CLIFFORD CHANCE OPINION IN CONNECTION WITH THE EUROPEAN FEDERATION OF ENERGY TRADERS MASTER NETTING AGREEMENT AND THE BOND MARKET ASSOCIATION CROSS PRODUCT MASTER AGREEMENT

C L I F F O R D
C H A N C E

CLIFFORD CHANCE LLP
10 UPPER BANK STREET
LONDON
E14 5JJ
TEL +44 20 7006 1000
FAX +44 20 7006 5555
DX 149120 CANARY WHARF 3
www.cliffordchance.com

70-40487914/JXL 26 September 2011

To: The European Federation of Energy Traders
Amstelveenseweg 998
1081 JS Amsterdam

Dear Sirs

The European Federation of Energy Traders Master Netting Agreement and the Bond Market Association Cross Product Master Agreement

We have been asked, as legal advisers to the European Federation of Energy Traders ("**EFET**") to give an opinion letter in respect of the laws of England and Wales ("**this jurisdiction**") in relation to a number of issues and questions raised by EFET in respect of the EFET Master Netting Agreement version 1.0, published by EFET on 25 June 2010 as modified by the Election Sheet, version 1.0 published on 15 June 2010 (the "**MNA**") and version 1.0 of the EFET Credit Support Annex to the MNA published on 1 February 2011 (the "**MNA Credit Support Annex**"); and the Cross Product Master Agreement (the "**CPMA**") published in February 2000 by the Bond Market Association ("**TBMA**"), as modified by the EFET and the International Energy Credit Association ("**IECA**") European Commodities Schedule published on 23 June 2003 (the "**Commodities Schedule**") and version 1.0 of the EFET Credit-Product Support Annex to the CPMA published on 23 June 2003 (the "**CP Credit Support Annex**" which together with the CPMA, is hereafter referred to as the "**CP Master Agreement**"). The MNA Credit Support Annex and the CP Credit Support Annex are together referred to as the "**Credit Support Annexes**". The MNA, the MNA Credit Support Annex, the CPMA and the CP Credit Support Annex are together referred to as the "**Agreements**".

Terms used in this opinion and not otherwise defined herein shall have the meanings ascribed to them in the Agreements.

For the purposes of giving this opinion, we have examined the form of the Agreements appended to this opinion letter.

EXECUTIVE SUMMARY

In broad terms, the netting provisions contained in the MNA and CPMA are effective under the laws of England and Wales, subject to the terms of reference, assumptions and qualifications in our opinion.

1. TERMS OF REFERENCE

1.1 This opinion is given in respect of:

(a) English companies; and

(b) foreign companies[1],

including such persons (banks) which have permission to accept deposits by virtue of Part IV of the Financial Services and Markets Act 2000 ("**FSMA**") and persons (insurance companies) which have such permission to carry out contracts of insurance. Please note that certain other types of person, not covered by this opinion, may also have permission to accept deposits, including building societies formed under the Building Societies Acts and credit unions within the meaning of Section 1 of the Credit Unions Act 1979.

For these purposes, an "**English company**" is a company which is formed and registered under the Companies Act 1985, the Companies Act 2006 or the former Companies Acts (as defined in Sections 1(1) and 1171 of the Companies Act 2006), but does not include a company formed and registered under any of the former Companies Acts in what was then Ireland; and a "**foreign company**" is a company (other than a "**Societias Europea**" established pursuant to EU Council Regulation No. 2157/2001 as of 8 October 2001 on the European Company Statute) which is incorporated or formed under the laws of another jurisdiction with a branch or branches established or located in this jurisdiction. As to companies registered in Scotland, see paragraph 3.3.14 below.

1.2 For the purposes of this opinion letter a reference to an "insurer" has the meaning given to it in article 2 of the Financial Services and Markets Act 2000 (Insolvency) (Definition of "Insurer") Order 2001 but excludes any:

(i) former or present underwriting member of the Society incorporated by the Lloyd's Act 1871;

(ii) friendly society;

(iii) exempt person in respect of that activity or a person who effects or carries out contracts of insurance of certain specified kinds only in the course of, or for the purposes of, a banking business and which is incorporated and registered under the laws of this jurisdiction or formed under the laws of another jurisdiction (other than Scotland) with a branch or branches established or located in this jurisdiction; or

(iv) person who is a "**reinsurance undertaking**" within the meaning of Directive 2005/68/EC (the "**Reinsurance Directive**") or who conducts exclusively Reinsurance business,

and additionally refers only to insurers which are incorporated and registered under the laws of this jurisdiction or formed under the laws of another jurisdiction (other than Scotland) with a branch or branches established or located in this jurisdiction.

[1] In relation to Partnerships, please see the additional provisions set out in Appendix 1 to this opinion.

1.2.1 For the purposes of the Opinion Letter the terms "**UK insurer**" and "**EEA insurer**" have the meaning given to them in the Insurers (Reorganisation and Winding Up) Regulations 2004 (the "**Insurers Winding up Regulations**").

1.2.2 "**Reinsurance**" has the meaning set out in the Reinsurance Directive.

1.3 In this opinion, unless otherwise specified:

(a) "**Party**" means a party to the Agreements;

(b) references to a "**paragraph**" are (except where the context otherwise requires) to a paragraph of this opinion;

(c) reference to a "§" or "§§" are to sections of the Agreements, as the context requires;

(d) "**Insolvency Proceedings**" means the procedures listed in paragraph 3.1.1, where governed by English law and

(i) "**liquidator**" and "**administrator**" shall be interpreted accordingly; and, in relation to a UK investment bank, these terms include an individual appointed as administrator pursuant to the investment bank special administration procedure, the special administration (bank insolvency) procedure or the special administration (bank administration) procedure under the Investment Bank Regulations; and

(ii) "**liquidation**" and "**administration**" shall be interpreted accordingly; and, in relation to a UK bank, these terms include a bank insolvency and a bank administration respectively; and, in relation to a UK investment bank, these terms include an investment bank special administration, a special administration (bank insolvency) and/or a special administration (bank administration) under the Investment Bank Regulations, as the context may require;

(e) a reference to a "**financial collateral arrangement**" is to an arrangement defined as such in the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "**FCA Regulations**");

(f) a reference to a "**UK bank**" is to an undertaking incorporated in, or formed under the law of any part of, the United Kingdom and having its head office in the United Kingdom, which has permission under Part IV of FSMA to accept deposits; but for the purposes of this option does not include insurance companies or credit unions within the meaning of Section 31 of the Credit Unions Act 1979;

(g) a reference to a "**UK investment bank**" is to an undertaking to which the Investment Bank Regulations apply being, broadly, an institution which is incorporated in the UK, authorised under FSMA to safeguard and administer investments or deal in investments as principal or agent, and holds assets for clients);

(h) a reference to an "**EEA Credit Institution**" is to an EEA Credit Institution as defined in the Credit Institutions (Reorganisation and Winding Up) Regulations 2004 (the "**Credit Institutions Regulations**"), which means an EEA undertaking which qualifies as a credit institution under Directive 2000/12/EC but which is not a UK credit institution; and a reference to a "**UK credit institution**" is to a UK credit institution as so defined, which means an undertaking whose head office is in the United Kingdom with permission under Part IV of FSMA to accept deposits or to issue electronic money, but does not include insurance companies or credit unions within the meaning of section 1 of the Credit Unions Act 1979;

(i) a reference to the "**EU Insolvency Regulation**" is to EU Council Regulation No. 1346/2000 of 29 May 2000 on insolvency proceedings;

(j) a reference to the "**Cross-Border Insolvency Regulations**" is to the Cross-Border Insolvency Regulations 2006;

(k) a reference to the "**Settlement Finality Regulations**" is to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999;

(l) a reference to the "**Investment Bank Regulations**" is to the Investment Bank Special Administration Regulations 2011;

(m) any reference to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been amended or re-enacted on or before the date of this opinion letter; and

(n) headings are for ease of reference only and shall not affect its interpretation.

1.4 This opinion letter does not consider the situation where both: (a) the Agreements are not governed by English law; and (b) neither Party is an English company or an English branch of a foreign company.

1.5 This opinion letter is given only in respect of transactions which are legal, valid, binding, enforceable and capable of being netted in accordance with the provisions of the Agreements, the Netted Agreements, the Principal Agreements and the Uncovered Transactions as applicable.

1.6 We express no opinion as to any provisions of the Agreements (or any Netted Agreement, Principal Agreement, Uncovered Transaction or any transactions thereunder) other than those to which express reference is made in this opinion letter.

1.7 This opinion relates solely to matters of English law (as in force at the date hereof) and does not consider the impact of any laws (including insolvency laws) other than English law, even where, under English law, any foreign law falls to be applied. This opinion letter and the opinions given in it are governed by English law and relate only to English law as applied by the English courts as at today's date. All non-contractual obligations and any other matters arising out of or in connection with this opinion letter are governed by English law. We express no opinion in this opinion letter on the laws of any other jurisdiction. Our opinion is based upon the express words of the Agreements as they would be interpreted under English law, and takes no account of how such words would be interpreted under, or the effect of, any other law which may govern the Agreements.

1.8 We do not express any opinion as to any matters of fact or as to any competition law aspects raised by virtue of the publication of the Agreements.

1.9 We have not considered and do not express any opinion on the MNA, CPMA, Netted Agreements, Principal Agreements or Uncovered Transactions (including any transactions thereunder) except as the MNA is modified by the MNA Credit Support Annex and the CPMA is modified by the Commodities Schedule and CP Credit Support Annex.

1.10 We express no opinion on the formal requirements and procedures necessary in the formation of a legally binding and enforceable transaction and its inclusion in a Netted Agreement, Principal Agreement or Uncovered Transaction and the related MNA or the CPMA (as applicable) where the Netted Agreement, Principal Agreement or Uncovered Transaction is not governed by English law.

1.11 Notwithstanding paragraph 4.2.1, we do not opine on the enforceability of any net obligation resulting from any netting or set-off.

1.12 We do not express any opinion as to a Party's tax liability under the Agreements, the Netted Agreements, the Principal Agreements or the Uncovered Transactions and transactions thereunder.

1.13 Unless expressly stated, this opinion would not change if one or more of the Parties to the Agreements (or any Netted Agreement, Principal Agreement or Uncovered Transaction and transactions entered into thereunder) were a publicly-owned or quasi-governmental entity.

2. GENERAL ASSUMPTIONS NECESSARY FOR OPINION

For the purposes of this opinion letter we have, with your consent, made the assumptions set out below:

2.1 That each Party has the capacity, power and authority, under all applicable law(s), to enter into and to exercise its rights and to perform its obligations under the Agreements, all Netted Agreements, Principal Agreements and Uncovered Transactions and transactions entered into thereunder and that each Party has duly authorised, executed and delivered and properly completed the Agreements, all Netting Agreements, Principal Agreements and Uncovered Transactions and transactions entered into thereunder, as applicable, and taken all necessary steps to ensure their legality, validity and admissibility in evidence in this jurisdiction.

2.2 That where an Agreement, a Netted Agreement, Principal Agreement and/or Uncovered Transaction (and transactions thereunder) is expressed to be governed by a law other than the law of England and Wales, the relevant Agreement, Netted Agreement, Principal Agreement and/or Uncovered Transaction (and transaction thereunder) is legal, valid, binding and enforceable under the law by which it is expressed to be governed.

2.3 That the Agreements, and each underlying Netted Agreement, Principal Agreement and Uncovered Transaction (and transactions thereunder) are valid, binding and enforceable under the law by which they are expressed to be governed in accordance with their own respective terms and conditions save in respect of paragraphs 4.2.2, 4.2.6 and 4.2.7 as indicated below and each is capable of being terminated and closed out in the manner envisaged by the Agreements and capable of having a Termination Amount, Settlement Amount or Final Net Settlement Amount (as applicable) determined; except that this assumption is not made in relation to any provision of an Agreement on which we opine, where that Agreement is expressed to be governed by English law.

2.4 That each Netted Agreement, Principal Agreement, Uncovered Transaction (or any transactions thereunder) when duly and validly entered into will not modify, avoid, vary, rescind, render unenforceable or be contrary to public policy, any provision of the Agreements or any other Netted Agreement, Principal Agreement, Uncovered Transaction (or any transaction thereunder).

2.5 That each underlying Netted Agreement, Principal Agreement and each Uncovered Transaction, (and transactions thereunder) is capable of being amended in the manner envisaged by the Agreements as applicable.

2.6 That other than the Credit Support Annexes, there is no other agreement, instrument or other arrangement between or affecting the Parties to the MNA or the CPMA (as applicable) which conflicts with, overrides, modifies or supersedes the MNA, the CPMA, the Credit Support Annexes or any Netted Agreement, Principal Agreement or Uncovered Transaction or any transaction thereunder (save for any such agreement or arrangement in relation to any Netted Agreement, Principal Agreement or Uncovered Transaction or transaction thereunder which is effected under the terms of: (a) the MNA, MNA Credit Support Annex or any other Netted Agreement in respect of the Netted Agreement or any transaction thereunder; or (b) the CPMA, the CP Credit Support Annex or any other Principal Agreement / Uncovered Transaction in respect of the Principal Agreement / Uncovered Transaction or any transaction thereunder) and, in particular, insofar as any transaction or obligation arising under MNA, the CPMA, the Credit Support Annexes or any Netted Agreement, Principal Agreement or Uncovered Transaction or any transaction thereunder is a transfer order under the Financial Settlement Finality Regulations, there are no provisions in the rules of any relevant designated system which purport to override or are inconsistent with the MNA, the CPMA, the Credit Support Annexes or any Netted Agreement, Principal Agreement or Uncovered Transaction or any transaction thereunder. In broad terms a "transfer order" constitutes an unequivocal instruction by a participant (within the meaning of the Settlement Finality Regulations) authorising:

(i) a payment of money by reason of a book entry on the accounts of a credit institution, a central bank or a settlement agent, or an instruction which results in the discharge of a payment obligation as defined by the rules of a designated system; or

(ii) a transfer of securities by means of a book entry on a register or otherwise.

2.7 That each Agreement, all Netted Agreements, Principal Agreements, Uncovered Transactions and transactions thereunder are entered into by each Party prior to the commencement of any Insolvency Proceedings in respect of either Party.

2.8 That the Agreements and each Netted Agreement, Principal Agreement, Uncovered Transaction and transactions thereunder have been duly entered into and are not capable of being avoided for any reason other than those mentioned in paragraphs 4.2.2, 4.2.6 and 4.2.7.

2.9 That notwithstanding the assumption in paragraph 2.1 above, the Agreements, and all Netted Agreements, Principal Agreements and Uncovered Transactions and transactions thereunder are entered into by each Party as principal and that the obligations under the Agreements, Netted Agreements, Principal Agreements, Uncovered Transactions and transactions thereunder are mutual between the Parties. "Mutuality" generally exists where each Party is personally and solely liable as regards obligations owing by it and is solely entitled to the benefit of obligations owed to it. Circumstances in which the requisite mutuality will not be established include, without limitation, where a Party is acting as agent for another person, or is a trustee, or in respect of which a Party has a joint interest (including partnership) or in respect of which a Party's rights or obligations or any interest therein have been assigned, charged or transferred (whether in whole or in part) whether unilaterally, by agreement or by operation of law or court order (including, without limitation, pursuant to Section 111 of FSMA).

2.10 That all Settlement Amounts falling to be determined under the Netted Agreements, Principal Agreements, Uncovered Transactions and transactions thereunder are duly determined in accordance with the relevant provisions thereof.

2.11 That in the case of any Party which is a foreign company, all acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreements, the Netted Agreements, Principal Agreements, Uncovered Transactions and transactions thereunder have been duly fulfilled, performed and effected.

2.12 That the Agreements, Netted Agreements, Principal Agreements, Uncovered Transactions and transactions thereunder do not constitute market contracts within the meaning in Section 155 of the Companies Act 1989 and do not constitute margin within Section 190 of the Companies Act 1989. In broad terms a "market contract" includes (i) contracts entered into by a member of a recognised investment exchange on the exchange (with a person other than the exchange); and (ii) contracts entered into by a recognised investment exchange or a recognised clearing house with its respective members for the purpose of enabling the rights and liabilities of such members under transactions in investments to be settled.

2.13 That no substantive modifications have been made by the Parties to the Agreements, or any Netted Agreements, Principal Agreements, Uncovered Transaction and transactions thereunder entered into between the Parties (including, without limitation, the addition of any provisions relating to close-out netting).

2.14 That (save in relation to any non-performance by one Party which leads to the taking of action by the other Party under the termination and close-out provisions of the MNA or CPMA as applicable) each Party will duly perform its obligations under the Agreements, each Netted Agreement, Principal Agreement, Uncovered Transaction and transactions thereunder in accordance with their respective terms.

2.15 That any Party to the Agreements, Netted Agreements, Principal Agreements, Uncovered Transactions or transactions thereunder, which is at any time carrying on, or purporting to carry on, a regulated activity in the United Kingdom within the meaning of the FSMA will at all relevant times be doing so in circumstances which do not contravene Section 19 (*the general prohibition*) of the FSMA and that none of the Agreements, Netted Agreements, Principal Agreements, Uncovered Transactions or transactions thereunder, entered into results from a solicitation or approach by either Party which contravenes Section 21 (*financial promotion*) of the FSMA.

2.16 That each Close-Out Event specified as applicable pursuant to the elections made under §3 of Part I of the Election Sheet to the MNA or under Division 1, Part II, Section A of the Commodities Schedule is an effective and valid Event of Default under the applicable underlying Netted Agreement, Principal Agreement, Uncovered Transactions or transactions thereunder. In circumstances where individual counterparties choose to move away from the Agreements in any way, they must satisfy themselves that their agreement is still valid and enforceable and this opinion will not apply.

2.17 That where a foreign company is not a credit institution, an insurance undertaking, an investment undertaking holding funds or securities for third parties, or a collective investment undertaking, and its centre of main interests is in an EU member state other than the United Kingdom or Denmark, each branch will constitute an "establishment" within the meaning in the EU Insolvency Regulation.

2.18 That neither Party is a "group undertaking" in relation to the other Party (as that phrase is defined in Section 1161(5) of the Companies Act 2006).

2.19 That neither Party is "small company" as defined in Section 382 of the Companies Act 2006 or a "bridge bank" as defined in Section 12 of the Banking Act 2009.

2.20 That neither Party is a "consumer" as defined in Section 3(1) of the Unfair Terms in Consumer Contracts Regulations 1999.

2.21 That neither Party has "eligible depositors" as that phrase is defined in Section 93(3) of the Banking Act 2009.

2.22 It is not necessary to make any further election for close out netting to apply. We would, however, advise that 10.3 of the Commodities Schedule should be elected in order to protect the mutuality between the Parties (please see paragraph 2.9 above).

3. OPINIONS

On the basis of the foregoing terms of reference and assumptions and subject to the qualifications set out in paragraph 4 below, we are of the following opinion[2].

3.1 Winding-up, Insolvency or Attachment

General Overview (including Set-Off).

Please provide a short overview of the relevant insolvency proceedings, laws and terminology applicable to Party A and the contract types listed in Appendix C to the EFET Instruction Letter (attached hereto as Appendix 4).

3.1.1 The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion, are liquidation (including provisional liquidation), administration, bank insolvency, bank administration, investment bank special administration, special administration (bank insolvency), special administration (bank administration), administrative receivership, receivership, moratorium, voluntary arrangements and schemes of arrangement. These procedures are together called "Insolvency Proceedings". The legislation applicable to Insolvency Proceedings is:

(a) in relation to all Insolvency Proceedings initiated after the date of this opinion letter except schemes of arrangement, the provisions of the Insolvency Act 1986 and the Insolvency Rules 1986; and

(b) in relation to schemes of arrangement, Section 895 - 901 of the Companies Act 2006; and

(c) in relation to a UK bank, the Banking Act 2009, the Bank Insolvency (England and Wales) Rules 2009, the Bank Administration (England and Wales) Rules 2009, the Banking Act 2009 (Restrictions of Partial Property Transfers) Order 2009 and the Credit Institutions Regulations, and in relation to a UK investment bank, the Investment Bank Regulations, and in relation to a UK credit institution or an EEA credit institution, the Credit Institutions Regulations;

(d) the Cross-Border Insolvency Regulations; and

(e) in relation to insurers, the Financial Services and Markets Act 2000, the Insurers (Winding Up) Rules 2001, the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002, the Insurers (Reorganisation and Winding Up) Regulations 2004

---

[2] The content of this paragraph 3 follows the order of the questions set out in Section C of the "*Legal Opinion Regarding the Enforceability of Close-Out Netting and the Validity and Enforceability of Collateral Arrangements, under the EFET Master Netting Agreement and the TBMA Cross Master Agreement*" (the "**EFET Instruction Letter**") and attached hereto as Appendix 5. This opinion is deemed to incorporate all assumptions referred to in Sections B and C thereof.

(in the case of insurance undertakings only) and the Prudential Sourcebook for Insurers ("**INSPRU**"),

each as modified up to the date hereof. In relation to an obligation which is a transfer order [3] as defined in the Settlement Finality Regulations, the Settlement Finality Regulations will also be applicable. If any of the Agreements constitutes a financial collateral arrangement or an arrangement of which a financial collateral arrangement forms part, the FCA Regulations will also apply. Furthermore, the EU Insolvency Regulation has direct effect in this jurisdiction.

However, subject to the EU Insolvency Regulation and Section 426 of the Insolvency Act 1986;

(i) a foreign company may not enter administration or make a voluntary arrangement unless it is incorporated in an EEA member state, or has its centre of main interests in an EU member state (other than Denmark);

(ii) the better view is that administrative receivership and moratorium should not apply to a foreign company; and

(iii) bank insolvency and bank administration are procedures only available in respect of a UK bank;

(iv) investment bank special administration is a procedure only available in respect of a UK investment bank which is not a deposit-taking bank with eligible depositors; special administration (bank administration) is a procedure only available in respect of a UK investment bank which is a deposit-taking bank; and special administration (bank insolvency) is a procedure only available in respect of a UK investment bank which is a deposit-taking bank with eligible depositors; for these purposes, "eligible depositors" has the meaning given in Section 93(3) of the Banking Act 2009, being, broadly, depositors who are eligible for compensation under the Financial Services Compensation Scheme;

(v) in relation to an EEA credit institution, liquidation (including provisional liquidation), administration and voluntary arrangements cannot take effect. Furthermore, a scheme of arrangement in relation to an EEA credit institution which is, broadly, intended to enable it to survive, but affects creditors' rights, or to enable its assets to be realised and distributed to creditors, may not be sanctioned by the court unless the relevant insolvency officer or administrative or judicial

[3] In broad terms a "transfer order" constitutes an unequivocal instruction by a participant (within the meaning of the 1999 Regulations) authorising (i) a payment of money by reason of a book entry on the accounts of a credit institution, a central bank or a settlement agent, or an instruction which results in the discharge of a payment obligation as defined by the rules of a designated system or (ii) a transfer of securities by means of a book entry on a register or otherwise.

authority (which would usually be the officer or authority of the EEA Credit Institution's home state) has been notified and has not objected.

Under Part XXIV of FSMA, the UK Financial Services Authority (the "**FSA**") is given specific powers to petition to commence and otherwise to participate in Insolvency Proceedings relating to (i) any person authorised under FSMA and (ii) any person carrying on (or who has carried on) a regulated activity without authorisation or exemption under FSMA, other than Insolvency Proceedings which are bank insolvency, bank administration, investment bank special administration, special administration (bank administration) and special administration (bank insolvency), in respect of which the FSA is given similar powers to intervene and rights to participate under the Banking Act 2009 and the Investment Regulations, respectively.

3.1.2 Instead of or in addition to Insolvency Proceedings, a UK bank may be subject to a "property transfer instrument" under Section 11 and 12 of the Banking Act 2009 if the FSA is satisfied that the UK Bank is failing, or likely to fail, to satisfy the threshold conditions for authorisation under Section 41(1) of FSMA. In relation to netting the effects of a partial property transfer, and other powers exercisable under the Banking Act 2009, are considered at paragraph 4.3 below.

3.1.3 A Party which holds a licence under Section 6(1)(b) or (c) of the Electricity Act 1989 (as amended by the Energy Act 2004) and/or under Section 7 of the Gas Act 1986 (a "**Protected Energy Company**") may be the subject of an Energy Administration Order (an "**EAO**") under Section 154 of the Energy Act 2004. Whilst an EAO is in force, the affairs, business and property of the company are to be managed by a person appointed by the court. Whilst an EAO does not preclude an application for administration, a court may not grant such an order unless notice has been served on the Secretary of State and on the Gas and Electricity Markets Authority, a period of 14 days has elapsed since the last of those notices has been served and there is no application for an EAO that is outstanding. Similar restrictions apply to the application for a winding-up and for the enforcement of security.

3.1.4 There are no bankruptcy or insolvency treaties entered into by and in force in this jurisdiction which affect this opinion.

Please discuss and advise on whether the contract types listed in Appendix C are governed by different rules and whether these rules would result in a splitting-up or segregation of the portfolio of transactions under the relevant Netted Agreements or Principal Agreements into multiple "netting pools" of disparate treatment or whether these rules would otherwise limit or render wholly or partially unenforceable the early termination and close-out netting rights provided for in the EFET Master Netting Agreement or TBMA Cross Product Master Agreement.

3.1.5 Under the laws of this jurisdiction, there is no special insolvency procedure, subject to Section 233 of the Insolvency Act (as to which see paragraph 4.5.15 below) for any of the contract types listed in Appendix C (being commodity forwards, commodity spots, commodity options and commodity swaps). Such transactions are dealt with under the applicable Insolvency Proceedings in the same way and subject to the same procedures as set out in paragraphs 3.1.1 to 3.1.3 above. Please refer to paragraph 4.2.5 on the treatment of contingent obligations under Rule 4.90 of the Insolvency Rules 1986 in the liquidation of an English Party and paragraph 4.3 on the treatment of property upon the implementation of a partial property transfer in respect of a UK bank.

When rendering your opinion on the enforceability of close-out netting in the context of an insolvency proceeding, you should discuss whether the termination of the Netted Agreements or Principal Agreements or transactions entered into thereunder, the calculation of the Settlement Amounts, the aggregation and offsetting of such Settlement Amounts and the determination of the Final Net Settlement Amount and/or its payment is voidable, challengeable or in any way capable of being invalidated, deleted, frozen, stayed or otherwise retroactively impacted by a liquidator, receiver, other third party or the court.

3.1.6 In our view, a Party's right to terminate and to close-out a Netted Agreement, Principal Agreement or Uncovered Transaction or transactions entered into thereunder should not be voidable or challengeable on the opening of Insolvency Proceedings. However, if Insolvency Proceedings are commenced in relation to a Party, that Party would cease to be able to exercise any right to close-out under the MNA, CPMA, Netted Agreement, Principal Agreement, Uncovered Transaction or transactions entered into thereunder once the other Party has exercised its own right to close-out under the MNA, CPMA, Netted Agreement, Principal Agreement, Uncovered Transaction or transactions entered into thereunder or the close-out of the MNA, CPMA, Netted Agreement, Principal Agreement, Uncovered Transaction or transactions entered into thereunder has occurred automatically, though this would not affect the outcome of the close-out netting provisions of the MNA, CPMA, Netted Agreement, Principal Agreement, Uncovered Transaction or transactions entered into thereunder (as applicable) that the amount due in respect of the obligations of each Party would be a net sum.

3.1.7 With respect to the calculation, aggregation and off-setting of the Settlement Amounts and the determination of the Final Net Settlement Amount, please note our comments at paragraphs 4.2.1 to 4.2.5.

3.1.8 We express no view on the enforceability of the obligation to pay the Settlement Amount resulting from a close-out netting under a Netted Agreement, Principal Agreement or Uncovered Transaction or the obligation to pay a Final Net Settlement Amount under §4 of the MNA or Sections 3 and 4 of the CPMA as applicable.

3.1.9 Under the laws of this jurisdiction, there are no rules obliging a non-defaulting party to terminate an agreement upon the default of the other party thereto. However there may be an argument that such non-defaulting party, by failing to terminate the agreement, has waived its right to do so. It is a matter of debate whether the conditions precedent to a party's payment or delivery obligations under a transaction pursuant to the terms of a Netted Agreement, Principal Agreement or Uncovered Transaction would allow a party to withhold any payment or delivery indefinitely.

In particular, please clarify whether or not there is a distinction in time with respect to a creditor's rights between:

(a) ***the filing of proceedings seeking a judgment of insolvency;***

(b) ***a bankruptcy court recognizing the filing of proceedings seeking a judgment of insolvency;***

(c) ***the date on which a bankruptcy court determines a party first becomes insolvent; and***

(d) ***any other stage of the proceedings where a creditor's rights may be affected.***

3.1.10 See paragraphs 4.2 below. Subject thereto, it is immaterial whether the solvent Party exercises its rights to close-out at any of the above times.

We are also interested in whether the insolvency law provides for a "safe harbour" for certain derivatives or other categories of transactions and whether the contract types listed in Appendix C would benefit from such provision(s).

3.1.11 In respect of a UK bank, article 3 of the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 prohibits a partial property transfer of some, but not all, of the "protected rights and liabilities" between a particular person and a UK bank. Please refer to paragraphs 4.3.3 and 4.3.4 below for further details.

We would also like to know whether there is publicly available information that would confirm any of the procedural steps mentioned above under (a) through (d) or other solvency related facts (e.g., financial statements, corporate actions, etc).

3.1.12 In this jurisdiction a search may be carried out against a Party at the Companies Registration Office in London and an enquiry by telephone may be made in respect of a Party at the Central Index of Winding Up Petitions. In making such enquiry it should be asked whether or not: a winding-up order has been made; a petition for winding-up has been presented; an administration order has been made; or a petition for an administration order has been presented.

3.1.13 However, it is our experience that such searches and enquiries of the type referred to at paragraph 3.1.12 above may be unreliable and, in particular, that a notice of winding-up order made or resolutions passed, or an administration order made, or a receiver or administrative receiver appointed may not be filed promptly at the Companies Registry.

Do the laws of your jurisdiction consider early termination, set-off and close-out netting as separate or similar rights or do they make no such distinctions between them?

3.1.14 In this jurisdiction, a distinction is usually made between the concepts of early termination, set-off and close-out netting. Early termination is a contractual right which allows for the termination of an agreement (in accordance with the terms of the agreement) if the enforceability of such agreement is called into question or if a counterparty fails (or is at risk of failing) to perform its obligations- typically on the occurrence of an event of default, termination event or force majeure event. Set-off is a defence to a claim: where the defendant is owed a sum by the claimant, and a right of set-off exists, the defendant will escape liability on the claimant's claim by asserting a set-off of what he is owed against what is claimed against him. Close-out netting is a more extensive concept. It allows a party to accelerate or terminate all outstanding contracts in certain designated circumstances, to calculate the value of the obligations owing to and from the parties and then to aggregate the obligations owing by it to the other party against those owing from that other party to it so as to produce a single net balance due either by or to it.

3.1.15 Whilst close-out netting is technically not set-off, a court in this jurisdiction might analogise close-out netting to set-off, based on considerations of public policy. Such an approach is contemplated in the definition of "close-out netting provision" in the FCA Regulations.

Assuming the Parties have <u>not</u> specified that Automatic Termination (as defined in § 6.3 of the EFET Master Netting Agreement or Part II.B of the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement)] applies, are the provisions of the EFET Master Netting Agreement or the TBMA Cross product Master Agreement permitting the other Party (the "Terminating Party" or "Closing-Out Party") to terminate the Netted Agreements or Principal Agreements including all transactions upon the occurrence of a Close-Out Event enforceable under the laws of [this jurisdiction] or is there a risk that (i) the entering into the EFET Master Netting Agreement or TBMA Cross Product Master Agreement, (ii) the entering into Netted Agreements or Principal Agreements or transactions thereunder or (iii) the early termination by notice described in §5.1 of the EFET Master Netting Agreement or Section 2.2 of the Cross-Product Master Agreement itself could be challenged by a liquidator, administrator, receiver or third party?

3.1.16 Subject to the comments in paragraphs 4.2.2 to 4.2.7, 4.3, 4.4 and 4.5.16 below, the provisions of the MNA or the CPMA permitting the Terminating Party or Close-Out Party to terminate the Netted Agreements, Principal Agreements or Uncovered Transactions (including all transactions) upon the occurrence of a Close-Out Event would be enforceable in this jurisdiction.

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

3.1.17 Subject to the comments in paragraphs 4.2.2 to 4.2.7, 4.3, 4.4 and 4.5.14 below, the provisions of the MNA or the CPMA providing for automatic termination of the Netted Agreements, Principal Agreements or Uncovered Transaction (including all transactions) upon the occurrence of a Close-Out Event would be enforceable in this jurisdiction.

3.1.18 The Early Termination rights which arise as a result of an insolvency based Close-Out Event under §3.1(C) of the MNA and / or Division 1, Part II, Section A of the Commodities Schedule would be enforceable under the laws of this jurisdiction, whether termination takes the form of Close-Out on the occurrence of a Close-Out Event under §3 of the MNA and / or Division 1, Part II, Section A of the Commodities Schedule or by Automatic Termination under §6 of the MNA or under Division 1, Part II, Section C of the Commodities Schedule. This applies to Early Termination of the MNA, CPMA and all Netted Agreements, Principal Agreements, Uncovered Transactions and transactions in existence at the time under the General Agreement.

Would you recommend to elect Automatic Termination to apply upon a Winding-up, Insolvency or Attachment (as defined in §3.1(C) of the EFET Master Netting Agreement) or similar event? Under the laws of this jurisdiction, it is not necessary for the Parties to agree to automatic, rather than optional, termination of transactions.

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

3.1.19 Under the laws of this jurisdiction it is not necessary to specify, or refrain from specifying, a certain grace period.

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

3.1.20 Subject to paragraph 4.2 below, under the laws of this jurisdiction the off-setting of all Settlement Amounts in determining the Final Net Settlement Amount §8 of the MNA and Section 4 of the CPMA would be enforceable and effective.

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

3.1.21 Under the laws of this jurisdiction it is not necessary that all transactions and the Netted Agreements or Principal Agreements, as applicable, be part of a single agreement for both the Early Termination rights and/or close-out netting provisions under the Netted Agreements or Principal Agreements to be effective.

3.1.22 Under the laws of this jurisdiction, it is possible for the Parties to agree to sever some transactions from the Netted Agreements or Principal Agreements, without undermining the enforceability of the Single Agreement clause in respect of the other Netted Agreements or Principal Agreements.

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

3.1.23 As a result of recent cases and legislation, in the event of any proceedings being brought in a court of this jurisdiction in respect of a monetary obligation expressed to be payable in a currency other than sterling, a court would give judgment expressed as an order to pay such currency or its sterling equivalent at the time of payment or enforcement of judgment even though in the past the courts have considered themselves only able to give a monetary judgment expressed in sterling. However, with respect to Insolvency Proceedings, English law may require that all claims or debts are converted into sterling at an exchange rate determined by the court at a date related thereto, such as the date the company went into liquidation or bank insolvency (that is, the date of the winding up order or the date of the resolution to wind up) or, where an administrator proposes to make a distribution to creditors pursuant to Chapter 10 Part 2 of the Insolvency Rules 1986, the date the company entered administration.

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

3.1.24 Subject to paragraph 4 and Appendix 1 below, the termination close-out rights in insolvency would not be dependent upon, or otherwise affected by the status of the insolvent Party.

3.2 Non-insolvency related Material reasons

Please discuss and advise on the issues outlined above under d), e) and f) [3.1.20, 3.1.21, 3.1.22 and 3.1.23] in the context of non-insolvency related Material Reasons, as well as the following question:

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

3.2.1 Subject to paragraphs 4.2.1 to 4.2.5 below, the provisions of the MNA and the CPMA, which allow for Early Termination for a Material Reason or on the occurrence of a Close-Out Event (other than due to insolvency) and close-out netting of the Netted Agreements, Principal Agreements or Uncovered Transaction would be enforceable under the laws of this jurisdiction.

3.3 Multibranch Parties

(A) *Your jurisdiction multibranch party*

Would there be any change in your conclusions reached under C.I.1 or C.I.2 [3.1 or 3.2] above based on the fact that Party A has conducted business under the Netted Agreements or Principal Agreements on a multibranch basis prior to its insolvency?

3.3.1 There would be no change to our conclusion, subject to the following observations as to insolvency jurisdiction of the English courts:

(a) The English courts have insolvency jurisdiction in respect of all insolvency procedures of a UK credit institution incorporated in the UK, regardless of whether such UK credit institution has conducted business under the Netted Agreements, Principal Agreements and Uncovered Transaction on a multibranch basis.

(b) The English courts have insolvency jurisdiction in respect of all insolvency procedures of an insurer incorporated in the UK, regardless of whether such insurer has conducted business under the Netted Agreements, Principal Agreements and Uncovered Transaction on a multibranch basis.

(c) The EU Insolvency Regulation is applicable where a Party is not a credit institution, an insurance undertaking, an investment undertaking holding funds or securities for third parties, or a collective investment undertaking, and its centre of main interests is in an EU member state other than Denmark. The EU Insolvency Regulation does not contain a definition of the term "centre of main interests" as used in paragraphs

2.17, 3.1.1, 3.3.1(d) and 3.3.13 of this opinion. However, article 3(1) of the EU Insolvency Regulation states that, in the case of a company or legal person, the place of the registered office shall be presumed to be its centre of main interests in the absence of proof to the contrary. Furthermore, recital (13) to the EU Insolvency Regulation states that the centre of main interests should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.

(d) Where a Party is not a credit institution, an insurance undertaking, an investment undertaking holding funds or securities for third parties, or a collective investment undertaking, and its centre of main interests is in the United Kingdom, the English courts have jurisdiction in respect of Insolvency Proceedings.

3.3.2 Where a Party does not fall within any of the categories set out in paragraph 3.3.1 above, the English courts would have jurisdiction in respect of winding-up proceedings, subject to the comments in paragraphs 3.3.9 to 3.3.20 below.

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

3.3.3 A liquidator or administrator is required to include obligations arising from all transactions governed by the MNA or the CPMA (regardless of whether these obligations originate from multiple branches of such party) in the calculation of amounts owed to and from the Defaulting Party.

3.3.4 A liquidator or administrator will not be able to undermine the "global" netting provisions of the MNA or the CPMA (whereby the Non-Defaulting Party may net obligations arising from (i) all transactions governed by the terms of the Netted Agreements and/or the MNA; or (ii) all transactions governed by the Principal Agreements, Uncovered Transactions and/or the CPMA, regardless of the type of transaction or from which office it was entered into) by treating the obligations in respect of transaction entered into from the office in this jurisdiction separately from other obligations arising under the Netted Agreement and/or the MNA or the Principal Agreements, Uncovered Transaction and/or the CPMA or other transactions governed by the terms of the Netted Agreement and/or the MNA, or the Principal Agreements, Uncovered Transaction and/or CPMA.

3.3.5 Under the EU Insolvency Regulation set-off is permitted in each of the two following situations:

(a) if it is permitted under the law of the jurisdiction in which insolvency proceedings have been opened in relation to the insolvent debtor (art. 4.2(d) of the EU Insolvency Regulation); or

(b) if it is permitted by the law applicable to the insolvent debtor's claim (art. 6.1 of the EU Insolvency Regulation).

In relation to (a), the laws of this jurisdiction would be applicable, with the effect that set-off will be validated in the circumstances described in this opinion in the case of Insolvency Proceedings declared by a court in this jurisdiction. If the governing law of the MNA, the CPMA or the relevant Netted Agreement, Principal Agreement or Uncovered Transaction is not the law of this jurisdiction and the EU Insolvency Regulation applies, set-off will be allowed if it is permitted under the laws governing the MNA or the CPMA, Netted Agreement, Principal Agreement or Uncovered Transaction as applicable. In relation to (b) the law applicable may be the law expressed to be the governing law of the MNA or Netted Agreement; or the CPMA, Principal Agreement or Uncovered Transaction as applicable, or potentially the governing law of the transactions arsing under the Netted Agreement, Principal Agreement or Uncovered Transactions.

3.3.6 We express no view as to whether the EU Insolvency Regulation would validate an invalid netting provision under one of the MNA, the CPMA or the relevant Netted Agreement, Principal Agreement or Uncovered Transaction Agreements or transactions arsing thereunder.

3.3.7 We express no view as to whether or not the courts of this jurisdiction would make any distinction between the concepts of set-off and close-out netting for the purposes of the EU Insolvency Regulation.

3.3.8 Under the Cross-Border Insolvency Regulations, a court may recognise a foreign insolvency proceeding, and in consequence of such recognition may limit the application of English insolvency law, or apply certain of such provisions at times, or in circumstances, where they would not otherwise be available. In these circumstances the opinions in relation to English law expressed in this opinion letter may not apply.

(B) ***Foreign Multibranch party***

Would there be separate proceedings in this jurisdiction with respect to the assets and liabilities of the branch in this jurisdiction upon the start of the insolvency proceeding for Party F in a country other than this jurisdiction ("Country H")? Or would the relevant authorities in this jurisdiction defer to the proceedings in Country H, so that the assets and liabilities of the branch in this jurisdiction would be handled as part of the proceedings for Party F in Country H? Could local creditors of the branch in this jurisdiction initiate separate proceedings in this jurisdiction even if the relevant authorities in this jurisdiction did not do so?

3.3.9 Subject to the observations at paragraphs 3.3.10 to 3.3.17 below, in principle it is possible for the courts of this jurisdiction to initiate certain Insolvency Proceedings in relation to a foreign company based on the mere presence of assets and liabilities in this jurisdiction. Such proceedings could be initiated by local creditors even if the relevant authorities did not do so.

3.3.10 In respect of an EEA Credit Institution incorporated in an EEA member state, the courts of this jurisdiction will have no jurisdiction to open winding-up proceedings and/or re-organisation measures.

3.3.11 Furthermore, where the Defaulting Party is an EEA Credit Institution, a liquidator or administrator may not be appointed in relation to proceedings.

3.3.12 Where an insolvent Party is an insurance undertaking whose permission for the purposes of FSMA arises by virtue of Schedule 3 of FSMA, the English courts have no jurisdiction in respect of certain Insolvency Proceedings.

3.3.13 Where a Party is not a credit institution, an insurance undertaking, an investment undertaking holding funds or securities for third parties, or a collective investment undertaking, and its centre of main interests is in an EU member state other than the United Kingdom or Denmark, the EU Insolvency Regulation will apply. In such a case the English courts have no jurisdiction in respect of Insolvency Proceedings other than receivership, except in a case where the Party has an establishment (within the meaning in the EU Insolvency Regulation) in this jurisdiction, and then only to implement certain Insolvency Proceedings governed by English law in relation to the assets situated (or deemed under the EU Insolvency Regulation to be situated) in this jurisdiction. See paragraph 3.3.1(c) above in respect of "centre of main interests".

3.3.14 The courts of Scotland have exclusive jurisdiction in relation to liquidation of a Party incorporated under the laws of Scotland (a "**Scottish Party**"). Accordingly, the courts of this jurisdiction may defer to the courts of Scotland in relation to any question relating to the close-out netting provision in the General Agreement arising in the liquidation of a Scottish Party. In other Insolvency Proceedings there is a lower likelihood that the courts of this jurisdiction would be expected to defer to the courts of Scotland than in a case involving liquidation.

3.3.15 The courts having jurisdiction in relation to insolvency law in this jurisdiction are obliged to give assistance to courts in which concurrent insolvency proceedings have commenced under the laws of another jurisdiction. Such assistance may take the form of, for example, dealing with only those assets located in this jurisdiction or selectively applying provisions of foreign law in Insolvency Proceedings which are otherwise generally governed by English law. The courts of this jurisdiction may accordingly apply foreign systems of law rather than English law where the insolvent Party is subject to insolvency proceedings in another jurisdiction. Under Section 426 of the Insolvency Act 1986, a court with insolvency law jurisdiction in England has a discretion to apply the law of one of a list of specified jurisdictions to the insolvency of an entity (including a company incorporated and registered in England and Wales) if so requested by the competent court of that other jurisdiction. Those specified jurisdictions are currently the other parts of the United Kingdom, the Channel Islands, the Isle of Man, Anguilla, Australia, the Bahamas, Bermuda, Botswana, Brunei, Canada, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Ireland, Malaysia, Montserrat, New Zealand, South Africa, St. Helena, Turks and Caicos Islands, Tuvalu and the Virgin Islands. In exercising its discretion, the English court must have regard to the rules of private international law. In any case where the EU Insolvency Regulation applies (as to which, see paragraph 3.3.1(c) above) and if the specified jurisdiction concerned is any of the Channel Islands, Isle of Man, or Ireland, the English court's powers under Section 426 of the Insolvency Act 1986 would be displaced insofar as inconsistent with the EU Insolvency Regulation.

3.3.16 English courts may, in some circumstances, stay Insolvency Proceedings where they are of the opinion that proceedings in another forum would be more convenient or if concurrent proceedings are being brought elsewhere, but will take into account whether or not this will prejudice creditors whose claims have a close connection with this jurisdiction.

3.3.17 Under the Cross-Border Insolvency Regulations, a court may recognise a foreign insolvency proceeding, and in consequence of such recognition may limit the application of English insolvency law, or apply certain of such provisions at times, or in circumstances, where they would not otherwise be available.

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

3.3.18 Subject to the observations at paragraph 3.3.19 and paragraph 4 below, the administrator or liquidator in this jurisdiction would include the whole of the Defaulting Party's positions under the Netting Agreements, Principal Agreements or Uncovered Transactions and recognise the close-out netting provisions of the MNA and CPMA, as applicable, in accordance with their terms.

3.3.19 However, if a recognition order is made under the Cross Border Insolvency Regulations, or if the EU Insolvency Regulation applies, a liquidator or administrator may be required to defer to the jurisdiction of the insolvency officer appointed in another state, because particular transactions or the claims of the Defaulting Party against the Non-Defaulting Party arising under the MNA, CPMA, Netting Agreements, Principal Agreements or Uncovered Transactions may be deemed to be situated outside this jurisdiction.

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

3.3.20 We repeat the answer set out at paragraph 3.3.18 except that where a Party has no 'establishment' in this jurisdiction and the EU Insolvency Regulation applies, only a very limited range of Insolvency Proceedings is available (see paragraph 3.3.13).

3.4 Collateral

Under the laws of your jurisdiction, what law governs the transfer of ownership in the various forms of Eligible Credit Support deliverable under the EFET Cross Product Credit Support Annex?

3.4.1 The choice of law provisions of the Credit Support Annexes (as set out in the MNA or CPMA as applicable) would be recognised in this jurisdiction, subject to the observation at paragraph 3.9 below. The law governing the transferee's obligations in respect of cash collateral would, in the absence of an agreement to the contrary, be the law of the place where the transferor can recover from the obligor. However, where the EU Insolvency Regulation, the Credit Institutions Regulations or the Insurers Winding-up Regulations apply, the effectiveness of a set-off is determined by reference to the law governing the insolvent Party's claim, so that if the cash collateral has been transferred to the insolvent Party, the law of the place where the solvent Party is due to repay the cash would typically govern the effectiveness of the set-off of the cash collateral against obligations of the insolvent Party.

In relation to letters of credit, we refer to our observations at paragraph 3.4.2 below.

Would the laws of your jurisdiction characterise 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-characterised as creating a security interest? If so, is there any way to minimise such risk? What would be the consequences of such a re-characterisation?

3.4.2 The following paragraphs consider the position where cash is given as Eligible Credit Support. With respect to letters of credit, we assume that there is no "transfer", but rather that the letter of credit is issued in favour of the Party seeking credit support. In considering the following questions, therefore, we express no view in relation to letters of credit since the questions assume a "transfer". For cash we assume that the credit support is paid to the Transferee and not to any third party.

3.4.3 §7 of the Credit Support Annexes provide that each Party agrees that all right, title and interest in and to any Eligible Credit Support or Interest Amount which it transfers to the other Party under the terms of the Credit Support

Annexes will vest in the Transferee free and clear of any liens, claims, charges or encumbrances or any other interest of the Transferor or of any third person.

3.4.4 The English courts would look at the wording and the substance of the arrangements and would not re-characterise such transfers as creating security interest unless a court considers that the evidence shows that §7 of the Credit Support Annexes does not reflect the genuine intention and agreement of the Parties.

3.4.5 We are of the view that the laws of this jurisdiction would characterise each transfer of Eligible Credit Support, once payment is made to the Transferee, as effecting an unconditional transfer of ownership of the assets transferred. We do not consider that the courts of this jurisdiction would re-characterise such transfer as intending to create or creating in favour of either Party any mortgage, charge, lien, pledge, encumbrance or other security interest in any Eligible Credit Support transferred from one party to the other, in the absence of express words added to the Credit Support Annexes to such effect.

3.4.6 However, if the Eligible Credit Support is located (i.e. repayable) in a jurisdiction other than this jurisdiction (e.g. the jurisdiction of the Transferee) the laws of that other jurisdiction should be checked to ensure that the transfer would not be re-characterised since there is no authority as to whether or not the courts of this jurisdiction would apply the law of the jurisdiction where the assets are situated to the question of the proper characterisation of a transfer of Eligible Credit Support. Provided that the Transferee has possession or control of the Eligible Credit Support comprising cash, which would be the case where the transfer of the cash to the Transferee has been effected, the arrangements constituted by the Credit Support Annexes would, under the FCA Regulations, be treated as a financial collateral arrangement in relation to such cash.

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 your jurisdiction 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?

3.4.7 No further action is required under the laws of this jurisdiction to enforce or continue such ownership interest.

3.4.8 However, where the Eligible Credit Support is located in another jurisdiction, the laws of that jurisdiction should be checked to confirm that there are no procedures that must be followed to enforce or continue such ownership interest.

What is the effect, if any, under the laws of your jurisdiction of the right to substitute collateral pursuant to §6 of the EFET Cross Product Credit Support

Annex? Does the presence or absence of consent to substitution by Party B have any bearing on this question?

3.4.9 The right of the Transferor to exchange the Eligible Credit Support (for example, by swapping Euros for United States Dollars) pursuant to §6 of the Credit Support Annexes is a contractual right only. It does not affect our opinion expressed in paragraph 3.4. Any substitution would simply amount to two outright transfers; one in which the Transferee returns Eligible Credit Support and a second where the Transferor provides substitute Eligible Credit Support. The presence of consent has no bearing on the question.

3.4.10 This opinion does not consider letters of credit which we assume cannot be "transferred" (please see paragraph 3.4.2 above).

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

3.4.11 §11 of the CP Credit Support Annex or §12 of the MNA Credit Support Annex (as applicable) would be valid to the extent that it provides that the Base Currency Equivalent of all Eligible Credit Support provided thereunder will be included in the calculation of the Final Net Settlement Amount as an amount payable by the Transferee.

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

3.4.12 The provisions of the MNA, CPMA and Credit Support Annexes would be enforceable under the laws of this jurisdiction irrespective of the insolvency of Party A, subject in particular to our comments at paragraph 4.5.1 below.

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

3.4.13 Please see paragraph 4.2 below for a discussion of "suspect periods". Subject to those comments, on the assumption that the exchanged assets are of no greater value that the assets which they are replacing, our view is that a substitution during any applicable "suspect period" would not be invalidate an otherwise valid transfer.

Is the EFET Credit Cross Product 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 this jurisdiction in order to ensure validity of such transfer in each type of Eligible Credit Support created by Party A under the EFET Credit Cross Support Annex?

3.4.14 Under the laws of this jurisdiction the Credit Support Annexes are in an appropriate form to create the intended outright transfer of ownership in the collateral to Party B.

3.4.15 There are no other requirements under the laws of this jurisdiction necessary to ensure the validity of such transfer.

3.4.16 This opinion does not consider letters of credit which we assume cannot be "transferred" (please see paragraph 3.4.2 above).

Do you have other specific recommendations on the subject of collateral that you would like the EFET members to consider?

3.4.17 No specific recommendations.

3.5 General Enforceability

Please discuss and advise on the following issues:

Are the EFET Master Netting Agreement and the Cross-Product Master Agreement and the EFET Cross-Product Credit Support Annex enforceable under the laws of your jurisdiction in accordance with its own terms? We are especially interested in provisions that you may believe infringe upon the ordre public in [jurisdiction] and that may be challenged by the courts in [jurisdiction] irrespective of the law that governs the Agreement.

3.5.1 In our view, subject to the assumptions, qualifications and other comments of this opinion, the Agreements would be legal, valid and binding and enforceable under the laws of this jurisdiction.

Do you have other recommendations going to the topic of general legal enforceability that you would like the EFET members to consider?

3.5.2 In this jurisdiction, a contract may be discharged on the ground of "frustration" when something occurs after the formation of the contract, which renders it physically or commercially impossible to fulfil the contract or transforms the obligation to perform into a radically different obligation from that undertaken at the moment of entry into the contract.

3.6 **Confirmation Practices**

We would like you to distinguish between (1) the formal requirements and procedure in the formation of a legally binding and enforceable transaction and its inclusion in a Netted Agreement or Principal Agreement and the related EFET Master Netting Agreement or Cross-Product Master Agreement and (2) the formal requirements a Confirmation should comply with under the procedural laws of your jurisdiction in order to be sufficient for all purposes to evidence a binding transaction and its inclusion in the agreements mentioned under (1).

3.6.1 For a transaction to be enforceable, and subject to contrary agreement, the following three elements must be present (1) offer and acceptance (2) consideration, and (3) intention to create legal relations.

3.6.2 Under the laws of this jurisdiction, transactions can be made without procedural formalities (that is, no writing or other form is necessary), unless prescribed by statute. There is no statute of this jurisdiction which requires transactions as envisaged by the CPMA, MNA, Netted Agreement, Principal Agreement or the Uncovered Transaction to be in any prescribed form.

3.6.3 Consequently, a verbal agreement (whether taped or not) will be enforceable if the three elements set out in paragraph 3.6.1 above are present and no factors are absent which would make the agreement incomplete or invalid for reasons of uncertainty.

3.6.4 Under the laws of this jurisdiction an electronically transmitted confirmation of a transaction is acceptable. However, the method of transmission, whether it be by facsimile transmission, an exchange of telexes or an exchange of electronic messages on an electronic messaging system, must be in accordance with the terms of the contract.

3.6.5 Where, a Netted Agreement, Principal Agreement or Uncovered Transaction provides for confirmation of a transaction to be made "in writing", this would, in our opinion, include electronically transmitted confirmations.

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

3.6.6 There is no formal requirement for a signature, registration or notarisation in order to create a binding transaction under the laws of this jurisdiction.

3.6.7 It is necessary for a 'title transfer financial collateral arrangement' to be evidenced in writing under the FCA Regulation, but that requirement would be satisfied insofar as the Parties thereto have properly entered into the Credit Support Annexes.

At what point in time does a transaction agreed upon orally and later confirmed in writing become legally enforceable?

3.6.8 In accordance with the principles set out in paragraph 3.6.1 above, a transaction entered into orally will be legally enforceable at the time of that oral agreement, and its existence is not dependent on its later confirmation in writing. Furthermore, the submission of a written confirmation by one Party after the oral agreement would not vary the terms of that contract without the consent of all Parties.

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

3.6.9 As stated in paragraph 3.6.8 above, the submission of a Confirmation after the formation of a contract will not vary the terms orally agreed between the Parties.

3.6.10 Subject to any agreement to the contrary, remaining silent and thereby failing to object to incorrect terms in a received confirmation will not amount to a variation of the existing contract as orally agreed between the Parties.

3.6.11 It may, however, be possible to argue that by failing to object to the incorrect term in the confirmation and by conducting themselves in a way that a reasonable person would believe that the Party assents to the terms as proposed by the other Party, the Party who has so conducted itself, whatever its real intention may have been, is bound by the terms in the Confirmation as if it had intended to agree to those terms when the contract was orally agreed. However, such a result (an estoppel) can only arise out of a 'clear and unequivocal' representation. For this purpose mere inactivity is not generally sufficient. Therefore, for so long as a Party does not perform its obligations in respect of the transaction to which the incorrect Confirmation relates, failure to object by way of mere silence would not normally give rise to an estoppel.

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

3.6.12 In our view, unless it can otherwise be shown that the Parties intend otherwise, a transaction concluded orally which the Parties intend to be included in the Netted Agreement, Principal Agreement or Uncovered Transaction would be so included (even where no reference is made to the Netted Agreement, Principal Agreement or Uncovered Transaction as applicable). Where transactions are matched electronically rather than manually entered into, such transactions will be treated as validly concluded as a matter of English law. However, we express no view as to transactions entered into through any specific electronic trading or matching system.

3.7 Means of Evidence

Assuming there is a dispute with respect to the existence of the terms or conditions of a transaction, would any or all of the following be eligible for rendering or otherwise properly introducing evidence of the agreed terms of the transaction in court? Are there any local requirements or other considerations that are relevant to each form of evidence:

Taped Recording

3.7.1 Under the laws of this jurisdiction it is unlawful to intercept communications, which includes the recording of telephone conversations, without the consent of both the person making the call and the person receiving it. There are, however, certain exceptions to this rule.

3.7.2 First, it is not unlawful to record telephone conversations where the party reasonably believes that the sender and intended recipient have consented to the interception.

3.7.3 Secondly, a party may record a telephone conversation without the consent of the persons making and receiving the call, if the purpose of doing so falls within one of the circumstances set out in the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000. Such circumstances include where the keeping of records of transactions and other communications is necessary or desirable to establish the existence of facts relevant to the business. However, for this exception to apply the party is expected to make all reasonable efforts to ensure system users (which would include employees and officers of the parties) know that communications may be intercepted.

3.7.4 The admissibility in evidence of telephone recordings is subject to the Civil Evidence Acts (the "**CEA**"). Telephone recordings obtained legally will generally be admissible in evidence as "hearsay" evidence. Rule 33.2 of the Civil Procedure Rules and Section 2 of the Civil Evidence Act 1995 provide that a party intending to rely on hearsay evidence at trial is required to serve notice of that intention on the other side in advance of the trial. Further, section 4(1) of the Civil Evidence Act 1995 states that the court is required to have regard to any circumstances from which inferences can reasonably be drawn as to the reliability or otherwise of the hearsay evidence.

E-mail or other electronic message or transaction entry system

3.7.5 The requirements for contract formation under English law are offer and acceptance; English law does not prescribe any formalities for the format of offer and acceptance in relation to the Netted Agreements, Principal Agreements, Uncovered Transaction or transactions thereunder. Subject thereto, we express no view as to whether any electronic process creates a binding contract.

3.7.6 The admissibility in evidence of all documentary evidence including, but not limited to, electronic messaging systems is subject to the CEA.

3.7.7 Evidence generated and stored by computer systems could fall into two categories. First, where the system is used to store or process information originating from human input. These records would probably amount to hearsay evidence. Secondly, where the record is created directly by the computer system without human intervention, it is unlikely to be characterised as hearsay evidence and would instead constitute direct evidence.

3.7.8 Whilst the Civil Evidence Act 1995 makes all hearsay evidence admissible, the distinction between direct evidence and hearsay evidence remains relevant in relation to the procedure for relying on hearsay evidence in civil proceedings and in assessing the weight a court may attach to such evidence. As discussed in paragraph 3.7.4 above, Rule 33.2 of the Civil Procedure Rules and Section 2 of the Civil Evidence Act 1995 provide that a party intending to rely on hearsay evidence at trial is required to serve notice of that intention on the other side in advance of the trial. Further, Section 4(1) of the Civil Evidence Act 1995 states that the court is required to have regard to any circumstances from which inferences can reasonably be drawn as to the reliability or otherwise of the hearsay evidence. We express no view as to whether a confirmation generated by the process described above would constitute direct or hearsay evidence nor do we express a view as to the weight a court may attribute to any such evidence.

Facsimile

3.7.9 The requirements for contract formation under English law are offer and acceptance; English law does not prescribe any formalities for the format of offer and acceptance in relation to the Netted Agreements, Principal Agreements, Uncovered Transaction or transactions thereunder. Subject thereto, we express no view as to whether any facsimile process creates a binding contract.

3.7.10 The admissibility in evidence of all documentary evidence, including but not limited to facsimile is subject to the CEA. Please see paragraph 3.7.8 above for information on admissibility under the CEA.

Witness Statements

3.7.11 As set out above, the requirements for contract formation under English law are offer and acceptance; English law does not prescribe any formalities for the format of offer and acceptance in relation to the Netted Agreements, Principal Agreements, Uncovered Transaction or transactions thereunder.

3.7.12 The admissibility in evidence of all documentary evidence including, but not limited to, witness statements is subject to the CEA. A witness statement (absent direct, oral evidence given by the witness in person) would be characterised as hearsay evidence. Please see paragraph 3.7.8 above for information on admissibility under the CEA.

3.8 Core Provisions

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

3.8.1 Under the laws of this jurisdiction none of the elections contemplated under the Agreements would change the substance of such conclusions.

3.8.2 As to substitution with or without consent, please see paragraphs 3.4.9 and 3.4.10 above.

Considering your conclusions reached under Part C.I or C.II. (Enforceability of Close-Out Netting), what are the provisions of the EFET Master Netting Agreement or the Cross-Product Master Agreement that you regard as so essential that a material alteration thereof could affect the conclusions reached in Part C.I or C.II.

3.8.3 The following core provisions must not be amended in order to ensure the effectiveness of netting under the MNA and the CPMA:

1. §3, 4, 5, 6 and 7 of the MNA; and
2. Sections 2, 3 and 4 of the CPMA.

3.9 Governing Law, Arbitration and Jurisdiction

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

3.9.1 If the matter were raised before the courts of this jurisdiction, the choice of law provisions of §12 of the MNA and Section 6 of the CPMA would be recognised under the laws of this jurisdiction, even if neither Party is incorporated, domiciled or established in the jurisdiction by whose laws the MNA or CPMA, as applicable, is expressed to be governed subject to the provisions of Council Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations. However, there are some matters which are not determined by reference to governing law, but which are mandatory in the forum irrespective of the choice of governing law. In particular, where all the elements relevant to a situation being adjudicated upon were, at the time the choice of law was made, connected with a particular country, the courts of this jurisdiction may apply rules of law of that country which cannot be derogated from by contract. We express no opinion on the binding effect of the choice of law provisions in the Agreement insofar as they relate to non-contractual obligations arising from or connected with the CPMA or the MNA.

3.9.2 The courts having jurisdiction in relation to insolvency law in this jurisdiction are obliged to give assistance to courts in which concurrent Insolvency Proceedings have commenced under the laws of another jurisdiction. Such assistance may take the form of, for example, dealing with only those assets located in this jurisdiction or selectively applying provisions of foreign law in Insolvency Proceedings which are otherwise generally governed by English law. The courts of this jurisdiction may accordingly apply foreign systems of law rather than English law where the Party is subject to insolvency proceedings in another jurisdiction.

3.9.3 See paragraph 3.3.14 above in respect of a Scottish Party.

3.9.4 English courts may, in some circumstances, stay Insolvency Proceedings where they are of the opinion that proceedings in another forum would be more convenient or if concurrent proceedings are being brought elsewhere, but will take into account whether or not this will prejudice creditors whose claims have a close connection with this jurisdiction.

3.9.5 If proceedings were started in the English courts in breach of §12 of the MNA and / or Section 6 of the CPMA and the English courts would otherwise have jurisdiction over those proceedings, the English courts will stay the proceedings before them in favour of arbitration as specified in §12 of the MNA and / or Section 6 of the CPMA (as applicable) provided that: §12 of the MNA and / or Section 6 of the CPMA is / are not null and void, inoperative or incapable of being performed; the party seeking a stay of the proceedings in the English courts had not taken any step in those proceedings to answer the substantive claim; and the subject matter of the claim is capable of being resolved by arbitration or is not otherwise non-arbitrable for reasons of public policy or otherwise

3.10 Other Provisions

If you have other recommendations that you would like EFET member companies to consider (for example to fully optimise the General Agreement for a specific purpose such as to support limited trading between two entities both organised 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 opinion letter

3.10.1 Please see Appendix 2 attached hereto.

4. QUALIFICATIONS

4.1 Limitations Arising from Insolvency Law

The opinions set out in this opinion letter are subject to any limitations arising from insolvency, liquidation, administration, moratorium, reorganisation and similar laws affecting the rights of creditors.

4.2 Statutory Insolvency Set-Off

4.2.1 In a winding-up of a Party or an administration of a Party under the laws of this jurisdiction, the aggregation or set-off of amounts representing terminated obligations may be implemented under Rule 4.90 of the Insolvency Rules 1986 ("**Rule 4.90**") or (where the administrator appointed in respect of a Party has been authorised to make a distribution and has pursuant to Rule 2.95 of the Insolvency Rules 1986 given notice that he proposes to make it) Rule 2.85 of the Insolvency Rules 1986 ("**Rule 2.85**"), or in relation to UK bank, Rule 72 of the Bank Insolvency (England and Wales) Rules 2009 ("**Rule 72**") or, in relation to a UK investment bank, Rule 164 of the Investment Bank Special Administration (England and Wales) Rules 2011("**Rule 164**") rather than under the specific provisions of the CPMA, MNA, Netted Agreement, Principal Agreement or the Uncovered Transaction (as applicable). Set-off pursuant to Rule 4.90, Rule 2.85, Rule 72 or Rule 164 ("**Statutory Insolvency Set-Off**") would, in our view, result in a net amount payable between the Parties in respect of such amounts, subject to the other qualifications set out in this opinion and subject also to the inclusion in any Statutory Insolvency Set-Off of other mutual obligations between such Parties.

4.2.2 In a winding-up by the courts under the laws of this jurisdiction or a bank insolvency, any dispositions of the insolvent Party's property made after the commencement of winding-up or bank insolvency of such Party (which, in this context, means the time of presentation of the petition for winding-up; or, if earlier, the time of passing a resolution for voluntary winding-up; or, if the court makes a winding-up order on hearing an administration application, the making of the order) are void under Section 127 of the Insolvency Act 1986 unless the court otherwise orders or the FCA Regulations prevent its application. Transactions entered into after compulsory winding-up or bank insolvency has commenced in relation to a Party might not be capable of inclusion in the set-off or netting under the CPMA, MNA, Netted Agreement, Principal Agreement or the Uncovered Transaction (as applicable)or a set-off pursuant to a Statutory Insolvency Set-Off, but this would not impair the effectiveness of the close-out netting provision or a Statutory Insolvency Set-Off in respect of transactions entered into before the commencement of such Insolvency Proceedings.

4.2.3 The provisions in the Insolvency Rules 1986 or, in relation to a UK bank, the Bank Insolvency (England and Wales) Rules 2009 or, in relation to a UK investment bank, the Investment Bank Special Administration (England and Wales) Rules 2011 relating to the set-off of mutual credits and debts do not apply to amounts which arise under transactions entered into at certain times, and accordingly an English court might not allow such amounts to be included in an aggregation or set-off pursuant to the close-out netting provision or a Statutory Insolvency Set-Off. The times referred to are, so far as relevant, as follows:

(a) after the insolvent Party had entered administration;

(b) at a time when the solvent Party had notice that an application for an administration order in respect of the insolvent Party was pending or any person had given notice of intention to appoint an administrator in respect of the insolvent Party;

(c) at a time when the solvent Party had notice that a meeting of creditors of the insolvent Party had been summoned under Section 98 of the Insolvency Act 1986 (which requires a company which goes into creditors' voluntary winding-up to cause a meeting of creditors to be summoned for a day not later than the fourteenth day after the day on which there is to be held a shareholders' meeting at which the resolution for voluntary winding-up is to be proposed) or that a petition for the winding-up or an application for a bank insolvency order of the insolvent Party was pending; or

(d) during a winding-up or bank administration of the insolvent Party,

and, where the court has made a recognition order in respect of a foreign main proceeding under the Cross-Border Insolvency Regulations in respect of the insolvent Party, it appears that an amount may also be excluded from an aggregation or set-off pursuant to the close-out netting provision or a Statutory Insolvency Set-Off if the transaction under which such amount arose was entered into after the making of the recognition order, or after the solvent Party had notice that a recognition application was pending.

Furthermore, any debt which has been acquired by the solvent Party by assignment or otherwise pursuant to an agreement between the solvent Party and any other person must be excluded from Statutory Insolvency Set-Off, and may not be included in an aggregation pursuant to the close-out netting provision, where such assignment or other agreement was entered into at any of the times mentioned above.

However, notwithstanding these limitations, if the Agreement constitutes a financial collateral arrangement, or an arrangement of which a financial collateral arrangement forms part, amounts which arise under transactions entered into at the times mentioned in sub-paragraphs (a) and sub-paragraph (d) may still be included in an aggregation or set-off unless at the time the relevant financial obligations came into existence the solvent Party was aware, or should have been aware, that winding up proceedings or reorganisation measures (as such terms are defined in the FCA Regulations) had commenced in relation to the insolvent Party.

4.2.4 In respect of any transaction entered into before the commencement of the winding-up or bank insolvency of the insolvent Party, under which property is to be delivered after the time of such commencement and in respect of which the insolvent Party transfers ownership of the property to the solvent Party after the time of such commencement, it may not be possible for the price payable in respect of such property transferred to be included in the Final Net Settlement Amount. However, if such a transaction is terminated before ownership of the property to be delivered under such transaction is transferred, the gain or loss in respect of the transaction calculated in accordance with the close-out netting provision should be capable of being included in the Final Net Settlement Amount. Any action taken by the liquidator of the insolvent Party to recover the price from the solvent Party would not prejudice the effectiveness of the netting pursuant to the CPMA, MNA, Netted Agreement, Principal Agreement or the Uncovered Transaction (as applicable) of other, valid, obligations.

4.2.5 If an obligation which is owed by a Party is a contingent obligation, Rule 4.86 (or, in administration where the administrator has authority to make a distribution, Rule 2.81) of the Insolvency Rules 1986 will operate to allow the liquidator or administrator to value that obligation. The valued amount would be included in the Statutory Insolvency Set-Off notwithstanding that the amount so included may differ from the other Party's assessment of the value of that obligation. A right of appeal to the court is available against the liquidator's or the administrator's valuation.

4.2.6 Under Section 238 of the Insolvency Act 1986, a transaction entered into by a company at any time within a specified period ending with the onset of insolvency of the company (being, in broad terms, and so far as relevant, the earliest of the commencement of winding-up or bank insolvency, or the initiation of the process for appointment of an administrator; or, where the court has made a recognition order in respect of a foreign proceeding under the Cross-Border Insolvency Regulations, the date of the opening of the foreign proceeding) with a person on terms that provide for the company to receive either no consideration, or a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by it, may be set aside as a transaction at an undervalue, if at the time the transaction is entered into that company was unable to pay its debts or became unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 in consequence of the transaction. A court would not set aside such a transaction if it were satisfied that the company entered into the transaction in good faith and for the purpose of carrying on its business and that at the time it did so there were reasonable grounds for the belief that it would benefit the company. Transactions entered into on arm's length terms and at the then prevailing market rates are unlikely to constitute transactions at an undervalue. However, the matters referred to in the last two sentences are questions of fact in each case.

4.2.7 Under Section 239 of the Insolvency Act 1986 anything done or suffered to be done by a company, limited liability partnership ("**LLP**") or partnership within a specified period ending with the onset of insolvency (as defined in paragraph 4.2.6 above) of that company may be set aside as a preference. The thing done or suffered will be liable to be set aside if at the time it was done or suffered that company, LLP or partnership was unable to pay its debts or became unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 in consequence of the thing done or suffered and that thing has the effect of putting any person in a better position, in the event of that company, LLP or partnership going into insolvent liquidation, than that person would have been in if the thing had not been done or suffered. However, the court would not make such an order if it was satisfied that the company, LLP or partnership which gave the preference was not influenced to give it by a desire to put that person in such better position. However, Section 239(6) of the Insolvency Act 1986 contains a rebuttable presumption in cases where the person being put in a better position is a connected person to the company subject to the Insolvency Proceedings. As a result, where any obligation arises as a result of an act done by a Party at a time when it was unable to pay its debts (or became unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 in consequence of such payment), there is a risk that such obligation would be voidable. We cannot express an opinion as to whether any obligation of a Party under any transaction to which this opinion relates, which arises in such circumstances, would be included in the set-off calculation.

4.2.8 There are provisions in both the Companies Act 2006 and the Insolvency Act 1986 for schemes of arrangement or voluntary arrangements (where applicable) in respect of companies to be agreed by creditors or, in some cases, shareholders of the company. The courts will not sanction a scheme of arrangement under Section 895-901 of the Companies Act 2006 unless reasonable efforts were made to notify those creditors whose rights would be affected by the scheme of the meeting to approve that scheme. In relation to company voluntary arrangements under Part I of the Insolvency Act 1986, a creditor can be bound by the arrangement even if he did not have notice of the creditors' meeting to approve the arrangement. In the case of either a scheme of arrangement or a company voluntary arrangement, approval at the creditors' meeting of its terms does not require unanimity of the affected creditors, whether or not present at the meeting. Such arrangements could affect both set-off rights of creditors and the value of claims which the creditors may have against the company. If the netting provided for in the close-out netting provision has been effected before the approval of such an arrangement, any provision of such an arrangement which purports to unwind the application of the close-out netting provision would not bind the affected creditor if timely objection to the arrangement is made to the applicable court. An arrangement could, however, affect the value of any resulting net claim.

4.2.9 If any third party creditor (the "**attaching creditor**") of a Party ("**the defendant Party**") were to attach, execute, levy execution or otherwise exercise a creditor's process (whether before or after judgment) over or against any claim owing by the other Party ("**the debtor Party**") to the defendant Party under the CPMA, MNA, Netted Agreement, Principal Agreement, Uncovered Transaction or a transaction thereunder, then the debtor Party would, following an Early Termination Date or Final Settlement Date (as applicable), be able to exercise its rights to close-out under the CPMA, MNA, Netted Agreement, Principal Agreement, Uncovered Transaction or a transaction thereunder against the attaching creditor of the defendant Party in respect of claims which existed at the date of the attachment or other process, including the claim which is the subject of the attachment or other process. However, if the attaching creditor has become subject to liquidation, administration or analogous proceedings before an Early Termination Date or Final Settlement Date (as applicable) has occurred, it may be possible for the liquidator, administrator or other relevant insolvency official of the attaching creditor to claim the amounts subject to the attachment free of the debtor Party's rights under the close-out netting provision. This is because it may be argued that the debtor Party seeks to exercise a set-off right in respect of an amount which is now owed by the debtor Party to the attaching creditor rather than to the defendant Party, and a contractual provision which purports to create a right of set-off between non-mutual claims may not be effective in the liquidation, administration, or analogous proceedings in respect of the attaching creditor.

However, after the commencement of winding-up of the defendant Party any attachment will be ineffective unless the court otherwise orders, and in our view the court would not validate the attachment in order to defeat the rights of the debtor Party under the close-out netting provision.

4.3 **Banking Act 2009**

4.3.1 The Banking Act 2009 (the "**Banking Act**") contains various provisions which might affect the effectiveness of the close-out provision. In particular, Part I of the Banking Act provides for various remedies for a failing UK bank, which include the ability of the Treasury or the Bank of England to cause the transfer of securities issued by a UK bank, or property of a UK bank, to another person, by means of a "share transfer order", a "share transfer instrument", or a "property transfer instrument".

4.3.2 Section 75 of the Banking Act gives power to the Treasury to change the law (except the Banking Act itself) for the purpose of enabling the powers granted to the FSA, the Treasury and the Bank of England under Part I of the Banking Act to be used effectively. Such changes might affect private law rights and might be used with retrospective effect. Furthermore, under Sections 23 and 40, a share transfer instrument or order, or a property transfer instrument, may include incidental, consequential or transitional provisions which might have impact on private law rights.

4.3.3 The CPMA and the MNA provide for the exercise of termination rights in circumstances which might include the making of a property transfer instrument. Under Section 38 of the Banking Act, a property transfer instrument may disapply a right to terminate the CPMA, MNA, related Netted Agreement, Principal Agreement, Uncovered Transaction or transactions thereunder which is exercisable by virtue of the existence or making of the property transfer instrument. However, rights to terminate based on the existence or occurrence of other circumstances should not be affected.

4.3.4 A property transfer instrument may apply to only part of a UK bank's assets and liabilities (such a transfer being referred to as a "partial property transfer"). This may be the case because the property transfer instrument concerned expressly applies to only part of the UK bank's business or because it is ineffective in relation to foreign property, which may include transactions, or obligations arising under transactions, which are governed by the laws of a non-UK jurisdiction. A partial property transfer could apply so as to cause the transfer of some, but not all, of the transactions (or obligations arising under transactions), with the result that the ability to net the amounts due in respect of different transactions against the amounts due in respect of others is impaired. However, in this regard, Article 3 of the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (the "**Safeguards Order**") prohibits a partial property transfer which applies to some, but not all, of the "protected rights and liabilities" between a particular person and a UK bank. Article 3 of the Safeguards Order thus protects the Non-Defaulting Party against the adverse consequences of a partial property transfer affecting the Agreements or transactions, except that if any transaction is not a "relevant financial instrument" as defined in the Safeguards Order, Article 3 may not apply in relation to that transaction. For these purposes "relevant financial instrument" means: (a) an instrument listed in Section C of Annex I to the Markets in Financial Instruments Directive (2004/39/EC), read with Chapter VI of the Commission Regulation 1287/2006/EC, (b) any option, future, swap, forward, contract for differences or other derivative contract not falling within (a), and (c) any combination of the foregoing; a deposit; a loan; an instrument falling within article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; or any contract for the sale, purchase or delivery of transferable securities, the currency of the UK or any other country, territory or monetary union, any precious metal or any other commodity.

4.3.5 If a property transfer instrument is made, a "group company" of a UK bank must provide such services and facilities as are required to enable the transferee to operate the transferred business effectively. Furthermore, the Bank of England may cancel or modify the terms of a contract or other arrangement between the residual (post-transfer) UK bank and a group company or add or substitute a transferee as a party to such a contract or arrangement. It is theoretically possible that the termination or acceleration rights of a non-UK-bank Party under the Agreements may be disapplied or ineffective, or provisions of the Agreements could be modified or disapplied by the Bank of England, if a property transfer instrument is made in respect of a UK bank Party and continuation of the transactions is required to enable the transferee to operate a transferred business effectively. However, we would not expect this to be the outcome, as we understand that the purpose underlying the legislation is directed at continuation of non-financial "facilities".

4.4 Insurers

4.4.1 Where a UK insurer has been proved to be unable to pay its debts, a court in this jurisdiction, if it thinks fit, can reduce the value of one or more of the contracts of the insurer on such terms and subject to such conditions as it thinks just, in place of making a winding-up order pursuant to Section 377 of the Financial Services and Markets Act 2000. The statutory provision from which Section 377 of the Financial Services and Markets Act 2000 is derived is Section 58 of the Insurance Companies Act 1982 (now repealed). This provision empowered the Court to reduce the "amount" rather than the "value" of an insurer's contracts and the case law in relation to this provision determined that Section 58 of the Insurance Companies Act 1982 only applied to those sums prospectively payable under the insurer's current contracts and those sums prospectively payable at the date a winding up petition was presented but which had ripened into presently payable debts between the time of the presentation of the petition and the date of the court order. However, it was held that the provision did not apply to debts which had become presently payable debts by the date of presentation of the petition. It is not clear whether the reference to the "value" of the contract in the new Section 377 of the Financial Services and Markets Act 2000 rather than the "amount" of the contract will impact on the way in which the contract may be reduced. While the better view is that "contracts" for the purposes of Section 377 of the Financial Services and Markets Act 2000 should be interpreted as referring to insurance policies only, we express no view as to the effect on the Set-off Provisions if a liability of a Party under the MNA, CPMA or Credit Support Annexes were able to be reduced under this Section.

4.4.2 Rule 4.90 will apply on the winding up of a UK insurer subject to the following reservation:

(a) In respect of any case where the appointment of an administrator takes effect before 1st February 2011, Article 5 of the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002 (as amended)[4] provides that where an administration order is made in respect of an insurer and it subsequently goes into liquidation, sums due from the insurer to another party are not to be included in the account of mutual dealings rendered under Rule 4.90 of the Insolvency Rules 1986 (mutual credit and set-off) if, at the time they became due:

(i) an administration application had been made under paragraph 12 of Schedule B1 to the Insolvency Act 1986 ("Schedule B1") in relation to the insurer;

(ii) in the case of appointment of an administrator by the holder of a floating charge, a notice of appointment has been filed with the court under paragraph 18 of Schedule B1 in relation to the insurer; or

(iii) in the case of appointment of an administrator by the company or directors, a notice of intention to appoint has been filed with the court under paragraph 27 of Schedule B1 in relation to the insurer.

(b) In accordance with Article 2 of the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010, in any case where the appointment of an administrator takes effect after 1st February 2011, paragraph 14 of Schedule B1 (entitling the holder of a floating charge to appoint an administrator in certain circumstances) and paragraph 22 of Schedule B1 (entitling a company or its directors to appoint an administrator) will not apply.

4.4.3 The Insurers Winding Up Regulations require that where a long term or a general insurer or a composite insurer (as defined in regulation 21(c)) is wound up, debts are paid out of the entire assets of the insurer in the following order of priority: preferential debts (after the expenses of the winding up); insurance debts (broadly policyholders debts); the debts of ordinary creditors (regulation 21). Paragraphs (3) and (4) of this regulation provide that where the assets of an insurer are insufficient to cover all preferential debts, the preferential debts abate in equal proportions and where the assets are insufficient to meet all insurance debts, those debts abate in equal proportions. Paragraph (5) makes provision as to the priority of preferential debts (but only those debts) over property comprised in a floating charge.

---

[4] KA: The Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2002 was revoked by the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010. However the 2010 Order contains a saving provision effectively stating that the 2002 Order will still apply in respect of any case where the appointment of an administrator takes effect before the coming into force of the 2010 Order (being 1st February 2011).

4.4.4 The Insurers Winding Up Regulations deal separately with the implementation of Directive 2001/17/EC on the re-organisation and winding up of insurance undertakings with respect to composite insurers (where there is no arrangement to transfer the long-term business) providing for the separate application of assets representing the fund or funds of the insurer maintained by the insurer in respect of its long term business and those assets representing the fund or funds maintained in respect of its general business. Accordingly, the long-term business assets are to be applied firstly in discharge of certain preferential liabilities (broadly preferential debts and insurance debts) attributable to the long-term business of the insurer, and the general business assets are to be applied in discharge of the same type of preferential liabilities but attributable to the general business. However, any excess in the assets attributable to the long-term business of a composite insurer once all of such preferential liabilities attributable to the long-term business have been met must be applied to meet any shortfall in assets of the general business and vice versa should the excess be in the general business fund and the shortfall in the long-term fund (paragraphs (3) to (8) of regulation 22). The order of priority specified in regulation 21 in relation to long term and general insurers is to be applied in the winding up of the separate types (i.e., general and long-term business) of a composite insurer's business (regulations 23 and 24).

4.4.5 An insurer carrying on long-term business is required under INSPRU to maintain a separate account in respect of the assets and liabilities attributable to its long-term business. Furthermore, pursuant to INSPRU and the FSA's General Prudential Sourcebook, the long-term business assets must (subject to a few exceptions) not be applied other than for the purposes of its long-term business. Creditors who are not creditors of the long-term business do not have access to these assets unless and to the extent there is a surplus of assets in the fund.

4.5 General

4.5.1 The term "**enforceable**" as used in this opinion means that the obligations assumed by the relevant Party under the documents are of a type which the English courts enforce. It does not mean that those obligations will necessarily be enforced in all circumstances in accordance with their terms. In particular:-

(a) except in relation to those parts of this opinion where we expressly address insolvency issues, enforcement of obligations of a party to be performed after the date hereof may be limited by bankruptcy, insolvency, liquidation, administration, moratorium, reorganisation and other laws of general application relating to or affecting the rights of creditors in England, or any other jurisdiction which is the *lex situs* of the insolvent Party's assets as such laws may be applied in the event of the bankruptcy, insolvency, liquidation, administration, moratorium, reorganisation or other similar proceedings with respect to such Party (certain of which are specifically referred to in paragraphs 4.2.6 to 4.2.7);

(b) equitable remedies (such as specific performance or injunctive relief), being remedies at the discretion of an English court, may not be available to persons seeking to enforce provisions in the Agreements where an amount of damages is considered to be an adequate remedy;

(c) claims may become barred under the Limitation Acts or may be or become subject to a defence of set-off or counterclaim;

(d) where obligations are to be performed in a jurisdiction outside England, they may not be enforceable in England to the extent that performance would be illegal or contrary to public policy under the laws of the other jurisdiction;

(e) enforcement of obligations may be invalidated by reason of fraud;

(f) if an English company or Scottish Party is part of the British Crown in its capacity as the Government of the United Kingdom, it may not be possible to obtain an injunction or specific performance against that entity or to enforce any judgment or order against it or its assets.

(g) if a foreign company is determined to be part of Central Government or one of the Government departments pursuant to the State Immunity Act 1978, it may be able to claim immunity in relation to itself or its assets from suit or enforcement;

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

(i) enforcement of obligations may be invalidated by reason of misrepresentation, illegality, fraud, duress, undue influence or mistake of fact; and

(j) the effectiveness of any provision of the General Agreement which allows an invalid provision to be severed in order to save the remainder of its provisions will be determined by the English courts in their discretion. We express no opinion as to the effectiveness of §12.9 of the MNA (*Partial Invalidity*).

4.5.2 §1.3 of the MNA states that the MNA, all Netted Agreements and all transactions relating or appended to, issued or entered pursuant to, or provided under or in accordance with, the terms of such Netted Agreements and/or the MNA form a single agreement between the Parties and that the Parties would not enter into transactions if this was not the case. This involves questions of fact as to the agreement between and the intentions of the Parties at the time of any transaction or confirmation as to which we do not express an opinion.

4.5.3 §10.1(B) (I) and §10.1(B)(II) of the MNA states that a Party (the "**Suspending Party**") is entitled to cease further delivery, acceptance and notification under the Netted Agreements if the Suspending Party has a right to Close-Out or for so long as a Potential Close-Out Event has occurred and is continuing. It is a matter of debate whether these provisions would entitle the Suspending Party to withhold any payment or delivery indefinitely.

To the extent that that any matter is expressly to be determined by future agreement, the relevant provision may be unenforceable or void for uncertainty.

4.5.4 A Party which is an authorised person under FSMA ("**a regulated Party**") may be required, pursuant to client money rules made under Section 139(1) of FSMA, to procure the agreement of the other Party not to set off any amount due from him to the regulated Party in respect of transactions made by the regulated Party for the account of any of his clients whose monies are required to be treated by the regulated Party as client money ("**segregated clients**") against any amount due from the regulated Party in respect of other transactions made between the Parties. In such a case, the CPMA and MNA, may need to be amended to provide for two discrete Final Net Settlement Amounts to be calculated in order to produce, separately, a net sum payable in respect of transactions made for the account of segregated clients and a net sum payable in respect of all other transactions; or the regulated Party may need to enter into two sets of CPMAs / MNAs, one to apply to transactions made with the other Party for the account of segregated clients and the other to cover all other transactions. We express no opinion as to the effect under the laws of this jurisdiction of any failure by the regulated Party to adopt either course of action.

4.5.5 If the effect of proceedings in a forum outside this jurisdiction is to extinguish claims or liabilities under the governing law of those claims or liabilities, the English courts may recognise the extinction of those claims or liabilities.

4.5.6 A judgement on the MNA, CPMA, Netted Agreements, Principal Agreements, Uncovered Transactions and/or any transaction, whether in the courts or this jurisdiction or elsewhere, may be held to supersede such MNA, CPMA, Netted Agreements, Principal Agreements, Uncovered Transactions and/or transaction so that any obligation thereunder which by its terms would survive such judgment might not be held to do so.

4.5.7 In order to be effective, a submission to the jurisdiction of particular courts may require compliance with specific requirements because of the nature or location of the submitting Party and, accordingly, the submission made by such Party may not be effective if such requirements have not been complied with.

4.5.8 Any provision of the CPMA, MNA, Netted Agreement, Principal Agreement, Uncovered Transaction and/or a transaction stating that a failure or delay on the part of any Party in exercising any right or remedy under the relevant CPMA, MNA, Netted Agreement, Principal Agreement, Uncovered Transaction and/or transaction shall not operate as a waiver of such right or remedy may not be effective.

4.5.9 Any undertaking or indemnity given by a party in respect of stamp duties or registration taxes payable in the United Kingdom may be void.

4.5.10 Under the laws of this jurisdiction, interest imposed upon a Party by the Agreements, any Netted Agreement, Principal Agreement, Uncovered Transaction and/or any transactions might be held to be irrecoverable on the grounds that it is a penalty, or to the extent that it accrues on an unsecured debt after the making of a winding-up order in respect of, or the passing of a winding-up resolution by the company liable to pay such interest, but the fact that it was held to be irrecoverable would not of itself prejudice the legality or validity of any other provision of the Agreements, any Netted Agreement, Principal Agreement, Uncovered Transaction and/or transactions. If the relevant Agreement does not provide a contractual remedy for late payment of any amount payable thereunder that is a substantial remedy within the meaning of the Late Payment of Commercial Debts (Interest) Act 1998, the person entitled to that amount may have a right to statutory interest (and to payment of certain fixed sums) in respect of that late payment at the rate (and in the amount) from time to time prescribed pursuant to that Act. Any term of an applicable Agreement, Netted Agreement, Principal Agreement, Uncovered Transaction and/or any transaction may be void to the extent that it excludes or varies the right to statutory interest, or purports to confer a contractual right to interest that is not a substantial remedy for late payment of that amount, within the meaning of that Act. We express no opinion as to whether any such provisions in the MNA or CPMA do in fact constitute a "substantial remedy" in compliance with the conditions set out in Section 9 of such Act.

4.5.11 Where any Party to the Agreements, Netted Agreements, Principal Agreements, Uncovered Transactions or transactions is vested with a discretion or may determine a matter in its opinion, that Party may be required to exercise its discretion in good faith, reasonably and for a proper purpose, and to form its opinion in good faith and on reasonable grounds. Any provision in the applicable Agreement, Netted Agreement, Principal Agreement, Uncovered Transaction and/or transaction providing that any calculation, determination or certification is to be conclusive and binding may not be effective if such calculation, determination or certification is fraudulent or manifestly incorrect and an English court may regard any certification, determination or calculation as no more than prima facie evidence.

4.5.12 Liquidation, and, where an administrator is authorised to make a distribution, administration procedures under the Insolvency Rules 1986 are conducted in sterling. Rule 2.86 and Rule 4.91 of the Insolvency Rules 1986 and Rule 166 of the Investment Bank Special Administration (England and Wales) Rules 2011 provide that, for the purposes of Statutory Insolvency Set-Off, a debt incurred in a currency other than sterling shall be converted into sterling at the "official exchange-rate" (which is based on the market rate on the date the court makes the winding-up order, or the company concerned resolves to go into liquidation or enters administration). Therefore, the provisions in the Agreements, Netted Agreement, Principal Agreement, Uncovered Transaction and/or any transaction for the time and rate of conversion of one currency into another may, in the administration or liquidation of a Party under the laws of this jurisdiction, be superseded by a conversion, or conversions, at the time and rate specified by the administrator or liquidator, as set out above. Notwithstanding this, if the Agreements, Netted Agreement, Principal

Agreement, Uncovered Transaction and/or transaction constitute a financial collateral arrangement or an arrangement of which a financial collateral arrangement forms part, Rule 2.86 and Rule 4.91 of the Insolvency Rules 1986 are disapplied in respect of that agreement unless the arrangement provides for an unreasonable exchange rate or the collateral taker uses the mechanism provided under the arrangement to impose an unreasonable exchange rate.

4.5.13 Any provision of the Agreements, Netted Agreement, Principal Agreement, Uncovered Transaction and/or transaction which constitutes, or purports to constitute, a restriction on the exercise of any statutory power by any Party or any other person may be ineffective.

4.5.14 The opinions expressed in this opinion letter are subject to the effects of any United Nations, European Union or UK sanctions or other similar measures implemented or effective in the United Kingdom with respect to any Party to the Agreements, MNA, Netted Agreement, Principal Agreement, Uncovered Transaction and/or any transaction which is, or is controlled by or otherwise connected with, a person resident in, incorporated in or constituted under the laws of, or carrying on business in a country to which any such sanctions or other similar measures apply, or is otherwise the target of any such sanctions or other similar measures.

4.5.15 To the extent that a transaction may be (i) for the supply of electricity by an electricity supplier within the meaning of Section 108, Schedule 6, Part III, paragraph 47(1), 2(a) of the Utilities Act 2000; and/or (ii) for the supply of gas by a gas supplier within the meaning of Part 1 of the Gas Act 1986 to an entity subject to the Insolvency Proceedings, under Section 233 of the Insolvency Act 1986 the supplier may make it a condition of the giving of the supply that the relevant insolvency official personally guarantees the payment of any charges in respect of the supply. Such an arrangement may destroy the mutuality required for effective close out netting and set off of obligations under that transaction.

There are no other material issues relevant to the issues addressed in this opinion letter which we wish to draw to your attention.

This opinion is addressed exclusively to EFET, is for the sole benefit of those EFET members who EFET confirm to us in writing have fully paid the relevant fee and may not be relied upon by any other person, entity or corporation whatsoever (whether or not a member of EFET) and may not be disclosed to any other person or persons without our prior written approval.

Yours faithfully

APPENDIX 1

ADDITIONAL PROVISIONS RELATING TO PARTNERSHIPS

1. **ADDITIONAL SCOPE OF REVIEW**

1.1 The opinion in the Opinion Letter is also given in respect of parties which are partnerships.

1.2 For the purposes of the Opinion Letter a reference to a "partnership" has the meaning given it in Section 1 of the Partnership Act 1890 and Section 4 of the Limited Partnerships Act 1907; and which is organised, established or formed under the laws of this jurisdiction.

1.3 A reference to a "limited liability partnership" or "LLP" is to a limited liability partnership within the meaning in Section 1 of the Limited Liability Partnerships Act 2000 which is registered under the laws of this jurisdiction.

2. **ADDITIONAL ASSUMPTIONS**

In relation to partnerships and LLPs, we have additionally assumed the following:

2.1 We assume that where the Agreements, Netted Agreement, Principal Agreement, or Uncovered Transaction are entered into with a partnership, during the life of any transaction, the members of the partnership will remain unchanged.

In relation to this assumption, where there is a change in partnership, incoming partners may have no liability for the acts of their predecessor partner(s) unless they expressly undertake such liability. Section 17 of the Partnership Act 1890 provides that an incoming partner does not become liable to the creditors of the partnership for anything done before he became a partner. Under English law the introduction of a new partner will constitute a new partnership. Accordingly, it might be argued (a) that the relevant Agreement, Netted Agreement, Principal Agreement and / or Uncovered Transaction is not binding on the incoming partner(s), or (b) that transactions entered into by the former partners are not binding on incoming partner(s), with the consequence that not all obligations are subject to the Agreement, Netted Agreement, Principal Agreement, Uncovered Transaction or not all obligations are mutual, so that the relevant provisions of the §§3, 7 and 8 of the MNA and Sections 2, 3 and 4 of the CPMA (as applicable) would be ineffective to achieve (a) aggregation of values attributable to Netted Agreements, Principal Agreements, Uncovered Transactions or transactions entered into after the change in partners; or (b) aggregation of values attributable to Netted Agreements, Principal Agreements, Uncovered Transaction or transactions entered into before the change in partners against values attributable to Netted Agreements, Principal Agreements, Uncovered Transactions or transactions entered into after such change.

3. **ADDITIONAL OPINION**

3.1 *Legislation applicable to LLPs and partnerships in insolvency*

The following additional legislation applies:

3.1.1 In relation to partnerships, the Insolvent Partnerships Order 1994;

3.1.2 In respect of limited liability partnerships provisions contained in an Agreement in this jurisdiction: Parts I, II of the Limited Liability Partnerships Regulations 2001;

3.2 The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which an LLP or partnership could be subject under the laws of this jurisdiction, and which are relevant for the purposes of the opinion, are as follows:

3.2.1 Under the Insolvent Partnerships Order 1994 (as amended), partnerships are subject to the following:

(a) Voluntary Arrangements:

(i) for insolvent partnerships (Article 4); and

(ii) for members of insolvent partnerships (Article 5).

(b) Administration (Article 6).

(c) Winding up of an insolvent partnership as an unregistered company on petition of a creditor where there are:

(i) no concurrent petition(s) against partner(s) (Article 7); and

(ii) concurrent petition(s) presented against one or more partner(s) (Article 8).

(d) Winding up of an insolvent partnership as an unregistered company on petition of a partner where there are:

(i) no concurrent petition(s) presented against partner(s) (Article 9); and

(ii) concurrent petition(s) presented against all partner(s) (Article 10).

(e) Bankruptcy by joint petition of partners without winding-up of partnership (Article 11).

3.2.2 Under the Limited Liability Partnerships Regulations 2001, LLPs are subject to liquidation (including provisional liquidation), administration, administrative receivership, receivership, moratorium, voluntary arrangements and schemes of arrangement.

3.2.3 Subject to section 426 of the Insolvency Act 1986:

(a) Where a partnership is established in an EEA member state, or has its centre of main interests in an EU member state (other than Denmark), the EU Insolvency Regulation curtails an English court's jurisdiction to implement Insolvency Proceedings. Where an LLP or partnership is established or registered in this jurisdiction, an English court may only implement certain Insolvency Proceedings governed by English law in relation to the assets situated (or deemed under the EU Insolvency Regulation to be situated) in this jurisdiction.

(b) Where a partnership is an investment firm which provides services involving the holding or funds or securities for third parties or a collective investment scheme, and the centre of its main interests is in an EU member state (other than Denmark), the EU Insolvency Regulation will not apply. In such a case the EU Insolvency Regulation will not curtail the jurisdiction of the English courts.

Paragraph 3.1 of the main body of the Opinion Letter should be read as modified in accordance with this Schedule.

3.3 For the purposes of this Appendix, paragraph 2.9 of the main body of the Opinion Letter is amended as follows:

"That notwithstanding the assumption in paragraph 2.1 above, the Agreements, and all Netted Agreements, Principal Agreements, Uncovered Transactions and transactions thereunder are entered into by each Party as principal and that the obligations under the Agreements, Netted Agreements, Principal Agreements, Uncovered Transactions and transactions thereunder are mutual between the Parties. "Mutuality" generally exists where each Party is personally and solely liable as regards obligations owing by it and is solely entitled to the benefit of obligations owed to it. Circumstances in which the requisite mutuality will not be established include, without limitation, where a Party is acting as agent for another person, or is a trustee, or in respect of which a Party has a joint interest (including partnership) or in respect of which a Party's rights or obligations or any interest therein have been assigned, charged or transferred (whether in whole or in part) whether unilaterally, by agreement or by operation of law or court order (including, without limitation, pursuant to Section 111 of FSMA)."

4. ADDITIONAL RESERVATIONS AND QUALIFICATIONS

4.1 It is not permissible to set off non-mutual debts or obligations under Rule 2.85 of the Insolvency Rules 1986 or Rule 4.90 of the Insolvency Rules 1986 or Section 323 of the Insolvency Act 1986 or, in relation to a UK bank, Rule 72 of the Bank Insolvency (England and Wales) Rules 2009 or, in relation to a UK investment bank, Rule 164 of the Investment Bank Special Administration (England and Wales) Rules 2011 (each an "Insolvency Set-Off Rule"). A debt owed by a partner personally cannot, therefore, be set-off under an Insolvency Set-Off Rule against a debt owed by the creditors of the partnership. Under the insolvency laws of this jurisdiction, the Insolvency Set-off Rules are of mandatory application and will thus override any contractual provision to the extent that such provision is inconsistent with them. Debts owed by or to individual partners cannot be set-off against joint debts owed to or by the partnership because of absence of mutuality. Where mutuality exists, for example where there is a jointly owed claim against the partnership and jointly owed counterclaim by the partnership against the person claiming the debt, set-off may occur.

4.2 In a bankruptcy under Article 11 of the Insolvent Partnerships Order 1994, any dispositions of the insolvent Party's property made after the day of presentation of a bankruptcy petition in respect of such Party are void under section 284 of the Insolvency Act 1986 unless the court otherwise orders.

4.3 Under section 339 of the Insolvency Act 1986, a transaction entered into by a partnership at any time within a specified period ending on presentation of a bankruptcy petition on which the partners are adjudged bankrupt with a person on terms that provide for the partnership to receive either no consideration, or a consideration the value of which, in money or money's worth, of the consideration provided by the partners, may be set aside as a transaction at undervalue, if at the time the transaction is entered into, that partnership was insolvent within the meaning of section 241(3) of the Insolvency Act 1986 or become insolvent within the meaning of that section in consequence of the transaction.

4.4 Under section 340 of the Insolvency Act 1986 anything done or suffered to be done by a partnership within a specified period ending on the date of the presentation of a bankruptcy petition on which the partners are adjudged bankrupt may be set aside as a voidable preference. The thing done or suffered will be liable to be set aside if at the time it was done or suffered that partnership was insolvent within the meaning of section 341(3) of the Insolvency Act 1986 or became insolvent within the meaning of that section in consequence of the thing done or suffered, and that thing has the effect of putting any person in a better position, in the event of bankruptcy, than that person would have been in if the thing had not been done. However, the court would not make such an order if it was satisfied that the partnership which gave the preference was not influenced to give it by a desire to put that person in such better position.

4.5 In place of paragraph 4.2.8 of the main body of this Opinion Letter, the following section should be read as applying to LLPs and partnerships. There are provisions in the legislation applicable to LLPs for voluntary arrangements to be agreed by creditors of the LLP. A creditor can be bound by a voluntary arrangement even if he has not been given notice of the creditors' meeting to approve the arrangement. Approval at the creditors' meeting of its terms does not require unanimity of the affected creditors, whether or not present at the meeting.

4.6 Article 4(1) of the Insolvent Partnerships Order 1994 applies the provisions of Part I of and Schedule A1 to the Insolvency Act which govern company voluntary arrangements, with appropriate modifications, to insolvent partnerships so that an insolvent partnership is entitled to propose a partnership voluntary arrangement. Both corporate and individual members of a partnership may enter into voluntary arrangements. The courts may not sanction a partnership voluntary arrangement unless every creditor of the partnership of whose claim and address the person summoning the meeting is aware is invited to the meeting. The partnership voluntary arrangement binds every person who in accordance with the rules had notice of, and was entitled to vote at, the meeting. Approval at the creditors' meeting of its terms does not require unanimity of the affected creditors, whether or not present at the meeting. Furthermore, as a partnership may be wound up as an unregistered company, it may be possible for the court to sanction a scheme of arrangement in respect of its creditors or some of them. The court would not sanction a scheme of arrangement unless reasonable efforts were made to notify the creditors whose rights would be affected by the scheme of the meeting to approve that scheme.

Such arrangements could affect both set-off rights of creditors and the value of claims which the creditors may have against the insolvent Party. If the Liquidation Date has occurred before the approval of such an arrangement, any provision of such an arrangement which purports to unwind the application of the netting provisions would not bind the affected creditor if timely objection to the arrangement is made to the applicable court. An arrangement could, however, affect the value of any resulting net claim.

4.7 Insolvency proceedings in relation to an English partnership may only be opened in the EU Member State in which the partnership has its centre of main interest ("COMI") when the proceedings are opened. Preamble 13 of the EU Insolvency Regulation provides that the COMI "should correspond to the place where the debtor conducts the administration of his interests on a regular basis". Therefore, in relation to a limited partnership, the place from which the general partner conducts the business of the limited partnership is likely to be significant in determining its COMI.

APPENDIX 2
Suggestions in relation to paragraph 3.10.1 of the opinion letter

1. On the basis that a Party to the Agreements, Netted Agreements, Principal Agreements and Uncovered Transactions and transactions thereunder could be a publicly-owned or quasi-governmental entity, it would be beneficial if the Agreement, Netted Agreement, Principal Agreement and Uncovered Transaction and transaction thereunder contained a representation that the execution of the Agreement, Netted Agreement, Principal Agreement and Uncovered Transaction and any transactions constitutes, and the exercise of that party's rights and the performance of its obligations there under will constitute, private and commercial acts done and performed for private and commercial purposes. This representation could be buttressed by a 'waiver of immunities' provision.

2. Where a Party is a foreign company, it might be advisable for that Party to appoint an agent for the service of process in the Agreements, Netted Agreements, Principal Agreements and Uncovered Transactions and transactions thereunder (which agent should not have diplomatic immunity).

APPENDIX 3
FORM OF MNA AND MNA CREDIT SUPPORT ANNEX

EFET

European Federation of Energy Traders

Amstelveenseweg 998 / 1081 JS Amsterdam
Tel: +31 20 5207970

E-mail: secretariat@efet.org

Webpage: www.efet.org

Master Netting Agreement

dated as of ____________ (its **"Effective Date"**)

between

[_]

having its registered office at [_]

("**Party A**")

and

[_]

having its registered office at [_]

("**Party B**")

NOTICE & WAIVER: THIS MASTER NETTING AGREEMENT WAS PREPARED BY EFET AND ITS MEMBERS EXERCISING ALL REASONABLE CARE. HOWEVER EFET AND ITS MEMBER COMPANIES, REPRESENTATIVES AND COUNSEL INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE AND ANY DAMAGES OR LOSSES RESULTING OUT OF ITS USE IN ANY PARTICULAR CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS MASTER NETTING AGREEMENT TO ENSURE ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE USER'S LEGAL INTERESTS.

EFET

Master Netting Agreement

WHEREAS, *this Agreement (the "Master Netting Agreement") provides the means by which the Parties may, as they so elect, agree upon and implement certain mechanisms and procedures for the early termination and liquidation, close-out netting, payment netting and/or set-off of certain designated contracts, agreements, transactions, trades and related underlying obligations between them;*

WHEREAS, *the Parties have entered into and anticipate continuing to enter into contracts and individual trades and transactions thereunder involving purchases, sales, exchanges, hedges, options and similar undertakings the scope of which is further defined herein to which they wish the terms of this Master Netting Agreement to apply, and the terms of which they, as and where specified herein, wish the terms of this Master Netting Agreement to, as applicable, amend, revise, replace and/or restate; and*

WHEREAS, *the contractual mechanisms, rights and procedures provided for in this Master Netting Agreement are intended to assist the Parties in managing and mitigating the credit and counterparty performance related risks inherent to the types of transactions and business consolidated under this Master Netting Agreement;*

NOW, THEREFORE, *in consideration of the covenants and obligations herein contained and undertaken, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:*

§ 1

Definitions and Interpretation

1. **Definitions.** Terms used in this Master Netting Agreement shall have the meanings either set out in its Annex 1 (***Defined Terms***) or included in context within the body of this Master Netting Agreement.

2. **Other Definitional Provisions.** The term "**Party**" means a party to this Master Netting Agreement and a reference herein to either "**Party**" includes a reference to its successors and permitted assigns.

§ 2

Scope of Early Termination and Close-Out Netting Rights

1. **Designation of Agreements Which May Be Terminated, Closed-Out and Netted.** The scope of Close-Out netting rights available under this Master Netting Agreement is determined by a designation in the Election Sheet of agreements falling within its scope (each such agreement so designated being a "**Netted Agreement**" and all of them collectively being the "**Netted Agreements**"). Netted Agreements, and all transactions under the terms of those Netted Agreements entered into both before and after the date of this Master Netting Agreement, shall be governed by, and are hereby made subject to, consolidated under, and,

where applicable, amended, modified and/or supplemented by, the terms of this Master Netting Agreement.

2. **Exclusion of Agreements and Transactions from This Master Netting Agreement.** Any agreement or transaction between the Parties which might fall within the definition of a Netted Agreement, but which the Parties wish to exclude from the scope of this Master Netting Agreement and its Close-Out process, may be so excluded by listing such agreement or transaction in the Election Sheet as an Excluded Agreement.

3. **Single Agreement.** This Master Netting Agreement, all Netted Agreements, and all transactions relating or appended to, issued or entered pursuant to, or provided under or in accordance with, the terms of such Netted Agreements and/or this Master Netting Agreement, shall together constitute a single, integrated and inseparable agreement between the Parties. The Parties acknowledge that all such Netted Agreements, their underlying transactions and related documentation entered into after the date of this Master Netting Agreement are entered into upon reliance of this fact and that they would not otherwise enter into those Netted Agreements and/or transactions.

§ 3

Close-Out Events

1. **Definition of "Close-Out Event."** The Parties shall specify in the Election Sheet the definition(s) of Close-Out Event which they desire to apply to this Master Netting Agreement, and, if applicable, to the Netted Agreements. Possible definitions which may be selected for this purpose include, without limitation, the Master Netting Agreement Default Events set forth below in § 3.1(A) (***Master Netting Agreement Default Events***) and either: (i) the Netted Agreement Default Events set forth below in § 3.1(B) (***Netted Agreement Default Events***) or (ii) the Harmonised Default Events set forth below in § 3.1(C) (***Harmonised Default Events***), each if and as further revised, amended, restated, modified or supplemented by the Parties in the Election Sheet:

   (A) **Master Netting Agreement Default Events.** "**Close-Out Event**" shall mean any of the following Master Netting Agreement Default Events specified by the Parties as applicable in the Election Sheet:

      (I) **Master Netting Agreement Misrepresentations.** A representation or warranty made or repeated by a Party under § 12.1 (***Representations and Warranties***) of this Master Netting Agreement proves to have been incorrect or misleading in any material respect when made or repeated; or

      (II) **Master Netting Agreement Covenant Violations.** A Party is in violation of a covenant made under this Master Netting Agreement.

      (III) **Credit Support Defaults.** The failure of a Party or its Credit Support Provider, when required (after giving effect to any applicable notice or grace period thereunder), to make a payment, to deliver or return any Eligible Credit Support, or to perform any other material obligation (other than when such obligation is released or excused pursuant to provisions of the applicable agreement) under any Credit Support Document to this Master Netting Agreement.

   (B) **Netted Agreement Default Events.** "**Close-Out Event**" shall mean any event in relation to a Party, which is not an Excluded Default Event, on the basis of which the other Party has the contractual right to Close-Out all the transactions under a

Netted Agreement and shall include events on the basis of which a Party would have the contractual right to Close-Out a Netted Agreement or which would cause automatically the Close-Out of a Netted Agreement even if there are no transactions outstanding under that Netted Agreement at the relevant time.

(C) **Harmonised Default Events.** Notwithstanding anything to the contrary contained in any Netted Agreement, "**Close-Out Event**" shall mean any of the following events designated as effective by the Parties in their Election Sheet, and, depending upon whether the Parties have elected to disapply § 4.2 ***(Global Nature of Close-Out)***, such designation shall either: (i) if § 4.2 ***(Global Nature of Close-Out)*** has not been disapplied, delete from such Netted Agreement(s), replace and restate; or, (ii) in the event § 4.2 ***(Global Nature of Close-Out)*** has been disapplied, amend by adding such designated event(s) to, all of the definitions of events contained in each Netted Agreement, which, in relation to one Party give the other Party the contractual right to Close-Out all the transactions under such Netted Agreement, and if applicable, the Netted Agreement itself (and further, if such Netted Agreement is itself only a single transaction, that Netted Agreement itself):

(I) **Non-Performance.** The failure of a Party or its Credit Support Provider, when required, to make a payment, to deliver any Credit Support or to perform any other material obligation (other than when such obligation is released or excused pursuant to provisions of the applicable agreement, including, without limitation, those covering "Force Majeure" as defined in the applicable agreement):

(a) under the Netted Agreement; provided, that in the case of a failure to pay, such failure is not cured within two (2) Business Days of a written demand, or, in the case of any other failure of performance (not covered by sub-paragraphs (b) or (c) below, or by § 3.1(C)(IV) ***(Prolonged or Repeated Failure to Deliver or Accept)***), such failure is not cured within ten (10) Business Days of a written demand;

(b) under any Credit Support Document (after giving effect to any applicable notice or grace period thereunder); or

(c) in accordance with provisions of the applicable Netted Agreement regarding the provision of, as applicable, Credit Support, Performance Assurance or other financial security or collateral, however described.

(II) **Cross Default and Acceleration.**

(a) any default, event of default or other similar condition or event (however described) in respect of a Party, such Party's Credit Support Provider (if such Party has a Credit Support Provider) or such Party's Controlling Party (if such Party does not have a Credit Support Provider but has a Controlling Party) under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the Cross Default Threshold Amount (as specified for that Party in the Election Sheet) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable; or

(b) the default of a Party or its Credit Support Provider or Controlling Party (individually or collectively) to make one or more payments on the due date thereof in an aggregate amount of not less than the Cross Default Threshold Amount (as specified for that Party in the Election sheet) under one or more agreements or instruments relating to Specified Indebtedness (after giving effect to any applicable notice requirement or grace period).

(III) **Winding-up/Insolvency/Attachment.** A Party or its Credit Support Provider:

(a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);

(b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

(c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;

(d) institutes or has instituted against it a proceeding seeking a judgement of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and, if specified in the Election Sheet, is not withdrawn, dismissed, discharged, stayed or restrained within such period as specified in the Election Sheet;

(e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

(f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;

(g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;

(h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in §§ 3.1(C)(III)(a) to 3.1(C)(III)(g) (inclusive); or

(i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this § 3.1(C)(III).

(IV) **Prolonged or Repeated Failure to Deliver or Accept.** The failure of a Party to comply with its obligation to make or accept deliveries as required under a Netted Agreement transaction, (other than when such obligation is released pursuant to an event defined in the Netted Agreement as "Force Majeure") for more than seven consecutive days or for more than seven (7) days in aggregate within a period of sixty (60) days.

(V) **Misrepresentations and Warranty Defaults.** A representation or warranty when made or repeated or deemed to have been made or repeated by a Party to a Netted Agreement or by its Credit Support Provider in a Credit Support

Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated.

(VI) **Failures to Provide Performance Assurance.** The failure of a Party to, as applicable, provide or increase in amount, within three (3) Business Days of its receipt of a written demand therefore from the other Party (the **"Requesting Party"**) such Requesting Party believing in good faith that a Material Adverse Change has occurred and is continuing in respect of the other Party: (a) a Letter of Credit; (b) cash; or (c) other security (including a bank or parent guarantee), in a form, amount and from an Entity which is, and continues thereafter to remain, reasonably acceptable to the Requesting Party (each a **"Performance Assurance"**). For the avoidance of doubt, in the event that an Entity providing Performance Assurance on behalf of a Party does not thereafter continue to be reasonably acceptable to the Requesting Party, the Requesting Party shall have the right to require the other Party to provide to it additional, alternative and/or replacement Performance Assurance.

(a) **Material Adverse Change:** A Material Adverse Change shall have occurred if any one or more of following events has occurred and is continuing <u>in so far as such event is specified as applying to a Party in the Election Sheet</u>:

(i) **Credit Rating:** If the Credit Rating of an Entity listed in (AA) to (CC) below, each such Entity being a **"Relevant Entity"** of such Party, is withdrawn or downgraded below <u>the rating set out for such Party in the Election Sheet</u>:

(AA) the other Party (unless all of that other Party's financial obligations under all Netted Agreements are fully guaranteed or assured under a Credit Support Document);

(BB) the other Party's Credit Support Provider (other than a bank); or

(CC) any Entity (a **"Controlling Party"**) who is a party to a control and/or profit and loss transfer agreement (Berherrschungs-Gewinnabführungsvertrag) within the meaning of the German Stock Corporation Act (Aktiengesetz; AktG) (a **"Control and Profit Transfer Agreement"**) with a Party and that Party is in relation to such Entity, its subsidiary over which such Entity has control; or

(ii) **Credit Rating of a Credit Support Provider That is a Bank:** If the Credit Rating of a bank serving as the other Party's Credit Support Provider is withdrawn or downgraded below the <u>Credit Rating set out in the Election Sheet</u>.

(iii) **Financial Covenants:** In so far as a Relevant Entity does not have a Credit Rating, if such Relevant Entity does not fulfil any of the following financial requirements as determined by reference to its most recent financial statement:

(AA) **EBIT to Interest:** The ratio of EBIT to the sum of all interest and any amounts in the nature of interest charged to expense relating to financial indebtedness for borrowed money (which includes debts payable to Affiliates as well as debt instruments to financial institutions) for such Relevant Entity in any fiscal year is greater than the ratio specified in the Election Sheet;

(BB) **Funds from Operations:** The ratio of Funds from Operations to Total Debt for such Relevant Entity in any fiscal year is greater than the ratio specified in the Election Sheet; or

(CC) **Total Debt to Total Capitalisation:** The ratio of Total Debt to Total Capitalisation for such Relevant Entity in any fiscal year is less than the ratio specified in the Election Sheet.

(iv) **Decline in Tangible Net Worth:** If the Tangible Net Worth of a Relevant Entity falls below the amount specified in the Election Sheet.

(v) **Expiry of Credit Support Document:** If any Credit Support Document expires or terminates with respect to any outstanding obligations of the other Party under a Netted Agreement or this Master Netting Agreement, or, if a Credit Support Document is due to expire or terminate within the period of time, if any, specified in the Election Sheet, or the failing or ceasing of such Credit Support Document to be in full force or effect for the purposes of a Netted Agreement or this Master Netting Agreement (in each case other than in accordance with its terms or the terms of, as applicable, this Master Netting Agreement and/or the relevant Netted Agreement) before the satisfaction of all outstanding obligations of such other Party under this Master Netting Agreement and all Netted Agreements to which such Credit Support Document relates, without the written consent of the Requesting Party.

(vi) **Failure of Credit Support:** If any Credit Support Provider of the other Party disaffirms, disclaims, revokes, repudiates or rejects in whole or in part, or challenges the validity of, any Credit Support Document provided by it or otherwise fails to comply with or perform its obligations under or in respect of such Credit Support Document and such failure is continuing after any applicable grace or cure period.

(vii) **Failure of Control and Profit Transfer Agreement:** If any Controlling Party of the other Party disaffirms, disclaims, revokes, repudiates or rejects in whole or in part, or challenges the validity of any Control and Profit Transfer Agreement entered into by it or otherwise fails to comply with or perform its obligations under such Control and Profit Transfer Agreement.

(viii) **Impaired Ability to Perform:** If in the reasonable and good faith opinion of the Requesting Party, the ability of the Relevant Entity to perform its obligations under this Master Netting Agreement and any Netted Agreement, any Credit Support Document or any Control and Profit Transfer Agreement, as the case may be, is materially impaired.

(ix) **Amalgamation/Merger:** If the other Party or its Credit Support Provider undergoes a change of control, consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates, or reconstitutes into or as, another Entity, or another Entity transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates, or reconstitutes into or as, such other Party or its Credit Support Provider and:

(AA) the creditworthiness of such Party, its Credit Support Provider or the resulting, surviving, transferee or successor Entity is materially weaker than that of the other Party or such Credit Support Provider, as the case may be, immediately prior to such action;

(BB) the resulting, surviving, transferee or successor Entity fails to assume all the obligations of that other Party or such Credit Support Provider under this Master Netting Agreement and all Netted Agreements or any Credit Support Document to which it or its predecessor was a party either by operation of law or pursuant to an agreement reasonably satisfactory to the Requesting Party; or

(CC) the benefits of any Credit Support Document cease or fail to extend (without the consent of the Requesting Party) to the performance by such resulting, surviving, transferee or successor Entity of its obligations under this Master Netting Agreement and all Netted Agreements.

(VII) **Additional Harmonised Default Events.** Any additional events specified in the Election Sheet as Additional Harmonised Default Events.

2. **Excluded Default Events.** Notwithstanding anything to the contrary express or implied herein, any events designated by the Parties as Excluded Default Events in the Election Sheet shall not constitute Close-Out Events for purposes of this Master Netting Agreement.

§ 4

The Right to Close-Out, Its Effect and Applicable Limitations

1. **Termination and Close-Out of the Netted Agreements.** If a Close-Out Event has occurred and is continuing in respect of a Party, then the other Party (the "**Terminating Party**") shall be entitled to Close-Out all transactions under all of its Netted Agreements (provided, however, that absent an election to disapply § 4.2 ***(Global Nature of Close-Out)*** , it may not Close-Out less than all transactions under all such Netted Agreements, and, if applicable, the Netted Agreements themselves (and if any such Netted Agreement is itself a single transaction, such Netted Agreement itself) by providing a Termination Notice under § 5.1 (***Termination Notice***); and provided further, that no Termination Notice shall be required for the Close-Out of any Netted Agreement and its underlying transactions which have been Closed-Out automatically by, as applicable, either the Netted Agreement's own terms or the terms of this Master Netting Agreement set forth in § 6 (***Customization of Automatic Termination Rights***). A Close-Out Event will be deemed to be continuing until the earlier of such time as the conditions that constituted the Close-Out Event cease to exist or the payment in full of any amount that has become due and

payable, as applicable, hereunder or under the terms of all relevant Netted Agreements, as the result of the occurrence of such Close-Out Event. Each Netted Agreement is hereby amended accordingly.

2. **Global Nature of Close-Out.** Unless the Parties have provided otherwise in their Election Sheet, the scope of the Close-Out process under this Master Netting Agreement shall be global in respect of all Netted Agreements. Absent such contrary election, a Party may not Close-Out under fewer than all of its Netted Agreements and any attempt to initiate Close-Out of any fewer than all of such Netted Agreements shall initiate Close-Out of the remainder pursuant to the procedure set forth in § 5.2 (***Effect of Attempting to Initiate Close-Out of Less Than All Netted Agreements***). For the avoidance of doubt, absent the elections to both disapply this § 4.2 and to specify in the Election Sheet what alternative, non-global termination parameters will apply, a Party, from the Effective Date of this Master Netting Agreement, shall have no further right to voluntarily initiate by the giving of notice the Close-Out of a Netted Agreement pursuant to its own terms, nor, absent the Close-Out of all Netted Agreements may any single Netted Agreement automatically Close-Out pursuant to any terms providing for the same contained within the terms of a Netted Agreement, and each Netted Agreement is hereby amended accordingly.

3. **Effect of Initiation of Close-Out.** With effect from the Early Termination Date all further payment and performance obligations in respect of all transactions under such Netted Agreements shall be released (and not merely suspended) and all remaining duties and obligations of the Parties under each such Netted Agreement to schedule deliveries and acceptances and to effect ordinary payments and settlements shall be replaced by the single, surviving obligation of one Party to pay the other a Settlement Amount in respect of each Closed-Out Agreement in accordance with its terms, as amended by the terms of § 7 (***Determination and Settlement of Settlement Amounts***) and § 8 (***Netting-off of Settlement Amounts; Accrual of Interest***); and, pursuant to the terms of this Master Netting Agreement, those Settlement Amount payment obligations in respect of each Closed-Out Agreement shall be further consolidated by netting them off into a resultant single Final Net Settlement Amount due from one Party to the other in accordance with the provisions of § 8 (***Netting-off of Settlement Amounts; Accrual of Interest***).

§ 5

Voluntary Commencement of Close-Out

1. **Termination Notice.** Unless Close-Out has been initiated automatically in accordance with the procedures set forth below in § 6 (***Customization of Automatic Termination Rights***), the Terminating Party shall initiate Close-Out under all of the Netted Agreements by sending to the Defaulting Party a notice (the "**Termination Notice**") which notice may be, but need not be, in the form provided in the attached Annex 2 (***Form of Termination Notice***), specifying the date on which all transactions under all Netted Agreements are Closed-Out (the "**Early Termination Date**"). The Termination Notice given must be given in conformance with the notification requirements of §12.6 ***(Addresses for Communications Between Parties)*** and shall be deemed to satisfy the notice requirements of each Netted Agreement. The Early Termination Date designated may be no earlier than the day the Termination Notice is deemed to be received under the terms of this Master Netting Agreement and shall be no later than the day falling twenty (20) days after such day.

2. **Effect of Attempting to Initiate Close-Out of Less Than All Netted Agreements.** Unless the Parties have elected to disapply § 4.2 (***Global Nature of Close-Out***), in the event that the Terminating Party attempts to exercise any right to Close-Out one or more (but not all) of the Netted Agreements, the exercise of such right shall be deemed to be effective provision of a

Termination Notice, thereby initiating Close-Out, effective on the designated Early Termination Date, of all the Netted Agreements.

3. **Amendment to Early Termination Provisions of All Netted Agreements.** The provisions of each Netted Agreement governing its Close-Out are hereby amended to conform to the terms of this § 5 (***Voluntary Commencement of Close-Out***).

§ 6

Customization of Automatic Termination Rights

1. **Automatic Termination and Global Close-Out.** If the Parties have elected to apply § 3.1(B) ***(Netted Agreement Default Events)*** and have further not elected to disapply either § 4.2 ***(Global Nature of Close-Out)*** or this § 6.1, then upon the Automatic Termination of any Netted Agreement pursuant to its own terms, all other Netted Agreements shall automatically and immediately terminate as well, regardless of whether any or all such Netted Agreement(s) contain (an) Automatic Termination provision(s) of their own. And if applicable, the terms of each Netted Agreement are amended to so provide.

2. **Optional Uniform Election of Automatic Termination and Close-Out**. Notwithstanding any contrary election made in such Netted Agreement, if the Parties provide in the Election Sheet to make this § 6.2 operative, the terms of each Netted Agreement shall be amended to provide that, upon the occurrence of an Automatic Termination Close-Out Event designated in the Election Sheet as applying to a Party or, as applicable, its Credit Support Provider or Controlling Party, then all, but not fewer than all, Netted Agreements shall automatically Close-Out in accordance with their own terms, but with such Close-Out being effective as of the time of termination specified in the Election Sheet.

3. **Automatic Termination Mechanics.** Upon commencement of Close-Out pursuant to the terms of this § 6.1 ***(Automatic Termination and Global Close-Out)*** or § 6.2 ***(Optional Uniform Election of Automatic Termination and Close-Out)***, and effective as of the time specified for such termination in, as applicable, either the Election Sheet or the terms of the first Closed-Out Agreement to so Close-Out, Close-Out of the Netted Agreements shall be as provided in § 4.3 (***Effect of Initiation of Close-Out***); provided, however, that the Close-Out shall commence automatically and the Terminating Party need not send the Defaulting Party any Termination Notice in order to effectuate the commencement of such Close-Out.

4. **Automatic Early Termination and Adjustment for Bankruptcy.** If this § 6.4 is designated as operative by the Parties in their Election Sheet, in circumstances where Close-Out occurs automatically, the relevant Settlement Amount will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one Party to the other under the relevant Netted Agreement (and retained by such other Party) during the period from the date of Close-Out to the date of calculation of the relevant Settlement Amount.

§ 7

Determination and Settlement of Settlement Amounts

1. **Determination of Settlement Amounts.** The Settlement Amount under each Closed-Out Agreement shall be determined in accordance with the terms of such Closed-Out Agreement.

2. **Conversion of Settlement Amounts Into the Base Currency.** When a Close-Out has been commenced and there is more than one Settlement Amount and one or more of those

Settlement Amounts is denominated in a currency other than the Base Currency (the "**Other Currency**"), the Terminating Party shall determine the amount in the Base Currency (the "**Base Currency Equivalent**") that would result from the conversion of such Settlement Amount into the Base Currency at the spot exchange rate at which the Terminating Party can buy the Base Currency with the Other Currency, as determined in any commercially reasonable manner, for value on the relevant Final Settlement Date for the Settlement Amount. If all Settlement Amounts are denominated in a single currency other than the Base Currency, the Terminating Party may, notwithstanding a contrary designation of Base Currency in the Election Sheet, designate such other currency to be the Base Currency.

3. **Settlement of Settlement Amounts in Accordance with this Master Netting Agreement.** When Close-Out has been commenced, all Settlement Amounts of Closed-Out Agreements shall be determined at the times and in the manner set forth in this § 7 (***Determination and Settlement of Settlement Amounts***) and in § 8 (***Netting-off of Settlement Amounts; Accrual of Interest***), notwithstanding any provision to the contrary in any Closed-Out Agreement. The date specified for settlement of such Settlement Amounts in the terms of each respective Netted Agreement shall be the Early Termination Date and each Netted Agreement is hereby amended accordingly.

§ 8

Netting-Off of Settlement Amounts; Accrual of Interest

1. **Netting-Off.** If, on the Early Termination Date both Parties owe one or more Settlement Amounts under two or more Closed-Out Agreements, such settlement amounts shall be aggregated and netted-off, and only the difference, if any, between the two offsetting aggregate amounts (a "**Final Net Settlement Amount**") shall be owed on the Early Termination Date by the Party with the larger aggregate obligation.

2. **Discharge of Settlement Amount.** If a Settlement Amount has been netted off in whole or in part on the Early Termination Date, such Settlement Amount shall, to the extent of such netting-off, be deemed to have been discharged and no longer due under the relevant Closed-out Agreement.

3. **Final Net Settlement Amount.**

   (A) **Final Net Settlement Amount for Closed-Out Agreements.** The Terminating Party shall determine the Final Net Settlement Amount due and provide to the Defaulting Party a statement showing the calculation of the Final Net Settlement Amount (which may be, at the option of the Terminating Party, provided at the same time and as part of the Termination Notice or by separate notice following the Early Termination Date).

   (B) **Final Settlement Date.** The Final Net Settlement Amount shall be payable by the Party from whom such payment is due on or before the Business Day falling three (3) Business Days after the Business Day on which the statement is provided under §8.3(A) (***Final Net Settlement Amount for Closed-Out Agreements***) hereof (the "**Final Settlement Date**").

   (C) **Place of Payment and Base Currency.** Subject to the last sentence of § 7.2 (***Conversion of Settlement Amounts Into the Base Currency***), the Final Net Settlement Amount shall be paid in the Base Currency, and in conformance with the payment instructions specified in respect of the Party receiving the Final Net Settlement Amount, in the Election Sheet (or such alternative payment instructions as are provided by the Terminating Party in the statement provided pursuant to § 8.3(A) ***(Final Net Settlement Amount for Closed-Out Agreements)***, together with interest thereon, from (and including) the Final Settlement Date to (but excluding) the date such amount is paid, at the rate specified in § 8.4 (***Accrual of Interest on the Final Net Settlement Amount***). If the Party owing the Final Net Settlement Amount has more than one branch, there shall be no limitation as to the place of payment of the obligation, unless otherwise specified by the Parties hereto.

4. **Accrual of Interest on the Final Net Settlement Amount.** The Final Net Settlement Amount shall bear interest at the then prevailing Interest Rate specified by the Parties in the Election Sheet, from (and including) the Final Settlement Date to (but excluding) the date of actual payment.

§ 9

Credit Support / Performance Assurance

1. **Benefit of Credit Support.** If this § 9.1 is specified in the Election Sheet as applying, and without limitation to § 8.1 (***Netting-Off***), if a Party to whom a Settlement Amount is payable under any Closed-Out Agreement has the benefit of Credit Support under any Closed-Out Agreement or this Master Netting Agreement, then such Party shall include the Settlement Amount within its process of netting-off pursuant to § 8.1 (***Netting-Off***) but shall only be entitled to apply such Credit Support against the Final Net Settlement Amount. For such purposes:

   The definition of Settlement Amount in Annex 1, ***(Defined Terms)*** is restated as follows:

   "**Settlement Amount**" means, in respect of any Closed-Out Agreement, the net amount which is due and payable by one Party to the other upon: (i) all transactions under such Closed-Out Agreement having been Closed-Out, (ii) the resulting obligations of the Parties having been determined, but (iii) notwithstanding the terms of the applicable Closed-Out Agreement, the Parties shall be treated as not being entitled to exercise any rights to Credit Support in determining the Settlement Amount under any Closed-Out Agreement.

2. **Fungible Use of Credit Support.** If this §9.2 ***(Fungible Use of Credit Support)*** has been applied by the Parties in the Election Sheet, Credit Support in the form of cash which is provided, held, requested and/or delivered by and between the Parties and, if applicable, their Credit Support Providers, in respect of amounts owed or exposures under any one or more Netted Agreement or this Master Netting Agreement, may be used and applied by the Terminating Party fungibly, as, where and when needed for purpose of calculation of a Settlement Amount as contemplated in §9.1 ***(Benefit of Credit Support)*** notwithstanding any contrary implication, statement or limitation contained in any related Credit Support Document or correspondence or communication between the Parties, their Credit Support Providers or otherwise.

§ 10

Additional Optional Provisions Relating to Close-Out

1. **Designation of Additional Optional Provisions.** The following additional optional provisions set forth immediately hereinafter in §§ 10.1(A) and 10.1(B) shall not be a part of this Master Netting Agreement unless such provision(s) (is/are) expressly

incorporated by the Parties into the Master Netting Agreement by designation of such provision as operative in the Election Sheet, and, if and when so selected, shall be incorporated herein in the form(s), if and where applicable, in which the same have been further customized and amended by the Parties in the Election Sheet:

(A) **Set-Off of Final Net Settlement Amount.**

(I) **Set-Off Rights.** Where under the terms of § 8.3(B) (***Final Settlement Date***) the Final Net Settlement Amount is payable to or by the Defaulting Party, the Terminating Party may, at its option and without prior notice to the Defaulting Party, set off the Final Net Settlement Amount or part thereof against any payment obligation of ot to the Defaulting Party (whether or not matured, contingent or invoiced) under any other agreements, instruments or undertakings between the Parties. The right of set-off shall be without prejudice and in addition to any right of set-off, combination of accounts, lien, charge or other right to which any Party is at any time otherwise entitled (whether by operation of law, by contract or otherwise). If an amount is unascertained, the Terminating Party may reasonably estimate the amount to be set off.

(II) **No Security Interest Created.** Nothing in this § 10.1(A) is intended to create or does create in favor of either Party a mortgage, charge, lien, pledge, encumbrance or other security interest.

(III) **Base Currency Conversion.** Payment obligations of the Defaulting Party under any agreements, instruments or undertakings between the Parties that are denominated in a currency other than the Base Currency shall, in order to effect set-off in accordance with this § 10.1(A), be converted into a Base Currency Equivalent under the principles set out in § 7.2 (***Conversion of Settlement Amounts Into the Base Currency***).

(B) **Suspension.**

(I) **Rights to Suspend.** If: (i) a Party has a right to Close-Out or (ii) an event (a "**Potential Close-Out Event**") occurs that with the passage of time or the giving of notice would give a Party a right to Close-Out, then that Party (the "**Suspending Party**") shall, for so long as the Potential Close-Out Event continues or it has a right to Close-Out, be entitled to cease further delivery, acceptance, nomination and notification under each Netted Agreement (and upon the Suspending Party so ceasing, each Party shall be released (and not merely suspended) from the underlying delivery, acceptance, notification and nomination obligations) under all (but not some) Netted Agreements, provided (subject to sub-paragraph (II) below) that the Suspending Party gives X hours written notice to the other Party of the exercise by it of its rights pursuant to this provision and the Suspending Party does not subsequently seek to deliver, accept, nominate or notify in relation to any obligations arising under such Netted Agreements without first giving at least Y hours written notice to the other Party of its intention to re-commence delivery, acceptance, nomination or notification. For the purposes of this paragraph (I), X and Y shall have the meanings given to them in the Election Sheet.

(II) **Right to Withhold Payments.** If a Party has a right to Close-Out, or if a Potential Close-Out Event has occurred, then the Suspending Party shall, for so long as the Potential Close-Out Event continues or it has a right to Close-Out, have the right, without providing notice to the other Party, to withhold payments owed by it to the other Party under all (but not some) Netted Agreements, and, if applicable, under § 11 (***Payment Netting***).

(III) **Obligations of Other Party.** Where the Suspending Party exercises its rights under sub-paragraph (I) above, the other Party shall notify, nominate or renominate volumes and quantities to any system operator to reflect the cessation referred to in sub-paragraph (I).

(IV) **No Impact on Right to Close-Out.** The exercise by the Suspending Party of its rights under this § 10.1(B) shall not prevent it from subsequently exercising its Close-Out rights under this Master Netting Agreement, and are without prejudice to the Suspending Party's existing rights under any Netted Agreement.

(V) **Indemnification Obligation.** If a Suspending Party purports to exercise its rights under sub-paragraph (I) and/or (II) above in circumstances where neither a Close-Out Event nor a Potential Close-Out Event has in fact occurred in respect of the other Party, then the Suspending Party shall indemnify and hold harmless the other Party against any liabilities, imbalance charges or other costs reasonably incurred by the other Party in respect of any transactions under a Netted Agreement as a result of the Suspending Party's purported exercise of its rights under sub-paragraph (I) and/or (II) above.

(VI) **Amendment to Netted Agreement Terms**. Each Netted Agreement shall be amended in order to render its terms consistent with the terms of this §10.1(B).

§ 11

Payment Netting

1. **Payment Netting Election.** If this § 11.1 is made operative by the Parties in the Election Sheet, financial settlement and payment obligations (hereinafter "**Payment Obligations**") assumed in respect of transactions under, and imposed and governed by, a Concerned Agreement, notwithstanding any contrary provisions or terms contained therein, shall be paid and settled in accordance with the terms of this § 11, and the relevant payment and financial settlement terms and provisions of each such Concerned Agreement are hereby amended accordingly. The scope of this § 11 is limited to payments owed between the Parties under Concerned Agreements in the ordinary course of their trading activities and absent any Close-Out of such Concerned Agreements, which Payment Obligations, unless otherwise agreed by the Parties in respect of §11.3 ***(Harmonised Due Date)***, fall due on the same date (each, a "**Due Date**") and also in the same currency. Accordingly, nothing in this § 11 shall amend, override, restate or otherwise alter any of the provisions of this Master Netting Agreement concerning Close-Out and the accrual and obligation to make, or the mechanics provided herein for the payment of, a Final Net Settlement Amount.

2. **Designation of Concerned Agreements.** The Parties shall specify in the Election Sheet as "**Concerned Agreements**" those agreements and transactions between them across which

they wish to provide for and implement hereunder a system of offsetting netted settlement payments in lieu of the agreement-specific terms of payment provided for therein.

3. **Harmonised Due Date.** If the Parties have elected to make this §11.3 operative, they agree that all obligations imposed under the Concerned Agreements to effect regularly scheduled Payments Obligations on the dates such Payment Obligations become due and payable pursuant to the original terms of each Concerned Agreement shall be amended to provide that such Payment Obligations become due and payable by the tenth (10th) Business Day of the calendar month following, as applicable, the delivery, acceptance and scheduling, or similar performance of service, under a transaction, for the previous month (the "**Harmonised Due Date**"), provided that the Party who, if applicable, is the buyer (or Party otherwise obligated to make a payment) under such transaction has received in accordance with the terms of the Concerned Agreement governing such transaction an invoice pursuant to § 11.4 (***Invoice***) below not later than, and in each case including:

   (A) the fifth (5th) Business Day preceding and excluding the Harmonised Due Date for transactions governed by the Concerned Agreements specified in the Election Sheet as applying to this § 11.3(A), and

   (B) the fourth (4th) Business Day preceding and excluding the Harmonised Due Date for transactions governed by the Concerned Agreements specified in the Election Sheet as applying to this § 11.3(B).

   Payment Obligations deriving from transactions for which an invoice has not been received within the time periods stipulated under (a) and (b) above shall not become due and payable on the Harmonised Due Date but shall instead remain due and payable in accordance with the original billing and payment terms of the Concerned Agreement (unamended by this § 11) under which they were transacted.

4. **Invoice.** Each Party who is a seller (or otherwise entitled to receive a payment) in a transaction under a Concerned Agreement shall transmit to the other Party in the course of the calendar month following, as applicable, delivery, acceptance and scheduling, or similar performance of service for the previous calendar month, an invoice setting forth the total quantities, as applicable, sold or with respect to which settlement was otherwise required under the terms of each transaction and/or the Concerned Agreement in the previous calendar month. In connection with such invoice the Party shall state all amounts then owed between the Parties pursuant to the transactions and Concerned Agreements including, without limitation, all amounts owed for the purchase and sale, fees, charges, reimbursements, damages, interest, and other payments, settlements or credits, VAT and other taxes due and owed then between the Parties, and the Net Payment Amount due pursuant to § 11.5 (***Payment Netting***).

5. **Payment Netting.** If on, as applicable, a Due Date or Harmonised Due Date, there are any amounts due under one or more transactions under one or more Concerned Agreements, which would otherwise be payable by each Party to the other, then such amounts will be aggregated and the Parties shall discharge their respective Payment Obligations through netting, in which case the Party, if any, owing the greater aggregate amount shall pay the other Party the difference between the aggregate amounts owed (the "**Net Payment Amount**").

6. **Payment.** On, as applicable, a Due Date or Harmonised Due Date, the Party owing the Net Payment Amount shall pay by wire transfer in freely available funds to the other Party's bank account as specified for such Party and such purposes in the Election Sheet.

7. **Default Interest.** Late payments shall accrue interest from, and including, as applicable, the Due Date or Harmonised Due Date, to, but excluding, the date of payment at the Default Interest Rate as specified in the Election Sheet.

8. **Payment Default.** The failure to pay a Net Payment Amount shall be deemed to be a failure to pay an amount owed under each transaction or, as the case may be, owed under a Concerned Agreement and, unless otherwise agreed in this Master Netting Agreement, the Party the Net Payment Amount is owed to shall have all the rights and remedies which apply to the failure to pay according to the terms of such transactions or the Concerned Agreements. Each Concerned Agreement is hereby amended accordingly.

9. **Disputed Amounts.** If a Party, in good faith, disputes the accuracy of any invoice, it shall on or before, as applicable, the Due Date or Harmonised Due Date, provide a written explanation for the basis for the dispute and shall pay:

   (A) if this § 11.9 (A) is specified in the Election Sheet as applying, subject to manifest error, the full Net Payment Amount invoiced not later than, as applicable, the Due Date or Harmonised Due Date. If any amount paid under dispute is finally determined to have not been due, such overpayment shall, at the election of the owed Party, be credited or returned to it within ten (10) days of such determination, along with interest accrued at the Interest Rate as specified in the Election Sheet from, and including, the date such amount was paid, to the other Party, but excluding, the date returned or credited; or

   (B) if this § 11.9 (B) is specified in the Election Sheet as applying, the undisputed amount invoiced no later than, as applicable, the Due Date or Harmonised Due Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount shall, at the election of the owed Party, be credited or returned to it within ten (10) days of such determination, along with interest accrued at the Interest Rate from, and including, the date such amount was due, to the other Party, but excluding the date paid or credited.

§ 12

Miscellaneous and Optional Provisions

1. **Representations and Warranties.** Each Party represents and warrants to the other, which representations and warranties are deemed repeated each time the Parties enter into any transaction under a Netted Agreement and into any Netted Agreement, that: (a) it is duly authorized to execute and deliver this Master Netting Agreement and to perform its obligations hereunder and has taken all necessary actions to authorize such execution, delivery and performance, (b) the person signing this Master Netting Agreement on its behalf is duly authorized to do so on its behalf, and (c) this Master Netting Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, conservatorship, receivership, moratorium or other similar laws affection creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law). Each Party represents and warrants to the other that it has not transferred (whether by security or otherwise) assigned, purported to assign or otherwise dispose or disposed of, any of its rights to any amounts that may be owed to it under any Netted Agreement. Each Party further represents and warrants

to the other any such additional representations and warranties, if any, as are specified in the Election Sheet.

2. **Governing Law.** This Master Netting Agreement, and any dispute arising out of, relating to or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the substantive laws of the country and legal system specified for such purposes in the Election Sheet. The rights of the Parties under this Master Netting Agreement shall be in addition to, and not in limitation or exclusion of, any other rights which they may have (whether by agreement, operation of law or otherwise).

3. **Appointment of Process Agent.** Each Party irrevocably appoints the Process Agent (if any) specified for it in the Election Sheet to receive, for it and on its behalf, service of process in any suit, action or proceedings relating to this Master Netting Agreement. If for any reason any Party's Process Agent is unable to act as such, such Party will promptly notify the other Party and within thirty (30) days appoint a substitute process agent acceptable to the other Party. The Parties irrevocably consent to service of process given in the manner provided for in this Master Netting Agreement.

4. **Selection of Arbitration and/or Jurisdiction.**

   (A) **Jurisdiction.** If this § 12.4 (A) is specified in the Election Sheet as applying, each Party consents to the exclusive jurisdiction of the courts of the country whose law is selected to govern this Master Netting Agreement for purposes of the resolution of any dispute arising under or in connection with this Master Netting Agreement.

   (B) **London Court Arbitration.** If this § 12.4 (B) is specified in the Election Sheet as applying, any disputes which arise in connection with this Master Netting Agreement, including any question regarding its existence, or validity, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three, each Party having the right to nominate one arbitrator. The place of arbitration shall be London, England where all hearings and meetings shall be held, unless the Parties agree otherwise. Unless otherwise specified in respect of § 12.4(C), the language to be used in the arbitral proceedings shall be English and the Parties hereby expressly waive any right of appeal to any court having jurisdiction on any question of fact or law. It is agreed that the arbitrators shall have no authority to award exemplary or punitive damage of any type under any circumstances whether or not such damage may be available under the relevant applicable law, the Parties hereby waiving their right, if any, to recover such damages.

   (C) **DIS Arbitration.** If this § 12.4 (C) is specified in the Election Sheet as applying, any disputes which arise in connection with this Master Netting Agreement shall be referred for resolution to the German Institution of Arbitration (DIS) and decided according to its rules, ousting the jurisdiction on the ordinary courts. The numbers of arbitrators shall be three. The arbitration shall be conducted in the English language unless provided otherwise in the Election Sheet. The place of arbitration shall be Frankfurt, Germany where all hearings and meetings shall be held, unless the Parties agree otherwise.

5. **Limitations on Assignment and Transfer:** Unless provided otherwise in the Election Sheet, neither this Master Netting Agreement nor any Netted Agreement nor any interest in or under this Master Netting Agreement or any Netted Agreement may be transferred (whether by way

of security or otherwise) or assigned by either Party without the prior written consent of the other Party, except that a Terminating Party may make a transfer or assignment of all or any part of its interest in any Final Net Settlement Amount payable to it under § 8.3(B) (***Final Settlement Date***) hereof (and any of the interest thereon payable to it under § 8.4(C) (**Accrual of *Interest on the Final Net Settlement Amount***) hereof). Unless provided otherwise by amendment of these terms, any purported transfer or assignment that is not in compliance with this § 12.5 shall be void. The terms of this § 12.5 shall prevail over any inconsistent provisions contained in the Netted Agreements or Credit Support Documents.

(A) If the Parties have agreed in respect of either or both of them to apply this § 12.5(A), and notwithstanding anything to the contrary express or implied by the preceding paragraph of § 12.5, a Party may make such a transfer or assignment of this Master Netting Agreement and all of its Netted Agreements (but no fewer than all of such Netted Agreements) to an Affiliate; provided that such Affiliate is of an equivalent or greater creditworthiness than the assigning and transferring Party and is duly incorporated or organized in the same jurisdiction as the assigning and transferring Party. Such assignment and transfer shall only become effective upon notice of such transfer and assignment being received by the other Party and provided that any Credit Support Document issued or agreed on behalf of the assigning and transferring Party has first been reissued or amended to support the obligations of the Affiliate for the benefit of the other Party.

6. **Addresses for Communications Between Parties.** All notices sent by one Party to the other shall be in writing and shall be delivered by letter (overnight mail or courier, postage prepaid) or facsimile to the address provided for such Party in the Election Sheet. Each Party may change its notice information by two Business Days written notice to the other. Written notices shall be deemed received and effective:

(A) if delivered by hand, on the day delivered if delivered before 17.00 hours (recipient's time) on a Business Day or otherwise on the first Business Day after the date of delivery;

(B) if sent by first class post, on the second (2^{nd}) Business Day after the date of posting, or if sent from one country to another, on the fifth (5^{th}) Business Day after the day of posting; or

(C) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 17.00 hours (recipient's time) on a Business Day or otherwise at 09.00 hours (recipient's time) on the first Business Day after transmission.

7. **Rights of Third Parties.** The Parties do not intend that any third party shall have any rights under or be able to enforce the Master Netting Agreement and the Parties exclude to the extent permitted under applicable law any such third party rights that might otherwise be implied.

8. **No Waiver.** A failure or delay in exercising any right, power or privilege in respect of this Master Netting Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

9. **Partial Invalidity.** If, at any time, any provision of this Master Netting Agreement, a Netted Agreement or any transaction thereunder is or becomes illegal, invalid or

unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this Master Netting Agreement, any Netted Agreement or transaction thereunder, shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision that comes as close as possible to the invalid provision as regards its economic intent.

10. **Counterparts.** This Master Netting Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

Executed by the duly authorized representative of each Party and effective as of its designated Effective Date.

[**Name of Party A**]

By: ....

Name:
Title:

[**Name of Party B**]

By: ....

Name:
Title:

EFET

European Federation of Energy Traders

ELECTION SHEET
to the
Master Netting Agreement

This Election Sheet amends, restates, supplements, revises and forms a part of the Master Netting Agreement with an Effective Date of [ ] (the "**Master Netting Agreement**") between [ ] ("**Party A**") and [ ] ("**Party B**").

PART I: CUSTOMIZATION OF PROVISIONS

§ 2

Scope of Early Termination and Close-Out Netting Rights

§ 2.1 Designation of Agreements Which May Be Terminated, Closed-Out and Netted:

The following shall be "Netted Agreements":

[ ] **EFET Power**	Any European Federation of Energy Traders form General Agreement Concerning the Delivery and Acceptance of Electricity ("**EFET Power**") in effect between the Parties, including, without limitation, that certain EFET Power agreement with an Effective Date of [__________], including all amendments thereto
[ ] **EFET Gas**	Any European Federation of Energy Traders form General Agreement Concerning the Delivery and Acceptance of Natural Gas ("**EFET Gas**") in effect between the Parties, including, without limitation, that certain EFET Gas agreement with an Effective Date of [__________], including all amendments thereto
[ ] **GTMA**	Any Electricity Forward Agreement Association form Grid Trade Master Agreement ("**GTMA**") in effect between the Parties, including, without limitation, that certain GTMA dated [__________], including all amendments thereto
[ ] **ISDA**	Any International Swaps and Derivatives Association, Inc. form Master Agreement (Multicurrency - Cross-Border) ("**ISDA**") in effect between the Parties, including, without limitation, that certain ISDA dated [__________], including all amendments thereto
[ ] **ZBT 2004**	Any agreement in effect between the Parties based upon the 2004 release of the Zeebrugge Hub Natural Gas Trading Terms and Conditions, including, without limitation, that certain ZBT '04 dated [__________], including all amendments thereto

[ ] **ETMA**	Any International Emissions Trading Association form Emissions Trading Master Agreement for the EU Scheme© (**"ETMA"**) in effect between the Parties including, without limitation, that certain ETMA dated [__________], including all amendments thereto
[ ] **IETMA**	Any International Emissions Trading Association form International Emissions Trading Master Agreement© (**"IETMA"**) in effect between the Parties including, without limitation, that certain IETMA dated [__________], including all amendments thereto
[ ] **NBP '97 Master Agreement**	Any master agreement in effect between the Parties incorporating the Short Term Flat NBP Trading Terms and Conditions 1997 including, without limitation, that certain NBP '97 Agreement dated [__________], including all amendments thereto
[ ] **FEMA**	Any Nordic Association of Energy Traders form Financial Energy Master Agreement (**"FEMA"**) in effect between the Parties including, without limitation, that certain FEMA dated [__________], including all amendments thereto
[ ] **German Master Agreement / *Deutscher Rahmenvertrag***	Any Master Agreement for Financial Derivates Transactions (incl. any Addenda) *("Rahmenvertrag für Finanztermingeschäfte" inkl. "Anhänge")* in effect between the Parties, including, without limitation, that *Deutscher Rammenvertrag* dated as of [__________], including all amendments thereto
[ ] **Other Master Trading Agreements**	Any master agreement between the Parties covering securities contracts, spot or forward, physically or cash settling commodity contracts or currency contracts, repurchase agreements, swap agreements and any other physical or cash settling transaction whether currently in existence or arising hereafter.
[ ] **Long Form Confirmation Agreements**	All agreements or transactions between the Parties similar to the transactions covered by the Netted Agreements designated above that are documented under a confirmation or similar document which incorporates by reference all or some of the terms of one of the Netted Agreements designated above.
[ ] **Other**	[Specify]:

[ ] **Additional Netted Agreements.** The Parties wish to further expand the applicable definition of Netted Agreement beyond those master trading and netting agreements, if any, specified immediately above, in the manner and as further provided, and subject to any further limitations on such definition imposed, in the attached ***Additional Netted Agreement Rider to the Master Netting Agreement's Election Sheet***, appended hereto as ***Part III*** of this Election Sheet and, if the preceding box is checked, such Additional Netted Agreement Rider to the Master Netting Agreement's Election Sheet is thereby made a part of, and incorporated in, the Master Netting Agreement.

§ 2.2 **Exclusion of Agreements and Transactions from this Master Netting Agreement:**

The "**Excluded Agreements**" between the Parties are:

§ 3

Close-Out Events

§ 3.1 **Definition of "Close-Out Event":** The following shall be Close-Out Events:

[ ] **§ 3.1(A)** the following designated **Master Netting Agreement Default Events,** if any, shall be Close-Out Events:

[ ] **§ 3.1(A)(I) Master Netting Agreement Misrepresentations**

[ ] **§ 3.1(A)(II) Master Netting Agreement Covenant Violations**

[ ] **§ 3.1(A)(III) Credit Support Defaults**

[ ] **Other Master Netting Agreement Default Events** [SPECIFY]

AND EITHER:

[ ] **§ 3.1(B)** the **Netted Agreement Default Events** shall be Close-Out Events;

OR

[ ] **§ 3.1(C)** The following designated **Harmonised Default Events** shall apply and shall be Close-Out Events:

[ ] **§ 3.1(C)(I) Non-Performance**

[ ] **§ 3.1(C)(II) Cross Default and Acceleration**

and the **Cross Default Threshold Amount(s)** applicable shall be:

[ ] For **Party A:** ____________________ and/or

[ ] For **Party B:** ____________________

[ ] **§ 3.1(C)(III) Winding-up/Insolvency/Attachment**;

and the applicable time period for purposes of subparagraph (iv) shall be: ____________

[ ] **§ 3.1(C)(IV) Prolonged or Repeated Failure to Deliver or Accept**

[ ] **§ 3.1(C)(V) Misrepresentations and Warranty Defaults**

[ ] **§ 3.1(C)(VI) Failures to Provide Performance Assurance,** and, for purposes of **§ 3.1(C)(VI)(a) Material Adverse Change:**

the following categories of Material Adverse Change shall apply to **Party A**:

[ ] §3.1(C)(VI)(a)(i) **(Credit Rating)**, and the minimum rating shall be: ______________;
[ ] §3.1(C)(VI)(a)(ii) (**Credit Rating of Credit Support Provider that is a Bank**);
[ ] §3.1(C)(VI)(a)(iii) (**Financial Covenants**), and
the EBIT to Interest ratio shall be: __________,
the Funds From Operations to Total Debt ratio shall be: _________, and
the Total Debt to Total Capitalisation ratio shall be: ________;
[ ] §3.1(C)(VI)(a)(iv) (**Decline in Tangible Net Worth**), and the relevant figure is: ______;
[ ] §3.1(C)(VI)(a)(v) (**Expiry of Credit Support Document**), and
[ ] the relevant time period shall be ________ , or
[ ] no time period shall apply;
[ ] §3.1(C)(VI)(a)(vi) **(Failure of Credit Support)**;
[ ] §3.1(C)(VI)(a)(vii) **(Failure of Control and Profit Transfer Agreement)**;
[ ] §3.1(C)(VI)(a)(viii) **(Impaired Ability to Perform)**; and
[ ] §3.1(C)(VI)(a)(ix) **(Amalgamation/Merger)**

the following categories of Material Adverse Change shall apply to **Party B**:

[ ] §3.1(C)(VI)(a)(i) **(Credit Rating)**, and the minimum rating shall be: ______________;
[ ] §3.1(C)(VI)(a)(ii) (**Credit Rating of Credit Support Provider that is a Bank**);
[ ] §3.1(C)(VI)(a)(iii) (**Financial Covenants**), and
the EBIT to Interest ratio shall be: __________,
the Funds From Operations to Total Debt ratio shall be: _________, and
the Total Debt to Total Capitalisation ratio shall be: ________;
[ ] §3.1(C)(VI)(a)(iv) (**Decline in Tangible Net Worth**), and the relevant figure is: ______;
[ ] §3.1(C)(VI)(a)(v) (**Expiry of Credit Support Document**), and
[ ] the relevant time period shall be ________ , or
[ ] no time period shall apply;
[ ] §3.1(C)(VI)(a)(vi) **(Failure of Credit Support)**;
[ ] §3.1(C)(VI)(a)(vii) **(Failure of Control and Profit Transfer Agreement)**;
[ ] §3.1(C)(VI)(a)(viii) **(Impaired Ability to Perform)**; and
[ ] §3.1(C)(VI)(a)(ix) **(Amalgamation/Merger)**

[ ] **§ 3.1(C)(VII)** The following **Additional Harmonised Default Events: [___*Specify*___]**

§ 3.2 Excluded Default Events:

[ ] Notwithstanding the above election(s), the following Excluded Default Events shall not be Close-Out Events:

[ ] any event on the basis of which a Party has the contractual right to Close-Out all of the transactions, or all of the affected transactions, under a Netted Agreement due to: (i) the imposition or incurrence of tax liabilities or the obligation to gross-up payments on account of tax, or (ii) a change in law that makes performance under or in respect of that Netted Agreement illegal;

[ ] any event which is defined as "Force Majeure" under any Netted Agreement;

[ ] any failure to nominate, schedule, deliver, notify or accept under a Netted Agreement;

[ ] The following **Additional Excluded Default Events**: [Specify]

§ 4

<u>The Right to Close-Out and Applicable Limitations</u>

§ 4.2 Global Nature of Close-Out.

[ ] **Reservation of Right to Terminate Less Than All Netted Agreements (Non-Global Close-Out):** § 4.2 (***Global Nature of Close-Out***) shall <u>not</u> apply and instead the Parties reserve, in addition to the right to Close-Out all Netted Agreements pursuant to the terms of the Master Netting Agreement, the rights specified below:

[ ] **Voluntary Termination of Individual Netted Agreements based upon Their Own Close-Out Terms.** The right to instead Close-Out only some, but not all, Netted Agreements pursuant to their own terms, leaving the balance of remaining unterminated Netted Agreements subject to the terms of this Master Netting Agreement until such time, if any, as they are subsequently Closed-Out.

and/or:

[ ] **Automatic Termination of Individual Netted Agreements based upon Their Own Close-Out Terms.** The right, after entry into this Master Netting Agreement, for Netted Agreements to automatically self-terminate in accordance with the terms of their own Automatic Termination provisions, leaving the balance of remaining unterminated Netted Agreements containing no such automatic termination provisions subject to the terms of this Master Netting Agreement until such time, if any, as they are subsequently terminated.

and/or:

[ ] **Voluntary Termination of Individual Netted Agreements based upon the Close-Out Terms of the MNA.** The right to instead terminate one or more, but not necessarily all, Netted Agreements pursuant to the terms of, and due to the occurrence of a Close-Out Event specified in, this Master Netting Agreement, leaving the balance of remaining unterminated Netted Agreements subject to the terms of this Master Netting Agreement until such time, if any, as they are subsequently Closed-Out, and each Netting Agreement is hereby amended accordingly.

In each of the above three cases, if a Close-Out Event has occurred, and unless and until such time as a Party issues a Termination Notice in accordance with § 5.1 (***Termination Notice***) hereof, (or, if applicable, Close-Out of a Netted Agreement occurs automatically) each Party shall retain its rights and obligations under each Netted Agreement without regard to anything to the contrary set forth herein. Where a Party elects to exercise its Close-Out rights under a Netted Agreement (or, if applicable, such Netted Agreement Closes-Out automatically by its own terms), rather than in accordance with its Close-Out rights under this Master Netting Agreement, it will be required to satisfy the applicable notification requirements under the relevant Netted Agreement.

§ 6

Customization of Automatic Termination Rights

§ 6.1. **Automatic Termination and Global Close-Out.**

[ ] **§ 6.1** shall not apply.

§ 6.2. **Optional Uniform Election of Automatic Termination and Close-Out.**

[ ] **§ 6.2** shall apply to **Party A,**

with the **Effective Time of Automatic Termination** being: ________________

and the Close-Out Events constituting **Automatic Termination Close-Out Events** for Party A being:

[ ] All designated Close-Out Events

[ ] If the Parties have made operative the harmonised Close-Out Event definition in § 3.1(C) (***Harmonised Default Events***), then only those Close-Out Events designated in § 3.1(C)(III) (***Winding-up/Insolvency/Attachment***),

[ ] less, if any, the following sub-definitions contained within § 3.1(C) (***Harmonised Default Events***): ________________________

[ ] If the Parties have made operative the underlying Netted Agreement definition of Close-Out Event specified in § 3.1(B) (***Netted Agreement Default Events***), then only those Close-Out Events defined within the Netted Agreements analogous to those designated in § 3.1(C)(III) (***Winding-up/Insolvency/Attachment***)

[ ] Any event defined in a Netted Agreement which upon its occurrence will cause that Netted Agreement to automatically self-terminate by operation of an Automatic Termination provision contained therein.

[ ] OTHER **[Specify]**

[ ] **§ 6.2** shall apply to **Party B**

with the **Effective Time of Automatic Termination** being: ________________

and the Close-Out Events constituting **Automatic Termination Close-Out Events** for Party B being:

[ ] All designated Close-Out Events

[ ] If the Parties have made operative the harmonised Close-Out Event definition in § 3.1(C) (***Harmonised Default Events***), then only those Close-Out Events designated in § 3.1(C)(III) (***Winding-up/Insolvency/Attachment***),

[ ] less the following sub-definitions contained within § 3.1(C) (***Harmonised Default Events***): ________________________

[ ] If the Parties have made operative the underlying Netted Agreement definition of Close-Out Event specified in § 3.1(B) (***Netted Agreement Default Events***), then only those Close-Out Events defined within the Netted

Agreements analogous to those designated in § 3.1(C)(III) (***Winding-up/Insolvency/Attachment***)

[ ] Any event defined in a Netted Agreement which upon its occurrence will cause that Netted Agreement to automatically self-terminate by operation of an Automatic Termination provision contained therein.

[ ] OTHER **[Specify]**

§ 6.4 Automatic Early Termination and Adjustment for Bankruptcy

[ ] **§ 6.4** shall be operative

§ 8

Set-off of Settlement Amounts; Accrual of Interest

§ 8.3 Final Net Settlement Amount

§ 8.3(C) Place of Payment and Base Currency:

Base Currency: The Base Currency is:

[ ] Sterling; or

[ ] Euro; or

[ ] Other, [Specify]

Payment Instructions:

Payments due under this Master Netting Agreement in the Base Currency shall be made to the following accounts:

Name of Bank and Office, Account Number and Reference for Party A:

[Specify]

Name of Bank and Office, Account Number and Reference for Party B:

[Specify]

§ 8.4 Accrual of Interest on the Final Net Settlement Amount.

§ 8.4 The **"Interest Rate"** shall be: ________________

§ 9

Credit Support / Performance Assurance

§ 9.1 Benefit of Credit Support

[ ] Shall apply

§ 9.2 Fungible Use of Credit Support

[ ] Shall apply

§ 10

Additional Optional Provisions Relating to Close-Out

§ 10.1 **Designation of Additional Optional Provisions:** The following additional optional provisions are hereby made operative, amended and revised if and as hereinafter provided, and incorporated into the Master Netting Agreement:

[ ] **§ 10.1(A)** **Set-Off of Final Net Settlement Amount** shall apply

[ ] **§ 10.1(B)** **Suspension** shall apply;

and, for purposes of § 10.1(B): X shall be [_] hours, and
Y shall be [_] hours.

§ 11

Payment Netting

§ 11.1 **Optional Payment Netting Rights Election.**

[ ] **Payment Netting** shall apply between the Parties as specified below

§ 11.2 **Designation of Concerned Agreements.**

[ ] The **Concerned Agreements** to which Payment Netting shall apply are:

[ ] **[Specify];**

OR

[ ] **The Netted Agreements;**

[ ] *provided, however,* that the following Netted Agreements shall NOT be Concerned Agreements: [SPECIFY];

AND/OR

[ ] *provided, however,* that the following additional agreements, contracts and/or transactions (which are not Netted Agreements) SHALL BE Concerned Agreements: [SPECIFY]

§ 11.3 **Harmonised Due Date.**

[ ] **§ 11.3 (Harmonised Due Date)** shall be operative, and

[ ] The Concerned Agreements governed by § 11.3(A) are: [SPECIFY]; and/or

[ ] The Concerned Agreements governed by § 11.3(B) are: [SPECIFY]

§ 11.6 **Payment.** If different from those bank accounts specified for each Party in respect of §8.3(C) (***Place of Payment and Base Currency***), the Bank Account(s) to be used for purposes of § 11 (***Payment Netting***) are:

For Party A: **[insert bank account details]**

For Party A: **[insert bank account details]**

§ 11.7 **Default Interest Rate.** The **"Default Interest Rate"** shall be:

[ ] the Interest Rate plus three percent (3 %) per annum, or

[ ] **Other** [SPECIFY].

§ 11.9 **Disputed Amounts.**

[ ] **§ 11.9 (A)** shall apply.

[ ] **§ 11.9 (B)** shall apply.

§ 12

Additional Miscellaneous and Optional Provisions

§ 12.1 Representations and Warranties.

[ ] The Parties agree the following additional representations and warranties are added to, and made in accordance with, those set forth in § 12.1 (***Representations and Warranties***):

1.	
2.	
3.	
4.	

§ 12.2 Governing Law. The governing law for this Master Netting Agreement shall be the law of:

[ ] England & Wales

[ ] Germany

[ ] Other [*Specify*]

§ 12.3 Appointment of Process Agent.

[ ] Party A appoints as its Process Agent: ______________________

[ ] Party B appoints as its Process Agent: ______________________

§ 12.4 Selection of Arbitration and/or Jurisdiction.

[ ] **§ 12.4(A) Jurisdiction** shall apply

[ ] **§ 12.4(B) London Court Arbitration** shall apply

[ ] **§ 12.4(C) DIS Arbitration** shall apply

[ ] Another form of dispute resolution and/or submission to the jurisdiction of another court shall apply: [SPECIFY]

§ 12.5 Limitations on Assignment and Transfer.

[ ] The provision set forth in § 12.5(A) f the Master Netting Agreement shall be operative and apply in respect of:

[ ] Party A

[ ] Party B

§ 12.6 Addresses for Communications Between Parties. For the purposes of § 12.6 of this Master Netting Agreement:

Address for notices or communications to Party A:

Address:

Attention:

Facsimile No:

Telephone No:

Address for notices or communications to Party B:

Address:

Attention:

Facsimile No:

Telephone No:

PART II: ADDITIONAL TERMS

The following additional terms and conditions shall apply to the Master Netting Agreement

PART III: ADDITIONAL NETTED AGREEMENT RIDER

to the

Master Netting Agreement's Election Sheet

Additional Netted Agreements & Treatment of Related Defaults

§ 1 **Designation of Additional Netted Agreements & Transactions**: In addition to the master trading agreements identified as Netted Agreements in the Election Sheet in respect of § 2.1 (***Designation of Agreements Which May Be Terminated, Closed-Out and Netted***) of the Master Netting Agreement, the following, as applicable, transactions, agreements and contracts as specifically elected below in § 1.1 ***(Specific "Additional Netted Agreements & Transactions)*** and/or § 1.2 ***(Definition by Categories of Additional Netted Agreements)***, shall also be deemed to be Netted Agreements under this Master Netting Agreement;

> **provided, however,** that unless expressly provided to the contrary in this Rider, any defined events included in the terms of such Additional Netted Agreements which by virtue of being defined as Netted Agreements would otherwise become Close-Out Events under the terms of this Master Netting Agreement, shall not be Close-Out Events and their occurrence shall not (absent such event also being a Close-Out Event as defined in respect of one or more Netted Agreements incorporated by reference in Part I of this Election Sheet) give rise to the right to initiate, or, if applicable, cause the automatic Close-Out of, this Master Netting Agreement or any other Netted Agreement.

[ ] **§1.1 Specific "Additional Netted Agreements & Transactions"** are:

AND/OR:

[ ] **§1.2 Definition by Categories of Additional Netted Agreements: "Additional Netted Agreement"** also means any contract (whether oral or in writing) entered into by the Parties, other than: (i) those agreements identified as Netted Agreements in the Election Sheet in respect of § 2.1 (***Designation of Agreements Which May Be Terminated, Closed-Out and Netted***) of the Master Netting Agreement, and (ii) Excluded Agreements (or any transaction which is part of or subject to either of (i) or (ii)), and which:

[ ] is described in its terms as being an Additional Netted Agreement for the purposes of this Master Netting Agreement;

[ ] incorporates the Short Term Flat NBP Trading Terms and Conditions 1997, but is not subject to a NBP Master Agreement;

[ ] incorporates the Beach 2000 standard terms and conditions;

[ ] incorporates the Zeebrugge Hub Natural Gas Trading Terms and Conditions, releases 1999 or 2001;

[ ] incorporates the terms and conditions of any release of Global Coal's Standard Coal Trading Agreement (SCoTA);

[ ] is for the spot or forward physical sale, purchase and/or exchange of Commodities (including any option in respect of the physical delivery of any Commodity);

[ ] is a cash or financially settled forward or swap (including any cap, collar, or floor) or other derivative relating to any or all Commodities, or with respect to the price or value of any or all Commodities, or any combination of the foregoing;

[ ] is a rate swap transaction, basis swap, forward rate transaction, equity index swap, equity index option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions);

[ ] other: [Specify].

For purposes of this Additional Netted Agreement Rider, "**Commodities**" means:

[ ] electricity, crude oil, refined oil products, chemical products, natural gas, liquefied natural gas, natural gas liquids, coal, bio-fuels;

[ ] agricultural and other soft commodity products, metals, pulp and paper;

[ ] rights in and to transportation capacity, transmission capacity, capacity in electricity wires, gas or other petrochemical pipelines, and storage facilities;

[ ] rights to, and capacity in shipping, freight and similar carriers,

[ ] greenhouse gasses, carbon, NOx, SO_2, ROCs, particulates and other measurable emissions allowances and credits;

[ ] tradable renewable energy credits, certificates of origin, green certificates and LECS;

[ ] weather products, including without limitation, rainfall, temperature and similar measurable climatic elements;

[ ] other: [Specify];

and "**Commodity**" means and may refer to any one of them.

§ 2 **Additional Netted Agreement Settlement Amounts.** Rather than the definition of Settlement Amount set forth in Annex 1 to the Master Netting Agreement, "**Settlement Amount**" in respect of Additional Netted Agreements shall have the following meaning:

[ ] Not applicable; or

[ ] The net amount which would be due and payable by one Party to the other Party pursuant to applicable law as a result of a breach by the Defaulting Party of its obligations under such Additional Netted Agreement; or

[ ] [Specify]

§ 3 **Additional Netted Agreements and Payment Netting.**

[ ] Additional Netted Agreements shall be treated as Concerned Agreements for purposes of inclusion in payment netting pursuant to the terms of § 11 (***Payment Netting***)

§ 4 **Supplemental Liquidation Mechanics.**

[ ] Not applicable; or

[ ] The following shall be used to calculate the Settlement Amount of any Additional Netted Agreement the terms of which do not contain their own provisions for liquidating and valuing such transaction(s) upon Early Termination:

Calculation of Settlement Amount. The Settlement Amount for any terminated Additional Netted Agreement shall be the Gains less the Aggregate of the Losses and the Costs which the Terminating Party incurs as the result of the Close-Out of the Additional Netted Agreement and/or all transactions under such Additional Netted Agreement, as well as any other amounts payable between the Parties under or in connection with the Additional Netted Agreement. For the purposes of this provision:

(a) **"Costs"** means brokerage fees, commissions and other third party costs and expenses reasonably incurred by the Terminating Party either in terminating any arrangement pursuant to which it has hedged its obligation or entering into new arrangements which replace the Closed-Out Additional Netted Agreement and all reasonable legal fees, costs and expenses incurred by the Terminating Party in connection with its Close-Out of the Additional Netted Agreement.

(b) **"Gains"** means an amount equal to the present value of the economic benefit to the Terminating Party, if any (exclusive of Costs), resulting from the Close-Out of the Additional Netted Agreement, determined in a commercially reasonable manner; and

(c) **"Losses"**: means an amount equal to the present value of the economic loss to the Terminating Party, if any (exclusive of Costs), resulting from the Close-Out of the Additional Netted Agreement, determined in a commercially reasonable manner.

In calculating the Settlement Amount of a Closed-Out Additional Netted Agreement, the Terminating Party may, but is not obliged, to calculate its Gains or Losses as at the Early Termination Date, at its discretion, without entering into any replacement transaction for the terminated Additional Netted Agreement.

EFET

European Federation of Energy Traders

ANNEX 1
To The
Master Netting Agreement

Defined Terms

Terms used in the Master Netting Agreement shall have the following meanings:

"**Additional Netted Agreement**" shall have the meaning, if any, given to it in the Additional Netted Agreement Rider found at Part III of the Election Sheet.

"**Affiliate**" means with respect to a Party, any Entity Controlled, directly or indirectly, by that Party, any Entity that Controls, directly or indirectly, that Party or any Entity directly or indirectly under common Control with a Party.

"**Automatic Termination**" means the process of self-termination of a contract described further in §6 (***Customization of Automatic Termination Rights***).

"**Automatic Termination Close-Out Event**" has the meaning, if any, given to it in respect of a Party in § 6.2 of the Election Sheet.

"**Base Currency**" means the currency specified as such in § 8.3(C) of the Election Sheet.

"**Base Currency Equivalent**" has the meaning given to it in § 7.2 (***Conversion of Settlement Amounts Into the Base Currency***).

"**Business Day**" means a day (other than a Saturday or a Sunday) on which commercial banks are open for general business at the places where each Party has its registered office; provided, that for purposes of the use of such term in §11 (***Payment Netting***) Business Day shall mean any day on which commercial banks effect deliveries of both Euro and Sterling, excluding all Saturdays and Sundays and those days defined as "Non-Business Days" in the "Payment Netting Standard European Settlement Calendar" as published on the EFET website.

"**Close-Out**" means, when used as a verb, to accelerate, terminate, liquidate or cancel (including by way of Automatic Termination) the transactions under a Netted Agreement, and, if applicable, also the Netted Agreement itself (and if such Netted Agreement constitutes only a single transaction, the termination of such transaction and the Netted Agreement itself) and further to net off and aggregate the values of all such transactions into a single net sum in accordance with the terms of such Netted Agreement, as, if applicable, amended and/or supplemented and revised by this Master Netting Agreement; and, as applicable, if not required at an earlier stage of the process, following the completion of the Close-Out process, the termination of any remaining unterminated Netted Agreement itself; when used as a noun, "**Close-Out**" means the act of Closing-Out and "**Closed-Out** shall be construed accordingly.

"**Close-Out Event**" shall have the meaning(s) set forth in § 3.1 (***Definition of "Close-Out Event"***) unless another meaning has been selected by the Parties in § 3.1of their Election Sheet.

"**Closed-Out Agreement**" means a Netted Agreement under which all transactions which legally may be Closed-Out have been Closed-Out.

"**Concerned Agreements**" has the meaning given to it in § 11.2 (***Designation of Concerned Agreements***) and shall consist of those agreements identified as such in § 11.2 of the Election Sheet.

"**Control**" means ownership of more than 50% of the voting power of an Entity and "**Controlled**" or "**Controlling**" shall be construed accordingly.

"**Control and Profit Transfer Agreement**" has the meaning specified in §3.1(C)(VI)(a)(i)(CC).

"**Controlling Party**" means any Entity that has entered into a Control and Profit Transfer Agreement in respect of or in favour of a Party.

"**Credit Rating**" means in respect of an Entity any of the following:

(i) the long-term unsecured, unsubordinated (unsupported by third party credit enhancement) public debt rating;

(ii) the debt issuer's credit rating; or

(iii) the corporate credit rating given to that entity, in each of cases (i) to (iii) by Standard & Poor's Rating Group (a division of McGraw-Hill Inc.) or Moody's Investor Services Inc.;

"**Credit Support**" means any security, whether in the form of cash; parent company, Affiliate or bank guarantees or letters of credit, surety agreements, Control and Profit Transfer Agreements and all other instruments of a similar nature or purpose provided or agreed to be provided on behalf of a Party and in effect or required to be maintained in respect of any Netted Agreement, any transaction under a Netted Agreement or this Master Netting Agreement.

"**Credit Support Document**" means any agreement pursuant to which Credit Support or Performance Assurance is provided for purposes of this Master Netting Agreement or any Netted Agreement including, without limitation, any credit support annex or supplemental or amending agreement to this Master Netting Agreement or any Netted Agreement, as well as any Control and Profit Transfer Agreement.

"**Credit Support Provider**" means any provider of a Credit Support Document, including, without limitation, any Controlling Party or any provider of Performance Assurance.

"**Cross Default Threshold Amount**" has the meaning, if any, given to it in respect of a Party in the Election Sheet.

"**Default Interest Rate**" has the meaning given to it in respect of § 11.7 of the Election Sheet.

"**Defaulting Party**" means the Party that is not the Terminating Party.

"**Due Date**" has the meaning given to it in § 11.1 (***Payment Netting Election***).

"**Early Termination Date**" has the meaning given to it in § 5.1 (***Termination Notice***); and in the case of an Automatic Termination shall be the date on which the Closed-Out Agreements are deemed to have self terminated.

"**EBIT**" means earnings before interest and taxes which shall be in respect of the relevant fiscal year, the net revenue of the Relevant Entity before deducting corporate taxes (or any other tax on income or gains in the relevant jurisdiction of the Relevant Entity) plus the sum of all interest and any amounts in the nature of interest charged to expense relating to financial indebtedness for borrowed money (which amounts include debts payable to Affiliates as well as debt instruments to financial institutions) of the Relevant Entity.

"**Effective Date**" has the meaning given to it in the preamble to the Master Netting Agreement and means the date on which this Master Netting Agreement comes into force.

"**Election Sheet**" means the Election Sheet to the Master Netting Agreement.

"**Eligible Credit Support**" shall have the meaning or meanings assigned to such term in any credit support annex supplementing this Master Netting Agreement.

"**Entity**" means an individual, government or state division thereof, government or state agency, corporation, partnership or such other entity as the context may require.

"**Excluded Agreement**" has the meaning, if any, given to it in § 2.2 of the Election Sheet in respect of § 2.2 (***Exclusion of Agreements and Transactions from This Master Netting Agreement***) of the Master Netting Agreement.

"**Excluded Default Event**" has the meaning, if any, given to it in § 3.2 of the Election Sheet in respect of § 3.2 (***Excluded Default Events***) of the Master Netting Agreement.

"**Final Net Settlement Amount**" has the meaning given to it in § 8.1 (***Netting-Off***).

"**Final Settlement Date**" has the meaning given to it in § 8.3(B) (***Final Settlement Date***).

"**Funds from Operations**" means the amount of cash generated or employed by the Relevant Entity in its operating activities.

"**Harmonised Default Events**" means those events specified by the Parties as applicable in § 3.1 of the Election Sheet with respect to § 3.1(C) (***Harmonised Default Events***).

"**Harmonised Due Date**" has the meaning given to it in § 11.3 (***Harmonised Due Date***).

"**Interest Rate,**" has the meaning given to it in respect of § 8.4 of the Election Sheet

"**Letter of Credit**" means an irrevocable standby letter of credit payable on demand in a form and substance satisfactory to the Requesting Party and issued by a financial institution whose Credit Rating is at least the rating specified in respect of the Party in the Election Sheet as provided in §3.1(C)(VI)(a)(ii) (***Credit Rating of a Credit Support Provider that is a Bank***);

"**Master Netting Agreement**" means this Agreement and its Election Sheet and Annexes, together with any Credit Support Document(s).

"**Master Netting Agreement Default Events**" means those events specified by the Parties as applicable in § 3.1 of the Election Sheet with respect of § 3.1(A) (***Master Netting Agreement Default Events***).

"**Material Adverse Change**" has the meaning specified in § 3.1(C)(VI)(a)((***Material Adverse Change***);

"**Netted Agreements**" mean the agreements (each as from time to time amended or supplemented) between the Parties hereto designated as Netted Agreements in § 2.1 of the Election Sheet in respect of § 2.1 (***Designation of Agreements Which May Be Terminated, Closed-Out and Netted***) of the Master Netting Agreement including, if applicable, and further subject to applicable limitations imposed on such definition in relevant provisions of Part III of the Election Sheet, any Additional Netted Agreements (each, individually, a "**Netted Agreement**").

"**Netted Agreement Default Events**" has the meaning given to it in § 3.1(B) (***Netted Agreement Default Events***).

"**Party**" has the meaning given to it in § 1.2 (***Other Definitional Provisions***) (collectively, "**Parties**").

"**Payment Obligations**" has the meaning given to it in § 11.3 (***Harmonised Due Date***)

"**Performance Assurance**" has the meaning given to it in § 3.1(C)(VI) (***Failures to Provide Performance Assurance***); and, when and where applicable, may also reference similar forms of collateral provided to remedy a Material Adverse Change in the condition of a Party in accordance with the terms of any Netted Agreement.

"**Potential Close-Out Event**" has the meaning given to it in § 10.1(B)(1) (***Rights to Suspend***).

"**Process Agent**" means that agent, if any, as specified by the Parties in § 12.3 of the Election Sheet with respect of § 12.3 (***Appointment of Process Agent***).

"Requesting Party" has the meaning given to it in § 3.1 (***Failures to Provide Performance Assurance***).

"Relevant Entity" has the meaning given to it in § 3.1(c)(VI).

"**Settlement Amount**" means, in respect of any Closed-Out Agreement, the net amount which is due and payable by one Party to the other upon: (i) all transactions under such Closed-Out Agreement having been Closed-Out, (ii) the resulting obligations of the Parties having been determined, and (iii) in accordance with the applicable Closed-out Agreement, those obligations having been set off, and/or having been otherwise reduced, by the exercise of rights to apply any Credit Support delivered under or held in connection with such Closed-Out Agreement and/or this Master Netting Agreement.

"Specified Indebtedness" means any financial indebtedness (whether present or future, contingent or otherwise, as principal or surety or otherwise) for borrowed money (which includes all debts payable to Affiliates as well as debt instruments to financial institutions).

"**Suspending Party**" has the meaning given to it in § 10.1(B)(I) (***Rights to Suspend***).

"**Tangible Net Worth**" means the sum of all paid up shareholder cash contributions to the share capital account or any other capital account of the Relevant Entity ascribed for such purposes of the Relevant Entity and any accumulated retained earnings less any accumulated retained losses and intangible assets including, but not limited to, goodwill.

"**Terminating Party**" has the meaning, as applicable, given to it in § 4.1 (***Termination and Close-Out of the Netted Agreements***).

"**Termination Notice**" has the meaning given to it in § 5.1 (***Termination Notice***).

"Total Capitalisation" means in respect of the relevant period the sum of Total Debt and all paid up shareholder cash contributions to the share capital account or any other capital account of the Relevant Entity ascribed for such purposes of the Relevant Entity;

"Total Debt" means in respect of the relevant period the sum of financial indebtedness for borrowed money (which includes debts payable to affiliated companies as well as debt instruments to financial institutions) of the Relevant Entity;

EFET

European Federation of Energy Traders

ANNEX 2
to the
Master Netting Agreement

Form of Termination Notice

[ON TERMINATING PARTY LETTERHEAD]

[Defaulting Party's
Name and Address Details
As Specified for it in
§ 12.6 of the Election Sheet]

[DATE]

Dear ___________________:

RE: TERMINATION NOTICE -- Notice of Termination of Master Netting Agreement between ________________ and _______________ dated __/__/_____ (the "MNA").

You are hereby notified pursuant to the terms of the MNA that due to your having experienced a Close-Out Event, we are exercising our rights, effective __/__/_____ (the "**Early Termination Date**"), to terminate and Close-Out all Netted Agreements under the MNA in accordance with its terms, and those, as applicable, of each underlying Netted Agreement.

This letter shall serve as our Termination Notice, in fulfillment of the requirements of § 5 (Voluntary Commencement of Close-Out) of the MNA.

Capitalized terms used in this letter have the meanings given to them in the MNA.

[additional information relevant to mechanics and deadlines applicable to cessation of nominations, etc.}

Regards,

[Terminating Party]

[Signature]

EFET

European Federation of Energy Traders

Amstelveenseweg 998 / 1081 JS Amsterdam
Tel: +31 20 5207970

E-mail: secretariat@efet.org

Webpage: www.efet.org

Credit Support Annex

Dated as of [•]

between

[•]

(**"Party A"**)

and

[•]

(**"Party B"**)
(each, a **"Party"** and collectively, the **"Parties"**)

---

to the

EFET Form

Master Netting Agreement

with an Effective Date of [•]

§ 1
Definitions and Interpretation

1. **Definitions:** Words and expressions used in this Credit Support Annex (the "**Annex**") shall have the meanings set out in Appendix 1 (***Defined Terms***). In addition, words and expressions defined in the Master Netting Agreement referred to above (the "**MNA**") (and not otherwise defined herein) shall have the same meanings when used herein.

2. **Interpretation:** This Annex supplements, amends, forms part of and is subject to the MNA. The Parties agree to provide each other with Eligible Credit Support according to the following provisions. This Annex shall serve to collateralize outstanding obligations between the Parties from time to time pursuant to the MNA.

   Headings and titles are for convenience only and do not affect the interpretation of this Annex. Unless otherwise described, references in this Annex to paragraphs are to paragraphs of this Annex. In the event of inconsistency between this Annex and provisions of the MNA, this Annex shall prevail. In the event of inconsistency between § 15 (***Specifications***) and the other provisions of this Annex, § 15 (***Specifications***) shall prevail. References to "transfer" in this Annex mean, in relation to Cash: payment, and in relation to other assets: delivery.

§ 2
Valuation Agent and Determination of Valuations

1. **Valuation Agent:** The Valuation Agent shall be the agent designated as such in § 15.5. Should the Parties not have specified a Valuation Agent under § 15.5, the Party asserting a claim for transfer under § 3 (***Credit Support Obligations***) or § 4 (***Return of Eligible Credit Support***) shall be the Valuation Agent. Should: (a) a Close-Out Event have occurred; and/or (b) notice have been given of an event or circumstance which is not a Close-Out Event but which allows the Netted Agreements or a Netted Agreement (where the Parties have not elected §4.2 (***Global Nature of Close-Out***) of the MNA) to be Closed-Out, each event subsisting in respect of the Party that except for such event or events subsisting, would be the Valuation Agent designated in accordance with sentences one or two of this § 2.1, then the Party in relation to which the event described in (a) or (b) above does not subsist, for so long as the event described in (a) or (b) above subsists, shall assume the function of Valuation Agent.

2. **Determination of Valuations:** The Valuation Agent (or the Party assuming the function of Valuation Agent in accordance with § 2.1) shall determine the Base Currency Equivalent at the Valuation Time in respect of each Valuation Day and inform the Parties no later than the Notification Time on the Valuation Day of the following:

   (a) the amount of any Exposure;
   (b) the Value of any Eligible Credit Support held under this Annex;
   (c) the amount of any Credit Support Amount; and
   (d) the amount, if any, which may be transferred pursuant to § 3 (***Credit Support Obligations***) or § 4 (***Return of Eligible Credit Support***).

§ 3
Credit Support Obligations

1. **Credit Support Obligations:** Upon demand by a Party (the **"Transferee"**) on or promptly following a Valuation Day, the other Party (the **"Transferor"**) shall transfer to the Transferee Eligible Credit Support in an amount equal to the amount by which the Credit Support Amount of the Transferee exceeds the Eligible Credit Support held by the Transferee at the Valuation Time (the "**Delivery Amount**"). Eligible Credit Support demanded but not received by a Party prior to a Valuation Time shall be deemed to be held by it, provided that the transfer of such Eligible

Credit Support is due on or after such Valuation Time. The amounts to be transferred in accordance with this § 3.1 shall be rounded as specified in § 15.12.

2. **Delivery of Eligible Credit Support:** Subject to § 8 (***Dispute Resolution***), should a Transferor receive a request for Eligible Credit Support in accordance with § 3.1, then the Transferor shall transfer to the Transferee the requested Eligible Credit Support not later than close of business on the Local Business Day following such request by either:

   (a) transferring Cash to the account of the Transferee specified in § 14 (***Bank Accounts***); or
   (b) providing a Letter of Credit.

3. **Suspension of Delivery of Eligible Credit Support Relating to Termination of Less Than All Netted Agreements:** In the event that any Netted Agreement is terminated in accordance with its own terms (where the Parties have disapplied § 4.2 (***Global Nature of Close-Out***) of the MNA) at a time when all Netted Agreements are not also being Closed-Out pursuant to operation of the MNA or otherwise, if, as a consequence of such termination, the Party which is the non-defaulting Party under the terms of the terminated Netted Agreement(s) is required to transfer Eligible Credit Support pursuant to this Annex, then such transfer obligation shall be suspended until such time as the non-defaulting Party has been paid the sums payable (if any) as a consequence of the termination of the Netted Agreement(s). In addition, if as a consequence of the termination upon grounds as described in the preceding sentence, the Party which is the non-defaulting Party under the terminated Netted Agreement(s) is entitled to receive Eligible Credit Support pursuant to this Annex, then the non-defaulting Party may set-off the amount of such Eligible Credit Support to be delivered to it against sums payable (if any) by it as a consequence of the termination of the relevant Netted Agreement(s).

§ 4
Return of Eligible Credit Support

1. **Excess Credit Support:** Upon demand by the Transferor on or promptly following a Valuation Day, the Transferee shall transfer to the Transferor Eligible Credit Support in an amount equal to the amount by which the Eligible Credit Support held by the Transferee exceeds the Credit Support Amount of the Transferee at the Valuation Time (the "**Return Amount**"). The amounts to be transferred in accordance with this § 4.1 shall be rounded as specified in § 15.12.

2. **Return of Eligible Credit Support:** Subject to § 8 (***Dispute Resolution***), should a Transferee receive a request pursuant to § 4.1 (***Excess Credit Support***), then the Transferee shall transfer to the Transferor the requested Return Amount not later than close of business on the Local Business Day following such request by either:

   (a) transferring Cash to the account of the Transferor specified in § 14 (***Bank Accounts***); or
   (b) where the Eligible Credit Support is a Letter of Credit, and as preferred by the Transferor, waiving its rights, in part or in whole, under, or agreeing to the amendment or revocation of the Letter of Credit and, where relevant, its return. The Transferee may waive its rights conditional upon the transfer of other Eligible Credit Support such that its Value, when added to the Value of the remaining Eligible Credit Support held by the Transferee, equals the Credit Support Amount of the Transferee.

3. **Suspension of Return of Eligible Credit Support Relating to Termination of Less Than All Netted Agreements:** In the event that any Netted Agreement is terminated in accordance with its own terms (where the Parties have disapplied § 4.2 (***Global Nature of Close-Out***) of the MNA) but all Netted Agreements are not also being Closed-Out pursuant to operation of the MNA or otherwise, if, as a consequence of such termination, the Party which is the non-defaulting Party under the terms of the terminated Netted Agreement(s) is required to return Eligible Credit Support pursuant to this Annex, then such return obligation shall be suspended until such time as the non-defaulting Party has been paid the sums payable (if any) as a consequence of the

termination of the Netted Agreement(s). In addition, if as a consequence of the termination upon grounds as described in the preceding sentence, the Party which is the non-defaulting Party under the terms of the Netted Agreement(s) is entitled to a return of Eligible Credit Support pursuant to this Annex, then the non-defaulting Party may set-off the amount of such Eligible Credit Support to be returned to it against sums payable (if any) by it as a consequence of the termination of the Netted Agreement(s).

§ 5
Minimum Transfer, Threshold and Independent Amounts

1. **Minimum Transfer Amount**: In the event that a Minimum Transfer Amount has been agreed for a Party in § 15.1, that Party shall be obliged to transfer the Delivery Amount or the Return Amount pursuant to § 3 (***Credit Support Obligations***) or § 4 (***Return of Eligible Credit Support***), as the case may be, only if the Value of such Delivery Amount or Return Amount to be transferred, as the case may be, is at least equal to such Minimum Transfer Amount.

2. **Threshold Amounts**: In the event that a Threshold Amount has been agreed for a Party in § 15.2, that Party shall be obliged to transfer the Delivery Amount or the Return Amount pursuant to § 3 (***Credit Support Obligations***) or § 4 (***Return of Eligible Credit Support***), as the case may be, only if the Exposure of the other Party minus any Independent Amount of such Party, in addition to the first Party's Independent Amount if any, is at least equal to the Threshold Amount.

3. **Independent Amounts**: In the event that an Independent Amount has been agreed for a Party in § 15.9, such amount shall be added to the Exposure of the other Party when determining the Credit Support Amount of such other Party, and shall be deducted from its own Exposure when determining its own Credit Support Amount.

§ 6
Exchange of Eligible Credit Support

Exchange of Eligible Credit Support: Subject to the approval of the Transferee (not unreasonably to be withheld), the Transferor may replace, in whole or in part, any Eligible Credit Support provided under this Annex by Eligible Credit Support of the same or higher Value. The Transferee shall have no obligation to transfer the Eligible Credit Support which it holds until it has received the replacement Eligible Credit Support.

§ 7
Transfer of Title, Representation and No Security Interest

1. **Transfer of Title:** Each Party agrees that all right, title and interest in and to any Eligible Credit Support or Interest Amount which it transfers to the other Party under the terms of this Annex will vest in the Transferee free and clear of any liens, claims, charges or encumbrances or any other interest of the Transferor or of any third person.

2. **Representation**: Each Party represents to the other Party (which representation is deemed to be repeated on each day on which it transfers Eligible Credit Support or an Interest Amount) that it is the sole owner of or otherwise has the right to transfer all such Eligible Credit Support or Interest Amount to the other Party under this Annex, free and clear of any security interest, lien, encumbrance or other restriction.

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

§ 8
Dispute Resolution

1. **Objections**: Should a Party object to the Valuation Agent's (or in accordance with § 2.1 the Party acting as Valuation Agent's) calculation of Eligible Credit Support to be transferred or the Value of any Eligible Credit Support, then such Party shall notify the other Party and the Valuation Agent (if not the other Party), setting out the reasons for the objection, before the close of business on the earlier to occur of: the Local Business Day following the day on which the relevant demand for Eligible Credit Support is received, and the Local Business Day on which transfer of Eligible Credit Support is due pursuant to this Annex, as relevant.

2. **Undisputed Amounts**: Where a Party disputes the Valuation Agent's (or in accordance with §2.1 the Party acting as Valuation Agent's) calculation of Eligible Credit Support to be transferred, the Party obliged to transfer such Eligible Credit Support, shall transfer the undisputed amount of such Eligible Credit Support, if any, to the other Party no later than the time such transfer is due pursuant to, as applicable, § 3 (***Credit Support Obligations***) or §4 (***Return of Eligible Credit Support***) of this Annex.

3. **Resolution**: The Parties shall consult each other in an attempt to resolve disputes. If the Parties fail to resolve a dispute by the Resolution Time, then the Valuation Agent (or the Party acting as Valuation Agent in accordance with § 2.1) shall recalculate the Eligible Credit Support to be transferred and/or the Value of Eligible Credit Support as of the Recalculation Day by seeking quotations from three leading traders in each of the relevant commodity markets which it may choose according to its reasonably exercised discretion, and by taking the arithmetic average of those obtained. Where three quotations are not available for a Relevant Transaction, each Party shall obtain one quotation and the Valuation Agent (or the Party acting as Valuation Agent in accordance with § 2.1) will take the arithmetic average of those obtained. Where neither the Valuation Agent (or the Party acting as Valuation Agent in accordance with § 2.1) nor the Parties are able to obtain the requisite quotations for a Relevant Transaction, the Valuation Agent's (or in accordance with § 2.1 the Party acting as Valuation Agent's) original calculations shall be used for such Relevant Transaction. Following a recalculation pursuant to this § 8.3, the Valuation Agent (or the Party acting as Valuation Agent in accordance with § 2.1) will notify each Party (or the other Party if relevant), as soon as possible but in any event not later than the Notification Time on the Local Business Day following the Resolution Time, of the results of the recalculation and the means of arriving at those results. The appropriate Party will, upon demand following such notice, make the appropriate transfer.

4. **No Close-Out Event**: The failure by a Party to transfer any amount which is the subject of a dispute to which this § 8 (***Dispute Resolution***) applies will not constitute a Close-Out Event for as long as the procedures set out in this § 8 (***Dispute Resolution***) are being carried out. For the avoidance of doubt, upon completion of those procedures, any failure by a Party to make a required transfer on the relevant due date shall be a Close-Out Event for the purposes of the MNA and this Annex.

§ 9
Interest income on Cash

Interest Income on Cash: The Transferee shall pay interest on Cash at the Reference Interest Rate set out in § 15.8. Interest Amounts shall be paid on the first Local Business Day of each month for Eligible Credit Support held and received during the preceding month to the account of the Transferor specified in § 14 (***Bank Accounts***). For the avoidance of doubt, interest on Cash shall only accrue up to, but not including, any Early Termination Date set forth in the Termination Notice issued by the Terminating Party pursuant to § 4.1 (***Termination and Close-Out of the Netted Agreements***) of the MNA (or, in the event of Automatic Termination of the Netted Agreements, up to, but not including, the date of such Automatic Termination) .

§ 10
Close-Out Events

Close-Out Event: In addition to any further relevant elections made in the MNA, upon this Annex being entered into, the following events shall also be Close-Out Events in respect of any Letter of Credit, other Credit Support Document and in respect of any entity issuing either:

(A) any event described in § 3.1(A)(III) (***Credit Support Defaults***) of the MNA;

(B) any event described in § 3.1(C)(I)(b) or (c) of the MNA; or

(C) any event described in any of the following sub-elections under § 3.1(C)(VI) (***Failures to Provide Performance Assurance***) of the MNA:

> § 3.1(C)(VI)(a)(i) (***Credit Rating***) and§ 3.1(C)(VI)(a)(ii) (***Credit Rating of Credit Support Provider that is a Bank***), and, unless a different rating has been specified in the terms of the MNA, the minimum acceptable rating for any Credit Support Provider shall be A- from Standard & Poor's Rating Group and A3 by Moody's Investors Services, Inc.;
>
> § 3.1(C)(VI)(a)(v) (***Expiry of Credit Support Document***), and, unless a specific time has been specified in the terms of the MNA, thirty (30) calendar days shall apply; and
>
> § 3.1(C)(VI)(a)(vi) (***Failure of Credit Support***).

§ 11
Credit Support / Performance Assurance

Notwithstanding election to the contrary or no election in the MNA, upon this Annex being entered into the terms of § 9 (***Credit Support / Performance Assurance***) of the MNA shall be made operative and shall apply to the MNA.

§ 12
Termination of the Netted Agreements

Termination of the MNA: Upon the Early Termination Date, the Valuation Agent (or the Party acting as Valuation Agent in accordance with § 2.1) shall determine the Base Currency Equivalent of all Eligible Credit Support provided under this Annex at the exchange rate and for value on the date as set out in § 7.2 (***Conversion of Settlement Amounts Into the Base Currency***) of the MNA, ("**Determination Date**"), provided, however, that any Eligible Credit Support in the form of a Letter of Credit as of the Determination Date shall not be considered by the Valuation Agent in making such determination. Notwithstanding the preceding sentence, to the extent that the Transferee draws under any such Letter of Credit, the obligations of the Transferor shall be discharged in an amount equal to such drawings. Such amount determined by the Valuation Agent will be deemed to be an amount payable (but not yet paid) by the Transferee to the Transferor on the Determination Date and shall be included in the Final Net Settlement Amount to be determined pursuant to § 8 (***Netting-Off of Settlement Amounts; Accrual of Interest***) of the MNA. At the same time, all claims of the Parties for the transfer of Eligible Credit Support pursuant to § 3 (***Credit Support Obligations***) or § 4 (***Return of Eligible Credit Support***) shall expire.

§ 13
Expenses

Each Party shall pay its own costs and expenses in connection with performing its obligations under this Annex, and neither Party shall be liable for any such costs and expenses incurred by the other Party.

§ 14
Bank Accounts

Transfers of Cash pursuant to § 3 (***Credit Support Obligations***) and § 4 (***Return of Eligible Credit Support***) as well as payments of Interest Amounts shall be made to the following accounts:

Party A:

Bank: [ ]
Account number: [ ]
Sort Code: [ ]

Party B:

Bank: [ ]
Account number: [ ]
Sort Code: [ ]

§ 15
Specifications

1. **Minimum Transfer Amount** means with respect to Party A: [•], and

   Minimum Transfer Amount means with respect to Party B: [•],

   provided, however, that (a) if a Close-Out Event has occurred with respect to a Party, the Minimum Transfer Amount for that Party shall be automatically reduced to zero, or (b) where the Credit Support Amount with respect to both Parties on a Valuation Day is zero and there are no outstanding Transactions, the Minimum Transfer Amount with respect to both Parties on such day shall be zero.

2. **Threshold Amount** means with respect to Party A: [•]; and

   Threshold Amount means with respect to Party B: [•],

   but, in the event that a Close-Out Event has occurred with respect to a Party then the Threshold Amount for that Party shall be automatically (re)set to zero.

3. **Valuation Time**: means the close of business on the Local Business Day immediately preceding the Valuation Day or date of calculation, as applicable, provided that the calculations of Value and Exposure will, as far as practicable, be made as of approximately the same time on the same date.

4. **Valuation Day:** [•]

5. **Valuation Agent:** [•]

6. **Notification Time:** [•]

7. **Resolution Time**: [•]

8. **Reference Interest Rate** means [•]

9. **Independent Amount** means with respect to Party A: [•]
   Independent Amount means with respect to Party B: [•]

10. **Eligible Currency:** means [•]

11. **Eligible Credit Support:** means [•]

12. **Rounding:** The Delivery Amount and the Return Amount will be rounded up to the nearest integral multiple of [•] and down to the nearest integral multiple of [•] respectively.

13. **Base Currency:** Unless otherwise specified herein means the currency selected as such in Section 8.3(C) of Part I of the Election Sheet to the MNA.

14. **Additional provisions:** [•]

EFET

European Federation of Energy Traders

APPENDIX 1
to the
Annex

Defined Terms

Terms used in this Annex shall have the following meanings:

"**Base Currency Equivalent**" means, in respect of any amount denominated in the Base Currency, such Base Currency amount, and, in respect of any amount denominated in an Eligible Currency, the amount of Base Currency required to purchase such amount of Eligible Currency at the spot exchange rate determined by the Valuation Agent for value on the day that the relevant determination is being made.

"Cash" means an amount of money in the Base Currency or any Eligible Currency.

"Credit Support Amount" means in relation to a Party ("**Party X**") on a Valuation Day, the aggregate of Party X's Exposure plus any Independent Amount applicable to the other Party ("**Party Y**"), minus any Independent Amount posted as Cash applicable to Party X and any Threshold Amount applicable to Party Y. Calculations which result in a negative number shall be deemed to be zero.

"Delivery Amount" has the meaning set out in § 3.1.

"Eligible Credit Support" has the meaning set out in § 15.11.

"**Eligible Currency"** has the meaning set out in § 15.10.

"Exposure" means in relation to a Party on a Valuation Day, the amount, if any, determined in a commercially reasonable manner by the Valuation Agent to be due and payable to such Party if all Netted Agreements were being terminated as of the Valuation Time, on the basis that (i) that Party is not the Defaulting Party and (ii) the Final Net Settlement Amount shall be calculated in the Base Currency. For the avoidance of doubt, such amount shall include sums due and payable, and the value of commodity delivered, but for which payment has not been received. Calculations which result in a negative number shall be deemed to be zero.

"**Independent Amount**" has the meaning set out in § 15.9.

"Interest Amount" means with respect to an Interest Period, the aggregate sum of the Base Currency Equivalents of the amounts of interest determined for each relevant currency and calculated for each day in that Interest Period on the amount of the Eligible Credit Support comprised of Cash and held by the Transferee, determined by the Valuation Agent for each such day as follows:

(a) the amount of cash denominated in the relevant currency on that day; multiplied by
(b) the Reference Interest Rate in effect on that day; divided by
(c) 360 (or in the case of GBP, 365).

"Interest Period" means the period from (and including) the last Local Business Day on which an Interest Amount was transferred (or if no Interest Amount has yet been transferred, the Local Business Day on which Eligible Credit Support in the form of Cash was transferred to or received by the

Transferee) to (but excluding) the Local Business Day on which the current Interest Amount is transferred.

"Letter of Credit" means a standby letter of credit, bank guarantee or similar document in a format acceptable to the Transferee denominated in the Base Currency or an Eligible Currency issued irrevocably by a leading commercial bank with a credit rating of at least A- from Standard & Poor's Rating Group or A3 by Moody's Investors Services, Inc. which obliges the bank to pay the amount guaranteed therein upon first demand of the Transferee.

"Local Business Day" means in relation to a transfer of cash or other property under this Annex a day upon which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in the place where the relevant account is located and if different in the principal financial centre, if any, of the currency of such payment.

"Minimum Transfer Amount" is the amount designated as such in § 15.1.

"Notification Time" means the time designated as such in § 15.6.

"Recalculation Day" means the Valuation Day that gives rise to the dispute under § 8 (***Dispute Resolution***), provided, however, that if a subsequent Valuation Day occurs under § 3 (***Credit Support Obligations***) prior to the resolution of the dispute, then the "Recalculation Day" shall mean the most recent Valuation Day under that § 3 (***Credit Support Obligations***).

"Reference Interest Rate" has the meaning set out in § 15.8.

"Relevant Transaction" means a Netted Agreement or an Additional Netted Agreement (as the case may be).

"Resolution Time" has the meaning set out in § 15.7.

"Return Amount" has the meaning set out in § 4.1.

"Threshold Amount" has the meaning set out in § 15.2.

"Transferee" has the meaning set out in § 3 (***Credit Support Obligations***).

"Transferor" has the meaning set out in § 3 (***Credit Support Obligations***).

"Valuation Agent" means the agent designated as such in § 15.5 or otherwise provided for in § 2 (***Valuation Agent and Determination of Valuations***).

"Valuation Day" means any Local Business Day designated as such in § 15.4.

"Valuation Time" means the time designated as such in § 15.3.

"Value" means, for any Valuation Day or other day for which Value is calculated pursuant to this Annex, and subject to § 8 (***Dispute Resolution***) in the case of the dispute, with respect to:

(a) Eligible Credit Support that is Cash, the Base Currency Equivalent of such amount; and
(b) Eligible Credit Support that is a Letter of Credit, the Base Currency Equivalent of the face value of such Letter of Credit, less any drawn portion.

Executed by the duly authorised representative(s) of each Party

Party A:

By: ....
(Authorised Signatory)

Name:

Title:

Date:

Party B:

By: ....
(Authorised Signatory)

Name:

Title:

Date:

EFET

European Federation of Energy Traders

Amstelveenseweg 998 / 1081 JS Amsterdam
Tel: +31 20 5207970

E-mail: secretariat@efet.org

Webpage: www.efet.org

Credit Support Annex

Dated as of [•]

between

[•]

(**"Party A"**)

and

[•]

(**"Party B"**)
(each, a **"Party"** and collectively, the **"Parties"**)

---

to the

EFET Form

Master Netting Agreement

with an Effective Date of [•]

NOTICE & WAIVER: THIS ANNEX WAS PREPARED BY EFET EXERCISING ALL REASONABLE CARE. HOWEVER EFET, ITS RESPECTIVE MEMBERS, REPRESENTATIVES AND COUNSEL INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE OR FOR ANY DAMAGES OR LOSSES RESULTING OUT OF ITS USE IN ANY PARTICULAR CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS ANNEX AND THE MASTER NETTING AGREEMENT TO ENSURE ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE USER'S LEGAL INTERESTS. USERS OF THIS ANNEX ARE URGED TO CONSULT THE PRACTICE NOTES AND RELEVANT LEGAL OPINIONS MADE AVAILABLE BY EFET AS WELL AS THEIR OWN RESPECTIVE COUNSEL.

---

§ 13
Expenses

Each Party shall pay its own costs and expenses in connection with performing its obligations under this Annex, and neither Party shall be liable for any such costs and expenses incurred by the other Party.

§ 14
Bank Accounts

Transfers of Cash pursuant to § 3 (***Credit Support Obligations***) and § 4 (***Return of Eligible Credit Support***) as well as payments of Interest Amounts shall be made to the following accounts:

Party A:

Bank: [ ]
Account number: [ ]
Sort Code: [ ]

Party B:

Bank: [ ]
Account number: [ ]
Sort Code: [ ]

§ 15
Specifications

1. **Minimum Transfer Amount** means with respect to Party A: [•], and

   Minimum Transfer Amount means with respect to Party B: [•],

   provided, however, that (a) if a Close-Out Event has occurred with respect to a Party, the Minimum Transfer Amount for that Party shall be automatically reduced to zero, or (b) where the Credit Support Amount with respect to both Parties on a Valuation Day is zero and there are no outstanding Transactions, the Minimum Transfer Amount with respect to both Parties on such day shall be zero.

2. **Threshold Amount** means with respect to Party A: [•]; and

   Threshold Amount means with respect to Party B: [•],

   but, in the event that a Close-Out Event has occurred with respect to a Party then the Threshold Amount for that Party shall be automatically (re)set to zero.

3. **Valuation Time**: means the close of business on the Local Business Day immediately preceding the Valuation Day or date of calculation, as applicable, provided that the calculations of Value and Exposure will, as far as practicable, be made as of approximately the same time on the same date.

4. **Valuation Day:** [•]

5. **Valuation Agent:** [•]

6. **Notification Time:** [•]

7. **Resolution Time**: [•]

8. **Reference Interest Rate** means [•]

9. **Independent Amount** means with respect to Party A: [•]
   Independent Amount means with respect to Party B: [•]

10. **Eligible Currency:** means [•]

11. **Eligible Credit Support:** means [•]

12. **Rounding:** The Delivery Amount and the Return Amount will be rounded up to the nearest integral multiple of [•] and down to the nearest integral multiple of [•] respectively.

13. **Base Currency:** Unless otherwise specified herein means the currency selected as such in Section 8.3(C) of Part I of the Election Sheet to the MNA.

14. **Additional provisions:** [•]

Executed by the duly authorised representative(s) of each Party

Party A:

By: ....
(Authorised Signatory)

Name:

Title:

Date:

Party B:

By: ....
(Authorised Signatory)

Name:

Title:

Date:

APPENDIX 4
CPMA, COMMODITIES SCHEDULE AND CP CREDIT SUPPORT ANNEX

CROSS-PRODUCT MASTER AGREEMENT
February 2000

Dated as of ____________________

BETWEEN

__________________________ **("Party A") and** ______________________ **("Party B")**

1. Interpretation

1.1 *Definitions*

"**Agreement**" means this Cross-Product Master Agreement and its Schedule. Section and Schedule references are to this Agreement unless otherwise specified.

"**Base Currency**" means the currency chosen as such in Part VI of the Schedule.

"**Base Currency Equivalent**" has the meaning given to it in Section 3.2.

"**Business Day**" means a day on which commercial banks effect deliveries of the Base Currency in accordance with the market practice of the principal foreign exchange market for the Base Currency or, if the Base Currency is the euro, any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET) System is open.

"**Close Out**" means, when used as a verb, to accelerate, terminate, liquidate or cancel (including by way of automatic early termination) transactions under a Principal Agreement; and "**Close-Out**" means the act of Closing Out.

"**Close-Out Event**" means any event on the basis of which a Party has the contractual right to Close Out all of the transactions under a Principal Agreement or which causes automatically the Close-Out of all of the transactions under a Principal Agreement and which is not specified in Part II of the Schedule.

"**Close-Out Notice**" has the meaning given to it in Section 2.2(a).

"**Closed-Out Agreement**" means a Principal Agreement under which all transactions which legally may be Closed Out have been Closed Out.

"**Closed-Out Party**" means the Party that is not the Closing-Out Party.

"**Closing-Out Party**" has the meaning given to it in Section 2.1.

"**Final Net Settlement Amount**" has the meaning given to it in Section 4.4(a).

"**Final Settlement Date**" has the meaning given to it in Section 4.4(b).

"**Net Set-Off Amount**" has the meaning given to it in Section 4.1.

"**Principal Agreements**" means the agreements (each as from time to time amended or supplemented) between the Parties hereto designated in Part I of the Schedule.

"**Section 2 Notice**" means a notice provided under either Section 2.2(a) or Section 2.2(b).

"**Set-Off Date**" has the meaning given to it in Section 4.1.

"**Settlement Amount**" means, in respect of any Closed-Out Agreement, the net amount which is due and payable by one Party to the other upon (i) such agreement having been Closed Out, (ii) the resulting obligations of the Parties having been determined, and (iii) in accordance with the applicable Closed-Out Agreement, those obligations having been set off, and/or having been otherwise reduced, by the exercise of rights to apply any margin, collateral or other credit support delivered under or held in connection with such Closed-Out Agreement.

"**Settlement Date**" means each Set-Off Date and the Final Settlement Date.

1.2 *Other Definitional Provisions*

The term "**Party**" means a party to this Agreement and a reference herein to either "**Party**" includes a reference to its successors and permitted assigns.

2. Close-Out of all Principal Agreements

2.1 *Right to Close Out*

If any of the following events has occurred and is continuing:

(a) a Close-Out Event in respect of a Party under the terms of a Principal Agreement,

(b) a representation or warranty made or repeated by a Party hereunder proves to have been incorrect or misleading in any material respect when made or repeated, or

(c) a Party is in violation of a covenant made hereunder,

then, the Party which has the right to Close Out the Principal Agreement referred to in paragraph (a) above or the Party to whom the representation, warranty or covenant was made as referred to in paragraph (b) or (c) above (in each case, the "**Closing-Out Party**") shall be entitled to Close Out all (but not fewer than all) of the Principal Agreements which in the good faith judgment of the Closing-Out Party legally may be Closed Out under applicable law by providing a Close-Out Notice under Section 2.2(a) hereof, except that no Close-Out Notice shall be required for the Close-Out of any Principal Agreement which has been Closed Out by its terms prior to the delivery of a Close-Out Notice. For the purposes of paragraph (a) above, a Close-Out Event under the terms of a Principal Agreement will be deemed to be continuing until the earlier of such time as the conditions that constituted the Close-Out Event under such Principal Agreement cease to exist or the Settlement Amount that is due and payable under such Principal

Agreement has been paid in full. Each Principal Agreement is hereby amended accordingly.

2.2 *Exercise of Rights*

(a) *Close-Out Notice*

The Closing-Out Party shall specify in a notice to the Closed-Out Party (the "**Close-Out Notice**") the date on which the Principal Agreements are Closed Out pursuant to Section 2.1. The Close-Out Notice given in the manner specified in this Agreement shall satisfy the notification requirements (if any) under each Principal Agreement for accelerating and/or terminating transactions under such Principal Agreement. Each Principal Agreement is hereby amended accordingly.

(b) *Notice for Settlement of Automatically Closed-Out Agreements*

If all of the Principal Agreements have Closed Out automatically by their terms, the Settlement Amount under each such Principal Agreement shall be settled at the times and in the manner set forth in Sections 3.3 and 4 hereof if the Closing-Out Party so specifies in a notice to the Closed-Out Party promptly after all Principal Agreements are Closed Out. Each Principal Agreement is hereby amended accordingly.

(c) *The Closing-Out Party's Election*

For the avoidance of doubt, the Closing-Out Party may elect to exercise its rights under this Agreement by providing a Section 2 Notice. If one of the events listed in Section 2.1 hereof has occurred, unless and until a Closing-Out Party gives a Section 2 Notice, each Party shall retain its rights and obligations under each Principal Agreement without regard to Sections 3 and 4 hereof.

3. Determination and Settlement of Settlement Amounts

3.1 *Determination of Settlement Amount*

The Settlement Amount under each Closed-Out Agreement shall be determined in accordance with the terms of such Closed-Out Agreement.

3.2 *Determination of the Base Currency Equivalent of the Settlement Amount*

When a Section 2 Notice has been given and there is more than one Settlement Amount and a Settlement Amount is denominated in a currency other than the Base Currency (the "**Other Currency**"), the Closing-Out Party shall determine the amount in the Base Currency (the "**Base Currency Equivalent**") that would result from the conversion of such Settlement Amount into the Base Currency at the spot exchange rate at which the Closing-Out Party can buy the Base Currency with the Other Currency, as determined in any commercially reasonable manner, for value on the relevant Settlement Date for the Settlement Amount under Section 4 hereof. If all Settlement Amounts are denominated in a single currency other than the Base Currency, the Closing-Out Party may designate such other currency to be the Base Currency.

3.3 *Settlement of Settlement Amounts in Accordance with this Agreement*

When a Section 2 Notice has been given, all Settlement Amounts of Principal Agreements Closed Out pursuant to Section 2 (or Closed Out according to their terms on or prior to the delivery of the Section 2 Notice) shall be settled at the times and in the manner set forth in this Section 3.3 and Section 4 hereof (unless, in the good faith judgment of the Closing-Out Party, it is unlawful to do so), notwithstanding any provision to the contrary in any Closed-Out Agreement, and notwithstanding that Settlement Amounts may be payable by different branches of a Party at different locations or in different currencies pursuant to the terms of the relevant Principal Agreements. The date for settlement of such Settlement Amounts shall be deferred (with interest accruing at the rate and for the period specified in Section 4.5(a) hereof) until the occurrence of a Settlement Date hereunder. Each Principal Agreement is hereby amended accordingly.

4. Set-Off of Settlement Amounts; Accrual of Interest

4.1 *Set-Off*

On the first date and any subsequent date on which both Parties owe one or more Settlement Amounts under two or more Closed-Out Agreements (a "**Set-Off Date**"), the Closing-Out Party shall aggregate and set off all Settlement Amounts and accrued interest thereon owed by Party A to Party B against the aggregate of the Settlement Amounts and accrued interest thereon owed by Party B to Party A, and only the difference between the aggregate amounts (a "**Net Set-Off Amount**") shall be owed on such Set-Off Date by the Party with the larger aggregate obligation. The obligation of a Party to settle a Net Set-Off Amount on the Set-Off Date shall be deferred (with interest accruing at the rate and for the period specified in Section 4.5(b) hereof) until the occurrence of the first subsequent Settlement Date if any Settlement Amount is still to be determined.

4.2 *Discharge of Settlement Amount*

If a Settlement Amount has been set off in whole or in part on a Set-Off Date, such Settlement Amount shall, to the extent of such set-off, be deemed to have been discharged and no longer due under the relevant Closed-Out Agreement.

4.3 *Further Set-Offs*

Subject to Section 4.4 hereof, each Net Set-Off Amount shall be treated as if it were a Settlement Amount for purposes of Section 4.1 hereof and shall, with the interest accrued thereon, be included in the set-off on the first subsequent Set-Off Date.

4.4 *Final Net Settlement Amount*

(a) *Final Net Settlement Amount for Closed-Out Agreements*

On the first date on which the Settlement Amounts in respect of all Closed-Out Agreements have been determined, the Closing-Out Party shall determine the single amount (if any) payable by one Party hereunder (the "**Final Net Settlement Amount**") and provide to the Closed-Out Party a statement showing the calculation of the Final Net Settlement Amount (which may be provided at the same time and as part of the Section 2 Notice).

(b) *Final Settlement Date; Place of Payment*

The Final Net Settlement Amount shall be payable by the Party from whom such payment is due on the same Business Day on which the statement is provided under Section 4.4(a) hereof, if such statement is delivered by 10:00 a.m. on a Business Day (or, if the euro is the Base Currency, 10:00 a.m. Central European time); otherwise payment shall be made on the following Business Day (the "**Final Settlement Date**"). Subject to the last sentence of Section 3.2 hereof, the Final Net Settlement Amount shall be paid in the Base Currency, together with interest thereon, from (and including) the Final Settlement Date to (but excluding) the date such amount is paid, at the rate specified in Section 4.5(c) hereof. If the Party owing the Final Net Settlement Amount has more than one branch, there shall be no limitation as to the place of payment of the obligation, unless otherwise specified by the Parties hereto.

4.5 *Interest*

(a) *Interest on Settlement Amounts*

Each Settlement Amount shall bear interest at the relevant rate specified in the relevant Principal Agreement from (and including) the date on which it falls due under the Principal Agreement to (but excluding) the relevant Settlement Date for such Settlement Amount.

(b) *Interest on Net Set-Off Amounts*

Each Net Set-Off Amount shall bear interest (computed on the basis of daily compounding and the actual number of days elapsed over a year of such number of days as is customary for transactions involving the Base Currency in the London interbank market) at a rate per annum equal to the average of the rates at which overnight deposits in the Base Currency are offered by two major banks (selected by the Closing-Out Party) in the London interbank market at or about 11:00 a.m. (London time) on the Set-Off Date and each day for which such amount remains unpaid, or, if no such rate is available, at such rate as the Closing-Out Party may reasonably select, from (and including) the Set-Off Date therefor to (but excluding) the earlier of the next subsequent Set-Off Date or the Final Settlement Date.

(c) *Interest on the Final Net Settlement Amount*

The Final Net Settlement Amount shall bear interest at the rate specified in Section 4.5(b) hereof plus 1% per annum from (and including) the Final Settlement Date to (but excluding) the date of actual payment.

4.6 *No Limitation of Other Rights*

The Closing-Out Party's rights under this Section 4 shall be in addition to, and not in limitation or exclusion of, any other rights, including rights of set-off which the Closing-Out Party may have (whether by agreement, operation of law or otherwise).

5. Representations, Warranties and Covenants

Each Party represents and warrants to the other that (a) it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder and has taken all necessary actions to authorize such execution, delivery and performance, (b) the person signing this Agreement on its behalf is duly authorized to do so on its behalf, and (c) this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, conservatorship, receivership, moratorium or other similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law). Each Party represents and warrants to the other that it has not assigned, transferred, created or permitted to exist any lien or other encumbrance on, or otherwise disposed of, or purported to assign, transfer, create or permit to exist any lien or other encumbrance on, or otherwise dispose of, any of its rights to any amounts that may be owed to it under any Principal Agreement to any third party, and covenants that, so long as this Agreement is in effect, it will not assign, transfer, create or permit to exist any lien or other encumbrance on, or otherwise dispose of or purport to assign, transfer, create or permit to exist any lien or other encumbrance on, or otherwise dispose of, any of its rights to any amounts that may be owed to it under any Principal Agreement, to any third party.

6. Governing Law and Jurisdiction; Waivers

The rights of the Parties under this Agreement shall be in addition to, and not in limitation or exclusion of, any other rights which they may have (whether by agreement, operation of law or otherwise). This Agreement shall be governed by, and construed in accordance with, the laws of the jurisdiction specified in Part IV of the Schedule. The provisions regarding jurisdiction, waiver of immunities, waiver of trial by jury and process agent contained in the Principal Agreement specified in Part IV of the Schedule shall apply to this Agreement in the same manner and to the same extent as if such references were contained in this Agreement.

7. Transfer/Assignment

Neither this Agreement nor any interest in or under this Agreement may be transferred (whether by way of security or otherwise) or assigned by either Party without the prior written consent of the other Party, except that (a) a Party may make such a transfer or assignment of this Agreement to another entity pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, such other entity (but without prejudice to any right or remedy under this Agreement or any Principal Agreement); and (b) a Closing-Out Party may make such a transfer or assignment of all or any part of its interest in any Final Net Settlement Amount payable to it under Section 4.4(b) hereof (and any of the interest thereon payable to it under Section 4.5(c) hereof). Any purported transfer or assignment that is not in compliance with this Section 7 shall be void.

8. Notices and Other Communications

Any and all notices, statements, demands or other communications hereunder may be given by a Party to the other by telephone, mail, facsimile, e-mail, electronic message, telegraph, messenger or otherwise to the individuals and at the facsimile numbers and addresses specified with respect to it in Part V of the Schedule, or sent to such Party at any other place specified in a notice of change of number or address hereafter received by the other Party. Any notice, statement, demand or other communication hereunder will be deemed delivered on the day and at the time on which it is received or, if not received, on the day and at the time on which its delivery was in good faith attempted; provided, however, that any notice given by a Party to the other Party by telephone shall be deemed delivered only if: (a) such notice is followed by written confirmation thereof and (b) at least one of the other means of providing notice that are specifically listed above has previously been attempted in good faith by the notifying Party.

9. Counterparts

This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

[Name of Party A]

By: ....

Name:
Title:

[Name of Party B]

By: ....

Name:
Title:

SCHEDULE TO THE CROSS-PRODUCT MASTER AGREEMENT

This Schedule forms a part of the Cross-Product Master Agreement dated as of [ ] (the "**Agreement**") between [ ] ("**Party A**") and [ ] ("**Party B**"). Capitalized terms used but not defined in this Schedule shall have the meanings ascribed to them in the Agreement.

Part I. The Principal Agreements

☐	1.	Master Securities Loan Agreement dated as of [ ]
☐	2.	Master Repurchase Agreement dated as of [ ]
☐	3.	Master Dealer Agreement – OTC Options/U.S. Treasury Securities dated as of [ ]
☐	4.	Master Securities Forward Transaction Agreement dated as of [ ]
☐	5.	International Foreign Exchange Master Agreement dated as of [ ]
☐	6.	International Currency Options Market Master Agreement dated as of [ ]
☐	7.	Foreign Exchange and Options Master Agreement dated as of [ ]
☐	8.	ISDA Master Agreement (Multicurrency—Cross Border) dated as of [ ]
☐	9.	ISDA Master Agreement (Local Currency—Single Jurisdiction) dated as of [ ]
☐	10.	BFE/ESBG Master Agreement for Financial Transactions (European Master Agreement) dated as of [ ]
☐	11.	Global Master Repurchase Agreement dated as of [ ]
☐	12.	FOA Master Netting Agreement dated as of [ ]
☐	13.	Overseas Securities Lender's Agreement (OSLA) dated as of [ ]
☐	14.	EMTA Master Agreement for Options on Emerging Markets Instruments dated as of [ ]
☐	15.	Any master agreement between the Parties covering securities contracts, forward contracts, commodity contracts, spot or forward currency contracts, repurchase agreements, swap agreements or any other financial transactions whether currently in existence or arising hereafter.
☐	16.	All transactions between the parties similar to the transactions covered by the master agreements in 1-15 above that are documented under a confirmation or similar document which incorporates by reference the terms of a master agreement.
☐	17.	Other (specify):

Part II. Events Excluded from the Definition of "Close-Out Event"

The following event(s) shall be excluded from the definition of "Close-Out Event" for purposes of this Agreement:

1. The following Termination Events under the terms of the ISDA Master Agreement identified in Paragraphs 8 and 9 of Part I of this Schedule or any similar event under any Principal Agreement: Illegality, Tax Event, Tax Event Upon Merger and Credit Event Upon Merger.

2. Any Close-Out Event under a Principal Agreement which is (i) a "Disruption Event" as that term is described in Section 5.1 of the 1998 FX and Currency Option Definitions published by ISDA, EMTA and the Foreign Exchange Committee or (ii) any other event which (a) is in the nature of *force majeure* or act of state, (b) is beyond the control of a Party, (c) such Party, with reasonable diligence cannot overcome, and (d) prevents, hinders or delays such Party from performing or makes it illegal or impossible for such Party to perform its obligations when due under a Principal Agreement.

3. Other events: [ ]

Part III. Additional Acknowledgments and Representations

1. The Parties [do] [do not] agree to the following: Each Party intends that this Agreement constitutes a "netting contract" as defined in and subject to Title VI of the Federal Deposit Insurance Corporation Improvement Act of 1991 ("**FDICIA**"), each payment entitlement and payment obligation under the Agreement constitutes a "covered contractual payment entitlement" or "covered contractual payment obligation", respectively, as defined in and subject to FDICIA, and each Party represents that it is a "financial institution" as defined in and pursuant to FDICIA.

2. The Parties [do] [do not] agree to the following: Each Party intends that each payment to be made under this Agreement is a "margin payment" or a "settlement payment" or a "transfer" within the meaning of Sections 362 and 546 of Title 11 of the United States Code (the "**Bankruptcy Code**") and a "payment amount" within the meaning of Section 560 of the Bankruptcy Code.

Part IV. Governing Law and Jurisdiction; Waiver of Jury Trial

Governing Law: [the State of New York] [England and Wales]

Jurisdiction, Waiver of Immunities and Jury Trials and Process Agent: The provisions contained in Section(s) ____________________ of the Principal Agreement designated in Paragraph ____ of Part I of this Schedule shall apply as provided in Section 6 of this Agreement, irrespective of whether such Principal Agreement remains in effect.

Part V. Addresses for Communications Between Parties

For the purposes of Section 8 of this Agreement:

Address for notices or communications to Party A:
Address:
Attention:
Facsimile No.:
Telephone No.:
Electronic Messaging System Details:

Address for notices or communications to Party B:
Address:
Attention:
Facsimile No.:
Telephone No.:
Electronic Messaging System Details:

Part VI. Base Currency; Payment Instructions

The Base Currency is:

Payments due under this Agreement in the Base Currency shall be made to the following accounts:

Name of Bank and Office, Account Number and Reference for Party A: [ ]

Name of Bank and Office, Account Number and Reference for Party B: [ ]

Part VII. Optional Provisions

1. **Adequate Assurances.** The following [shall][shall not] be included as a new Section 2.3 of this Agreement:

   2.3 The failure by a Party to give adequate assurances of its ability to perform any of its obligations under any Principal Agreement within [ ] Business Days of a written request to do so when the other Party has reasonable grounds for insecurity shall be a Close-Out Event for the purposes of each Principal Agreement. Each Principal Agreement is hereby amended accordingly.

2. **Terminating Transactions Not Documented by a Master Agreement.** The Parties [agree][do not agree] to amend the Agreement to restate Section 2.1 as follows:

   2.1 *Right to Close Out*

   If any of the following events has occurred and is continuing:

   (a) a breach of any of a Party's obligations under any financial transaction entered into by the Parties that is not subject to a master agreement (an "**Uncovered Transaction**"),

   (b) a Close-Out Event in respect of a Party under the terms of a Principal Agreement,

(c) a representation or warranty made or repeated by a Party hereunder proves to have been incorrect or misleading in any material respect when made or repeated, or

(d) a Party is in violation of a covenant made hereunder,

then, the Party which has the right to Close Out the Uncovered Transaction referred to in paragraph (a) above and/or the Principal Agreement referred to in paragraph (b) above or the Party to whom the representation, warranty or covenant was made as referred to in paragraphs (c) or (d) above (in each case, the "**Closing-Out Party**") shall be entitled to Close Out all (but not fewer than all) of the Uncovered Transactions and the Principal Agreements which in the good faith judgment of the Closing-Out Party legally may be Closed Out under applicable law by providing a Close-Out Notice under Section 2.2(a) hereof, except that no Close-Out Notice shall be required for the Close-Out of any Uncovered Transaction or Principal Agreement which has been Closed Out by its terms prior to the delivery of a Close-Out Notice. For the purposes of paragraphs (a) and (b) above, a breach of the terms of an Uncovered Transaction and a Close-Out Event under the terms of a Principal Agreement will be deemed to be continuing until the earlier of such time as the conditions that constituted the Close-Out Event under such Uncovered Transaction or Principal Agreement cease to exist or the Settlement Amount that is due and payable under such Uncovered Transaction or such Principal Agreement has been paid in full. Each Principal Agreement and the terms of each Uncovered Transaction are hereby amended accordingly.

With respect to each Uncovered Transaction, "**Settlement Amount**" means the net amount which would be due and payable by one Party to the other Party pursuant to agreement or applicable law as a result of a breach by the Closed-Out Party of its obligations under such Uncovered Transaction. In addition, each reference in every other section of this Agreement to the term "Principal Agreement" shall be construed to include the term "Uncovered Transaction".

3. **Elimination of Closing Out Party's Election.** The Parties [agree][do not agree] to amend the Agreement as follows:

3.1 Section 2.1 of the Agreement [as restated in Part VII.2 of the Schedule]* is amended (a) to delete, in the first sentence thereof, the words "be entitled to" and to insert in lieu thereof ", when any Principal Agreement is Closed Out,"; and (b) to delete the second sentence thereof.

3.2 Section 2.2(b) is amended to delete the words "*Notice for*" in the title thereof and the phrase "if the Closing-Out Party so specifies in a notice to the Closed-Out Party promptly after all Principal Agreements are Closed Out," in the first sentence thereof and is restated as follows:

---

* Include the bracketed language only if the Parties have agreed to include Part VII.2 of the Schedule in the Agreement.

> "*(b) Settlement of Automatically Closed-Out Agreements*
> If all of the Principal Agreements have been Closed Out automatically by their terms, the Settlement Amount under each such Principal Agreement shall be settled at the times and in the manner set forth in Sections 3.3 and 4 hereof. Each Principal Agreement is hereby amended accordingly."

3.3 Section 2.2(c) is deleted in its entirety.

Part VIII. Credit Support

First Alternative:

Security Interest.

With respect to [Principal Agreement Nos. [ ] in Part I of the Schedule]:

1. The Parties hereto agree that any property in which a Party has been or will be granted a security interest to secure obligations owed to it by the other Party (the "**Other Party**") under a Principal Agreement (the "**Collateral**") shall also secure the Other Party's obligation to pay a Final Net Settlement Amount under Section 4.4 of the Agreement.

2. The Parties hereby agree that the Party to whom any Final Net Settlement Amount is owed (the "**Secured Party**") shall be entitled to realize against any Collateral and apply the proceeds thereof to satisfy the obligation of the Other Party to pay the Final Net Settlement Amount or, if the Secured Party so determines in its sole discretion, to set off any Final Net Settlement Amount payable by the Other Party against the amount of any Collateral or the market value thereof (such market value to be determined in a commercially reasonable manner).

3. Each Principal Agreement and Credit Support Document related thereto is hereby amended as set forth in paragraphs 1 and 2 above.

"**Credit Support Document**" means any agreement, registration, filing or comparable document creating or perfecting a security interest in financial assets, general intangibles, contract rights, securities accounts, security entitlements or other property to secure performance of the obligations of a Party under a Principal Agreement, excluding any guarantee by a third party of a Party's obligations.

Second Alternative:

With respect to [Principal Agreement Nos. [ ] in Part I of the Schedule]:

Certain Set-Off Rights. In respect of any Closed-Out Agreement, the Closing-Out Party shall have the right to: (i) determine in good faith an amount equal to the fair market value of any securities or other property that either Party has obtained under such Closed-Out Agreement or Credit Support Document related thereto and is or may be obligated to return or otherwise transfer to the other Party, and (ii) include such amount as an amount payable by such Party in determining the Settlement Amount under such Closed-Out Agreement. Each Principal Agreement and Credit Support Document related thereto is hereby amended accordingly.

"**Credit Support Document**" means any agreement, registration, filing or comparable document creating an interest in financial assets, general intangibles, contract rights, securities accounts, security entitlements or other property to secure performance of the obligations of a Party under a Principal Agreement, excluding any guarantee by a third party of a Party's obligations.

Part IX. Additional Terms

The following additional terms and conditions shall apply:

[Name of Party A]

By: ....

Name:
Title:

[Name of Party B]

By: ....

Name:
Title:

EFET

European Federation of Energy Traders

Amstelveenseweg 998 / 1081 JS Amsterdam
Tel: +31 20 5207970 / Fax: +31 20 64 64 055

E-mail: secretariat@efet.org

Webpage: www.efet.org

EFET/IECA
COMMODITIES SCHEDULE

to the
Cross-Product Master Agreement
(the "Schedule")

NOTICE & WAIVER: THIS SCHEDULE WAS PREPARED BY EFET IN CONJUNCTION WITH THE IECA EXERCISING ALL REASONABLE CARE. HOWEVER EFET, IECA AND THEIR RESPECTIVE MEMBERS, REPRESENTATIVES AND COUNSEL INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE AND ANY DAMAGES OR LOSSES RESULTING OUT OF ITS USE IN ANY PARTICULAR CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS SCHEDULE AND THE AGREEMENT TO ENSURE ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE USER'S LEGAL INTEREST. USERS OF THIS SCHEDULE ARE URGED TO CONSULT THE PRACTICE NOTES AND RELEVANT LEGAL OPINIONS MADE AVAILABLE THROUGH EFET AND THE BOND MARKET ASSOCIATION AS WELL AS THEIR OWN COUNSEL.

EFET/IECA
COMMODITIES SCHEDULE

to the

Cross-Product Master Agreement

dated as of __________

between

[____________________________]

having its registered office at [_____________________________]

("**Party A**")

and

[____________________________]

having its registered office at [_____________________________]

("**Party B**")

This Schedule is to be used in conjunction with the Cross-Product Master Agreement published by The Bond Market Association in February 2000. Division 1 of this Schedule requires the Parties to make a series of elections in respect of certain matters, whilst Division 2 of this Schedule makes further amendments to apply to the Cross-Product Master Agreement entered into by Party A and Party B.

Capitalised terms used but not defined in this Schedule shall have the meanings ascribed to them in the Agreement.

In the event of any inconsistency between the provisions of this Schedule and any other provisions of this Agreement, this Schedule will prevail.

DIVISION 1 – ELECTIONS BY THE PARTIES

Part I. Principal Agreements, Excluded Agreements and Uncovered Transactions

A. The Principal Agreements are:

1. [ ]	Electricity Forward Agreement Association Grid Trade Master Agreement dated as of [ ] (the **"GTMA"**)
2. [ ]	European Federation of Energy Traders General Agreement concerning Delivery and Acceptance of Electricity with an Effective Date of [ ] (the **"EFET Power Agreement"**)
3. [ ]	European Federation of Energy Traders General Agreement concerning Delivery and Acceptance of Natural Gas with an Effective Date of [ ] (the **"EFET Gas Agreement"**)
4. [ ]	International Swaps and Derivatives Association, Inc. (**"ISDA"**) Master Agreement (Multicurrency - Cross-Border) dated as of [ ] (the **"ISDA Master Agreement"**)
5. [ ]	Zeebrugge Hub Natural Gas Trading Terms and Conditions 2001 ("**ZBT Terms**")
6. [ ]	Master agreements agreed between the Parties incorporating the Short Term Flat NBP Trading Terms and Conditions 1997 dated as of [ ] ("**NBP Master**") *
7. [ ]	Any master agreement between the Parties covering securities contracts, spot or forward, physically or cash settling commodity contracts or currency contracts, repurchase agreements, swap agreements and any other physical or cash settling transaction whether currently in existence or arising hereafter.
8. [ ]	All agreements or transactions between the Parties similar to the transactions covered by the master agreements in 1-7 above that are documented under a confirmation or similar document which incorporates by reference all or some of the terms of the master agreements in 1-7.
9. [ ]	Other [Specify]:

*A form of document that could be used in conjunction with Short Term Flat NBP Trading Terms and Conditions 1997 to create a master agreement is attached to the guidance notes as Annexure A.

B. The Excluded Agreements are:

1.	
2.	
3.	

C. Uncovered Transactions

Unless the Parties make at least one election under each of items (a) – (d) below of this Part I of Division 1 they shall be deemed to agree that this Agreement applies only to the identified Principal Agreements.

The Parties elect that:

[ ] ***Close-Out and netting shall apply across the Principal Agreements only (and not Uncovered Transactions)***, and therefore the Parties agree to amend and restate Section 2.1 as follows:

"2.1 *Right to Close Out*

If a Close-Out Event has occurred and is continuing in respect of a Party, then the other Party (the "**Closing-Out Party**") shall be entitled to Close Out all (but not fewer than all) of the Principal Agreements by providing a Close-Out Notice under Section 2.2(a), except that no Close-Out Notice shall be required for the Close Out of any Principal Agreement which has been Closed Out by its terms or under Section 2.2(b). A Close-Out Event will be deemed to be continuing until the earlier of such time as the conditions that constituted the Close-Out Event cease to exist or the Settlement Amount that is due and payable under such Principal Agreement has been paid in full. Each Principal Agreement is hereby amended accordingly."

OR

[ ] ***Close-Out and netting shall apply to Principal Agreements and Uncovered Transactions***, and therefore the Parties agree to amend and restate Section 2.1, ***and have made certain elections***, as follows:

"2.1 *Right to Close Out*

If a Close-Out Event has occurred and is continuing in respect of a Party, then the other Party (the "**Closing-Out Party**") shall be entitled to Close Out all (but not fewer than all) of the Uncovered Transactions and the Principal Agreements by providing a Close-Out Notice under Section 2.2(a), except that no Close-Out Notice shall be required for the Close Out of any Uncovered Transaction or Principal Agreement which has been Closed Out by its terms or under Section 2.2(b). A Close-Out Event or an Uncovered Transaction Default will be deemed to be continuing until the earlier of such time as the conditions that constituted the Close-Out Event or Uncovered Transaction Default cease to exist or the Settlement Amount that is due and payable under such Principal Agreement or such Uncovered Transaction has been paid in full. Each Principal Agreement and each Uncovered Transaction are hereby amended accordingly.

Each reference in every other provision of this Agreement to the term "Principal Agreement" shall be construed to mean "Principal Agreement or Uncovered Transaction."

Where the Parties have elected that Close-Out and netting shall apply to Principal Agreements and Uncovered Transactions, they shall elect as follows:

(a) "**Commodities**" means:

[ ] crude oil, oil products, chemical products, natural gas, coal, metals, pulp, paper, freight, electricity, electricity transmission capacity or any other form of energy or energy related products and by-products thereof and weather;

[ ] a greenhouse emissions allowance, a tradable renewable energy credit and bandwith;

[ ] other: [Specify].

(b) "**Uncovered Transaction**" means any contract (whether oral or in writing) entered into by the Parties other than a Principal Agreement or an Excluded Agreement (as identified in Part 1 of Division 1 of this Schedule, or any transaction which is part of or subject thereto), and:

[ ] is described in its terms as being an Uncovered Transaction for the purposes of this Agreement;

[ ] incorporates the Short, Flat NBP Trading Terms and Conditions 1997, but is not subject to a NBP Master;

[ ] incorporates the Beach 2000 standard terms and conditions;

[ ] incorporates the Zeebrugge Hub Natural Gas Trading Terms and Conditions 1999;

[ ] contemplates the spot or forward physical delivery, notification or nomination of Commodities (including any option thereto);

[ ] contemplates or is a cash settled forward or swap (including any cap, collar, or floor) or other derivative relating to any or all Commodities, or with respect to the price or value of any or all Commodities, or any similar transaction or combination of the foregoing;

[ ] is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity index swap, equity index option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions);

[ ] other: [Specify].

(c) "**Uncovered Transaction Default**" means, in respect of a Party:

[ ] a breach of any of the obligations of that Party or its Credit Support Provider under any Uncovered Transaction; or

[ ] the occurrence with respect to that Party or its Credit Support Provider under any Uncovered Transaction of:

[ ] (i) **Payment Default:** a failure to perform any payment obligation under any Uncovered Transaction by the relevant due date, where such failure is not remedied on or before the later of any grace period provided for in the Uncovered Transaction or two Business Days after notice of such failure is given to the Party;

[ ] (ii) **Insolvency:** howsoever described in the Uncovered Transaction, a default or event of default consequent on any insolvency or bankruptcy event;

[ ] (iii) **Breach of Agreement:** a failure to comply with or perform any material obligation (other than an obligation to pay or deliver, accept delivery, notify or nominate under an Uncovered Transaction) to be complied with or performed by the Party or its Credit Support Provider in accordance with any Uncovered Transaction or Credit Support if such failure is not remedied on or before the later of any grace period provided for in the Uncovered Transaction or ten Business Days after notice of such failure is given to the Party by the other Party;

[ ] (iv) **Misrepresentation:** a material representation or warranty made or repeated (or deemed to have been made or repeated) in respect of any Uncovered Transaction or Credit Support, as applicable, proving to have been incorrect or misleading in any material respect when made or repeated (or deemed to have been made or repeated);

[ ] (v) **Other**: [Specify].

(d) Where a Close-Out Notice has been served, with respect to each Uncovered Transaction, "**Settlement Amount**" means the net amount which would be due and payable by one Party to the other Party pursuant to agreement, or where no such provision exists in a particular Uncovered Transaction, the Settlement Amount:

[ ] means the net amount which would be due and payable by one Party to the other Party pursuant to applicable law as a result of a breach by the Closed-Out Party of its obligations under such Uncovered Transaction; or

[ ] has the following meaning: [Specify],

and Section 3.1 is construed accordingly.

AND

Section 2.2(c) shall be restated as follows:

"(c) **<u>Non-Global Close-Out:</u>** For the avoidance of doubt, the Closing-Out Party may elect to exercise its rights under this Agreement by providing a Section 2 Notice. If one of the events listed in Section 2.1 hereof has occurred, unless and until a Closing-Out Party gives a Section 2 Notice, each Party shall retain its rights and obligations under each Principal Agreement without regard to Sections 3 and 4 hereof. Where a Party elects to exercise its rights under a Principal Agreement rather than its rights under this Agreement, it is required to satisfy the notification requirements under the relevant Principal Agreement."

UNLESS

[ ] The Parties hereby elect that Section 2.2(c) shall be restated as follows:

"(c) **Global Close-Out:** In the event that the Closing-Out Party exercises any right to Close Out one or more (but not all) of the Principal Agreement(s) for one of the events listed in Section 2.1 hereof (whether or not in conjunction with the giving of a Section 2 Notice), the exercise of such right shall be deemed to be effective provision of a Section 2 Notice."

D. Application of this Agreement

This Agreement applies to Principal Agreements and transactions thereunder entered into before or after the date of this Agreement.

Part II. Definition of Close-Out Event and Excluded Event

A. [ ] "Close-Out Event" means an event that is not an Excluded Event and:

[ ] is an event in relation to a Party on the basis of which the other Party has the contractual right to Close Out all the transactions under a Principal Agreement and shall include events on the basis of which a Party would have the contractual right to Close Out all of the transactions under a Principal Agreement or which would cause automatically the Close-Out of all of the transactions under a Principal Agreement even if there are no transactions outstanding under that Principal Agreement at the relevant time;

[ ] occurs when a representation or warranty made or repeated by a Party under Section 5 of this Agreement proves to have been incorrect or misleading in any material respect when made or repeated;

[ ] occurs when a Party is in violation of a covenant made under this Agreement;

[ ] is an Uncovered Transaction Default (as defined in Section 2.1);

[ ] is the failure by a Party or its Credit Support Provider to give adequate assurances of its ability to perform any of its obligations under any Principal Agreement within three Business Days of a written request to do so when the other Party has reasonable grounds for insecurity. Such failure shall be a Close-Out Event for the purposes of each Principal Agreement. Each Principal Agreement is hereby amended accordingly.

OR

[ ] "**Close-Out Event**" means the following events and circumstances:

1. [ ]	[Insolvency Event]
2. [ ]	[Breach of Representation or Warranty]

3. [ ]	[Non-Payment]
4. [ ]	[Persistent Notification/Delivery Default]
5. [ ]	[Breach of Material Obligation]
6. [ ]	[Failure of Credit Support]
7. [ ]	[Cross Default]
8. [ ]	[Default under Relevant Transaction]
9. [ ]	[Material Adverse Change]

[ ] an Uncovered Transaction Default (as defined in Section 2.1);

[ ] the failure by a Party or its Credit Support Provider to give adequate assurances of its ability to perform any of its obligations under any Principal Agreement within three Business Days of a written request to do so when the other Party has reasonable grounds for insecurity. Such failure shall be a Close-Out Event for the purposes of each Principal Agreement. Each Principal Agreement is hereby amended accordingly.

B. "Excluded Events" means the following events and circumstances:

[ ] any event on the basis of which a Party has the contractual right to Close Out all of the transactions, or all of the affected transactions, under a Principal Agreement due to: (i) the imposition or incurrence of tax liabilities or the obligation to gross-up payments on account of tax, or (ii) a change in law that makes performance under or in respect of that Principal Agreement illegal;

[ ] any event which is defined as a "Force Majeure" under any Principal Agreement;

[ ] any failure to nominate, deliver, notify or accept under a Principal Agreement where the Principal Agreement provides by its terms for payment to be made consequent upon such event;

[ ] The following events and circumstances: [Specify]

C. Automatic Close-Out of each Principal Agreement

[ ] The Parties agree that Section 2.2(b) is restated as follows:

"(b) *Automatically Closed Out Agreements*

Each of the Principal Agreements shall Close Out automatically immediately upon the automatic Close-Out of any one of the Principal Agreements pursuant to its terms. If all of the Principal Agreements are Closed Out automatically, the Settlement Amount under each Principal Agreement shall be settled at the times and in the manner set forth in Sections 2.1 (where applicable, in relation to Uncovered Transactions), 3.3 and 4 hereof, if the Closing-Out Party so specifies in a notice to the Closed-Out Party promptly after the automatic Close Out of all such Principal Agreements. Each Principal Agreement is hereby amended accordingly."

Part III. Additional Acknowledgments and Representations

[ ] The parties agree the following additional acknowledgements and representations are added to Section 5:

1.	
2.	
3.	
4.	

Part IV. Governing Law and Jurisdiction

Unless the Parties make an election below the governing law shall be the law of England and Wales, and the Parties submit to the exclusive jurisdiction of the English courts for the purposes of any dispute under or in connection with this Agreement.

[ ] Governing Law: Germany

Jurisdiction: The Parties submit to the exclusive jurisdiction of the Frankfurt/Main courts for the purposes of any dispute under or in connection with this Agreement.

[ ] Governing Law: [Specify law and jurisdiction]

Part V. Addresses for Communications Between Parties

For the purposes of Section 8 of this Agreement:

Address for notices or communications to Party A:

Address:
Attention:
Facsimile No:
Telephone No:

Address for notices or communications to Party B:

Address:
Attention:
Facsimile No:
Telephone No:

Part VI. Base Currency; Payment Instructions

The Base Currency is:

[ ] Sterling; or

[ ] Euro; or

[ ] Other, [Specify]

Payments due under this Agreement in the Base Currency shall be made to the following accounts:

Name of Bank and Office, Account Number and Reference for Party A:
[Specify]

Name of Bank and Office, Account Number and Reference for Party B:
[Specify]

Part VII. Assignment

Unless the Parties make an election below, Section 7 shall apply but shall be amended to:

(a) include the phrase "or any Principal Agreement" after the word "Agreement" each time it appears in Section 7 save for in line 7 where it already appears; and

(b) add the phrase "The terms of this Section 7 prevail over any inconsistent provisions contained in the Principal Agreements or Credit Support Documents" to the end of the Section.

[ ] Section 7 is deleted and restated as follows:

"Neither this Agreement nor the Principal Agreements nor any rights or obligations thereunder may be transferred (whether by security or otherwise) or assigned by either Party without the prior written consent of the other Party except that a Closing-Out Party may make such a transfer or assignment of all or any part of its interest in any Final Net Settlement Amount payable to it under Section 4.4(b) (and any of the interest thereon payable to it under Section 4.5(c)). The terms of this Section 7 prevail over any inconsistent provisions contained in the Principal Agreements."

[ ] Section 7 is deleted and restated as follows: [Specify]

Part VIII. Section 10 - Optional Miscellaneous Provisions

Section 10 of the Agreement shall contain the following provisions if elected by the Parties:

10.1 Set-Off of Final Net Settlement Amount

[ ] The following shall be included in the Agreement:

Where under the terms of Section 4.4(b) the Final Net Settlement Amount is payable, the Closing-Out Party may, at its option and without prior notice to the Closed-Out Party, set off the Final Net Settlement Amount or part thereof against any payment obligation of the Closed-Out Party (whether or not matured, contingent or invoiced) under any other agreements, instruments or undertakings between the Parties. The right of set-off shall be without prejudice and in addition to any right of set-off, combination of accounts, lien, charge or other right to which any Party is at any time otherwise entitled (whether by operation of law, by contract or otherwise). If an amount is unascertained, the Closing-Out Party under Section 2.1 may reasonably estimate the amount to be set off.

Nothing in this Section 10.1 is intended to create or does create in favour of either Party a mortgage, charge, lien, pledge, encumbrance or other security interest.

Payment obligations of the Closed-Out Party under any agreements, instruments or undertakings between the Parties that are denominated in a currency other than the Base Currency shall, in order to effect set off in accordance with this Section 10.1, be converted into a Base Currency Equivalent under the principles set out in Section 3.2.

10.2 *No waiver*

[ ] The following shall be included in the Agreement:

A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

10.3 *Rights of Third Parties*

[ ] The following shall be included in the Agreement:

The Parties do not intend that any third party shall have any rights under or be able to enforce the Agreement and the Parties exclude to the extent permitted under applicable law any such third party rights that might otherwise be implied.

10.4 *Suspension*

[ ] The following shall be included in the Agreement:

(i) If (a) a Party has a right to Close Out under Section 2.1, or (b) an event occurs that with the passage of time or the giving of notice would give a Party a right to Close Out under Section 2.1 (a **"Potential Close-Out Event"**), then that Party (the "**Suspending Party**") shall, for so long as it has a right to Close Out under Section 2.1 or the Potential Close-Out Event continues, be entitled to cease further delivery, acceptance, nomination and notification (and upon the Suspending Party so ceasing, each Party shall be released (and not merely suspended) from the underlying delivery, acceptance, notification and nomination obligations) under all (but not some) Principal Agreements, provided (subject to paragraph (ii) below) that the Suspending Party gives X hours written notice to the other Party of the exercise by it of its rights pursuant to this provision and the Suspending Party does not subsequently seek to deliver, accept, nominate or notify in relation to any obligations arising under such Principal Agreements without first giving at least Y hours written notice to the other Party of its intention to re-commence delivery, acceptance, nomination or notification. For the purposes of this paragraph (i):

X shall be [______] hours, and Y shall be [______] hours.

(ii) If a Party has a right to Close Out under Section 2.1, or if a Potential Close-Out Event has occurred, then the Suspending Party shall, for so long as it has a right to Close Out under Section 2.1 or the Potential Close-Out Event continues, have the right, without providing notice to the other Party, to withhold payments owed by it to the other Party under all (but not some) Principal Agreements.

(iii) Where the Suspending Party exercises its rights under paragraph (i) above the other Party is under a positive obligation to notify, nominate or renominate volumes and quantities to any system operator to reflect the cessation referred to in paragraph (i).

(iv) The exercise by the Suspending Party of its rights under this provision shall not prevent it from subsequently exercising its rights under Section 2.1 of this Agreement, and are without prejudice to the Suspending Party's existing rights under any Principal Agreement.

(v) If a Suspending Party purports to exercise its rights under paragraph (i) and/or (ii) above in circumstances where neither a Close-Out Event nor a Potential Close-Out Event has in fact occurred in respect of the other Party, then the Suspending Party shall indemnify and hold harmless the other Party against any liabilities, imbalance charges or other costs incurred by the other Party in respect of any transactions under a Principal Agreement as a result of the Suspending Party's purported exercise of rights under paragraph (i) and/or (ii) above.

(vi) Each Principal Agreement shall be amended by the terms of this Section 10.4.

10.5 *Automatic Early Termination and Adjustment for Bankruptcy*

[ ] The following shall be included in the Agreement:

In circumstances where Close-Out occurs automatically, the relevant Settlement Amount will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under the relevant Principal Agreement (and retained by such other party) during the period from the date of Close-Out to the date of calculation of the relevant Settlement Amount.

10.6 *Single Agreement*

[ ] The following shall be included in the Agreement:

This Agreement, all Principal Agreements, and all transactions under Principal Agreements shall together constitute a single agreement between the Parties, and the Parties acknowledge that all such transactions entered into after the date of this Agreement are entered into upon reliance of this fact and that they would not otherwise enter into those transactions.

10.7 *Benefit of Credit Support*

[ ] The following shall be included in the Agreement:

Without limitation to Section 4.1, if a Party to whom a Settlement Amount under any Closed-Out Agreement is payable has the benefit of Credit Support under any

Closed-Out Agreement or this Agreement, then such Party shall include the Settlement Amount within the set-off pursuant to Section 4.1 but shall only be entitled to apply such Credit Support against the Final Net Settlement Amount.

The definition of Settlement Amount in Section 1.1 is restated as follows:

"**Settlement Amount**" means, in respect of any Closed-Out Agreement, the net amount which is due and payable by one Party to the other upon (i) such agreement having been Closed Out, (ii) the resulting obligations of the Parties having been determined, but (iii) notwithstanding the terms of the applicable Closed-Out Agreement, the Parties shall not be entitled to exercise any rights to Credit Support in determining the Settlement Amount under any Closed-Out Agreement.

10.8 *Withholding Final Net Settlement Amount*

[ ] The following shall be included in the Agreement:

Where under the terms of Section 4.4(b) the Final Net Settlement Amount is payable to the Closed-Out Party, the Closing-Out Party shall not be required to pay the Final Net Settlement Amount to the Closed-Out Party until the Closing-Out Party receives confirmation satisfactory to it, in its reasonable discretion, that all obligations of any kind whatsoever of the Closed-Out Party to make any payments to the Closing-Out Party or its Affiliates under this Agreement or any other agreement have been or will be fully and finally performed.

10.9 *Appointment of Process Agent*

[ ] The following shall be included in the Agreement:

Each Party irrevocably appoints the Process Agent (if any) specified opposite its name below to receive, for it and on its behalf, service of process in any suit, action or proceedings relating to this Agreement. If for any reason any Party's Process Agent is unable to act as such, such Party will promptly notify the other Party and within 30 days appoint a substitute process agent acceptable to the other Party. The Parties irrevocably consent to service of process given in the manner provided for in this Agreement.

Party A appoints as its Process Agent:

Party B appoints as its Process Agent:

10.10 *Partial Invalidity*

[ ] The following shall be included in the Agreement:

If, at any time, any provision of this Agreement, a Principal Agreement or any transaction thereunder is or becomes illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this Agreement, any Principal Agreement or transaction thereunder, shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision that comes as close as possible to the invalid provision as regards its economic intent.

Part IX. Credit Support

The following shall each be a Credit Support Document:

[ ] The Cross-Product Credit Support Annex attached hereto**;

[ ] Guarantees: [Specify];

[ ] Other: [Specify].

Credit Support Provider means any provider of a Credit Support Document.

** A form of Cross-Product Credit Support Annex that could be used in conjunction with this Agreement is attached to the guidance notes as Appendix B.

Part X. Additional Terms

DIVISION 2 – FURTHER AMENDMENTS

Section 1 - Interpretation

The following definitions are added:

"**Affiliate**" has the meaning given to that term in EFET General Agreement Concerning the Delivery and Acceptance of Electricity, version 2.1, December 20, 2000;

"**Credit Support**" means any margin, collateral, guarantees or other credit support delivered under or held in connection with a Principal Agreement and/or this Agreement, including, but not limited to, any Credit Support Document;

"**Credit Support Document**" has the meaning ascribed to it in Part IX of Division 1 of this Schedule;

"**Credit Support Provider**" means any provider of a Credit Support Document

"**Closing-Out Party**" has the meaning ascribed to it in Section 2.1;

"**Excluded Events**" has the meaning ascribed to it at Part II of Division 1 of this Schedule.

The following definitions are amended and restated as follows:

"**Agreement**" means the Cross-Product Master Agreement published by The Bond Market Association in February 2000 as amended by this Schedule, together with any Credit Support Document. All references in the Agreement to specific Parts of the Schedule shall mean references to the same Part number in Division 1 of this Schedule;

"**Business Day**" means a day (other than a Saturday or a Sunday) on which commercial banks are open for general business at the places where each Party has its registered office; and

"**Close-Out Event**" is restated in accordance with the election made by the Parties at Part II of Division 1 of this Schedule.

Section 3 – Determination and Settlement of Settlement Amounts

The first sentence of Section 3.3 is amended by deleting the words from "(unless, in the good faith judgment" to "terms of the relevant Principal Agreements" inclusive, and replacing them with ", notwithstanding any provision to the contrary in any Closed-Out Agreement."

Section 4 – Set-Off of Settlement Amounts; Accrual of Interest

The first sentence of Section 4.4(b) shall be prefaced with the words "Subject to Section 10.8 (if applicable), "

Section 5 – Representations, Warranties and Covenants

The final sentence of Section 5 is restated as follows:

"Each Party represents and warrants to the other that it has not transferred (whether by security or otherwise) assigned, purported to assign or otherwise dispose or disposed of, any of its rights to any amounts that may be owed to it under any Principal Agreement."

Section 6 – Governing Law and Jurisdiction; Waivers

The final sentence of Section 6 is deleted in its entirety.

Section 8 – Notices and Other Communications

Section 8 is deleted and restated as follows:

"All notices sent by one Party to the other shall be in writing and shall be delivered by letter (overnight mail or courier, postage prepaid) or facsimile to the address provided in Part V of Division 1 of this Schedule. Each Party may change its notice information by two Business Days written notice to the other. Written notices shall be deemed received and effective:

(a) if delivered by hand, on the day delivered if delivered before 17.00 hours (recipient's time) on a Business Day or otherwise on the first Business Day after the date of delivery;

(b) if sent by first class post, on the 2nd Business Day after the date of posting, or if sent from one country to another, on the 5th Business Day after the day of posting; or

(c) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 17.00 hours (recipient's time) on a Business Day or otherwise at 09.00 hours (recipient's time) on the first Business Day after transmission."

Party A:

By: ....

Name:
Title:
Date:

Party B:

By: ....

Name:
Title:
Date:

Version 1.0/June 23, 2003

EFET

European Federation of Energy Traders

Amstelveenseweg 998 / 1081 JS Amsterdam
Tel: +31 20 5207970 / Fax: +31 20 64 64 055

E-mail: secretariat@efet.org

Webpage: www.efet.org

Cross-Product Credit Support Annex

to the
Cross-Product Master Agreement
(the "Annex")

NOTICE & WAIVER: THIS ANNEX WAS PREPARED BY EFET IN CONJUNCTION WITH THE IECA EXERCISING ALL REASONABLE CARE. HOWEVER EFET, IECA AND THEIR RESPECTIVE MEMBERS, REPRESENTATIVES AND COUNSEL INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE AND ANY DAMAGES OR LOSSES RESULTING OUT OF ITS USE IN ANY PARTICULAR CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS ANNEX AND THE AGREEMENT TO ENSURE ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE USER'S LEGAL INTEREST. USERS OF THIS ANNEX ARE URGED TO CONSULT THE PRACTICE NOTES AND RELEVANT LEGAL OPINIONS MADE AVAILABLE THROUGH EFET AND THE BOND MARKET ASSOCIATION AS WELL AS THEIR OWN COUNSEL.

CROSS-PRODUCT
CREDIT SUPPORT ANNEX

to the

Cross-Product Master Agreement

Dated as of [•]

between

[•]

("Party A")

and

[•]

("Party B")

This Cross-Product Credit Support Annex (the "**Annex**") supplements, amends, forms part of and is subject to the Cross Product Master Agreement (the "**Agreement**") referred to above. The Parties agree to provide each other with Eligible Credit Support according to the following provisions. This shall serve to collateralize outstanding obligations between the Parties from time to time pursuant to the Agreement.

§ 1
Definitions and Interpretation

1. **Definitions:** In addition to the other terms and phrases in the Agreement, the capitalized terms used in this Annex shall have the meanings set out in Appendix 1.

2. **Interpretation:** Headings and titles are for convenience only and do not affect the interpretation of this Annex. Unless otherwise described, references in this Annex to paragraphs are to paragraphs of this Annex. In the event of inconsistency between this Annex and other provisions of the Agreement, this Annex will prevail. In the event of inconsistency between § 14 and the other provisions of this Annex, § 14 will prevail. References to "transfer" in this Annex mean, in relation to Cash, payment, and in relation to other assets, delivery.

§2
Valuation Agent and Determination of Valuations

1. **Valuation Agent:** The Valuation Agent shall be the agent designated as such in § 14.5. Should the Parties not have determined a Valuation Agent under § 14.5, the Party asserting a claim for transfer under § 3 or § 4 shall be the Valuation Agent. Should (a) a Close-Out Event have occurred or (b) notice have been given of an event or circumstance which is not a Close-Out Event but which allows a Principal Agreement to be closed out, each in relation to the Valuation Agent designated in accordance with sentences one or two of this § 2.1, then the Party in relation to which the event described in (a) or (b) above does not subsist, for so long as the event described in (a) or (b) above subsists, shall assume the function of Valuation Agent.

2. **Determination of Valuations:** The Valuation Agent or the Party assuming the function of Valuation Agent in accordance with § 2.1 shall determine the Base Currency Equivalent at the Valuation Time in respect of each Valuation Day and inform the Parties no later than the Notification Time on the Valuation Day of the following:

   (a) the amount of any Exposure;
   (b) the Value of any Eligible Credit Support held under this Annex;
   (c) the amount of any Credit Support Amount; and
   (d) the amount, if any, which may be transferred pursuant to § 3 or § 4.

§3
Credit Support Obligations

1. **Credit Support Obligations:** Upon demand by a Party (the **"Transferee"**) on or promptly following a Valuation Day, the other Party (the **"Transferor"**) shall transfer to the Transferee Eligible Credit Support in an amount equal to the amount by which the Credit Support Amount of the Transferee exceeds the Eligible Credit Support held by the Transferee at the Valuation Time (the "**Delivery Amount**"). Eligible Credit Support demanded but not received by a Party prior to a Valuation Time shall be deemed to be held by it, provided that the transfer of such Eligible Credit Support is due on or after such Valuation Time. The amounts to be transferred in accordance with this § 3.1 shall be rounded as specified in § 14.12.

2. **Delivery of Eligible Credit Support:** Subject to § 8, should a Transferor receive a request for Eligible Credit Support in accordance with § 3.1, then the Transferor shall transfer to the Transferee the requested Eligible Credit Support not later than close of business on the Local Business Day following such request by either:

   (a) transferring Cash to the account of the Transferee specified in § 13; or
   (b) providing a Letter of Credit.

3. **Suspension of Delivery of Eligible Credit Support:** In the event that a Principal Agreement is terminated (i) upon grounds which do not constitute a Close-Out Event for purposes of the Agreement, or (ii) upon grounds which do constitute a Close-Out Event for purposes of the Agreement but the non-defaulting party elects not to exercise its right to Close Out under the Agreement (if applicable) and, if as a consequence of such termination, the party which is the non-defaulting party under the terms of that Principal Agreement is required to deliver Eligible Credit Support pursuant to this Annex, then such delivery obligation shall be suspended until such time as the non-defaulting party has been paid the sums payable (if any) as a consequence of the termination of the relevant Principal Agreement. In addition, if as a consequence of the termination upon grounds as described in the preceding sentence, the party which is the non-defaulting party under the terms of the Principal Agreement is entitled to receive Eligible Credit Support pursuant to this Annex, then the non-defaulting party may set off the amount of such Eligible Credit Support to be delivered to it against sums payable (if any) by it as a consequence of the termination of the relevant Principal Agreement.

§4
Return of Eligible Credit Support

1. **Excess Credit Support:** Upon demand by the Transferor on or promptly following a Valuation Day, the Transferee shall transfer to the Transferor Eligible Credit Support in an amount equal to the amount by which the Eligible Credit Support held by the Transferee exceeds the Credit Support Amount of the Transferee at the Valuation Time (the "**Return Amount**"). The amounts to be transferred in accordance with this § 4.1 shall be rounded as specified in § 14.12.

2. **Return of Eligible Credit Support:** Subject to § 8, should a Transferee receive a request pursuant to § 4.1, then the Transferee shall transfer to the Transferor the requested Return Amount not later than close of business on the Local Business Day following such request by either:

   (a) transferring Cash to the account of the Transferor specified in § 13; or
   (b) where the Eligible Credit Support is a Letter of Credit, and as preferred by the Transferor, waiving its rights, in part or in whole, under, or agreeing to the amendment or revocation of the Letter of Credit and, where relevant, its return. The Transferee may waive its rights conditional upon the transfer of other Eligible Credit Support such that its Value, when added to the Value of the remaining Eligible Credit Support held by the Transferee, equals the Credit Support Amount of the Transferee.

3. **Suspension of Return of Eligible Credit Support:** In the event that a Principal Agreement is terminated (i) upon grounds which do not constitute a Close-Out Event for purposes of the Agreement, or (ii) upon grounds which do constitute a Close-Out Event for purposes of the Agreement but the non-defaulting party elects not to exercise its right to Close Out under the Agreement (if applicable) and, if as a consequence of such termination, the party which is the non-defaulting party under the terms of the Principal Agreement is required to return Eligible Credit Support pursuant to this Annex, then such return obligation shall be suspended until such time as the non-defaulting party has been paid the sums payable (if any) as a consequence of the termination of the relevant Principal Agreement. In addition, if as a consequence of the termination upon grounds as described in the preceding sentence, the party which is the non-defaulting party under the terms of the Principal Agreement is entitled to a return of Eligible Credit Support pursuant to this Annex, then the non-defaulting party may set off the amount of such Eligible Credit Support to be returned to it against sums payable (if any) by it as a consequence of the termination of the relevant Principal Agreement.

§5
Minimum Transfer, Threshold and Independent Amounts

1. **Minimum Transfer Amount**: In the event that a Minimum Transfer Amount has been agreed for a Party in § 14.1, that Party shall be obliged to transfer the Delivery Amount or the Return

Amount pursuant to § 3 or § 4, as the case may be, only if the Value of such Delivery Amount or Return Amount to be transferred, as the case may be, is at least equal to such Minimum Transfer Amount.

2. **Threshold Amounts**: In the event that a Threshold Amount has been agreed for a Party in § 14.2, that Party shall be obliged to transfer the Delivery Amount or the Return Amount pursuant to § 3 or § 4, as the case may be, only if the Exposure of the other Party minus any Independent Amount of such Party, in addition to the first Party's Independent Amount if any, is at least equal to the Threshold Amount.

3. **Independent Amounts**: In the event that an Independent Amount has been agreed for a Party in § 14.9, such amount shall be added to the Exposure of the other Party when determining the Credit Support Amount of such other Party, and shall be deducted from its own Exposure when determining its own Credit Support Amount.

§6
Exchange of Eligible Credit Support

Exchange of Eligible Credit Support: Subject to the approval of the Transferee (not unreasonably to be withheld), the Transferor may replace, in whole or in part, any Eligible Credit Support provided under this Annex by Eligible Credit Support of the same or higher Value. The Transferee shall have no obligation to transfer the Eligible Credit Support which it holds until it has received the replacement Eligible Credit Support.

§7
Transfer of Title, Representation and No Security Interest

1. **Transfer of Title:** Each Party agrees that all right, title and interest in and to any Eligible Credit Support or Interest Amount which it transfers to the other Party under the terms of this Annex will vest in the Transferee free and clear of any liens, claims, charges or encumbrances or any other interest of the Transferor or of any third person.

2. **Representation**: Each Party represents to the other Party (which representation is deemed to be repeated on each day on which it transfers Eligible Credit Support or an Interest Amount) that it is the sole owner of or otherwise has the right to transfer all such Eligible Credit Support or Interest Amount to the other Party under this Annex, free and clear of any security interest, lien, encumbrance or other restriction.

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

§8
Dispute Resolution

1. **Objections**: Should a Party object to the Valuation Agent's calculation of Eligible Credit Support to be transferred, or the Value of any Eligible Credit Support, then such Party will notify the other Party and the Valuation Agent (if not the other Party), setting out the reasons for the objection, not later than the close of business on the Local Business Day following the day on which the relevant demand for Eligible Credit Support is received, or on the Local Business Day on which Eligible Credit Support is transferred, as relevant.

2. **Undisputed Amounts**: Where a Party disputes the Valuation Agent's calculation of Eligible Credit Support to be transferred, the appropriate Party will transfer the undisputed amount, if any, to the other Party no later than the time such transfer is due pursuant to this Annex.

3. **Resolution**: The Parties will consult each other in an attempt to resolve disputes. If the Parties fail to resolve a dispute by the Resolution Time, then the Valuation Agent will recalculate the Eligible Credit Support to be transferred and/or the Value of Eligible Credit Support as of the Recalculation Day by seeking quotations from three leading traders in each of the relevant commodity markets which it may choose according to its reasonably exercised discretion, and by taking the arithmetic average of those obtained. Where three quotations are not available for a Relevant Transaction, each Party shall obtain one quotation and the Valuation Agent will take the arithmetic average of those obtained. Where neither the Valuation Agent nor the Parties are able to obtain the requisite quotations for a Relevant Transaction, the Valuation Agent's original calculations will be used for such Relevant Transaction. Following a recalculation pursuant to this § 8.3, the Valuation Agent will notify each Party (or the other Party if relevant), as soon as possible but in any event not later than the Notification Time on the Local Business Day following the Resolution Time, of the results of the recalculation and the means of arriving at those results. The appropriate Party will, upon demand following such notice, make the appropriate transfer.

4. **No Close-Out Event**: The failure by a Party to transfer any amount which is the subject of a dispute to which this § 8 applies will not constitute a Close-Out Event for as long as the procedures set out in this § 8 are being carried out. For the avoidance of doubt, upon completion of those procedures, § 10 of this Annex will apply to any failure by a Party to make a required transfer on the relevant due date.

§9
Interest income on Cash

Interest Income on Cash: The Transferee shall pay interest on Cash at the Reference Interest Rate set out in § 14.8. Interest Amounts shall be paid on the first Local Business Day of each month for Eligible Credit Support held and received during the preceding month to the account of the Transferor specified in § 12. For the avoidance of doubt, interest on Cash shall only accrue up to the date set forth in the Close-Out Notice, issued by the Closing-Out Party pursuant to Section 2.2 of the Agreement, on which the Principal Agreements are Closed-Out.

§10
Close-Out Event

Close-Out Event: For the purposes of Part II of Division 1 of the EFET/IECA Commodities Schedule, a Close-Out Event shall also exist with respect to a Party if (a) such Party fails to transfer, when due, Eligible Credit Support under § 3, § 4 or § 8, or (b) a Letter of Credit Default has occurred, and such failure or Letter of Credit Default, as the case may be, is not cured within one (1) Local Business Day of written demand by the other Party.

§11
Termination of the Agreement

Termination of the Agreement: In the event a Close-Out Notice is issued as a result of a Close-Out Event occurring in relation to a Party, the Valuation Agent shall determine the Base Currency Equivalent of all Eligible Credit Support provided under this Annex on the date of calculation of the Final Net Settlement Amount ("**Determination Date**"); provided, however, that any Eligible Credit Support in the form of a Letter of Credit as of the Determination Date shall not be considered by the Valuation Agent in making such determination. Notwithstanding the preceding sentence, to the extent that the Transferee draws under any such Letter of Credit, the obligations of the Transferor shall be discharged in an amount equal to such drawings. Such amount determined by the Valuation Agent will be deemed to be an amount payable (but not yet paid) by the Transferee to the Transferor on the Determination Date and shall be included in the Final Net Settlement Amount to be determined pursuant to Section 4 of the Agreement. At the same time, all claims of the Parties for the transfer of Eligible Credit Support pursuant to § 3 or § 4 shall expire.

§12
Expenses

Each Party will pay its own costs and expenses in connection with performing its obligations under this Annex, and neither Party will be liable for any such costs and expenses incurred by the other Party.

§13
Bank Accounts

Transfers of Cash pursuant to § 3 and § 4 as well as payments of Interest Amounts shall be effected to the following accounts:

Party A:

Bank:
Account number:
Sort Code:

Party B:

Bank:
Account number:
Sort Code:

§ 14
Specifications

1. **Minimum Transfer Amount** means with respect to Party A: [•], and

   Minimum Transfer Amount means with respect to Party B: [•]

   provided, however, that (a) if a Close-Out Event has occurred with respect to a Party, the Minimum Transfer Amount for that Party shall be automatically reduced to zero, or (b) where the Credit Support Amount with respect to both Parties on a Valuation Day is zero and there are no outstanding Transactions, the Minimum Transfer Amount with respect to both Parties on such day shall be zero.

2. **Threshold Amount** means with respect to Party A: [•]; and

   Threshold Amount means with respect to Party B: [•],

   but, in the event that (i) a Close-Out Event has occurred with respect to a Party then the Defaulting Party's Threshold Amount shall be automatically (re)set to zero.

3. **Valuation Time**: means the close of business on the Local Business Day immediately preceding the Valuation Day or date of calculation, as applicable, provided that the calculations of Value and Exposure will, as far as practicable, be made as of approximately the same time on the same date.

4. **Valuation Day:**

5. **Valuation Agent:**

6. **Notification Time:**

7. **Resolution Time**:

8. **Reference Interest Rate** means

9. **Independent Amount** means with respect to Party A:
Independent Amount means with respect to Party B:

10. **Eligible Currency:** means

11. **Eligible Credit Support:** means

12. **Rounding:** The Delivery Amount and the Return Amount will be rounded up to the nearest integral multiple of [•] and down to the nearest integral multiple of [•] respectively.

13. **Base Currency:** Unless otherwise specified herein means the currency selected as such in Part VII of Division 1 of the EFET/IECA Commodities Schedule

14. **Additional provisions:**

EFET

European Federation of Energy Traders

APPENDIX 1
to the
Cross-Product Credit Support Annex

Defined Terms

Terms used in this Annex shall have the following meanings:

"**Base Currency Equivalent**" means, in respect of any amount denominated in the Base Currency, such Base Currency amount, and, in respect of any amount denominated in an Eligible Currency, the amount of Base Currency required to purchase such amount of Eligible Currency at the spot exchange rate determined by the Valuation Agent for value on the day that the relevant determination is being made.

"**Cash**" means an amount of money in the Base Currency or any Eligible Currency.

"**Credit Support Amount**" means in relation to a Party ("Party X") on a Valuation Day, the aggregate of Party X's Exposure plus any Independent Amount applicable to the other Party ("Party Y"), minus any Independent Amount posted as Cash applicable to Party X and any Threshold Amount applicable to Party Y. Calculations which result in a negative number shall be deemed to be zero.

"**Eligible Credit Support**" has the meaning set out in § 14.11.

"**Eligible Currency**" has the meaning set out in § 14.10.

"**Exposure**" means in relation to a Party on a Valuation Day, the amount, if any, determined in a commercially reasonable manner by the Valuation Agent to be due and payable to such Party if all Principal Agreements were being terminated as of the Valuation Time, on the basis that (i) that Party is not the Defaulting Party and (ii) the Termination Payment shall be calculated in the Base Currency. For the avoidance of doubt, such amount shall include sums due and payable, and the value of commodity delivered, but for which payment has not been received. Calculations which result in a negative number shall be deemed to be zero.

"**Independent Amount**" has the meaning set out in § 14.9.

"**Interest Amount**" means with respect to an Interest Period, the aggregate sum of the Base Currency Equivalents of the amounts of interest determined for each relevant currency and calculated for each day in that Interest Period on the amount of the Eligible Credit Support comprised of Cash and held by the Transferee, determined by the Valuation Agent for each such day as follows:

(a) the amount of cash denominated in the relevant currency on that day; multiplied by
(b) the Reference Interest Rate in effect on that day; divided by
(c) 360 (or in the case of GBP, 365)

"**Interest Period**" means the period from (and including) the last Local Business Day on which an Interest Amount was transferred (or if no Interest Amount has yet been transferred, the Local Business Day on which Eligible Credit Support in the form of Cash was transferred to or received by the Transferee) to (but excluding) the Local Business Day on which the current Interest Amount is transferred.

“Letter of Credit” means a standby letter of credit, bank guarantee or similar document in a format acceptable to the Transferee denominated in the Base Currency or an Eligible Currency issued irrevocably by a leading commercial bank with a credit rating of at least A- from Standard & Poor’s Rating Group or A3 by Moody’s Investors Services, Inc. which obliges the bank to pay the amount guaranteed therein upon first demand of the Transferee.

“Letter of Credit Default” means:

(a) the credit rating of the issuer of the Letter of Credit is withdrawn or downgraded below a rating of "A-" by S&P or "A3" by Moody's;

(b) the issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit and such failure continues after the lapse of any applicable grace period;

(c) the issuer of the Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of such Letter of Credit;

(d) any event analogous to an event specified in §10.5(c) of the EFET General Agreement occurs with respect to the issuer of the Letter of Credit;

(e) the Letter of Credit fails or ceases to be in full force and effect; or

(f) the Letter of Credit expires or terminates in accordance with the terms within the next thirty (30) calendar days.

“Local Business Day” means in relation to a transfer of cash or other property under this Annex a day upon which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in the place where the relevant account is located and if different in the principal financial centre, if any, of the currency of such payment.

“Minimum Transfer Amount” is the amount designated as such in § 14.1.

“Notification Time” means the time designated as such in § 14.6.

“Recalculation Day” means the Valuation Day that gives rise to the dispute under § 8, provided, however, that if a subsequent Valuation Day occurs under § 3 prior to the resolution of the dispute, then the “Recalculation Day” shall mean the most recent Valuation Day under that § 3.

“Reference Interest Rate” has the meaning set out in § 14.8.

“Relevant Transaction” means a Principal Agreement or an Uncovered Transaction (as the case may be).

“Resolution Time” has the meaning set out in § 14.7.

“Threshold Amount” has the meaning set out in § 14.2.

“Transferee” has the meaning set out in § 3.

“Transferor” has the meaning set out in § 3.

“Valuation Agent” means the agent designated as such in § 14.5 or otherwise provided for in § 2.

“Valuation Day” means any Local Business Day designated as such in § 14.4.

"Valuation Time" means the time designated as such in § 14.3.

"Value" means, for any Valuation Day or other day for which Value is calculated pursuant to this Annex, and subject to § 8 in the case of the dispute, with respect to:

(a) Eligible Credit Support that is Cash, the Base Currency Equivalent of such amount; and
(b) Eligible Credit Support that is a Letter of Credit, the Base Currency Equivalent of the face value of such Letter of Credit, less any drawn portion.

Executed by the duly authorised representative(s) of each Party

Party A:

By: ....

Name:
Title:
Date:

Party B:

By: ....

Name:
Title:
Date:

APPENDIX 5
EFET INSTRUCTIONS LETTER

15 November 2010

EFET CPMA-MNA Legal Opinion Review

Legal Opinion Regarding the Enforceability of Close-Out Netting and the Validity and Enforceability of Collateral Arrangements under the EFET Master Netting Agreement and the TBMA Cross Product Master Agreement.

Dear EFET Counsel,

We are seeking opinions from various jurisdictions on the enforceability of close-out netting provisions of the EFET Master Netting Agreement and the TBMA Cross Product Master Agreement. As far as the latter is concerned, we are also interested in the validity and enforceability of collateral provided under the EFET Cross Product Credit Support Annex to the TBMA Cross Product Master Agreement.

This process is in line with Directive 2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (the "**Banking Directive**") and Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions (the "**Capital Adequacy Directive**"), which, through implementation in all Member States of the European Union, apply to those of our members that are credit institutions or investment firms. Article 78(2) and Annex III, Part 7 of said Banking Directive require institutions to make available to the competent authorities written and reasoned legal opinions to the effect that, in the event of a legal challenge, the relevant courts and administrative authorities would uphold the netting agreement used by the institution ("**Enforceability of Close-out Netting**"). The Banking Directive specifically requires the opinions to address the validity and enforceability of the cross-product netting agreement under its terms and its impact on the material provisions of any included individual master agreement. In the case of a party which has entered into transactions under an EFET General Agreement as a multibranch party, i.e., where it operates for the purposes of the EFET General Agreement with two or more branches and in two or more jurisdictions ("**Multibranch Parties**"), it is necessary to obtain opinions on the enforceability of close-out netting from each jurisdiction where such a designated branch of that party is located. EFET has decided to commission such opinions and update them at least annually. Additionally, EFET members which are not credit institutions or otherwise expressly subject to the Banking Directive and Capital Adequacy Directive require the advice provided in these jurisdiction opinions for reasons of maintaining sound and legally optimal commercial contracting practices.

In addition to the traditional netting opinion scope covering the enforceability of close-out netting in relevant jurisdictions, EFET is also interested in your opinions and recommendations addressing (i) the enforceability of rights in collateral provided under the EFET Cross Product Credit Support Annex to the TBMA Cross Product Master Agreement ("**Collateral**"), (ii) the validity and enforceability of other provisions of the EFET Master Netting Agreement and the TBMA Cross Product Master Agreement ("**General Enforceability**"), (iii) in general terms the conditions that have to be met for a transaction concluded under a Netted Agreement or Principal Agreement to fall within the scope of the netting provisions of the relevant EFET Master Netting Agreement or TBMA Cross Product Master Agreement and for a confirmation or other non-written documentation to be eligible for evidencing a legally binding transaction ("**Confirmation Practices**"), (iv) the validity and enforceability of the EFET Master Netting Agreement and the TBMA Cross Product Master Agreement and how this may be affected when certain provisions are modified by the parties ("**Core Provisions**"), and (v) the enforceability of the elections made with respect to governing law, arbitration and jurisdiction, especially if a foreign law has been chosen ("**Governing Law, Arbitration and Jurisdiction**").

We request that you provide us with a fixed quote for your fees and expenses for rendering a legal opinion in accordance with the specific content and form set forth in this letter. We will then decide as soon as possible whether to contact you again to request that you proceed. The detailed requirements for the opinion are as follows:

A. Documents to be Considered:

- EFET Master Netting Agreement (Version 1.0, published June 2010) (**Enclosure 1**)[1],
- Cross-Product Master Agreement (Version 1), published by The Bond Market Association (TBMA)[2] in February 2000 (**Enclosure 2**)[3],

[1] The EFET Master Netting Agreement constitutes a bilateral cross-product netting agreement governing all transactions the Parties may enter into under certain master agreements (each a "Netted Agreement") falling within the scope of the Master Netting Agreement. The EFET Master Netting Agreement provides that the Master Netting Agreement, all Netted Agreements and all transactions entered into thereunder form a single agreement (§ 2.3 of the EFET Master Netting Agreement). Upon the occurrence of a Close-Out Event in respect of a Party, including a winding-up, insolvency or attachment, the other Party shall be entitled to terminate all transactions under all of its Netted Agreements (§ 4.1 of the EFET Master Netting Agreement). Settlement Amounts are determined for the terminated Netted Agreement (each a "Closed-Out Agreement") in accordance with their terms (§ 7.1 of the EFET Master Netting Agreement) and, to the extent necessary, converted into the Base Currency. If on the Early Termination Date both Parties owe one or more Settlement Amounts under two or more Closed-Out Agreements, such Settlement Amounts are aggregated and netted-off and only the difference, if any, between the two offsetting aggregate amounts (the "Final Net Settlement Amount") shall be owed by the Party with the larger aggregate obligation (§ 8.1 of the EFET Master Netting Agreement).

[2] In 2006 The Bond Market Association (TBMA) and the Securities Industry Association (SIA) merged to form the new Securities Industry and Financial Markets Association (SIFMA).

[3] The Cross-Product Master Agreement constitutes a bilateral cross-product netting agreement governing all transactions the Parties may enter into under certain master agreements (each a "Principal Agreement") falling within the scope of the Cross-Product Master Agreement. If so selected by the Parties in Section 10.6 of the EFET/IECA Commodities Schedule, the Cross-Product Master Agreement provides that it forms together with all Principal Agreements and all transactions entered into thereunder a single agreement. Upon the occurrence of a Close-Out Event in respect of a Party, including a winding-up, insolvency or attachment, the other Party shall be entitled to

- EFET/IECA Commodities Schedule to the Cross-Product Master Agreement (Version 1.0. published 23 June 2003) (**Enclosure 3**),

- EFET Cross-Product Credit Support Annex to the Cross-Product Master Agreement (Version 1.0, published 23 June 2003) (**Enclosure 4**) [4],

Copies of current versions of each of the Enclosures are also available on the EFET website: www.efet.org

B. General Assumptions

- Two counterparties enter into the EFET Master Netting Agreement or the TBMA Cross Product Master Agreement and at least one of the counterparties is incorporated or organized or has its centre of main interest in [jurisdiction] ("**Party A**").

- Party A is a corporation, financial institution or other entity as further described in Appendix A.

- The relevant EFET Master Netting Agreement or TBMA Cross Product Master Agreement is governed by the laws of [jurisdiction][5].

- Each EFET Master Netting Agreement or TBMA Cross Product Master Agreement and (in case of the TBMA Cross Product Master Agreement) the EFET Cross-Product Credit Support Annex) is enforceable under the laws of any jurisdiction (other than the laws of [jurisdiction]) and each counterparty has duly authorized, executed and delivered, and has the capacity to enter into, each document.

- The relevant EFET Master Netting Agreement or TBMA Cross Product Master Agreement provides for the inclusion of some or all of the master agreements described in Appendix B, each such master agreement being a Netted Agreement or Principal Agreement.

---

terminate all of its Principal Agreements (Section 2.1 of the Cross-Product Master Agreement). Settlement Amounts are determined for the terminated Principal Agreement (each a "Closed-Out Agreement") in accordance with their terms (Section 3.1 of the Cross-Product Master Agreement) and, to the extent necessary, converted into the Base Currency. If after termination both Parties owe one or more Settlement Amounts under two or more Closed-Out Agreements, such Settlement Amounts are aggregated and netted-off and only the difference, if any, between the two offsetting aggregate amounts (the "Final Net Settlement Amount") shall be owed by the Party with the larger aggregate obligation (Section 4 of the Cross-Product Master Agreement).

4 The EFET Cross-Product Credit Support Annex supplements the Cross Product Master Agreement. It provides for the transfer of full ownership in the collateral to the Transferee who acquires the right of complete and unrestricted use of the collateral (§ 7 of the EFET Cross-Product Credit Support Annex). Upon termination of the Cross Product Master Agreement, any collateral provided but not yet re-transferred by the Parties is to be valued and included in the Final Net Settlement Amount to be determined pursuant to Section 4 of the Cross Product Master Agreement (§ 11 of the EFET Cross-Product Credit Support Annex). One special feature of the EFET Cross-Product Credit Support Annex is the inclusion of Letter of Credits.

5 Please note that, with respect to Part C.I.1 (Close-out Netting), Part C.II (Multibranch) and Part C.VII (Governing Law) the assumption is broader in order to also cover General Agreements governed by foreign law.

- On the basis of the terms and conditions of the EFET Master Netting Agreement or TBMA Cross Product Master Agreement and other relevant factors, and acting in a manner consistent with the intentions stated in the EFET Master Netting Agreement or TBMA Cross Product Master Agreement, the counterparties over time enter into a number of transactions which include some or all of the transactions described in Appendix C.

- Some of the Transactions provide for an exchange of cash by both counterparties and others provide for the physical delivery of shares, bonds or commodities (including emission rights) in exchange for cash..

You will find additional assumptions below.

C. Issues and Additional Assumptions

I. Enforceability of Close-out Netting

We would like you to distinguish between (1) a termination and close-out based on an event that constitutes a Winding-up, Insolvency or Attachment (as defined in § 3.1(C)(iii) of the EFET Master Netting Agreement) or a similar insolvency related Close-Out Event and (2) other non-insolvency related Close-Out Events.

1. Winding-up, Insolvency or Attachment

General Overview (including Set-Off):

Please provide a short overview of the relevant insolvency proceedings, laws and terminology applicable to Party A and the contract types listed in Appendix C. Please discuss and advise on whether the contract types listed in Appendix C are governed by different rules and whether these rules would result in a splitting-up or segregation of the portfolios of transactions under the relevant Netted Agreements or Principal Agreements into multiple "netting pools" of disparate treatment or whether these rules would otherwise limit or render wholly or partially unenforceable the early termination and close-out netting rights provided for in the EFET Master Netting Agreement or TBMA Cross Product Master Agreement.

When rendering your opinion on the enforceability of close-out netting in the context of an insolvency proceeding, you should discuss whether the termination of the Netted Agreements or Principal Agreements or the transactions entered into thereunder, the calculation of the Settlements Amounts, the aggregation and offsetting of such Settlement Amounts and the determination of the Final Net Settlement Amount and/or its payment is voidable, challengeable or in any way capable of being invalidated, deleted, frozen, stayed or otherwise retroactively impacted by a liquidator, receiver, other third party or the court. In particular, please clarify whether or not there is a distinction in time with respect to a creditor's rights between: (a) the filing of proceedings seeking a judgment of insolvency; (b) a bankruptcy court recognizing the filing of proceedings seeking a judgment of insolvency; (c) the date on which a bankruptcy court determines a party first becomes insolvent; and (d) any other stage of the proceedings where a creditor's rights may be affected. We are also interested in whether the insolvency law provides for a "safe harbor" for certain derivatives or other categories of transactions and whether the contract types listed in Appendix C would benefit from such provision(s). We would also like to know whether there is publicly available information that would confirm any of the procedural steps mentioned above under (a) through (d) or other solvency related facts (e.g., financial statements, corporate actions, etc.). Do the laws of your jurisdiction consider early termination, set-off and close-out netting as legally distinct and separate rights, similar or related rights or do they make no such distinctions between them?

Please base your opinion on the following additional assumptions:

- The relevant EFET Master Netting Agreement or TBMA Cross Product Master Agreement is governed by any law (including English, German or New York law or the laws of [jurisdiction]).
- After entering into transactions and prior to the maturity thereof, Party A becomes the subject of voluntary or involuntary proceedings under the insolvency laws of [jurisdiction] and, subsequent to the commencement of the insolvency, either Party A or an insolvency official seeks to assume the confirmations representing profitable ("in the money") transactions for the insolvent counterparty.

Please discuss and advise on the following issues:

a) Assuming the Parties have <u>not</u> specified that Automatic Termination (as defined in § 6.3 of the EFET Master Netting Agreement or Part II.B of the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement) applies, are the provisions of the EFET Master Netting Agreement or TBMA Cross Product Master Agreement permitting the other Party (the "Terminating Party" or "Closing-Out Party") to terminate the Netted Agreements or Principal Agreements including all transactions upon the occurrence of a Close-Out Event enforceable under the laws of [jurisdiction] or is there a risk that (i) the entering into the EFET Master Netting Agreement or TBMA Cross Product Master Agreement, (ii) the entering into Netted Agreements or Principal Agreements or transactions thereunder or (iii) the early termination by notice described in § 5.1 of the EFET Master Netting Agreement or Section 2.2 of the Cross-Product Master Agreement itself could be challenged by a liquidator, administrator, receiver or third party?

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

c) Would you recommend to elect Automatic Termination to apply upon a Winding-up, Insolvency or Attachment (as defined in § 3.1(C)(iii) of the EFET Master Netting Agreement) or similar event? If yes, please specify such event or events and indicate whether it would be necessary or advisable to specify, or to refrain from specifying, a certain grace period to provide for optimal timing of such termination under local law? If you are recommending that a grace period be made applicable, what, in your best estimation is the minimum reasonable period of time required by a party whose creditor(s) have instituted an unsubstantiable or otherwise clearly frivolous involuntary bankruptcy proceeding against it in the insolvency courts of your jurisdiction to have that proceeding dismissed or otherwise terminated? If you are recommending that Automatic Termination be made applicable in respect of parties subject to the insolvency laws of your jurisdiction, what is the optimal timing for that Automatic Termination to take effect? In this event, please supply specific recommended language for purposes of customizing the Automatic Termination provisions to implement such optimal termination timing.

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

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

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

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

2. Non-insolvency related Material Reasons

Please discuss and advise on the issues outlined above under d), e) and f) in the context of non-insolvency related Material Reasons, as well as the following question:

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

II. Multibranch Parties

We would like you to distinguish between (1) a Multibranch Party incorporated, organized or having its centre of main interest in [jurisdiction] and (2) a Multibranch Party incorporated, organized or having its centre of main interest <u>outside</u> [jurisdiction], but operating through one or more branches in [jurisdiction].

1. [Jurisdiction] Multibranch Party

Please base your opinion on the assumptions outlined under Part C.I and the following additional assumptions:

- Party A has entered into transactions under Netted Agreements or Principal Agreements through offices in [jurisdiction] as well as through one or more branches located abroad. After entering into these transactions and prior to the maturity thereof, Party A becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of [jurisdiction].

Please discuss and advise on the following issues:

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

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

2. Foreign Multibranch Party

Please base your opinion 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 [jurisdiction] has entered under some or all Netted Agreements or Principal Agreements into transactions 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 [jurisdiction] (the "**[jurisdiction] Branch**").
- After entering into these transactions and prior to the maturity thereof, Party F becomes the subject of voluntary or involuntary proceedings under the insolvency laws of Country H.

Please discuss and advise on the following issues:

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

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

m) Please consider your answer to your question assuming instead that Party F has no branch located in [jurisdiction], but has assets in [jurisdiction].

III. Collateral

Please base your opinion 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 is at all times Transferor under the EFET Cross Product Credit Support Annex and (ii) that the collateral is owned by Party A or that Party A is authorized and empowered to transfer ownership in the collateral.

- The counterparties agree that Eligible Credit Support will include cash and Letters of Credit. Cash is denominated in a freely convertible currency and is held in an account under the control of Party B maintained in the jurisdiction of the relevant currency.

Please discuss and advise on the following issues:

n) Under the laws of [jurisdiction], what law governs the transfer of ownership in the various forms of Eligible Credit Support deliverable under the EFET Cross Product Credit Support Annex?

o) Would the laws of [jurisdiction] 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?

p) 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 [jurisdiction] 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?

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

r) Party B's right in relation to the transferred collateral upon termination of the relevant master agreement will be governed by Section 4 of the Cross-Product Master Agreement together with §11 of the EFET Cross Product Credit Support

Annex. Assuming that Section 4 of the Cross-Product Master Agreement is valid and enforceable in [jurisdiction] insofar as it relates to the determination of a Final Net Settlement Amount payable by either Party on the termination of transactions, is § 11 of the EFET Cross Product Credit Support Annex also valid to the extent that it provides for the value of the collateral provided and not yet transferred to be included in the calculation of the Final Net Settlement Amount under Section 4 of the Cross-Product Master Agreement?

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

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

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

v) Do you have other specific recommendations on the subject of collateral that you would like the EFET members to consider?

IV. General Enforceability

Please discuss and advise on the following issues:

w) Are the EFET Master Netting Agreement and the Cross-Product Master Agreement and the EFET Cross-Product Credit Support Annex enforceable under the laws of [jurisdiction] in accordance with its own terms? We are especially interested in provisions that you may believe infringe upon the *ordre public* in [jurisdiction] and that may be challenged by the courts in [jurisdiction] irrespective of the law that governs the Agreement.

x) Do you have other recommendations going to the topic of general legal enforceability that you would like EFET members to consider?

V. Confirmation Practices

We would like you to distinguish between (1) the formal requirements and procedure in the formation of a legally binding and enforceable transaction and its inclusion in the Netted Agreement or Principal Agreement and the related EFET Master Netting Agreement or the Cross-Product Master Agreement and (2) the formal requirements a Confirmation should comply with under the procedural laws of [jurisdiction] in order to be sufficient for all purposes to evidence a binding transaction and its inclusion in the agreements mentioned under (1). When doing so, please base your opinion on the following additional assumptions:

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

- Parties may or may not use matching systems (like EFET eCM, MarkitWire or DTTC DS Match) to electronically match and exchange confirmations.

1. Binding transaction

Please discuss and advise on the following issues:

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

z) At what point in time does an transaction agreed upon orally become legally binding or enforceable?

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

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

2. Means of Evidence

Please discuss and advise on the following issues:

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

VI. Core Provisions

Please base your opinion on the additional assumptions outlined under Part C.I.1 and C.II and discuss the following issues:

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

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

VII. Governing Law, Arbitration and Jurisdiction

Please base your opinion on the following additional assumptions:

- The relevant EFET General Agreement is governed by the laws of a jurisdiction other than [jurisdiction] (including English, German or New York law).

Please discuss and advise on the following issues:

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

VIII. Other Provisions

gg) If you have other recommendations that you would like EFET member companies to consider (for example to fully optimize the 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.

D. Addressees, Form and Tenor, Executive Summary and Other Issues

The opinion should be addressed to EFET and should provide that it: (i) is for the sole benefit of EFET and its Legal Committee members and any other subscribing entities; (ii) may not be relied upon by, or disclosed to, any other person or legal entity without EFET's or your prior written approval; but (iii) may be made available by EFET members to the appropriate regulatory authorities.

The opinion should discuss the issues outlined in Part C in substantially the same order as shown in this instruction letter. We expect a short introductory statement indicating a positive or negative answer, followed by an elaborated and reasoned discussion of the relevant legal aspects upon which your statement is based. We recognize that legal certainty or precedent is often lacking. However, we would like you to render a final conclusion even if it is based upon more generic concepts of laws or only reflects the "better view" or "more likely approach" you believe a court in [jurisdiction] would take.

The opinion should be accompanied by an executive summary presenting the main conclusions and reservations reached in the opinion. You may clarify that the executive summary does not form part of the opinion and that it is given for the purposes of convenience only.

If you believe that your conclusions reached under Part C I. (Enforceability of Close-out Netting) above will be that the receiver or liquidator in [jurisdiction] courts will not recognize the close-out netting provisions of the EFET General Agreements in accordance with their terms, please contact us immediately.

If you have any further questions or need some additional information, please do not hesitate to contact us.

Kind regards

Dr. Jan Haizmann
EFET Legal Committee
European Federation of Energy Traders (EFET)

Appendices and Enclosures

Appendix A

Types of Counterparties

Corporations (e.g., a limited liability company, stock corporation or *Societas Europaea*)

Partnerships (e.g., a general or limited partnership)

Banks/Credit Institutions

Investment Services Provider/Investment Firms

Insurance Companies

Investment Fund Management Companies

Other Financial Institution (please specify)

Municipalities or Counties

Associations of Local Government

Publicly-owned Corporations

Quasi Governmental Entities (please specify)

Appendix B

Master Agreements covered by the
EFET Master Netting Agreement or the TBMA Cross Product Master Agreement

Energy Trading Master Agreements

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

- Canadian Base Contract for Short-term Sale and Purchase of Natural Gas (version 2005), sponsored by GasEDI
- Canadian Base Contract for Short-term Sale and Purchase of Natural Gas (version 2000), sponsored by GasEDI

Derivatives Master Agreements

- Financial Energy Master Agreement (version 2000), sponsored by the Nordic Association of Energy Traders (NAET)
- ISDA 2002 Master Agreement, sponsored by the International Swaps and Derivatives Association, Inc.
- 1992 ISDA Master Agreement (Multicurrency – Cross Border), sponsored by the International Swaps and Derivatives Association, Inc.
- 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction), sponsored by the International Swaps and Derivatives Association, Inc.
- 1987 Interest Rate and Currency Exchange Agreement, sponsored by the International Swaps and Derivatives Association, Inc.
- Australian version of the 1992 ISDA Master Agreement (Multicurrency – Cross Border), sponsored by the Australian Financial Markets Association (AFMA)
- New Zealand version of the 1992 ISDA Master Agreement (Multicurrency – Cross Border)
- German Rahmenvertrag für Finanztermingeschäfte (version 2001), sponsored by the German Banker's Association
- German Rahmenvertrag für Finanztermingeschäfte (version 1994), sponsored by the German Banker's Association
- Swiss Master Agreement for Over-The-Counter Derivative Instruments (version 2003), sponsored by the Schweizerische Bankiervereinigung
- Swiss Master Agreement for Over-The-Counter Derivative Instruments (version 1994), sponsored by the Schweizerische Bankiervereinigung
- French Convention-Cadre FBF Relative Aux Operations Sur Instruments Financiers à Terme (version July 2007), sponsored by the Fédération Bancaire Française (FBF)
- French Convention-Cadre FBF Relative Aux Operations Sur Instruments Financiers à Terme (version August 2001), sponsored by the Fédération Bancaire Française (FBF)
- French Convention-Cadre AFB Relative Aux Operations Sur Instruments Financiers à Terme (version), sponsored by the Association Française des Banques (AFB)
- Spanish Contrato Marco De Operaciones Financieras (versión 1997), sponsored by the Asociación Española de Banca Privada (AEB)
- Dutch Raamovereenkomst voor Financiële Derivaten (RFD), sponsored by the Nederlandse Vereniging van Banken (NVB)

- Japanese Bond Option Agreement, sponsored by the Japan Securities Dealers Association (JSDA)
- Mexican Contrato Marco para Operaciones Financieras Derividas
- Mexican Contrato Normativo para la realización de las operaciones de Intercambio
- Mexican Master Agreement for Entering into Dollar against Mexican Peso Forward Transactions
- US Master Securities Forward Agreement (version 1996), sponsored by The Bond Market Association (TBMA)
- US Master OTC Options Agreement (version 2000), sponsored by The Bond Market Association (TBMA)
- US OTC Option Transactions – U.S. Treasury Securities Master Dealer Agreement (version August 1989), sponsored by the Public Securities Association (PSA)
- UK International Currency Options Market Agreement (ICOM) sponsored by the British Bankers' Association (BBA)
- UK Foreign Exchange and Options Master Agreement (FEOMA), sponsored by the British Bankers' Association (BBA)
- UK International Foreign Exchange Master Agreement (IFEMA), sponsored by the British Bankers' Association (BBA)
- The 1994 International Bullion Master Agreement (IBMA) (version June 1994), sponsored by the London Bullion Market Association and the Foreign Exchange Committee
- European Master Agreement for Financial Transactions (EMA) (edition January 2004), sponsored by the Banking Federation of the European Union (FBE)
- European Master Agreement for Financial Transactions (EMA) (edition January 2001), sponsored by the Banking Federation of the European Union (FBE)

<u>Securities Lending Master Agreements</u>

- Global Master Securities Lending Agreement (GMSLA) (version 2010), sponsored by the International Securities Lending Association (ISLA)
- Global Master Securities Lending Agreement (GMSLA) (version 2000), sponsored by the International Securities Lending Association (ISLA)
- Master Equity & Fixed Interest Stock Lending Agreement (MEFISLA) (version 1996), sponsored by the International Securities Lending Association (ISLA)
- Master Gilt Edged Stock Lending Agreement (GESLA) (version 1996), sponsored by the International Securities Lending Association (ISLA)
- Overseas Securities Lender's Agreement (OSLA) (version 1995), sponsored by the International Securities Lending Association (ISLA)
- Overseas Securities Lender's Agreement (OSLA) (version October 1994), sponsored by the International Securities Lending Association (ISLA)
- Overseas Securities Lender's Agreement (OSLA) (version February 1994), sponsored by the International Securities Lending Association (ISLA)

- US Master Securities Loan Agreement (version 2000), sponsored by The Bond Market Association (TBMA)
- US Master Securities Loan Agreement (version May 1993), sponsored by the Public Securities Association (PSA)
- Canadian Securities Loan Agreement, sponsored by the Investment Dealers Association of Canada (IDAC)
- German Rahmenvertrag für Wertpapierleihgeschäfte
- German Rahmenvertrag für Wertpapierdarlehen (version 1999)
- French Contract Cadre de Prêts des Titres (version 2007), sponsored by the Association Francaise des Professionnels des Titres (AFTI)
- French Contract Cadre de Prêts des Titres (version), sponsored by the Association Francaise des Professionnels des Titres (AFTI)
- Australian Master Securities Lending Agreement (version November 2003), sponsored by Australian Securities Lending Association Ltd. (ASLA)
- Australian Master Securities Lending Agreement (version December 2002), sponsored by Australian Securities Lending Association Ltd. (ASLA)
- Australian Master Securities Lending Agreement (version April 1997), sponsored by Australian Securities Lending Association Ltd. (ASLA)
- New Zealand Master Repurchase Securities Lending Agreement
- Japanese Basis Agreement Concerning Stock Lending Transactions, sponsored by the Japan Securities Dealers Association (JSDA)

<u>Repurchase Master Agreements</u>

- Global Master Repurchase Agreement (GMRA) (version October 2000), sponsored by The Bond Market Association (TBMA) and the International Securities Market Association (ISMA)
- Global Master Repurchase Agreement (GMRA) (version 1995), sponsored by the Public Securities Association (PSA) and the International Securities Market Association (ISMA)
- Global Master Repurchase Agreement (GMRA), sponsored by the Public Securities Association (PSA) and the International Securities Market Association (ISMA) (version November 1992)
- US Master Repurchase Agreement (MRA) (version September 1996), sponsored by The Bond Market Association (TBMA)
- US Master Repurchase Agreement (MRA) (version 1987)
- Canadian Repurchase/Reverse Repurchase Transaction Agreement
- Australian version of the Global Master Repurchase Agreement (GMRA) (version 1995), sponsored by the Australian Financial Markets Association (AFMA)
- New Zealand version of Global Master Repurchase Agreement (GMRA) (version 1995)

- German Rahmenvertrag für Wertpapierpensionsgeschäfte (version 2005)
- German Rahmenvertrag für Wertpapierpensionsgeschäfte (version 2002)
- German Rahmenvertrag für echte Pensionsgeschäfte (version 1997)
- French Convention-cadre FBF Relative Aux Opérations de Pensions Livriée (version 2007), sponsored by the Fédération bancaire française (FBF) [FBF07 REPO]
- French Convention-cadre FBF Relative Aux Opérations de Pensions Livriée (version 2003), sponsored by the Fédération bancaire française (FBF)
- French Convention-cadre Relative Aux Opérations de Pensions Livriée, sponsored by the Association du Forex et des Trésoriers de Banque (AFTB
- Japanese Bond Lending Agreement, sponsored by the Japan Securities Dealers Association (JSDA)
- Japanese Basic Agreement Concerning Gensaki Transactions of Bonds, Japan Securities Dealers Association (JSDA)

Appendix C

Transactions under Netted Agreements or Principal Agreements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. Credit Default Swap. A transaction in which one party pays either a single fixed amount or periodic fixed amounts or floating amounts determined by reference to a specified notional amount, and the other party (the credit protection seller) pays either a fixed amount or an amount determined by reference to the value of one or more loans, debt securities or other financial instruments (each a "Reference Obligation") issued, guaranteed or otherwise entered into by a third party (the "Reference Entity") upon the occurrence of one or more specified credit events with respect to the Reference Entity (for example, bankruptcy or payment default). The

amount payable by the credit protection seller is typically determined based upon the market value of one or more debt securities or other debt instruments issued, guaranteed or otherwise entered into by the Reference Entity. A Credit Default Swap may also be physically settled by payment of a specified fixed amount by one party against delivery of specified obligations ("Deliverable Obligations") by the other party. A Credit Default Swap may also refer to a "basket" (typically ten or less) or a "portfolio" (eleven or more) or Reference Entities or may be an index transaction consisting of a series of component Credit Default Swaps.

15. Credit Derivative Transaction on Asset-Backed Securities. A Credit Default Swap for which the Reference Obligation is a cash or synthetic asset-backed security. Such a transaction may, but need not necessarily, include "pay as you go" settlements, meaning that the credit protection seller makes payments relating to interest shortfalls, principal shortfalls and write-downs arising on the Reference Obligation and the credit protection buyer makes additional fixed payments of reimbursements of such shortfalls or write-downs.

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

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

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

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

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

21. Emissions Allowance Transaction. A transaction in which one party agrees to buy from or sell to the other party a specified quantity of emissions allowances or reductions at a specified price for settlement either on a "spot" basis or on a specified future date. An Emissions Allowance Transaction may also constitute a swap of emissions allowances or reductions or an option whereby one party grants

to the other party (in consideration for a premium payment) the right, but not the obligation, to receive a payment equal to the amount by which the specified quantity of emissions allowances or reductions exceeds or is less than a specified strike. An Emissions Allowance Transaction may be physically settled by delivery of emissions allowances or reductions in exchange for a specified price, differing vintage years or differing emissions products or may be cash settled based on the difference between the market price of emissions allowances or reductions on the settlement date and the specified price.

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

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

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

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

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

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

28. Forward Rate Transaction. A transaction in which one party agrees to pay a fixed rate for a defined period and the other party agrees to pay a rate to be set on a

specified date in the future. The payment calculation is based on a notional amount and is settled based, among other things, on the difference between the agreed forward rate and the prevailing market rate at the time of settlement.

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

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

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

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

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

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

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

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

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

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

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