KROMANN REUMERT

LEGAL OPINION SUMMARY TABLE

DENMARK ("DK")

Date: 8 November 2022	**Version:** 1.0
Prepared by: Kromann Reumert	
Coverage: EFET Gas, EFET Electricity	

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

Types of Counterparty *What types of counterparty are covered by the opinion?*	Types of Danish Parties covered by this opinion are listed in Schedule A. The Danish Party can be a Financial Entity (see definitions) or a Non-Financial Entity (see definitions).	See section 1.4 and Schedule A. For definitions, see section 1.3.
Types of Transaction *What types of transaction are eligible for close-out netting?*	Most Commodity Transactions (i.e. when qualifying as Relevant Financial Obligations).	See section 1.5 of the opinion, and sections 2.3-2.5 of Schedule B.
Automatic Termination *Does the opinion require or recommend that automatic early termination applies to a counterparty organised in DK?*	No	See section 3.1.1.2.
Early termination provision *Is the early termination provision of the Agreement enforceable in DK?*	Yes, in respect of Relevant Financial Obligations, the early termination provision of the Agreement will be enforceable against a bankruptcy estate of a Danish Party (whether or not Automatic Termination applies), and also against a Danish Party not being insolvent.	See sections 3.1.1.2(b), 3.1.1.3(b), 3.1.2.2, 3.1.2.3, and 3.1.3 See also text summary in section 1.2.
Close-out netting *Is the close-out netting provision of the Agreement enforceable in a local insolvency in DK?*	Yes, in respect of Relevant Financial Obligations, the close-out netting provision of the Agreement will be enforceable against a bankruptcy estate of a Danish Party.	See section 3.1.1.4.
Characterization of collateral *Would laws of DK characterize transfer of collateral as effecting an unconditional transfer of ownership or is there risk of re-characterizing such transfer as creating a security interest?*	Yes, Danish law respects that a financial collateral arrangement may include transfer of title as a valid form of posting financial collateral (e.g. cash credited to the Transferee's account) in relation to act of perfection and realisation of the collateral.	See section 3.3.2
Further action required *Is any action required to ensure that ownership title continues to rest with Party B?*	No	See sections 3.3.3 and 3.3.8.
Amendments necessary *Are there any recommended amendments to the standard documents?*	In order to preserve termination and close-out netting rights, where applicable: No.	
Other remarks *Does the opinion specify issues that you deem to be of specific interest in negotiating an agreement with a counterparty in DK?*	If Agreement is from before 3 January 2018, agree that the close-out netting and financial collateral rules in the Capital Markets Act shall apply. Consider exclusive English jurisdiction if the Agreement is subject to English law and jurisdiction.	See section 2(o). See section 3.9.

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8 NOVEMBER 2022
MATTER ID. 1066284 SSL/SSL
DOC. NO. 1066284-311961472-14-4.45

EFET GENERAL AGREEMENTS CONCERNING THE DELIVERY AND ACCEPTANCE OF NATURAL GAS AND OF ELECTRICITY, RESPECTIVELY, AND RELATED COLLATERAL ARRANGEMENT - DANISH LAW

Dear Sirs,

We have been asked to provide a legal opinion in respect of matters of Danish law in connection with specific questions detailed in your e-mail dated 11 July 2022 and the thereto attached instruction letter regarding enforceability of close-out netting and the validity and enforceability of collateral arrangements and other related issues under the EFET General Agreements Concerning the Delivery and Acceptance of Electricity and of Natural Gas, respectively.

This opinion is limited to law applicable in Denmark excluding Greenland and the Faroe Islands.

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

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

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1. INTRODUCTION

1.1 Scope of Review

1.1.1 We have reviewed (the English versions of) the following documents related to electricity (printed from www.efet.org or received from EFET):

(a) EFET General Agreement Concerning the Delivery and Acceptance of Electricity (version 2.1(a), dated 21 September 2007) (the "**Electricity Agreement**").

(b) EFET General Agreement Concerning the Delivery and Acceptance of Electricity (version 2.1, dated 20 December 2000).

(c) Change Letter to amend § 14 (VAT and Taxes) of the EFET General Agreement Concerning the Delivery and Acceptance of Electricity (Version 1.0, published 16 December 2013).

(d) Change Letter to amend § 14 (VAT and Taxes) of the EFET General Agreement Concerning the Delivery and Acceptance of Electricity (Version 2.0, published 1 October 2015).

(e) EFET Allowances Appendix to the General Agreement Concerning the Delivery and Acceptance of Electricity (Version 5.0, published February 2018).

(f) EFET Allowances Appendix (Power) to the General Agreement Concerning the Delivery and Acceptance of Electricity (Version 6.1, published 4 November 2021) (the "**Electricity Allowances Appendix**").

(g) EFET French Capacity Certificates Appendix (Version 1.0, published March 2013).

(h) EFET GTMA Appendix to the General Agreement Concerning the Delivery and Acceptance of Electricity (Version 2.1, published 20 December 2000 and Version 2.1(a) published 21 September 2007) (Version 1.0, published 11 September 2009).

(i) EFET EECS Certificates Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Electricity (Version 1.0, published 14 December 2013).

(j) EFET EECS Certificate & National Scheme Certificate Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Electricity (Version 1.1 (b), published 4 November 2021).

(k) UK ETS Allowances Appendix (Power) (Version 1.0, published July 29, 2021.

1.1.2 We have reviewed (the English versions of) the following documents related to natural gas (printed from www.efet.org or received from EFET):

(a) EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (version 2.0(a), published 11 May 2007) (the "**Gas Agreement**").

(b) EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (version 2.0, published 6 January 2003).

(c) EFET Sample Amendment Agreement to § 14 (VAT and Taxes), the definitions of "Other Tax" and "Zero-Rated" in Annex 1, and the Election Sheet to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published July 2007).

(d) EFET Sample Amendment Agreement to § 8 (Remedies for Failure to Deliver and Accept the Contract Quantity) of the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published October 2005).

(e) Change Letter to amend § 14 (VAT and Taxes) of the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 16 December 2013).

(f) EFET Allowances Appendix (Gas) to the General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 5.1, published 4 November 2021) (the "**Gas Allowances Appendix**").

(g) EFET Allowances Appendix (Gas) ("Phase IV (Gas) Appendix") to General Agreement Concerning the Delivery and Acceptance of Gas Version 2.0(a)/May 11, 2007 (Version 4.0 published on 28 February 2018).

(h) EFET IBP Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas 2.0(a) (Version 1.0/4 December 2017).

(i) EFET PVB Appendix to the General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 27 March 2020).

(j) Austrian VTP Appendix to the EFET General Agreement concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 20 September 2013).

(k) EFET TTF Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 4.0, published 26 May 2014).

(l) EFET TVB Appendix to the General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0 - 29 May 2020).

(m) EFET PEG Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 4.0/October 2018).

(n) EFET Polish VP Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 14 December 2013).

(o) EFET Portuguese VTP Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0/ June 21, 2021).

(p) EFET Ukrainian Customs Warehouse Storage Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0/May 2021).

(q) EFET Ukrainian Border Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published February 2020).

(r) EFET Recommended Clauses for use with Ukrainian Counterparties, published February 2020.

(s) EFET Zeebrugge Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0 4 December 2017).

(t) EFET UK 6:6 Beach Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 2016).

(u) EFET UK 5:5 Beach Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 7 September 2015).

(v) EFET NBP Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 7 September 2015).

(w) Change Letter EFET Trading Hub Europe amendments to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas, published 26 July 2021.

(x) UK ETS Allowances Appendix (Gas) (Version 1.0, published December 13, 2021).

1.1.3 We have reviewed (the English versions of) the following documents related to both natural gas and electricity (printed from www.efet.org or received from EFET):

(a) EFET VAT Annex for use with the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas Version 2.0/January 6, 2003 and the EFET General Agreement Concerning the Delivery and Acceptance of Electricity Version 2.1/December 20, 2000 (Version 1.0, published 20 November 2005).

(b) Amendment Agreement IBOR Transition wording for General Agreements, CPPNA, PPA and Appendices, published November 4, 2021.

(c) EFET Credit Support Annex to the General Agreement (Version 1.0(a), published September, 2005).

(d) EFET Credit Support Annex to the General Agreement (Version 2.0, published May, 2010).

(e) EFET Credit Support Annex to the General Agreement (Version 3.1, published November 4, 2021) (the "**Credit Support Annex**").

(f) Ratification Letter for Amendments to Covered Principal Agreements governed by English law concerning the giving of notices as published by EFET on 13th October 2020.

(g) Ratification Letter for Amendments to Covered Principal Agreements governed by German law concerning the giving of notices as published by EFET on 13th October 2020.

For purposes of section 3.5 (Confirmation Practices) additionally:

(h) EFET Electronic Confirmation Agreement (published 20 March 2017).

For purposes of section 3.6.3 (Core Provisions) only:

(i) EFET Cross Product Payment Netting Agreement (Version 1, published 20 October 2005).

(j) EFET Master Netting Agreement (Version 1.0, published June 2010).

(k) CPMA Cross-Product Master Agreement (Version 1.0, published 16 February 2000) as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement (Version 1.0, published 23 June 2003).

(l) EFET Cross-Product Credit Support Annex to the CPMA Cross-Product Mater Agreement (Version 1.0, published 23 June 2003).

(m) EFET Credit Support Annex to the Master Netting Agreement (Version 1.0, published February 2011).

1.1.4 The Electricity Agreement (as defined in section 1.1.1(a)) and the Gas Agreement (as defined in section 1.1.2(a)) are together referred to as the "**Agreements**". If the term "Agreement" is used it can be either or both of the Agreements.

The Electricity Allowances Appendix (as defined in section 1.1.1(f)) and the Gas Allowances Appendix (as defined in section 1.1.2(f)) are together referred to as the "**Allowances Appendices**". If the term "Allowances Appendix" is used it can be either or both of the Allowances Appendices.

The Agreements, the Credit Support Annex, the Allowances Appendices, the other documents listed above, and the Individual Contracts are hereinafter referred to together as the "**Documents**".

1.2 Text summary of main conclusions on enforceability

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

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

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

- claims originating from trading in "financial instruments", and

- "claims originating from agreements on energy products"

(defined together as "Relevant Financial Obligations" in this opinion).

Accordingly, claims under the Agreement which are Relevant Financial Obligations may be subject to close-out netting under the Capital Markets Act.

Therefore, based on the assumptions and subject to the qualifications set out in this opinion, our conclusion is that in respect of an Agreement between a Counterparty (being either a Financial Entity or a Non-Financial Entity) and a Danish Party, the early termination, the close-out netting, and the calculation and payment of one termination amount pursuant to the Agreement will in our view be enforceable against a bankruptcy estate of a

Danish Party in respect of obligations which are Relevant Financial Obligations, and a choice of Automatic Termination will not change this conclusion.

1.3 Definitions

Terms defined in each of the Agreements have the same meaning when used in this opinion related to the relevant Agreement, unless otherwise stated herein. In section 3.3 (Collateral) below, in addition to the terms in the Agreements or as stated herein, the capitalized terms shall have the same meaning as in the Credit Support Annex.

In addition the following definitions are used in this opinion:

"**Agreements**" has the meaning set forth in section 1.1.4;

"**Allowances Appendices**" has the meaning set forth in section 1.1.4;

"**Bankruptcy Act**" means the Danish Bankruptcy Act (*konkursloven*), Consolidated Act no. 775 of 3 May 2021 as amended;

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

"**Capital Markets Act**" means the Danish Act on Capital Market (*lov om kapitalmarkeder*), Consolidated Act no. 2014 of 1 November 2021;

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

"**Commodity**" has the meaning set forth in section 1.5(e);

"**Commodity Spot**" has the meaning set forth in section 1.5(d);

"**Commodity Transaction**" has the meaning set forth in section 1.5;

"**Counterparty**" means the Danish Party's counterparty to the Gas Agreement and/or the Electricity Agreement;

"Danish BRRD-rules" means the Danish regulation implementing Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 as amended and Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 as amended, i.e. primarily the BRRD Act and Chapter 15a of the Financial Business Act;

"**Danish Insolvency Proceedings**" means bankruptcy (*konkurs*) and formal restructuring proceedings (*rekonstruktion*) regulated by the Bankruptcy Act and as described in Schedule B, section 1.1;

"**Danish Preventive Restructuring Proceedings**" means preventive restructuring proceedings (*forebyggende rekonstruktion*) regulated by the Bankruptcy Act and as described in Schedule B, section 1.2;

"**Danish Party**" has the meaning set forth in Schedule A;

"**Documents**" has the meaning set forth in section 1.1.4;

"Eligible Danish Collateral" has the meaning set forth in Schedule B, section 2.8.2;

"Emission Allowances" means in accordance with MiFID II, Annex I, Section C, no. 11, emissions allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme);

"European Restructuring Directive" means Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency);

"Financial Business Act" means the Danish Financial Business Act (*lov om finansiel virksomhed*), Consolidated Act no. 406 of 29 March 2022, as amended;

"Financial Entity" has the meaning set forth in Schedule B, section 2.2;

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

"Limitation Day" means the limitation day (*fristdagen*) as set forth in Section 1 of the Bankruptcy Act, which for the purpose of this opinion will generally be the earliest of the times of filing a petition for bankruptcy or formal restructuring proceedings with a bankruptcy court (*skifteretten*), or the date on which the bankruptcy court during a Danish Preventive Restructuring Proceeding decides on a stay of individual enforcement actions (*fyldestgørelsesforbud*), or in respect of credit institutions or certain investment firms that has been subject to resolution measures (*afviklingsforanstaltninger*) under the Danish BRRD-rules the date of initiation of such measures or the date where such undertaking satisfy the resolution conditions of the Danish BRRD-rules, provided that the bankruptcy or formal restructuring proceedings have been initiated within 3 months;

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

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

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

"Non-Financial Entity" has the meaning set forth in Schedule B, section 2.2;

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

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

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

"Relevant Financial Obligations" has the meaning set forth in Schedule B, section 2.3.

1.4 Types of Danish Parties

This opinion covers Danish Parties which are listed in Schedule A hereto.

With respect to Danish branches of foreign legal entities, see section 3.2.2 below.

Except as specifically stated, this opinion would not change if the Danish Party was a publicly owned Danish legal entity or a Danish public authority, provided that such entity enters into the Agreement in a commercial capacity, but no opinion is rendered on Danish procurement law.

No opinion is rendered in respect of individuals.

The opinion in section 3.3 on Collateral does not cover a Danish Party which is designated as a retail client (as defined in MiFID II, Article 4(1)(11)).

1.5 Product Coverage

This opinion covers the following types of Individual Contracts (litra (a)-(d) in respect of a Commodity (litra (e)) (the quoted text in litra (a)-(e) below is as described in the instruction letter):

(a) "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."

(b) "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."

(c) "Commodity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic amounts of the same currency based on the price of a Commodity or an exchange-traded futures contract on a Commodity (e.g., the EEX EU Carbon Future); all calculations are based on a notional quantity of the Commodity."

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

We assume that a "Physical Commodity Transaction" may potentially be a spot transaction or it could be a forward, swap or option with physical settlement of the Commodity.

There is no general statutory definition of a "spot transaction" under Danish law. However, Article 7(2) of the MiFID II Regulation relates to the exclusion of "spot contracts" in Article 7(1) (which relates to the transactions comprised by C(7) of Annex I to MiFID II), and for these purpose defines a "spot contract" as "a contract for the sale of a commodity, asset or right, under the terms of which delivery is scheduled to be made within the longer of the following periods: (a) 2 trading days; (b) the period generally accepted in the market for that commodity, asset or right as the standard delivery period". However, a contract is not a spot contract if, irrespective of its explicit terms, there is an understanding between the parties to the contract that delivery of the underlying is to be postponed and not to be performed within the period mentioned in (a) and (b). Accordingly, we are of the view that contracts for the delivery of a Commodity, which under this test would qualify as spot contracts (for purposes of this opinion, a "**Commodity Spot**"), will not constitute a derivative under the Capital Markets Act.

(Commodity Forward, Commodity Option, Commodity Swap, and Physical Commodity Transaction are hereinafter referred to together as "**Commodity Transactions**").

(e) ""Commodity" means electricity, natural gas, emissions allowances, (green) certificates or capacity rights."

The Danish term for "commodity", i.e. "råvare", is not defined in the Capital Markets Act, but the term is defined in the MiFID II Regulation, Article 2(6), as "any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity".

Accordingly, in our view "electricity" will be covered by the Danish term for "commodity", i.e. "råvare", as used in the list of financial instruments in Section 4 of the Capital Markets Act, and certain Commodity Transactions relating to electricity may be covered by such provisions relating to financial instruments, see Schedule B, section 2.4 and/or relating to agreements on energy products, see Schedule B, section 2.5.

Furthermore, in our view "natural gas" will be covered by the Danish term for "commodity", i.e. "råvare", as used in the list of financial instruments in Section 4 of the Capital Markets Act, and certain Commodity Transactions relating to natural gas may be covered by such provisions relating to financial instruments, see Schedule B, section 2.4 and/or relating to agreements on energy products, see Schedule B, section 2.5.

We assume that "emissions allowances" as stated above will be either (i) Emission Allowances or (ii) other emissions allowances[1] (than Emission Allowances) comprised by Article 8(d) of the MiFID II Regulation or by Section C(10) of Annex I to MiFID II. Accordingly, certain Commodity Transactions relating to such "emissions allowances" may be covered by Section 4 of the Capital Markets Act relating to financial instruments, see Schedule B, section 2.4 and/or provisions relating to agreements on energy products, see Schedule B, section 2.5.

We assume that "(green) certificates" as stated above (i) will be tradable electronic renewable energy certificates, which evidence the origin of energy produced by renewable energy, such as renewable origin electricity or gas, or by other renewable non-fossil sources[2], and (ii) will be comprised by Article 8(d) of the MiFID II Regulation or by Section C(10) of Annex I to MiFID II. Accordingly, certain Commodity Transactions relating to such "(green) certificates" may be covered by Section 4 of the Capital Markets Act relating to financial instruments, see Schedule B, section 2.4 and/or provisions relating to agreements on energy products, see Schedule B, section 2.5.

We assume that "capacity rights" as stated above will be either rights relating to (i) commodity storage capacity of natural gas, or (ii) transmission or transportation capacity relating to natural gas or to electricity comprised by the MiFID II Regulation, Article 8(b) and (c), respectively, or by Section C(10) of Annex I to MiFID II. Accordingly, certain Commodity Transactions relating to such "capacity rights" may be covered by Section 4 of the Capital Markets Act relating to financial instruments, see Schedule B, section 2.4, and/or for transmission or transportation capacity only, the provisions relating to agreements on energy products, see Schedule B, section 2.5.

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[1] Please refer to section 2.5 for the potential different coverage of Emission Allowances and other emissions allowances, respectively, under Section 5, no. 3 of the Capital Markets Act.

[2] In accordance with the definition of "renewable energy" in Article 2(1) of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), and in Section 2, Subsection 2 of the Danish Act on the Promotion of Renewable Energy (Consolidated Act no. 1791 of 2 September 2021, as amended).

2. ASSUMPTIONS

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

(a) Two Parties enter into the Agreement and at least one of the Parties is incorporated or organised in Denmark (i.e. the Danish Party);

(b) the Danish Party is a corporation, financial institution or other entity as further described in section 1.4 and Schedule A;

(c) the Agreement is governed by the laws of Germany or England and Wales;

(d) on the basis of the terms and conditions of the Agreement and other relevant factors, and acting in a manner consistent with the intentions stated in the Agreement, the Parties over time enter into a number of Individual Contracts which may include all of the Commodity Transactions;

(e) the Individual Contracts provide for the physical delivery of a Commodity, including emissions allowances and (green) certificates, in exchange for cash, however, some of them may also provide for cash settlement;

(f) that each of the Agreements and any of the Annexes, Appendices and other Documents set out in section 1.1 (including the Credit Support Annex) is legal, valid, binding and enforceable under the laws of any relevant jurisdiction;

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

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

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

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

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

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

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

(n) that the Documents do not provide for liquidated damages, which are not a genuine estimate of the loss likely to be suffered;

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

(p) save for elections or required specifications made in the applicable Election Sheet, Annex or Appendix, as applicable, no substantive modifications have been made to any of the Documents; and

(q) that no law (other than Danish law) and no terms or deviations from the standard terms of the Documents agreed between the Parties affect the conclusions in this opinion.

3. OPINION AND SPECIFIC QUESTIONS

Our opinions and answers to the specific questions you have asked us to address in this section 3 are based on the assumptions set out in section 2 and subject to the general qualifications set out below and in section 4.

3.1 Enforceability of Close-out Netting

3.1.1 Winding up, Insolvency or Attachment

This question relates to a termination and close-out netting based on an insolvency based Material Reason listed in § 10.5(c) of the Agreement[3], but which is not Danish Preventive Restructuring Proceedings (which is covered by section 3.1.2 below).

Our opinion in this section is also based on the following additional assumption:

- After entering into the Individual Contracts and prior to the maturity thereof, the Danish Party becomes subject of a voluntary or involuntary case under the insolvency laws of Denmark, and subsequent to the commencement of the insolvency, either the Danish Party or an insolvency official seeks to assume the confirmations representing profitable Individual contracts for the insolvent Danish Party.

3.1.1.1 Short overview of Danish Insolvency Proceedings

We refer to Schedule B, section 1.1.

3.1.1.2 Automatic Termination

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

We would generally only recommend electing Automatic Termination if legally required in order to terminate and close-out net the Agreement and Individual Contracts thereunder. From a Danish legal perspective, the election of Automatic Termination in respect of one or more insolvency based Material Reasons listed in § 10.5(c) of the Agreement will not change the opinion on enforceability of close-out netting provided in section 3.1.1.3(b) below. Accordingly, in our view, there is no need from a Danish legal perspective to agree to make Automatic Termination operative vis-à-vis a Danish Party.

(b) *Assuming you recommend Automatic Termination to apply, are the provisions of the EFET General Agreement terminating the EFET General Agreement (including all Individual Contracts) upon the occurrence of a Material Reason described in § 10.5(c) of the EFET General enforceable under the laws of Denmark or is there a risk that the automatic termination could be challenged by a liquidator, receiver or third party? Will*

[3] Under Danish law the reasons listed in (i) and (v) of § 10.5(c) of the Agreement will in our view not per se be deemed insolvency based reasons as a liquidation may not necessarily be caused by an insolvency related event or result in insolvency proceedings being commenced.

there be a difference in the treatment of electricity/natural gas and green certificates traded separately or in combination?

The election of Automatic Termination would not change the opinion provided in section 3.1.1.3(b) below.

3.1.1.3 No Automatic Termination

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

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

In our view, in the event any of the Danish Insolvency Proceedings occurs with respect to the Danish Party, it will trigger one or more of the insolvency based Material Reasons listed in § 10.5(c) of the Agreement, and accordingly, we do not find it necessary to amend the events listed in § 10.5(c).

(b) Are the provisions of the EFET General Agreement permitting the Terminating Party to terminate the Agreement (including all Individual Contracts) upon the occurrence of a Material Reason described in § 10.5(c) of the EFET General Agreement enforceable under the laws of Denmark or is there a risk that (i) the entering into the EFET General Agreement, (ii) the entering into Individual Contracts thereunder or (iii) the termination by notice itself could be challenged by an liquidator, receiver or third party?

The Early Termination rights in § 10.3 of the Agreement operable as the result of an insolvency based Material Reason listed in § 10.5(c) of the Agreement[4] (whether by automatic or active termination) will in our view be enforceable against a Danish Party subject to Danish Insolvency Proceedings in respect of Relevant Financial Obligations under the Agreement and the Individual Contracts, and subject to the qualifications below.

Under Section 206, Subsection 1 of the Capital Markets Act, if close-out netting is agreed in the Agreement and relates to Relevant Financial Obligations, the Individual Contracts and the Agreement need not be deemed a single agreement in order to preserve the enforceability of Early Termination rights and the ability to close-out net under the Agreement.

If a Danish Party (i.e. Danish credit institutions or certain Danish investment firms) is subject to measures under the Danish BRRD-rules, this will influence on the enforceability of the Counterparty's Early Termination rights, see section 1.3 in Schedule B.

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

(c) Is there a risk that a termination notice given in accordance with the E-Notice Agreement (e.g. by e-mail with attached document in PDF format) (i) may not be recognised as valid termination notice by a liquidator, receiver or court or (ii) could the deemed receipt of the termination notice be challenged by a liquidator, receiver or court?

[4] See footnote 3.

As a general rule under Danish law, the giving of a notice is not subject to formality requirements. Under Danish law a written statement is generally valid and binding, irrespective of its form. Special formality requirements to a notice are only required if statutory law, trade usage or custom, or the relevant agreement requires such formality.

Under the assumption that there is not any statutory law or trade usage or custom setting formality requirements in the market for bilateral trading of Commodity Transactions, it will be relevant to refer to the Agreement. If it is agreed between the Parties, that a written notice may be given by e-mail, including a termination notice, in our view, this would be binding for the Parties. However, if a Danish Party is subject to bankruptcy proceedings, the Danish Party will at the time the bankruptcy order is issued no longer be entitled to receive termination notices pursuant to Section 29 of the Bankruptcy Act, and this will be binding on a Counterparty which knew or should have known of the bankruptcy[5]. Accordingly, in a bankruptcy scenario, we would recommend that the Counterparty provides a termination notice in a way which ensures that it is in fact (also) received by the bankruptcy trustee in order to reduce the risk of being met with a challenge that the notice is not provided to the right recipient and at the intended time, which may mean that an e-mail notice should not be used in practice for a termination notice against a Danish Party subject to bankruptcy proceedings. Section 29 of the Bankruptcy Act does not apply in case of a Danish Party being subject to formal restructuring proceedings, but the Danish Party may generally only act together with the restructuring administrator in matters of material significance, and therefore, it would be advisable to provide a termination notice in a way which ensures that it is actually received by the Danish Party, which may mean that an e-mail notice may be less advisable to use in practice for a termination notice against a Danish Party subject to formal restructuring proceedings.

In principle, it is possible under Danish law to agree with binding effect for the Parties, that a notice is deemed delivered at a certain point in time if sent and/or delivered in a pre-agreed manner. However, the Party sending the notice will have the burden of proof that this has taken place, if challenged. For notices with a material content, such as a termination notice, the Party sending the notice may potentially also need to justify that the Party acted in good faith, including why one method of delivery has been chosen instead of another, if the latter method would have increased the possibility that the notice would be received.

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

Subject to the qualifications set out below, the close-out netting and the calculation and payment of a Termination Amount under § 11 of the Agreement arising as the result of an insolvency of the Danish Party will, in our view, be enforceable under Danish law in accordance with its terms in respect of claims which are Relevant Financial Obligations.

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

[5] After the end of the calendar day on which the bankruptcy notice was published in the Danish Offical Gazette (*Statstidende*), the debtor's dispossession is effective against the whole world, re. Section 30 of the Bankruptcy Act.

In addition, Section 201 of the Capital Markets Act, cf. Section 206, Subsection 3, provides that the valuation of financial obligations by a non-defaulting party in a close-out netting scenario must be on commercially reasonable terms.

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

Provisions in § 11 of the Agreement providing that certain calculations or determinations will be final, conclusive and binding may not be effective, if such calculations or determinations are incorrect and such provisions will not necessarily prevent judicial inquiry into the merits of such calculations or determinations.

The close-out netting and the calculation and payment of a Termination Amount under § 11 of the Agreement may be suspended or set aside for a Danish Party (i.e. Danish credit institutions and certain Danish investment firms) subject to measures pursuant to the Danish BRRD-rules (see Schedule B, section 1.3).

<u>Restrictions on close-out netting</u>
As set out in Schedule B, section 2.7, a close-out netting or the subsequent calculation and payment of the Termination Amount related thereto is voidable or challengeable, should Danish Insolvency Proceedings be commenced in respect of a Danish Party, to the extent:

- A close-out netting, which is carried out after the Danish Party has commenced formal restructuring proceedings, includes financial obligations that did not arise before the time when the non-defaulting party knew, or should have known, the circumstances occasioning the Limitation Day (*fristdagen*), see Section 207, Subsection 1 of the Capital Markets Act;
- A close-out netting, which is carried out after the Danish Party has been declared bankrupt, includes financial obligations that did not arise before the time when the non-defaulting party knew, or should have known, the circumstances occasioning the Limitation Day (*fristdagen*), see Section 207, Subsection 2, first sentence of the Capital Markets Act;
- A close-out netting includes financial obligations which came into existence after the day the bankruptcy was announced in the Danish Official Gazette (*Statstidende*), see Section 207, Subsection 2, second sentence of the Capital Markets Act; or
- The Counterparty acquired a claim against the Danish Party within 3 months of the Limitation Day and the Counterparty knew, or ought to have known, that the Danish Party was insolvent when the claim against the Danish Party was acquired or came into existence, see Section 208, Subsection 1 of the Capital Markets Act.

3.1.1.5 *Do the laws of Denmark recognize that the close-out netting provisions in §§ 10 to 11 of the EFET General Agreement apply to all Individual Contracts or could it be challenged by a liquidator, receiver or third party? Would we need the single agreement concept in order to preserve the enforceability of the termination right and the ability to calculate a net amount? If the single agreement concept is particularly important in your jurisdiction, please elaborate in a detailed and circumstantiated manner on whether or not, and if so, the degree to which, provisions allowing or providing for the termination of some Individual Contracts but not all Individual Contracts under the EFET General Agreement might impact termination and close out rights generally, as well as subsequent rights to terminate Individual Contracts remaining under the EFET General Agreement following a previous Partial Close-Out.*

For Relevant Financial Obligations arising from the Individual Contracts and the Agreement, a liquidator, receiver or third party cannot challenge the inclusion of such claims in a close-out netting unless the financial obligations or claims fall within the restrictions set out in section 3.1.1.4 above. However, the close-out netting rights may be suspended or set aside for a Danish Party, which is a Danish credit institution or a certain Danish investment firm if it becomes subject to measures pursuant to the Danish BRRD-rules (see Schedule B, section 1.3).

In our opinion, the single agreement concept is not required in order to preserve the enforceability of the Early Termination right and the ability to calculate a net amount under Danish law as the enforceability of these rights as agreed in the Agreement will under Danish law follow from Section 206 of the Capital Markets Act. In addition, there is limited Danish authority on whether parties can agree with binding effect for third parties that two or more transactions are a single agreement with the consequence that a bankruptcy estate be prevented from cherry picking among them. In our view, a single agreement concept in itself is likely not to be upheld in case of a Danish bankruptcy estate, if this concept is the only basis for claiming termination and netting rights. Accordingly, under Danish law it is important that such rights are explicitly agreed in §§ 10 and 11 of the Agreement.

Danish legal literature assumes that a close-out netting must always include all transactions covered by the netting agreement in question. This is assumed in order to avoid arbitrary selection among transactions by the parties to the detriment of third parties. However, in our view it must be possible to agree under Danish law that a specific type of Individual Contracts, for example, such as transactions in Emission Allowances (subject to the Allowances Appendix) can be closed-out and netted even though the remaining Individual Contracts between the Parties are not closed-out and netted. We base this on the reasoning that the Parties are free to enter into one Agreement under which for example only Emission Allowances are traded and another Agreement under which no Emission Allowances are traded. Under such circumstances, a "Partial Close-Out" of only the Agreement under which Emission Allowances are traded would be the main rule if only that Agreement had been defaulted. As we believe that Danish law will not distinguish between whether there is one or two Agreements so long as it is clear and objective which type of Individual Contracts can be subject to a Partial Close-Out (e.g. such that only transactions in Emission Allowances under the Allowances Appendix are closed-out if only transactions in Emission Allowances have been defaulted due to uncured non-performance or breach of warranty or misrepresentation concerning only one or more transactions in Emission Allowances), we are of the view that a Partial Close-Out is possible under Danish law, provided that the Individual Contracts subject to Partial Close-Out are an objectively defined group and that none of the Parties are vested with any discretion to choose which Individual Contracts to make subject to such Partial Close-Out.

We note that there are to our knowledge no legal precedents in respect of this question, and as such the question remains subject to legal uncertainty under Danish law.

3.1.1.6 *Is the insolvent counterparty's (i.e. the Danish Party's) obligation to pay the amount of any compensation claim in Euro, USD or GBP (as agreed between the parties in the Election Sheet) enforceable under the laws of Denmark or could the calculation in a foreign currency be challenged by a liquidator, receiver or third party?*

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

There is to our knowledge no Danish legal authority on this point, but in our view the purpose of the close-out netting provisions of the Capital Markets Act, including the fact that the Capital Markets Act explicitly states that a bankruptcy estate of a Danish Party is bound by a close-out netting agreement (as further discussed under Schedule B, section 2) points to the conclusion that a close-out netting would be completed based on such agreed currency and only if the resulting net balance was in favour of the Counterparty, would the Counterparty have to file its claim for such net payment in the bankruptcy estate of the Danish Party in Danish Kroner calculated on the date of the commencement of such bankruptcy proceedings (*dekretdag*). In our view, a similar principle will apply in case of initiation of formal restructuring proceedings, cf. Section 12g of the Bankruptcy Act.

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

The application of the Danish close-out netting rules as described in Schedule B, section 2 and the scope of Relevant Financial Obligations apply irrespective of whether the Danish Party is a Financial Entity or a Non-Financial Entity, and irrespective of whether the Counterparty is a Financial Entity or a Non-Financial Entity, see Schedule B, section 2.2. However, if a Danish Party is a Danish credit institution or certain Danish investment firm subject to measures under the Danish BRRD-rules, this will influence on the enforceability of the Counterparty's Early Termination rights, see Schedule B, section 1.3.

3.1.1.8 *Please specify if any of your conclusions in this Section I would be changed or qualified if the Parties would enter into several Individual Contracts for multiple types of products (e.g., some Individual Contracts would provide for delivery of electricity/natural gas, other ones for green certificates) under the same General Agreement? Is there a risk that any safe harbor provisions applicable to one type of product, but not the other, would cease to apply as a result?*

In our view, the conclusions above in sections 3.1.1.2-3.1.1.7 would not be changed or qualified if the Parties would enter into several Individual Contracts for multiple types of Commodities under the same Agreement, (e.g. some Individual Contracts would provide for delivery of natural gas and other ones for green certificates under the Gas Agreement) provided that all the Individual Contracts qualify as Relevant Financial Obligations, re. Schedule B, section 2.3.

If one or more Individual Contracts do not qualify as Relevant Financial Obligations, a Counterparty will in our view most likely not be able to enforce a right to early terminate, close-out net and calculate a net settlement amount for such Individual Contracts as the result of an insolvency of the Danish Party, as such insolvency events may not per se be deemed a material default under Danish law, which entitles the Counterparty to terminate the transactions.

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

3.1.2 Preventive restructuring frameworks

This question relates to a termination and close-out netting based on an insolvency based or related Material Reason listed in § 10.5(c) of the Agreement, to the extent applicable, where the event is a Danish Preventive Restructuring Proceeding, see below section 3.1.2.3. Since the rules on Danish Preventive Restructuring Proceedings have just entered into force in Denmark, the below responses are our current best view of how they will operate in the scenarios to be discussed. In particular, we note, that even though Danish Preventive Restructuring Proceedings may be initiated prior to the debtor actually being insolvent (i.e. likelihood of insolvency may be sufficient), we would find it most likely, that such proceedings under Danish law would be considered "insolvency proceedings" for purposes of Section 5, no. 7 of the Capital Markets Act, and therefore, subject to the same close-out netting rules etc. as applicable in case of a Danish Party subject to Danish Insolvency Proceedings and as generally described in section 3.1.1 above

Please discuss the issues outlined above under section 3.1.1.

3.1.2.1 Short overview of Danish Preventive Restructuring Proceedings

We refer to Schedule B, section 1.2.

3.1.2.2 Automatic Termination

We refer to our response in section 3.1.1.2, which in our best view also applies to a Danish Party subject to Danish Preventive Restructuring Proceedings, but where reference is made to section 3.1.1.3, with the modifications set out in section 3.1.2.3 below.

3.1.2.3 No Automatic Termination

We refer to our response in section 3.1.1.3, which in our best view also applies to a Danish Party subject to Danish Preventive Restructuring Proceedings, with the following modifications:

- In respect of our response to section 3.1.1.3(a), we note, that Danish Preventive Restructuring Proceedings may be initiated in a situation where the debtor is not yet insolvent (i.e. likelihood of insolvency may be sufficient), and according to the rules a restructuring administrator may not always be appointed and/or a stay of individual enforcement actions may not always be applied for or granted, which in our view mean, that it may be less clear, that any such measure in itself will qualify as one or more of the Material Reasons listed in § 10.5(c) of the Agreement. Accordingly, the Parties could consider agreeing specifically, whether any or which measures taken pursuant to the European Restructuring Proceedings as implemented in local law should in itself qualify as a Material Reason under the Agreement.

- In respect of our response to section 3.1.1.3(c), we note that Section 29 of the Bankruptcy Act does not apply in case of a Danish Party being subject to Danish Preventive Restructuring Proceedings, but since the statutory right to terminate and close-out net is overruling mandatory law, it would be advisable to provide a termination notice in a way which ensures that it is actually received by the Danish Party, which may mean that an e-mail notice may be less advisable to use in practice for a termination notice against a Danish Party subject to Danish Preventive Restructuring Proceedings. If a restructuring administrator has been appointed we also refer to the arguments in section 3.1.1.3(c) relating to formal restructuring proceedings.

3.1.2.4 Netting of all positive and negative Settlement Amounts in determining the Termination Amount

We refer to our response in section 3.1.1.4, which in our best view also applies to a Danish Party subject to Danish Preventive Restructuring Proceedings.

3.1.2.5 *Recognition of the applicability of the close-out netting provisions in §§ 10 to 11 of the EFET General Agreement to all Individual Contracts*

We refer to our response in section 3.1.1.5, which in our best view also applies to a Danish Party subject to Danish Preventive Restructuring Proceedings.

3.1.2.6 *The insolvent counterparty's (i.e. the Danish Party's) obligation to pay the amount of any compensation claim in Euro, USD or GBP*

We refer to our response in section 3.1.1.6, which in our best view also applies at least to a Danish Party subject to Danish Preventive Restructuring Proceedings where a stay of individual enforcement actions has been issued.

3.1.2.7 *Dependency upon the status of one or more of the concerned parties falling within a particular category of classification of entity*

We refer to our response in section 3.1.1.7, which in our best view also applies to a Danish Party subject to Danish Preventive Restructuring Proceedings.

3.1.2.8 *Several Individual Contracts for multiple types of products under the same General Agreement*

We refer to our response in section 3.1.1.8, which in our best view also applies to a Danish Party subject to Danish Preventive Restructuring Proceedings.

3.1.3 Non-Insolvency related Material Reasons

Please discuss the issues outlined above under sections 3.1.1.5-3.1.1.8 in the context of non-insolvency related Material Reasons, as well as the following question: Are the rights of the Terminating Party to terminate and close-out the EFET General Agreement enforceable in accordance with the terms of the EFET General Agreement, irrespective of the insolvency of Party A (i.e. the Danish Party)?

Subject to the qualification below, Early Termination for Material Reasons (§ 10.5(a), (b), (d) and (e) of the Gas Agreement, and § 10.5(a), (b), (d), (e) and (f) of the Electricity Agreement) and close-out netting (§ 10.3 in connection with § 11 of the Agreement) other than due to insolvency based events are enforceable inter partes under Danish law. In respect of enforceability against a bankruptcy estate of a Danish Party or a Danish Party subject to formal restructuring proceedings, reference is made to section 3.1.1 above, and in respect of a Danish Party subject to Danish Preventive Restructuring Proceedings, reference is made to section 3.1.2 above.

Provisions in § 11 of the Agreement providing that certain calculations or determinations will be final, conclusive and binding may not be effective, if such calculations or determinations are incorrect and such provisions will not necessarily prevent judicial inquiry into the merits of such calculations or determinations.

3.2 Multibranch Parties

3.2.1 Danish Multibranch Party

Our opinion in this section is also based the following additional assumption:

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

3.2.1.1 *Would there be any change in your conclusions reached under sections 3.1 above based upon the fact that the Danish Party has conducted business under the EFET General Agreement on a multibranch basis prior to its insolvency?*

No, as Danish law does not consider a branch as a separate legal entity, and consequently, Danish bankruptcy proceedings would cover all assets of a Danish Party notwithstanding whether it has entered into Individual Contracts under the EFET General Agreement on a multibranch basis prior to its insolvency or not on a multibranch basis.

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

A bankruptcy estate of a Danish Party would in our opinion be bound by the provisions on close-out netting of the Capital Markets Act as outlined under section 3.1 above, irrespective of any insolvency proceedings against one or more branches of such Danish Party in other jurisdictions, including jurisdictions where close-out netting is unenforceable.

Accordingly, in our opinion, the Agreement would be treated in accordance with our opinions under section 3.1 above in this scenario.

3.2.2 Foreign Multibranch Party

Our opinion in this section is also based on the following additional assumptions:

- 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 or having its centre of main interest in a country ("Country H") other than Denmark has entered under the EFET General Agreement into Individual Contracts both through its home office and through one or more branches located in other countries including in each case a branch of Party F located in and subject to the laws of Denmark (the "Danish Branch").
- After entering into these Individual Contracts and prior to the maturity thereof, Party F becomes the subject of voluntary or involuntary proceedings under the insolvency laws of Country H.

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

A legal entity incorporated outside Denmark cannot be subject to insolvency proceedings in Denmark, unless it is deemed to have its actual place of business in Denmark. In this context, the Danish courts will look to whether the management of the legal entity has its de facto seat in Denmark (notwithstanding the formal registration hereof). If such foreign legal entity has a Danish subsidiary, such Danish subsidiary may be declared bankrupt in Denmark. Under Danish law, a Danish branch of a foreign legal entity does not constitute a separate legal entity, and cannot (as the main rule) be declared bankrupt in Denmark.

Consequently, Danish law would in our opinion defer to the proceedings in Country H, so that the assets and liabilities of the Danish Branch would be handled as part of the proceedings for Party F in Country H.

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

N/A as there would in our view not be separate proceedings in Denmark, see our answer to question 3.2.2.1 above.

Please also see section 3.2.1 above, concerning the situation where a legal entity has its actual place of business in Denmark.

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

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

3.3 Collateral

Our opinion in this section is also based on the following additional assumptions:

- Although it is a bilateral form in that it contemplates that each party may be required to post collateral to the other, we assume that (i) Party A (i.e. the Danish Party) is at all times Transferor under the EFET Credit Support Annex and (ii) that the collateral is owned by Party A or that Party A is authorised and empowered to transfer ownership in the collateral.
- The Parties agree that Eligible Credit Support will include cash, Letters of Credit and Parent Company Guarantee (PCG). Cash is denominated in a freely convertible currency and is held in an account under the control of Party B as Transferee maintained in the jurisdiction of the relevant currency.
- Party A, when transferring Eligible Danish Collateral (i.e. Cash credited an account) under the Agreement, will have full legal title to such Eligible Danish Collateral at the time of transfer, free and clear of any lien, claim, charge or encumbrance or any other interest of Party A or of any third person and that no secondary pledge or similar security interest over the Eligible Danish Collateral will subsequently be created by Party A or by operation of law or otherwise.

As described in section 2.8.2 of Schedule B, only Cash credited to an account qualify as Eligible Danish Collateral pursuant to the Danish rules on financial collateral arrangements. Whilst both letters of credit and parent company guarantees may be relevant for providing security under Danish law, they are not in themselves financial collateral and no title transfer occurs. Since the questions contained in this section 3.3 relate to financial collateral and title transfer we do not express any view in our responses in the opinion in relation to letters of credit and parent company guarantees.

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

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

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

Under Danish private international law the general rule is the principle of lex rei sitae, i.e. that the law of the country where the subject matter is situated at the time of the establishment of the proprietary interest applies. This means as the general rule that a proprietary interest (including transfer of title) in Danish Eligible Collateral[6] located in Denmark will normally be governed by Danish law.

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

3.3.2 *Would the laws of Denmark 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?*

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

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

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

In relation to the rules on voidability (*omstødelse*) in the Bankruptcy Act, we note that the preparatory works state that Section 205 does not apply in relation to such voidability rules. Accordingly, if a financial collateral arrangement in the form of title transfer is in its substance creating a security interest, it will be characterised as a security interest in respect of the voidability rules. Based on the wording used in the Credit Support Annex, it is our view that Eligible Credit Support provided under the Credit Support Annex will be characterised as being a security interest in substance under Danish law, and therefore will each transfer of Eligible Credit Support be considered a security interest in respect of the voidability rules, see further below in section 3.3.7.

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

3.3.3 *Assuming that Party B receives absolute ownership in the collateral, will it need to take any action thereafter to ensure that its title therein continues? Are there any requirements in Denmark 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?*

A financial collateral arrangement must be in writing or be evidenced in an equivalent way in order to be governed by the provisions of Chapter 36, see Section 198, Subsection 1 of the Capital Markets Act. In our view, this requirement has been satisfied if the Parties have entered into the Credit Support Annex.

Assuming that Party B (the Transferee) has received absolute ownership in the Cash held in an account under the control of Party B (the Transferee) no further actions or requirements is necessary to ensure its title therein pursuant to Danish law.

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

Pursuant to Section 202, Subsection 1, it is possible for the Transferor, upon agreement with the Transferee, to substitute Eligible Danish Collateral (i.e. Cash credited an account) with other financial collateral, and according to the preparatory works it is a requirement that the substitution collateral is of substantially the same value as the substituted collateral. If such substitution collateral is provided no later than at the same time as the Transferor regains possession of the substituted collateral, the substitution collateral may only be avoided if the substituted collateral was avoidable, see below section 3.3.7.

Accordingly, the right of Party A (the Transferor) to substitute Cash pursuant to § 6 of the Credit Support Annex does not affect the validity under Danish law of the unconditional transfer of ownership contemplated by § 7 of the Credit Support Annex. Any substitution Cash shall be provided to Party B (the Transferee) no later than at the same time as Party A (the Transferor) regains possession of the substituted Cash. If the value of the substituted Cash is higher than "substantially the same value" as the substitution Cash such excess collateral may be voidable pursuant to the Bankruptcy Act.

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

3.3.5 *Party B's right in relation to the transferred collateral upon termination of the relevant master agreement will be governed by § 11 of the EFET General Agreement together with § 11 of the EFET Credit Support Annex. Assuming that § 11 of the EFET General Agreement is valid and enforceable in Denmark insofar as it relates to the determination of a net amount payable by either Party on the termination of Individual Contracts, is § 11 of the EFET Credit Support Annex also valid to the extent that it provides for the value of the collateral provided and not yet transferred (i.e. returned to Transferor) to be included in the calculation of a net amount payable under § 11 of the EFET General Agreement as "other amounts payable"?*

For the purposes of this question we assume that a Material Reason has occurred and is continuing in respect of one of the parties (but that such party is not subject to measures under the Danish BRRD-rules), that the other party has terminated the Agreement in accordance with § 10 of the Agreement, that the Terminating

Party is calculating the Termination Amount in accordance with § 11, that § 11 of the Agreement is valid and enforceable in Denmark insofar as it relates to the determination of a net amount payable by either Party on the termination of Individual Contracts, and that Party B (the Transferee) has received and not yet returned Cash as Eligible Credit Support in accordance with the Credit Support Annex.

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

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

Accordingly, in our view, it is possible under Danish law to agree that Cash provided as Eligible Credit Support shall in the event of an Early Termination constitute an amount owing from the Transferee to the Transferor to be included in the determination of a final settlement amount in accordance with the close-out netting provisions of the Capital Markets Act described in Schedule B, section 2. Provided that any conversion of Cash into the Base Currency is effected on commercially reasonable terms, we are of the view that § 11 of the Credit Support Annex is valid to the extent that the wording thereof will be read and construed as providing for the value of the Cash provided to Party B (the Transferee) and not yet returned to Party A (the Transferor) to be included in calculation of a net amount payable under § 11 of the Agreement as "other amounts payable".

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

In respect of enforceability of the rights of Party B under the Agreement, including if Party A as the defaulting party is insolvent, reference is made to other parts of this opinion.

In our view, a financial collateral arrangement which is properly entered into in accordance with the provisions of Chapter 36 of the Capital Markets Act described and/or referred to in other parts of this section 3.3 is binding on Party A and is also binding on a bankruptcy estate of Party A, provided Party A is not a credit institution or an investment firm subject to the Danish BRRD-rules where certain rights etc. may be suspended and/or set aside.

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

The voidability rules of the Bankruptcy Act apply generally, also to financial collateral arrangements, unless exceptions are specifically set out in Chapter 36 of the Capital Markets Act.

Of particular relevance in respect of provision of security is Section 70 of the Bankruptcy Act which states that if security (i) is not created prior to or simultaneously with the establishment of the debt which it is securing (i.e. it is securing old debt), or (ii) is not perfected without undue delay after the creation of such debt, such security may be voidable (*omstødelig*) if Danish Insolvency Proceedings are commenced against the Danish Party during the three-month period starting from the date of the act of perfection of such Eligible Danish Collateral. According to case law and legal literature, the terms "simultaneously" and "without undue delay" must be strictly interpreted but taking into account the concrete circumstances relating to the relevant action required for perfection. As we have noted above in section 3.3.3, we are of the view that the title transfer arrangement under the Credit Support Annex will be characterised as being a security interest in substance, and therefore each transfer of Eligible Credit Support will be considered a security interest in respect of the voidability rules, including Section 70 of the Bankruptcy Act.

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

In respect of substitution and voidability, reference is made to section 3.3.4 above.

Section 72 and Section 74 of the Bankruptcy Act also apply generally, including in respect of financial collateral arrangement, but do not have any particular relevance for such collateral arrangement. Reference is made to the general description in section 3.1.1.3(b).

3.3.8 *Is the EFET Credit Support Annex in an appropriate form to create the intended outright transfer of ownership in the collateral to Party B? Are there any other requirements to be observed in Denmark in order to ensure validity of such transfer in each type of Eligible Credit Support created by Party A under the EFET Credit Support Annex? For example, are there any other requirements such as those mentioned under section 3.3.3 above?*

In our view the Agreement together with the Credit Support Annex constitute a financial collateral arrangement for the purpose of Chapter 36 of the Capital Markets Act in respect of financial obligations (see sections Schedule B, 2.3-2.5), and accordingly, in our view, under Danish law the Agreement together with the Credit Support Annex is in an appropriate form to create a financial collateral arrangement in the form of transfer of title to Cash credited to the account of Party B (the Transferee) for financial obligations.

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

We do not have any specific recommendations.

2.4 General Enforceability

3.4.1 *Is the EFET General Agreement and any of the above Annexes (including the EFET Credit Support Annex) and Appendices enforceable under the laws of Denmark in accordance with its own terms? We would like you to specifically discuss, in a detailed an circumstantiated manner the provisions on (i) non-performance due to Force Majeure (§ 7 of the EFET General Agreement), (iii) remedies for non-performance (§ 8 of the EFET General Agreement) and (iii) limitation of liability (§ 12 of the EFET General Agreement) and any other provisions which in your opinion need to be commented on according to the law of Denmark, including whether these provisions could and/or need to be further "expanded" and/or "strengthened" under the laws of Denmark. We are especially interested in provisions that you may believe infringe upon the ordre public in Denmark and that may be challenged by the courts in Denmark irrespective of the laws that governs the EFET General Agreement.*

We are of the opinion that § 7 in each of the Agreement is enforceable in accordance with its terms.

Under Danish law, professional parties to a contract may agree on a force majeure provision, including the scope of force majeure events and the consequences of their occurrence.

We are of the opinion that each of §§ 12.2, 12.3, 12.4 and 12.5 of the Agreement are enforceable in accordance with its terms, except that a Danish court may find that § 12.3 of the Agreement is not enforceable in case of gross negligence (which is not generally exempted pursuant to § 12.4 of the Agreement as is the case with intentional default and fraud).

Please note that in general, the validity and enforceability of an agreement may be affected by generally applicable principles of "reasonableness and fairness" (*urimeligt eller i strid med redelig handlemåde*) as set out in Section 36 of the Danish Contracts Act (*aftaleloven*)[7] and "breach of expectations" (*bristede forudsætninger*), but such principles are rarely used on agreements between professional parties.

3.4.2 *Is there a risk that a notice, declaration or other communication given in accordance with the E-Notice Agreement may not be recognised as valid? Could the deemed receipt of a notice be challenged? Who bears the burden of proof that the document attached to the e-mail is not falsified?*

As a general rule under Danish law, the giving of a notice is not subject to formality requirements. Under Danish law a written statement is generally valid and binding, irrespective of its form. Special formality requirements to a notice are only required if statutory law, trade usage or custom, or the relevant agreement requires such formality. Under the assumption that no such trade usage or custom exists in the market for bilateral trading of Commodity Transactions, it will be relevant to refer to the Agreement. If it is agreed between the Parties, that a written notice may be given by e-mail, including a termination notice, in our view, this would be binding for the Parties. In respect of material notices, such as termination notices, we also refer to section 3.1.2.3.

In principle, it is possible under Danish law to agree with binding effect for the Parties, that a notice is deemed delivered at a certain point in time if sent and/or delivered in a pre-agreed manner. However, the Party sending the notice will have the burden of proof that this has taken place, if challenged. For notices with a material content, such as a termination notice, the Party sending the notice may potentially also need to justify that the Party acted in good faith, including why one method of delivery has been chosen instead of another, if the latter method would have increased the possibility that the notice would be received.

Under Danish law, generally the party raising a claim of for example false statement, would have the burden of proof in case of a litigation between the Parties.

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

For topics discussed in this opinion on enforceability, we do not have any specific recommendations.

3.5 Confirmation Practices

Our opinion in this section is also based the following additional assumptions:

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

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

- 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.

3.5.1 Binding Individual Contract

3.5.1.1 Does the formation of a legally binding and enforceable Individual Contract require any formal act (e.g., execution in writing, signature, registration or notarization) under the laws of Denmark?

As a general rule under Danish law, the conclusion of an agreement is not subject to formal requirements. Under Danish law an oral agreement is generally valid and binding, even if not recorded. However, for evidence reasons it is advisable to have promises and agreements in writing. A written agreement is only required if statutory law, trade usage or custom requires such formality.

Under the assumption that no such trade usage or custom exists in the market for bilateral trading of Commodity Transactions, we are of the opinion that a verbal agreement is sufficient under Danish law to form a legally binding Individual Contract. It should be noted that under Danish law, agreements on close-out netting (*slutafregning*) pursuant to Section 206 of the Capital Markets Act have to be in writing or be evidenced in an equivalent way, see Section 198, Subsection 1 of the Capital Markets Act. The Agreement contains provisions on close-out netting, and we consider these provisions to be sufficient for the purposes of Section 198, Subsection 1 of the Capital Markets Act provided the Individual Contracts clearly refer to the Agreement.

As outlined above, the general rule under Danish law is that there are no requirements as to form in connection with the formation of a contract, and, in principle, an agreement can be entered into by electronic exchange of data provided there is a binding and valid offer and acceptance. However, it is a condition that the contract is the outcome of a declaration of intent by the parties.

Where a electronic confirmation matching system reflects the intention of both Parties, for example expressed by entering into an Electronic Confirmation Agreement, and the Parties act in accordance therewith, in our view the use of such electronic systems in the ordinary course of business implies that agreements made thereby are binding on the Parties.

Under Danish law the principle of freedom to submit evidence prevails. Consequently, most digital evidence is admissible but the weight of such evidence is solely at the discretion of the Danish courts.

3.5.1.2 At what point in time does an Individual Contract agreed upon orally become legally binding or enforceable under the laws of Denmark?

Under Danish law, an Individual Contract agreed upon orally becomes legally binding and enforceable at the time of the oral acceptance.

We note that according to Article 12 of Commission Delegated Regulation (EU) No 149/2013, as amended, issued pursuant to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (as amended) (the "**EMIR Regulation**") certain deadlines apply for exchanging confirmations for OTC derivative contracts (as defined in the EMIR Regulation). In accordance with the publication from the European Commission "EMIR: Frequently Asked Questions", latest update on 10 July 2014, we do not believe that breach of such deadlines, to the extent applicable, will influence on the transactions being legally binding and enforceable under Danish law.

3.5.1.3 Does failure to object to incorrect terms in a received Confirmation constitute "acceptance" of those terms per the laws of Denmark? If so, is there a relevant time period per the laws of Denmark that could potentially override the governing law of the EFET General Agreement, and permit the parties to object still?

As mentioned above, an oral agreement is legally binding. The written Confirmation will in this respect merely serve the purpose of evidencing the oral agreement, and, in principle, one party cannot unilaterally amend the oral agreement by including new terms in a Confirmation.

However, where two professional parties have entered into an oral agreement, a party who receives a confirmation of the agreement (made in good faith by the other party), which contains incorrect terms, should react in order not to risk being deemed bound by the revised terms through passivity. When a party should react depends on the circumstances, but generally a notification without undue delay will be sufficient in order not to be bound. Accordingly, if a Confirmation contains terms, which do not reflect the oral agreement, the recipient should, without undue delay, notify the other party of such discrepancies to avoid risking being deemed bound by the revised terms through passivity. In our view, this interpretation presented under Danish law would only apply to any issues of formation of contracts between two professionals, if Danish law has been agreed as the governing law in general or to formation of contracts issues.

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

Under circumstances where express reference has been made to the Agreement when entering into an Individual Contract, in our opinion the Agreement will be part of the contractual relationship relating to that Individual Contract.

If the Parties orally enter into an Individual Contract without any reference to the Agreement between them, but subsequently confirm the Individual Contract in writing the Agreement has in principle not been made part of the contractual relationship of the Individual Contract as such. However, if it can be proven that it was the intention of the Parties to impliedly make the terms of the Agreement part of the Individual Contract, e.g. by pointing to a trade usage in the market or between the Parties in question, we are of the opinion that the Agreement will be part of the contractual relationship relating to the Individual Contract. Although Danish law recognizes that the acceptance of contractual terms may be impliedly agreed, in practice, it may be uncertain whether such intention can be proven in case of a dispute.

The exchange of a subsequent Confirmation referring to the Agreement (which the other party does not object to) may be an indication of the intention of the Parties, but if the other party can argue that this was not the intention, it may be possible that a Danish court will find that the terms of the Agreement have not been validly included as part of the Individual Contract in question.

We express no view on any specific Confirmation, including through EFET eCM.

3.5.2 Means of Evidence

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

As a general matter, any of the above means of evidence are admissible in a Danish court. However, Danish courts will decide on a case-by-case basis the value that it will attribute to any evidence, based on the specific circumstances. Also, a Danish court will not be bound by an agreement to the effect that a specific means of evidence shall be conclusive proof between the Parties, if the evidence is contested in good faith by one of the Parties.

3.6 Core Provisions

We have based our opinion in the following section also on the additional assumptions outlined under sections 3.1 and 3.2 above.

3.6.1 Would any of the selections contemplated by the EFET General Agreement or any of the mentioned Annexes (including the EFET Credit Support Annex) and Appendices change the substance of your conclusions reached under section 3.1 (Enforceability of Close-out Netting) above? As far as the EFET Credit Support Annex is concerned, you should in particular discuss the effect of electing to allow substitution with or without consent.

In our opinion, none of the elections contemplated by the Agreement or any of the Annexes listed in Section 1.1 (including the Credit Support Annex) will change the substance of the conclusions reached under section 3.1 in relation to the enforceability of the close-out netting provisions of the Agreement.

In respect of substitution with or without consent under the Credit Support Annex, we refer to section 3.3.4.

3.6.2 Considering your conclusions reached under section 3.1 (Enforceability of Close-out Netting) above, what are the provisions of the EFET General Agreement that you regard as so essential that a material alteration thereof could affect the conclusions reached in that section 3.1 (each such provision a "Core Provision")? We believe that the following provisions are Core Provisions: § 1, § 10.3(a), the second sentence of § 10.3(b), § 10.3(d), § 10.5(c)(iv), § 11 and the related definitions contained in Annex 1 to the EFET General Agreement.

To the extent that the Capital Markets Act permits close-out netting of financial obligations, we consider the following provisions so essential to the Agreement (i.e. to be Core Provisions) that a material alteration thereof could affect the conclusions reached regarding close-out netting in respect of financial obligations which may be subject to close-out netting, see section 3.1: § 1, § 10.3(a), second sentence of § 10.3(b), § 10.3(d), § 10.5(c)(iv) and § 11, and the related Defined Terms contained in Annex 1 to the Agreement.

3.6.3 Would the inclusion of the General Agreement in the EFET Cross Product Payment Netting Agreement, the Master Netting Agreement or in the CPMA Cross-Product Master Agreement (as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement) (the "CPMA") change the substance of your conclusions reached under section 3.1?

In our opinion and based on the assumption that the Core Provisions (see section 3.6.2) in the Agreement have not been changed, inclusion of the Agreement in the EFET Cross Product Payment Netting Agreement, in the CPMA or in the Master Netting Agreement does not change the substance of the conclusions reached under section 3.1 in relation to the close-out netting provisions of the Agreement. We do not express any opinion on any provisions, including the payment netting, close-out netting and/or set-off provisions, in the EFET Cross Payment Netting Agreement, the CPMA or the Master Netting Agreement.

3.7 Governing Law, Arbitration and Jurisdiction

Our opinion in this section is also based the following additional assumption:

- The relevant EFET General Agreement is governed by the laws of a jurisdiction other than Denmark (including English or German law) and is legal, valid, binding and enforceable under the laws of the jurisdiction which it is governed by.

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

Based on the foregoing assumptions (in section 2 and above) and subject to the qualifications (in section 4 below), we are of the opinion that:

- The express choice of either German or English law to govern the Agreement is a valid choice of law subject to Danish public policy and the mandatory rules of the laws of any country with which the transaction has a significant connection, if and in so far as under the laws of that country those rules must be applied notwithstanding the choice of law, cf. Article 3 (3), Article 7 and Article 16 of the Convention on the Law Applicable to Contractual Obligations dated 19 June 1980 (the Rome Convention) as implemented in Denmark by Danish Consolidated Act No. 139 of 17 February 2014, and the submission by the Danish Party to the jurisdiction of the courts of Germany or England, respectively, is valid and binding upon the Danish Party.
- An express choice of either German or English law to govern non-contractual obligations arising out of or in connection with the Agreement may not be upheld by the courts of Denmark as (i) where applicable, Regulation (EC) No. 864/2007 of 11 July 2007 (the "**Rome II-Regulation**") does not apply to Denmark (on account of the general Danish opt-out, (cf. The European Council's Edinburgh Decision of 12 December 1992 and the Protocol to the Treaty of Amsterdam on the position of Denmark)) and (ii) according to Danish principles of private international law, a choice of law agreement in respect of non-contractual obligations entered into before the event giving rise to the damage has occurred may not be enforceable.
- A final judgment of a German court against the Danish Party in respect of any suit, action or proceeding arising out of or relating to the Agreements will be recognised and enforced by the courts of Denmark, subject to and in accordance with the provisions of Regulation (EU) No. 1215/2012 of the European Parliament and Council on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 12 December 2012 (the "**Brussels I-Regulation**") and the bilateral agreement in relation thereto between Denmark and the European Community of 19 October 2005 (and any protocol and accession convention in respect thereof) and Danish Consolidated Act No. 1282 of 14 November 2018, implementing the Brussels I-Regulation and such bilateral agreement in Denmark.
- A final judgment properly obtained in any court of England against the Danish Party in respect of any suit, action or proceeding arising out of or relating to the Agreements will neither be recognised nor enforced by the Danish courts without re-examination of the substantive matters thereby adjudicated. In connection with any such re-examination, the judgement will generally be accepted as material evidence, but the parties must provide the Danish courts with satisfactory information about the contents of English law and, if they fail to do so, the Danish courts may apply Danish law instead. Please also refer to section 3.9 below.
- Subject to the compliance with the 10 June 1958 New York Convention on the Recognition of Enforcement of Foreign Arbitral Awards, an arbitral award obtained against a Danish Party in an arbitration proceeding pursuant to the provisions of the Agreement will be enforced by Danish courts without re-examination or re-litigation of the matters thereby adjudicated.

3.8 Regulatory Regime

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

There are no exchange control laws or license requirements under Danish law that would affect the enforceability of the Agreement or the Individual Contracts.

3.9 Other Provisions

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

For Agreements subject to English law and jurisdiction, the Parties may consider to submit any dispute to the *exclusive* jurisdiction of the English courts, as this may at potentially bring the Agreement within the scope of the provisions of the Hague Convention of 30 June 2005 on Choice of Court Agreements (the "**Hague Convention**") (and any protocol and accession convention in respect thereof).

4. **QUALIFICATIONS**

This opinion is subject to the following additional qualifications:

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

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

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

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

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

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

4.7 Enforcement may be limited by insolvency, bankruptcy, formal restructuring proceedings (*rekonstruktion*), Danish Preventive Restructuring Proceedings, or other laws affecting creditors' rights in general pursuant to the Bankruptcy Act, which includes claw back provisions (*omstødelige dispositioner*) which may be used if a creditor has received an otherwise preferential position in the period up to the insolvency proceeding, or pursuant to the Danish BRRD-rules. Reference is also made to Schedule B, section 1.3.

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

4.9 With regard to jurisdiction, a Danish court may stay or - if appropriate - dismiss proceedings inter alia if concurrent proceedings involving the same cause of action and between the same parties are instituted before the courts of another EU/EEA member state, if related actions are pending in the courts of another EU/EEA member state or if the action comes within the exclusive jurisdiction of another court in each case in accordance with the provisions of the Brussels I-Regulation or the Hague Convention. Additionally, with regard to jurisdiction, whether a Danish court will stay or dismiss proceedings if concurrent proceedings involving the same cause of action and between the same parties are instituted before the courts of England and Wales, if related actions are pending before the courts of England and Wales or if the action comes within the jurisdiction of a court of England and Wales is a matter of Danish national law. While a Danish court may stay or dismiss proceedings in Denmark on the basis of lack of jurisdiction or on the basis of contractual jurisdiction agreements, the matter will be decided on a case by case basis and there can be no assurance that a contractual jurisdiction agreement will be upheld in all circumstances.

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

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

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

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

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

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

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

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

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

5. RELIANCE

5.1 This opinion is addressed exclusively to EFET and (i) is for the sole benefit of EFET and its members; and (ii) may not be relied upon by, or disclosed to, any other person or legal entity without EFET's and our prior written approval.

5.2 This oplnion may be made available by EFET members to the appropriate regulatory authorities upon their request, provided that (A) such disclosure is for information purposes only and we do not assume any duty or liability to the recipient, and (B) none of such persons to whom this opinion is disclosed may rely on this opinion for its own benefit or for that of any other person.

5.3 This opinion is governed by Danish law and Kromann Reumert is only liable for damages under the general rules of Danish law. Kromann Reumert's liability is capped at DKK 20 million for any and all claims related to this opinion (and previous opinions relating to the Agreements) in aggregate for all persons which may be entitled to rely on this opinion. Claims in respect of this opinion can only be made against Kromann Reumert and not against any of Kromann Reumert's partners or employees individually. Kromann Reumert is not liable for any operating loss, loss of time, loss of profits, loss of goodwill or reputation or for any indirect loss whatsoever and howsoever arising. This opinion is not granted in connection with any specific Agreements or Individual Contracts.

6. PROFESSIONAL QUALIFICATION, GOVERNING LAW AND JURISDICTION

6.1 We are qualified to practise law in Denmark.

6.2 This opinion is governed by Danish law and is subject to the exclusive jurisdiction of the Danish courts.

Yours faithfully,
Kromann Reumert

Susanne Schjølin Larsen
Partner

SCHEDULE A - TYPES OF DANISH PARTIES

A Danish Party is a party to the Gas Agreement and/or the Electricity Agreement which is incorporated or organised in Denmark (excluding Greenland and the Faroe Islands) and is a:

- Danish public limited company (*aktieselskab*);
- Danish private limited company (*anpartsselskab*);
- Danish limited partnership (*kommanditselskab*);
- Danish partnership (*interessentskab*); or
- Danish association (*forening*);

  including any of the following

- Danish financial institution (including banks and other credit institutions, investment firms, insurance companies, investment funds, investment fund management companies, and pension funds).

SCHEDULE B - RELEVANT DANISH LAW

1. RELEVANT DANISH INSOLVENCY PROCEEDINGS AND PREVENTIVE MEASURES, LAWS AND TERMINOLOGY

1.1 Danish Insolvency Proceedings (bankruptcy proceedings and formal restructuring proceedings)

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

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

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

1. a transfer of the debtor's business,
2. a compulsory composition[8] (*tvangsakkord*), or
3. other initiatives which alone or together with the other parts of the formal restructuring proceedings entail that the debtor is no longer insolvent.

Once initiated, the formal restructuring proceedings cannot be recalled or otherwise annulled. If the restructuring proceedings do not result in an outcome as described in 1-3 above, adopted by the creditors, the bankruptcy court will immediately commence bankruptcy proceedings over the assets of the debtor. This is the case if a restructuring plan or proposition is voted against by the creditors, and also if the bankruptcy court decides to stop the restructuring proceedings, e.g. due to the debtor's failure to cooperate in good faith or if the restructuring proceedings for some reason prove to be pointless. The restructuring proceedings, however, will seize if the debtor becomes solvent during the proceedings.

When restructuring proceedings are initiated the bankruptcy court immediately appoints one or more restructuring administrators (*rekonstruktører*) and, upon request from the debtor, an accountant (*regnskabskyndig tillidsmand*) to oversee and administrate the restructuring proceedings, to work out the restructuring plan and final restructuring proposal and to present these to the creditors.

The bankruptcy court will then announce the restructuring of the debtor in the Danish Official Gazette (*Statstidende*) making the restructuring official. The restructuring administrator encourages all creditors to

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

file their claims in order to build a foundation for the potential restructuring of the debtor. The claims will then be ranked in the same way as in the case of a bankruptcy.

Creditors are not allowed to terminate bilateral agreements merely as a consequence of the debtor being subject to Danish Insolvency Proceedings and/or merely due to the request for commencement of such proceedings. Furthermore, the bankruptcy estate or the debtor with consent of the restructuring administrator in formal restructuring proceedings, as applicable, generally have the right to continue bilateral agreements. However, none of these mandatory rules apply if other statutory provisions provide otherwise, for example the Danish rules on close-out netting and financial collateral arrangements, which applies to Relevant Financial Obligations, see section 2 of this Schedule B.

However, if claims under the Agreement do not qualify as Relevant Financial Obligations, and a Danish Party becomes subject to Danish Insolvency Proceedings, Danish Preventive Restructuring Proceedings, or other insolvency related events occur; in our view, notwithstanding the terms of the Agreement,

- the Counterparty may not, per se, be entitled to terminate the Agreement nor any Individual Contract;
- the bankruptcy estate will most likely have the right to cherry pick among outstanding Individual Contracts (the single agreement concept will most likely not prevent a bankruptcy estate from cherry picking among these); and
- pursuant to general Danish law on set-off, the Counterparty may not set-off claims under Individual Contracts which were not cherry picked by the bankruptcy estate with claims of the bankruptcy estate under Individual Contracts which the bankruptcy estate cherry picked.

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

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

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

1.2 Danish Preventive Restructuring Proceedings

With effect from 17 July 2022, a new type of restructuring proceedings, i.e. preventive restructuring proceedings (*forebyggende rekonstruktion*, and defined as Danish Preventive Restructuring Proceedings for purposes of this opinion), was introduced under Danish law by an amendment to the Bankruptcy Act, implementing the European Restructuring Directive.

Danish Preventive Restructuring Proceedings are initiated by the debtor filing for preventive restructuring with a bankruptcy court. The preventive restructuring proceedings may be initiated already at the *likelihood* of the debtor being insolvent, i.e., prior to the debtor actually being insolvent, which as described above would be a requirement for formal restructuring proceedings to be initiated.

There are two types of Danish Preventive Restructuring Proceedings. The main difference between the two types of proceedings is whether the creditors may enforce their claims via the bailiff's court or whether a stay of individual enforcement actions (*fyldestgørelsesforbud*) is decided by the bankruptcy court. If no stay of individual enforcement actions is applied for or granted, the creditors and business partners are not informed of the proceedings (unless formal restructuring proceedings are initiated later) and no restructuring administrator is appointed unless the debtor requests it. If a stay of individual enforcement actions is granted, the creditors are informed, and a restructuring administrator is appointed. An accountant may be appointed irrespective of whether a stay of individual enforcement is granted, if the debtor requests it.

Creditors are not allowed to terminate bilateral agreements merely as a consequence of the debtor being subject to Danish Preventive Restructuring Proceedings and/or merely due to the debtor's request for commencement of such proceedings, cf. Section 9 e, Subsection 1 of the Bankruptcy Act. Furthermore, if a stay of individual enforcement actions has been granted, the debtor, with the consent of the restructuring administrator, generally has the right to continue bilateral agreements, in which case the counterparty's claim will be preferential after section 94 of the Bankruptcy Act, cf. Section 9 e, Subsection 2 of the Bankruptcy Act. However, none of these mandatory rules apply if other statutory provisions provide otherwise, cf. Section 9 e, Subsection 3 of the Bankruptcy Act. This exemption is worded similarly to the exemptions applicable in respect of continuation of bilateral agreements in bankruptcy (Section 53 of the Bankruptcy Act) and in formal restructuring proceedings (cf. Section 12 n of the Bankruptcy Act). Accordingly, we interpret this as preserving any right to terminate and close-out net which follows from the Capital Markets Act also in case of Danish Preventive Restructuring Proceedings (as is the case with Danish Insolvency Proceedings).

Non-Financial Entities and certain Financial Entities may be subject to the Danish Preventive Restructuring Proceedings, but according to the preparatory works, the various types of entities listed in Article 1(2), points (a)-(f) of the European Restructuring Directive may not be subject to Danish Preventive Restructuring Proceedings.

1.3 Danish BRRD-rules

Failing banks and other credit institutions and certain investment firms may be subject to various recovery and resolution measures pursuant to the BRRD Act which includes transfer of assets and liabilities to the Danish Financial Stability Company (*Finansiel Stabilitet* - an independent public company) or a subsidiary of the Danish Financial Stability Company), bail-in, suspension of contractual rights and obligations, etc.

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

Pursuant to the Financial Business Act, the Danish FSA is also granted with various early intervention measures in case of financial difficulties in such institutions, including issuing of various types of orders (*påbud*) to the institution and its management, the right to remove senior management, and the appointment of a temporary administrator.

The implementation of measures pursuant to the Danish BRRD-rules does not qualify as insolvency proceedings as a matter of law and may not qualify as an enforcement event under Section 206 of the Capital Markets Act provided that the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, continue to be performed. Accordingly, the implementation of such measures will not per se entitle a counterparty to terminate, carry out close-out netting, enforce collateral etc.

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

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

1.4 Applicable law

The EU Insolvency Regulation no. 848/2015, as amended, does not apply in Denmark.[9] Under Danish law the only cross-border regulation relevant to consider on a general level is the Nordic Bankruptcy Convention.[10]

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

Accordingly, if a Danish Party[11] (which becomes subject to Danish Insolvency Proceedings in Denmark), has entered into an Agreement governed by the laws of another jurisdiction, the choice of law will in our opinion most likely not be binding for the Danish Party's bankruptcy estate in respect of set-off and early termination rights (unless special exemptions apply, see below in respect of the Danish close-out netting rules), and the Danish Party's bankruptcy estate may modify the laws of the relevant jurisdiction with mandatory creditor protection rules in the Bankruptcy Act or other relevant law. In a recent court case, the Maritime and Commercial Court of Denmark (*Sø- og Handelsretten*) came to the conclusion in a specific case[12] and set aside a governing law clause appointing English law as the applicable law, and the claim raised by the bankruptcy estate in the Danish court could be subject to substantive proceedings in Denmark.

Denmark has implemented the Banks Winding-up Directive[13] by Executive Order (*bekendtgørelse*) no. 721 of 30 May 2017 (the "Winding-up Order"), which applies to winding-up of an EU based bank or other credit institutions. Section 17 of the Winding-up Order provides that as the general rule netting agreements will be governed by the agreed choice of law. We are not aware of any Danish authority concerning the scope of this provision in the Winding-up Order. In our view, it is not certain that this choice of law provision in Section 17 of the Winding-up Order would be overruling and conclusive for a Danish Party's bankruptcy estate in a situation where applying mandatory Danish bankruptcy provisions would lead to a result which is different from the law of the netting agreement.

1.5 Publicly available information

In Denmark a search on the status of the Danish Party may be carried out online with the Danish Business Authority (at www.virk.dk) and it is possible to obtain an on-line transcript. A transcript from the Danish Busi-

[9] See preamble 88 of the EU Insolvency Regulation.
[10] Order (*anordning*) no. 251 of 1 September 1934 as amended.
[11] For a Danish Party being a bank or other credit institutions subject to the Banks Winding-up Directive, see also footnote 13, and for an insurance company subject to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast),as amended; the choice of law shall be interpreted in the context of those Directives and the Danish implementing executive orders.
[12] U.2019.69S.
[13] Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions, as amended.

ness Authority is, however, not conclusive evidence of whether or not: (i) a winding up, administration, bankruptcy or formal restructuring order has been issued, (ii) a resolution for winding up has been passed; or (iii) an administrator, trustee or liquidator has been appointed. Notice of the matters referred to above may not be filed with the Danish Business Authority immediately and may not be registered immediately. In addition, such transcripts do not report petitions for winding up, administration, bankruptcy or formal restructuring prior to the issuance of the order therefor.

Petitions for Danish Preventive Restructuring Proceedings, formal restructuring proceedings or bankruptcy are not published. Anyone having a legal interest therein may obtain information from the bankruptcy court as regards whether and when a debtor has filed such a petition.

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

2. DANISH RULES ON CLOSE-OUT NETTING AND FINANCIAL COLLATERAL ARRANGEMENTS

2.1 Introduction

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

The main close–out netting provision (Section 206, Subsection 1 of the Capital Markets Act) provides that parties can agree, with legal effect for third parties (including a bankruptcy estate), that financial obligations under an agreement may be close-out netted upon the occurrence of an enforcement event. An enforcement event (*fyldestgørelsesgrund*) is an event of default or other event agreed by the parties, which gives a party the right to close-out net (Section 5, no. 6 of the Capital Markets Act). Such event can be the commencement of insolvency proceedings (*insolvensbehandling*)[14] of a party (irrespective of the jurisdiction in which such insolvency proceedings take place).

Chapter 36 also contains the Danish rules on financial collateral arrangements implementing the Collateral Directive. These rules are described below in section 2.8 of this Schedule B.

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

2.2 Financial Entities and Non-Financial Entities

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

For the purpose of this opinion the following entities are Financial Entities (each a "**Financial Entity**")[15] :

(a) a public authority (excluding publicly guaranteed undertakings unless they, inter alia, fall under (b) to (e) below) including:

[14] As set forth in Section 5, no. 7 of the Capital Markets Act, "insolvency proceedings" include *inter alia* bankruptcy, formal restructuring proceedings as well as other Danish or foreign types of liquidation, winding up or reorganisation measures caused by a debtor's insolvency. It does not as a matter of law per se include resolution measures of banks and other credit institutions or certain investment firms or Danish branches of such undertakings under the Danish BRRD-rules, see Section 31 of the BRRD Act and Section 243 d of the Financial Business Act.

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

1. public bodies in European Union Member States and countries that the EU has entered into a financial agreement with, which are responsible for, or assist, in public debt management, and
2. public bodies in European Union Member States and countries that the EU has entered into a financial agreement with, which are authorised to keep accounts for clients;

(b) central banks, the European Central Bank, the Bank for International Settlements, any multilateral development bank, the International Monetary Fund and the European Investment Bank;

(c) financial institutions (*finansielle institutioner*) subject to supervision, including:

1. credit institutions as defined in Article 3(1)(1) of Directive 2013/36/EU,
2. investment firms as defined in Article 4(1)(1) of Directive 2014/65/EU,
3. financial institutions (*finansieringsinstitutter*) as defined in Article 3(1)(22) of Directive 2013/36/EU,
4. insurance undertakings as defined in Article 1(a) of Council Directive 92/49/EEC as amended and a life assurance undertaking as defined in Article 1(a) of Directive 2002/83/EC,
5. undertakings for collective investment in transferable securities (UCITS) with an authorisation under Article 5 of Directive 2009/65/EC,
6. management companies, and
7. alternative investment fund managers;

(d) central counterparties (CCPs), settlement agents and clearing houses, as defined respectively in Article 2(c)-(e) of Directive 98/26/EC as amended or similar institutions regulated under national law acting in the futures, options and derivatives markets to the extent not covered by such Directive; and

(e) legal persons, who act in a trust or representative capacity on behalf of any one or more persons, including bondholders or holders of other forms of securitised debt, or any authority or entity as defined in (a) to (d) above.

For the purpose of this opinion entities (legal persons) which are not a Financial Entity as set out in (a) to (e) above are Non-Financial Entities (each a "**Non-Financial Entity**")[16].

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

2.3 Scope of Financial Obligations

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

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

For the purpose of this opinion, we will focus on the scope in Section 5, no. 2, second sentence, since all claims covered hereby will also be covered by Section 5, no. 2, first sentence. Accordingly, the scope of "Relevant Financial Obligations" (i.e. "financial obligations" which may be subject to close-out netting and financial

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

collateral arrangement under Danish law) which we define below will apply irrespective of whether or not a Financial Entity is a party to the Agreement.

We assume that the Agreement will not be used for foreign exchange trading, trading on commodities exchanges, and deposits and advances. Thus, for the purpose of this opinion determining the scope of "financial obligations" will relate to

- claims originating from trading in "financial instruments"; and
- "claims originating from agreements on energy products"

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

Thus, below we first address claims originating from trading in "financial instruments" (see Schedule B, section 2.4 below) and then we address "claims originating from agreements on energy products" (see Schedule B, section 2.5 below).

2.4 Claims originating from trading in financial instruments

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

In respect of Commodity Transactions (excluding Commodity Spot), the definition of "financial instrument" in Section 4, Subsection 1, nos. 4, 5, 6, 7 and 10 of the Capital Markets Act may be relevant. In respect of Commodity Spot relating to Emission Allowances the definition of "financial instrument" in Section 4, Subsection 1, no. 11 of the Capital Markets Act is relevant.

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

<u>Section 4, Subsection 1, no. 5 of the Capital Markets Act</u>
Pursuant to Section 4, Subsection 1, no. 5 of the Capital Markets Act, any derivative contract including, *inter alia*, futures, options and swaps with a commodity[17] as the underlying asset that must be settled in cash or may be settled in cash at the option of one of the parties (other than by reason of a default or other termination event) qualify as a "financial instrument" under the Capital Markets Act. Accordingly, to the extent any Commodity Transactions (excluding Commodity Spot) relating to natural gas and to electricity may be considered cash settled in accordance with this test, it will qualify as a "financial instrument" under the Capital Markets Act.

<u>Section 4, Subsection 1, no. 6 of the Capital Markets Act</u>
Pursuant to Section 4, Subsection 1, no. 6 of the Capital Markets Act, options, futures, swaps, and any other derivative contracts relating to commodities[18] that can be physically settled provided that they are traded on a

[17] As mentioned in section 1.5(e) of the opinion the term "commodity" is not defined in the Capital Markets Act. The term is, however, defined in Article 2(6) of the MiFID II Regulation as *"any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity"*, and accordingly, in our view natural gas as well as electricity are comprised by this term as used in Section 4, Subsection 1, nos. 5, 6 and 7 of the Capital Markets Act.

[18] Includes both natural gas and electricity, see footnote 17.

Regulated Market, an MTF or an OTF (except for wholesale energy products[19] traded on an OTF that must be physically settled) qualify as a "financial instrument" under the Capital Markets Act. This provision may be relevant for Commodity Transactions (excluding Commodity Spot) relating to natural gas and to electricity.

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

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

(a) physical delivery of the relevant commodities themselves;

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

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

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

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

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

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

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

1) commodity storage capacity;

[19] The definition of wholesale energy products includes both natural gas and electricity as underlying commodities, re. Article 4(58) of the MiFID II, and Article 6(3) of the MiFID II Regulation.

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

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

This provision may be relevant for Commodity Transactions (excluding Commodity Spot) relating to (green) certificates, to capacity rights and to emissions allowances other than Emission Allowances.

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

This provision may be relevant for Commodity Spot relating to Emission Allowances.

2.5 Claims originating from agreements on energy products

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

The scope of these types of financial obligations was introduced in the Capital Markets Act and is a Danish law addition to the scope set out above in Schedule B, section 2.4 which comes from the Collateral Directive. The scope of financial obligations in Danish law was expanded to cover various contracts related to energy trading. Based on its wording the following criteria should be noted to assess the claims which in our view will be covered:

- claims, i.e. payment of money, and not claims for physical delivery of an energy product,
- the claims may arise from a contract relating to delivery of a physical energy product, either in the ongoing trading relationship or in case of a close-out due to an event of default or other termination event (by notice or by automatic termination),
- such contract may relate to delivery of a physical energy product or be a derivative,
- the traded contract can be part of a master agreement or (other) close-out netting agreement,
- it is not relevant where and how the contract is entered into, and accordingly it can be traded OTC, via broker and/or on a market place,
- the contract relates to one of the following energy products: natural gas, electricity, coal, oil or biofuel or transportation thereof, or CO2 allowances or certificates for energy based on renewable energy (*VE-beviser*), and
- the scope is not directly linked to any EU rules and may as such be interpreted under Danish law.

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

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

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

- claims (i.e. payment of money) originating from a Commodity Transaction, including a Commodity Spot, relating to electricity may qualify as a Relevant Financial Obligation under this provision, irrespective of whether it relates to a contract for physical delivery or for cash settlement;

- claims (i.e. payment of money) originating from a Commodity Transaction, including a Commodity Spot, relating to Emission Allowances[20], may qualify as a Relevant Financial Obligation under this provision, irrespective of whether it relates to a contract for physical delivery or for cash settlement;

- in our best view, claims (i.e. payment of money) originating from a Commodity Transaction, including a Commodity Spot, relating to (green) certificates[21], may qualify as a Relevant Financial Obligation under this provision, irrespective of whether it relates to a contract for physical delivery or for cash settlement; and

- claims (i.e. payment of money) originating from a Commodity Transaction, including a Commodity Spot, relating to transportation capacity of natural gas and of electricity may qualify as a Relevant Financial Obligation under this provision, irrespective of whether it relates to a contract for physical capacity or for cash settlement.

However, claims (i.e. payment of money) originating from a Commodity Transaction, including a Commodity Spot, relating to

- emissions allowances other than Emission Allowances may in our view likely qualify as a Relevant Financial Obligation under this provision, and derivatives contracts of such emissions allowances will qualify as a Relevant Financial Obligation for purposes of this opinion if it is a derivative contract covered by Section 4, Subsection 1, no. 10 of the Capital Markets Act, re. Article 8 of the MiFID II Regulation, re. Schedule B, section 2.4; and

- commodity storage capacity of natural gas may not qualify as a Relevant Financial Obligation under this provision, but claims (i.e. payment of money) originating from trading in derivatives on such storage capacity will qualify as a Relevant Financial Obligation for purposes of this opinion if it is a derivative contract covered by Section 4, Subsection 1, no. 10 of the Capital Markets Act, re. Article 8 of the MiFID II Regulation, re. Schedule B, section 2.4.

[20] Section 5, no. 3 of the Capital Markets Act uses the Danish term for "CO2 allowances" (i.e. "CO2 kvoter") and not the Danish term for "emission allowances" (i.e. "emissionskvoter") as used in the list of financial instruments in Section 4 of the Capital Markets Act. The scope of the term CO2 allowances may potentially be broader than emission allowances, but it is not possible to make this determination only based on the wording of the provision and it is not explained in the preparatory works, but in our interpretation CO2 allowances will at least include Emission Allowances for purposes of this opinion.
[21] Section 5, no. 3 of the Capital Markets Act refers to "certificates for energy based on renewable energy (*VE-beviser*)", which is not (in its Danish version) defined in the Capital Markets Act. In our best view, the reference to "renewable energy" may be understood in accordance with current Danish law in Section 2, Subsection 2 of the Danish Act on the Promotion of Renewable Energy (Consolidated Act no. 1791 of 2 September 2021, as amended) which implements the definition in Article 2(1) of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), and therefore in our best view "certificates for energy based on renewable energy" in Section 5, no. 3 of the Capital Markets Act would generally include (green) certificates evidencing the origin of energy produced from renewable non-fossil sources as described in section 1.5(e) of the opinion.

2.6 Notice of Termination

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

2.7 Restrictions on Close-out Netting

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

According to the Capital Markets Act, Section 207:

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

According to the Capital Markets Act, Section 208:

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

2.8 Financial Collateral Arrangements

2.8.1 Background - Danish law relating to financial collateral arrangements

As mentioned in section 2.1 of this Schedule B, the Collateral Directive, including the provisions relating to financial collateral arrangements, was implemented into Danish law as of 1 January 2004.

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

A financial collateral arrangement is an agreement between parties covered by Section 196 of the Capital Markets Act (which includes Danish Parties covered by section 1.4 of the opinion) on the posting of collateral for financial obligations (cf. Section 5, no. 2 and Schedule B, sections 2.3-2.5 above) in the form of collateral covered by Section 197 of the Capital Markets Act, see below. Pursuant to Section 196, Subsection 2, a retail client (as defined in MiFID II, Article 4(1)(11)) cannot be part in a title transfer financial collateral arrangement.

A "financial collateral agreement" can be an agreement on provision of financial collateral in the form of transfer of title (*overdragelse af ejendomsret*) or in the form of charges/pledges (*pant*), cf. Section 5, no.1 of the Capital Markets Act. According to § 7 of the Credit Support Annex it is contemplated that collateralisation is made by transfer of title.

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

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

2.8.2 Type of collateral

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

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

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

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

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

A letter of credit is not in itself covered by the definition of Eligible Danish Collateral. We have not reviewed any specific Letter of Credit for the purpose of providing this opinion. A Letter of Credit is in accordance with its definition in the Credit Support Annex a standby letter of credit, bank guarantee or similar document issued irrevocably by a commercial bank, and we assume that the Transferee may draw upon each such Letter of Credit in one or more drawings in an aggregate amount (up to the face amount for which the Letter of Credit has been issued) that is equal to all amounts that are due and payable by the Transferor but have not been paid to the Transferee within the time allowed for such payments under the Agreement (including any notice or grace period). We assume that the Letters of Credit will in accordance with their terms serve as Eligible Credit Support, but in respect of this opinion, the Letters of Credit will not be considered Eligible Danish Collateral and cannot be included in the calculation of one close-out net amount pursuant to the Capital Markets Act. Furthermore, we assume that the Letter of Credit will be issued by the relevant commercial bank to the Transferee directly and accordingly there is no title transfer. The same applies in respect of a parent company guarantee, which, however, is issued by an intra-group parent and not a bank.

Since the questions contained in section 3.3 of the opinion relate to financial collateral and title transfer we do not express any view in our responses in the opinion in relation to Letters of Credit and parent company guarantees.