Annex to requirements of Czech law; such changes should be specifically discussed with appropriate local legal counsel in each individual case, depending mainly on the jurisdiction of incorporation of the Parties and location of the accounts of the Parties and governing laws of the relevant account agreements.

(f) *Currency conversions*. In the event of an insolvency of a Party, Czech insolvency laws would require that the amount payable under the EFET Documents (including, any amount payable as a result of close-out netting effected under an EFET Document) be converted into Czech currency for the purpose of its registration in the insolvency proceeding in respect of that Party. Similarly, any payment from an insolvency trustee in insolvency proceedings made in satisfaction of a receivable registered in such insolvency proceedings would likely be made in Czech currency.

3. ASSUMPTIONS

The views set out in this Memorandum have been expressed on the following assumptions (without prejudice, and in addition, to other specific assumptions set out elsewhere in this Memorandum).

3.1 General Assumptions

3.1.1 Two counterparties enter into a Master Agreement and at least one of the counterparties is incorporated or organized or has its centre of main interest in the Czech Republic and as such, is subject to Czech insolvency rules ("**Party A**").

3.1.2 Party A is:

(a) a bank, within the meaning of Section 1(1) of the Banking Act (Act No. 21/1992 Coll., as amended, hereinafter the "**Banking Act**"), incorporated in the Czech Republic (a "**Czech Bank**"), or where so indicated in this Memorandum, a credit institution referred to in Article 3(1)(1) of Directive 2013/36/EU that has set up a branch in the Czech Republic and has obtained an authorization to provide banking services in the Czech Republic through that branch (an "**EU Credit Institution**"), or a foreign credit institution (other than EU Credit Institutions) that has set up a branch in the Czech Republic and has obtained an authorization to provide banking services in the Czech Republic through that branch ("**Non-EU Credit Institutions**"). Unless the context indicates otherwise, in this Memorandum the term "**credit institution**" shall include any of the entities set forth in this Paragraph 3.1.2(a);

(b) a security dealer (in Czech, *obchodník s cennými papíry*) within the meaning of Section 5 of the Capital Markets Act (Act No. 256/2004 Coll., as amended, hereinafter the "**Capital Markets Act**"), incorporated in the Czech Republic, or where so indicated in this Memorandum, a foreign securities firm that has set up a branch in the Czech Republic and has obtained an authorization to provide investment services in the Czech Republic. Unless the context indicates otherwise, in this Memorandum the term "**securities firm**" shall include any of the entities set forth in this Paragraph 3.1.2(b);

(c) an insurance company within the meaning of Section 3(1)(b) of the Insurance Act (Act No. 277/2009 Coll., as amended, hereinafter the "**Insurance Act**"), incorporated in the Czech Republic (hereinafter "**Insurance Companies**"), or where so indicated in this Memorandum, an insurance undertaking within the meaning set forth in Article 3(1)(5) of Directive 2013/36/EU having their in the Czech Republic (hereinafter "**EU Insurance Undertakings**") or a foreign insurance undertaking (other than EU Insurance Undertakings) that has set up a branch in the Czech Republic and has obtained an authorization to provide insurance services in the Czech Republic through that branch ("**Non-EU Insurance Undertakings**"). Unless the context indicates otherwise, in this Memorandum the term "**insurance undertaking**" shall include any of the entities set forth in this Paragraph 3.1.2(c) and the term "**regulated entities**" shall mean any of the entities set forth in Paragraphs 3.1.2(a) through (c);

(d) a company incorporated in the Czech Republic as a joint stock company (in Czech, *akciová společnost*) or a limited liability company (in Czech, *společnost s ručením omezeným*) or a partnership incorporated as general partnerships (in Czech, *veřejná obchodní společnost*) or limited partnership (in Czech, *komanditní společnost*), in each case, under the provisions of the Czech Corporations Act (Act No. 90/2012 Coll., the Act on Corporations, as amended, hereinafter the "**Corporations Act**") (collectively, "**Czech Corporates**"). Please refer to Paragraph 3.2.14 for additional restrictions that may apply to state enterprises, governmental and quasi-governments entities, state, municipalities, and their respective divisions, agencies and instrumentalities; or

(e) where so indicated in this Memorandum, a company or a partnership similar to those set forth under (d) above, in each case incorporated, organized or established outside the Czech Republic, to the extent it is authorized to conduct its respective business in the Czech Republic through a branch in the Czech Republic (collectively, "**Foreign Corporates**" and, together with Czech Corporates, the "**Corporates**").

3.1.3 Each EFET Document, Netted Agreement and Principal Agreement is enforceable under the laws of any jurisdiction (other than the laws of the Czech Republic) and each counterparty has duly authorized, executed and delivered, and has the capacity to enter into, each such document. If there is any requirement in any jurisdiction (other than Czech Republic) which might affect the legality, binding effect and enforceability of any EFET Document in such jurisdiction, such requirement has been satisfied.

3.1.4 The relevant EFET Document provides for the inclusion of some or all of the master agreements described in Annex II to this Memorandum, each such master agreement being a Netted Agreement or a Principal Agreement.

3.1.5 On the basis of the terms and conditions of the EFET Document and other relevant factors, and acting in a manner consistent with the intentions stated in the EFET Document, the counterparties over time enter into a number of transactions which include some or all of the transactions described in Annex I to this Memorandum.

3.1.6 Some of the transactions under the Netted Agreements or Master Agreements provide for an exchange of cash by both counterparties and others provide for the physical delivery of shares, bonds or commodities (including emission rights) in exchange for cash.

3.2 Authority of Parties

3.2.1 Each Party to the EFET Documents is, and will continue to be, a validly existing legal entity with capacity (*právní osobnost a svéprávnost*), power and authority under the applicable law(s) of all relevant jurisdiction(s) and any applicable international laws to enter into and perform its obligations (i) under the EFET Documents, and (ii) any transactions thereunder that may be entered into by the Parties pursuant to the EFET Documents, and each of the Parties will take all necessary steps to execute, deliver and perform the EFET Documents and any transactions thereunder and to ensure their legal validity.

3.2.2 None of the Parties is either a consumer (*spotřebitel*) within the meaning of Section 419 of the Act No. 89/2012 Coll., Civil Code (the "**Civil Code**"), or a weaker party (*slabší strana*) within the meaning of Section 433 of the Civil Code, Each Partz will qualify as an entrepreneur (in Czech, *podnikatel*) within the meaning of Section 420 of the Civil Code.

3.2.3 Each EFET Document, Netted Agreements and Principal Agreements and transactions thereunder to be entered into will have been duly authorised, executed and delivered by each Party in accordance with all applicable laws and each EFET Document, Netted Agreement and Principal Agreement will have been properly completed by the Parties.

3.2.4 Where any authority or power of attorney has been used to enter into, perfect or in connection with the EFET Documents, any Netted Agreement, any Principal Agreement, decisions or operations contemplated thereby, such authority or power of attorney and its communication to other parties had/have under all applicable laws the effect of binding the person or entity purportedly represented under such authority or power of attorney and such power of attorney has not been revoked prior to such execution and the attorney executing such document did not at that time have any conflict of interest with its principal.

3.2.5 The Transferor is and will be the sole owner of the Eligible Credit Support transferred to the Transferee under the Credit Support Annexes, neither such Eligible Credit Support nor any part of it, has been or will be assigned, pledged or otherwise encumbered or disposed by the Transferor or any third party authorized to do so, the Transferor is and will be fully authorized to assign, pledge and/or dispose with the Eligible Credit Support, and the transfer of Eligible Credit Support by the Transferor to the Transferee under the Credit Support Annexes has not been restricted or excluded by any arrangement or instrument binding on the Transferor.

3.2.6 Each of the Parties will obtain, comply with the terms of, and maintain all authorisations, approvals, licences and consents required to enable it to lawfully enter into, and perform its obligations under, the EFET Documents, the Netted Agreements, the Principal Agreements and any transactions thereunder and to ensure the legality, validity, enforceability or admissibility in evidence of the EFET Documents, the Netted Agreements, the Principal Agreements and any transactions thereunder in all relevant jurisdictions.

3.2.7 A Czech Bank has entered into any EFET Document, each Netted Agreement and each Principal Agreement in compliance with the Banking Act and other legislation and regulation applicable to a Czech Bank and all rights and obligations under any EFET Document and each Netted Agreement are compatible with the Banking Act and other legislation and regulation applicable to a Czech Bank.

3.2.8 The EFET Documents, the Netted Agreements, the Principal Agreements and transactions thereunder constitute legal, valid and binding obligations of each Party enforceable under all applicable laws (other than the laws of the Czech Republic).

3.2.9 All of the representations and warranties given by any of the Parties to the EFET Documents or any Netted Agreement or any Principal Agreement (other than representations and warranties as to such matters of Czech law on which we express views herein) are, and will be, when made or repeated or when deemed to be made or repeated (as the case may be), and were at all relevant times, true and accurate. Any representation or warranty given by any of the Parties to the EFET Documents or any Netted Agreement or any Principal Agreement (other than representations and warranties as to such matters of Czech law on which we express views herein) that such Party is not aware of or has no notice of any act, matter, thing or circumstance means that the same does not exist or has not occurred.

3.2.10 Each Party is either a sophisticated dealer in transactions listed in Annex I to this Memorandum, or any other regular participant in the wholesale market in such transactions.

3.2.11 As a general point, certain entities listed in Section 6 of the Insolvency Act, including, without limitation, the state, municipalities and regions, and the Czech National Bank ("**CNB**"), are expressly exempted from the effects of the Insolvency Act. The analysis of various provisions of the Insolvency Act in this Memorandum should be read with this in mind.

3.2.12 The term "publicly-owned entities" shall be understood to mean mainly business companies (joint stock and limited liability companies, *etc.*), in which the state or other public corporations (municipalities, regions) have equity interests permitting them to control the company. These companies are subject to the same treatment as entities with shareholders consisting exclusively of private persons, where the state (municipality, region) may exert its influence only on the same basis as any other shareholder, *i.e.* through the weight of its votes.[1]

In addition, the state controls "state enterprises" which manage state property and similar forms such as "national enterprises" and "state organizations". These organizations may generally also conduct business under their own name and liability in areas specified in their founding deeds although it is less likely that their scope of business would include trading in transactions listed in Annex I.

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[1] ČEZ, a. s., the most significant Czech electricity producer, is an example of such a publicly-owned entity.

Publicly-owned entities may also include other corporate entities managing the governmental or municipal (regional) property (*příspěvkové organizace*); however, as a rule, they are founded as non-profit and their purpose is entirely different from trading in transactions listed in Annex I.

3.2.13 Quasi-governmental entities may be understood to mean mainly specific-purpose property funds (such as the State Environmental Fund) and a number of state organizations, which are corporate entities, but manage state property. Such entities are founded as public entities, whether by a specific law or under general law, and their scope of business, operations and conditions applicable to them are set forth in the respective legislation.

3.2.14 Specific rules apply under Czech law to publicly owned-entities, state enterprises, governmental and quasi-governments entities, state, municipalities, and their respective divisions, agencies and instrumentalities. Specific local law advice is required when entering into EFET Documents with such entities, taking into account on a case by case basis their constitutive documents, legislation applicable to them and restrictions set out in respective legislation. At the same time, public procurement rules may affect these entities or so called "sector entities" (including entities conducting business in the energy sector) and specific local law advice is required to ascertain the scope of rules applicable to individual transactions contemplated by the EFET Documents.

3.2.15 The parties to the EFET Documents have complied (and will continue to comply) with all applicable anti-terrorism, anti-corruption, anti-money laundering, sanctions and human rights laws and regulations, and that performance and enforcement of the EFET Documents is, and will continue to be, consistent with all such laws and regulations.

3.3 Governing Law

Unless specified otherwise in Paragraph 3.7, the views expressed in this Memorandum are based on the assumption that the EFET Documents are governed by Czech law.

3.4 Terms of the EFET Documents

3.4.1 Subject to and under the terms and conditions of the EFET Documents, the Parties enter into a certain number of Netted Agreements and/or Principal Agreements which belong to the Netted Agreements and/or Principal Agreements as described in Annex II to this Memorandum.

3.4.2 Save for any specifications or alterations in the election sheet relating to the EFET Documents (each such election sheet, an "**Election Sheet**"), none of the terms and provisions of the EFET Documents will be varied, waived or discharged and any Netted Agreement and Principal Agreement entered into after the date of this Memorandum will be entered into as specified in the Netted Agreement, Principal Agreement. None of the EFET Documents, Netted Agreement or Principal Agreement can be voided or otherwise held ineffective.

3.4.3 Save in respect of a termination for Close-Out Event in respect of a Party, each Party will perform its obligations under the EFET Documents and any Netted Agreements and Principal Agreement and transactions thereunder in accordance with their respective terms and nothing in the terms of any Netted Agreement or any Principal Agreement will alter the assumptions set out under this Paragraph 3 or the qualifications set out under Paragraph 5 below.

3.4.4 None of the EFET Documents, Netted Agreements or Principal Agreements, or transactions thereunder or operations contemplated thereby will infringe the terms of or constitute a default under, any trust deed, debenture, agreement or other instrument or obligation to which any of the Parties to the EFET Documents, Netted Agreement or Principal Agreement is a party or by which any of its property, undertaking, assets or revenues are bound.

3.4.5 Each Close-Out Event specified as applicable pursuant to the Master Agreements is a valid, binding and enforceable termination event under the applicable Netted Agreement or applicable Principal Agreement and any obligation of pay an amount on the basis of a Master Agreement or Principal Agreement (including as a result of termination of transactions under such agreement) constitutes a valid, binding and enforceable obligation of the relevant party.

3.4.6 None of the EFET Documents, Netted Agreements or Principal Agreements is an adhesion contract (in Czech, *smlouva uzavřená adhezním způsobem*) within the meaning of Section 1798 of the Civil Code.

3.4.7 The Eligible Credit Support provided under the Credit Support Annexes only takes the form of Cash (as defined therein).

3.4.8 Each Party is at the time of the transfer of Cash under the Credit Support Annexes entitled to dispose of the transferred Cash.

3.5 Bona Fide Purpose and Insolvency

3.5.1 In respect of each EFET Document, Netted Agreement, Principal Agreement and each of the transactions or operations contemplated by, referred to in, provided for or effected by it:

(a) each of the Parties has entered into and will enter into the relevant EFET Documents, Netted Agreements and Principal Agreements and transactions thereunder in good faith and for the purpose of carrying on its business;

(b) the binding effect of the relevant EFET Documents, Netted Agreements, Principal Agreements and transactions thereunder is not affected by duress, undue influence or mistake and neither the relevant EFET Documents, nor the Netted Agreements, Principal Agreements and transactions thereunder have been entered into by either party in connection with money laundering or any other unlawful activity or with the intention or purpose of avoiding or circumventing (in Czech, *obcházení*) any statutory, contractual or other legal obligation or in contrary with good morals (in Czech, *příčí se dobrým mravům*), public policy (in Czech, *veřejný pořádek*) or commercial customs (in Czech, *obchodní zvyklosti*);

(c) each of the Parties entered into and will enter into the EFET Documents under the terms customary in business transactions (in Czech, *za podmínek obvyklých v obchodním styku*) and none of the terms of the EFET Documents is considerably unfavorable (in Czech, *nápadně nevýhodné*) to any Party, nor does any of the terms of the transaction contemplated by the EFET Documents confer unjustified preference (in Czech, *nedůvodné zvýhodnění*) on any of the shareholders of the Parties to the detriment of its other shareholders or the Parties themselves, or gross disproportion in mutual undertakings (in Czech, *hrubý nepoměr vzájemných plnění*) and each of the Parties has received an adequate consideration for the performance of its obligations under the EFET Documents, each Netted Agreement and each Principal Agreement to which it is a party;

(d) none of the Parties entered into, nor will enter into the relevant EFET Documents, Netted Agreements or Principal Agreements and transactions thereunder if entering into the same would be to the detriment of or create undue preference for certain of its creditors; and

(e) neither any of the EFET Documents, any Netted Agreement, any Principal Agreement nor the performance by any Party of their respective obligations under the EFET Documents or any Netted Agreements or any Principal Agreements and transactions thereunder constitute an ineffective act within the meaning described in Paragraph 4.1.1(i) below.

3.5.2 At the time at which the EFET Documents, any Netted Agreements or any Principal Agreements and transactions thereunder are entered into, no insolvency administrator, preliminary insolvency administrator, receiver, administrative receiver, trustee, liquidator, sequestrator or similar officer has been appointed in relation to any Party to such EFET Documents, Netted Agreements or Principal Agreements and transactions thereunder or any of their respective assets or undertakings and no Party has received a summons regarding asset declaration.

3.5.3 The center of main interest of the Party incorporated in the Czech Republic for the purposes of the Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**") is situated in the Czech Republic and such Party has no "establishment" (as defined in the Regulation) in any other jurisdiction.

3.5.4 At the time at which the EFET Documents, any Netted Agreements and any Principal Agreements and transactions thereunder are entered into, and any Eligible Credit Support is provided under the Credit Support Annexes, neither Party is insolvent nor it has passed a resolution for its liquidation, neither has a court of competent jurisdiction terminated or decided on the termination of the respective Party.

3.5.5 Where any views are expressed as regards the application of Czech insolvency laws with respect to a Party, the other Party itself is, and will continue to be, solvent.

3.6 Other Documents

Except for the Netted Agreements and Principal Agreements and transactions thereunder, there is no other agreement, instrument or other arrangement between any of the Parties to the EFET Documents which conflicts with, overrides, modifies or supersedes the EFET Documents and there is no repudiation or rescission of the EFET Documents.

3.7 Specific Assumptions

3.7.1 For purposes of Paragraph 4.1 only, we have assumed that:

(a) The relevant Master Agreement is governed by any law (including English, German, New York or Czech law).

(b) After entering into the Netted Agreements and any transactions thereunder and prior to the maturity thereof, Party A becomes the subject of voluntary or involuntary proceedings under the insolvency laws of the Czech Republic and, subsequent to the commencement of the insolvency, either Party A or an insolvency official seeks to assume the confirmations representing profitable ("in the money") transactions for the insolvent counterparty.

3.7.2 For purposes of Paragraphs 4.3.5 through 4.3.7 only, we have assumed that:

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

(b) After entering into these Netted Agreements, Principal Agreements and transactions thereunder and prior to the maturity thereof, Party F becomes the subject of voluntary or involuntary proceedings under the insolvency laws of Country H.

3.7.3 For purposes of Paragraph 4.6 only, we have assumed that:

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

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

3.7.4 For purposes of Paragraph 4.8 only, we have assumed that the relevant EFET Document is governed by the laws of a jurisdiction other than the Czech Republic (including English or German law).

4. CONCLUSIONS

On the basis of the assumptions and subject to the qualifications set forth in this Memorandum, we express the following views:

4.1 Enforceability of Close-Out Netting

4.1.1 Brief description of Czech insolvency laws, and relevant terminology

(a) General

The main provisions of Czech law regulating an insolvency of the Parties set forth in Paragraph 3.1.2 are contained in the following Czech statutes (such provisions shall collectively be referred to in this Memorandum as "**Czech insolvency laws**"):

(i) the Insolvency Act, which sets out the main rules governing two principal types of insolvency proceeding available under Czech law[2]. Liquidation bankruptcy (in Czech, *konkurs*) predominantly aims to sell-off the property of

[2] Third type of insolvency proceedings, debt discharge (*oddlužení*) is applicable solely to individuals that do not carry out business activities, i.e., non-business entities.

the debtor and distribute the proceeds of the sale to creditors. Liquidation bankruptcy ultimately ends with the liquidation of the insolvent company. Reorganization (in Czech, *reorganizace*) is a form of insolvency proceedings introduced by the Insolvency Act in which the debtor or creditors prepare, the creditors approve and the insolvency court confirms a reorganization plan, pursuant to which the debtor is restructured and the creditors' claims are satisfied. The Insolvency Act also contains certain special provisions dealing with insolvency proceedings of credit institutions and insurance undertakings (and certain other regulated entities) and sets out certain provisions dealing with cross-border insolvencies. In this Memorandum, the liquidation bankruptcy proceedings and reorganization proceedings, whether in respect of the Corporates or regulated entities, shall collectively be referred to as "**Czech insolvency proceedings**". Please note that the regulation of the liquidation bankruptcy proceedings and the reorganization proceedings is identical in many respects. Therefore, our analysis of the questions that follow focuses primarily on liquidation bankruptcy proceedings; only where applicable do we set out differences associated with reorganizations proceedings. Special provisions of Czech law dealing with the close-out netting apply equally to liquidation bankruptcy proceedings and reorganization proceedings.

(ii) Act No. 91/2012 Coll., on International Private Law, as amended (the "**Conflict of Laws Act**") setting out certain conflict of laws provisions determining laws applicable to EFET Documents; and

(iii) Act No. 99/1963 Coll., on Civil Proceedings, as amended (the "**Civil Proceedings Act**") that contains procedural provisions governing Czech insolvency proceedings (in addition to the provisions set forth in the Insolvency Act).

Financial collateral arrangements are regulated primarily by Act No. 408/2010 Coll., on financial collateral, as amended (the "**Financial Collateral Act**"). Close-out netting arrangements are regulated primarily by the Capital Markets Act.

After accession of the Czech Republic to the European Union on 1 May 2004, the Regulation became directly applicable in the Czech Republic, containing certain important provisions applicable to cross-border insolvencies.

Furthermore, in respect of regulated entities the special laws regulating the conduct of their business also contain certain provisions relating to the insolvency of such entities. Please note that such special regulatory laws often empower the regulator to impose certain regulatory measures with respect to the regulated entities (which may include the appointment of a special administrator taking over the management of the relevant entity) to enforce compliance with the regulatory requirements. Although such regulatory measures may generally affect creditors' rights and would typically constitute a Close-Out Event described in § 6.3 of the EFET Master Netting Agreement or Part II.B of the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement, they are not insolvency proceedings designed to organize the property and affairs of an insolvent debtor (but may generally result in the opening of such insolvency proceedings subject to certain conditions) and they should not affect the enforceability of the close-out netting provisions. Therefore, these special laws will not be taken into account for the purposes of this Memorandum.

(b) Insolvency Proceedings

The insolvency proceedings are initiated by the filing of an insolvency petition (in Czech, *insolvenční návrh*) and its publication in the insolvency register - a public evidence of insolvency proceedings available also on internet website isir.justice.cz (the "**Insolvency Register**"). The right to file an insolvency petition is given to the debtor or any of its creditors. Subject to certain conditions, an insolvent corporate debtor and its directors are obliged to file an insolvency petition in respect of the debtor. Only a debtor may file a petition for insolvency in the event there is an immediate threat of insolvency (i.e., a situation in which a debtor is not insolvent yet, but there is reasonable expectation that a debtor will not be able to meet the majority of its payment obligations when they come due), rather than actual insolvency.

The insolvency petition is generally publicized in the Insolvency Register within two hours (subject to business hours of the relevant court) from its filing and the insolvency proceeding is deemed to commence by such publication.

After a preliminary examination of the insolvency petition the court may dismiss the insolvency petition on certain formal or limited substantive grounds.

Where the circumstances indicate that it is necessary to impose a control over the use by the debtor of its assets, the court may appoint a preliminary administrator (in Czech, *předběžný správce*) and/or issue an injunction restricting the debtor in disposition with its assets. The injunction may also require that the debtor dispose of its assets solely with the consent of the preliminary trustee or that the debtors' counterparties may only discharge their obligations vis-à-vis the debtor to the preliminary administrator.

The debtor is entitled to file (within 15 days from the date of the filing of the insolvency petition or, in case that the insolvency petition has been filed by the debtor, within 7 days from the date of the filing of the insolvency petition) petition for a moratorium, the purpose of which is to allow the debtor an opportunity to find a satisfactory solution to its financial distress and thereby avoid insolvency. During the moratorium, the debtor may not be declared insolvent. The counterparties of the debtor under the agreements on delivery of goods and services, including electricity and raw materials, may not terminate such agreements where such agreements were in place for at least three months at the date of the initiation of moratorium and where the debtor continues to perform its obligations under such agreements which have arisen during the moratorium. Moratorium is granted for the period requested in the moratorium filing, but in each case not more than three months. Moratorium may be extended by the court by not more than 30 days, subject to certain conditions.

Petition for moratorium may be filed by the debtor even before the commencement of insolvency proceedings. The above rules apply also to moratorium declared on the basis of such petition.

Following the filing of the insolvency petition, the insolvency proceedings are technically divided into two phases.

In the first phase, the insolvency court decides whether the debtor is insolvent. Simultaneously with the declaration of insolvency, the court appoints an insolvency trustee (in Czech, *insolvenční správce*) to administer the insolvency estate (in Czech, *majetková podstata*) and invites creditors to register their claims within a period of two months. First creditors' meeting (in Czech, *schůze věřitelů*) is to be held within two months from the declaration of insolvency. The creditors' meeting appoints the creditors' committee (in Czech, *věřitelský výbor*) to assist and approve certain actions of the insolvency trustee. The creditors' meeting may also replace the insolvency trustee appointed by the trustee. The creditors' meeting also decides on the method of resolving insolvency, i.e., liquidation bankruptcy or reorganization.

On the basis of the decision of the creditor's meeting referred to above and in absence of such decision, on the basis of rules set out in the Insolvency Act, the insolvency court decides whether liquidation bankruptcy or reorganization procedures should apply.

(c) Liquidation Bankruptcy Proceedings

The liquidation bankruptcy proceedings are initiated by the publication of the court decision on the declaration of bankruptcy in the Insolvency Register. The purpose of liquidation bankruptcy proceedings is to organize the property and affairs of an insolvent debtor mainly through the forced realization of the debtor's assets and distribution of the proceeds to its creditors. Creditors' claims are paid out of the proceeds of the realization of the debtor's assets according to the ranking of the claims, and generally on a *pro-rata* basis as between the claims of the same ranking. Creditors do not relinquish their right to receive full payment of their claims; however, creditors are not allowed to enforce their claims separately outside the liquidation bankruptcy proceedings.

The insolvency trustee will continue the debtor's business unless and until the court (after hearing the creditors' committee) decides on the basis of a motion filed by the insolvency trustee that the continuation of the debtor's business as a going concern should be terminated. The main task of the insolvency trustee is to collect the debtor's assets, to sell them, to review claims filed by creditors and, finally, to distribute the proceeds from the realization of the insolvency estate to the creditors in accordance with the distribution rules set forth in the Insolvency Act.

As indicated above, creditors are notified of the commencement of liquidation bankruptcy proceedings through the Insolvency Register. The debtor's assets are sold by the insolvency trustee *per partes* or, if the court and the creditors' committee agree, as the bulk of all assets forming the entire insolvency estate or as a going concern. The trustee is bound by the instructions of the secured creditors relating to the administration and sale of assets securing their respective claims, unless the insolvency trustee proves to the court that such assets may be administered or sold on more advantageous terms than those which would be achieved by complying with the instructions of the respective secured creditor.

The secured creditors are entitled to receive in satisfaction of their secured claim the proceeds of the sale of assets securing their respective claims, subject to deduction of the costs related to the administration and sale of assets under security - such costs shall not exceed 5% and 4% respectively of the proceeds from the sale of assets (i.e., 9% in total)[3], however the insolvency court may decide about the costs otherwise[4] -

3 The secured creditor may agree that the above caps on costs of administration and sale be increased, but they cannot be lowered or eliminated.

4 This change has been introduced by amendment to the Insolvency Act effective as of January 1, 2014 and as such has not yet been tested before Czech courts.

and trustee fees determined as a certain percentage from the proceeds from the sale to be distributed to the creditor.

During liquidation bankruptcy, the insolvency trustee should regularly report to the insolvency court and the creditors' committee on the status of the sale of the debtor's assets. Secured creditor and creditors committee may instruct the insolvency trustee to prepare a special report on the status of the sale.

At the end of the liquidation bankruptcy proceedings, the insolvency trustee prepares a so-called final report, which summarizes what the proceeds of the sale are and how they are to be distributed among creditors. The final report is reviewed by the insolvency court and published. Creditors are allowed to comment on the final report, and their comments are verified by the insolvency court. The insolvency trustee, the debtor and those creditors whose comments on the final report were not agreed by the court may file an appeal against the decision of the court on final report.

The liquidation bankruptcy proceedings will be closed by the court after all proceeds from the realization of the insolvency estate have been distributed. After closing of the liquidation bankruptcy proceedings, the debtor remains fully liable to its creditors in respect of any liabilities that have not been satisfied within the liquidation bankruptcy proceedings; in the case of a corporate debtor, however, liquidation bankruptcy will eventually result in the ultimate dissolution of the debtor (i.e., the debtor will cease to exist as a legal entity), thus preventing later recourse to the debtor for payment of any remaining amounts.

(d) Reorganization Proceedings

The Insolvency Act introduced a new type of insolvency proceedings –reorganization – either as pre-packaged reorganization or reorganization in insolvency. In reorganization, the debtor's business should generally be preserved and operated by the debtor's management ("debtor-in-possession") under a reorganization plan approved and supervised by the creditors and the court.

Debtors in the process of liquidation, and certain regulated entities (please see indents (e) through (g) of this Paragraph 4.1.1), including the entities authorized to effect trades on a commodities exchange, automatically do not qualify for reorganization proceedings. Furthermore, unless the debtor applies for a pre-packaged reorganization (reorganization plan pre-approved by the majority of secured and unsecured creditors), the debtor only qualifies for reorganization procedures if its total turnover in the last accounting period preceding the insolvency petition reached a minimum of CZK 50,000,000, or if it employs at least 50 employees.

(i) Pre-Packaged Reorganization

By the term Pre-Packaged Reorganization we refer to reorganization that is pre-agreed between a debtor and its creditors or between the creditors; reorganization plan should in this case (usually) be prepared prior to initiation of the insolvency proceedings. In any case, the approval by creditors of reorganization as method of resolving insolvency is to be submitted with the petition for initiation of the insolvency proceeding.

In case a debtor is involved in the preparation of the Pre-Packaged Reorganization, the reorganization may be proposed also before the actual insolvency in the event there is an immediate threat of insolvency (in that case only the debtor may file petition for insolvency).

A reorganization plan has to be prepared and filed with the insolvency court together with the petition for initiation of the insolvency proceeding or at latest upon the decision of the insolvency court on insolvency.

(ii) Reorganization in Insolvency

The reorganization regime in insolvency is similar to the Pre-Packaged Reorganization. The main differences are in the way of preparation of the reorganization plan and in the manner of achieving of the approval of the plan by the creditors and the insolvency court.

Reorganization in insolvency could be initiated only after the debtor is declared insolvent by the insolvency court. The application for reorganization could be filed either by a debtor, a creditor or group of creditors. If such application is filed by a creditor or group of creditors, it must be approved by the creditors' meeting by (i) majority of the secured and majority of the unsecured creditors present in the meeting, or (ii) by creditors representing more than 90% of all receivables present in the meeting.

The debtor has a preferential right to prepare the reorganization plan. Only in instances set out in the Insolvency Act, it may be prepared by other persons, including creditors, selected by the creditors' meeting and if not decided by the creditors' meeting, the court may authorize the persons that filed an application for reorganization or joined such application to prepare the plan.

(iii) Reorganization Plan

The reorganization plan shall, among others, contain division of creditors into creditors' groups, description of selected reorganization methods (e.g., debt-equity swap, write-off of a portion of the debts, sale or transfer of debtor's assets, etc.), specification of persons entitled to dispose with insolvency estate, specification of financing of the reorganization plan and specification of debtor's obligations after the reorganization is completed.

The reorganization plan shall be approved by the majority of creditors (each group of creditors must approve the reorganization plan and for the purpose of this voting, the shareholders of the debtor are deemed to constitute a separate group of creditors) and by the insolvency court. Even if the reorganization plan is not approved by all groups of creditors, the insolvency court may not reject the reorganization plan if it is duly approved by at least one group of the creditors (except for the shareholders) and it ensures equal treatment for all creditors and all receivables and it can be reasonably expected that it will not result in liquidation or liquidation bankruptcy of the debtor ("cram-down" rule). In the event the parties fail to agree on the reorganization plan, the insolvency court will decide that the reorganization will be replaced by bankruptcy liquidation.

Once the goals contemplated by the reorganization plan are achieved, the reorganization plan terminates and the insolvency court will only acknowledge the completion of the reorganization. Prior to completion of the reorganization plan, the insolvency court may decide that the reorganization regime will be replaced by the liquidation bankruptcy – such change would primarily result from a breach of the reorganization plan by the debtor.

(iv) Practical Aspects of Reorganization

Upon approval of the reorganization, the debtor is entitled to dispose with its assets forming the insolvency estate; its disposal rights may be limited only in accordance with the approved reorganization plan. In case and to the extent that the debtor's disposition rights are limited by the reorganization plan, the insolvency trustee is entitled to perform such rights.

The insolvency trustee supervises the debtor and provides the insolvency court and the creditors' committee with regular reports (at least on quarterly basis). In case the reorganization plan contemplates any changes concerning the corporate structure of a debtor, including debt-equity swap, such changes should in principle be effected upon the approval of the reorganization plan and in accordance with its terms and shall be implemented by the insolvency trustee (please note, however, that for example corporate changes, increase in registered capital and similar acts still need to be properly registered and perfected in relevant evidences).

The creditors' committee may reserve rights to approve any debtor's action that would otherwise be performed by the debtor without any limitation even if is not stipulated by the reorganization plan.

Upon the approval of the reorganization plan, the rights of any creditors and third parties (including any security) cease to exist unless they are expressly set forth in the reorganization plan.

(e) Insolvency Proceedings Applicable to Credit Institutions

General provisions of the Insolvency Act apply to Czech Banks, except for those provisions regarding the moratorium and reorganization, the application of which is expressly excluded. Liquidation bankruptcy proceedings are the only available procedure for resolving an insolvency of a Czech Bank.

The insolvency regime applicable to Czech Banks has certain specific features. Most importantly, as regards Czech Banks, the Insolvency Act provides that, for so long as a Czech Bank holds a banking license, insolvency proceedings may not be opened against that Czech Bank; pending the revocation of its banking license, a Czech Bank would be subject only to certain regulatory measures imposed by the Czech National Bank (as the banking regulatory authority) under the provisions of the Banking Act (including certain measures that generally affect creditors' rights, such as forced administration). The Banking Act expressly stipulates that, once a Czech Bank becomes insolvent, the Czech National Bank shall revoke the Czech Bank's banking license.

As an example of further differences set out in the Insolvency Act in relation to the credit institutions, the Insolvency Act provides that receivables evidenced in the accounting books of the insolvent credit institution are deemed to have been registered by their respective creditors in the insolvency proceedings as of the date of the declaration of liquidation bankruptcy. The insolvency trustee is obliged, within 60 days of the declaration of liquidation bankruptcy, to notify each creditor of, among other things, the declaration of liquidation bankruptcy and the amount of its receivables. If a creditor disagrees with the amount of its receivable, it can file objections with insolvency trustee within four months following the declaration of liquidation bankruptcy.

The Insolvency Act and the Conflict of Laws Act further contain special insolvency provisions with respect to EU Credit Institutions (which may generally also include Czech Banks), resulting mainly from the implementation of the EC Directive No. 2001/24 on the reorganization and winding up of credit institutions (the "**WUCI Directive**").

In addition, notwithstanding the general rules applicable to set-off set out in Paragraph 4.1.1(h) of this Memorandum, the Insolvency Act expressly provides that the insolvency proceedings in relation to an insolvent EU Credit Institution do not affect the right of set-off available under the law governing the receivable of such EU Credit Institution against which the creditor sets off its receivable.

An insolvency petition seeking the opening of insolvency proceedings against a credit institution may be filed also by the Czech banking regulatory authority, *i.e.*, the Czech National Bank (in addition to the debtor itself and its creditors); however, with respect to EU Credit Institutions (other than Czech Banks), insolvency proceedings may be opened, in accordance with the provisions of the WUCI Directive, only by the relevant authority of the Member State in which the EU Credit Institution obtained its banking license (the "**Home Member Sate**"). The effects of such insolvency proceedings will then be generally recognized in the Czech Republic.

(f) Insolvency Proceedings Applicable to Securities Firms

Czech law does not provide for any special insolvency regime applicable to securities firms. Unlike for credit institutions, the revocation of the securities dealer's license is arguably not a prerequisite for the application of the Insolvency Act and the declaration of insolvency over a securities firm. Nevertheless, there are several special provisions applicable to the insolvency of securities firms, relating mainly to customers' assets and their return.

The Capital Markets Act sets out the process of forced administration for securities firms. The principal effect of the forced administration is the appointment of an administrator, who has a power to manage the company instead of the existing directors. The forced administration would either result in successful turnaround of the relevant securities firm and revocation of the forced administration by the Czech National Bank, or declaration of insolvency or liquidation of the securities firm. Close-out netting arrangements entered into before the declaration of the forced administration, as well as the financial collateral arrangements entered into before the declaration of the forced administration (or on the day of the declaration, provided that the counterparty did not and could not be aware of the declaration), are protected from the effects of the forced administration.

The Capital Markets Act further expressly provides that, in the event of an insolvency of a securities firm, its customers' assets do not form part of the insolvency estate and the insolvency trustee shall, without delay, return such assets to the customers.

Pursuant to the Capital Markets Act, securities firms are obliged to make regular contributions to a special guarantee fund. The Capital Markets Act also specifies the manner in which compensation from the special guarantee fund is provided to customers in the event of the insolvency of a securities firm.[5]

(g) Insolvency Proceedings Applicable to Insurance Undertakings

Similar to credit institutions, Czech insolvency proceedings may not be opened against Czech Insurance Companies as long as they hold relevant authorization to carry out insurance business; pending the revocation of its authorization, a Czech Insurance Company would be subject only to certain regulatory measures imposed by the Czech National Bank (as the regulatory authority in the area of insurance business) under the provisions of the Insurance Act, including the forced administration. The regime of the forced administration is very similar to that described above for securities firms. Under the Insurance Act, an insolvency of the Czech Insurance Company would typically result in the Czech National Bank revoking the institution's insurance authorization.

Similarly to the Czech Banks, the Insolvency Act provides that receivables evidenced in accounting books of the respective insolvent Czech Insurance Company are deemed to have been filed by their creditors as of the date of the declaration of liquidation bankruptcy. The insolvency trustee is obliged, within 60 days of the declaration of liquidation bankruptcy, to notify each creditor of, among other things, the declaration of liquidation bankruptcy and the amount of its receivables. If a creditor disagrees with the amount of its receivable, it can file objections with insolvency trustee within four months following the declaration of liquidation bankruptcy.

The Insolvency Act also expressly provides that the insolvency proceedings in relation to an insolvent insurance undertakings do not affect the right of set-off available under the law governing the receivable of such insurance undertakings against which the creditor sets off its receivable.

The Insolvency Act and the Conflict of Laws Act further contain special insolvency provisions with respect to EU Insurance Undertakings (which may also include Czech Insurance Companies), which are mainly the result of the implementation of the EC Directive No. 2001/17 on the reorganization and winding-up of insurance undertakings (the "**WUIU Directive**").

An insolvency petition seeking the opening of insolvency proceedings against a Czech Insurance Company or foreign insurance undertaking may be filed by the insurance regulatory authority (in addition to the debtor itself and its creditors); however, with respect to EU Insurance Undertakings (other than Czech Insurance Companies), insolvency proceedings may be opened only by the relevant authority of the Member State in which the relevant institution obtained its insurance license (the

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[5] A foreign securities firm is obliged to participate in the Czech guarantee fund only if it is not participating in any guarantee fund in its home Member State or if such foreign guarantee fund does not protect Czech customers.

"**Home Member State**").The effects of such insolvency proceedings will then be generally recognized in the Czech Republic.

(h) Set-Off

Under Czech law, if a creditor and a debtor have mutual receivables eligible for set-off, with the same type of performance (such as when they are both in respect of a payment obligation), either party may unilaterally invoke the set-off.

Under Czech law, all receivables are generally eligible for set-off except in cases when set-off is excluded by law or agreement between the parties. The basic requirement for receivables to be eligible for set-off is that such receivables could be claimed in court (*i.e.*, the receivables must validly exist, be enforceable, due and payable, and must not be statute-barred).[6] The Civil Code provides for further restrictions on set-off. Most importantly, a receivable may not be set off against a receivable which is uncertain (in Czech, *nejistá*) or ambiguous (in Czech, *neurčitá*). Note that the interpretation of these terms under the Civil Code has not yet been established. A set-off cannot be done under a condition or with a delayed effect.

Parties are free to agree in a contract that set-off will be possible even in respect of receivables which would not otherwise be eligible for set-off due to the restrictions set forth above; restrictions which cannot be overridden by a contract include restrictions on set-off against receivables in respect of alimony payments, damages arising from injury, etc.

Restrictions on set-off against receivables that form part of insolvency estate are contained in the Insolvency Act. The Insolvency Act does not contain a general prohibition on the set-off against such receivables and the set-off continues to be generally permitted even during insolvency. By way of exception:

(i) Set-off against receivables that form part of insolvency estate is excluded during moratorium, reorganization (effective from the filing of the application for reorganization) and where the insolvency court issues an injunction prohibiting such set-offs.

(ii) Section 140 of the Insolvency Act sets out that, after the declaration of insolvency, set-offs are permitted subject to certain constraints and requirements, such as:

(A) mutual receivables of the insolvent debtor and respective creditor must be eligible for set-off prior to declaration of insolvency (i.e., the receivables must validly exist, be enforceable, due and payable, and must not be statute-barred);

(B) a creditor is not allowed to set-off receivables that have been acquired through an ineffective legal act or receivables, which the creditor acquired with the knowledge of the debtor's insolvency;

(C) creditor's receivables to be used for set-off must be registered in the insolvency proceedings prior to the set-off;

[6] However, if the statute of limitations elapsed only after the receivables had become eligible for set-off, such receivables may still be set-off.

(D) a creditor must pay to the insolvency estate the excess of the debtor's receivable over the creditor's receivable resulting from set off of those receivables.

(i) Ineffective Acts

As a general rule, any action taken by the debtor may be declared "ineffective vis-à-vis the creditors" by the insolvency court, if it were to prejudice the creditors' rights. The grounds for opposing a legal act arise in the event that:

(i) a transaction is effected without respective consideration, i.e. a transaction where the usual consideration in a similar transaction is significantly higher;

(ii) a transaction results in preferential treatment, e.g. premature or preferential repayment of the obligations of only some creditors, etc.; or

(iii) a transaction aims to deprive the creditors of certain benefits, provided that the debtor intended to do so and that the counterparty to the transaction had or should have had knowledge of this intention.

The types of transactions under (i) and (ii) are vulnerable to attack if (a) they were undertaken during the one-year period prior to the commencement of insolvency proceedings, or a three-year period if the transaction was made for the benefit of a person affiliated with the debtor, or (b) they were undertaken by the debtor when insolvent, or consisted of a legal act resulting in the debtor's insolvency. In respect of the transactions listed under (iii) above, a five-year period applies.

The insolvency trustee may commence proceedings against persons who benefited from such transactions within a year from the declaration of insolvency. Individual creditors are not allowed to commence such proceedings, but the creditors committee may instruct the insolvency trustee to do so.

Furthermore, as of the commencement of insolvency proceedings, it is, among other things, not allowed:

(i) to execute or enforce any security instrument in respect of debtor's assets, or

(ii) for the debtor to dispose of its assets where through such disposal, the composition, utilization or determination of the debtor's assets might be substantially altered, or through which their value might be diminished to more than a negligible degree, excluding in each case exempt transactions, such as transactions pursued in the ordinary course of business or to avert impending damage.

Transactions contravening the above restrictions are deemed to be ineffective vis-à-vis creditors.

4.1.2 **Assuming the Parties have not specified that Automatic Termination (as defined in § 6.3 of the EFET Master Netting Agreement or Part II.B of the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement) applies, are the provisions of the EFET Master Netting Agreement or TBMA Cross Product Master Agreement permitting the Terminating Party to terminate the Netted Agreements or Principal Agreements including all transactions upon the occurrence of a Close-Out Event**

enforceable under the laws of Czech Republic or is there a risk that (i) the entering into the EFET Master Netting Agreement or TBMA Cross Product Master Agreement, (ii) the entering into Netted Agreements or Principal Agreements or transactions thereunder or (iii) the early termination by notice described in § 5.1 of the EFET Master Netting Agreement or Section 2.2 of the Cross-Product Master Agreement itself could be challenged by a liquidator, administrator, receiver or third party?

Please refer to our response to question 4.1.5 below.

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

The Automatic Termination should as a principle be an enforceable arrangement, provided that the determination of the triggering event is sufficiently specific and does not take effect retroactively (i.e., the relevant provision does not stipulate that the Automatic Termination takes effect prior to the occurrence of the event which triggered such Automatic Termination).

A challenge against the validity and/or enforceability of an Automatic Termination could be raised on the grounds that the Automatic Termination seeks to circumvent limitations on termination of transactions in insolvency of the relevant Czech entity (as described in more detail in Paragraph 4.1.5(i) below) and/or set-off restrictions in respect of the receivables that form part of the insolvency estate of the relevant Czech entity. Such arguments would suggest that the insolvency proceeding seeks to install special mandatory regime seeking to ensure increased protection of the insolvency estate and increased rights of the insolvent debtor. Automatic Termination could then be declared to be invalid for circumvention of mandatory termination and set-off restrictions set forth in the Insolvency Act, circumventing the principles of Insolvency Act or declared ineffective on one or more of the grounds described in Paragraph 4.1.1(i).

There are some important arguments against challenges based on the argument on circumvention of applicable restrictions on termination and set-off. The effects of Automatic Termination are based and rely on the use of close-out netting as instrument distinct from both termination and set-off. As described in more detail below in Paragraph 4.1.5, the close-out netting arrangements are as a principle enforceable in the insolvency proceedings of a Czech entity. Accordingly, by effecting the Automatic Termination, the terminating Party does not assume for it rights broader than those it would have had it effected the termination only upon occurrence of insolvency. At the same time a contractual agreement enabling a party to terminate a contract upon insolvency of the other party (without automatic option) appears to be recognized without reasonable doubt as a matter of Czech law.

As to the arguments based on ineffectiveness of the Automatic Termination for one or more of the grounds described in Paragraph 4.1.1(i), the general analysis set out in that Paragraph applies.

4.1.4 **Would you recommend to elect Automatic Termination to apply upon a Winding-up, Insolvency or Attachment (as defined in § 3.1(C)(iii) of the EFET Master Netting**

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

As described in more detail in this Memorandum below, the election of the Automatic Termination does not provide any material additional assurance regarding the ability of the solvent Party to enforce its termination and close-out netting rights in the period between the opening of an insolvency proceeding in the Czech Republic in respect of the other Party and declaration of bankruptcy in respect of such Party and enforceability of Automatic Termination provisions may be challenged on the grounds that the Automatic Termination seeks to circumvent limitations on termination of transactions in insolvency of the relevant Czech entity (as described in more detail in Paragraph 4.1.5(i) below) and/or set-off restrictions in respect of the receivables that form part of the insolvency estate of the relevant Czech entity. Accordingly, we do not recommend such election.

If elected, taking into account the above potential legal risks, the Automatic Termination should typically cover (i) filing of an insolvency petition by the debtor, (ii) filing of an application for reorganization by the debtor, and (iii) filing of an application for moratorium by the debtor. Including the filing of an insolvency petition by any third party as an Automatic Termination trigger should be carefully considered in respect of a Czech counterparty since any creditor of the debtor may file an insolvency petition (subject to limited restrictions set out in the Insolvency Act) and it is not uncommon in the practice of Czech insolvency proceedings that such petitions filed by creditors are unsubstantiable or otherwise clearly frivolous. Even in case of such petitions, it may take number of weeks for the debtor to have the insolvency proceedings dismissed. Accordingly, if the third party petitions are included as a trigger of Automatic Termination, the parties may consider having the Automatic Termination occur only if such petition (i) results in declaration of insolvency by the insolvency court, or (ii) is not rejected in the period agreed in the relevant Master Agreement. Although we would expect such period to range typically from 30 to 60 days, this phase may in certain cases last longer than 60 days even though the insolvency is ultimately not declared by the relevant court.

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

(a) Early Termination

By "**discretionary termination rights**", we mean the rights of the Terminating Party to terminate relevant Master Agreement (and all Netted Agreements, Principal Agreements and transactions thereunder) and designate an Early Termination Date in accordance with the provisions of §5.1of EFET Master Netting Agreement or with the provisions of Clause 2.1 of Cross-Product Master Agreement (the "**Termination Provisions**") upon the occurrence of a Close-Out Event (whether or not relating to an insolvency) with respect to the other Party in circumstances where the Automatic Termination has not been elected to apply to the other Party.

Except as indicated below, we are not aware of any provisions of Czech insolvency laws that would affect the discretionary termination rights of either Party with respect to relevant Master Agreement, all Netted Agreements, Principal Agreements and transactions thereunder. Generally, Czech insolvency laws do not restrict the solvent parties from exercising their contractual or statutory rights to terminate contracts with the insolvent counterparty and, in certain cases, even provide them with additional termination rights.

As exceptions to the above general rule:

(i) Section 253 of the Insolvency Act sets out that the insolvency trustee may refuse performance under any contract between the Parties that provides for a mutual performance of their obligations which, as of the date of the opening of the liquidation bankruptcy proceedings, has been performed by neither the insolvent debtor nor the other party, or which has been performed only partially (executory contract), Such right is to be exercised by the trustee in the period of 30 days from the opening of the liquidation bankruptcy proceedings (and unless otherwise determined by the trustee during this period, is deemed to be automatically exercised upon the lapse of this period). During this period, the other party may not rescind the contract, unless the relevant contract stipulates otherwise. Potentially, this could apply to any Netted Agreement under relevant Master Agreement or to relevant Master Agreement as a whole. To mitigate adverse effects of Section 253 to the position of a party vis-à-vis an insolvent Czech counterparty, we recommend the insertion set out in Annex I, Clause 6 to this Memorandum. Regardless of the proposed modification, since Section 253 of the Insolvency Act is the provision which seeks to make it possible for the insolvency trustee to cherry-pick the favourable transactions to which the insolvent debtor is a party, it is strongly recommended to designate the Early Termination Date under the relevant Master Agreement and effect the close-out netting before the declaration of bankruptcy.

(ii) Section 122(2) of the Insolvency Act provides that, during the moratorium, contracts on the supply of energy and commodities as well as other contracts on the supply of goods and services that were in existence for at least three months as at the date on which the moratorium is declared may not be cancelled by the respective counterparty to such contracts, nor may the counterparty withdraw from them, on grounds of a default of the debtor with payments for the goods or services that occurred before the declaration of the moratorium, or on grounds of the deterioration of the debtor's financial standing, provided that the debtor duly and timely fulfills at least its obligations arising on the basis of these contracts in the period commencing 30 days before the declaration of the moratorium.

Although this provision appears to be seeking to protect the insolvent debtor from cessation of deliveries which are essential for the continuation of business and should therefore not apply in cases where the relevant Netted

Agreement is entered into for investment purposes, it cannot be excluded that this provision would be construed so as to apply to any Netted Agreements, Principal Agreements and transactions thereunder or even the relevant Master Agreement as a whole. In such case, it would not be possible to rescind or otherwise terminate the relevant Master Agreement during moratorium.

(iii) In addition, although the Insolvency Act does not further regulate the legal effects of rescission, under Czech contractual law generally applicable to commercial relations (Section 2004 and 2005 of the Civil Code) the remedy of rescission generally results in the termination of all rights and obligations of the parties under a contract, except for any rights to claim damages for the breach of the contract. The Civil Code further stipulates that a rescission does not effect any provisions of the contract regarding the governing law or dispute resolution nor any other provisions that, pursuant to the Parties' intention or given the nature of such provisions, should remain effective.

Please note that it is not clear which provision of the relevant Master Agreement, in addition to those set forth above (i.e., provisions regarding the governing law and dispute resolution), would (by their nature) remain effective if either Party exercised its rescission rights with respect to the relevant Master Agreement. Even if the Parties explicitly set out their intentions in relevant Master Agreement as to which provisions should remain unaffected by a rescission, it is possible that such specification would be disregarded in insolvency proceedings.

(b) Close-out Netting

By the close-out netting provisions, we mean the provisions of §8 of EFET Master Netting Agreement and of Clause 4 of Cross-Product Master Agreement, providing for the release of all obligations under the Transactions then outstanding under all Netted Agreements, Principal Agreements and transactions thereunder and replacement of those obligations with a single obligation to pay the Final Net Settlement Amount (the "**Netting Provisions**").

Section 366(2) of the Insolvency Act explicitly protects from the effects of the Insolvency Act contractual close-out netting arrangements that meet the requirements of Section 193 of the Capital Markets Act (each such arrangement hereinafter a "**Close-out Netting Arrangement**"), provided in each case that such Close-Out Netting Arrangements are validly entered into under their respective governing laws and are not ineffective for one or more of the grounds described in Paragraph 4.1.1(i) above.

For the purposes of this Memorandum it is therefore crucial to consider to what extent the Netting Provisions meet the above requirements and qualify as a Close-out Netting Arrangement within the meaning of the above.

Close-out netting arrangements are defined in Section 193 of the Capital Markets Act as an institute distinct from set-off which is "*… a contractual arrangement governed by Czech or foreign law which:*

a) can be documented in writing (or, as the case may be, by way of records which allow for unaltered reproduction);

b) *relates to receivables of the parties (including accessories of such receivables) that are eligible to be collateralized by financial collateral arrangements under the Financial Collateral Act or to receivables (including accessories of such receivables) under financial collateral arrangements (or equivalent legal relations under foreign law); and*

c) *triggers, upon occurrence of a pre-agreed event, the discharge and replacement of the obligations which correspond to the receivables referenced in (b) or, as the case may be, the set-off of those obligations (due and undue), such that the final result is a single receivable on the part of one party, and a corresponding obligation on the part of the other party to settle the resulting amount.*"

We believe that the Netting Provisions satisfy the above requirements and that, accordingly, the Netting Provisions should be treated as a Close-out Netting Arrangement within the meaning of the above; this conclusion is, however, subject to the assumptions and qualifications set forth below:

(i) We assume that each Party has executed (or confirmed the execution by it of) relevant Master Agreement (including its Annexes, Schedules and the Election Sheet) in writing (which term under Czech law also includes facsimile copies). Please note that Section 193 of the Capital Markets Act also allows a Close-out Netting Arrangement to be evidenced by any other record which permits the unaltered reproduction.

In this respect we note that there are some doubts under Czech law whether email constitutes communication "in writing or in a manner which permits the unaltered reproduction".

Czech law positively states that written form of a legal act made via electronic means is complied with if the legal act is (a) made by such electronic means that enable it to record the contents of the legal act and to identify the person who made the legal act, and (b) signed (whereby, as described below, requirement (b) in practice of Czech courts largely subsumes requirement (a)).

Czech law distinguishes between simple electronic signature (being in principle any data serving as a method of authentication) and certified electronic signature (being a specific authentication tool issued by the state accredited certification authority). Some part of Czech legal theory suggests that, for example, a signature block in the end of the email, accompanied by other data allowing for identification of the person making the legal act (e.g., an email address) should be considered to constitute sufficient electronic signature, and accordingly an email signed in that way should constitute written form. This interpretation also seems to be in line with EU law applicable to financial collateral arrangements[7].

[7] Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements states that the evidence of perfection of financial collateral by "electronic means" will suffice. Similarly, Directive No. 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures sets forth that an electronic signature (simple) should not be denied legal effectiveness solely on the grounds that it is in electronic form, or not based upon a qualified certificate, or not based

That said, Czech courts have so far been very reluctant to accept simple electronic signature. In particular, the Czech Supreme Court has so far to our knowledge never accepted email with simple electronic signature as being effective to constitute a written document. In instances where it considered the issue and refused to admit "simple" emails as written documents, the court positively confirmed that an email with certified signature constitutes written form and although it did not positively state that anything less is unacceptable, it never provided a guidance of what constitutes sufficient standard to constitute written form.

Therefore, although (using reasonable interpretation of applicable Czech laws based on EU directives, and observing the market practice) such requirement may appear excessive, the only genuinely safe harbor and advisable practice to satisfy the requirement under this paragraph (i) is to either use certified electronic signature in the email confirmations or use means traditionally accepted as written form under Czech law (i.e., facsimile or hardcopy).

Although we believe that Section 193 of the Capital Markets Act requires that only the Close-out Netting Arrangement itself be evidenced in writing or by other admissible record, due to the lack of any precedents or authoritative interpretation we cannot entirely exclude that Czech courts could interpret the provision such that also the EFET Documents other than Master Agreement and/or Netted Agreements, Principal Agreements and transactions thereunder must also be similarly evidenced.

(ii) In order for the Netting Provisions to qualify as a Close-out Netting Arrangement it is necessary to ensure that only the receivables which can be secured by financial collateral arrangements under the Financial Collateral Act are included in the scope of Close-Out Netting Arrangement. Such receivables include receivables arising out of transactions the subject of which are exclusively monetary funds, investment instruments, emission allowances or commodities, and rights and receivables related to such transactions.

Annex I includes the transactions under relevant Master Agreement which you have asked us to consider from the perspective of their eligibility for close-out netting. These transactions would in general qualify as monetary funds, investment instruments, emission allowances or commodities and as such, be generally eligible to be included in a Close-Out Netting Arrangement. By way of exception, certain ambiguities exist in respect of some of the transactions outlined below:

<u>Bullion Options, Bullion Swaps, Commodity Forwards, Commodity Options or Commodity Swaps,</u>

which in each case provide for <u>physical settlement</u> ("**Relevant Commodities Transactions**") could in theory be qualified as either commodities or investment instruments, and as such, be eligible for netting. Neither of these qualifications is, however, without ambiguities.

upon a qualified certificate issued by an accredited certification-service-provider, or not created by a secure signature-creation device.

Characterisation as Commodities

The treatment of electricity, gold, silver and platinum as commodities appears to be established in Czech law beyond any reasonable doubt. Accordingly, to the extent that the Financial Collateral Act was interpreted and construed so that it does not distinguish between spot trades with commodities and other (derivative) trades, the Relevant Commodities Transactions would be eligible for netting as "commodities".

However, we believe that there is a considerable likelihood that a court of competent jurisdiction in the Czech Republic would distinguish between spot and other trades. Such likelihood is in our view based, inter alia, on the reasons set out below:

(A) traditional interpretation of the term "commodities" used in the Financial Collateral Act would suggest that this term includes solely spot trades; this view is consistent for example with Act No. 229/1992 Coll., on commodities exchanges, and also with Article 2(1) of Commission Regulation (EC) No 1287/2006 of 10 August 2006 ("**Regulation 1287/2006**");

(B) any reasonable interpretation is likely to conclude that a distinction needs to be made between the scope of the terms "commodities" and "investment instruments" used in the Financial Collateral Act, as otherwise use of both terms would be inappropriate; because "commodities" and "investment instruments" have different treatment in various pieces of Czech legislation (including for example legislation governing VAT), it is not desirable that certain instrument can be characterised as both a commodity and an investment instrument;

(C) it further appears that if a strict distinction is to be made between "commodities" and "investment instruments", derivatives as general class will typically be less likely to be characterised as commodities; broad categories of commodity derivatives are indeed specifically described as investment instruments in the Capital Markets Act (see below); and

(D) if the above distinction between spot trades and derivatives is applied to the Relevant Commodities Transactions, these would in our view more likely to be characterised as derivatives, due mainly to (i) a significant delay between the parties entering into a Relevant Commodities Transaction and a settlement of the Relevant Commodities Transaction, and/or (ii) the commercial effect of the Relevant Commodities Transaction being the transfer of risk of price fluctuations of the underlying asset from the seller to the buyer.

Characterisation as Investment Instruments

In case that the Relevant Commodities Transactions would be qualified as derivative trades and as such, excluded from the scope of "commodities", the analysis of eligibility of the Relevant Commodities Transactions for netting would then need to turn to the question whether such derivatives are also "investment instruments" as defined in the Capital Markets Act. For purposes of this Memorandum, we considered the following categories of investment instruments set out in the Capital Markets Act which may potentially apply to the Relevant Commodities Transactions:

(A) options, futures, swaps and other instruments the value of which is derived from underlying commodities, providing for physical settlement of the underlying commodity, traded on the regulated market seated in a member state of the European Union, or in a multilateral trading facility operated by a party seated in a member state of the European Union;

(B) options, futures, swaps, forwards and other instruments the value of which is derived from underlying commodities, providing for physical settlement of the underlying commodity, and not referred to under [*cross-reference in the Capital Markets Act points to the category of investment instruments comprising the instruments listed in category (A) above*], are not intended for commercial purposes and exhibit the features of other investment derivative instruments; these include in particular instruments booked and settled via a clearing system, or instruments including a margin call; and

(C) instruments the value of which is derived from underlying assets, rights, liabilities, indices or quantified indices, which are not [*cross-reference in the Capital Markets Act points to the category of investment instruments comprising options, futures, swaps, forwards and other instruments the value of which is derived from underlying climatic indicators, transport tariffs, emission quotas or inflation rate, as well as other economic indices published in official statistics, providing for cash settlement or the right of at least one party to choose whether it wishes to receive cash settlement, unless the exercise of such right is dependent on insolvency or other analogous inability to perform*] and which exhibit the features of other investment derivative instruments; these include in particular instruments traded on the regulated market seated in a member state of the European Union, or in a multilateral trading facility operated by a party seated in a member state of the European Union, booked and settled via a clearing system, or instruments including a margin call."

None of the above categories is applicable to the Relevant Commodities Transactions without considerable level of uncertainty. Specifically, in respect of:

(A) category (A), the Relevant Commodities Transactions would typically not be traded on "a regulated market or in a multilateral trading facility".

It can be argued in this respect that the term "regulated market" should not be restricted to "stock-exchange" types of markets but should rather include any market, which is subject to regulation of the trades entered into in such market or of requirements regarding access of the potential participants to such market. Such interpretation could be supported by formal argument suggesting that futures are the only category of instruments, which are listed in category (A) and which are regularly traded in "stock-exchange" type of market. Since the other instruments listed in category (A) are in commercial practice traded exclusively "over-the counter", their inclusion in category (A) would be superfluous in case that the term "regulated market" were to be interpreted to include only the "stock-exchange" type of markets and such interpretation would be unreasonable. Following this line of argumentation, it could then be argued that electricity market is subject to sector regulation, be it in terms of requirements to obtain licence to trading or obligations imposed on licensed traders.

Despite the above arguments, we believe that broader interpretation of the term "regulated market" as outlined above is less likely to succeed, since the Capital Markets Act, while not defining the term "regulated market", appears to clearly use the term in the context of "stock-exchange types" of markets. For example, it sets out minimum capital requirements applicable to regulated markets, requirements in terms of admission of instruments to trading in regulated markets, trading and trade transparency rules applicable to regulated markets etc. It also contemplates the role of "organiser" of regulated market licenced by the Czech National Bank to operate the regulated market; this concept is clearly unsuitable to electricity market.

(B) category (B), the Relevant Commodities Transactions do not have any of the features specifically referred to in the Capital Markets Act, i.e., they are neither "booked or settled via a clearing system", nor do they "include a margin call".

Strong argument for inclusion of the Relevant Commodities Transactions in category (B) is that the Relevant Commodities Transactions (as noted above) do in fact exhibit some principal features of derivative instrument, e.g., (i) significant delay exists between the parties entering into a Relevant Commodities Transaction and a settlement of the Relevant Commodities Transaction, and/or (ii) the commercial effect of the Relevant Commodities Transaction is the transfer of risk of price fluctuations of the underlying asset from the seller to the buyer).

The problem inherent in the use of the above argument is the complete absence of binding guidance in Czech legislation and case law as to what the "features of derivative instruments" are. Article 38 of Regulation 1287/2006 sets out that an instrument shall be considered as having the characteristics of other derivative financial instruments and not being for commercial purposes "*if it satisfies the following conditions:*

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

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

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

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

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

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

Using Article 38 of the Regulation, it could then be argued that the Relevant Commodities Transactions comply with the conditions set out in (c), mainly because of use of the relevant Master Agreement, standardized eCM and EFETnet platform to document the Relevant Commodities Transaction, and reference to standardized terms in description of scheduled deliveries. In this respect, we see a significant risk that a court of competent jurisdiction in the Czech Republic would interpret Article 38 of Regulation 1287/2006 so that the conditions in (a) through (c) are cumulative, mainly because of the use of phrase "satisfies the following conditions" in the chapeau of Article 38. This wording would in the context of Czech law typically be formally interpreted as introducing a set of cumulative conditions, especially in view of contrasting phrase in paragraph (a) which contains phrase "meets one of the following sets of criteria".

We are aware of commercial argument suggesting that if the conditions set out in Article 38 of Regulation 1287/2006 would be interpreted as cumulative, scope of Article 38 would be unreasonably restrictive. Although we do see strong commercial merits to such argument, we are not convinced that a court of competent jurisdiction in the Czech Republic would necessarily be prepared to accept such commercial argumentation or to give it greater weight than the formal interpretation outlined above.

In the case that the commercial terms of the Relevant Commodities Transactions were adjusted so as to include also margin calls (i.e., a Credit Support Annex would be put in place), an additional strong argument would be available for characterisation of the Relevant Commodities Transactions as investment instruments. We note that the relevant court would still need to be convinced that Credit Support Annex constitutes a margining arrangement within the meaning of the Capital Markets Act. Since the margining mechanism used in the Credit Support Annexes is customarily used in the transactions with commodities and derivatives and, together with similarly structured ISDA Credit Support Annex and ISDA Credit Support Deed, constitutes market standard in margining arrangements, we see no particular reason to question the satisfaction of this requirement (if interpreted reasonably). Such characterisation will however be unprecedented under Czech law and will, to a certain extent, be an assessment of facts rather than an interpretation of law.

At the same time, the relevant court would need to satisfy itself that other requirements applicable to category (B) described above are met. In particular, the court would need to be convinced that the Relevant Commodities Transactions "are not entered into for commercial purposes". We are not aware of any case law of Czech courts or authoritative legal theory, which would specify the contents of this term in any closer detail; at the same time, outside the scope of legislation transposing MiFID into Czech law, Czech law would typically assign to this term different meaning than that contemplated by MiFID. Unlike Regulation 1287/2006, interpretative statements of CESR dealing with the construction of the term "not entered into for commercial purposes" are not legally binding and it remains to be seen what interpretative power a Czech court deciding in a dispute would assign to such statements. Accordingly, to the extent that Article 38 of Regulation 1287/2006 (see above) cannot be relied on to support the argument that the Relevant Commodities Transactions are not entered into for commercial purposes, no assurances can be given as to interpretation of this term taken by a court of competent jurisdiction in the Czech Republic.

(C) category (C) - please refer to the argumentation in (B) above; please note that for inclusion in category (C), however, it is not required that the Relevant Commodities Transactions "are not entered into for commercial purposes".

<u>Emissions Allowance Transactions</u>

With respect to the emission allowances, the Financial Collateral Act expressly refers to *non-derivative spot transactions with emission allowances* as instruments eligible for close-out netting. Please note, however, that when referring to emission allowances, the relevant footnote of the Financial Collateral Regulations cross-refers solely to emission allowances and CERs issued under Article 12 of the Kyoto Protocol but not ERUs issued under Article 6 of the Kyoto Protocol. Accordingly, the treatment of Emission Spots with ERUs at their underlying asset remains doubtful.

With respect to derivative transactions with emissions allowances as the underlying asset, the statutory definition of investment instruments set out in the Capital Markets Act only includes:

a) "*options, futures, swaps, forwards and other instruments related to climatic variables, freight rates, <u>emission allowances</u> or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties otherwise than by reason of a default or other termination event*"; and

b) instruments the value of which is derived from underlying assets, rights, liabilities, indices or quantified indices, which are not the [*instruments described in (a) above*] and which exhibit the features of other investment derivative instruments; these include in particular instruments traded on the regulated market seated in a member state of the European Union, or in a multilateral trading facility operated by a party seated in a member state of the European Union, booked and settled via a clearing system, or instruments including a margin call.

The only derivative emission allowance transaction which safely qualifies as nettable instrument is accordingly a derivative transaction with emission allowances which is "*settled in cash or may be settled in cash at the option of one of the parties otherwise than by reason of a default or other termination event*".

For the remaining derivative transactions with emission allowances, as well as any derivative transactions with CERs or ERUs at their underlying asset (not explicitly mentioned in (a) above) (the "**Relevant EUA Transactions**"), the treatment remains doubtful.

In line with the discussion outlined in those paragraphs, in order for the Relevant EUA Transaction to be nettable, the relevant court would need to satisfy itself that such transaction has "features of derivative instruments". The arguments set out above in respect of the Relevant Commodities Transactions in paragraphs (B) and (C) above apply equivalently also to the Relevant EUA Transactions.

Property Index Derivative Transactions

In order for index transactions to qualify as investment instruments, the relevant reference index must be "published by official statistics" and the relevant transaction must be "*settled in cash or may be settled in cash at the option of one of the parties otherwise than by reason of a default or other termination event*".

Alternatively, the relevant court would need to satisfy itself that such transaction has "features of derivative instruments". The arguments set out above in respect of the Relevant Commodities Transactions in paragraphs (B) and (C) above apply equivalently also to such index transactions.

Summary

Accordingly, there is some uncertainty whether the instruments referred to in this paragraph (ii) are eligible to be included in close-out netting arrangements under Section 193 of the Capital Markets Act. We are not aware of any legislative intent or policy which would seek to exclude (whether explicitly or by omission) instruments of this type from the scope of close-out netting arrangements under Section 193 of the Capital Markets Act and by extension, give them less favorable netting regime than other types of spot or derivative trades with commodities referred to above.

As noted above, there are strong arguments, which support the characterisation of the Relevant Transactions as investment instruments, particularly in the context of category (2) and (3) above. In view of the traditionally formalistic approach of Czech courts, no assurance can be given, however, that a Czech court would not adopt restrictive interpretation of relevant legislation and exclude such instruments from the scope of close-out netting arrangements under Section 193 of the Capital Markets Act. Such restrictive interpretation would result in these instruments not being nettable under Section 193 of the Capital Markets Act.

We have submitted a qualified query to the Czech National Bank seeking clarification regarding the eligibility of the Relevant Commodities Transactions (with electricity or gas as their underlying asset) for the close-out netting. The Czech National Bank responded that they consider the Relevant Commodities Transactions to be the receivables which can be secured by financial collateral arrangements under the Financial Collateral Act, i.e., receivables arising out of transactions the subject of which are exclusively monetary funds, investment instruments, emission allowances or commodities, and rights and receivables related to such transactions. They based their conclusion on the fact that the Relevant Commodities Transactions are "transactions the subject matter of which is electricity or gas, i.e., commodity, and that even failing their characterization as investment instrument, the Relevant Transactions would be considered rights and receivables related to transactions described in the above definition" [*i.e., cross-referring to the definition of receivables which can be secured by financial collateral arrangements under the Financial Collateral Act*]. The Czech National Bank concluded that they "have no doubts" that the Relevant Commodities Transactions are eligible for close-out netting under Section 193 of the Capital Markets Act. This conclusion could in our view apply bz analogy also to the Relevant EUA Transactions.

The reasoning used in the above response is admittedly not particularly robust and accordingly, the persuasiveness of the response could be diminished. At the same time, the interpretative statements of the Czech National Bank are not binding for Czech courts and accordingly, the conclusion reached in the response of the Czech National Bank does not necessarily predetermine the conclusion reached in eventual dispute. That said, in absence of relevant case law, the response of the Czech National Bank is the only interpretative tool currently available on the subject this far and provides some comfort that the Relevant Commodities Transactions and Relevant EUA Transactions would indeed be eligible for the close-out netting.

(iii) Section 193 of the Capital Markets Act requires that the manner of valuation of receivables included in the close-out netting, the moment as of which such valuation must be effected, and the terms of (and time period for) settlement of the resulting single receivable must be set out in the close-out netting arrangement, and must not be in conflict with customary practice in the relevant financial market.

Although we see no particular reason to question the satisfaction of these requirements (if interpreted reasonably) in relation to the Netting Provisions, we wish to make a general note that, in the case of a dispute concerning the enforceability of the Netting Provisions, a Czech court will need to satisfy itself as to the fulfillment of these requirements, which will involve, to a certain extent, an assessment of facts rather than an interpretation of law.

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

In our view, it is not necessary for the Netted Agreements, Principal Agreements and transactions thereunder to form part of a single agreement in order for the Netting Provisions to be effective under Czech law. The Netting Provisions merely stipulate that the relevant scope of receivables needs to be set out in the netting arrangement without requiring that such receivables would necessary have to arise on the basis of the same agreement.

There is some uncertainty under Czech law as to whether a Partial Close-Out can be effected so that only part of (but not all) receivables subject to the relevant Close-Out Netting Arrangement be terminated. As noted above, Section 193 of the Capital Markets Act refers to mechanism where obligations included in the Close-Out Netting Arrangement are terminated and replaced by a “single obligation”. Although this wording does not explicitly rule out the possibility for partial close-outs, a convincing argument could be presented on the literal interpretation of Section 193 of the Capital Markets Act that a Close-Out Netting Arrangement providing for a Partial Close-Out is not one contemplated by Section 193 of the Capital Markets Act and as such, does not enjoy the protections (described in this Memorandum) afforded to Close-Out Netting Arrangements under Czech law.

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

The obligation to pay an amount in foreign currency would as a principle be valid under the laws of the Czech Republic. However, for purposes of enforcing such obligations against a Czech entity, certain limitations are set out in the Czech legislation.

Section 175 of the Insolvency Act requires that all receivables denominated in currencies other than Czech currency need to be converted into Czech currency for the purposes of their registration in insolvency proceedings, using the foreign exchange rate published by the Czech National Bank on the date when insolvency proceedings were opened or, if earlier, on the maturity date of the respective receivable. This could apply, for instance, to the Final Net Settlement Amount.

The Insolvency Act does not expressly specify that the payments by an insolvency trustee to creditors following the determination of the insolvency estate must be denominated in Czech currency. It is, however, likely that the Insolvency Act contains an implied assumption that payments to creditors (other than those made in the continuing business of the insolvent debtor) will only be made in Czech currency as otherwise the mandatory conversion referred to above would have no obvious purpose in the context of Czech insolvency laws. Furthermore we have not seen any court resolution on the distribution of proceeds from the insolvency estate where a payment has been made in a currency other than Czech currency. However, there are no provisions in the Insolvency Act regarding exchange rate at which the receivable denominated in foreign currency would be converted to the Czech currency amount to be paid to the creditor.

In addition, under Section 155(2) of the Civil Proceedings Act, Czech courts may generally refuse to issue a judgment in a non-Czech currency if payment in such currency would be "inconsistent with the circumstances of the relevant case".

4.1.8 **Please specify, if and as applicable, the degree to which termination and close-out rights in insolvency in your jurisdiction are dependent upon, or otherwise effected by, the status of one or more of the concerned parties falling within a particular category of classification of entity. Specifically, do these rights differ as the result of a party being a financial institution, ordinary corporate entity or any other categorization or regulatory or legal status?**

Termination and close-out rights should not be dependent upon, or otherwise affected by, the status of one or more of the concerned parties falling within a particular category of classification of entity.

That said, as noted above, Section 193 of the Capital Markets Act determines the scope of receivables eligible for close-out netting by reference to the receivables that can be collateralized by financial collateral arrangements. On that basis, one could argue that only mutual receivables of entities which are permitted to enter into a financial collateral arrangement (please refer to Paragraph 4.4 below) are also permitted to be covered by a close-out netting arrangement. We believe there are strong arguments against such interpretation. We believe that the legislative intent of the above provision and of the cross-reference to the Financial Collateral Act was to determine the receivables eligible for close-out netting arrangements by their character (i.e., as receivables arising out of transactions the subject of which are exclusively monetary funds, investment instruments, emission allowances or commodities, and rights and receivables related to such transactions) and not by their parties. Although footnotes contained in Czech laws do not have statutory nature (i.e., for purposes of application Czech laws by the courts, they do not form part of such laws), it should be noted that the footnote contained in Section 193 of the Capital Markets Act which specifies the cross-reference to the Financial Collateral Act also refers only to the provisions of the Financial Collateral Act defining the character of receivables that can be collateralized by financial collateral arrangements, and not the provisions defining parties to such receivables.

4.2 Non-Insolvency related Close-Out Events

4.2.1 **Are the rights of the Terminating Party or Closing-Out Party to terminate and Close-Out the Netted Agreements or Principal Agreements including all transactions enforceable in accordance with the terms of the EFET Master Netting Agreement or TBMA Cross Product Master Agreement, irrespective of the insolvency of Party A?**

Given the explicit protections set forth in the Insolvency Act, and assuming for this purpose (in accordance with the conclusions set forth above) that the Netting Provisions constitute the Close-out Netting Arrangement, we are of the view that the enforceability of the Netting

Provisions should not be affected by Czech insolvency laws, provided that the Netting Provisions are validly entered into under their respective governing law and are not ineffective for one or more of the grounds described in Paragraph 4.1.1(i) above.

General analysis set forth in Paragraph 4.1 above applies also to non-insolvency related Close-Out Events (provided that the effects of insolvency rules are not applicable to termination made prior to insolvency of the Czech counterparty).

4.3 Multibranch Parties

4.3.1 Overview of international insolvency law

Czech international insolvency law is primarily governed by Section 426 et seq. of the Insolvency Act and the Regulation, pursuant to which the insolvency proceedings which have a "European cross-border effect"[8] shall be governed by the Regulation.

Insolvency proceedings without such cross-border effect are governed by the Conflict of Laws Act and the substantive provisions of the Czech insolvency laws (excluding the Regulation) – please see Paragraph 4.3.3 for more details.

(a) The Regulation

Scope of Application of the Regulation

The Regulation entered into force on 31 May 2002 and has been directly applicable in each EU member state (including the Czech Republic after its accession to the EU on 1 May 2004) except for Denmark (each such state, a "**Regulation State**").

It applies to collective insolvency proceedings that are opened against a debtor that has the center of its main interest in a Regulation State ("**Regulation Debtor**"). In the case of a legal entity, there is a rebuttable presumption that the seat of the registered office is the center of main interest.

For the purposes of this Memorandum, the Regulation applies to insolvency proceedings opened in the Czech Republic against companies,[9] whose center of main interest is in a Regulation State.

International Jurisdiction

In accordance with Article 3(1) of the Regulation, Czech courts are granted jurisdiction to open so-called main insolvency proceedings with respect to companies whose center of main interests is situated in the Czech Republic. The conditions for the opening of such proceedings shall be determined by Czech law. The effects of main insolvency proceedings generally cover all of the debtor's assets located in Regulation States. Any judgment opening insolvency proceedings handed down by Czech courts should be recognized in all other Regulation States as of the date it becomes effective in the Czech Republic. As a basic principle, main insolvency proceedings should, with no further formalities, have the same effect in every other

[8] That is, insolvencies with cross-border effects, where the centre of main interest of the insolvent debtor is in the Regulation State.

[9] Pursuant to Article 1(2), the Regulation does not apply to insolvency proceedings concerning insurance undertakings, banks, investment undertakings which provide services involving the holding of funds or securities for third parties, or to collective investment undertakings.

Regulation State as under the law of the Czech Republic (Articles 16 and 17 of the Regulation). Article 26 of the Regulation contains a public order reservation.

Before the opening of main insolvency proceedings in another Regulation State, territorial insolvency proceedings may be opened in the Czech Republic if the debtor has an establishment (which is any place of operations where the debtor carries out a nontransitory economic activity with human means and goods) in the territory of the Czech Republic. The effects of those territorial insolvency proceedings should be restricted to the assets of the debtor located in the territory of the Czech Republic (Article 3(2) of the Regulation).

In accordance with Article 27 of the Regulation, after the opening of main insolvency proceedings in another Regulation State, secondary insolvency proceedings may be initiated in the Czech Republic aside from the main proceedings, if the debtor has an establishment in the Czech Republic. In this case the debtor's insolvency does not have to be re-examined in respect of the secondary insolvency proceedings. The effects of secondary insolvency proceedings are restricted to the assets located in the Regulation State where they are established.

According to Article 27 of the Regulation, secondary proceedings must be liquidation proceedings. As a result, in the Czech Republic secondary insolvency proceedings could only be conducted in the form of liquidation bankruptcy proceedings. The liquidator in the main proceedings has the right to request the opening of secondary proceedings. However, any other person or authority empowered to request the opening of insolvency proceedings under Czech law also has the right to request the opening of secondary proceedings in the Czech Republic.

<u>Substantive law in respect of Close-Out Netting</u>

The Regulation contains conflict of law rules in respect of insolvency proceedings having a cross-border effect in a Regulation State.

Pursuant to Article 4(1) of the Regulation, as a general rule, the effects of insolvency proceedings opened in a Regulation State shall be subject to the law of the Regulation State in which such proceedings are opened (lex fori concursus). This general rule applies to main insolvency proceedings and territorial insolvency proceedings (Article 4 of the Regulation) as well as to secondary insolvency proceedings (Article 28 of the Regulation).

According to Article 4(2)(d) and Article 4(2)(e) of the Regulation, the law of the Regulation State in which such proceedings are opened shall determine in particular the conditions under which set-offs may be invoked and the effects of insolvency proceedings on current contracts to which the debtor is party.

Articles 5 to 15 of the Regulation contain special conflict of law rules that provide exemptions to the general rule set out in Article 4 and Article 27 of the Regulation.

Pursuant to Article 6(1) of the Regulation, the opening of insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such set-off is permitted by the law applicable to the insolvent debtor's claim. As a result, in cases where Article 6(1) of the Regulation applies, the solvent party may also set off its claims if this is admissible under the governing law of the claim.

The results of close-out netting are arguably economically equivalent to the results of set-off, but there is a technical difference in the contractual mechanism. Close-out netting is a process involving (i) the termination of open transactions on the occurrence of an event of default, (ii) the liquidation of those transactions so as to attribute to them a value (usually either by reference to their market value or to the cost of replacing them) and (iii) the aggregation of the values attributed to those transactions, giving rise to a single net debt owed by one party to the other.

Article 6(1) of the Regulation does not explicitly cover the termination and liquidation of the transactions. It only applies to the mere set-off after the termination and valuation of the transactions.

In the absence of any further guidance as to the interpretation of Article 6(1) of the Regulation by Czech courts, it is currently unclear whether in cases in which the Regulation applies and insolvency proceedings are opened in the Czech Republic, Czech courts would also look to the law governing the Netting Provisions to determine whether the close-out netting is to be given effect even in situations where Czech substantive insolvency law (analyzed in Paragraph 4.1.1 above) would not recognize the Netting Provisions.

The Conflict of Laws Act, however, provides a clear guidance concerning applicable substantive law concerning close-out netting in insolvency proceedings against Credit Institutions. It stipulates that provisions concerning close-out netting shall be governed by *lex causae*, i.e. by the law governing the agreement under which the close-out netting was established.

<u>Czech International Insolvency Law Relating to Credit Institutions and Insurance Undertakings</u>

In principle, the provisions of the Czech international insolvency law also apply to credit institutions and insurance undertakings.

However, the implementation of the WUCI and WUIU Directives resulted in certain additional provisions (set forth in the Insolvency Act and the Conflict of Laws Act) that apply only to EU Credit Institutions and EU Insurance Undertakings and, in specific instances, also to certain other credit institutions and insurance undertakings.

Most importantly, the Insolvency Act provides that, with respect to EU Credit Institutions and EU Insurance Undertakings, insolvency proceedings can be opened only by the relevant administrative or judicial authorities of the Home Member State.

The Conflict of Laws Act stipulates, as a general rule, that insolvency proceedings in respect of Czech Banks, EU Credit Institutions, Czech Insurance Companies and EU Insurance Undertakings are to be governed by the laws of the Home Member State. Furthermore, the Conflict of Laws Act specifically provides that the laws of the Home Member State shall be used to determine the conditions under which set-offs may be invoked in winding-up proceedings. Notwithstanding this general rule applicable to set-off, in accordance with the WUCI Directive, the Conflict of Laws Act also contains a specific rule regarding the law applicable to a close-out netting, applicable to Czech Banks, EU Credit Institutions and even such Non-EU Credit Institutions that have at least two banking branches established within the territory of the EU and EEA in at least two different countries. In accordance with Article 25 of the WUCI Directive, this rule provides that netting agreements shall be governed solely by the law of the contract that governs such agreements.

(b) Conflict of Laws Act

Scope of Application of the Act

Cross-border proceedings concerning debtors established in non-Regulation States are currently regulated by Conflict of Laws Act. Cross-border proceedings can be also theoretically governed by a bilateral or multilateral treaty, but we are not aware that the Czech Republic is a signatory state of any such treaty.

Pursuant to the Conflict of Laws Act, the Czech courts would have jurisdiction to commence insolvency proceedings in respect of non-Regulation Debtors in the case that their jurisdiction would be provided by the Regulation had the relevant debtor been a Regulation Debtor. In such cases, the Czech insolvency proceedings and rights and authority of the insolvency trustee to dispose of the insolvency estate also extend to the assets of the debtor located abroad, provided that the relevant foreign laws recognizes the effects of such Czech insolvency proceedings.

In addition, Czech courts may commence insolvency proceedings in respect of a non-Regulation Debtor that has a branch in the Czech Republic, provided that such insolvency proceedings are requested by a creditor with its habitual residence or seat in the Czech Republic or whose receivable against such debtor has arisen in connection with the activities of such branch. In such case, the Czech insolvency proceedings only apply to assets of the debtor in the Czech Republic.

4.3.2 **Multijurisdictional Netting**

In accordance with your instructions, we distinguish in this Paragraph 4.3 between (1) a Multibranch Party incorporated, organized or having its centre of main interest in the Czech Republic and (2) a Multibranch Party incorporated, organized or having its centre of main interest outside the Czech Republic, but operating through one or more branches in the Czech Republic.

Czech Multibranch Party

4.3.3 **Would there be any change in your conclusions reached under C.I.1 or C.I.2 above based upon the fact that Party A has conducted business under some or all of the Netted Agreements or Principal Agreements on a multibranch basis prior to its insolvency?**

Please refer to Paragraph 4.3.1 above.

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

Please refer to Paragraph 4.3.1 above.

Foreign Multibranch Party

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

Similarly to the regime for Czech Multibranch Parties described in Paragraph 4.3.1 above, if insolvency proceedings are commenced abroad in respect of Party F and the proceedings are not within the scope of the Regulation, Czech courts will recognize insolvency proceedings commenced abroad under the conditions equivalent to the Regulation (i.e., center of main interest of the non-Regulation Debtor is in the jurisdiction that opened the insolvency proceedings and no competing insolvency proceedings have been initiated in the Czech Republic) but it will also require reciprocity (i.e., that the relevant foreign jurisdictions treat reciprocally insolvency proceedings commenced in the Czech Republic).

Although Czech law does not explicitly address the issue, if the foreign proceedings were not recognized in the Czech Republic, separate Czech proceedings in respect of the Czech Branch could in theory also be opened in respect of Czech assets of such Czech Branch as described in Paragraph 4.3.1.

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

As mentioned in Paragraph 4.3.1 above, Czech insolvency proceedings may in certain circumstances have effect only on assets of the insolvent debtor located in the Czech Republic. In those cases, there is considerable level of uncertainty as to which debtor's receivables would form a part of the insolvency estate. In theory, the issue described in your question could arise, although as noted above, in cases in which potential claims under Master Agreement form part of the insolvency estate, Czech substantive law should still apply to determine that the entirety of (and not only part of) the Close-out Netting Arrangement would be applied.

4.3.7 **Please consider your answer to your question assuming instead that Party F has no branch located in Czech Republic, but has assets in Czech Republic.**

See above. To the extent that Czech insolvency proceedings apply only to assets located in the Czech Republic, Paragraph 4.3.6 above applies.

4.4 Collateral

4.4.1 Brief description of Czech financial collateral regime

As a general background, financial collateral arrangements are governed by the Financial Collateral Act, which implements the Directive 2002/47/EC on financial collateral arrangements (the "**Financial Collateral Directive**") into Czech law.

The Financial Collateral Act does not apply to all security arrangements but only to those that qualify as "financial collateral arrangements". The financial collateral arrangements are generally protected from effects of insolvency of the financial collateral provider under Section 366(2) of the Insolvency Act and their creation is also exempted from certain strict rules which would otherwise apply to traditional security arrangements. However, no published case law is available yet and it therefore remains to be seen how the Financial Collateral Act will be interpreted by Czech courts.

To qualify as a "financial collateral arrangement", a Credit Support Annex must fulfill the following principal conditions:

(a) The Eligible Credit Support should only comprise of cash, financial instruments or credit receivables set out in the Financial Collateral Act (as noted below, a Letter of Credit would not be eligible instrument for these purposes).

(b) Although no specific form is required for the financial collateral arrangement itself, the creation and perfection of the financial collateral arrangement and the identification of the financial collateral provided under the arrangement should be evidenced in writing or in a manner which permits the unaltered reproduction.

(c) The exclusive subject-matter of the transactions for which the relevant Credit Support Annex provides credit support should be monetary funds, investment instruments, emission allowances or commodities, and rights and receivables related to such transactions.

(d) The financial collateral arrangement must be entered into and come into existence (i.e., the relevant Eligible Credit Support transferred in accordance with the terms set out below) before initiation of insolvency proceedings in respect of the Transferor.

(e) The Transferor and the Transferee should fall within one of the categories of eligible parties listed in the Financial Collateral Act. Entities described in Paragraph 3.1.2. would generally qualify as such eligible party, although a Czech Corporate only with certain specified counterparties (a Czech Corporate among whose main activities is also trading with commodities will always qualify as eligible party).

Note that the Eligible Credit Support should be transferred to the Transferee each time in line with the laws of the country governing the transfer (please see below for more details on the governing law). Where the transfer is governed by Czech law and the Eligible Credit Support comprises of cash, such cash would be transferred upon being credited to the account designated by the Transferee.

A Credit Support Annex which would not be characterised as a financial collateral arrangement would expose the Party B to substantial risk relating to the legal status of that Credit Support Annex and the enforceability of Party B's rights to the Eligible Credit Support provided under that Credit Support Annex. For example:

(a) It is questionable whether the mutual obligations of the parties related to the provided Eligible Credit Support would be capable of being discharged trough close-out netting and replaced with a single obligation to pay the Final Net Settlement Amount.

(b) In absence of statutory protection given to the financial collateral arrangements, characterisation, legal regime and enforceability of the arrangements such as Credit Support Annexes is under Czech law questionable. Transfers of the Eligible Credit Support under a Czech law governed Credit Support Annex would most likely be characterised as purported security transfers of ownership right to the Eligible Credit Support (as opposed to outright transfers of ownership). Given the absence of certain provisions which are in our view required to be contained in the agreements constituting security transfers of ownership right, the relevant Credit Support Annex (if characterised as security transfers of ownership right) might be found invalid (or else, voidable) and unenforceable for lack of essential requirements prescribed by Czech law in respect of these types of arrangements. Even if the overall validity of the relevant Credit Support Annex were to be maintained, there is a substantial risk that obligations not existing at the time of the entry into the relevant Credit Support Annex (including the Final Net Settlement Amount) would not be secured by the Credit Support Annex.

(c) As of the moment of commencement of insolvency proceedings in respect of Party A, rights of Party B to enforce its rights to Credit Support Annex would be suspended and Eligible Credit Support provided to Party B under a Credit Support Annex would form part of the insolvency estate of Party A. Party B would then (subject to registering its claim and have the existence, validity and ranking of such claim successfully reviewed by the trustee, i.e., among other things defending successfully validity of a Credit Support Annex as a security transfer of ownership right to the Eligible Credit Support) take the position of the secured creditor with rights described in more detail in Section 4.1.1 above.

For above reasons, we strongly recommend to structure the Credit Support Annex, if governed by Czech law, as a financial collateral arrangement. Accordingly, unless indicated otherwise in this Memorandum, we will also only analyze the collateral arrangements under the Credit Support Annex from the perspective of the Financial Collateral Act or the Financial Collateral Directive (as applicable).

Also, the provision of Eligible Credit Support in the form of a Letter of Credit would as a principle not be characterised as financial collateral arrangement or other type of security provided from the assets of Party B and it would have no direct bearing on the relationship between Party A and Party B; the only connection between the mutual obligations of Party A and Party B would be that performance by the Credit Support Provider under the Letter of Credit would discharge Party A from its obligations to the extent that such obligations were performed by the Credit Support Provider. Also, please note that, given the absence of mutuality of the obligations of the Credit Support Provider and Party B, the obligations under the Letter of Credit could not be included in the close-out netting. For the above reasons, we only analyze the Eligible Credit Support provided in the form of cash for the purposes of this Memorandum.

Finally, as noted above, financial collateral arrangement may collateralize only the transactions the exclusive subject-matter of which are monetary funds, investment instruments, emission allowances or commodities, and rights and receivables related to such transactions. Please refer to our analysis set out in Paragraph 4.1.5(ii)(B) for the scope of Netted Agreements, Principal Agreements and transactions thereunder falling within that definition. If non-eligible Netted Agreements, Principal Agreements and transactions thereunder purported to be secured by a Credit Support Annex, such Credit Support Annex may lose the protection of the Financial Collateral Act (either in whole or insofar as it relates to the collateralization of such non-eligible Netted Agreements, Principal Agreements and transactions thereunder).

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

Case law of the Czech Supreme Court confirms that cash credited to an account should be regarded as a receivable of the account holder against the relevant account bank. The Czech Civil Code now describes all receivables (including the receivables of the account holder against the account bank) as movable assets (which are defined more broadly than under the previous Czech legislation), and accordingly, one could argue that according to the conflict of laws rules, provisions governing transfers of movable assets (rather than those described below governing assignments of claims) apply. Were such interpretation to prevail, some uncertainty would prevail as to the law governing the financial collateral – Conflict of Laws is not entirely clear in determining whether *lex rei sitae* (laws of jurisdiction where the cash was located at the time of the financial collateral came into existence) or *lex causae* (laws governing the agreement under which the close-out netting was established) should prevail in those circumstances.

As to the law governing the assignments of claims, Clause 14 of the Rome Regulation (as defined below) sets out that:

"*1. The relationship between assignor and assignee under a voluntary assignment or contractual subrogation of a claim against another person (the debtor) shall be governed by the law that applies to the contract between the assignor and assignee under this Regulation.*

2. The law governing the assigned or subrogated claim shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment or subrogation can be invoked against the debtor and whether the debtor's obligations have been discharged.

3. The concept of assignment in this Article includes outright transfers of claims, transfers of claims by way of security and pledges or other security rights over claims."

Accordingly, within the scope of the Rome Regulation, while the parties are free to elect the choice of law to govern their Credit Support Annex (and such law would in its turn govern the financial collateral arrangement), certain elements of the financial collateral arrangement under the Credit Support Annex (including, without limitation, enforcement of Party B's rights in respect of the transferred Eligible Credit Support against the account bank) would be governed by the law under which the relevant receivables arose (i.e., typically the governing law of the relevant account agreement or of the jurisdiction of incorporation of the relevant account bank).

In summary, although (regardless of the specific conflict of laws rule applicable to a particular financial collateral arrangement), it appears without doubt that some elements of the financial collateral arrangements will not be governed solely by the governing law of the Credit Support Annex. Accordingly, to the extent that the agreement on maintain the relevant bank account is governed by the laws of, or the account bank is incorporated in a jurisdiction other the Czech Republic, specific local law advice should be sought to determine if the below considerations expressed solely in the context of Czech law are applicable to particular Credit Support Annex.

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

As noted in Paragraph 4.4.2 above, foreign laws may in certain circumstances interfere in determining the nature of the transaction evidenced by the Credit Support Annex. Where Czech law applies and a transfer of Eligible Credit Support under the Credit Support Annex qualifies as a financial collateral arrangement under the Financial Collateral Act, Czech law should not recharacterise the nature of transactions contemplated by the Credit Support Annexes or the transfer of ownership of the Eligible Credit Support **-** the Financial Collateral Act recognizes the full transfer of ownership within the context of financial collateral arrangements.

As noted above, Czech insolvency laws recognize the financial collateral arrangements under the Financial Collateral Act or under foreign laws equivalent to Financial Collateral Act in accordance with their terms, provided that such arrangements are validly entered into under their respective governing laws and are not ineffective for one or more of the grounds described in Paragraph 4.1.1(i) above.

In order to minimize the risk of recharacterisation, the parties may consider to include the following wording in the relevant Credit Support Annex: “This Annex and the provision of Eligible Credit Support hereunder constitute a financial collateral arrangement pursuant to [Act No. 408/2010 Coll., on financial collateral, as amended]/[a foreign regulation equivalent to Czech Act No. 408/2010 Coll., on financial collateral, as amended].”

4.4.4 **Assuming that Party B receives absolute ownership in the collateral, will it need to take any action thereafter to ensure that its title therein continues? Are there any requirements in the Czech Republic necessary or advisable, including any filing, registration, notification, stamping, notarisation or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval? Are there any other procedures that must be followed or consents or other governmental or regulatory approvals that must be obtained or established, to enforce, or continue such ownership interest?**

No. Perfection by transfer to the account of the Transferee suffices to constitute valid title to the Eligible Credit Support in the form of cash. That said, in the (admittedly uncommon) arrangement, where the Eligible Credit Support comprising of cash is maintained in an account of the Transferor, the account bank should be notified of the financial collateral arrangement to avoid discharge of the account receivable through payment by the account bank to the transferor.

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

Substitution of collateral has pursuant to the explicit provision of Section 14 of the Financial Collateral Act no effect on the creation of existence of financial collateral arrangements. The right of the Transferee to the substitution of provided collateral must be set out in the financial collateral arrangement.

It is uncertain under the current legislation whether such substitution would not reset applicable hardening periods as described in Paragraph 4.1.1(i). Although as noted above, Section 14(3) of the Financial Collateral Act seeks to uphold the existence of the financial collateral arrangement, it cannot be excluded that the mere act of substitution would not be treated as new act that needs to be tested against the criteria described in Paragraph 4.1.1(i). Legal risk of such new act being ineffective (in the situation, where the original transfer of collateral complied with the criteria described in Paragraph 4.1.1(i)) would appear to be low, where collateral of same or lower value is provided by the new act. From the practical perspective, however, there appears to be clear increase of practical risk associated with replacement as the new act gives any interested party an opportunity to challenge new act as an isolated event assessed by the criteria existing at the time of the new act. We have in practice experienced similar line of argumentation within the context of challenges to effectiveness of security which is being periodically renewed (for example, pledge of receivables where the original pledged receivables terminate and a pledge is created over receivables of similar value).

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

As noted above, financial collateral arrangement will be protected from the insolvency of the Transferee only if the relevant financial collateral arrangement comes into existence (i.e., the relevant Eligible Credit Support is transferred to the Transferee in accordance with the terms set out below) before initiation of insolvency proceedings in respect of the Transferee.

It is not excluded that the receivable of the Transferee for provision of "new" collateral would belong among the receivables that "relate to transactions" contemplated by the EFET Documents (within the meaning of Section 193 of the Capital Markets Act) and accordingly, be eligible to be included in the close-out netting as one of the netted claims. The opposite argument would suggest that by limiting financial collateral arrangements to those that come into existence before initiation of insolvency proceedings, the receivable for provision of "new" collateral was not intended to relate to such arrangement and should be protected by the same treatment. Pending further clarification by case law, it remains unclear which of the above arguments would prevail.

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

Yes. Financial collateral arrangements enjoy under Section 366(2) of the Insolvency Act general protection from the insolvency of a Czech entity, subject to conditions described in Paragraph 4.4.1 above.

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

Please refer to Paragraph 4.1.1(i) for description of applicable hardening periods and acts taken by the debtor that may be declared ineffective. In respect of substitution, please refer to Paragraph 4.4.5. Transfer of additional collateral pursuant to the mark-to-market provisions of the Credit Support Annexes during the suspect period should in our view be considered to constitute performance of obligations validly created before the suspect period (if that is indeed the case) and accordingly not challenged for those reasons. We note, however, that we have recently encountered court proceedings where performance by the debtor of obligations which were validly created before the suspect period (e.g., repayment of loans under a loan agreement concluded and fully funded before the suspect period) was challenged as ineffective act. The relevant proceedings are still pending and accordingly, there can be no assurance given regarding their outcome and treatment of collateral provided in the "suspect periods" set out in Paragraph 4.1.1(i).

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

Credit Support Annex is in an appropriate form to be recognized by Czech insolvency laws if it is (i) governed by foreign law and (ii) valid and enforceable under such foreign law. We would recommend including provisions granting the Transferee explicitly the right to dispose of the Eligible Credit Support pending its returning to the Transferor.

In case of Credit Support Annex governed by Czech law, we would recommend number of drafting changes to adjust the Credit Support Annex to requirements of Czech law; such changes should be specifically discussed with appropriate local legal counsel in each individual case, depending mainly on the jurisdiction of incorporation of the parties and location of the accounts of the parties and governing laws of the relevant account agreements.

4.5 General Enforceability

4.5.1 **Are the EFET Master Netting Agreement and the Cross-Product Master Agreement and the EFET Cross-Product Credit Support Annex enforceable under the laws of**

Czech Republic in accordance with its own terms? We are especially interested in provisions that you may believe infringe upon the *ordre public* in Czech Republic and that may be challenged by the courts in Czech Republic irrespective of the law that governs the Agreement.

Force Majeure

Force majeure as a general concept should be generally enforceable under Czech law. The Civil Code stipulates that a court is authorized to change a content of a contract or terminate it if, after its conclusion, (i) the circumstances under which the contract had been concluded change in a material way, creating a substantial disproportion between positions of contracting parties, by either disproportionately increasing costs of one party or by disproportionately decreasing a value of subject matter of the contract and (ii) an affected party acting with a due care could not reasonably expect such change of circumstances and (iii) the parties fail to reach a settlement. Changes of the financial standing of either party and changes of the economic situation or market situation *can*, according to some scholars, qualify as a change of circumstances. There is however, no relevant case law so far concerning application of this principle. Also, the statutory regime described above can be modified by contract.

Under Czech law, if a performance of a contractual obligation has become objectively and permanently impossible, such obligation ceases to exist. No impossibility of performance is given, if an obligation can only be performed under aggravated conditions, at higher cost, after the agreed time of performance, or with third party assistance. As a rule, the obligation will not cease to exist, under this principle, if it is a monetary obligation or an obligation to deliver goods that are defined by their category. The obligation to prove impossibility of performance is with the non-performing party, who also must compensate the respective other party for incurred damage (unless the impossibility of performance arose from circumstances that exclude liability for damages – please see our answer below).

In the event of partial impossibility of performance, the whole contract ceases to exist, if the unaffected part of the contract loses its economic meaning for the creditor.

Remedies for non-performance

Restitution and damages are generally acceptable and enforceable remedies for breach of contract under Czech law. The Civil Code introduced a principle pursuant to which a damage should in the first instance be remedied by restitution and only where the remedy of restitution is not practicable or where requested by damaged party, by monetary compensation. It remains to be seen how Czech courts will treat the above order of priorities in awarding remedies in practice.

Limitation of Liability

Liability for damage in Czech civil law (governed in commercial transactions principally by Section 2909 *et seq.* of the Civil Code) is based on the principle of objective liability. For this kind of liability, the injured party has to prove (i) the breach of an obligation on the part of the causer (illicit conduct), (ii) the occurrence of damage, and (iii) a causal relationship between the illicit conduct and the damage arisen. A contractual party is not liable for damage if it proves that it was unable to prevent the event of damage due to “circumstances that exclude liability for damages”, namely, a hindrance, the occurrence and continued existence of which prevents the causer from contractual performance, which arose independently from the causer’s will, and which cannot have reasonably been expected to (i) be avoided or overcome by the causer, and (ii) be foreseen by the causer at the time it entered into the contractual obligation. Further, the Civil Code does not provide for relief from liability for damages, if the hindrance only occurred at a time when the causer was already in default, or if the causer was obliged to overcome the hindrance according to the contract. Also, the liberating effect of the hindrance lasts only for so long as the hindrance exists.

The Civil Code allows parties to a contract to deviate from the above arrangement and agree on different (more moderate or more severe) terms of liability for damage. The parties may agree to limit liability for damages, provided that, to the extent that such agreement is made before the relevant damage has occurred, the parties may not limit liability caused willfully or with gross negligence. Damage is deemed to have been caused willfully if the causer (i) intended to cause damage by its actions or omissions, or (ii) knew that its actions or omissions were apt to cause damage, and acted with that knowledge when pursuing the damaging action. Any agreement which limits or excludes a liability of a contractual counterparty for damages it caused to a "weaker party" is not permissible.

Enforceability of Limitation of Consequential Damages and similar types of liabilities

In civil law, compensation for material damage includes compensation for (i) actual damage (*damnum emergens*), (ii) lost profit (*lucrum cessans*), and (iii) necessary expenses incurred as a consequence of the illicit conduct.

Czech law does not differentiate between direct and indirect damage, nor does it recognize the concept of "consequential damages". Compensation is only available to the extent the damage is caused by the illicit conduct.

In certain cases, the Civil Code itself limits the scope of compensation. As a matter of principle, damages will be compensated solely:

(a) if there is a causal connection between the wrongful act and the damage incurred (this, according to the case law of Czech courts also includes a test of whether the damage incurred is not a "highly unlikely" consequence of the wrongful act); and

(b) in so far that they are not compensated by default interest.

If a contractual penalty has been agreed for the breach of any obligation, and damage is incurred as a consequence of such breach of an obligation, then the injured party may only assert compensation for damages aside from, and on top of, the contractual penalty, if this was explicitly agreed in the respective agreement.

Enforceability of Duty to Mitigate

The duty to mitigate damages corresponds to a similar concept in Czech law, namely that injured party is required by law to take the necessary measures to avert or mitigate damage, taking into consideration the circumstances of each particular case. Damage incurred as a consequence of a failure to comply with this duty need not be compensated. For the assessment of whether the injured party has sufficiently complied with its duty to avert or mitigate the damage, the criterion of objectivity is crucial: the question of how another person with the same standing, under the same circumstances, would have acted, and the peculiarities of the individual case must always be taken into account.

Liability of employees and officers

Please note that under Czech law, employees and officers of a company cannot be held liable by the injured party in excess of limits of liability set out within the applicable framework of labor law or corporate law regulations.

Termination

Under Czech law, it is unclear whether, in addition to situations specifically contemplated under the Master Agreements, the Parties would not be able to terminate the relevant Master Agreement (or the Netted Agreements, Principal Agreements or transactions thereunder) also in other cases, pursuant to the general provisions of Czech contract law set forth in the Civil Code. These cases could include a failure by a Party to perform any obligation under the relevant Master Agreement, the frustration of the sole purpose of any particular transaction, threatening insolvency of a Party, intervening impossibility to perform any obligation under relevant Master Agreement, etc.

Under Czech contractual law generally applicable to commercial relations (Section 2001 *et seq.* of the Civil Code) the remedy of rescission generally results in the termination of all rights and obligations of the parties under a contract, except for any rights to claim damages for the breach of the contract. The Civil Code further stipulates that a rescission does not affect any provisions of the contract regarding the governing law or dispute resolution, or any other provisions that, pursuant to the Parties' intention or given the nature of such provisions, should remain effective.

Please note that it is not clear which provision of relevant Master Agreement, in addition to those set forth above (i.e., provisions regarding the governing law and dispute resolution), would (by their nature) remain effective if either Party exercised its rescission rights with respect to the relevant Master Agreement. Even if the Parties explicitly set out their intentions in the relevant Master Agreement as to which provisions should remain unaffected by a rescission, it is possible that such specification (clearly possible in relation to a purely contractual rescission) would be disregarded in the context of bankruptcy proceedings.

If (i) EFET Master Netting Agreement is governed by Czech law and (ii) the intention of the Parties is to minimize the effect of such additional termination rights provided for by the general provisions of Czech contract law, it is advisable that EFET Master Netting Agreement be amended by adding the following Clause in Part II of the Election Sheet: "*For the avoidance of any doubt, to the extent permitted by applicable laws, the Parties agree that neither Party shall have the right to terminate this Agreement or any Netter Agreements other than in cases and as otherwise expressly specified in this Agreement. The Parties further agree that:*

*1. the provisions of Sections 2001 through 2003, Section 2004(2) and Section 2004(3) of the Czech Act No. 89/2012 Coll., the Civil Code (the "**Czech Civil Code**") shall not apply to the Agreement and any Netted Agreements, Principal Agreements and transactions thereunder;*

2. without prejudice to the provisions of Section 2005(2) of the Czech Civil Code and other provision of this Agreement, the termination of the Agreement and/or any [Netted Agreement] and/or transactions thereunder shall not affect the effectiveness of [relevant close-out to be described here] and any payment obligations resulting therefrom effected prior to such termination;

3. the Parties shall bear the risk of a change of circumstances within the meaning of Section 1765(2) of the Civil Code;

4. *neither Party is entitled to terminate this Agreement pursuant to Section 2000(1) of the Civil Code*."

If (i) Cross-Product Master Agreement is governed by Czech law and (ii) the intention of the Parties is to minimize the effect of such additional termination rights provided for by the general provisions of Czech contract law, it is advisable that Cross-Product Master Agreement be amended by adding the following Clause in Part IX: "*For the avoidance of any doubt, to the extent permitted by applicable laws, the Parties agree that neither Party shall have the right to terminate this Agreement or any Principal Agreement other than in cases and as otherwise expressly specified in this Agreement. The Parties further agree that:*

1. *the provisions of Sections 2001 through 2003, Section 2004(2) and Section 2004(3) of the Czech Act No. 89/2012 Coll., the Civil Code (the "**Czech Civil Code**") shall not apply to the Agreement and any Principal Agreements and transactions thereunder;*

2. *without prejudice to the provisions of Section 2005(2) of the Czech Civil Code and other provision of this Agreement, the termination of the Agreement and/or any Principal Agreements and transactions thereunder shall not affect the effectiveness of [relevant close-out to be described here] and any payment obligations resulting therefrom effected prior to such termination;*

3. *the Parties shall bear the risk of a change of circumstances within the meaning of Section 1765(2) of the Civil Code;*

4. *neither Party is entitled to terminate this Agreement or any Principal Agreement pursuant to Section 2000(1) of the Civil Code*."

<u>Terminology, legal institutes</u>

We note that the EFET Documents use terminology and specific references to institutes of German or English law (as applicable). As the use of these references may not be fully justified in relation to Parties incorporated in the Czech Republic or arrangements governed by Czech law, it may be advisable that the Master Agreements be amended with respect to one or both Parties by deleting the relevant terms typical for the relevant governing law of the EFET Documents or replacing them by their Czech equivalents, as appropriate.

4.6 Confirmation Practices

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

No. Please refer, however, to formal requirements in respect of Close-Out Netting Arrangements and financial collateral arrangements referred to above.

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

The orally agreed Netted Agreements or Principal Agreements are legally enforceable as of the moment in which the parties achieved consensus with respect to the so-called "essential prerequisites" (*podstatné náležitosti*) of the given type of contract (which will differ depending on its subject matter).

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

The objection to the confirmation may, depending on the intensity or scope of this discrepancy, lead to doubts as to whether the relevant Netting Agreement or Principal Agreement was concluded at all.

If a Netting Agreement or Principal Agreement is agreed orally – and if we consider the confirmation as an offer to modify the terms of that Netting Agreement or Principal Agreement – then the failure to object to the terms in a received confirmation does not constitute "acceptance" of those terms. Under Czech law, silence, or failure to act, does not, in and of itself, imply the acceptance of an offer to contract (or to amend a contract). However, the new Civil Code stipulates that a response to the offer with modifications that do not material change the terms of the offer would constitute an acceptance of such offer (as amended by the proposed modifications), unless the offeror rejects such amended offer without undue delay.

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

Yes, provided that the relevant Party can prove in eventual dispute that the other Party was cognizant of the existence and contents of relevant Master Agreement.

4.6.5 **Assuming there is a dispute with respect to the existence or the terms or conditions of an transaction, would any or all of the following be eligible for rendering or otherwise properly introducing evidence of the agreed terms of the transaction in court: (i) taped recording; (ii) witness' statement; (iii) e-mail or other electronic message or transaction entry system; and/or (iv) facsimile? Are there any local requirements or other considerations that are relevant to each form of evidence?**

Czech law recognizes a declaration of the will to contract expressed in electronic form, facsimile, or through recordings, provided that the content of the respective transaction and the person expressing the will to enter into the same can be determined (and assuming specific form is not prescribed for the relevant declaration of will by applicable laws).

Any means permitting one to establish the state of facts may be used as evidence in court, unless the evidence submitted has been obtained in conflict with generally binding statutory law. It will, however, depend on the circumstances of the case concerned what weight the court will assign to evidence in the form of an e-mail or other electronic message or transaction entry system, facsimile and/or taped recording. It may be expected, however, that if the parties consistently act in accordance with the agreed process of confirming the transactions, it would be difficult to reject any confirmations or other transaction documents generated in this way.

Phone conversations

In respect of recording a phone conversation, please note that there is a theoretical discussion about admissibility of recording. New Civil Code sets out that recording of a person without that person's consent is admissible is such recording is made solely for the purposes of exercise or protection of legitimate interests of a person. Recording made to establish contents of a contract would arguably fall within that category, although Czech courts have historically taken a very restrictive approach to admissibility of such recordings.

As part of any hearing on this issue, the court is to assess whether the evidence submitted was obtained in conflict with generally binding statutory law, and whether obtaining the evidence encroached upon the rights of other (natural or legal) persons. Against this background, the Czech courts held that phone conversations can generally be recorded without the knowledge of the caller. Consent of the called person would still be required.

That said, Czech courts consistently rule that recordings of the telephone calls of natural persons are personal statements of a private character and, as such, may be admitted as evidence in civil proceedings only with the consent of the individual who participated in the phone call. Such consent of the recorded participant still needs to be given personally by the relevant individual, i.e., the consent cannot be given by the employer of the recorded participant.

In some recent cases, the Czech Supreme Court deviated from the above principle and held that agreed recordings of business conversations may, depending on the circumstances of the case, not be considered personal statements of a private character, and accordingly, could be used as evidence without the consent of the individual who participated in the phone call. This conclusion, however, has not been consistently applied in the later case law and scope of circumstances in which the Czech Supreme Court permitted the recordings of business conversations, has been inconsistent. Accordingly, the admissibility of recordings as evidence remains doubtful.

Even if a phone call was admissible as evidence, the weight that would be attributed to such evidence cannot be predicted. It might be necessary to submit additional evidence, such as evidence that the phone call was indeed connected between the caller's and the called person's phone number as specified, when the call took place, whether the participants could have been at all able to engage in conversation at the given moment in time (e.g., one of them could have been on vacation), etc; further, it cannot be ruled out that the court would have to deal with the objection that the recording was fabricated evidence or has been manipulated.

E-mails

Please note that Czech law distinguishes between simple electronic signature (being in principle any data serving as a method of authentication) and certified electronic signature (being a specific authentication tool issued by the state operated certification authority).

Documents signed and delivered using certified electronic signature are equivalent to written form and should be treated equally in the courts (subject to general procedural rules on taking evidence).

Documents signed by simple electronic signatures raise more uncertainties. In the first place, it is unclear what level of authentication is required to constitute an electronic signature. Some part of Czech legal theory suggests that, for example, a signature block in the end of the email, accompanied by other data allowing for identification of the person making the legal act (e.g., an email address) should be considered to constitute sufficient electronic signature, and accordingly an email signed in that way should constitute written form (and treated equivalently to documents signed by certified electronic signature).

That said, Czech courts have so far been very reluctant to accept simple electronic signature. In particular, the Czech Supreme Court has so far to our knowledge never accepted email with simple electronic signature as being effective to constitute a written document. In instances where it considered the issue and refused to admit "simple" emails as written documents, the court positively confirmed that an email with certified signature constitutes written form and although it did not positively state that anything less is unacceptable, it never provided a guidance of what constitutes sufficient standard to constitute written form.

Therefore, although (using reasonable interpretation of applicable Czech laws based on EU directives, and observing the market practice) such requirement may appear excessive, the only genuinely safe harbor and advisable practice to satisfy written form (and be equally capable of being used as evidence in courts) is to either use certified electronic signature in the email communication or use means traditionally accepted as written form under Czech law (i.e., facsimile or hardcopy).

4.7 Core provisions

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

The elections contemplated by the EFET Documents would not change the conclusion reached under Paragraph 4.1. On the right of substitution, please refer to Paragraph 4.4. In respect of various elections made in Master Agreements, please refer to 4.7.3 below. Please note that the terms of the relevant Credit Support Annex will need to be verified to ensure that all individual agreements covered by the relevant Master Agreements, will be collateralized by the relevant Credit Support Annex. If, for example, the Credit Support Annex under its terms collateralizes only the relevant Master Agreement and not the Netting Agreements or Principal Agreements included in the netting provisions of the relevant Master Agreement, it may be impossible to use the collateral provided under such Credit Support Annex to satisfy obligations under the agreements not included.

4.7.2 **Considering your conclusions reached under Part C.I or C.II. (Enforceability of Close-out Netting), what are the provisions of the EFET Master Netting Agreement or the Cross-Product Master Agreement that you regard as so essential that a material alteration thereof could affect the conclusions reached in that Part C.I or C.II (each such provision a “Core Provision”)?**

As noted above, Czech law is concerned with the following elements of the Close-Out Netting Arrangements:

- an agreement that mutual obligations of the parties will be terminated and replaced with a single payment obligation;
- manner of determination of the amount of the resulting payment obligation;
- manner of payment of the resulting payment obligation.

As such, we believe that the following provisions of the Master Agreements are Core Provisions:

- §§4 and 7 of the EFET Master Netting Agreement,
- Clauses 2, 3 and 4.4 of the Cross-Product Master Agreement,

and, in each case, related definitions and provisions of the Master Agreements (or relevant Elections Sheets) which affect or purport to modify those provisions.

Please refer also to Paragraph 4.1.6 and our remarks regarding the Partial Close-Out. To the extent that the risks of Partial Close-Out not being recognized under Czech law would be considered material, any provisions affecting the Global Close-Out mechanics of the EFET Master Netting Agreement (including §§ 4.2 a §6) would also fall into Core Provisions.

4.8 Governing Law, Arbitration and Jurisdiction

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

Czech law leaves it to the parties of a relationship of obligations under civil law to choose which law should govern their mutual relations, provided that there is an "international" element in their relationship. If Master Agreement is agreed between a foreign and a Czech entity, then the existence of the foreign element is given as a matter of course; the choice of foreign law to govern Master Agreement and/or the Netting Agreement and/or the Principal Agreement will then as a principle is upheld as a valid choice of law in any action in the Czech Republic.

In property-related[10] disputes containing a foreign element, including disputes arising from relevant Master Agreement or Netting Agreement or Principal Agreement, the jurisdiction of Czech courts may be established upon a written agreement of the parties; however, the subject-matter jurisdiction of Czech courts cannot be changed in this way, *i.e.* it is impossible to determine upon the jurisdiction of the respective Regional Court, if Czech procedural rules stipulate that the jurisdiction of the respective District Court shall apply (and vice versa).

If the jurisdiction of Czech courts is not agreed, they may hear property-related disputes containing an international element, provided that they have territorial jurisdiction (general, exclusive or optional).

Czech law allows contractual parties to submit their disputes to one or several arbitrators or a permanent arbitration court for judgment, provided that the dispute is property related (and except for disputes arising from bankruptcy or execution procedures, for the hearing and decision concerning which the general courts enjoy sole authority). A further prerequisite for the admissibility of an arbitration clause is that the parties must have the option to enter into a (either out-of-court or judicially approved) settlement.

A foreign arbitration award will be recognized and enforced in the Czech Republic in the same way as domestic arbitration awards, as long as reciprocity is ensured. In these circumstances, recognition or enforcement of a foreign arbitral award may be rejected only if such award:

(a) is not in force or enforceable under the laws of the jurisdiction in which it has been issued;

(b) has been cancelled in the jurisdiction in which (or according to the laws of which) it has been issued;

[10] The term „property" for this purpose also includes movable assets, rights, commodities and intangible assets.

(c) has a defect which would give grounds for cancelling of a Czech arbitration award by a Czech court; or

(d) contradicts public order.

These rules can be modified by an international treaty by which the Czech Republic is bound. Notably, the Czech Republic is a signatory of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

Submission to jurisdiction of an EC court would be governed by Regulation (EC) No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the "**Brussels Regulation**"). Under the Brussels Regulation, Czech court may be obliged to decline jurisdiction in certain circumstances, including where:

(a) Article 22 of the Brussels Regulation applies to determine exclusive jurisdiction in certain matters;

(b) the contract is an insurance, consumer or employment contract; however, EFET Documents should not, in our view, be qualified as an insurance, consumer or employment contract; or

(c) the court of another Member State has already seized jurisdiction pursuant to Articles 27 to 30 of the Brussels Regulation.

On July 13, 2006, the Czech Republic acceded to the Rome Convention on the Law Applicable to Contractual Obligation (1980) (the "**Rome Convention**"). The Rome Convention is now directly applicable in the Czech Republic and, in case of an inconsistency between the Rome Convention and Czech statutory norms, the Rome Convention prevails.

On 17 December 2009, Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (the "**Rome Regulation**") entered into force. The Rome Regulation is directly applicable in the Czech Republic and overrides local conflict of law rules (and, within its scope of application, supersedes the Rome Convention).

Please note that submission to jurisdiction and choice of law clauses in each individual document should be verified with Czech legal counsel in the context of particular transactions in case that the relevant document is to be governed by Czech law. In this respect, please also note that the appointment of a process agent (as set out for example in §12.3 of the EFET Master Netting Agreement) would not be recognized by Czech procedural rules.

5. QUALIFICATIONS

The views expressed in this Memorandum are subject to the following qualifications (in addition to any additional specific qualifications set forth elsewhere in this Memorandum).

5.1 Insolvency Law

We set out below certain qualifications which address certain provisions of the insolvency law of the Czech Republic which could affect the validity and/or enforceability of the EFET Documents or one or more Netted Agreements and transactions thereunder:

5.1.1 Under Section 170(a) of the Insolvency Act, interest (including default interest) owed by the insolvent debtor which accrued after the declaration of insolvency on a debt that was incurred before the declaration or became payable after the declaration, cannot be paid from the insolvency estate. This would apply to interest payable under §11(7) of the EFET Master Netting Agreement and potentially also under §8(4) of EFET Master Netting Agreement, Clause 4.5 of the Cross-Product Master and Interest Amounts accrued under the Credit Support Annex, preventing the relevant Party from recovering any such interest that accrued after the declaration of insolvency in respect of the other Party.

5.1.2 Any payments in non-Czech currencies to non-residents may be restricted for a period of up to three months should a state of emergency in the foreign exchange economy be declared by the Czech Government.

5.1.3 After the commencement of insolvency proceedings, where the circumstances indicate that it is necessary to impose a control over the use by the debtor of its assets, the court may appoint a preliminary administrator (in Czech, *předběžný správce*) and issue an injunction restricting the debtor in disposition with its assets. The injunction may also require that the debtor dispose of its assets solely with the consent of the preliminary trustee or that the debtors' counterparties may only discharge their obligations vis-à-vis the debtor to the preliminary administrator. Similar restrictions may be contained also in the declaration of insolvency.

After the opening of the liquidation bankruptcy proceedings, the insolvent debtor may no longer make any dispositions with the property forming the insolvency estate and such right is exclusively vested in the insolvency trustee.

Accordingly, we express no views as to whether any obligations arising after the date of issuance of the preliminary injunction, declaration of insolvency or commencement of Czech liquidation bankruptcy proceedings may be included in the Close-out Netting Arrangement; however, this should not affect the effectiveness of the Netting Provisions with respect to the obligations already existing as of such date.

5.1.4 Our opinion on the close-out netting is given only in respect of obligations under the EFET Documents and Netted Agreements, Principal Agreements and transactions thereunder entered into which are mutual between a pair of principal Parties to those obligations in the sense that each is personally and solely liable as regards obligations owing by it and is sole beneficial owner of obligations owed to it.

5.2 Enforceability of Claims

In this Memorandum, the word "enforceable" or words of similar import, means that obligations assumed by the relevant Party under the relevant EFET Documents are of a type which Czech courts and/or arbitral tribunals applying Czech law enforce and does not mean that those obligations will necessarily be enforced, or indicate what remedies may be awarded or in what manner enforceability will be effected, whether in court or arbitral proceedings in the Czech Republic or elsewhere, in accordance with their terms. In particular:

5.2.1 Any enforcement of the EFET Documents in the Czech Republic will be subject to the rules of civil procedure arising by operation of law as applied by the courts or other competent authority of the Czech Republic which may, inter alia, require the translation of foreign language documents into the Czech language.

5.2.2 Provisions relating to severability of contractual provisions are subject to the discretion of a Czech court or arbitral tribunal. Severable provision will not be held valid if it cannot be presumed that the relevant legal act would not be entered into by a party had it been aware of the invalidity of the remaining provisions.

5.2.3 Any obligation which a Czech court considers objectively impossible to perform will be held void by such Czech court. This could, for example, apply to obligations which require a corporate body to do any act which, in accordance with the relevant law, can only be performed by shareholders of such corporate body.

5.2.4 Enforceability of any provisions of the EFET Documents will be limited by:

(a) the general principles of law including good morals (*dobré mravy*), good faith (*dobrá víra*) and honest dealing (*poctivé jednání*) and acting professionally (*jednání s odbornou péči*);

(b) Section 580 of the Civil Code, pursuant to which any legal act which, by virtue of its content or its purpose, breaches the law (*odporuje zákonu*) where so required by the logic and purpose (*smysl a účel*) of the law, is contrary to good morals (*příčí se dobrým mravům*), or requires impossible performance, is not valid; and

(c) Section 8 of the Civil Code, pursuant to which an abuse of rights would not be enforced.

5.2.5 A Czech court may refuse to give effect to any provision of the EFET Documents (a) for the payment of expenses in respect of the costs of enforcement (actual or contemplated) of unsuccessful litigation brought before a Czech court or where the court has itself made an order for costs, (b) which would constitute an agreement to agree for the purposes of Czech law, (c) which would involve the enforcement of foreign tax or criminal laws, or (d) which would be inconsistent with Czech public policy.

5.2.6 The enforcement of obligations of a party under the EFET Documents or any Netting Agreement or Principal Agreement to be performed after the date on which the EFET Documents or any Netting Agreement or Principal Agreement is entered into may be limited by insolvency, bankruptcy, liquidation, reorganisation and other laws of general application relating to or affecting the rights of creditors as such law may be applied in the event of insolvency, bankruptcy, liquidation, reorganisation or other similar proceedings with respect to such party (this qualification does not affect our views set our in this Memorandum with respect to the enforceability of the Netting Provisions);

5.2.7 On the basis of section 2(b) of Article VIII of the International Monetary Fund Agreement, an obligation which is contrary to the exchange control regulations of another member state of the International Monetary Fund may not be enforceable in the Czech Republic.

5.3 Application of Foreign Law

5.3.1 In accordance with our conclusions contained under Paragraph 4.8, if any obligation is to be performed in a jurisdiction outside the Czech Republic, it may not be enforceable in the Czech Republic to the extent that performance would be illegal or contrary to public policy under the laws of the other jurisdiction and a Czech court may take into account the law of the place of performance in relation to the manner of performance and to the steps to be taken in the event of defective performance.

5.3.2 In accordance with our conclusions contained under Paragraph 4.8, the choice of Czech law to govern the EFET Documents, a Netted Agreement or a Principal Agreement might not be recognised or upheld if such choice conflicts with the mandatory law of another jurisdiction which is the only jurisdiction with a connection to any such relevant EFET Documents a Netted Agreement or a Principal Agreement.

5.4 Other Qualifications

5.4.1 We express no opinion as to any matters of fact.

5.4.2 Current Czech legislation governing civil law (including contract law and law of corporations) has become effective only on 1 January 2014. Such legislation is based on the principle of discontinuation from previous legal regime, introduces new legal concepts and phraseology, is entirely untested and to date there is neither jurisprudence nor real cases of practical application of such legislation; it also remains unclear which provisions of the new legislation can be derogated by contract. Accordingly, there can be no assurance that determinations reached by the courts of competent jurisdiction in the Czech Republic would coincide with the views expressed herein.

5.4.3 Pursuant to Act No. 219/1995 Coll., the Foreign Exchange Act, if a foreign exchange emergency is declared by the Czech Government, payments in foreign currencies may be suspended for the duration of such emergency for up to three months.

5.4.4 Under Section 10(7) of the Czech Energy Act11, should the energy generation, distribution or trade licence issued to a Czech counterparty be revoked, the Czech Energy Regulatory Authority may direct such counterparty to relinquish its “energy facilities” for compensation determined in accordance with the Czech Energy Act. We believe it would be unreasonable to interpret the Czech Energy Act so that the term “energy facilities” would include any obligations of the relevant Czech counterparty under the EFET Documents; the term clearly appears to cover energy generation or transmission facilities. It cannot be excluded, however, that such term would be interpreted widely so as to include rights or obligations under the EFET Documents or that upon relinquishing such genuine energy facilities, contracts relating to the output of such facilities would be dragged into the same regime.

5.4.5 Under Section 54 of the Czech Energy Act, the electricity grid operator may declare a state of emergency and change the terms of the electricity supplies; and

5.4.6 Under Section 12a of the Czech Crisis Management Act[12], the Ministry of Industry and Trade may impose additional obligations to, among others, energy generation and distribution license holders to ensure energy needs and safeguard or restore the critical infrastructure.

5.4.7 Czech laws or other regulations that are unconstitutional may be invalidated by the Czech Constitutional Court as of the date determined in its decision and including with retrospective effect.

5.4.8 Any obligations which are not actionable before a court, which are uncertain or unascertainable (*nejistá či neurčitá*) are not eligible for set-off. This would relate for example to obligations which are time-barred or obligations for the payment of damages.

[11] Act No. 458/2000 Coll., on the conditions of conduct of business and authority of the public administration bodies in the energy sector, as amended.

[12] Act No. 240/2000 Coll., on the crisis management, as amended,

5.4.9 Provisions creating or purporting to create a power of attorney (including powers of attorney purported to be governed by foreign law) are revocable under Czech law and subject to conflict of interest limitations.

5.4.10 Where the EFET Documents, Netted Agreements, Principal Agreements or transactions thereunder provide for simultaneous performance of the parties, a party may enforce its right to performance only if it has already performed its obligation or is willing and able to perform simultaneously.

5.4.11 Where a party to the EFET Documents, Netted Agreements or Principal Agreements is vested with discretion, Czech law may require that such discretion is exercised in compliance with the principles of good morals (in Czech, *dobré mravy*), good faith (in Czech, *dobrá víra*), public policy (in Czech, *veřejný pořádek*) and commercial customs (in Czech, *obchodní zvyklosti*).

5.4.12 In order to commence proceedings under any of the EFET Documents, Netted Agreements, Principal Agreements or transactions thereunder in front of the Czech courts, it may be necessary to deliver a translation of such agreement certified by a translator registered with the Czech courts.

5.4.13 Claims under the EFET Documents may become subject to a defence of set-off or satisfaction of a counterclaim or time barred (in Czech, *promlčení nebo prekluze*) under applicable limitation legislation, which defences cannot be waived under Czech law.

5.4.14 According to Rome I, a court hearing a dispute arising out of the EFET Documents may:

(a) be forced to apply provisions of the law of the country with which all other elements relevant to the situation at the time of the choice of law are connected, which cannot be derogated from by agreement (in Czech, *ustanovení práva, od nichž se nelze smluvně odchýlit*);

(b) be forced to apply provisions of law of one or more of the member states of the European Community in which all other elements relevant to the situation at the time of the choice of law are located, which cannot be derogated from by agreement (in Czech, *ustanovení práva Společenství, od nichž se nelze smluvně odchýlit*);

(c) be forced to apply overriding mandatory provisions (in Czech, *imperativní ustanovení*) of the law of the forum (i.e. the place where the dispute is being heard);

(d) have regard to overriding mandatory provisions (in Czech, *imperativní ustanovení*) of the law of the country with which all other elements of the situation are connected, in so far as those mandatory overriding provisions render the performance of the relevant EFET Document unlawful; and

(e) refuse to apply provisions of law insofar as they are manifestly incompatible with public policy (in Czech, *veřejný pořádek*) of the forum.

5.4.15 We express no opinion on the enforceability of any net obligation resulting from any netting, set-off or under general laws. According to Section 175 of the Insolvency Act, cash payment claims against an insolvent Party in any currency other than Czech currency must be converted into Czech currency at an exchange rate officially published by the Czech National Bank applicable on the date of the opening of the insolvency proceedings or, if earlier, on the maturity date of the respective receivable.

5.4.16 Except as otherwise expressly described in Clause 4.4, we express no opinion on the enforceability of any guarantees or credit support or on the effectiveness of security provided in relation to the EFET Documents.

5.4.17 If any person expressed to be a Party to the EFET Documents or Netting Agreement or Principal Agreement knew or should reasonably have known that any representation, warranty or statement in the EFET Documents or any Netting Agreement or Principal Agreement was incorrect, inaccurate or incomplete or any covenant was or could reasonably be expected to be impossible to fulfill, such person may be limited in enforcing its rights under the EFET Documents or under the Netting Agreement or Principal Agreement.

5.4.18 Any provision of the EFET Documents which constitutes, or purports to constitute, a restriction on the exercise of any statutory power by any Party or any other person may be ineffective.

5.4.19 To the extent that any matter is expressly to be determined by future agreement or negotiation, the relevant provision may be unenforceable or void for uncertainty. There are provisions in Czech law which might prevent or restrict the exercise by either Party of any right or discretion afforded to it under the EFET Documents.

5.4.20 A claim cannot generally be validly assigned under Czech law if the creditor and the debtor of the claim have contractually restricted the assignment of the claim. Any assignment of a claim which contravenes a contractually agreed restriction on assignment will be invalid.

5.4.21 A Czech court might hold that any provision of the EFET Documents or Netting Agreement or Principal Agreement allowing any party to terminate such EFET Documents or Netting Agreement or Principal Agreement as a result of technical defaults which do not materially affect the interests of such party is ineffective.

5.4.22 Any provision of an EFET Documents which constitutes, or purports to constitute, a presumption (rebuttable or irrebutable), including, without limitation, presumption of deemed repetition of representations, or (except with certain exceptions) deemed delivery of documents, which reverses the burden of proof is void or voidable.

5.4.23 A provision requiring a Party to represent that the EFET Documents or Netting Agreement or Principal Agreement is legal, valid and binding may be unenforceable to the extent that it applies to provisions of such EFET Documents or Netting Agreement or Principal Agreement which are not legal, valid and binding.

5.4.24 A Czech court might hold that, irrespective of the provisions of the EFET Documents, any waiver of or amendment to the EFET Documents agreed between the respective parties is valid whether or not given or made in writing or orally or implied by subsequent conduct of the relevant parties.

5.4.25 The collection, processing, use and transfer of personal data by any Party to the EFET Documents must comply with the requirements of the applicable data protection laws. In this respect please note that the Czech Data Protection Act (Act No. 101/2000 Coll. as amended) currently only provides for the protection of data relating to natural persons. Any contractual provision relating to the collection, processing or use of such data which does not comply with the Czech Data Protection Act may be held to be invalid and unenforceable and may be fined as an administrative or even criminal offence by the competent regulatory authority; to the extent the information being transferred, collected or processed relates to corporations (not individuals) the Czech Data Protection Act does not apply.

5.4.26 Under Czech law consent of all parties to the agreement is required to effect the assignment of obligations to a third party (such as the assignment contemplated under §12.5 of the Master Netting Agreement). A Czech court might hold that the execution of the EFET Documents does not, in and of itself, represent such consent.

5.4.27 Provisions purporting to:

(a) create obligations binding on a party who is not a party to that contract;

(b) transfer obligations, contracts or parts of contracts without the consent of the obligee;

(c) assign rights that are not also accompanied by an assumption of any directly related obligation; or

(d) waive generally objections to validity of the contract,

are invalid and unenforceable under Czech law.

5.4.28 Notices under contract that are not actually delivered may not be deemed to be delivered notwithstanding any provision in any EFET Document to the contrary, except that any notice made through a licenced operator of postal services will be deemed delivered on the third or, if delivered abroad, fifteenth business day after its despatch.

5.4.29 The obligations of a party to an EFET Document to "procure" (*zajistit*) that other persons which are not parties to the relevant EFET Document take or omit certain actions may be interpreted as obligations of that party to intercede with the relevant person so as to achieve the required purpose, rather than a strict requirement to procure that the relevant action is taken by such person.

5.4.30 Under Czech law, a creditor has the right to claim default interest only if it is not in default with the performance of its contractual and statutory obligations and only if the debtor is liable for its default.

5.4.31 We do not express any opinion as to the efficacy of any set-off arrangements contained in the Agreements to the extent they relate to receivables arising under contracts governed by laws other than the laws of the Czech Republic.

5.4.32 Certain kinds of asset may enjoy immunity from suit, execution, attachment or other legal process in any proceedings taken in the Czech Republic, including but not limited to:

(a) movables and/or immovables which may only be in the sole property of the Czech Republic or which are not customarily the subject matter of private ownership and/or commerce pursuant to Czech law (e. g., natural mineral water, mineral resources, surface and ground water, motorways); and

(b) assets used for military, national security or diplomatic purposes pursuant to Czech law or pursuant to international treaties that are binding upon the Czech Republic.

5.4.33 Current Czech legislation governing civil law (including contract law and law of corporations) has become effective only on 1 January 2014. Such legislation is based on the principle of discontinuation from previous legal regime, introduces new legal concepts and phraseology, is entirely untested and to date there is neither jurisprudence nor real cases of practical application of such legislation; it also remains unclear which provisions of the new legislation can be derogated by contract. Accordingly, there can be no assurance that determinations reached by the courts of competent jurisdiction in the Czech Republic would coincide with the opinions expressed herein.

5.4.34 We express no opinion on matters of fact

6. ADDRESSEES AND PURPOSE

This Memorandum is addressed exclusively to EFET, (i) is provided for the sole benefit of EFET and its Legal Committee members and any other subscribing entities; (ii) may not be relied upon by, or disclosed to, any other person or legal entity without prior written consent of each of EFET and White & Case (Europe) LLP except that it may be made available by EFET members to the appropriate regulatory authorities.

Yours faithfully,

David Plch

David Plch, Partner and Head of the Branch
On behalf of White & Case (Europe) LLP, organizační složka

ANNEX I

TRANSACTIONS UNDER NETTED AGREEMENTS OR PRINCIPAL AGREEMENTS

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

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

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

4. Bullion Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed rate and the other party pays periodic amounts of the same currency or a different currency calculated by reference to a Bullion reference price (for example, Gold-COMEX on the COMEX Division of the New York Mercantile Exchange) or another method specified by the parties. Bullion swaps include cap, collar or floor transactions in respect of Bullion.

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

   For purposes of Bullion Trades, Bullion Options and Bullion Swaps, “Bullion” means gold, silver, platinum or palladium and “Ounce” means, in the case of gold, a fine troy ounce, (or in the case of reference prices not expressed in Ounces, the relevant Units of silver, platinum or palladium).

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

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

index (in the case of an economic statistic cap) or commodity price (in the case of a commodity cap).

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

9. Commodity Forward. A transaction in which one party agrees to purchase a specified quantity of a commodity at a future date at an agreed price and the other party agrees to pay a price for the same quantity to be set on a specified date in the future. The payment calculation is based on the quantity of the commodity and is settled based, among other things, on the difference between the agreed forward price and the prevailing market price at the time of settlement.

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

11. Commodity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic amounts of the same currency based on the price of a commodity, such as natural gas or gold, or a futures contract on a commodity (e.g., West Texas Intermediate Light Sweet Crude Oil on the New York Mercantile Exchange); all calculations are based on a notional quantity of the commodity.

12. Contingent Credit Default Swap. A Credit Default Swap Transaction in which the credit protection seller pays an amount determined by reference to the value of a hypothetical swap transaction.

13. Credit Default Swap Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to enter into a Credit Default Swap.

14. Credit Default Swap. A transaction in which one party pays either a single fixed amount or periodic fixed amounts or floating amounts determined by reference to a specified notional amount, and the other party (the credit protection seller) pays either a fixed amount or an amount determined by reference to the value of one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity") upon the occurrence of one or more specified credit events with respect to the Reference Entity (for example, bankruptcy or payment default). The amount payable by the credit protection seller is typically determined based upon the market value of one or more debt securities or other debt instruments issued, guaranteed or otherwise entered into by the Reference Entity. A Credit Default Swap may also be physically settled by payment of a specified fixed amount by one party against delivery of specified obligations ("Deliverable Obligations") by the other party. A Credit Default Swap may also refer to a "basket" (typically ten or less) or a "portfolio" (eleven or more) or Reference Entities or may be an index transaction consisting of a series of component Credit Default Swaps.

15. Credit Derivative Transaction on Asset-Backed Securities. A Credit Default Swap for which the Reference Obligation is a cash or synthetic asset-backed security. Such a transaction may,

but need not necessarily, include "pay as you go" settlements, meaning that the credit protection seller makes payments relating to interest shortfalls, principal shortfalls and write-downs arising on the Reference Obligation and the credit protection buyer makes additional fixed payments of reimbursements of such shortfalls or write-downs.

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

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

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

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

20. Economic Statistic Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency by reference to interest rates or other factors and the other party pays or may pay an amount or periodic amounts of a currency based on a specified rate or index pertaining to statistical data on economic conditions, which may include economic growth, retail sales, inflation, consumer prices, consumer sentiment, unemployment and housing.

21. Emissions Allowance Transaction. A transaction in which one party agrees to buy from or sell to the other party a specified quantity of emissions allowances or reductions at a specified price for settlement either on a "spot" basis or on a specified future date. An Emissions Allowance Transaction may also constitute a swap of emissions allowances or reductions or an option whereby one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which the specified quantity of emissions allowances or reductions exceeds or is less than a specified strike. An Emissions Allowance Transaction may be physically settled by delivery of emissions allowances or reductions in exchange for a specified price, differing vintage years or differing emissions products or may be cash settled based on the difference between the market price of emissions allowances or reductions on the settlement date and the specified price.

22. Equity Forward. A transaction in which one party agrees to pay an agreed price for a specified quantity of shares of an issuer, a basket of shares of several issuers or an equity index at a future date and the other party agrees to pay a price for the same quantity of shares of an issuer to be set on a specified date in the future. The payment calculation is based on the number of shares and can be physically-settled (where delivery occurs in exchange for payment) or cash-settled (where settlement occurs based on the difference between the agreed forward price and the prevailing market price at the time of settlement).

23. Equity Index Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which an equity index either exceeds (in case of a call) or is less than (in case of a put) a specified strike price.

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

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

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

27. Foreign Exchange Transaction. A transaction providing for the purchase of one currency with another currency providing for settlement either on a “spot” or two-day basis or a specified future date.

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

29. Freight Transaction. A transaction in which one party pays an amount or periodic amounts of a given currency based on a fixed price and the other party pays an amount or periodic amounts of the same currency based on the price of chartering a ship to transport wet or dry freight from one port to another; all calculations are based either on a notional quantity of freight or, in the case of time charter transactions, on a notional number of days.

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

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

32. Physical Commodity Transaction. A transaction which provides for the purchase of an amount of a commodity, such as coal, electricity or gas, at a fixed or floating price for actual delivery on one or more dates.

33. Property Index Derivative Transaction. A transaction, often structured in the form of a forward, option or total return swap, between two parties in which the underlying value of the transaction is based on a rate or index based on residential or commercial property prices for a specified local, regional and national area.

34. Repurchase Transaction. A transaction in which one party agrees to sell securities to the other party and such party has the right to repurchase those securities (or in some cases equivalent securities) from such other party at a future date.

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

36. Swap Deliverable Contingent Credit Default Swap. A Contingent Credit Default Swap under which one of the Deliverable Obligations is a claim against the Reference Entity under an ISDA Master Agreement with respect to which an Early Termination Date (as defined therein) has occurred.

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

38. Total Return Swap. A transaction in which one party pays either a single amount or periodic amounts based on the total return on one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity"), calculated by reference to interest, dividend and fee payments and any appreciation in the market value of each Reference Obligation, and the other party pays either a single amount or periodic amounts determined by reference to a specified notional amount and any depreciation in the market value of each Reference Obligation.

    A total return swap may (but need not) provide for acceleration of its termination date upon the occurrence of one or more specified events with respect to a Reference Entity or a Reference Obligation with a termination payment made by one party to the other calculated by reference to the value of the Reference Obligation.

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

ANNEX II

MASTER AGREEMENTS COVERED BY THE EFET MASTER NETTING AGREEMENT OR THE TBMA CROSS PRODUCT MASTER AGREEMENT

Energy Trading Master Agreements

- European General Agreement Concerning the Delivery and Acceptance of Electricity (version 2007), sponsored by the European Federation of Energy Traders (EFET)
- European General Agreement Concerning the Delivery and Acceptance of Electricity (version 2000), sponsored by the European Federation of Energy Traders (EFET)
- European General Agreement Concerning the Delivery and Acceptance of Natural Gas (version 2007), sponsored by the European Federation of Energy Traders (EFET)
- European General Agreement Concerning the Delivery and Acceptance of Natural Gas (version 2003), sponsored by the European Federation of Energy Traders (EFET)
- UK Grid Trade Master Agreement (version June 2004), sponsored by the Futures and Options Association (FOA)
- NBP Amendment Agreement for natural gas settled through the National Balancing Point (NBP) based on the Short Term Flat NBP Trading Terms and Conditions 1997
- ZBT Amendment Agreement for natural gas settled through the Belgian Zeebruegge hub based on the Zeebruegge Terms and Conditions 2004
- ZBT Amendment Agreement for natural gas settled through the Belgian Zeebruegge hub based on the Zeebruegge Terms and Conditions 2001
- International Emissions Trading Master Agreement (version 2010/2011), sponsored by the International Emissions Trading Association (IETA)
- Emissions Trading Master Agreement for the EU Scheme (version 2008), sponsored by the International Emissions Trading Association (IETA)
- Emissions Trading Master Agreement for the EU Scheme (version 2005), sponsored by the International Emissions Trading Association (IETA)
- Emissions Trading Master Agreement for the EU Scheme (version 2002), sponsored by the International Emissions Trading Association (IETA)
- US Master Power Purchase & Sale Agreement (version 2000), sponsored by the Edison Electric Institute
- US General Terms and Conditions Base Contract for Sale and Purchase of Natural Gas (version 2002), sponsored by the North American Energy Standards Board, Inc (NAESB)
- US General Terms and Conditions Base Contract for Sale and Purchase of Natural Gas (version 2006), sponsored by the North American Energy Standards Board, Inc (NAESB)
- Canadian Base Contract for Short-term Sale and Purchase of Natural Gas (version 2005), sponsored by GasEDI
- Canadian Base Contract for Short-term Sale and Purchase of Natural Gas (version 2000), sponsored by GasEDI

Derivatives Master Agreements

- Financial Energy Master Agreement (version 2000), sponsored by the Nordic Association of Energy Traders (NAET)
- ISDA 2002 Master Agreement, sponsored by the International Swaps and Derivatives Association, Inc.
- 1992 ISDA Master Agreement (Multicurrency – Cross Border), sponsored by the International Swaps and Derivatives Association, Inc.
- 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction), sponsored by the International Swaps and Derivatives Association, Inc.
- 1987 Interest Rate and Currency Exchange Agreement, sponsored by the International Swaps and Derivatives Association, Inc.
- Australian version of the 1992 ISDA Master Agreement (Multicurrency – Cross Border), sponsored by the Australian Financial Markets Association (AFMA)
- New Zealand version of the 1992 ISDA Master Agreement (Multicurrency – Cross Border)
- German Rahmenvertrag für Finanztermingeschäfte (version 2001), sponsored by the German Banker’s Association
- German Rahmenvertrag für Finanztermingeschäfte (version 1994), sponsored by the German Banker’s Association
- Swiss Master Agreement for Over-The-Counter Derivative Instruments (version 2003), sponsored by the Schweizerische Bankiervereinigung
- Swiss Master Agreement for Over-The-Counter Derivative Instruments (version 1994), sponsored by the Schweizerische Bankiervereinigung
- French Convention-Cadre FBF Relative Aux Operations Sur Instruments Financiers à Terme (version July 2007), sponsored by the Fédération Bancaire Française (FBF)
- French Convention-Cadre FBF Relative Aux Operations Sur Instruments Financiers à Terme (version August 2001), sponsored by the Fédération Bancaire Française (FBF)
- French Convention-Cadre AFB Relative Aux Operations Sur Instruments Financiers à Terme (version), sponsored by the Association Française des Banques (AFB)
- Spanish Contrato Marco De Operaciones Financieras (versión 1997), sponsored by the Asociación Española de Banca Privada (AEB)
- Dutch Raamovereenkomst voor Financiële Derivaten (RFD), sponsored by the Nederlandse Vereniging van Banken (NVB)
- Japanese Bond Option Agreement, sponsored by the Japan Securities Dealers Association (JSDA)
- Mexican Contrato Marco para Operaciones Financieras Derividas
- Mexican Contrato Normativo para la realización de las operaciones de Intercambio
- Mexican Master Agreement for Entering into Dollar against Mexican Peso Forward Transactions
- US Master Securities Forward Agreement (version 1996), sponsored by The Bond Market Association (TBMA)

- US Master OTC Options Agreement (version 2000), sponsored by The Bond Market Association (TBMA)
- US OTC Option Transactions – U.S. Treasury Securities Master Dealer Agreement (version August 1989), sponsored by the Public Securities Association (PSA)
- UK International Currency Options Market Agreement (ICOM) sponsored by the British Bankers' Association (BBA)
- UK Foreign Exchange and Options Master Agreement (FEOMA), sponsored by the British Bankers' Association (BBA)
- UK International Foreign Exchange Master Agreement (IFEMA), sponsored by the British Bankers' Association (BBA)
- The 1994 International Bullion Master Agreement (IBMA) (version June 1994), sponsored by the London Bullion Market Association and the Foreign Exchange Committee
- European Master Agreement for Financial Transactions (EMA) (edition January 2004), sponsored by the Banking Federation of the European Union (FBE)
- European Master Agreement for Financial Transactions (EMA) (edition January 2001), sponsored by the Banking Federation of the European Union (FBE)

Securities Lending Master Agreements

- Global Master Securities Lending Agreement (GMSLA) (version 2010), sponsored by the International Securities Lending Association (ISLA)
- Global Master Securities Lending Agreement (GMSLA) (version 2000), sponsored by the International Securities Lending Association (ISLA)
- Master Equity & Fixed Interest Stock Lending Agreement (MEFISLA) (version 1996), sponsored by the International Securities Lending Association (ISLA)
- Master Gilt Edged Stock Lending Agreement (GESLA) (version 1996), sponsored by the International Securities Lending Association (ISLA)
- Overseas Securities Lender's Agreement (OSLA) (version 1995), sponsored by the International Securities Lending Association (ISLA)
- Overseas Securities Lender's Agreement (OSLA) (version October 1994), sponsored by the International Securities Lending Association (ISLA)
- Overseas Securities Lender's Agreement (OSLA) (version February 1994), sponsored by the International Securities Lending Association (ISLA)
- US Master Securities Loan Agreement (version 2000), sponsored by The Bond Market Association (TBMA)
- US Master Securities Loan Agreement (version May 1993), sponsored by the Public Securities Association (PSA)
- Canadian Securities Loan Agreement, sponsored by the Investment Dealers Association of Canada (IDAC)
- German Rahmenvertrag für Wertpapierleihgeschäfte
- German Rahmenvertrag für Wertpapierdarlehen (version 1999)

- French Contract Cadre de Prêts des Titres (version 2007), sponsored by the Association Francaise des Professionnels des Titres (AFTI)
- French Contract Cadre de Prêts des Titres (version), sponsored by the Association Francaise des Professionnels des Titres (AFTI)
- Australian Master Securities Lending Agreement (version November 2003), sponsored by Australian Securities Lending Association Ltd. (ASLA)
- Australian Master Securities Lending Agreement (version December 2002), sponsored by Australian Securities Lending Association Ltd. (ASLA)
- Australian Master Securities Lending Agreement (version April 1997), sponsored by Australian Securities Lending Association Ltd. (ASLA)
- New Zealand Master Repurchase Securities Lending Agreement
- Japanese Basis Agreement Concerning Stock Lending Transactions, sponsored by the Japan Securities Dealers Association (JSDA)

Repurchase Master Agreements

- Global Master Repurchase Agreement (GMRA) (version October 2000), sponsored by The Bond Market Association (TBMA) and the International Securities Market Association (ISMA)
- Global Master Repurchase Agreement (GMRA) (version 1995), sponsored by the Public Securities Association (PSA) and the International Securities Market Association (ISMA)
- Global Master Repurchase Agreement (GMRA), sponsored by the Public Securities Association (PSA) and the International Securities Market Association (ISMA) (version November 1992)
- US Master Repurchase Agreement (MRA) (version September 1996), sponsored by The Bond Market Association (TBMA)
- US Master Repurchase Agreement (MRA) (version 1987)
- Canadian Repurchase/Reverse Repurchase Transaction Agreement
- Australian version of the Global Master Repurchase Agreement (GMRA) (version 1995), sponsored by the Australian Financial Markets Association (AFMA)
- New Zealand version of Global Master Repurchase Agreement (GMRA) (version 1995)
- German Rahmenvertrag für Wertpapierpensionsgeschäfte (version 2005)
- German Rahmenvertrag für Wertpapierpensionsgeschäfte (version 2002)
- German Rahmenvertrag für echte Pensionsgeschäfte (version 1997)
- French Convention-cadre FBF Relative Aux Opérations de Pensions Livriée (version 2007), sponsored by the Fédération bancaire française (FBF) [FBF07 REPO]
- French Convention-cadre FBF Relative Aux Opérations de Pensions Livriée (version 2003), sponsored by the Fédération bancaire française (FBF)
- French Convention-cadre Relative Aux Opérations de Pensions Livriée, sponsored by the Association du Forex et des Trésoriers de Banque (AFTB

- Japanese Bond Lending Agreement, sponsored by the Japan Securities Dealers Association (JSDA)
- Japanese Basic Agreement Concerning Gensaki Transactions of Bonds, Japan Securities Dealers Association (JSDA)