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Copenhagen, 13 May 2016

Dear Sirs

Validity and Enforceability under Danish law of Close-out Netting under the ISDA Master Agreements

In this opinion we consider the validity and enforceability under Danish law of the termination, bilateral close-out netting and multibranch netting provisions of the 1987, 1992 and 2002 ISDA Master Agreements¹ (each an “**ISDA Master Agreement**” and collectively, the “**ISDA Master Agreements**”) published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”).

Our opinion also includes certain advice on the following standard form documents published by ISDA:

- (i) the 2001 ISDA Cross-Agreement Bridge (the “**2001 Bridge**”); and
- (ii) the 2002 ISDA Energy Agreement Bridge (the “**2002 Bridge**”).

Capitalised terms used herein that are not defined herein shall have the meanings ascribed to such terms in the ISDA Master Agreement.

¹ The 1987 ISDA Interest Rate and Currency Exchange Agreement and the 1987 ISDA Interest Rate Swap Agreement (collectively referred to as the “**1987 ISDA Master Agreements**”) published in March 1987 by ISDA, the 1992 ISDA Master Agreement (Multicurrency – Cross Border) (the “**Cross Border Agreement**”) and the 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction) (the “**Single Jurisdiction Agreement**”) and, together with the Cross Border Agreement, the “**1992 ISDA Master Agreements**”) published in June 1992 by ISDA and the 2002 ISDA Master Agreement, published in January 2003 by ISDA (the “**2002 ISDA Master Agreement**”).

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The issues you have asked us to address are set out below in italics, followed in each case by our analysis and conclusions. We indicate where relevant any assumptions that you have asked us to make. In addition, we make the following assumptions:

- (1) To the extent that any obligation arising under the ISDA Master Agreement falls to be performed in any jurisdiction outside Denmark, its performance will not be illegal or ineffective by virtue of the laws of that jurisdiction.
- (2) Each party (a) is able lawfully to enter into the ISDA Master Agreement under the laws of its jurisdiction of incorporation and under its relevant constitutional documents, (b) has taken all corporate action necessary to authorise its entry into the ISDA Master Agreement, and (c) has duly executed and delivered the ISDA Master Agreement.
- (3) The ISDA Master Agreement and the swap, foreign exchange, option and other transactions thereunder (“**Transactions**”) would, when duly entered into by each party, constitute legally binding, valid and enforceable obligations of each party under the law by which they are expressed to be governed.
- (4) Each of the parties is acting as principal and not as agent in relation to its rights and obligations under the ISDA Master Agreement, and no third party has any right to, interest in, or claim on any right or obligation of either party under the document.
- (5) The terms of the ISDA Master Agreement, including each Transaction under the ISDA Master Agreement, are agreed at arms’ length by the parties so that no element of gift or undervalue from one party to the other party is involved.
- (6) At the time of entry into the ISDA Master Agreement, no insolvency, rescue, or composition proceedings have commenced in respect of either party, and neither party is insolvent at the time of entering into the ISDA Master Agreement or becomes insolvent as a result of entering into the document.

The advice in this opinion is only in relation to Danish law as in force at the date hereof and we have assumed that no law of a jurisdiction other than Denmark adversely affects the conclusions in this opinion.

BACKGROUND

A. Insolvency Issues

A.1 General Insolvency Issues

The only insolvency, bankruptcy, composition, rehabilitation (e.g. liquidation, administration, receivership or voluntary arrangement) or other insolvency laws and procedures to which a party (excluding natural persons, cf. assumption (a)(6) stated under the Section headed “*Close-out Netting under*



the ISDA Master Agreement” below) would be subject in Denmark are the following:

- (a) The Danish Bankruptcy Act, Consolidation Act No. 11 of 6 January 2014 as amended (the “**Bankruptcy Act**”), and
- (b) The Danish Administration of Justice Act, Consolidation Act No. 1255 of 16 November 2015 as amended (the “**Administration of Justice Act**”).

The types of insolvency proceedings possible under the Bankruptcy Act and Administration of Justice Act (which for the purpose of this opinion shall include all proceedings in respect of its assets, or any branch it may have in this jurisdiction) to which a party to the ISDA Master Agreement, cf. assumption (a) below (but excluding natural persons, cf. assumption (a)(6)) may become subject in Denmark are the following:

- (i) a reconstruction carried out under the supervision and authority of one or more supervisors appointed by the bankruptcy court (in Danish: “rekonstruktion”), and
- (ii) a full bankruptcy under the supervision and authority of one or more trustees appointed by the bankruptcy court (in Danish: “konkurs”).

A.2 Bank Executive Order and Insurance Executive Order

Directive 2001/24/EC on the reorganisation and winding up of credit institutions has been implemented into Danish law by executive order no. 674 of 24 June 2004 (the “**Bank Executive Order**”). The Bank Executive Order applies to Danish banks, mortgage credit institutions and issuers of electronic money.

Moreover, Directive 2001/17/EC on the reorganisation and winding up of insurance companies has been implemented into Danish law by executive order no. 792 of 16 August 2005 (the “**Insurance Executive Order**”). The Insurance Executive Order applies to Danish insurance companies and pension funds (but not for reinsurance business).

As a result of the Bank Executive Order and the Insurance Executive Order our analysis and conclusions in respect of certain of the issues you have asked us to address will depend on whether the insolvency proceedings affect banks (or mortgage credit institutions or issuers of electronic money) or insurance companies incorporated in Denmark (that is, an entity covered by either the Bank Executive Order or the Insurance Executive Order) or other Danish entities. When no specific distinction is made our analysis and conclusions apply equally to entities covered by the Bank/Insurance Executive Order and other entities.



B Recovery and resolution of credit institutions and investment firms (BRRD)

B.1 Implementation of the BRRD

On 1 June 2015, Act No. 333 of 31 March 2015 on recovery and resolution of credit institutions (the “**Recovery and Resolution Act**”) entered into force. The Recovery and Resolution Act implements *inter alia* Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (“**BRRD**”). The rules are applicable to (i) banks, mortgage-credit institutions and investment companies I (in Danish: “fondsmæglerselskab I”), and (ii) certain financial holding companies and finance institutions which are part of a group with an entity mentioned under (i). The Recovery and Resolution Act provides the Danish resolution authority, Finansiel Stabilitet, with certain resolution tools in relation to such institutions which are failing or likely to fail.

The Recovery and Resolution Act implements Art. 66 of the BRRD on the power to enforce crisis management measures or crisis prevention measures by other Member States, Art. 67 of the BRRD on the power in respect of assets, rights, liabilities, shares and other instruments of ownership located in third countries as well as the provisions on cross-border group resolution in Arts. 87 to 92 of the BRRD and the provisions on relations with third countries in Arts. 93 to 98 of the BRRD. The Recovery and Resolution Act thus provides for general principles on resolution involving more than one Member State, European resolution colleges (providing for a forum for exchange of information and the coordination of resolution action for European resolution authorities in resolutions involving more than one Member State) as well as provisions on the recognition and enforcement of third-country resolution proceedings.

Recovery and resolution measures undertaken by a resolution authority in a country outside the EU, with which the EU has not entered into an agreement, will be subject to the separate assessment by Finansiel Stabilitet as to the recognition and enforcement thereof. Finansiel Stabilitet may reject recognition and enforceability of the third country resolution measures on the grounds specified in Section 53, Subsection 5 of the Recovery and Resolution Act implementing Art. 95 of the BRRD. Finansiel Stabilitet shall consult with other relevant resolution authorities in the EU.

Section 54 of the Recovery and Resolution Act, which implements Article 96 of the BRRD, confers Finansiel Stabilitet with the authorisation to apply resolution tools against a third country branch in situations (i) where the third country resolution authority has not commenced resolution proceedings which affect the branch or (ii) where Finansiel Stabilitet refuses to recognise the third country resolution proceedings on the basis of a list of events outlined in Section 53, Subsection 5 of the Recovery and Resolution Act. The ability of Finansiel Stabilitet to take independent action with respect to local operations of third country branches is in all events subject to a manifesta-



tion of distress as further defined in Section 54, Subsection 2 of the Recovery and Resolution Act.

B.2 Resolution tools

For the purpose of the Recovery and Resolution Act, “resolution” shall mean the utilisation by Finansiell Stabilitet of one or more of the resolution tools at its disposal under the act. Under Section 2, Subsection 3 of the Recovery and Resolution Act, the resolution tools of Finansiell Stabilitet in this respect include:

- (a) sale of the business or shares of the institution under resolution under Sections 19 to 20 of the Recovery and Resolution Act;
- (b) the setting up of a bridge institution under Sections 21 to 22 of the Recovery and Resolution Act which may take over all or parts of the shares of the institution under resolution or the assets, rights and liabilities of the institution under resolution;
- (c) the separation of the performing assets from the impaired or underperforming assets of the failing institution under Section 23 of the Recovery and Resolution Act; and
- (d) the bail-in of the shareholders and creditors of the failing institution under Sections 24 to 28 of the Recovering and Resolution Act implementing *inter alia* Art. 43 of the BRRD.

Under the bail-in tool mentioned in (d), Finansiell Stabilitet may write down any unsecured liability of the institution under resolution or convert such liability into equity of the relevant institution under resolution. The value of the assets and liabilities are based on an independent valuation made in accordance with Sections 6 to 7 of the Recovery and Resolution Act, which implements art. 36 of the BRRD. In terms of Transactions under an ISDA Master Agreement, the valuation must take the close-out netting procedure into account. Such independent valuation will be binding on the parties to the agreement in question under Section 11 of the Recovery and Resolution Act.

The bail-in tool may only be applied in respect of an unsecured liability of the institution under resolution and only after the application of any netting mechanism. For derivatives² the bail-in tool is only available in respect of any amount owing to the institution under resolution after the netting mechanism set out in the ISDA Master Agreement has been completed in accord-

² A financial instrument as set out in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC as implemented by Article 38 and 39 of Regulation (EC) No 1287/2006. It may not cover all Transactions covered by Appendix A, but Transaction not covered will benefit from the overall safeguard measure preventing that the relevant counterparty to the institution under resolution incurs a greater loss than in the situation where usual insolvency proceedings had been initiated against such institution, cf. paragraph B.4 below. We refer to our conclusions in this regard in this opinion.



ance with the terms thereof, cf. Section 27, Subsection 3 of the Recovery and Resolution Act.

To give effect to this tool, Finansiel Stabilitet is provided with the authority to terminate and close-out the relevant derivative contract/master agreement even if the other party is not in default. Section 27, Subsection 3 of the Recovery and Resolution Act provides that the termination by Finansiel Stabilitet must respect any close-out netting procedure so that cherry-picking of Transactions will not be possible.

The bail-in tool is not applicable to mortgage credit institutions, cf. Section 24, Subsection 4 of the Recovery and Resolution Act.

B.3 Suspension period

BRRD, and thus the Danish implementation thereof, further provides for certain restrictions on the enforcement of the netting provisions upon resolution measures being initiated under the Recovery and Resolution Act in relation to the institutions under resolution. Sections 32 to 34 of the Recovery and Resolution Act implementing Arts. 69 to 71 of BRRD introduce a temporary suspension period, which may be invoked by Finansiel Stabilitet in relation to:

- (i) all payments and delivery obligations to be made by the institution under resolution under a contract concluded by such institution, including demand rights in respect to such obligations under a financial collateral arrangement³;
- (ii) all steps taken by a counterparty to enforce security interests in relation to any assets of the institution under resolution, including any steps to apply netting and set-off provisions; and
- (iii) the application against the institution under resolution (and, in certain events, its subsidiaries) of other contractually agreed termination events.

The temporary suspension period runs from the time the notification of the initiation of crises management measures is made until the expiry of the business day after such notice upon which time the payment obligation of the institution under resolution will resume and the counterparty of the institution under resolution may take all enforcement steps that it is entitled to.

It follows from Section 31 of the Recovery and Resolution Act implementing Art. 68 of BRRD that the initiation of a resolution actions, including the temporary suspension as described in the immediately preceding paragraph,

³ If an institution under resolution's payment or delivery obligations under an Agreement are suspended, the payment or delivery obligations of the counterparty shall be suspended for the same period of time.



shall not in itself constitute an enforcement event or insolvency event under the netting rules of Section 58h of the Securities Trading Act (as defined and described below), provided that the institution under resolution otherwise complies with the provisions thereof.

The preparatory remarks to Section 34 of the Recovery and Resolution Act provide that the power to suspend termination rights applies also in respect of contracts which have been defaulted prior to the initiation of resolution actions under the Recovery and Resolution Act.

B.4 Safeguard provisions

The Recovery and Resolution Act contains safeguard provisions to prevent:

- (i) a partial transfer of some but not all Transactions and related collateral under a framework agreement such as the ISDA Master Agreement under Section 36 of the Recovery and Resolution Act; and
- (ii) that the relevant counterparty to the institution under resolution incurs a greater loss than in the situation where usual insolvency proceedings had been initiated against such institution under Section 49 of the Recovery and Resolution Act.

It thus follows from Section 36, Subsection 1 of the Recovery and Resolution Act that:

“Finansiel Stabilitet must ensure the continued operation of agreements on financial collateral in the form of transfer of title, cf. chapter 18a of the Securities Trading Act, set-off and close-out- and netting agreements to avoid transfer of some but not all rights and liabilities comprised by such an agreement between the institution or entity under resolution and its counterparty and to avoid modification or termination of rights and liabilities which are covered by such agreement, cf. Section 39.”

Section 39 refers to arrangements necessary to protect the rights of depositors in that covered deposits may be transferred without related assets, rights or liabilities.

However, it further follows from the preparatory remarks to Section 36 of the Recovery and Resolution Act that Finansiel Stabilitet may transfer some but not all rights and liabilities under an agreement mentioned in Section 36, Subsection 1 if Finansiel Stabilitet demonstrates that the counterparty did not suffer a greater loss than in the situation where usual insolvency proceedings had been initiated against such institution.

B.5 Implication on conclusions in this opinion

The conclusions reached below in this opinion are, in respect of the Danish institutions to which the Recovery and Resolution Act applies, subject to the



modification outlined above in this Section “*Background*”, “*B. Recovery and resolution of credit institutions and investment firms (BRRD)*”.

C. Netting – New Regime and Old Regime

In December 2003, the Danish Parliament adopted Act No. 1171 of 19 December 2003 amending the Danish Securities Trading Act which implemented Directive 2002/47/EC of 6 June 2002 on Financial Collateral Arrangements (the “**Financial Collateral Directive**”) into Danish law and at the same time changed the rules regarding bilateral netting. The implementation of the Financial Collateral Directive introduced significant changes in the treatment of both close-out netting provisions and financial collateral arrangements and provided for a much more detailed regulation of such arrangements under Danish law than had previously been the case.

The provisions on bilateral netting (as well as the rules on financial collateral arrangements) are found in Chapter 18a of the Danish Securities Trading Act, Consolidation Act No. 1530 of 2 December 2015 as amended and/or replaced from time to time (the “**Securities Trading Act**”) having effect on agreements entered into on or after 1 January 2004 (the “**New Regime**”).

ISDA Master Agreements entered into prior to 1 January 2004 will remain subject to the netting regime under Section 58 of the then applicable Danish Securities Trading Act (the “**Old Regime**”). The Old Regime was statutorily enacted with effect from 1 January 1996 by Act No. 1072 of 20 December 1995 on Trading in Securities. This legislation was part of a stock exchange reform which *inter alia* implemented the EU Investment Service Directive No. 93/22/EEC of 10 May 1993 and parts of the Capital Adequacy Directive into Danish law.

In this opinion we consider ISDA Master Agreements entered into on or after 1 January 2004 (that is, regulated by the New Regime) as well as ISDA Master Agreements entered into before 1 January 2004 (that is, regulated by the Old Regime). Our analysis and conclusions in respect of the issues you have asked us to address are set out for both the New Regime and the Old Regime. When no specific distinction is made our analysis and conclusions apply equally under the New Regime and the Old Regime.

The bilateral netting rules under both the New Regime and the Old Regime entail that netting can be agreed irrespective of the category of claim and counter claim (money against securities or different currencies) and whether each claim is due or not. For the effectiveness of a netting agreement it will be necessary that the agreement includes stipulations of the method of the netting, for instance how claim and counter claim will be computed and the currency of any net claim.

The netting rules do not deal with whether the non-defaulting party may demand specific performance or if unwinding is possible. The rule in the Bankruptcy Act requiring all claims on a bankrupt party to be converted into Danish Kroner at the rate applicable on the date of bankruptcy decree has



not been amended. The conversion of any cash payment obligation into Danish Kroner will presumably - although there is no authority for this - only relate to the final balance to be filed for proof.

Section 58d of the Securities Trading Act (New Regime) provides that the calculation of the relevant financial obligations, which are being netted, must be conducted in a commercially reasonable manner. There is no similar provision under the Old Regime.

D. Financial Obligations - Transactions

D.1 New Regime

The bilateral netting rules are available for all “financial obligations” as defined in Section 58e of the Securities Trading Act and the Transactions covered by [Appendix A](#) will thus qualify for the bilateral netting rules if they fall within the definition of financial obligations in Section 58e of the Securities Trading Act.

Section 58e, Subsection 2 of the Securities Trading Act defines “financial obligations” as obligations which give right to cash settlement or delivery of securities. However, if both parties in an agreement regarding close-out netting are covered by assumption (a)(6) below, then only obligations stemming from foreign exchange and securities trading, trading on commodities exchanges and lending and borrowing shall be considered financial obligations, cf. Section 58e, Subsection 3 of the Securities Trading Act.

The definition of financial obligations contains reference to the term “securities” which is defined in Section 2 of the Securities Trading Act. By way of Act no. 108 of 7 February 2007, the Danish Parliament adopted a bill, which took effect on 1 November 2007, implementing into Danish law, *inter alia*, Directive 2004/39/EC on Markets for Financial Instruments (“**MiFID**”). Act No. 108 of 7 February 2007 entailed a change of Section 2 of the Securities Trading Act whereby the definition of securities is expanded in accordance with MiFID to include financial instruments which were previously not qualified as securities under Danish law. A translation into English of Section 2 of the Securities Trading Act is attached hereto as [Appendix C](#).

The definition of securities is broad and includes most financial instruments, including:

- transferable securities which are negotiable on the capital market, including shares, bonds or other forms of securitised debts, other securities giving the right to acquire or sell such shares or bonds or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures,
- money-market instruments, including treasury bills, certificates of deposit and commercial papers, excluding instruments of payment,



- units in collective investment undertakings,
- options, futures, swaps, forward rate agreements and other derivative contracts relating to securities, currencies, interest rates or yields,
- options, futures, swaps, forward rate agreements and other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties,
- options, futures, swaps, and other derivative contracts relating to commodities that can be physically settled provided that they are traded on a regulated market or a multilateral trading facility or otherwise have the characteristics of derivative financial instruments,
- derivative instruments for the transfer of credit risk,
- financial contracts for differences (CFDs),
- options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission permissions or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties, and
- negotiable mortgage deeds regarding real property or movables.

The definition of securities in Section 2 of the Securities Trading Act does not pertain to foreign exchange transactions on spot basis, but the definition of financial obligations in Section 58e, Subsection 2 also pertains to netting with respect to claims stemming from trade in currencies as such claims give right to “cash settlement”.

Pursuant to Section 2, Subsection 2 of the Securities Trading Act, the Danish Financial Supervisory Authority is authorised to decide that other instruments and contracts shall be covered by all or parts of the rules governing securities in the Securities Trading Act.

The Danish Financial Supervisory Authority has not issued any orders on other instruments which are applicable to the rules in Chapter 18a of the Securities Trading Act.

In our view all of the Transactions covered by Appendix A generally fall within the definition of financial obligations in Section 58e of the Securities Trading Act and thus qualify for the bilateral netting rules. However, the description of certain of the Transactions in Appendix A is wide and not very specific, and in order to fall within the definition of securities the conditions set out in the wording of Section 2 of the Securities Trading Act would have to be satisfied.



Accordingly, in our opinion:

- Credit Spread Transactions would be considered securities according to Section 2 of the Securities Trading Act, provided that the underlying instrument on which the calculation of the value of the transaction is based is a security according to Section 2 of the Securities Trading Act.
- Transactions relating to commodities, including Physical Commodity Transactions would be considered securities according to Section 2 of the Securities Trading Act, provided that such Transactions (i) must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), (ii) can be physically settled provided that the commodity derivatives in question are traded on a regulated market or a multilateral trading facility or (iii) can be physically settled and not being for commercial purposes, and provided that the commodity derivatives have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are cleared and settled through recognised clearing houses or are subject to regular margin calls.
- Transactions relating to climatic variables, freight rates, emission permissions or other official economic statistics, including Weather Transactions, Freight Transactions, EU Emissions Allowance Transactions and Economic Statistic Transactions would be considered securities according to Section 2 of the Securities Trading Act, provided that such Transactions must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event).
- Longevity/Mortality Transaction provided the instrument is not structured as an insurance product or contrary to public policy.

Assuming that the above conditions are complied with, the Transactions covered by Appendix A in our view fall within the definition of financial obligations in Section 58e of the Securities Trading Act and thus qualify for the bilateral netting rules.

D.2 Old Regime

The bilateral netting rules under the Old Regime are available for claims stemming from foreign exchange and securities trading. With respect to the definition of “securities” in Section 2 of the Securities Trading Act, reference is made to paragraph D.1 above. Thus, the main difference between the Old Regime and the New Regime as regards the scope of netting is that netting under the Old Regime does not cover all claims which give rise to cash settlement.

Assuming that the conditions referred to in paragraph D.1 above are complied with, the Transactions covered by Appendix A in our view qualify for



the bilateral netting rules under the Old Regime as they are claims stemming from foreign exchange and securities trading.

E. Covered Bond Legislation

By way of Act no. 577 of 6 June 2007 amending the then applicable Danish Financial Business Act and various other acts, the Danish Parliament adopted legislation allowing Danish banks to issue covered bonds (in Danish: "særligt dækkede obligationer"). The main parts of the Act entered into force on 1 July 2007. It has not been possible for banks to issue covered bonds under Danish law prior to the entry into force of the Act.

The Act provides that assets of the bank included as collateral for covered bonds must be kept separate from the other assets of the institution. Moreover, the bank must maintain a register of the assets included as collateral for covered bonds.

Section 152g, Subsection 4 of the Danish Financial Business Act, Consolidation Act No. 182 of 18 February 2015 as amended (the "**Financial Business Act**") provides that financial instruments may be included in a register of assets only if they are used for hedging risks between the assets in the register on the one side and the covered bonds on the other side and where the agreement on the financial instrument specifies that the reconstruction proceedings or bankruptcy of the Danish bank or non-compliance with its obligation to post additional collateral does not constitute an event of default ("**Qualified Financial Instruments**").

In the event of bankruptcy of a Danish bank it follows from Section 247d, Subsection 1 of the Financial Business Act that the registered assets - after the costs of the administrator have been covered - first serve to satisfy the holders of covered bonds and counterparties on Qualified Financial Instruments. This means that in the event of bankruptcy, the registered assets do not form part of the bank's assets available for distribution to other creditors. The registered assets are instead separated into a special administration estate.

If a Danish bank having issued covered bonds has entered into one or more Transactions under an ISDA Master Agreement, such Transactions will not be Qualified Financial Instrument and thus not form part of the registered assets if the ISDA Master Agreement stipulates that reconstruction proceedings or bankruptcy of the relevant Danish bank or non-compliance with its obligation to post additional collateral constitute an event of default. If, on the other hand, an ISDA Master Agreement governing certain Transactions had been amended disapplying the relevant Danish bank's reconstruction proceedings and bankruptcy as events of default, the analysis in this opinion is not of direct relevance as this opinion governs the validity and enforceability of close-out netting in case of insolvency proceedings against a Danish counterparty.



CLOSE-OUT NETTING UNDER THE ISDA MASTER AGREEMENT

In this Section of our opinion, we consider issues relating to the enforceability of the bilateral close-out netting provisions of the ISDA Master Agreement. For this purpose you have asked us to make the following assumptions:

- (a) Two institutions (either two derivatives dealers or a derivative dealer and a sophisticated end-user of derivatives) have entered into a ISDA Master Agreement and at least one of the institutions is organised in Denmark. We assume that each party is either:
 - (1) a public authority (excluding publicly guaranteed undertakings unless they fall under items 2 to 6)⁴; or
 - (2) a central bank⁵, the European Central Bank, the Bank for International Settlements, a Multilateral Development Bank as defined in Article 1 (19) of Directive 2000/12/EC, the International Monetary Fund and the European Investment Bank; or
 - (3) a financial institution subject to prudential supervision⁶ includ-

⁴ In Denmark, this would e.g. include the Danish State and local authorities such as a municipality (in Danish: "kommune") or a region.

⁵ In Denmark, the central bank is "Danmarks Nationalbank".

⁶ A "financial institution" subject to prudential supervision and incorporated or organised in Denmark would cover:

- (a) a bank (in Danish: "pengeinstitut") in the form of (i) a commercial bank (in Danish: "bank") organised in Denmark as a public limited company (in Danish: "aktieselskab") under the Danish Companies Act (in Danish: "Selskabsloven"), Consolidation Act No. 1089 of 14 September 2015 as amended (the "**Companies Act**") or an earlier statute, (ii) a savings bank (in Danish: "sparekasse") organised in Denmark as an independent institution (in Danish: "selvejende institution") and (iii) a credit cooperative (in Danish: "andelskasse") organised in Denmark as a credit cooperative (in Danish: "andelskasse") and, in case of each of (i), (ii) and (iii), authorised by the Danish Financial Supervisory Authority (in Danish: "Finanstilsynet") under the Financial Business Act or under an earlier statute,
- (b) a mortgage-credit institution (in Danish: "realkreditinstitut") organised in Denmark as a public limited company under the Companies Act or an earlier statute and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute,
- (c) Danmarks Skibskredit A/S organised in Denmark as a public limited company under the Companies Act or an earlier statute and subject to the supervision by the Danish Financial Supervisory Authority under the Act on a Ship Finance Institute, Consolidation Act No. 851 of 25 June 2014 as amended,
- (d) KommuneKredit organised in Denmark under Act No. 383 of 3 May 2006 as amended on the mortgage credit association of municipalities and regions in Denmark and subject to the supervision by the Ministry or Economic Affairs,
- (e) an investment company (in Danish: "fondsmæglerselskab") organised in Denmark as a public limited company under the Companies Act or an earlier statute and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute,
- (f) an investment management company (in Danish: "investeringsforvaltningsselskab") organised in Denmark as a public limited company under the Companies Act or an earlier statute and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute, and
- (g) an insurance company (in Danish: "forsikringsselskab") organised in Denmark as either (i) a public limited company under the Companies Act or an earlier statute, (ii) a mutual company (in Danish: "gensidigt selskab") or (iii) a pension fund (in Danish:



ing:

- (i) a credit institution as defined in Article 1 (1) of Directive 2000/12/EC⁷, including the institutions listed in Article 2 (3) of that Directive,
- (ii) an investment firm as defined in Article 1 (2) of Directive 2004/39/EEC⁸,
- (iii) a finance institution as defined in Article 1 (5) of Directive 2000/12/EC⁹,
- (iv) an insurance undertaking as defined in Article 1 (a) of Directive 92/49/EEC and a life assurance undertaking as defined in Article 1 (a) of Directive 92/96/EEC¹⁰,
- (v) an undertaking for collective investments in transferable securities (UCITS) as defined in Article 1 (2) of Directive 85/611/EEC¹¹, or

“tværgående pensionskasse”) and, in case of each of (i), (ii) and (iii), authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute.

⁷ In Denmark, the term “credit institution” would cover banks and mortgage-credit institutions.

⁸ In Denmark, the term “investment firm” would cover an investment company.

⁹ In Denmark, the term “finance institution” would cover, for example, leasing companies and factoring companies, which under Danish law are generally not subject to prudential supervision. Furthermore, the term would cover investment companies and investment administration companies, which are subject to prudential supervision, cf. footnote 4 above.

¹⁰ In Denmark, the term “insurance undertaking” or “life assurance undertaking” would cover

(a) (i) a pension insurance company (in Danish: “pensionsforsikringselskab”) organised in Denmark as a public limited company under the Companies Act or an earlier statute, (ii) a lateral pension fund (in Danish: “tværgående pensionskasse” organised in Denmark as a private foundation, (iii) a company pension fund (in Danish: “firmapensionskasse”) organised in Denmark as a private foundation, (iv) an insurance company (in Danish: “forsikringselskab”) organised in Denmark as a public limited company under the Companies Act and, in case of each of (i), (ii), (iii) and (iv), authorised by the Danish Financial Supervisory Authority under the Danish Financial Business Act or under an earlier statute; and

(b) Arbejdsmarkedets Tillægspension (“ATP”) organised in Denmark as a self-owned institution regulated under the ATP Act, Consolidation Act No. 1110 of 10 October 2014 as amended (the “ATP Act”).

¹¹ A “UCITS” would cover a mutual fund which is organised in Denmark as an investment association (in Danish: “investeringsforening”), a company for investment of variable capital (SI-KAV) or a securities fund (in Danish: “værdipapirfond”) and authorised by the Danish Financial Supervisory Authority under the Danish Investment Associations Act (in Danish: “lov om investeringsforeninger m.v.”), Consolidation Act no. 1051 of 25 August 2015 as amended (the “Investment Associations Act”). The Danish implementation of the Alternative Investment Fund Managers Directive 2011/61/EU (the “AIFMD”) became fully effective on 22 July 2014 by way of an amendment to the Investment Association Act and the entry into force of a new Danish Act on Managers of Alternative Investment Funds, Act no. 598 of 12 June 2013 as amended (the “AIFM Act”). Mutual funds and hedge funds, which were organised in Denmark as special purpose associations (in Danish: “specialforeninger”), restricted associations (in Danish: “famandsforeninger”), hedge associations (in Danish: “hedgeforeninger”) and professional associations (in Danish: “professionel foreninger”) are now capital associations (in Danish: “kapitalforeninger”) or other alternative investment funds under the AIFM Act. Please see footnote 12 below.



- (vi) an investment management company as defined in Article 1(a)(2) of Directive 85/611/EEC;
- (4) a central counterparty (CCP), a settlement agent or a clearing house, as defined respectively in Article 2 (c), (d) and (e) of Directive 98/26/EC, including similar institutions regulated under national law acting in the futures, options and derivatives markets to the extent not covered by that Directive; or
- (5) a person, other than a natural person, who acts in a trust or representative capacity on behalf of any one or more persons, including any bondholders or holders of other forms of debt instruments or any institution as defined in items 1 to 4; or
- (6) a person, other than a natural person, who is not covered by items 1 to 5, including unincorporated undertakings and partnerships, and sole proprietorships¹².

We have as [Appendix B](#) attached a list of certain counterparty types, which has been prepared by ISDA in November 2010. In Appendix B, we have included our comments to the types of counterparties set out in therein and confirm that all relevant Danish entity types listed in Appendix B are covered by this opinion.

- (b) The parties have selected either New York law or English law to govern, at least one of the institutions entering the ISDA Master Agreement is organised in Denmark and, in respect of the 1987 ISDA Master Agreement, neither institution is specified as a Multibranch Party and,

¹² No. 6 would for example cover (a) a public limited company (in Danish: "aktieselskab") organised in Denmark under the Companies Act or an earlier company statute, (b) a private limited company (in Danish: "anpartsselskab") organised in Denmark under the Companies Act or an earlier statute, (c) a limited partnership (in Danish: "kommanditselskab") organised in Denmark under the Danish Act on Undertakings Carrying on Business for Profit (in Danish: "Lov om visse erhvervsdrivende virksomheder"), Consolidation Act no. 1295 of 15 November 2013 as amended (the "**Act on Undertakings Carrying on Business for Profit**"), (d) a partnership (in Danish: "interessentskab") organised in Denmark under the Act on Undertakings Carrying on Business for Profit, (e) a capital association (in Danish: "kapitalforening") organised in Denmark under the AIFM Act (which includes entities previously organised as special purpose associations (in Danish: "specialforeninger"), restricted associations (in Danish: "famandsforeninger"), hedge associations (in Danish: "hedgeforeninger"), professional associations (in Danish: "professionel foreninger", associations for professional investors and non-approved restricted associations), (f) a one-man business organised in Denmark under the Act on Undertakings Carrying on Business for Profit, (g) an association with limited liability (in Danish: "forening med begrænset ansvar") organised in Denmark under the Act on Undertakings Carrying on Business for Profit, (h) company with limited liability (in Danish "selskab med begrænset ansvar") organised in Denmark under the Act on Undertakings Carrying on Business for Profit, (i) a co-operative society with limited liability (in Danish: "andelsselskab med begrænset ansvar") organised in Denmark under the Act on Undertakings Carrying on Business for Profit and (j) a commercial fund (in Danish: "erhvervsdrivende fond") organised in Denmark under the Act No. 712 of 25 June 2014 on Commercial Funds. No. 6 would also cover state-owned companies and other state-owned entities (if not covered by any of the other categories).



in respect of the 1992 and 2002 Master Agreements, neither institution has specified that the provisions of Section 10(a) apply to it.

- (c) Provisions of the ISDA Master Agreement that we deem crucial to our opinion have not been altered in any material respect. In our view, no selection contemplated by Sections 5 and 6 of the ISDA Master Agreement and made pursuant to a Schedule to the ISDA Master Agreement or in a Confirmation of a Transaction would be considered a material alteration for this purpose.
- (d) On the basis of the terms and conditions of the ISDA Master Agreement and other relevant factors, and acting in a manner consistent with the intentions stated in the ISDA Master Agreement, the parties over time enter into a number of Transactions that are intended to be governed by the ISDA Master Agreement. The Transactions entered into include any or all of the transactions described in Appendix A.
- (e) Some of the Transactions provide for an exchange of cash by both parties and others provide for the physical delivery of shares, bonds or commodity derivatives in exchange for cash.
- (f) After entering into these Transactions and prior to the maturity thereof, one of the parties, which is organised in Denmark, becomes the subject of a voluntary or involuntary case under the insolvency laws of Denmark and, subsequent to the commencement of the insolvency, either that party or an insolvency official seeks to assume the Confirmations representing profitable Transactions for the insolvent party and reject the Confirmations representing unprofitable Transactions for the insolvent party.
- (g) The parties have amended the 1987 ISDA Master Agreements so that (1) they have adopted the approach of Full Two Way Payments for all Events of Default and Termination Events and (2) early termination does not automatically occur upon the insolvency of the party organised in Denmark.
- (h) The parties have amended the 1992 ISDA Master Agreement so that they have adopted the Second Method for all Events of Default and Termination Events.

Close-out Netting under the ISDA Master Agreement

1. *Assuming the parties have not selected Automatic Early Termination upon certain insolvency events to apply to the insolvent counterparty organised in your jurisdiction, are the provisions of the ISDA Master Agreement permitting the Non-defaulting Party to terminate all the Transactions upon the insolvency of its counterparty enforceable under the law of your jurisdiction?*



New Regime:

Assuming the parties have not selected Automatic Early Termination upon certain insolvency events to apply to the insolvent counterparty organised in Denmark, the provisions of the ISDA Master Agreement permitting the Non-defaulting Party to terminate all the Transactions upon the insolvency of its counterparty would in our opinion be enforceable under Danish law with the modifications set out below in the response to this question 1.

Section 58h, Subsection 2 of the Securities Trading Act provides that with legal effect towards the estate and creditors it may be agreed that in case of the occurrence of an Event of Default, close-out netting shall take effect when the Non-defaulting Party gives notice in this respect to the Defaulting Party. Section 58h, Subsection 2 further stipulates that if insolvency proceedings as defined in Section 58h, Subsection 1 are commenced against the Defaulting Party, this party may demand that close-out netting is effected so that the parties are put in a position as if the close-out netting had occurred without undue delay after the time when the Non-defaulting Party knew or should have known that the Defaulting Party became subject to insolvency proceedings.

Certain restrictions as to what financial obligations may be included in a close-out netting apply according to Section 58h, Subsections 3-6 of the Securities Trading Act (reference is made to the description thereof in the response to question 3 below).

With respect to particular considerations in respect of certain Transactions, reference is made to the Section "*Background*", "*D. Financial Obligations – Transactions*" above.

Old Regime:

Assuming the parties have not selected Automatic Early Termination upon certain insolvency events to apply to the insolvent counterparty organised in Denmark, the provisions of the ISDA Master Agreement permitting the Non-defaulting Party to terminate all the Transactions upon the insolvency of its counterparty would presumably not be enforceable under Danish law.

In any event, close-out must according to the Old Regime occur as of the date of filing for reconstruction proceedings or, as the case may be, the date of the bankruptcy decree, or generally the day of the opening of negotiations for a statutory composition scheme as decided by the probate court. The discretion and flexibility otherwise given to the Non-defaulting Party do not affect the validity of the close-out and liquidation provisions of the ISDA Master Agreement.

This opinion is based on certain language in the explanatory remarks to Section 57 of the then applicable Securities Trading Act (multilateral netting) by the Ministry of Commerce in the bill for the Act at its



submission in the Danish Parliament (Folketinget) which indicated that a party shall not have optional rights. This remark was not repeated in relation to Section 58 but we believe that Danish courts when interpreting Section 58 will draw an analogy to the operation of Section 57. To our knowledge no court practice exists. The introduction of the New Regime should not from a strictly legal perspective be considered a source of law when interpreting Section 58. We are unable to assess what practical impact, if any, the New Regime would have on the Danish court's interpretation of the Old Regime.

Certain restrictions as to what claims may be included in a close-out netting apply (reference is made to the description thereof in the response to question 3 below).

With respect to particular considerations in respect of certain Transactions, reference is made to the Section "*Background*", "*D. Financial Obligations – Transactions*" above.

Insolvency proceedings affecting Danish credit institutions or insurance companies:

New Regime and Old Regime:

Credit institutions:

As mentioned in "*Background*" "*A.2 Bank Executive Order and Insurance Executive Order*" above Directive 2001/24/EC on the reorganisation and winding up of credit institutions has been implemented into Danish law by the Bank Executive Order which applies to Danish banks, mortgage credit institutions and issuers of electronic money.

It transpires from whereas (16) and (17) and Article 10 of the Directive that the Directive respects *lex concursus* as the law generally applicable on insolvency proceedings with certain exceptions listed elsewhere in the Directive.

It follows from Article 10(2), item c) of the Directive that if a credit institution becomes subject to insolvency proceedings the law of the home Member State shall determine the conditions under which set-offs may be invoked. Article 23 modifies this rule by stating that insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of a credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim. In addition, Article 10(2), item c) is modified by Article 25 which stipulates that netting agreements shall be governed solely by the law of the contract which governs such agreements. In our opinion, Article 25, which is implemented into Danish law by Section 19 of the Bank Executive Order, as *lex specialis*, applies to the netting agreements and, in our opinion, to the ISDA Master Agreement. In our opinion and although to our knowledge there is no relevant published court practice, this entails that in case of insolvency proceedings



in respect of a Danish bank, mortgage credit institution or issuer of electronic money, the enforceability of the provisions of the ISDA Master Agreement permitting the Non-defaulting Party to terminate all the Transactions upon the insolvency of its counterparty will depend on the governing law of the ISDA Master Agreement (and not Danish law, being the law where the insolvency proceedings are carried out).

Insurance companies:

As mentioned in “Background” “A.2 Bank Executive Order and Insurance Executive Order” above Directive 2001/17/EC on the reorganisation and winding up of insurance companies has been implemented into Danish law by the Insurance Executive Order which applies to Danish insurance companies and pension funds (but not for reinsurance business).

It transpires from whereas (11) and Article 9 of the Directive that the Directive respects *lex concursus* as the law generally applicable on insolvency proceedings with certain exceptions listed elsewhere in the Directive.

It follows from Article 9(2), item c) of Directive 2001/17/EC that if an insurance company becomes subject to insolvency proceedings the law of the home Member State shall determine the conditions under which set-offs may be invoked. Article 9(2), item c) is not explicitly implemented in the Insurance Executive Order but the same principles will, in our view, apply as a matter of general Danish law. Article 22 (implemented into Danish law in Section 15 of the Insurance Executive Order) modifies this rule by stating that insolvency proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of an insurance company, where such a set-off is permitted by the law applicable to the insurance company’s claim. A rule similar to Article 25 of Directive 2001/24/EC covering credit institutions is not included in Directive 2001/17/EC.

Absent any clear authority in the Insurance Executive Order we are of the opinion that Articles 9(2), item c) and 22 in Directive 2001/17/EC on set-off cannot be considered applicable on the determination of the enforceability of the provisions of the ISDA Master Agreement permitting the Non-defaulting Party to terminate all the Transactions upon the insolvency of its counterparty if such counterparty is a Danish insurance company or pension fund. As a consequence thereof, we are of the view that in such cases Danish substantive law (as described in the sections on “New Regime” and “Old Regime” above in our response to this question 1) will apply on the determination of the enforceability of the provisions of the ISDA Master Agreement permitting the Non-defaulting Party to terminate all the Transactions upon the insolvency of its counterparty. To our knowledge there is no relevant published court practice.



2. *Assuming the parties have selected Automatic Early Termination upon certain insolvency events to apply to the insolvent counterparty organised in your jurisdiction, are the provisions of the ISDA Master Agreement permitting the Non-defaulting Party to terminate all the Transactions upon the insolvency of its counterparty enforceable under the law of your jurisdiction?*

New Regime:

Assuming the parties have selected Automatic Early Termination upon certain insolvency events to apply to the insolvent counterparty organised in Denmark, the provisions of the ISDA Master Agreement permitting the Non-defaulting Party to terminate all the Transactions upon the insolvency of its counterparty would in our opinion be enforceable under Danish law with the modifications set out below in the response to this question 2.

Section 58h, Subsection 1 of the Securities Trading Act contains the main provision regarding close-out netting and has the following wording:

“An agreement may with legal effect towards third parties, subject however to Subsections 3-6, contain a provision to the effect that the financial obligations, cf. Section 58e, as are governed by the agreement shall be netted through close-out netting, if one of the parties is in breach of the agreement, including that close-out netting shall take place, if a party becomes subject to insolvency proceedings, or execution is levied over a claim covered by the agreement on close-out netting. Insolvency proceedings mean bankruptcy, reconstruction proceedings, insolvent administration of the estate of the deceased, debt re-scheduling and other Danish and foreign winding-up proceedings and reorganisation measures founded in the debtors’ insolvency as defined in Article 2(1), items (j) and (k) of Directive 2002/47/EC.”

Certain restrictions as to what financial obligations may be included in a close-out netting apply according to Section 58h, Subsections 3-6 of the Securities Trading Act (reference is made to the description thereof in the response to question 3 below).

With respect to particular considerations in respect of certain Transactions, reference is made to the Section “*Background*”, “*D. Financial Obligations – Transactions*” above.

Old Regime:

The same conclusions and modifications apply as in respect of the New Regime except for the restrictions according to Section 58, Subsections 3-6 of the Securities Trading Act as these restrictions are only



directly applicable under the New Regime (reference is made to the description of the restrictions in the response to question 3 below).

As regards the analysis, Section 58 of the then applicable Securities Trading Act contains the provision regarding close-out netting and has the following wording:

“With legal effect towards the estate and the creditors, an agreement between two parties on foreign-exchange and securities trading under this Act may contain a provision to the effect that all such claims as they have against one another and as are governed by the agreement in question shall be netted regularly through agreed settlement or be netted through final discharge, if one of the parties violates his contractual obligations or is ordered to be wound up; or if an administration order is applied for; or if he dies; or if negotiations for a compulsory composition are opened.”

Insolvency proceedings affecting Danish credit institutions or insurance companies:

New Regime and Old Regime:

Credit institutions:

Reference is made to the response to question 1 as regards the implementation into Danish law of Directive 2001/24/EC on the reorganisation and winding up of credit institutions. Based on the same analysis as set out in our response to question 1 above, in our opinion and although to our knowledge there is no relevant published court practice, the enforceability of the provisions of the ISDA Master Agreement permitting the Non-defaulting Party to terminate all the Transactions upon the insolvency of its counterparty in case of insolvency proceedings in respect of a Danish bank, mortgage credit institution or issuer of electronic money will depend on the governing law of the ISDA Master Agreement (and not Danish law, being the law where the insolvency proceedings are carried out).

Insurance companies:

Reference is made to the response to question 1 as regards the implementation into Danish law of Directive 2001/17/EC on the reorganisation and winding up of insurance companies. Based on the same analysis as set out in our response to question 1 above, we are of the opinion that Articles 9(2), item c) and 22 in Directive 2001/17/EC on set-off cannot be considered applicable on the determination of the enforceability of the provisions of the ISDA Master Agreement permitting the Non-defaulting Party to terminate all the Transactions upon the insolvency of its counterparty if such counterparty is a Danish insurance company or pension fund. As a consequence thereof, we are of the view that in such cases Danish substantive law (as described in the sections on “New Regime” and “Old Regime” above in our response to



this question 2) will apply on the determination of the enforceability of the provisions of the ISDA Master Agreement permitting the Non-defaulting Party to terminate all the Transactions upon the insolvency of its counterparty. To our knowledge there is no relevant published court practice.

3. *Are the provisions of the ISDA Master Agreement providing for the netting of termination values in determining a single lump-sum termination amount upon the insolvency of a counterparty enforceable under the law of your jurisdiction?*

New Regime:

On the assumption that an Event of Default (resulting from an insolvency proceeding) has occurred in relation to a Danish Party to the ISDA Master Agreement we believe that the provisions of the ISDA Master Agreement providing for the netting of termination values in determining a single lump-sum termination amount upon the insolvency of a counterparty are, with the modifications set out below in the response to this question 3, enforceable under Danish law in respect of claims which fall under the definition of financial obligations in Section 58e of the Securities Trading Act (with respect to particular considerations in respect of certain Transactions, reference is made to the Section “*Background*”, “*D. Financial Obligations – Transactions*” above).

We are of the above opinion because:

- (a) the Non-defaulting Party would be entitled to cancel, rescind or terminate all outstanding Transactions with a Defaulting Party, and the insolvency official would not under Danish law be able to require selective performance of particular Transactions;
- (b) the Non-defaulting Party would be entitled to set-off (i.e. combine or amalgamate) any losses payable by it to the Defaulting Party on Transactions profitable to the Defaulting Party in respect of cancelled Transactions, regardless of the currency of those losses subject, however, to the modifications set out in Section 58h, Subsections 3 to 6 of the Securities Trading Act which contains certain restrictions on which financial obligations may be subject to close-out netting in case of insolvency proceedings (see below in the response to this question 3 for a translation into English of the provisions in question); and
- (c) under Danish law there is no objection to a provision in the ISDA Master Agreement whereby the damages for breach of the ISDA Master Agreement are fixed in advance, provided that the liquidated damages are a genuine pre-estimate of the loss likely to be suffered and do not exceed the real losses expected to be suffered.



Section 58h, Subsections 3 to 6 has the following wording:

“Subsection 3. A final discharge covered by Subsection 1, which is effected after the defaulting party has been made subject to reconstruction proceedings, may include claims, which have come into existence prior to the time when the non-defaulting party knew or ought to have known the circumstances establishing the suspect date, cf. Section 1 of the Bankruptcy Act.

Subsection 4. A final discharge covered by Subsection 1, which is effected after the defaulting party has been declared bankrupt, may include claims, which have come into existence prior to the time when the non-defaulting party knew or ought to have known the circumstances establishing the suspect date, cf. Section 1 of the Bankruptcy Act. Claims that came into existence after the expiry of the day where the bankruptcy was announced in the Official Gazette can, however, not be included in a close-out netting.

Subsection 5. A claim, which is covered by the provisions in Section 42, Subsections 3 and 4 of the Bankruptcy Act, can be included in a close-out netting pursuant to Subsection 1, unless the non-defaulting party knew or ought to have known that the defaulting party was insolvent when the claim vis-à-vis the defaulting party was acquired or came into existence respectively.

Subsection 6. Close-out netting pursuant to Subsection 1 is only voidable pursuant to Section 69 of the Bankruptcy Act if the final discharge covered claims which could not have been included in an agreed close-out netting in case of bankruptcy, cf. Subsections 4 and 5.”

Section 58d of the Securities Trading Act provides that the calculation of the relevant financial obligations, which are being netted, must be conducted in a commercially reasonable manner.

Subject to the paragraphs above, the ISDA Master Agreement creates a single Obligation, covering all Obligations under the ISDA Master Agreement in question, such that, if an Event of Default resulting from an insolvency proceeding occurs in relation to a party which results in close-out against that party in accordance with the ISDA Master Agreement, the Non-defaulting Party would have a claim or obligation, respectively, to receive or pay only the net value of the sum of the unrealised gain and losses on, and other amounts payable under those Obligations.



Old Regime:

The same analysis, conclusions and modifications apply as in respect of the New Regime except as set out below:

In respect of the Old Regime, the reference to financial obligations in Section 58e of the Securities Trading Act shall be replaced with a reference to claims resulting from foreign exchange and securities trading.

The provisions in Section 58h, Subsections 3 to 6 of the Securities Trading Act do not apply under the Old Regime. Under the Old Regime the Non-defaulting Party would be entitled to set-off (i.e. combine or amalgamate) any losses payable by it to the Defaulting Party on Transactions profitable to the Defaulting Party in respect of cancelled Transactions, regardless of the currency of those losses provided that the Non-defaulting Party did not enter into the relevant Transactions at a time when it had received notice of the insolvency of the Defaulting Party and did not acquire any of the claims intended for set-off after having received such notice.

Section 58d of the Securities Trading Act does not apply under the Old Regime.

Insolvency proceedings affecting Danish credit institutions or insurance companies:

New Regime and Old Regime:

Credit institutions:

Reference is made to the response to question 1 as regards the implementation into Danish law of Directive 2001/24/EC on the reorganisation and winding up of credit institutions. Based on the same analysis as set out in our response to question 1 above, in our opinion and although to our knowledge there is no relevant published court practice, the enforceability of the provisions of the ISDA Master Agreement providing for the netting of termination values in determining a single lump-sum termination amount upon the insolvency of a counterparty in case of insolvency proceedings in respect of a Danish bank, mortgage credit institution or issuer of electronic money will depend on the governing law of the ISDA Master Agreement (and not Danish law, being the law where the insolvency proceedings are carried out).

Insurance companies:

Reference is made to the response to question 1 as regards the implementation into Danish law of Directive 2001/17/EC on the reorganisation and winding up of insurance companies. Based on the same analysis as set out in our response to question 1 above, we are of the opinion that Articles 9(2), item c) and 22 in Directive 2001/17/EC on set-off cannot be considered applicable on the determination of the enforceability of the provisions of the ISDA Master Agreement providing



for the netting of termination values in determining a single lump-sum termination amount upon the insolvency of its counterparty if such counterparty is a Danish insurance company or pension fund. As a consequence thereof, we are of the view that in such cases Danish substantive law (as described in the sections on “New Regime” and “Old Regime” above in our response to this question 3) will apply on the determination of the enforceability of the provisions of the ISDA Master Agreement providing for the netting of termination values in determining a single lump-sum termination amount upon the insolvency of a counterparty. To our knowledge there is no relevant published court practice.

In an amendment of the Danish Financial Business Act, it has been clarified that any close-out and netting arrangement entered into by a life insurance company will be enforceable against an administrator appointed to administer the portfolio of registered assets.

4. *Assuming the parties have entered into either a 1992 ISDA Master Agreement (Multicurrency-Cross Border) or a 2002 ISDA Master Agreement, one of the parties is insolvent and the parties have selected a Termination Currency other than the currency of the jurisdiction in which the insolvent party is organised*
 - (1) *would a court in your jurisdiction enforce a claim for the net termination amount in the Termination Currency?*
 - (2) *can a claim for the new termination amount be proved in insolvency proceedings in your jurisdiction without conversion into the local currency?*

If in either case the claim must be converted into local currency for the purposes of enforcement or proof in insolvency proceedings, please set out the rules governing the timing and exchange rate for such conversion.

New Regime:

According to Section 40, Subsection 2, of the Bankruptcy Act any amounts in foreign currency filed against a Danish bankruptcy estate shall be converted into Danish Kroner at the exchange rate prevailing on the date of pronouncement of the bankruptcy decree as described further below. The same requirement applies in respect of enforcement by Danish courts of claims against Danish parties subject to insolvency proceedings.

This requirement for conversion into Danish Kroner will in our opinion – though there is no authority on this issue – presumably only relate to the final balance to be filed for proof after the close-out netting process has occurred.



If the parties have not selected Automatic Early Termination upon certain insolvency events to apply to the insolvent counterparty organised in Denmark with the effect that termination will be effective on the Early Termination Date designated by the Non-defaulting Party, then the conversion into Danish Kroner pursuant to Section 40, Subsection 2 of the Bankruptcy Act will in our opinion – though there is no authority on this issue – presumably be made as of the Early Termination Date in question rather than the date of pronouncement.

The conversion shall be made at the applicable “exchange rate” on the date of conversion. No official exchange rate is published in Denmark but in our opinion the rate published by the Danish Central Bank (in Danish: “Danmarks Nationalbank”) may be applied when converting the amount into Danish Kroner.

Old Regime:

The same analysis and conclusions as set out in the first paragraph of the response to question 4 in respect of the New Regime apply in respect of the Old Regime. The response in the second paragraph is not applicable under the Old Regime, cf. our response to question 1 above in respect of the Old Regime.

5. *Is it possible to obtain or execute a judgment in a foreign currency in your jurisdiction?*

It is generally possible to obtain a judgment in the form of a money award in a foreign currency in Denmark. However, enforcement in Denmark by a Danish Bailiff Court of a judgment in the form of a money award can generally only be effected in Danish currency calculated at the rate of exchange prevailing at the date of enforcement.

No official exchange rate is published in Denmark but in our opinion the rate published by the Danish Central Bank (in Danish: “Danmarks Nationalbank”) may be applied when converting the amount into Danish Kroner.

CLOSE-OUT NETTING FOR MULTIBRANCH PARTIES

In this Section of our opinion, we consider issues relating to the enforceability of the multibranch close-out netting provisions of the ISDA Master Agreement. For this purpose you have asked us to assume the same facts as set out in (a) to (h) above (as applicable) with the following modifications:

- (i) When addressing questions 6 and 8 below, we have assumed that a bank organised in Denmark has entered into an ISDA Master Agreement on a multibranch basis. In the ISDA Master Agreement, the bank has specified that Section 10(a) applies to it. The bank has then entered into Transactions under the ISDA Master Agreement through its head office in Denmark and also through one or more branches located in other jurisdictions that had been specified in the Schedule to the



ISDA Master Agreement. After entering into these Transactions and prior to the maturity thereof, the bank becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of Denmark.

- (j) When addressing questions 7 and 8 below, we have assumed that a bank (“**Bank F**”) organised and with its headquarters in a jurisdiction (“**Country H**”) other than Denmark has entered into an ISDA Master Agreement on a multibranch basis. Bank F has entered into Transactions under the ISDA Master Agreement through Bank F and also one or more branches located in other jurisdictions that Bank F had specified in the Schedule to Bank F’s ISDA Master Agreement, including a branch of Bank F located in and subject to the laws of Denmark (the “**Local Branch**”). After entering into these Transactions and prior to the maturity thereof, Bank F becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of Country H.

Close-out Netting for Multibranch Parties

6. *In relation to a multibranch party organised in your jurisdiction would there be any change in your conclusions concerning the enforceability of close-out netting under the ISDA Master Agreement based upon the fact that the bank has entered into an ISDA Master Agreement on a multibranch basis and then conducted business in that fashion prior to its insolvency?*

We do not consider that the use of the ISDA Master Agreement with branches of a Danish bank in a number of different jurisdictions, including some where the legal basis of netting is not clear, would jeopardise the existence of a claim or obligation arising under the close-out and liquidation provisions of an ISDA Master Agreement. In particular, insolvency proceedings in relation to a Danish bank and its branch(es) in Denmark may be commenced and/or continued in Denmark notwithstanding that equivalent proceedings may be commenced and/or continuing concurrently in some or all of those different jurisdictions. Further, in those proceedings under Danish law there are no limitations on the bringing of claims against a Danish bank by creditors, who are not subject to the jurisdiction of the courts of Denmark.

We do not consider that the entering into of a Transaction by a branch of an insolvent party that is a Danish bank on behalf of and for the account of another branch of that insolvent party located in another jurisdiction would jeopardise the existence of such a claim or obligation.

If the insolvent party is a Danish bank and has entered into an ISDA Master Agreement and agreed to an “Office” (or other capitalised term with the equivalent meaning, collectively referred to herein as an “**Office**”) in Denmark and a number of Offices in other jurisdictions, all or some of which Offices have outstanding Transactions governed by the ISDA Master Agreement, this would not affect the ability of the



solvent party to enforce the ISDA Master Agreement in accordance with its terms against the insolvent party in insolvency proceedings under Danish law, it being noted that if the insolvent party is a Danish credit institution or insurance company, then based on the analysis set out in the responses to questions 1 to 3 above, the Bank Executive Order or the Insurance Executive Order (as the case may be) may affect the choice of law applicable on the ability of the solvent party to enforce the ISDA Master Agreement in accordance with its terms.

7. *In relation to a multibranch party with a branch located in your jurisdiction:*
 - (a) *would there be a separate proceeding in your jurisdiction with respect to the assets and liabilities of the Local Branch at the start of the insolvency proceeding for Bank F in Country H? Or would the relevant authorities in your jurisdiction defer to the proceedings in Country H so that the assets and liabilities of the Local Branch would be handled as part of the proceeding for Bank F in Country H? Could local creditors of the Local Branch initiate a separate proceeding in your jurisdiction even if the relevant authorities in your jurisdiction did not do so?*

If the insolvent party is a bank incorporated or organised in jurisdiction other than Denmark (the “**Home Jurisdiction**”) and has entered into an ISDA Master Agreement and agreed to an Office in Denmark and a number of Offices in other jurisdictions, all or some of which Offices have outstanding Transactions governed by the ISDA Master Agreement and insolvency proceedings are initiated against the insolvent party under Danish law, such insolvency proceedings would deal with the assets and liabilities of the insolvent party and the Office in Denmark of the insolvent party as follows:

The foreign legal entity incorporated outside Denmark cannot undergo insolvency proceedings in Denmark. If a bank registered outside Denmark has a Danish subsidiary, such Danish subsidiary may be declared bankrupt in Denmark. The Danish branch of a company incorporated outside of Denmark cannot be declared bankrupt in Denmark, as the branch is not a separate legal entity under Danish law. This will also apply to a Danish branch of a bank incorporated outside of Denmark.

A Danish bankruptcy estate only has jurisdiction over assets in Denmark. Under the Nordic Bankruptcy Treaty, assets in the Nordic countries belonging to the debtor are included in the bankruptcy estate. Danish courts will recognise a foreign bankrupt party as a legal entity; for instance, if Bank F is placed in bankruptcy in Country H and there is not a separate petition for Danish bankruptcy proceedings, Danish courts will recognise the foreign bankrupt party as the legal entity being responsible for the assets and liabilities of the Local Branch.



- (b) *if there would be a separate proceeding in your jurisdiction with respect to the assets and liabilities of the Local Branch, would the relevant insolvency official and the courts in your jurisdiction, on the facts above, include Bank F's position under an ISDA Master Agreement, in whole or in part, among the assets of the Local Branch and, if so, would the insolvency official and the courts in your jurisdiction recognise the close-out netting provisions of the ISDA Master Agreement in accordance with their terms? The most significant concern would arise if the insolvency official or court considering a single ISDA Master Agreement would require a counterparty of the Local Branch to pay the mark-to-market value of Transactions entered into with the Local Branch to the insolvency official of the Local 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 Bank F under the same ISDA Master Agreement. In considering this issue, please assume that close-out netting under the ISDA Master Agreement would be enforced in accordance with its terms in the proceedings for Bank F in Country H.*

As mentioned above a Danish Branch of a foreign bank cannot be declared bankrupt in Denmark. If, however, a foreign bank has a Danish subsidiary such Danish subsidiary may be declared bankrupt and an insolvency proceeding in this jurisdiction for that subsidiary would include obligations arising from all Transactions (regardless of the Office from which they were entered into) in the calculation of amounts owed to and from the Defaulting Party and would recognise the termination and liquidation of the ISDA Master Agreement in accordance with its terms, it being noted that if said subsidiary is a Danish credit institution or insurance company, then based on the analysis set out in the responses to questions 1 to 3 above, the Bank Executive Order or the Insurance Executive Order (as the case may be) may affect the choice of law applicable to the recognition of the termination and liquidation of the ISDA Master Agreement in accordance with its terms.

8. *Thus far ISDA has obtained legal opinions indicating that bilateral and multibranch close-out netting would be enforceable in a number of jurisdictions. However, ISDA would like you to confirm that where courts in your jurisdiction have jurisdiction over the assets of a bank organised in your jurisdiction or a Local Branch, a multibranch master agreement such as the ISDA Master Agreement would be treated as a single, unified agreement by an insolvency official under the laws of your jurisdiction regardless of the treatment of the ISDA Master Agreement or Transaction thereunder by an insolvency official in a jurisdiction where close-out netting may be unenforceable.*

We can confirm that in our view where courts in Denmark have jurisdiction over the assets of a bank organised in Denmark or a Local



Branch, a multibranch master agreement such as the ISDA Master Agreement would be treated as a single, unified agreement.

KEY DIFFERENCES BETWEEN THE 1992 ISDA MASTER AGREEMENTS AND THE 2002 ISDA MASTER AGREEMENT

In this Section of our opinion, we consider issues relating to key differences between the 1992 ISDA Master Agreements and the 2002 ISDA Master Agreement. For this purpose you have brought the following key differences to our attention:

- (a) Sections 5 and 6 of the 1992 ISDA Master Agreements have been amended in several ways. Grace periods in Sections 5(a)(i), 5(a)(v) and 5(a)(vii)(4) have been reduced in length.
 - (b) Section 5(a)(v) has been amended so that cross-acceleration of a Specified Transaction is not sufficient to trigger an Event of Default; rather, there must be a determination that an acceleration has occurred under the documentation applicable to the relevant Specified Transactions. Thus, “mini close-outs”, where fewer than all transactions are terminated, are not sufficient in themselves to constitute an Event of Default.
 - (c) Force Majeure Event has been added as an additional Termination Event in Section 5(b)(ii). While some of the changes to the 1992 Master Agreement effected by the inclusion of a Force Majeure Event relate to Sections 5 and 6, none of the changes relate to close-out netting in the event of insolvency.
 - (d) A single measure of damages provision, Close-out Amount, has been added in the 2002 ISDA Master Agreement, replacing the choice that existed in the 1992 ISDA Master Agreements between Market Quotation and Loss.
 - (e) A contractual set-off provision has been added as Section 6(f) of the 2002 ISDA Master Agreement.
9. *We ask that you confirm that the inclusion of the Force Majeure Event would not affect your opinion. If the inclusion of this provision would affect your opinion, please set forth the legal implications. Please note that this is not a request for advice on force majeure and impossibility issues generally under the laws of your jurisdiction, but merely whether the inclusion of the Force Majeure Event would affect your opinion on the enforceability of the termination, close-out netting and multibranch netting provisions of the 2002 ISDA Master Agreement.*

In our view the inclusion of the Force Majeure Event would not affect our opinion on the enforceability of the termination, close-out netting



and multibranch netting provisions of the 2002 ISDA Master Agreement.

10. *Please confirm that the inclusion of Close-out Amount in lieu of the prior choice between Market Quotation and Loss would not affect your opinion on the enforceability of the termination, close-out netting and multibranch netting provisions of the 2002 ISDA Master Agreement.*

In our view the inclusion of Close-out Amount would not affect our opinion on the enforceability of the termination, close-out netting and multibranch netting provisions of the 2002 ISDA Master Agreement.

The provision in Section 6(d)(i) of the 2002 ISDA Master Agreement that in the absence of written confirmation from the source of a quotation obtained in determining a Close-out Amount, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation may not be effective if such records are incorrect, and such a provision will not necessarily prevent judicial inquiry into the merits of such records.

11. *We are not asking you to opine on the enforceability of Section 6(f), but to confirm that the inclusion of Section 6(f) would not affect your opinion on the enforceability of the termination, close-out netting and multibranch netting provisions of the 2002 ISDA Master Agreement.*

In our view the inclusion of Section 6(f) would not affect our opinion on the enforceability of the termination, close-out netting and multibranch netting provisions of the 2002 ISDA Master Agreement.

2001 ISDA CROSS-AGREEMENT BRIDGE

In this Section of our opinion, we consider whether the inclusion of the 2001 Bridge would materially affect the conclusions above. For this purpose we have assumed that each of the Bridged Agreements (as defined in the 2001 Bridge) are valid and enforceable close-out netting agreements under the governing law and that by way of the 2001 Bridge the close-out amounts under those Bridged Agreements will be taken into account in Section 6 of the ISDA Master Agreements as Unpaid Amounts.

12. *Please state whether the inclusion of the 2001 Bridge would materially affect the conclusions reached in your opinion. Please note that we are not asking you to confirm the validity or enforceability of the 2001 Bridge under the laws of your jurisdiction.*

We can confirm that the inclusion of any of the Bridged Agreements under the 2001 Bridge would not affect our opinions on the enforceability of the termination, close-out netting and multibranch netting provisions of the ISDA Master Agreements as set out above.



We have not individually examined whether the transactions covered by the Bridged Agreements constitute financial obligations within the meaning of Section 58e of the Securities Trading Act.

2002 ISDA ENERGY AGREEMENT BRIDGE

In this Section of our opinion, we consider whether the inclusion of the 2002 Bridge would materially affect the conclusions above. For this purpose we have assumed that each of the Bridged Agreements (as defined in the 2002 Bridge) are valid and enforceable close-out netting agreements under the governing law and that by way of the 2002 Bridge the close-out amounts under those Bridged Agreements will be taken into account in Section 6 of the ISDA Master Agreements as Unpaid Amounts.

13. *Please state whether the inclusion of the 2002 Bridge would materially affect the conclusions reached in your opinion. Please note that we are not asking you to confirm the validity or enforceability of the 2002 Bridge under the laws of your jurisdiction.*

We can confirm that the inclusion of any of the Bridged Agreements under the 2002 Bridge would not affect our opinions on the enforceability of the termination, close-out netting and multibranch netting provisions of the ISDA Master Agreements as set out above. We have not individually examined whether the transactions covered by the Bridged Agreements constitute financial obligations within the meaning of Section 58e of the Securities Trading Act.

ISDA CLOSE-OUT AMOUNT PROTOCOL

We refer to the Close-out Amount Protocol published by ISDA on 27 February 2009 (the "Protocol"). On the assumption that the changes intended by the Protocol are effective as a matter of the governing law of the Covered Master Agreement (as defined in the Protocol), we confirm that the changes made by the Protocol are not material to and do not affect the conclusions reached in this opinion.

JUNE 2014 AMENDMENTS TO THE ISDA MASTER AGREEMENT

We refer to the June 2014 Amendment to the ISDA Master Agreement in relation to Section 2(a)(iii). We confirm that the amendments will not have material and adverse effect on our conclusions as to the enforceability of the early termination and close-out netting provisions of the ISDA Master Agreements.

PENDING DEVELOPMENTS

On 16 November 2015 a draft bill was sent to public hearing in Denmark. The proposed legislation will introduce *inter alia* (i) amendments to Danish legislation as a consequence of the implementation of the Directive on markets in financial instruments (MiFID 2) and (ii) other changes related to reg-



ulation on markets in financial instruments (MIFIR). This is proposed to be done *inter alia* by replacing the Securities Trading Act with an act on capital markets. As the bill is currently drafted, the amendments to the Danish netting and collateral rules will not affect the conclusions reached in this legal opinion.

We are not aware of any other developments pending as a result of which the current regulatory or legal environment in Denmark concerning the enforceability of close-out netting may be expected to change in the foreseeable future.

RECOMMENDATION

Chapter 18a of the Securities Trading Act applies to ISDA Master Agreements entered into on or after 1 January 2004.

As the Securities Trading Act after implementing the Financial Collateral Directive has solved a number of the issues and uncertainties, including adopting a possibility for giving notice on termination in case of insolvency, relevant for ISDA Master Agreements entered into prior to 1 January 2004, parties to an ISDA Master Agreement entered into prior to 1 January 2004 may wish to be covered by the new rules in Chapter 18a of the Securities Trading Act. The preparatory remarks do not contain any specific rules as to what is required in this respect. In our view it will be sufficient for the parties to such ISDA Master Agreement to sign an addendum to the ISDA Master Agreement after 1 January 2004 such addendum to include the following:

“The parties hereby confirm the terms of the [specification of existing ISDA Master Agreement] dated [] between them (the “ISDA Master Agreement”) and confirm by their signature to this addendum that the ISDA Master Agreement as amended by this addendum including all Transactions covered by the ISDA Master Agreement and entered into prior to the date hereof (details of which are set out in the appendix hereto) shall be covered by Chapter 18a of the Danish Securities Trading Act (Consolidation Act No. 1530 of 2 December 2015) on Financial Collateral Arrangements and Close-out Netting, etc. (as it may be amended and/or replaced from time to time).”

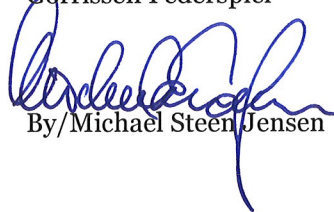
ISDA Master Agreements entered into prior to 1 January 2004 will remain subject to the netting rules under the Old Regime.



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This opinion is given for the sole benefit of the addressee specified at the head of this letter and its members and may with the exception of advisors and regulators of ISDA and its members neither be transmitted to anyone else nor be relied upon by any other person unless we otherwise specifically agree with that person in writing.

Yours faithfully
Gorrissen Federspiel



By/Michael Steen Jensen



CERTAIN TRANSACTIONS UNDER THE ISDA MASTER AGREEMENTS

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

Bond Forward. A transaction in which one party agrees to pay an agreed price for a specified amount of a bond of an issuer or a basket of bonds of several issuers at a future date and the other party agrees to pay a price for the same amount of the same bond to be set on a specified date in the future. The payment calculation is based on the amount of the bond 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).

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 specified amount of 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.

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

Bullion 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.

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 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, and in the case of silver, platinum and palladium, a troy ounce (or in the case of reference prices not expressed in Ounces, the relevant Units of gold, silver, platinum or palladium).

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).

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).

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

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. A Commodity Forward may be settled by the physical delivery of the commodity in exchange for the specified price or may be cash settled based on the difference between the agreed forward price and the prevailing market price at the time of settlement.

Commodity 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 on the price of one or more commodities.

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

Commodity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic



amounts of the same currency based on the price of a commodity, such as 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.

Contingent Credit Default Swap. A Credit Default Swap Transaction under which the calculation amounts applicable to one or both parties may vary over time by reference to the mark-to-market value of a hypothetical swap transaction.

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.

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) of Reference Entities or may be an index transaction consisting of a series of component Credit Default Swaps.

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.

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

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



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

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

Economic Statistic Transaction. A transaction 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.

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.

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 and shares 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).

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 the case of a call) or is less than (in the case of a put) a specified strike price.



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

Equity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price or a fixed or floating 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.

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 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).

Foreign Exchange Transaction. A deliverable or non-deliverable 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.

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.

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.

Fund Option Transaction. A transaction in which one party grants to the other party (for an agreed payment or other consideration) the right, but not the obligation, to receive a payment based on the redemption value of a specified amount of an interest issued to or held by an investor in a fund, pooled investment vehicle or any other interest identified as such in the relevant Confirmation (a "Fund Interest"), whether i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests in relation to a specified strike price. The Fund Option Transactions will generally be cash settled (where settlement occurs based on the excess of such redemption value over such specified strike price (in the case of a call) or the excess of



such specified strike price over such redemption value (in the case of a put) as measured on the valuation date or dates relating to the exercise date).

Fund Forward Transaction. A transaction in which one party agrees to pay an agreed price for the redemption value of a specified amount of i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests at a future date and the other party agrees to pay a price for the redemption value of the same amount of the same Fund Interests to be set on a specified date in the future. The payment calculation is based on the amount of the redemption value relating to such Fund Interest and generally cash-settled (where settlement occurs based on the difference between the agreed forward price and the redemption value measured as of the applicable valuation date or dates).

Fund Swap Transaction. A transaction 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 based on the redemption value of i) a single class of Fund Interest of a Single Reference Fund or ii) a basket of Fund Interests.

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

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

Longevity/Mortality Transaction. (a) A transaction employing a derivative instrument, such as a forward, a swap or an option, that is valued according to expected variation in a reference index of observed demographic trends, as exhibited by a specified population, relating to aging, morbidity, and mortality/longevity, or (b) A transaction that references the payment profile underlying a specific portfolio of longevity- or mortality- contingent obligations, e.g. a pool of pension liabilities or life insurance policies (either the actual claims payments or a synthetic basket referencing the profile of claims payments).

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

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 or national area.



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.

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.

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.

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

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

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

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.



CERTAIN COUNTERPARTY TYPES¹³

Description	Covered by opinion	Legal form(s)
<p><u>Bank/Credit Institution</u>. A legal entity, which may be organized as a corporation, partnership or in some other form, that conducts commercial banking activities, that is, whose core business typically involves (a) taking deposits from private individuals and/or corporate entities and (b) making loans to private individual and/or corporate borrowers. This type of entity is sometimes referred to as a “commercial bank” or, if its business also includes investment banking and trading activities, a “universal bank”. (If the entity <u>only</u> conducts investment banking and trading activities, then it falls within the “Investment Firm/Broker Dealer” category be-</p>	<p>Yes</p>	<ul style="list-style-type: none"> - A bank (in Danish: “pengeinstitut”) in the form of (i) a commercial bank (in Danish: “bank”) organised in Denmark as a public limited company under the Danish Companies Act (ii) a savings bank (in Danish: “sparekasse”) organised in Denmark as an independent institution (in Danish: “selvejende institution”) and (iii) a credit cooperative (in Danish: “andelskasse”) organised in Denmark as a credit cooperative (in Danish: “andelskasse”) and, in case of each of (i), (ii) and (iii), authorised by the Danish Financial Supervisory Authority under the Danish Financial Business Act or under an earlier statute - a mortgage-credit institution (in Danish: “realkreditinstitut”) organised in Denmark as a public limited company under the Companies Act or an earlier statute and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute - Danmarks Skibskredit A/S organised in Denmark as a public limited company under the Companies Act and subject to the supervision by the Danish Financial Supervisory Authority under Act on a Ship Finance Institute, Consolidation Act No. 851 of 25 July 2015 as amended - KommuneKredit organised in Denmark under Act No. 383 of 3 May 2006 as amended on the mortgage credit association of municipalities and regions in Denmark and subject to the supervision by the Ministry or Economic Affairs,

¹³ In these definitions, the term “legal entity” means an entity with legal personality other than a private individual.



Description	Covered by opinion	Legal form(s)
<p>low.) This type of entity is referred to as a “credit institution” in European Community (EC) legislation. This category may include specialised types of bank, such as a mortgage savings bank (provided that the relevant entity accepts deposits and makes loans), or such an entity may be considered in the local jurisdiction to constitute a separate category of legal entity (as in the case of a building society in the United Kingdom (UK)).</p>		
<p><u>Central Bank.</u> A legal entity that performs the function of a central bank for a Sovereign or for an area of monetary union (as in the case of the European Central Bank in respect of the euro zone).</p>	Yes	Danmarks Nationalbank
<p><u>Corporation.</u> A legal entity that is organized as a corporation or company rather than a partnership, is engaged in industrial and/or commercial activities and does not fall</p>	Yes	<ul style="list-style-type: none"> - A public limited company (in Danish: “Aktieselskab” or “A/S”) organised in Denmark under the Companies Act or under an earlier statute - a private limited company (in Danish: “anpartselskab” or “ApS”) organised in Denmark under the Companies Act or under an earlier statute



Description	Covered by opinion	Legal form(s)
within one of the other categories in this Appendix B.		
<p><u>Hedge Fund/Proprietary Trader</u>. A legal entity, which may be organized as a corporation, partnership or in some other legal form, the principal business of which is to deal in and/or manage securities and/or other financial instruments and/or otherwise to carry on an investment business predominantly or exclusively as principal for its own account.</p>	Yes	<p>A capital association (in Danish: “kapitalforening”) or other alternative investment fund organised in Denmark and authorised by the Danish Financial Supervisory Authority under the AIFM Act (which includes entities previously organised as special purpose associations (in Danish: “specialforeninger”), restricted associations (in Danish: “famands-foreninger”), hedge associations (in Danish: “hedgeforeninger”) , professional associations (in Danish: “professionel foreninger”), associations for professional investors and non-approved restricted associations).</p>
<p><u>Insurance Company</u>. A legal entity, which may be organised as a corporation, partnership or in some other legal form (for example, a friendly society or industrial & provident society in the UK), that is licensed to carry on insurance business, and is typically subject to a special regulatory regime and a special insolvency regime in order to protect the interests of policyholders.</p>	Yes	<p>An insurance company (in Danish: “forsikringsselskab”) organised in Denmark as either (i) a public limited company (in Danish: “aktieselskab” or “A/S”), (ii) mutual company (in Danish: “gensidigt selskab”) or (iii) a pension fund (in Danish: “tværgående pensionskasse”) and, in case of each of (i), (ii) and (iii), authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute.</p>



Description	Covered by opinion	Legal form(s)
<p><u>International Organization</u>. An organization of Sovereigns established by treaty entered into between the Sovereigns, including the International Bank for Reconstruction and Development (the World Bank), regional development banks and similar organizations established by treaty.</p>	No	This is because there is no Danish equivalent.
<p><u>Investment Firm/Broker Dealer</u>. A legal entity, which may be organized as a corporation, partnership or in some other form, that does not conduct commercial banking activities but deals in and/or manages securities and/or other financial instruments as an agent for third parties. It may also conduct such activities as principal (but if it does so exclusively as principal, then it most likely falls within the “Hedge Fund/Proprietary Trader” category above.) Its business normally includes holding securities and/or other finan-</p>	Yes	<ul style="list-style-type: none"> - An investment company (in Danish: “fondsmæglerselskab”) organised in Denmark as a public limited company under the Companies Act or under an earlier statute and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute - an investment management company (in Danish: “investeringsforvaltningsselskab”) organised in Denmark as a public limited company under the Companies Act or under an earlier statute and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute



Description	Covered by opinion	Legal form(s)
<p>cial instruments for third parties and operating related cash accounts. This type of entity is referred to as a “broker-dealer” in US legislation and as an “investment firm” in EC legislation.</p>		
<p><u>Investment Fund.</u> A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide investors with a share in profits or income arising from property acquired, held, managed or disposed of by the manager(s) of the legal entity or arrangement or a right to payment determined by reference to such profits or income. This type of entity or arrangement is referred to as a “collective investment scheme” in EC legislation. It may be regulated or unregulated. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have</p>	<p>Yes</p>	<ul style="list-style-type: none"> - An investment association (UCITS) (in Danish: “investeringsforening”) organised in Denmark and authorised by the Danish Financial Supervisory Authority under the under the Investment Associations Act - a company for investment of variable capital (SIKAV) organised in Denmark and authorised by the Danish Financial Supervisory Authority under the Investment Association Act - a securities fund (in Danish: “værdipapirfond) organised in Denmark and authorised by the Danish Financial Supervisory Authority under the Investment Association Act - an alternative investment fund (in Danish: “alternativ investeringsfond”) authorised by the Danish Financial Supervisory Authority under the AIFM Act <p>Entities which were organised in Denmark as special purpose associations (in Danish: “specialforeninger”), restricted associations (in Danish “fåmandsforeninger”), hedge associations (in Danish “hedgeforeninger”), professional associations (in Danish: “professionel foreninger”), associations for professional investors and non-approved restricted associations (in Danish: “ikke-godkendte fåmandsforeninger”) are now capital associations (in Danish: “kapitalforeninger”) or other alternative investment funds for the purposes of the AIFM Act. Please see above under “Hedge Fund/Proprietary Trader”.</p>



Description	Covered by opinion	Legal form(s)
<p>various rights and obligations governed by general law and/or, typically in the case of regulated Investment Funds, financial services legislation. Where the arrangement does not have separate legal personality, one or more representatives of the Investment Fund (for example, a trustee of a unit trust) contract on behalf of the Investment Fund, are owed the rights and owe the obligations provided for in the contract and are entitled to be indemnified out of the assets comprised in the arrangement.</p>		
<p><u>Local Authority.</u> A legal entity established to administer the functions of local government in a particular region within a Sovereign or State of a Federal Sovereign, for example, a city, county, borough or similar area.</p>	<p>Yes</p>	<ul style="list-style-type: none"> - A municipality (in Danish: “kommune”) - a region (in Danish: “region”)
<p><u>Partnership.</u> A legal entity or form of arrangement without legal personality that</p>	<p>Yes</p>	<ul style="list-style-type: none"> - A limited partnership (in Danish: “Kommanditselskab” or “K/S”) organised in Denmark under the Danish Act on Undertakings Carrying on Business for Profit



Description	Covered by opinion	Legal form(s)
<p>is (a) organised as a general, limited or some other form of partnership and (b) does not fall within one of the other categories in this Appendix B. If it does not have legal personality, it may nonetheless be treated as though it were a legal person for certain purposes (for example, for insolvency purposes) and not for other purposes (for example, tax or personal liability).</p>		<ul style="list-style-type: none"> - a partnership (in Danish: “interessentskab” or “I/S”) organised in Denmark under the Danish Act on Undertakings Carrying on Business for Profit
<p><u>Pension Fund.</u> A legal entity or an arrangement without legal personality (for example, a common law trust) established to provide pension benefits to a specific class of beneficiaries, normally sponsored by an employer or group of employers. It is typically administered by one or more persons (who may be private individuals and/or corporate entities) who have various rights and obligations governed by pensions legislation. Where the arrange-</p>	<p>Yes</p>	<ul style="list-style-type: none"> - A pension insurance company (in Danish: “pensionsforsikringselskab”) organised in Denmark as a public limited company under the Companies Act or under an earlier statute and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute - a lateral pension fund (in Danish: “tværgående pensionskasse”) organised in Denmark as a private foundation and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute - a company pension fund (in Danish: “firmapensionskasse”) organised in Denmark as a private foundation and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute - an insurance company (in Danish: “forsikringselskab”) organised in Denmark as a public limited company under the Companies Act or an earlier statute authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under



Description	Covered by opinion	Legal form(s)
<p>ment does not have separate legal personality, one or more representatives of the Pension Fund (for example, a trustee of a pension scheme in the form of a common law trust) contract on behalf of the Pension Fund and are owed the rights and owe the obligations provided for in the contract and are entitled to be indemnified out of the assets comprised in the arrangement.</p>		<p>an earlier statute</p> <ul style="list-style-type: none"> - Arbejdsmarkedets Tillægspension (“ATP”) organised in Denmark as a self-owned institution and regulated under the ATP Act
<p><u>Sovereign</u>. A sovereign nation state recognized internationally as such, typically acting through a direct agency or instrumentality of the central government without separate legal personality, for example, the ministry of finance, treasury or national debt office. This category does not include a State of a Federal Sovereign or other political subdivision of a sovereign nation state if the sub-division has separate legal personality (for exam-</p>	<p>Yes</p>	<p>The Danish State</p>



Description	Covered by opinion	Legal form(s)
<p>ple, a Local Authority) and it does not include any legal entity owned by a sovereign nation state (see “Sovereign-owned Entity”).</p>		
<p><u>Sovereign Wealth Fund</u>. A legal entity, often created by a special statute and normally wholly owned by a Sovereign, established to manage assets of or on behalf of the Sovereign, which may or may not hold those assets in its own name. Such an entity is often referred to as an “investment authority”. For certain Sovereigns, this function is performed by the Central Bank, however for purposes of this Appendix B the term “Sovereign Wealth Fund” excludes a Central Bank.</p>	No	This is because there is no Danish equivalent.
<p><u>Sovereign-Owned Entity</u>. A legal entity wholly or majority-owned by a Sovereign, other than a Central Bank, or by a State of a Federal Sovereign, which may or may not benefit from any im-</p>	Yes	E.g. a state-owned company (in Danish: “statsligt aktieselskab”) or a partnership in which the Danish state participates.



Description	Covered by opinion	Legal form(s)
<p>munity enjoyed by the Sovereign or State of a Federal Sovereign from legal proceedings or execution against its assets. This category may include entities active entirely in the private sector without any specific public duties or public sector mission as well as statutory bodies with public duties (for example, a statutory body charged with regulatory responsibility over a sector of the domestic economy). This category does not include local governmental authorities (see “Local Authority”).</p>		
<p><u>State of a Federal Sovereign</u>. The principal political sub-division of a federal Sovereign, such as Australia (for example, Queensland), Canada (for example, Ontario), Germany (for example, Nordrhein-Westfalen) or the United States of America (for example, Pennsylvania). This category does not include a Local</p>	No	This is because there is no Danish equivalent.



Description	Covered by opinion	Legal form(s)
Authority.		
<u>Other finance institutions.</u> Finance institutions not covered by any of the above categories.	Yes	A leasing company (in Danish: “leasing selskab”) or a factoring company (in Danish: “factoring selskab”) which under Danish law are generally not subject to prudential supervision.
<u>Other persons.</u> Other persons, other than natural persons, who is not covered by any of the above categories.	Yes	<ul style="list-style-type: none"> - A one-man business organised in Denmark under the Act on Undertakings Carrying on Business for Profit - an association with limited liability (in Danish: “forening med begrænset ansvar”) organised in Denmark under the Act on Undertakings Carrying on Business for Profit - a company with limited liability (in Danish: “selskab med begrænset ansvar”) organised in Denmark under the Act on Undertakings Carrying on Business for Profit - a co-operative society with limited liability (in Danish: “andelselskab med begrænset ansvar”) organised in Denmark under the Act on Undertakings Carrying on Business for Profit - a commercial fund (in Danish: “erhvervsdrivende fond”) organised in Denmark under the Act on Commercial Funds



TRANSLATION INTO ENGLISH OF SECTION 2 OF THE SECURITIES TRADING ACT

2(1) The provisions of this Act with respect to securities shall apply to the following financial instruments:

- 1) Transferable securities (with the exception of instruments of payment) which are negotiable on the capital market, including:
 - a) shares in companies and other securities equivalent to shares in companies, partnerships and other entities, and depositary receipts in respect of shares;
 - b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities; and
 - c) any other securities giving the right to acquire or sell such securities as listed under item a or b hereof or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;
- 2) money-market instruments, including treasury bills, certificates of deposit and commercial papers, excluding instruments of payment;
- 3) units in collective investment undertakings covered by the act on managers of alternative investment funds and the investment associations act and units in other institutes for collective investment;
- 4) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
- 5) options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);
- 6) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market or a multilateral trading facility;
- 7) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that are not covered by item 6 and that can be physically settled and not being for commercial purposes, which have the characteristics of other derivative financial instruments, hav-



ing regard to whether, *inter alia*, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;

- 8) derivative instruments for the transfer of credit risk;
 - 9) financial contracts for differences (CFDs);
 - 10) options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission permissions or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not covered by items 1-9, which have the characteristics of other derivative financial instruments, having regard to whether, *inter alia*, they are traded on a regulated market or a multilateral trading facility, are cleared and settled through recognised clearing houses or are subject to regular margin calls; and
 - 11) negotiable mortgage deeds regarding real property or movables.
- 2(2)** The Danish Financial Supervisory Authority (Finanstilsynet) shall be entitled to lay down rules that certain financial instruments and contracts not mentioned under 2(1) shall be included under all or certain parts of this Act with respect to securities.