

GMRA

As at 31 MARCH 2011

ICMA/SLRC

LEGAL OPINION UPDATE 2011

SLOVENIA

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¹ Access to the GMRA portion of the industry netting opinion covering the GMRA 1995, GMRA 2000, and GMRA 2011 contained in Appendix 1, is provided by the International Capital Market Association, (ICMA) to its members.

For any questions relating to access to the opinions, or new membership enquiries, please contact Lisa Cleary, Executive Counsel at ICMA - Lisa.Cleary@icmagroup.org

To: International Capital Market Association (*ICMA*)

As of 31 March ~~2010~~, 2011

Dear Sirs

Global Master Repurchase Agreement

CORE OPINION

This opinion consists of a Core Opinion, and Appendix 1.

We have been instructed to give ~~an~~our opinion as to the validity under the laws of the Republic of Slovenia (Slovenia) of the 1995 version of the ~~TBMA~~PSA/ISMA Global Master Repurchase Agreement (~~GMRA 1995~~) ~~and~~, the 2000 version of the TBMA/ISMA Global Master Repurchase Agreement (~~GMRA 2000~~), and the 2011 version of the ICMA/SIFMA Global Master Repurchase Agreement (GMRA 2011) (the GMRA 1995, the GMRA 2000 and the GMRA 2011 together the GMRA or Agreement) and the annexes to the GMRA 1995 and GMRA 2000 listed in Appendix 1, Part I to this opinion, comprising the Core Opinion and Appendix 1 only.

Subject to our assumption in paragraph (i) below, the term GMRA 2000 and the substance of our opinion in relation to the GMRA 2000 shall apply to both the GMRA 2000 and the GMRA 1995 as amended by entry by the parties into the amendment agreement (the **Amendment Agreement**) in the form published by ICMA and the Securities Industry ~~and Financial Markets Association (SIFMA)~~ Financial Markets Association (SIFMA). Subject to our assumption in paragraph (j) below, the term GMRA 2011 and the substance of our opinion in relation to the GMRA 2011 shall apply to the GMRA 2011, the GMRA 1995 as amended by the parties by signing up to the GMRA 2011 protocol (the ICMA GMRA 2011 Protocol) in the form published by ICMA and the GMRA 2000 as amended by the parties by signing up to the ICMA GMRA 2011 Protocol.

Terms defined in ~~the GMRA~~an Agreement have the same meaning in this opinion in relation to that ~~GMRA~~Agreement.

This opinion is given in respect of parties, which are:

- (a) large commercial companies² as defined under the Law on Commercial Companies-1;

² The Law on Commercial Companies-1 (Official Gazette of the Republic of Slovenia, No. 42/2006, with subsequent amendments; hereafter: *ZGD-I*) defines in Article 55 as large companies those companies which do not qualify as small, medium or micro sized companies under the Law on Commercial Companies-1. In

- (b) banks as defined under the Law on Banking-1;
- (c) securities dealers;³ meaning brokerage houses as provided under the Law on Financial Instruments Market;⁴
- (d) Bank of Slovenia; [the Slovenian central bank](#);

in each case incorporated, organised, established or formed under the laws of the Republic of Slovenia and branches located in the Republic of Slovenia of entities incorporated, organised, established or formed outside of the Republic of Slovenia of the type referred in (a) to (c) above (each a **Relevant Entity**). There are four laws in the Republic of Slovenia which in general regulate incorporation, organisation, establishment or formation of the parties in respect of which this opinion is given: the Commercial Companies Act-1 (Official Gazette of the Republic of Slovenia, no. 42/2006 with subsequent amendments; [ZGD-1](#)) regulating companies in general, the Law on Banking-1 (Official Gazette of the Republic of Slovenia, no. 131/2006, with subsequent amendments, **ZBan-1**) regulating banks, the Law on Financial Instruments Market (Official Gazette of the Republic of Slovenia, no. 67/2007, with subsequent amendments, **ZTFI**), regulating securities dealers and the Law on the Bank of Slovenia-1 (Official Gazette of the Republic of Slovenia, No. 58/2002 with subsequent amendments; **ZBS-1**) regulating the Bank of Slovenia.

order to qualify as a micro, small or medium sized company, the company has to fulfil at least two of the following three conditions relating to (i) the number of employees (on average not more than 10 for micro, not more than 50 for small sized or not more than 250 for medium sized companies), (ii) the net sales income (net sales income in the previous year shall not exceed EUR 2,000,000 for micro sized, or EUR 8,800,000 for small sized or EUR 35,000,000 for the medium sized company) and (iii) the value of the company's assets (in the previous business year shall not exceed EUR 2,000,000 for micro sized, EUR 4,400,000 for small or EUR 17,500,000 for medium sized companies). As a result, in order to qualify as a large company under the ZGD-1, the company needs to satisfy at least two of the following criteria: average number of employees of the current business year must be above 250; net sales income must be above EUR 35,000,000 and/or company's assets must be above EUR 17,500,000. Qualifying per se as large commercial companies are, banks, insurance companies, stock exchanges and commercial companies which are obliged to consolidate auditing by law. This opinion is not given in relation to insurance companies and stock exchanges.

³ [Slovenian law does not define the term “securities dealer”. The closest defined term would be the definition of the entities provided under the Financial Instruments Market Act \(Official Gazette of the Republic of Slovenia, No. 67/2007, with subsequent amendments\), which allows investment services and transactions to be carried out only by brokerage houses \(i.e. investment firms\), banks, and certain other entities under certain conditions. Carrying out investment services and transactions for own account is permissible under the ZTFI \(defined below\) provided that the entity carrying out such services and transactions does not act as a market maker and does not systematically trade outside organized markets and multilateral trading facilities providing a system accessible to third parties for the purposes of entering into transactions with such third parties.](#)

~~⁴ Slovenian law does not define the term “securities dealer”. The closest defined term would be the definition of the entities provided under the Financial Instruments Market Act (Official Gazette of the Republic of Slovenia, No. 67/2007, with subsequent amendments), which allows investment services and transactions to be carried out only by brokerage houses (i.e. investment firms), banks, and certain other entities under certain conditions. Carrying out investment services and transactions for own account is permissible under the ZTFI (defined below) provided that the entity carrying out such services and transactions does not act as a market maker and does not systematically trade outside organized markets and multilateral trading facilities providing a system accessible to third parties for the purposes of entering into transactions with such third parties.~~

This opinion is confined to matters of ~~the Republic of Slovenia~~[Slovenian](#) law and we express no opinion with regard to any system of law other than the laws of ~~the Republic of Slovenia~~[Slovenian](#).

We have assumed that:

- (a) each party has all requisite capacity and corporate power to execute, deliver and perform its obligations under the Agreement and each party has taken all necessary steps to execute, deliver and perform the Agreement and all transactions entered into under the Agreement;
- (b) the Agreement has been duly authorised, executed and delivered by each party in accordance with all applicable laws;
- (c) other than by the annexes [to the GMRA 1995 and GMRA 2000](#) listed in Appendix 1, Part I of the GMRA, the Cross-Product Master Agreement (February 2000 and June 2003 versions) (the *CPMA*), ~~the latter~~ in the forms published by SIFMA [and the ICMA GMRA 2011 Protocol](#) or as stated in this opinion, none of the terms of the Agreement has been varied, waived or discharged in any material respects and transactions have been entered into as specified in the Agreement;
- (d) the Agreement is legal, valid, binding and enforceable under English law;
- (e) the Agreement has been entered into at arm's length by each of the parties;
- (f) the Agreement and all transactions entered into under the Agreement are entered into prior to the formal commencement of insolvency proceedings against either party;
- (g) at the time at which a transaction is entered into under the Agreement, neither party has actual notice of the insolvency of the other party;
- (h) the requirements of the law (other than the laws of ~~Republic of Slovenia~~) governing the transfer of Securities, Margin, Collateral, Equivalent Securities, Equivalent Margin, Equivalent Margin Securities and Equivalent Collateral are complied with;
- (i) where the parties to a GMRA 1995 have subsequently executed an Amendment Agreement, the effect of such Amendment Agreement will be to amend the terms of [the](#) GMRA 1995 to conform the GMRA 1995 to [the](#) GMRA 2000; ~~and~~
- (j) [where the parties to a GMRA 1995 or GMRA 2000 have subsequently adhered to and agree to be bound by the terms of the ICMA GMRA 2011 Protocol in respect of the GMRA 1995 or GMRA 2000 as applicable, the effect of such adherence and agreement will, under all applicable laws, be to amend the terms of paragraphs 2 and 10 of the](#)

[GMRA 1995⁵ as set out in Annex 1, or in respect of the GMRA 2000⁶ as set out in Annex 2, of that Protocol;](#)

⊕(k) where the parties have entered into a CPMA, we repeat our assumptions in (a)-(h) above in relation to such CPMA and, in addition, have assumed, without further investigation, that such CPMA constitutes a valid and binding agreement between the parties under all applicable laws.

Subject to the above, we are of the opinion that under the laws of ~~the Republic of~~ Slovenia:

1. INSOLVENCY PROCEEDINGS

1.1 The only bankruptcy, composition, rehabilitation (e.g. administration, receivership or voluntary arrangement) or other insolvency proceedings to which a Relevant Entity would be subject in ~~the Republic of~~ Slovenia (save for the Bank of Slovenia, and, as to which, please refer to paragraph 1.2 below) are the following:

(a) bankruptcy proceedings;

(b) compulsory settlement proceedings (but not for banks and securities dealers, as provided under Article 318 of the ZBan-1 and Article 160 of the ZTFI, respectively);

(c) winding up by the court;

(d) compulsory liquidation by the Bank of Slovenia in case of banks only,

(the above together are called **Insolvency Proceedings**).⁷

⁵ Paragraphs 2(a), 2(j), 2(k) and 10. New paragraphs 2(fA) and 2(mA) are added.

⁶ Paragraphs 2 (a), 2(l), 2(m) and 10. New paragraphs 2(gA) and 2(qA) are added.

⁷ Winding up by the court or compulsory liquidation by the Bank of Slovenia are in fact not Insolvency Proceedings, because both proceedings are not triggered by insolvency causes for the entity concerned. This is confirmed by the provision of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (Official Gazette of the Republic of Slovenia, no. 126/2007; with subsequent amendments; hereafter ~~ZFPPIPP~~), which came into partial effect from the January 15, 2008 onwards: but is otherwise fully effective (according to the present legislature) on the 1.10.2008. ZFPPIPP, in its Article 5, ~~which came into effect from the January 15, 2008 onwards~~, expressly defines as insolvency proceedings only compulsory settlement and bankruptcy proceeding. ~~Nevertheless, there might be similar consequences for the transactions as~~ Such non-insolvency proceedings assume that all obligations of the parties are fully fulfilled, otherwise, they shall result in the case of Insolvency Proceedings – an insolvency proceeding. Similarly, appointment of an extraordinary management, withdrawal of a license or imposing of a prohibition to conduct specific activities in case of banks by the Bank of Slovenia under the ZBan-1 or securities dealer under the ZTFI are not insolvency proceedings but would be covered under the Event of Default provision of the GMRA Netting Provisions of the Agreement. ~~With regard to cross border insolvency, the ZFPPIPP introduced new rules following the UNCITRAL Model Law on Cross Border Insolvency. At the moment, major amendment to the ZFPPIP is considered at the governmental level. That means that the bill amending the ZFPPIPP was not yet introduced in the Parliament for its considerations and potential approval. It is impossible to assess when such amendment to the ZFPPIPP will be effective (if at all), but normally we would expect this to occur during the~~

1.2 The ZBS-1 does not contain any provisions under which insolvency-related proceedings could be instituted against the Bank of Slovenia. On the other hand, the new ZFPPIPP extends its application with regard to bankruptcy to all legal entities, unless provided otherwise under the law regulating such type of entity. The Bank of Slovenia is regulated under the specific law as a public legal entity, so the question is whether the ZBS-1 in any way exempts the Bank of Slovenia from the application of the ZFPPIPP. There are no provisions in the ZBS-1 that would explicitly exempt the Bank of Slovenia from the application of the ZFPPIPP or insolvency proceedings. Consequently, one could argue that the provisions of the ZFPPIPP are applicable also with regard to the Bank of Slovenia. We however believe that this is not the case.

(a) Although there are no explicit provisions in the ZBS-1 on non-application of insolvency proceedings with regard to the Bank of Slovenia, there is a provision in the ZBS-1, which can be interpreted as exempting the Bank of Slovenia from the insolvency proceedings. Namely, under Article 51 of the ZBS-1, any deficit of income over expenditures shall be covered from the general reserves of the Bank of Slovenia. To the extent that the general reserves are not sufficient to cover such deficit, the deficit shall be covered from the budget of ~~the Republic of~~ Slovenia. Consequently, it appears that ~~the Republic of~~ Slovenia shall cover any obligations of the Bank of Slovenia, which cannot be covered directly from the Bank of Slovenia's assets. As a result, because the potential shortage of the Bank of Slovenia's assets is to be covered by the Republic itself, there can be no insolvency proceeding instituted against the Bank of Slovenia and actual insolvency of the Bank of Slovenia would occur only if the Republic of Slovenia was insolvent.⁸ The ZFPPIP is according to our understanding not

~~year. Envisaged changes, to the extent adopted as currently proposed, would affect our close out netting analysis presented in the opinion, however in a positive manner that will facilitate enforceability of close out netting and remove current ambiguities. The bill, as currently drafted, most importantly proposes introduction of close out netting definition based on the ISDA Model Netting Act as of 2006 and expressly providing that the insolvency proceeding shall not affect contractual provisions on close out netting. Moreover, the bill also aims to remove ambiguity of the Article 483 of the ZFPPIPP (discussed at page 20 of this opinion) replacing current term "večstranski pobot (multilateral set-off)" with the newly defined term for close out netting—"dogovor of izravnavi".~~

⁸ Similarly, there are no provisions in the Constitution of the Republic of Slovenia or other laws that would expressly exempt the Republic of Slovenia from the application of the ZFPPIPP. Consequently, one could also argue that the provisions of the ZFPPIPP are applicable also with regard to the Republic of Slovenia, which is also a legal entity. We however believe that this is not the case. Although the wording of the ZFPPIPP refers to any legal entity, we do not believe that the wording is applicable to the Republic of Slovenia as a legal entity. There are namely no provisions in the ZFPPIPP that would deal with specifics of the Republic as a legal entity. The provisions on the ZFPPIPP including for example bankruptcy administrator, termination of powers, etc. are not tailored to the Republic of Slovenia. Finally, as with regard to the Bank of Slovenia, application of ZFPPIP rules on the bankruptcy would result in termination of the Republic of Slovenia, as this is the main scope of for example bankruptcy proceedings under the ZFPPIP, hence it is not logical to apply them to Slovenia as a legal entity. Consequently, we do not believe that the provisions of ZFPPIPP could apply to the Republic of Slovenia insolvency (same arguments can be used also with regard to the Bank of Slovenia to support our argument that the ZFPPIPP is not applicable to the Bank of Slovenia). Instead, it appears that the insolvency of the Republic of Slovenia would be governed by specific act, which could be passed by the government or parliament. No such act has been passed yet, and nor is any pending or discussed in practice. However, in case of occurrence of any event which could be treated as insolvency of the Republic of Slovenia, we believe that it would be adopted on a case by case basis with regard to the circumstances relating to insolvency of the Republic of Slovenia, if any. Although without

applicable to the Republic of Slovenia and consequently, there is no law in place that would regulate insolvency proceeding of the Republic of Slovenia⁹. Moreover, as an additional argument to support our conclusion with regard to the Bank of Slovenia and no applicability of the ZFPPIP to it, it shall be noted that the Constitution of the Republic of Slovenia assumes the existence of the Bank of Slovenia, hence it may be unconstitutional (without any change to the Constitution itself) to apply bankruptcy proceedings against the Bank of Slovenia that shall, according to the scope of such proceedings under the ZFPPIP, result in its termination. As a result, we believe that the ZFPPIP is not applicable to the Bank of Slovenia and there is no insolvency regulation in place that would apply to it, apart from the obligation of the Republic of Slovenia's budget to cover any deficit in Bank of Slovenia's expenditures over its income, unless covered by the reserves of the Bank of Slovenia itself. Institution of any insolvency proceeding over the Bank of Slovenia would therefore require further legislative measures, which so far do not exist.

(b) As no insolvency proceedings could be instituted against the Bank of Slovenia, the advice expressed in this opinion regarding insolvency proceedings does not apply to the Bank of Slovenia as a debtor. Its bankruptcy, if any, would namely depend on any potential further legislative action, which would in such case likely define terms and conditions of such bankruptcy proceedings and its potential effect on the outstanding transactions to which the Bank of Slovenia is a party, thus Bank of Slovenia can not be subject to any existing insolvency regulation.

1.3 With regard to cross border insolvency, the ZFPPIP's rules are modelled on the UNCITRAL Model Law on Cross Border Insolvency. They are located under the

precedent so far, we believe that such act could, if adopted, provide for moratorium or write off or reprogramming of debts (as was the case in the past globally), thus any implemented measures will be provided on a case by case basis. No such acts were adopted so far or pending. Any actions of the Republic of Slovenia in case of its insolvency, if any, would be therefore likely, but not necessarily, subject to specific legislation at the time of its occurrence, if any.

⁹—~~Similarly, there are no provisions in the Constitution of the RS or other laws that would expressly exempt the Republic of Slovenia from the application of the ZFPPIP. Consequently, one could also argue that the provisions of the ZFPPIP are applicable also with regard to the Republic of Slovenia, which is also a legal entity. We however believe that this is not the case. Although the wording of the ZFPPIP refers to any legal entity, we do not believe that the wording is applicable to the Republic of Slovenia as a legal entity. There are namely no provisions in the ZFPPIP that would deal with specifics of the Republic as a legal entity. The provisions on the ZFPPIP including for example bankruptcy administrator, termination of powers, etc. are not tailored to the Republic of Slovenia. Consequently, we do not believe that the provisions of ZFPPIP could apply to the Republic of Slovenia insolvency (same arguments can be used also with regard to the Bank of Slovenia to support our argument that the ZFPPIP is not applicable to the Bank of Slovenia). Instead, it appears that the insolvency of the Republic of Slovenia would be governed by specific act, which could be passed by the government or parliament. No such act has been passed yet, and nor is any pending or discussed in practice. However, in case of occurrence of any event which could be treated as insolvency of the Republic of Slovenia, we believe that it would be adopted on a case by case basis with regard to the circumstances relating to insolvency of the Republic of Slovenia, if any. Although without precedent so far, we believe that such act could, if adopted, provide for moratorium or write off or reprogramming of debts (as was the case in the past globally), thus any implemented measures will be provided on a case by case basis. No such acts were adopted so far or pending. Any actions of the Republic of Slovenia in case of its insolvency, if any, would be therefore likely, but not necessarily, subject to specific legislation at the time of its occurrence.~~

ZFPPIP in its Chapter 8 (Insolvency Proceedings with International Elements). As a general rule, unless provided otherwise under the law, the provisions of Chapter 8 of the ZFPPIP are applicable for a (i) legal assistance applied for in Slovenia by a foreign court or foreign official with respect to foreign insolvency proceedings and applied by a local court or official abroad with respect to the domestic insolvency proceedings; (ii) concurrent (local and foreign) insolvency proceedings and (iii) if foreign creditors have the interest to apply for the commencement of the local insolvency proceeding or to participate in such proceedings. The ZFPPIP differs among home and foreign insolvency proceedings, whereas foreign proceedings are divided into main and ancillary (non-main) foreign insolvency proceedings. The ZFPPIP's provisions allow for recognition of foreign insolvency proceedings, either in the form of main or ancillary insolvency proceedings. The courts and insolvency official in Slovenia are required to offer assistance to foreign insolvency official, and the foreign insolvency official is inter alia entitled to apply to commence local insolvency proceeding, however, only subject to provisions of the local laws on commencement of insolvency proceedings (ie, ZFPPIP). Following the UNCITRAL Model Law on Cross Border Insolvency, the ZFPPIP provides for provisional reliefs and stays of including but not limited to court execution and court collateral proceedings, entrusting the insolvency administrator to administer or realize debtor's assets as well as suspension of the right to transfer, encumber or otherwise dispose of any asset of the insolvent debtor. As a general rule the provisions of the law of the country where insolvency proceedings are conducted shall apply with respect to the legal effects of insolvency proceedings on such proceedings, however, the law provides for certain exemptions, such as real estate contracts (*lex rei situae* rule), application of the law of the state where public registry is kept, with respect of the rights entered into any registry; application of the law of the state applicable to payment systems and financial systems; application of the governing law of the contract with respect to netting arrangements and repurchase agreements, the latter in accordance with our considerations under Part III of this opinion.

1.4 We confirm that all of the Insolvency Proceedings would be adequately covered by the definition of Act of Insolvency in the GMRA. We confirm that all of the Insolvency Proceedings would be adequately covered by the definition of Act of Insolvency in the Agreements.

2. VALIDITY OF THE AGREEMENT

2.1 Please refer to Appendix 1, Part II.

3. NETTING PROVISIONS

3.1 Please refer to Appendix 1, Part III.

4. GMRA 1995 AND GMRA 2000 ANNEXES, CORE PROVISIONS OF THE GMRA

4.1 Please refer to Appendix 1, Parts IV ~~–~~ V and VII.

5. **TRANSACTIONS ENTERED INTO AS AGENT ~~PURSUANT TO~~ IN RESPECT OF THE GMRA 1995 AND GMRA 2000**

5.1 Please refer to Appendix 1, Part VI.

6. **LOCATION OF SECURITIES**

6.1 The substance of our opinion on the Agreement would not be affected if Purchased Securities ~~or~~ Margin Securities, or Collateral or Margin comprising of Securities, are held outside ~~the Republic of~~ Slovenia.

6.2 Under the laws of ~~the Republic of~~ Slovenia, if the transfer of Purchased Securities ~~or~~ Margin Securities, or Collateral or Margin comprising of Securities, is made in accordance with the formalities required under the laws ~~of the Republic~~ of Slovenia, the transfer would be respected as an outright transfer and would not be recharacterised except to the extent provided under paragraphs 3 and 4 of Appendix 1, Part II. This means that in case book entry securities with the accounts maintained in Slovenia are used under the GMRA, the Slovenian courts would apply Slovenian law¹⁰ as to the legal nature and proprietary effect of book entry securities collateral, perfection requirements and realisation of such collateral. Assuming therefore, that the Law on Financial Collateral (Official Gazette of the Republic of Slovenia, no. 47/2004 with subsequent amendments **ZFZ**), as provided under paragraph 3~~(i)~~(d) of Appendix 1, Part III and further of this opinion applies to the transactions, under Article 7 of the ZFZ, the collateral provider shall register collateral taker's right in the register where such instruments are maintained or simply deliver the financial collateral to the collateral taker in order to fulfil its obligation on creation of the financial collateral.¹¹ ~~Under the ZFZ, the obligation of a party to provide financial~~

¹⁰ See paragraph 2(b) of Appendix 1, Part II of this opinion.

¹¹ ~~It is a practical concern how this can be achieved in the Slovenian registry of dematerialised (book entry) securities, since for example the Law on Book Entry Securities (Official Gazette of the RS, No. 2/2007, with subsequent amendments) as currently valid in Slovenia, does not have any specific provisions on entry of the title transfer financial collateral into the register of book entry securities. Instead it recognizes *inter alia* only entry of transfer of the title or pledge on securities into the register of book entry securities. The only possible way to register the title transfer financial collateral arrangement, as provided under the ZFZ is thus to register it as a normal title transfer (as in the case of the plain sale) by a written order of the debtor (what would also correspond to the requirements for provision of the financial collateral set out in Article 7 of the ZFZ), with the financial collateral arrangement attached, which is according to our information in fact the practice among the market participants in Slovenia.~~

¹² It is a practical concern how this can be achieved in the Slovenian registry of dematerialised (book entry) securities, since for example the Law on Book Entry Securities (Official Gazette of the RS, No. 2/2007, with subsequent amendments) as currently valid in Slovenia, does not have any specific provisions on entry of the title transfer financial collateral into the register of book entry securities. Instead it recognizes *inter alia* only entry of transfer of the title or pledge on securities into the register of book entry securities. Taking into account the scope of the GMRA to treat Transactions as an outright transfer of Securities, this shall not be problematic and actually welcomed (because the purpose of the GMRA is exactly to structure Transactions as outright transfers); nevertheless it may cause practical issues. In practice, the only possible way to register the title transfer financial collateral arrangement, as provided under the ZFZ is thus to register it as a normal title transfer (as in the case of a simple transfer) by a written order of the debtor (that would also correspond to the requirements for provision of the financial collateral set out in Article 7 of the ZFZ), with the financial

collateral is fulfilled at the moment collateral is either registered or delivered into the possession of the financial collateral taker or its representative. Therefore in case of securities, which are not delivered to or registered at the account of the financial collateral taker or its representative, it is questionable whether such transaction would be treated as a financial collateral arrangement, since under the ZFZ, conditions for creation of a financial collateral arrangement will not be established. We ~~nevertheless~~ assume that in case of ~~a~~ registered securities, the financial collateral taker will be recorded as such in the books of the issuer or its agent (ie, registrar), ~~thus~~ hence it appears that such action would comply with the conditions mentioned above, thus conditions for a financial collateral arrangement will be satisfied. In case of a Seller holding as a custodian or custodian holding for a third party, we assume that either a Seller or a custodian in such case can be treated as representatives of the financial collateral taker so delivery or registration at the account of such Seller or custodian would still entail institution of a financial collateral arrangement.¹³

7. CPMA

7.1 Entry by the parties into a CPMA will not affect the substance of our opinion on the provisions of the ~~GMRA Agreement~~ and their effect under ~~the Republic of Slovenian~~ law, nor will it affect the substance of our opinion on the validity of the ~~GMRA Agreement~~ as a whole under ~~the Republic of Slovenia~~ Slovenian law. The effects of the CPMA entry by the parties, are however, considered under section 2(e)(i) and further of Appendix 1, Part III below.

8. OTHER ~~MATTERS~~

8.1 On the assumption that under English law the unenforceability or illegality of a provision of the ~~GMRA Agreement~~ would not undermine the efficacy of the remainder of the ~~GMRA Agreement~~ generally or of the GMRA Netting Provisions (as defined in Appendix 1, Part III) in particular, the unenforceability or illegality of any provision of the ~~GMRA Agreement~~ would not undermine the efficacy of the remainder of the ~~GMRA Agreement~~ generally or of the GMRA Netting Provisions in particular under ~~the Republic of Slovenia~~ Slovenian law.

[collateral arrangement attached, which is according to our information in fact the practice among the market participants in Slovenia.](#)

¹³ We note that the text of the Financial Collateral Directive in English defines the term provision of a financial collateral broadly (see Article 2.2 of the Directive): it involves provision, delivery, transfer, holding, registration or otherwise designation so as to be in the possession or under control of the collateral taker or of a person acting on the collateral taker's behalf. Such definition appears to be more extensive than the definition in the ZFZ, without any particular reason for this, so it may be argued that the provisions of the ZFZ shall be interpreted within the scope of the original Directive's text, in particular with regard to the term representative, which may substantiate our arguments above. The courts in Slovenia, however, have not addressed yet such issues, so we can not ~~confirm~~ exclude that ~~such analysis will be upheld by the courts.~~ here take the narrower view on this issue.

- 8.2 The [GMRA Agreement](#) may be used by any party with any other party wherever either is incorporated, formed or established. However, this opinion relates only to Relevant Entities— [entering into transactions with foreign entities](#).¹⁴
- 8.3 The GMRA Netting Provisions would be enforceable in all Insolvency Proceedings including ~~non-~~[no](#) liquidation insolvency.— ZFPPIPP and ZFZ shall apply to all insolvency proceedings, regardless whether there is a liquidation of a debtor or not. Thus, the GMRA Netting Provisions would apply also to the compulsory settlement, which however does not result in a liquidation of a debtor-company itself.
- 8.4 There is no necessity for the set-off effected under the GMRA Netting Provisions to be reflected in the records of the parties for it to be effective and no other action is required including, without limitation, any filing or registration, for the set-off to be effective.
- 8.5 Under the laws of ~~the Republic of~~ Slovenia it is not necessary for the efficacy of the GMRA Netting Provisions that all transactions should be treated as a single agreement.
- 8.6 The use of the [GMRA Agreement](#) with branches of a party in a number of jurisdictions, including one where the legal basis for set-off is not clear, would not jeopardise the validity of [the](#) GMRA Netting Provisions in respect of a Relevant ~~Entity~~[Entity](#).
- 8.7 The GMRA Netting Provisions would be enforceable in ~~the Republic of~~ Slovenia notwithstanding that actions may be taken by insolvency officials in other jurisdictions. ~~To the extent that there is a branch of securities dealer located in Slovenia, with the main insolvency proceedings instituted over the securities dealer in a country which does not allow enforceability of GMRA Netting Provisions in insolvency, the actions of such foreign insolvency official may adversely affect enforceability of GMRA Netting Provisions in case of Insolvency Proceedings instituted with regard to its branch in Slovenia.~~
- 8.8 We have no reason to believe that the [GMRA Agreement](#) would be unenforceable because of the law of any other jurisdiction.
- 8.9 With the exception of an Event of Default which is the presentation of a petition for winding-up or any analogous proceeding, or the appointment of a liquidator or any analogous officer of the Defaulting Party, the close-out and set-off provisions of the GMRA Netting Provisions are at the option of the non-defaulting party. —We do not consider that the GMRA Netting Provisions would be more likely to be upheld if their operation were automatic. The discretion and flexibility given to the non-defaulting party under the GMRA Netting Provisions do not affect the validity of the close-~~out and set-off provisions of that clause.~~— [out and set-off provisions of the GMRA Netting](#)

¹⁴ [See our footnotes 13 and 14 further below. Foreign entities are entities that are not incorporated and/or organized under Slovenian law. Note that application of the ZFZ to the transactions requires a specific type of a foreign entity to enter into the GMRA with the Slovenian Relevant Entity. See also footnote 12 to the opinion, immediately further below.](#)

Provisions. The effects of the discretion and flexibility of the non-defaulting party under the GMRA Netting Provisions, are however, considered under paragraph 5 of Appendix 1, Part III below. For the purposes of this paragraph 8.9, references to “close-out” do not apply to clause 10(n) of GMRA 2011, GMRA 1995 as amended by the GMRA 2011 Protocol and the GMRA 2000 as amended by the GMRA 2011 Protocol. This is discussed separately under paragraph 3(i) and also Appendix 1, Part V below.

There are no other material issues relevant to the issues raised by this opinion that we wish to draw to your attention.

The Core Opinion and Appendix 1 only are given for the sole benefit of ICMA and its members (including branches of those members or, where the member is itself a branch, the head office) excluding associate members.

The Core Opinion and Appendix 1 may not be transmitted or disclosed to, or used or relied upon by any other person without our prior written consent.- Without limiting the foregoing, you may provide a copy of this opinion to any competent regulatory authority including the UK Financial Services Authority and the German Bundesanstalt für Finanzdienstleistungsaufsicht; however this opinion is not addressed to such regulatory authority and may not be relied upon by them.

Yours faithfully,

Jadek & Pensa d.n.o.-o.p.

APPENDIX 1

GMRA

Part I

List of annexes to the GMRA

GMRA 1995	GMRA 2000	GMRA 2011
<ul style="list-style-type: none">• Buy/Sell Back annex• Agency Annex• Bills of exchange annex• EMU annex• Equities annex• Gilts annex• Net paying securities annex• Italian annex• Japanese Securities Annex	<ul style="list-style-type: none">• Buy/Sell Back annex• Agency Annex• Bills of exchange annex• Equities annex• Gilts annex• Italian annex• Canadian Annex• Japanese Securities Annex• Canadian Annex	<ul style="list-style-type: none">• None.

Part II

Validity of the GMRA

1 ~~1~~ — The GMRA will be legal, valid, binding and enforceable under the laws ~~of the Republic~~ of Slovenia and will take effect in accordance with its terms. Assuming that the counterparty to the parties as to which this opinion is rendered is one of the entities defined in Article 1(2), points (a) to (d) of the Directive 2002/47/EC¹⁵ of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements that was transposed in the Slovenian law with introduction of ZFZ, under Slovenian law, to the extent ~~the~~ applicable, the GMRA will be characterized as financial collateral arrangement.¹⁶ The Bank of Slovenia is authorized to enter into repurchase ~~agreements under the Law on the Bank of Slovenia 1~~ transactions.

¹⁵ Article 1(2), (a) to (d) of the Directive 2002/47/EC provides:

"The collateral taker and the collateral provider must each belong to one of the following categories:

- (a) a public authority (excluding publicly guaranteed undertakings unless they fall under points (b) to (e)) including: (i) public sector bodies of Member States charged with or intervening in the management of public debt, and (ii) public sector bodies of Member States authorised to hold accounts for customers;
- (b) a central bank (including the Bank of Slovenia), the European Central Bank, the Bank for International Settlements, a multilateral development bank as defined in Article 1(19) of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, the International Monetary Fund and the European Investment Bank;
- (c) a financial institution subject to prudential supervision including: (i) a credit institution as defined in Article 1(1) of Directive 2000/12/EC, including the institutions listed in Article 2(3) of that Directive; (ii) an investment firm as defined in Article 1(2) of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (1); (iii) a financial institution as defined in Article 1(5) of Directive 2000/12/EC; (iv) an insurance undertaking as defined in Article 1(a) of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and a life assurance undertaking as defined in Article 1(a) of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance; (v) an undertaking for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS); (vi) a management company as defined in Article 1a(2) of Directive 85/611/EEC;
- (d) a central counterparty, settlement agent or 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, and a person, other than a natural person, who acts in a trust or representative capacity on behalf of any one or more persons that includes any bondholders or holders of other forms of securitised debt or any institution as defined in points (a) to (d)."

¹⁶ Because this opinion is given with regard to only specific Slovenian entities, we have not detailed other counterparties which are qualified under Slovenian law as the parties falling within the scope of the Directive 2002/47/EC. ~~This~~ Moreover, this opinion is not given on the transactions covered by the GMRA between two Slovenian ~~counterparties~~ Relevant Entities, but only with respect to such transactions among Slovenian Relevant Entity and foreign entities. In such case, there will be a risk that such GMRA ~~is null and void due to the fact~~ provisions that a foreign law governs the can not be derogated from by an agreement, whereby under Slovenian entities are parties to it. The aforementioned may be also supported on law, despite the basis choice of the foreign law, will be overridden by the appropriate Slovenian provisions (Article 3.3. of the Regulation

~~2~~

2 A court in ~~Republic of~~ Slovenia would uphold the choice of English law and the submission by the parties to the English courts~~and the choice of English law~~. This statement is subject to the following considerations.

- (a) The submission by the parties¹⁷ to the English courts is subject to the following qualification. In a case where the Council Regulation (EC) No 44/2001 (the **Brussels Regulation**) applies or either the 1968 Brussels or the 1988 Lugano Convention and its revision of 2007 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (the 'Conventions') apply, the English court may be obliged to decline jurisdiction which it might otherwise have had in certain circumstances, including where: (a) Article 22 of the Brussels Regulation or, as the case may be, Article 16 of the Conventions applies; (b) the contract is an insurance contract, a consumer contract, or a contract of individual employment; or (c) the courts of another EU member state bound by the Brussels Regulation were already seised with jurisdiction in accordance with Articles 27-30 of the Brussels Regulation, or the courts of another contracting state to one or other Convention were already seised with jurisdiction in accordance with Articles 21-23 of the Conventions. Therefore, the Slovenian court may be obliged to assume jurisdiction in certain circumstances, including where Article 22 of the Brussels Regulation¹⁸ applies. Similarly, submission to the English courts might be affected with regard to specific issues, which are under the exclusive jurisdiction of the Slovenian courts, as provided under Article 50.1 of Slovenian Law on Private International Law (Official Gazette of the RS, No. 56/1999; see also Article 52.1; hereafter **ZMZP**) referring also to other laws containing similar

(EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) ~~(hereafter: **Rome I**, exempting from the general freedom of choice rule situations where all elements relevant to the situation at the time of the choice are located in country other than the country whose law has been chosen with regard to application of provisions of such of the law of such other country which can not be derogated from by agreement. Similar provision with regard to application of implemented Community Law is set forth in the Article 3.4 of the Rome I. Thus, as in the past on the basis of the ZMZP it appears that choice of foreign law by local parties, without any international character to the transaction, may still not be valid.)).~~ We also believe that there is a risk that the jurisdiction clause of the GMRA will be disputed in that case, assuming that there will be no further connection with English law, apart from the choice of law clause.

¹⁷ Again it shall be noted that our opinion does not deal with situation where the GMRA is entered into among the two Slovenian Relevant entities only. Thus, the issue whether the choice of law clause under the GMRA is effective if both parties to the GMRA are Slovenian entities was not considered. Although Brussels Regulation in its Article 23 according to its wording apparently does not limit the parties' freedom to agree on jurisdiction of a foreign court, it is questionable whether the scope of Brussels Regulation covers also situations where both parties are domiciled in one Member State, without any further connection to another Member State, but for the jurisdiction and governing law agreed with regard to such other Member State. We believe that such prorogation of jurisdiction may be disputed, however, have not found any local, or European Court of Justice, jurisprudence on the same.

¹⁸ ~~Slovenia is neither a party to the Brussels Convention on Jurisdiction and the Enforcement of Judgements (1968) nor to the Lugano Protocol (1988). Since 1.1.2010, the Lugano Convention of 30 October 2007 is in effect with regard to the whole European Community (on 18 May 2009 the European Community ratified the revised Lugano Convention), thus also with regard to Republic of Slovenia.~~

provisions (such as subject to certain conditions also the ZFPPIPP's provisions relating to bankruptcy issues) or if the jurisdiction is assumed under the provisions of the Council Regulation (EC) No 1346/2000, in particular under Article 3.2 to another EU member state, which may not be England.

- (i) On 29 May 2000 the Council of the European Union adopted Council Regulation (EC) No 1346/2000 on insolvency proceedings (the Regulation) which entered into force on 31 May 2002. Denmark (pursuant to recital 33 of the Regulation) is not participating in the adoption of the Regulation and is therefore not bound by it nor subject to its application. The objective of the Regulation is to establish common rules on cross-border insolvency proceedings, based on principles of mutual recognition and co-operation. The Regulation applies to “collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator” (Article 1(1)); the Regulation lists the relevant insolvency proceedings to which it applies in each Member State in Annex A thereto (the insolvency proceeding to which the Regulation applies are referred to below as EU Regulation Insolvency Proceedings; these are not identical to the Insolvency Proceedings referred to at paragraph 1 of this opinion). Certain types of entity are specifically excluded from its operation (for example credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties and collective investment undertakings (Article 1(2)) and certain third party *rights in rem* are not affected by the opening of insolvency proceedings (Article 5).
- (ii) Broadly, the Regulation serves to grant the courts of the Member State of the European Union (other than Denmark) (a Member State) within the territory of which the centre of a debtor's main interests are located jurisdiction to open EU Regulation Insolvency Proceedings in respect of such debtor. These proceedings are, with regards to other Member States, international in scope, are to be governed by the law of the Member State where proceedings are opened and are to be effective in all Member States, unless secondary proceedings are opened in another Member State. In the case of companies, the place of the registered office of such company is presumed to be the centre of the company's main interests in the absence of proof to the contrary (Article 3(1)).
- (iii) Even if the centre of a debtor's main interests are in a Member State, the courts of another Member State may open secondary proceedings in the event that such debtor possesses an establishment (being any place of operations where the debtor carries out a non-transitory economic activity with human goods and means) in the territory of such other Member State (Article 3(2)). The applicable law will be the law of that other Member State. However, secondary proceedings are territorial in scope and so will not extend beyond the Member State where they are opened, save in respect of creditors who have given their consent. Generally they will be opened following the opening of the main proceedings, but there are exceptions to this principle.

- (b) Under the [Regulation \(EC\) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations \(Rome I\)](#) (hereafter: [Rome I](#)), replacing ZMZP¹⁹ in this regard;²⁰ the parties ~~to the agreement are as a general rule~~ free to select the law applicable to the agreement, nevertheless such freedom of choice may be in certain cases excluded or limited under the ~~Rome I itself. Moreover, the parties to the agreement are also free to select place of jurisdiction in accordance with the provisions of the Brussels Regulation and the ZMZP.~~ The Rome I and the ZFZ (as defined under paragraph ~~6.26.2~~ of Core Opinion) do not provide for any exclusive choice of law provision that would apply to the GMRA in general. The ZBS-1 does not address any issue with regard to the choice of law selected by the Bank of Slovenia in its transactions. Consequently it does not provide any limitation with regard to the choice of law of transactions taking place between the Bank of Slovenia and other entities and general rules for private transactions on the choice of law shall therefore apply. Thus, if the Bank in Slovenia agreed to the foreign choice of law, the GMRA shall be governed by it in relation to the Bank of Slovenia too and the courts shall apply it. This means that the Slovenian Courts would apply selected English law to the GMRA, if such choice is valid under English law.²¹ In general, Rome I is pursuant

¹⁹ ~~ZMZP is substantially compliant with the provisions of the Rome Convention (1980). The Rome Convention was ratified and published in the Official Gazette of the Republic of Slovenia, International Treaties, No. 115/2005, however, its validity depends on the ratification by other states. According to our information, the Rome Convention took effect in the Republic of Slovenia (RS) as of 1.5.2006. See Article 5 and 6 of the Convention on the Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the Convention on the Law Applicable to Contractual Obligations opened for Signature in Rome on 19 June 1980, and to the First and Second Protocols on its Interpretation by the Court of Justice of the European Communities (2005/C 169/01).~~

²⁰ [ZMZP is substantially compliant with the provisions of the Rome Convention \(1980\). The Rome Convention was ratified and published in the Official Gazette of the Republic of Slovenia, International Treaties, No. 115/2005, however, its validity depends on the ratification by other states. According to our information, the Rome Convention took effect in the Republic of Slovenia \(RS\) as of 1.5.2006. See Article 5 and 6 of the Convention on the Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the Convention on the Law Applicable to Contractual Obligations opened for Signature in Rome on 19 June 1980, and to the First and Second Protocols on its Interpretation by the Court of Justice of the European Communities \(2005/C 169/01\).](#)

²¹ Here it is assumed that the securities used are **not** entered into the book entry securities register in the Republic of Slovenia, which would trigger the exclusive application of Slovenian law to the issues of legal nature, effects, realization and formalities of collateral provided under the GMRA. See Article 15 of the ZFZ. For analysis of the cases where securities used under transactions are book entry securities with accounts maintained in Slovenia, please see paragraph 6.2 of Core Opinion. Because our analysis of the enforceability of the GMRA within Slovenia, in cases where the Slovenian court would assume jurisdiction over the GMRA and apply Slovenian law to it, relies on the provisions of the ZFZ (please see our considerations with regard to the ZFZ application under paragraph 3(i)(d) of Appendix 1, Part III and further below of this opinion) treating transactions under the GMRA as a title transfer financial collateral arrangement, as this is discussed further below, we believe that the court would therefore under article 15 of the ZFZ, regardless of the contractual provisions, apply to such transactions with book entry securities registered within Slovenia, Slovenian law with regard to the issues of legal nature, effects, realization and formalities applying to the title transfer financial collateral arrangement. Please see our considerations with regard to the consequence of (non) application of the ZFZ to transactions as title transfer financial collateral arrangement detailed under Part III of this Appendix.

to Article 1.2(f) not applicable to questions governed by the law of companies including but not limited to winding up issues and pursuant to its Article 9, the Rome I shall not restrict the application of the overriding mandatory provisions of the law of the forum. It therefore appears that selection of a foreign law would be invalid, if such selected law contradicts overriding mandatory provisions of the law, such as the provisions of the ZFPPIPP, ~~that~~ which would be treated as provisions safeguarding its public interest. So we believe the Slovenian courts would disregard contractual provisions of the GMRA and instead apply the provisions of ZFPPIPP and in the relevant parts of the ZBan-1 or ZTFI in case of the banks and securities dealers, respectively, when dealing with insolvency issues or issues relating to the Insolvency Proceedings which might arise from the GMRA. The Bank of Slovenia can not be subject to the Insolvency Proceedings on the basis of the current legislation (as discussed under paragraph 1.2 of the Core Opinion) so it is questionable whether the Slovenian courts would be able to assume jurisdiction over GMRA transaction with the Bank of Slovenia at all. Nevertheless, even if assuming jurisdiction and applying Slovenian law to the GMRA, the Slovenian courts would need to consider such transactions within the meaning of title transfer financial collateral arrangement as provided under the ZFZ, meaning to apply ZFZ provisions to such transactions, assuming that the GMRA is entered among the Relevant Entities. Despite there may be no insolvency issues with regard to Bank of Slovenia, such application of ZFZ is important to prevent any form of further recharacterisation (which could lead to consequences discussed under paragraph 3 below). On the other hand, we believe that the jurisdiction of the English courts would be valid with regard to the Bank of Slovenia. ~~The~~ if entering into the GMRA with a foreign party. Slovenian domestic law does not provide for any immunity of the Bank of Slovenia in front of the foreign courts. There is no word on immunity provided in the ZBS-1 or elsewhere with regard to the Bank of Slovenia. Under Slovenian litigation law in general, the issue of immunity of foreign parties (states and others) in front of Slovenian courts shall be considered with regard to the rules of international law, and we would assume that similar is true also under English law with regard to immunity of foreign parties in front of the English courts. Notwithstanding to the above, we believe that the Bank of Slovenia's entry into the GMRA transaction could be viewed (if at all an immunity claim is raised) only as an act of *iure gestionis* of a state (obligation arising for private acts of a state) and not as acts of the nature *action imperia* (public action) of a state (Republic of Slovenia).²² ~~Therefore, even in case of any immunity claims raised we do not believe that entry into the GMRA transaction by the Bank of Slovenia (which would be likely treated also as a commercial action) could be subject to immunity in front of foreign courts.~~²³ ~~According to our knowledge (see also decision of a Supreme~~

²² Note that the Republic of Slovenia is not a signatory to the European Convention on State Immunity, Basle, 16.V.1972 (to which United Kingdom is a party) and to the United Nations Convention on Jurisdictional Immunities of States and Their Property (to which the United Kingdom is a party, but does not appear to be effective yet). There are no standard wordings for waivers to immunity claims available under Slovenian law.

²³ Given the fact that the Bank of Slovenia is an entity that freely disposes with its assets, with substantial independence from the state (although owned by the state), we believe it is even more unlikely that any such immunity would be granted to the Bank of Slovenia. In general, the extent of connection with Slovenia will be decreased if assets are held outside of Slovenia, hence also any risks mentioned in our opinion will in that case adequately decrease.

Court of Slovenia, no. II IPs 55/98, dated 9.10.1998), the international law nowadays extremely rarely allows immunity challenges by states for acts of *iure gestionis* nature and we do not see any exception to this with regard to the contemplated Bank of Slovenia GMRA transactions. Consequently, although there is no jurisprudence on the point, it does not appear that the Bank of Slovenia could successfully raise an immunity defence in front of the English court with regard to the GMRA transactions²⁴ entered into with a foreign counterparty²⁵

~~(c) Slovenian law does not address or regulate netting (but for so far in applicable provisions discussed under section (e)(i) of this paragraph 2~~ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) is directly applicable in Slovenia, as elsewhere in the EU. Assuming that one of the parties to the GMRA 2011 is a foreign entity and provided further that both parties to the GMRA 2011 are pursuing commercial activity, we believe that the provisions of Paragraph 17 of the GMRA 2011 concerning choice of law of the parties with respect to any non-contractual obligations arising out of or in connection with the GMRA 2011 shall be upheld by the Slovenian court, provided further that such non-contractual obligation is not excluded from the scope of the Rome II, under the Rome II itself.

~~(d) Slovenian law in general does not address or regulate netting (to date in applicable provisions discussed under Appendix I, Part III with respect to the newly introduced provisions of the ZFPPIP and ZFZ),~~ but merely set off. Set off is regulated under the Obligations Code.²⁶ Nevertheless, besides the statutory set off, the parties are free to arrange for a contractual set off, and we believe that a netting arrangement would be treated as such.²⁷ The set off is, on the other hand, regulated under the ZFPPIPP,

~~²⁴ With regard to the restriction on enforcement against any assets of the central bank, please note that the ZBS-1 expressly sets forth restriction on court or out of court enforcement only with regard to the assets of the official foreign exchange reserve of other states and central banks, deposited with the Bank of Slovenia. Thus, in addition to the above, general limitations will also be applicable to the court enforcement with regard to the Bank of Slovenia as provided in the general law on court enforcement applicable to any legal entity – court enforcement can be restricted only with regard to the assets, which are necessary for conduct of its activities or functions.~~

²⁵ With regard to the restriction on enforcement against any assets of the central bank, please note that the ZBS-1 expressly sets forth restriction on court or out of court enforcement only with regard to the assets of the official foreign exchange reserve of other states and central banks, deposited with the Bank of Slovenia. Thus, in addition to the above, general limitations will also be applicable to the court enforcement with regard to the Bank of Slovenia as provided in the general law on court enforcement applicable to any legal entity – court enforcement can be restricted only with regard to the assets, which are necessary for conduct of its activities or functions. Also, it does not appear that a court could require the counterparty to the Bank of Slovenia to redeliver assets (or the value thereof) without receiving in turn all assets it has delivery (or the value thereof).

²⁶ Articles 311 to 318 of the Obligation Code (Official Gazette of the Republic of Slovenia, No. 83/2001 with subsequent amendments) regulate conditions for the statutory set off, which are essentially the following: mutual, monetary (or claims relating to *genus*, *ie*, replaceable things of the same kind), due claims.

²⁷ *Strohsack* expressly refers to the right of the parties to provide in their agreements for a contractual set off which differs from the statutory set-off as provided in the Obligation Code, given the autonomy of the parties' regulation of contractual obligations, as provided in Article 3 of the Obligation Code (previously under Article 10 of the Law on Obligations). *See also* Boris Strohsack, *Obligation Relationships III*, Uradni list RS, Ljubljana 1996, page 94.

however within the terms of the statutory set off, but with the exception that also non-monetary claims and claims which are not due may be subject to the set off as well.²⁸ ~~We~~ ZFPPIPP also does not allow set off of claims existing prior to commencement and those starting to exist or that were acquired by a creditor by virtue of an assignment after the commencement of a bankruptcy proceedings. Conversion of obligations into monetary obligations and into the local currency, as required for an insolvency set off under the ZFPPIP is made at the market rates and official exchange rates, respectively at the moment of commencement of insolvency proceedings.

Such insolvency set off is also not applicable with regard to obligations arising under the contracts that are still open and unperformed synallagmatic contracts at the moment of commencement of insolvency proceedings, for which the insolvency administrator obtains the right to elect those that will be performed and those which will be cancelled by the insolvent debtor. In the absence of any regulation to the contrary excluding the right granted under Slovenian law to the insolvency administrator to cancel such open executory contracts (such as provisions of the ZFZ or ZFPPIPP, as discussed under Appendix I, Part III), the right of insolvency administrator to select profitable and non-profitable transactions would in our opinion apply. We cannot exclude the risk with regard to the Relevant Entities that the court or an insolvency official would compare the importance of the already performed and unperformed transactions and obligations under the GMRA to decide on that basis whether its potential termination would be advantageous with regard to the GMRA and all its Transactions covered or only with regard to the unperformed part. Hence, there is a risk that the court or an insolvency official considers individual transactions as partial performances, and thus treats them not as single, but separate transactions.²⁹ Thus, we believe the application of the set off as regulated by the Obligation Code and ZFPPIPP, would not produce an economic result similar to that provided in the agreements. ~~Likewise, under~~

²⁸ See Supreme Court of the RS, VSS, III Ips 64/96 as of 9.1.1977, as published in the Commentary to the Law on Compulsory Settlement, Bankruptcy and Liquidation, Nina Plavšak, Saša Prelič, Gospodarski vestnik, Ljubljana 2000, p. 692. Here, the Supreme Court held that only those claims, which fulfil conditions for the set off under the Law on Obligation (and specific conditions under ZFPPIPP) may be subject to set off in the insolvency proceedings. The decision was issued in 1997 before implementation of the ZFZ.

²⁹ Thus, unless Transactions are so called open executory transactions, in general any claims (including non-monetary, non-mature) claims of a creditor against the bankrupt debtor existing at the moment of commencement of insolvency proceedings will be automatically subject to set off, in case of insolvency. However, in accordance with the statutory provisions (i.e., conversion of claims into the local currency at the official rates etc.). Also other mandatory provisions prohibiting the set off of claims existing prior to commencement of bankruptcy proceedings against those existing after will apply. In this regard, application of any contractually agreed intra-trade will be prohibited, because the mandatory provisions of the ZFPPIPP will override contractual provisions on the same. Mere set off does not constitute a netting arrangement, as defined pursuant to the ZFPPIPP (see paragraph 2(b)(i) and further of Appendix I, Part III further below), so could not be enforced on that basis in case of insolvency of a Relevant Entity. If an agreement is an open executory contract, then it is debateable whether the right of insolvency administrator shall prevent the operation of set off right provided under the contract. It appears that such right of an insolvency administrator shall not prevent contractual individual transaction set off, however, there is a substantial risk that the court may have different view on this. Otherwise, outside of insolvency, intra-trade set off shall be enforceable.

— Under Slovenian ZMZZ transfer of materialized securities may be subject to the laws of the country of the debtor's (ie, issuer's) registered seat.³⁰ Transfer of a debt or a right would be governed by the law of such claim or debt.³¹

~~(d)~~(e) Under Article 15 of the ZFZ, however, in case of book entry securities, where the accounts of such book entry securities are maintained within Slovenia, Slovenian law would apply to the issues of the legal nature of the financial collateral arrangement, its effects, formalities requirements and its realization. This means, that with regard to such book entry securities courts in Slovenia would apply Slovenian law and disregard the contractual provisions of the agreement relating to the legal nature of the financial collateral arrangement, its effects, required formalities and its realization, because we understand the provision of Article 15 of the ZFZ to be a mandatory provision of the law and is therefore outside of the scope of the parties' freedom to choose the governing law.

~~(e)~~(f) Directive 2001/24/EC of the European Council and Parliament on the reorganisation and winding up of credit institutions (the **Directive**) was required to be implemented in Member States by 5 May 2004. Broadly, the Directive serves to grant the administrative or judicial authorities of the Member State in which a credit institution is authorised in accordance with Directive 2000/12/EC jurisdiction to implement reorganisation measures or winding-up proceedings in respect of that credit institution. These proceedings are, with regards to other Member States, international in scope, are to be governed by the law of the Member State where proceedings are opened and are to be effective in all Member States.

(i) Article 25 of the Directive provides that netting agreements shall be governed solely by the law of the contract which governs such agreements. Article 26 makes similar provision in respect of repurchase agreements. Although the Directive 2001/24/EC is purported to be implemented in the provisions of the ZBan-1 with regard to banks, there appear to be no provisions in the ZBan-1 which would expressly reflect Article 25 and 26 of the said Directive.³² The

³⁰ There is no provision in the law, which would deal specifically with the issue of the law governing securities. Rome I is applicable to contractual obligations and expressly exempts its application with regard to obligations arising under negotiable instruments to the extent that the obligations under such other negotiable instrument arise out of their negotiable character. Article 28 of the ZMZZ -however provides that in case of unilateral legal transactions the law of the debtor's registered seat is a governing law to the transaction. Under the Obligation Code (Official Gazette of the Republic of Slovenia, No. 83/2001 with subsequent amendments) securities are treated as unilateral legal transactions, so it appears that the afore mentioned provision would apply also to securities. Notwithstanding the above, the ZFZ expressly provides that the financial collateral issues, which are perfected by entry of such collateral into the public register, are governed by the law of the state where such financial instruments (for example, securities) are registered. *See* Article 15 of the ZFZ, as amended. The Republic of Slovenia is at the moment not a signatory to the Hague Convention on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary (not yet in force as per 31.03.2010).

³¹ *See* Article 27 (and 26) of the ZMZZ. For the purposes of this opinion it is assumed that cash presents a receivable against the financial institution, where the deposit of cash is held.

³² We understand that Articles 25 and 26 provide for exclusive application of the law of the contract governing such agreements (netting arrangements and repurchase agreements), despite of the start of reorganisation or winding up measures. Although the same may be argued on the basis of the general provisions of the ZMZZ,

provisions are however, with the adoption of the new ZFPPIPP, ~~now~~ according to the legislative history of ZFPPIPP, expressly implemented in the national legislation in its Article 483. The ZFPPIPP now provides for the application of the generally applicable contractual law to the netting arrangements³³ and repurchase agreements with regard to the legal consequences of Insolvency Proceedings. According to Article 483 of the ZFPPIPP, the legal effects of insolvency proceedings with regard to the rights and obligations of the parties to the repurchase agreements shall be governed by the generally applicable law, which is used for such relationships. There is ~~one~~ an exception to the said rule. Namely, the aforementioned rule shall not prevent application of the law in which the central registry or depository is located with regard to the legal effects of the insolvency proceedings and implementation of the insolvent debtor's rights on securities or other instruments, if such securities or other financial instruments are acquired or transferred by recording in such central registry or depository.

~~(ii)~~ (i) Consequently, subject to our considerations in Appendix 1, Part III 3 b to the extent that Slovenian court deals with the Insolvency Proceeding with regard to the Slovenian counterparty (but for the Bank of Slovenia, where no insolvency proceeding can be instituted), according to the said general rule of Article 483.2 of the ZFPPIPP, the Slovenian court would under such mandatory rule need to apply generally applicable law to the GMRA (English law); entered into between Slovenian Relevant Entity and a foreign entity, with regard to effects of insolvency proceedings on the GMRA's parties rights and obligations under the GMRA. Consequently, assuming that the rights of the parties and obligations under the GMRA are not adversely affected by the insolvency of the Slovenian counterparty under English law, the court here would need to uphold it according to the terms of English law (on which we do not opine).

~~(iii)~~ (ii) The legislative history of the bill relating to ZFPPIPP indicates that the legislator in its explanation of the bill regarding Article 483 of the ZFPPIPP, clearly indicated that the purpose of the said Article 483 was to implement provisions of Articles 25 and 26 (in the first and second paragraph of Article 483, respectively) of the Directive 2001/24/EC on the reorganization and winding up of credit institutions. Those provisions of the said directive regulate netting arrangements and repurchase agreements. Indeed the second paragraph of Article 483 deals with repurchase agreements. Although such implementation in general (not only with regard to credit institutions as set forth under the said

such application of the ZMPP provisions may be contested in case of insolvency proceedings involving repurchase or close out netting arrangements.

³³ ~~Note however that netting in~~ Netting arrangements are now defined under the ZFPPIPP ~~is translated in its~~ Articles 24 and 483.1 as a "multilateral set-off". In our opinion netting arrangement ("dogovor o izravnavi"), which is definitely closer to the ~~translation does not match actual meaning of the scope of~~ netting as used in arrangements, than the previous (before Article 25483.1 referred to multilateral set off), which was ambiguous. The term is new, since there was previously no special regulation of netting (apart from the Directive 2001/24/EC set off). See our considerations under 2(a) and further of Appendix 1, Part III of this opinion below.

Directive) is wider than required, we do not believe that this shall render such general application invalid.

~~(iv)~~(iii) Notwithstanding the above, to the extent that Transactions would involve securities or other financial instruments the existence or transfer of proprietary rights or other rights of which presupposes their recording in the Slovenian central registry or intermediary account, Slovenian insolvency law shall apply with regard to the effects of insolvency on such rights that are evidenced in the register. Although this appears to be the exemption to the general rule that the governing law of the contract shall govern insolvency effects on the repurchase agreement, we believe the scope of such exemption is limited and is applicable only with regard to proprietary rights and other rights (i.e., pledge, etc.) that can be entered into the register. Even if Slovenian law was applicable in such case by the court, we believe that the court would ~~however,~~ need to apply the provisions of the ZFZ with regard to such transactions.

3 Without limiting paragraph ~~3.1~~ above, Transactions entered into under the GMRA (whether a Repurchase Transaction or in the case of the GMRA 1995 and GMRA 2000 only, a Buy/Sell Back Transaction) will take effect as a title transfer financial collateral arrangement in the Purchased Securities from the Seller to the Buyer, and the Buyer will have only a contractual obligation to transfer Equivalent Securities on the Repurchase Date. ~~In that~~f a Slovenian court assumes jurisdiction over the GMRA in the Insolvency Proceedings, it would need to apply, according to our considerations under paragraph 2 above, English law with regard to effects of insolvency on the repurchase agreement and the GMRA Netting Provisions. In the event that Slovenian law is applicable with regard to the GMRA for whatever reason outside of insolvency the Slovenian courts if assuming jurisdiction could not challenge provisions of English law as governing law of the GMRA³⁴ unless the effects of such provisions were manifestly incompatible with Slovenian public order (assuming also that the provisions are valid under English law). For this purpose the court could review the purpose and consider economic effects of the transaction. In such review, it would consider in particular whether the transfers contemplated present any violation of the *lex commissoria*³⁵ rule and rules of insolvency proceedings, which would likely be treated as part of the *ordre public* and violation of it as being manifestly incompatible with it. As a result, it appears that GMRA ~~would likely~~may be treated, if still considered under

³⁴ See footnote ~~11~~14 above.

³⁵ *Lex commissoria* aims to protect the debtor from the situation in which the creditor receives more from the collateral granted by the debtor than is the value of the debtor's debt. Due to such provision, the collateral shall be sold in case of a realization of a collateral (ie, pledge), and any surplus returned to the debtor, and which can not become the property of the creditor (ie, pledgee), unless subject to the terms and conditions of the ZFZ. See Article 132 of the Property Law (Official Gazette of the Republic of Slovenia, No. 87/2002 with subsequent amendments) and the Decision of the Supreme Court II Ips 427/2003 as of 26.8.2004. The provisions of GMRA regarding the determination of the Default Market Value (and the default provisions of the ZFZ Article 5.2 which would apply if no contractual provisions existed regarding such determination) mitigate the risk that a financial collateral agreement would be deemed to constitute a violation of the prohibition of *lex commissoria* within the cited Supreme Court decision.

Slovenian law,³⁶ as a form of a credit agreement³⁷, however, subject to the application of the ZFZ, the court would need to consider it within the meaning of a title transfer financial collateral arrangement, with the transfer of Purchased Securities as collateral to which the ZFZ³⁸ is applicable and consequently treat it as a title transfer financial collateral arrangement. However, such recharacterisation would not affect the GMRA's insolvency provisions.³⁹

- 4 Similarly, the transfer of cash and securities by way of Margin pursuant to paragraph 4 of the GMRA would be recognised by a court in the Republic of Slovenia as a transfer of absolute title in the assets transferred with an obligation on the transferee to repay Cash Margin or deliver Equivalent Margin Securities as appropriate, assuming the same is valid under English law.

_____ In case that the Slovenian court assumes jurisdiction in the insolvency proceeding, it would need to apply also the ZFPPIPP provisions concerning application of the generally applicable law to the repurchase agreement (GMRA). ZFPPIPP however does not define the repurchase agreements, so one could argue, that Margin requirements may not necessarily be part of the repurchase agreement, so shall not be covered by the provision of Article 483.2 of ZFPPIPP referring to governing law of the repurchase agreements. It appears however that the Slovenian court would still need to treat Margin provisions as part of the repurchase agreement and therefore apply foreign (English) law as a governing law to it, because the provision of Article

³⁶ There is no standardized test that the courts would use for this kind of transaction or similar or for recharacterization purposes, but the courts may consider the economic effect of the transaction and the effects of the transaction on the position at the end of the transaction. In case the ZFZ applies to the transaction, the Slovenian courts would need to consider the GMRA and transactions pursuant to it also within the meaning of the ZFZ's provisions.

³⁷ It is likely, however, that the courts would nowadays recognize GMRA immediately as a form of repurchase agreement. Although transactions falling within the scope of repurchase agreements are named under various laws differently (compare for example provisions of Article 483.2 of the ZFPPIP, Article 117 of the ZBan-1, and Slovenian translation of Article 26 of Directive), in our opinion, due to translation issues, the term repurchase agreement, has been recognized also by the courts in several cases, which however do not deal directly with the issues covered under this opinion. According to the unpublished draft of the Master Agreement for Temporary Sales of Debt Instruments (which was drafted by the Bank of Slovenia ~~back~~ in 2004, simultaneously with implementation of the Financial Collateral Directive, and deals expressly with repurchase transactions), the purpose of repurchase transactions was to provide a counterpart with a credit. Similar ~~qualification~~ treatment can be found also in some prior instructions of the Bank of Slovenia concerning banks' day to day operations. It ~~is likely~~ may be that the courts would in ~~the beginning of their~~ initial review of such transaction use the same approach. Subject to the application of the ZFZ, we believe that ~~at the end~~ ultimately, repurchase transactions will be treated as title transfer financial collateral arrangements within the meaning of the ZFZ.

³⁸ See paragraph 3(+) (d) of Appendix 1, Part III of this opinion and further for the ZFZ.

³⁹ Article 117 of the ZBan-1 deals under the section concerning Risk Management, with regard to credit risk, hedging also with so called temporary sales / purchases. The definition of these closely resembles repurchase transactions, because, the transferor transfers title over securities or goods or any guaranteed rights thereto to the transferee, whereas such transfer can be made only to one person at once and whereby the transferee or transferor agrees to repurchase or resell such securities goods or rights back to the counterpart in the future or upon the request of the party or for the price set forth in the agreement. Article 192 of the ZTFI incorporates the cited provisions of the ZBan-1 into the risk management provisions of the ZTFI applying to brokerage houses. With regard to the court's consideration, please *see also* footnote ~~29~~ 32 above.

483.2 of the ZFPPIPP refers to the repurchase agreements in general, affecting them as a whole, unless specific regulation would apply to the specific elements of the repurchase agreements. For example, the issue of rights over Margin Securities registered in Slovenia would fall under the exemption to the rule on the governing law of repurchase agreement under the ZFPPIPP as discussed under paragraphs 2(e)(i) and (iv) of this opinion above.

_____ Nevertheless, outside of insolvency or if the court does not apply English law as the governing law of repurchase agreements and Slovenian law is applicable otherwise, the court in the Republic of Slovenia **would not** upset or recharacterise transfers made pursuant to paragraph 4, subject to the conditions on application of the ZFZ mentioned under ~~3-1~~ above. Transfer of cash and securities by way of Margin as provided for in paragraph 4 of the GMRA would be treated as a title transfer financial collateral arrangement and in case of a top up Margin would likely constitute additional financial collateral in the financial collateral arrangement, within the meaning of Article 14 of the ZFZ. Thus, such transfers would be characterized as title transfer of cash and securities as collateral as provided under the ZFZ and as a result upheld by the courts and **should not** be adversely recharacterised⁴⁰ by the court, subject to the condition that the ZFZ applies to the transactions, as mentioned under ~~3-1~~ above. In our opinion, the provisions of the GMRA would not be considered as being manifestly incompatible with the Slovenian public order.

~~(e)~~(g) The courts of Slovenia have not issued yet, to our knowledge, any decision which would address the issues of the set off and close out netting provisions of the GMRA or similar agreements (ie, ISDA, OSLA, GESLA, GMSLA, MRAs). In fact there is no known decision of the court or available literature, which would address the afore mentioned issues and there is no recharacterisation decision by the courts to the above. Nevertheless, it is normal practice of the courts in litigation, in particular in case of ambiguous provisions or where explanation of the transactions is needed, to look beyond the terms of the contract and reveal the will of the parties to the disputed agreements, if there are any claims by the parties as to the substance of the disputed agreement. For this purpose, the courts tend to consider the intention of the parties, including also review of the transaction terms beyond the terms of the document itself and the economic effects of the transactions and we believe the same will be done also in case of a court dispute relating to the Agreements.⁴¹

5 A court in the Republic of Slovenia would uphold the alternative margin methods provided for in paragraphs 4(i), (j) and (k), assuming they are valid under English law. The parties are free to choose their contractual rights and obligations to the extent permitted by law. As discussed in the paragraph 4 above with regard to Margin provisions, the Slovenian court would in case of insolvency need to consider whether the alternative margin methods are covered by the provision of the ZFPPIPP on repurchase agreement to be governed by the governing (English) law of the GMRA. Our considerations with regard to the Margin provisions, discussed under the

⁴⁰ See footnote ~~29~~32 above.

⁴¹ See for example Supreme Court's decision in the case no. II Ips 427/2003.

paragraph 4 above, would equally apply with regard to alternative margin methods. If nevertheless the court considers margin methods under Slovenian law (either in or outside of insolvency) with regard to our considerations under 2 of Appendix 1, Part II of this opinion, alternative margin methods provided for under paragraph 4(i), (j) and (k) of the GMRA are recognized by the provisions of the ZFZ, as referred to in Appendix 1, Part III 3 (i)(d) of the opinion, so we believe they will be upheld by the court.

Part III

GMRA

Netting

Provisions⁴²

1 ~~1~~—The central provisions of the GMRA which provide for set-off following an Event of Default are contained in paragraph 10 (Event of Default), and in particular (i) sub-paragraphs 10(b) to 10(d) of the GMRA 1995 and; (ii) sub-paragraphs 10(b) to 10(d) and 10(n) of the GMRA 1995 as amended by the ICMA GMRA 2011 Protocol; (iii) sub-paragraphs 10(b) to 10(f) of the GMRA 2000 (hereafter jointly referred as; (iv) sub-paragraphs 10(b) to 10(f) and 10 (n) of the GMRA 2000 as amended by the ICMA GMRA 2011 Protocol; and (v) sub-paragraphs 10(b) to 10(f) and 10(n) of the GMRA 2011, together the **GMRA Netting Provisions**).

2 ~~2~~—If an Event of Default has occurred, either because of an Act of Insolvency in respect of a Relevant Entity or following any other default by that party, the GMRA Netting Provisions would, subject to paragraph 3 below, be effective and the effect of those provisions would be that one party would be under a single obligation to pay a net amount in the Base Currency to the other party.

~~As discussed under section 2(e) and further of Appendix 1, Part II above, the ZFPPIPP now contains a provision that the effects of insolvency proceedings with regard to mutual rights and obligations to the parties of the repurchase agreements shall be governed by the contractually agreed law applicable to the repurchase agreements. Moreover, the same Article 483 of the ZFPPIPP, in the first paragraph now provides that the multilateral set offs shall be governed by the law applicable to such agreements. As will be analyzed further below, although ambiguously drafted, it appears that the purpose of paragraph 1 of Article 483 of the ZFPPIPP referring to multilateral set off was to regulate netting arrangements and to implement Article 25 of the Directive 2001/24/EC on the reorganization and winding up of credit institutions into Slovenian law. As discussed further, it appears that the result of both provisions is that that the law governing the contract shall govern the repurchase agreement or close out netting arrangement, therefore upholding also the validity of close out netting assuming that English law, governing the GMRA, upholds the same in terms of insolvency. Because the Netting Provisions present a part of the GMRA that is in turn a repurchase agreement, the question is whether the court here shall apply the contractually governed (English) law of the GMRA with regard to its Netting Provisions on the basis of 483.2~~

⁴²—~~For a discussion of the effect of the EU Regulation on Insolvency Proceedings, please see paragraphs 2(a)(i) of Appendix 1, Part II and 3(a) of Appendix 1, Part III of this opinion.~~

~~of the ZFPPIPP, because of its repurchase agreement nature in general, or on the basis of the provision of Article 483.1 of the ZFPPIPP concerning specifically multilateral set offs (netting arrangements as will be analyzed further below). The distinction may be important because Article 483.2 of the ZFPPIPP dealing with repurchase agreements appears to be clear with regard to its wording to apply to repurchase agreements, whereas with regard to the wording of Article 483.1 of the ZFPPIPP, there is ambiguity whether it is indeed applicable to the netting arrangements.~~

~~Article 483.1 of the ZFPPIPP uses the term “multilateral set offs” (“večstranski poboti”), thus does not use the term “netting”. It states that effects of the insolvency proceedings in relation to multilateral set offs shall be governed under the generally applicable contractual law. This means that as English law governs the GMRA it shall govern also effect of insolvency proceedings on multilateral set offs governed by the GMRA.~~

~~Multilateral set offs are not regulated under Slovenian law, but the term occasionally appears in the jurisprudence of the courts as a reference to set off among more than two parties which are involved. The Supreme Court qualified such multilateral set offs not as set offs, but instead as a range of agreements for releasing of a debt.~~

~~On the other hand it shall be noted that the term “netting” does not exist in Slovenian jurisprudence, instead only “set off”. The only exception to this is the provision of the ZFZ which defines close out netting (and expressly upholds it during the insolvency).~~

~~We therefore believe that the term is ambiguous and may be open for interpretation. For this purpose it is important that the legislator in its explanation of the bill regarding Article 483 of the ZFPPIPP, clearly indicated that the purpose of the said Article 483 was to implement provisions of Articles 25 and 26 (in the second paragraph of Article 483) of the Directive 2001/24/EC on the reorganization and winding up of credit institutions. What causes doubt is that Article 483 is general in scope, so implementing the provisions in general, whereas according to the Directive the application appears to be limited only to credit institutions.⁴³ We do not believe however that such wide implementation alone shall make the provisions inapplicable to close out netting. Articles 25 and 26 of the said Directive indeed regulate netting arrangements and repurchase agreements, respectively. Consequently, it appears that simple translation of~~

⁴³—It therefore appears that at least with regard to banks as the local counterparties the risk that the court would view the provisions of Article 483.2 of the ZFPPIPP as inapplicable to close out netting provisions of the Master Agreement appears to be even less likely, due to the legislating history referring to the implementation of the repurchase arrangement provision of the Directive 2001/24/EC regulating banks. Therefore, with regard to insolvency of banks as the local counterparties, this may be used as a further supportive argument, that the effects of insolvency on repurchase agreements such as GMRA shall be governed by Article 483.2 of the ZFPPIPP, therefore under English law. Nevertheless, compared to the Directive 2001/24/EC, Article 483.2 appears to be narrower in scope. It namely expressly refers only to the effects of insolvency proceedings on mutual rights and obligations of the parties, whereas, the Directive provides for the exclusive (save for *lex rei sitae* rule provided in Article 24 of the Directive, as implemented also in Article 481 of the ZFPPIPP) governance of the law of the contract governing repurchase agreement with regard to repurchase agreements in general.

~~netting arrangement was not correct, because there is no specific wording existing in Slovenian law on netting. Nevertheless the discrepancy presents a certain risk, as described above, due to which the court may render also other views on the interpretation of the term “netting”.~~

~~Secondly, provided that Article 483.1 of the ZFPPIPP indeed applies to netting arrangement, as contemplated above, there is still no guidance on what the term “netting arrangement” means under Slovenian law. Here it is important to note that the ZFZ describes close out netting in its English term (close out netting), while defining so called “contractual set off”. Assuming that netting arrangements are meant by the term multilateral set off (“večstranski pobol”) as used in Article 483 of the ZFPPIPP, the next question is what does it cover and whether such term covers also early termination (automatic or active) rights.~~

~~Provisions of the ZFZ expressly provide that close out netting arrangements based upon early termination shall remain valid also after institution and during the course of bankruptcy proceedings. Close out netting arrangements based upon early termination are further defined by the ZFZ to have as a consequence acceleration of maturity of obligations, conversion of nonmonetary claims into monetary claims and set off of such amounts due according to their market value. Whereas under the definition set off is the last event in the course of close out netting, it appears that the early termination is presumed to occur beforehand.~~

~~As a result, we believe it can be argued that the close out netting presumes also validity of early termination, so early termination rights shall be included in the multilateral set off as governed by Article 483 of the ZFPPIPP. Based upon considerations of the ZFZ, we therefore understand early termination right as an integral part of close out netting, so we believe that the Slovenian courts in case of insolvency of a Relevant Entity shall review effects of them under English law governing the GMRA, within the meaning of the netting arrangement.~~

~~Thus, to the extent that the GMRA is governed by foreign (English) law and even if courts in Slovenia assume jurisdiction over the Relevant Entity due to its insolvency, the courts would need to apply the governing law of the GMRA with regard to the effects of insolvency to such arrangements. Therefore, provided that close out netting and early termination may not be challenged under the governing law of the GMRA, they could not be challenged in front of Slovenian court in case of an Insolvency Proceeding.~~

~~Consequently, either under Article 483.1 or under Article 483.2 of the ZFPPIPP the Slovenian court should in case of an Insolvency Proceeding apply the provisions of the governing (English) law to the GMRA with regard to close out netting, therefore upholding it, assuming that it is valid and enforceable under the GMRA’s governing English law. Although it appears that with regard to the Netting Provisions of the GMRA the court may not simply rely on the ZFPPIPP provision of Article 483.2 concerning the repurchase agreements to consider Netting Provisions under governing (English) law of the GMRA on that basis, the application of the rule provided under Article 483.1 of the ZFPPIPP on netting provisions would have, subject to our considerations above, the same results. The Slovenian court would in both cases need to apply English law as the~~

~~governing law of the GMRA and with regard to the legal effects of insolvency on the Netting Provisions. To sum up, assuming that English law allows enforceability of the Netting Provisions in insolvency of a Relevant Entity, the Netting Provisions of the GMRA shall be enforceable in accordance with English law.~~

~~(a) If a CPMA is entered into between the parties, it appears that the Slovenian courts in Insolvency Proceedings will need to apply the provision of Article 483.1 ZFPPIPP relating to netting and the provision of the second paragraph of the same Article dealing with repurchase agreements could not be applicable. In this instance the close out netting provisions will according to our understanding be governed by the CPMA presumably involving also other types of transactions as well as repurchase agreements. Without considering general rules on insolvency and potential enforceability of netting arrangements under such general rules of the ZFPPIPP, there are three legal bases under Slovenian law that support the enforceability of netting arrangements with respect to GMRA, even if an Act of Insolvency is existing with regard to a Relevant Entity. No court jurisprudence is available so far with regard to enforceability of netting arrangements under Slovenian or foreign law.~~

~~(i) ZFPPIPP's Article 483.1 provides for the application of the general contractual law governing netting arrangements to effects of insolvency with respect to rights and obligations of the parties under netting arrangements.~~

~~(ii) ZFPPIPP's Article 483.2 provides for the application of the general contractual law applicable to the agreement with regard to legal effects of insolvency proceedings on the mutual rights and obligations of the parties under repurchase agreements.~~

~~(iii) In addition, assuming that the ZFZ is applicable to the GMRA, Article 12 of the ZFZ expressly allows the close out netting due to the early termination to remain in full force and effect during the insolvency proceedings.~~

~~(b) Assuming that the GMRA is entered into between a Relevant Entity and a foreign entity, and the Act of Insolvency in respect of a Slovenian Relevant Entity (but for the Bank of Slovenia, for which special considerations, as discussed under 1.2 of Core Opinion apply) we believe that the GMRA Netting Provisions shall be enforceable in a Slovenian court assuming jurisdiction due to insolvency of a Slovenian Relevant Entity, in accordance with the provisions of the governing law of the GMRA, which is the English law.~~

~~(i) Recent amendment to the ZFPPIPP introduced among other matters, also new Article 24a ZFPPIPP that now expressly regulates netting arrangements (*dogovor o izravnavi*) in connection with so called "qualified financial contracts", basically following the definition of a netting arrangement under the ISDA Model Netting Act 2006. Pursuant to Article 24a of the ZFPPIPP a "qualified financial contract" is a contract related to financial instruments~~

qualifying as such under the ZTFI⁴⁴, or derivative financial instruments relating to commodities or emission rights as the underlying instrument, that may be settled also physically (i.e. by delivering the underlying instrument).

(ii) A netting arrangement under Article 24a of the ZFPPIP is defined as a contractual agreement, contained in a qualified financial contract or in a master agreement entered into in relation to specific types of qualified financial contracts among the parties, containing the following rules that shall apply in case of insolvency or other events qualifying as an event of default under such a netting arrangement or qualified financial contract, with regard to the defaulting contractual party:

(1) the rule under which a contract is deemed to be terminated or under which the non-defaulting party obtains the right to cancel the agreement or under which the obligations of the parties shall accelerate with occurrence of such event;

(2) rules on the calculation of netting, market, liquidation or replacement monetary value of counterclaims at the moment of termination or acceleration of maturity as provided in the preceding subparagraph;

(3) the rules on conversion of amounts due into single currency, where such obligations are denominated in different currencies; and

(4) the rules on the determination of net amount of monetary obligations of a contractual party and a counterparty, upon netting of obligations of contractual parties, valued in accordance with the second and third subparagraphs above.

(iii) Under Article 483.1 of the ZFPPIP, which is located in its Chapter 8 dealing with Insolvency Proceedings with International Elements, the general contractual law governing netting arrangements shall apply with regard to effects of insolvency with respect to rights and obligations of the parties under netting arrangements. Moreover, such contractual law shall not be applied merely with regard to netting arrangements defined under Article 24a but also with respect to netting arrangements fulfilling conditions of Article 24a of the ZFPPIP regardless of whether such a netting arrangement is linked to or forming part of a qualified financial contract. Thus, under Article 483.1 it is not crucial for the application of the governing law to the contract with respect to legal effects of insolvency whether the Transactions that shall be subject to GMRA Netting Provisions present qualified financial contracts within the meaning of the ZFPPIP or not. Chapter 8 of the ZFPPIP is applicable also whenever foreign creditors have an interest in commencing or participating in the (local) insolvency proceedings. Thus, we believe that Article 483.1 is applicable in

⁴⁴ ZTFI is the law transposing Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on Markets in Financial Instruments (“MiFID”), and the definition of financial instruments under the ZTFI follows the definition of financial instruments under the Annex I, Section C of the MiFID.

Transactions under the GMRA with one Slovenian Relevant Entity and a foreign counterparty. As a result, the definition of a netting arrangement to which the Article 483.1 of the ZFPPIPP applies is broader than under Article 24a of the ZFPPIPP, covering not only netting arrangements in a qualified financial contracts, but also in other types of contracts.

(iv) We believe that the GMRA Netting Provisions further fall within the scope of a netting arrangement covered by Articles 483.1 and 24a of the ZFPPIPP. Namely:

(1) paragraph 10 of the GMRA, in particular sub-paragraph (b), sets forth the rules for acceleration of obligations under the Agreement in connection with the occurrence of an insolvency event; thus the GMRA has provisions in place giving one party the right to accelerate the obligations under the GMRA if a counterparty becomes insolvent or if an insolvency proceeding against it is instituted; hence the first of the conditions set forth under Article 24a, para 2(2), first indent, for an arrangement to be considered as a netting arrangement under the ZFPPIPP is fulfilled;

(2) Act of Insolvency in Paragraph 10 of the GMRA, in particular sub-paragraphs (b) and (c) of the GMRA 1995 and (b), (c) and (d) of the GMRA 2000 further provide for the rules for calculation of valuation of obligations (Default Market Value) for the purposes of acceleration of claims, as required for a netting arrangement under Article 24.a, para. 2(2), second indent, of the ZFPPIPP; and

(3) the GMRA contains rules on determination of the net balance (see Article 24.a, para. 2(2), third indent, of the ZFPPIPP) under Paragraph 10 of the GMRA, in particular subparagraph (c).

(v) With regard to the above, and provided that an international element is available, such as a GMRA entered into among the Slovenian Relevant Entity and a foreign party we believe that the provisions of Article 483.1 of the ZFPPIPP shall be applied by the Slovenian court, hence, the GMRA Netting Provisions shall be enforced in accordance with the applicable governing law of the GMRA, even if the Slovenian Relevant Party is insolvent. Notably, Articles 164a and 264a of the ZFPPIPP with regard to netting arrangements governing qualified financial contracts, also exclude application of the insolvency administrator's right to elect which of the executory contracts open at the moment of commencement of insolvency proceeding shall be terminated or not. Since Article 483.1 generally provides for application of the foreign (contractual) law with respect to legal effects of insolvency proceedings on the netting arrangements, we believe also that any right of an insolvency administrator to terminate open executor agreements shall be reviewed by such applicable foreign (English) law. To the extent that the GMRA Netting Provisions are enforceable under English law despite the insolvency of a Slovenian Relevant Entity, we believe that Slovenian courts shall enforce the

GMRA Netting Provisions in case of insolvency of a Slovenian Relevant Entity subject to the same terms and conditions as provided under English law.

(c) In addition to our arguments for upholding of GMRA Netting Provisions under the governing law on the basis of Article 483.1 of the ZFPPIP, there appears to be additional basis for consideration of insolvency effects on the GMRA Netting Provisions by the Slovenian court under the governing law of the GMRA, that is ZFPPIP's Article 483.2. The said Article 483.2 in general provides for application of the governing law of the contract to the effects of insolvency proceedings over the rights and obligations of the parties arising under the repurchase agreements (*poгодbe o ponovnem odkupu*). Although the purpose of such provision in the ZFPPIP was, according to the legislative history, to transpose Article 26 of the Directive, we do not believe that this shall prevent its general application in accordance with its wording. The wording of Article 483.2 of the ZFPPIP is not limited to banks only, but is general, hence shall in our opinion apply to all Relevant Entities (with the exception of the Bank of Slovenia, as already mentioned).

(i) The ZFPPIP does not provide for any definition of repurchase agreements. Thus, in the absence of any jurisprudence on the ZFPPIP it is unclear whether the GMRA fits within the scope of Article 483.2 of the ZFPPIP. Article 483.2 refers to "agreements on (repeated) repurchase" (*poгодba o ponovnem odkupu*). Slovenian translation of Directive's Article 27 referring to repurchase agreements translates repurchase agreements as temporary purchases (*začasna prodaja*). A similar term as is used in the translation of the Directive, is used in Article 117 of the ZBan-1, which also cross refers to Article 192 of the ZTFI.⁴⁵ On the basis of the clear legislative history indicating that the purpose of the Article 483.2 of the ZFPPIP was to transpose Article 27 of the Directive, refers in its English version to repurchase agreements, we are confident that the GMRA shall fit within the scope of the Article 483.2. Moreover, although there are only a few known court cases with regard to repurchase agreements, at least in those available cases, the Supreme Court⁴⁶ defined repurchase agreements also with the term temporary purchase/sale, hence similar to the Slovenian translation of the Directive.

(ii) As a result, we believe that the Article 483.2, directing the court to apply the same (governing law of the contract) law with respect to insolvency effects on the mutual rights and obligations of the parties under repurchase agreements, as Article 483.1 with regard to netting arrangements, additionally supports our position presented above with regard to Article 483.1 of the ZFPPIP. It may be that the courts would treat Article 483.1 (addressing only netting arrangements) as *lex specialis* compared with Article 483.2 (addressing, one could argue, the wider scope of repurchase agreements in general), however, such narrower interpretation of the Article 483.2 that may be introduced by the courts is of more theoretical and, less practical, importance. It would

⁴⁵ See footnote 33 above.

⁴⁶ See Judgment X Ips 657/2006 of the Supreme Court [Administrative Unit]

specifically not adversely affect our analysis, because with respect to both, netting arrangements and repurchase agreements, as mentioned, the same law - the governing law of the agreement (ie, English law with regard to the GMRA) - shall be relevant with respect to the insolvency effects on the rights of the parties arising under such arrangements.

(d) Finally, additional basis for upholding of GMRA Netting Provisions is the provisions of the ZFZ itself. Subject to our considerations with regard to Articles 483.1 and 483.2 of the ZFPPIP above, we believe it is unlikely that the Slovenian court would consider the GMRA Netting Provisions under Slovenian law, where one party to the GMRA is a foreign party, and if assuming jurisdiction over the matter, because the ZFPPIP directs the court to apply in this regard the governing law of the GMRA. Nevertheless, even if the courts adopt different views as presented by us above, and, disregarding Article 483 of the ZFPPIP, apply Slovenian law with regard to effects of insolvency proceedings on the mutual rights and obligations of the parties under the GMRA Netting Provisions, we believe that the courts would need to consider GMRA Netting Provisions on the basis of the ZFZ, assuming that the ZFZ⁴⁷ is applicable to Transactions. This statement is subject to the following considerations:

~~Given our consideration under paragraph (b) above, we however believe that the result shall be the same — the Slovenian court would need to consider the effects of Insolvency Proceedings under the netting provisions of the CPMA in accordance with the governing (English) law of the CPMA.~~

~~In the absence of any jurisprudence with regard to above, to the extent that the Slovenian court would still apply Slovenian law to the GMRA's Netting Provisions, given our considerations above, the court would need to consider the Netting Provisions in accordance with the ZFZ. The provisions of the ZFZ, as referred to in 3(i) below (Article 12) in particular expressly allow and extend application and enforceability of the close out netting and set off provisions also into the period of an Insolvency Proceeding and the same would apply also for the early termination, thus preventing the application of otherwise applicable mandatory provisions of the ZFPPIP.~~

~~At the moment of commencement of Insolvency Proceedings, which is the day on which the summons on commencement of Insolvency Proceeding was posted at the Agency of the Republic of Slovenia for Public Legal Records and Related Services web site, the legal consequences of the insolvency proceedings start to apply.⁴⁸ This~~

⁴⁷ Amendment to the ZFZ due to implementation of Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims is still pending, however, and *under consideration* at the governmental level.

⁴⁸ ~~See Article 244 and further with regard to bankruptcy and Article 150 and of the ZFPPIP with regard to compulsory settlement (which is relevant only with regard to ordinary corporates). With regard to court enforcement proceedings, the legal effects of initiation of compulsory settlement proceeding will start to apply with the beginning of the next day after the petition for initiation of compulsory settlement proceedings is filed with the court. The most important effect of initiation of compulsory settlement proceedings is limitation of the debtor's business, which is limited to conduct of regular business and settlement of obligations from such regular business of the debtor.~~

~~involves, most notably, in case of bankruptcy proceedings, denomination of claims nominated in a foreign currency into the local currency using official exchange rate of the Bank of Slovenia, acceleration of non due claims to due claims, change of the non monetary claims into the monetary claims at the market rates, adjustment of the interest rates accruing to the transaction to the statutory rates, set off of the mutual claims save for those which are mutually onerous, as provided under the ZFPPIPP, the right of the bankruptcy administrator to cherry pick the mutually onerous transactions by the bankruptcy administrator. Under the ZFPPIPP the bankruptcy administrator has a right to decide within 3 months time period from the date of start of bankruptcy proceedings which mutually onerous transactions will be kept in force, despite the start of the Insolvency Proceedings and which shall be cancelled, according to its own discretion (taking into account benefits to the bankruptcy estate), however, in the latter case of cancellation, provided that it received a consent of the bankruptcy court with regard to cancellation. We believe that the bankruptcy administrator would be bound by the paragraph 13 of the GMRA to treat all transactions under a GMRA as a single agreement, with the effect that either the whole agreement and all transactions pursuant to it can either be terminated or continued by the bankruptcy administrator. Since our opinion is based on the application of the ZFZ which in Article 12 extends validity and application of close out netting even after the start of the Insolvency Proceedings (as defined in 3(i) below), there is no need to include the automatic termination clause in the agreement, which might otherwise be preferable in order to ensure that the termination is effected before the formal start of the Insolvency Proceedings.⁴⁹~~

~~3 — As discussed under paragraph 2 above, under Slovenian ZFPPIPP, the Slovenian court shall apply English law to both early termination and set off provisions which are contemplated under the GMRA Netting Provisions. Notwithstanding the above, due to the direct applicability of EC regulation in the member states⁵⁰, the Slovenian court would have to apply also the provisions of the **Regulation**, as discussed under paragraph 2(a)(i) of Appendix 1, Part II of this opinion.⁵¹ The provisions of the Regulation dealing with set off and those dealing with the interaction between primary and secondary proceedings referred to in paragraph 2(a) of Appendix 1, Part II are not clear. The following is a summary of how we consider a Slovenian court would apply the Regulation with regard to set off. No opinion is given on how any court other than a Slovenian court would apply the Regulation. There is no court decision known yet which would involve court's reasoning on the application of the Regulation.~~

⁴⁹ — ~~As an Act of Insolvency may under the GMRA occur with the filing of the petition for insolvency, and as under the ZFPPIPP insolvency proceedings commence, and the legal consequences of insolvency proceedings generally start to apply, when the decision by the court on the commencement of the insolvency proceedings is handed down, the Event of Default may in the case of GMRA actually occur before the commencement of insolvency proceedings. This does not affect our analysis, as the mandatory regime after the commencement of the Insolvency Proceedings determines whether arrangements entered into or executed in the period of one year before the commencement are challengeable. Since in our opinion the regime for GMRA would, under the provisions of the ZFZ, be unaffected by insolvency, its provisions would not be subject to challenge even if they came into effect before the actual commencement of the Insolvency Proceedings, provided that the ZFZ applies.~~

⁵⁰ — ~~See Article 249.2 of the EC Treaty.~~

⁵¹ — ~~See Article 2.2 of the Regulation.~~

~~Article 4(1) provides that, save as otherwise provided in the Regulation, the law applicable to EU Regulation Insolvency Proceedings referred to in paragraph 2(a) of Appendix 1, Part II above and their effects shall be that of the Member State within the territory of which such proceedings are opened.~~

~~The Regulation specifically states that “the opening of EU Regulation Insolvency Proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such set-off is permitted by the law applicable to the insolvent debtor’s claim” (Article 6(1)).~~

~~—Article 4(2)(d) provides that any set-off is subject to the conditions under which set-offs may be invoked imposed by the law of the Member State where the EU Regulation Insolvency Proceedings are opened, but this would seem to be subject to Article 6 (as set-off would seem to be otherwise provided for in Article 6).~~

~~—Article 4(2)(m) provides that the laws of the State of the opening of proceedings shall determine “the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all creditors”.~~

~~Article 6(2) provides that Article 6(1) shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).~~

~~While the interaction between Article 6 and Article 4(2)(m) is not clear, the position would seem to be as follows:~~

~~—to the extent set off is permitted in the jurisdiction of the Member State in which the relevant EU Regulation Insolvency Proceedings are opened, set off should not be affected;~~

~~(ii) to the extent that set-off is not permitted in the jurisdiction of the Member State in which the relevant EU Regulation Insolvency Proceedings are opened it may nevertheless be permitted if (i) it is permitted by the law applicable to the insolvent debtor’s claim under the conflict of laws principles of the jurisdiction of the Member State in which the relevant EU Regulation Insolvency Proceedings are opened,⁵² unless (ii) permitting the set-off would be regarded, under the laws of that jurisdiction, as contravening rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all creditors (i.e. within Article 4(2)(m)).~~

~~—The precise interaction between main and secondary proceedings in the event of conflicting legal systems’ approach on insolvency is unclear. Although the Regulation does allow the secondary proceedings to be stayed at the request of the liquidator in the main proceedings, any such request being very difficult~~

⁵²—This is further substantiated by the provision of the Recital 26 of the Regulation, which clearly recognizes that the right to set off would remain with the creditor, even is not permitted under the opening state law, to the extent it is still permitted under the law applicable to the claim of the insolvent debtor.

~~to refuse, this remains subject to such liquidator taking any suitable measure to guarantee the interests of the creditors in the secondary proceedings. It is unclear what result would follow were set off applied by operation of law in the Member State where secondary proceedings are opened but not permitted by the applicable law in the main proceedings.~~

~~Assuming that the Slovenian court opens the Insolvency Proceedings, therefore applying Slovenian law to the insolvency within the meaning of Article 4 of the Regulation, it would, with regard to our considerations under 2 above, apply English law as the governing law of the GMRA to the Netting Provisions either by directly referring to Article 483.1 (dealing with multilateral set offs) or to Article 483.2 (dealing with repurchase agreements) of the ZFPPIPP, to the conditions under which set off may be invoked. Moreover, ZFPPIPP now expressly states that without regard to the general principle that the law of the country where the insolvency proceedings are maintained (*lex loci concursus*) shall apply to the legal effects of insolvency proceedings, this general principle shall be derogated where a party to whose benefit any action that is subject to setting aside was made, proves that the law of another country shall apply to such action and that such applicable law does not allow setting aside of such action. Because under Slovenian law effects of insolvency proceedings on netting and repurchase agreement are governed by the governing (English) law of the GMRA, the Slovenian court would need to apply English law with regard to Netting Provisions of the GMRA.~~

~~Although ZFPPIPP, under special chapter 8.7, which expressly applies also to banks (subject to certain conditions), refers to the possibility to institute local secondary proceedings in Slovenia, it is questionable whether such provision could give rise to separate insolvency proceedings with regard to the EU bank's branch in Slovenia. The said chapter namely applies to banks only to the extent not provided otherwise under the banking act or regulations of another EU member state country, which is applicable to insolvency of the banks or credit institutions.~~

~~The banking act here (ZBan-1) does not address separate (secondary) legal proceeding with regard to branches of EU banks here (or branches of third country banks). Thus initially it appears that such separate proceedings shall not be possible in Slovenia with regard to branches of banks, at least not under the ZBan-1. Nevertheless, the problem is that secondary proceedings could be instituted under the general provisions of the ZFPPIPP's Article 474 and further which is then repeated also specifically under its chapter 8.7, and its Article 487.~~

~~We however believe that institution of separate insolvency proceedings concerning banks is not allowed under the ZFPPIPP or ZBan-1 in Slovenia. However, it should be explained that there is no clear wording on this in ZBan-1 and ZFPPIPP so our arguments are based on the interpretation of the laws, which appear themselves to be ambiguous. In addition, there are no court cases or theory that would address the same issues (obviously also due to the recent implementation of ZFPPIPP).~~

~~First of all, it appears that the purpose of Article 487 under chapter 8.7 of the ZFPPIPP is expressly only to allow initiation of secondary insolvency proceedings also in cases where there are no formal recognition proceedings, but such recognition is due to provisions Articles 16 and 17 of the Regulation.~~

~~Since general provisions of the ZFPPIPP (Articles 474 and following Articles) allow institution of secondary insolvency proceedings only where there was a formal recognition proceedings instituted pursuant to ZFPPIPP, obviously the intent of Article 487 of the ZFPPIPP was only to allow the same where there was no such formal proceedings as is the case with regard to the Regulation. Notably, the same Article 487 does not refer to the provisions of the ZBan-1 that could give rise to recognition without any formal proceedings as sufficient for initiation of secondary insolvency proceedings under the ZFPPIPP.~~

- ~~—ZFPPIPP in general does not allow opening of insolvency proceedings with regard to branches, but only with regard to legal entities. Branches are not legal entities. Therefore, with regard to the branch of the foreign entity in Slovenia, only secondary proceeding could be instituted in Slovenia, if initially a foreign (main) proceeding was opened. The basic condition for opening of the secondary proceedings appears however to be under the ZFPPIPP, the formal recognition of foreign (main) proceedings here.~~
- ~~—Because the ZBan-1 provisions, supported also by the ZFPPIPP provision (as detailed above), provide for the direct effect of insolvency proceedings instituted with regard to the bank in another EU member country in Slovenia, there can be no special recognition proceeding on the basis of ZFPPIPP applicable to branch of EU bank here, since the insolvency proceedings against the debtor (i.e., bank, founder of a branch here) would have direct effects here, consequently neither Article 474 (requiring formal recognition proceedings with regard to initiation of secondary insolvency proceedings) nor Article 487 of the ZFPPIPP (referring only to Regulation as a basis for the start of secondary insolvency proceedings without formal recognition proceedings) are applicable. These arguments tend to prevent the start of secondary insolvency proceedings against a branch of an EU bank in Slovenia.~~
- ~~—In addition, further argument supporting the same can be found also in ZBan-1. ZBan-1 otherwise regulates banks and branches of banks, but as mentioned above does not provide any explicit rule allowing the initiations of secondary insolvency proceedings with regard to banks' branches in Slovenia. Moreover, ZBan-1 chapter dealing with bankruptcy of a bank, expressly provides that the provisions of the ZFPPIPP shall apply to the bankruptcy of banks only (unless provided otherwise under the ZBan-1 itself), without referring, however, to branch. Thus, it can be argued that ZBan-1 does not allow application of ZFPPIPP with regard to branches, but only with regard to banks (which means that also insolvency of Slovenian bank's branch will be governed by the ZFPPIPP, since branch is under the general principles here an asset of its founder).~~
- ~~—Lastly, interpretation that no secondary insolvency proceedings against the branch of an EU bank can be instituted in Slovenia is in line with the provisions of the Directive 2001/24/EC. Because the ZFPPIPP and ZBan-1 were intended to implement also its provisions, it would be harder for a court here to interpret provisions of ZFPPIPP and ZBan-1 contrary to the Directive 2001/24/EC.~~

~~—Assuming further that the law of the relevant bank's home country, which established a branch here, is compliant with the Directive 2001/24/EC, this may be additional argument to claim that ZFPPIPP that allows in general institution of secondary insolvency proceedings is inapplicable in this regard with regard to branches of banks, because it conditions the use of its chapter 8.7 (including also Article 487 of the ZFPPIPP referring to secondary proceedings without formal recognition procedure) with regard to banks only if not contravening the rules of the home country.~~

~~—With regard to securities dealers' (brokerage houses) branches, the provisions of the ZFPPIPP will be applicable with regard to their insolvency. Neither Regulation nor Directive 2001/24/EC are namely applicable to such entities. Only a minor part of the insolvency rules applicable to an investment firm is regulated under the ZTFI, which crossrefers partially to the provisions of the ZBan-1. Consequently, we believe that secondary insolvency proceedings could be instituted against the branch of a foreign investment firm (security dealer) in Slovenia, on the basis of the general provisions of the ZFPPIPP, however only to the extent main proceedings were instituted and recognized in Slovenia.~~

~~—The basic rule of the ZFPPIPP is however, that the law of the country where the insolvency proceeding is opened shall apply to the legal effects of such insolvency proceedings. Consequently, if Slovenian law was to apply to such secondary proceedings, it follows that on the basis of provisions of the ZFPPIPP detailed under 2 above, this shall not affect the rule of the Slovenian ZFPPIPP that netting arrangements and repurchase agreement shall be governed by the law otherwise applicable to the arrangement. Assuming that English law upholds the GMRA Netting Provisions even in insolvency, and the same is true under the law of the main proceedings country, they shall be upheld in either case.~~

~~—Assuming however that the law of the main proceedings does not uphold the GMRA Netting Provisions in case of insolvency, we believe that actions of a foreign insolvency administrator could affect upholding of the GMRA Netting Provisions in the secondary Slovenian proceedings, however, in our opinion, only in cases where the ZFZ was not applicable to the transactions.~~

~~—Notwithstanding to the above, if Slovenian law was applicable to the GMRA Netting Provisions, we believe that the set off as provided in the GMRA will be allowed in case the Insolvency Proceedings are governed by Slovenian law even if the ZFZ applies to the transaction, regardless⁵³ of whether the entities subject to Insolvency Proceedings are banks, large commercial companies or securities dealers (thus, regardless of whether they are covered by the Regulation). Furthermore, we believe that the GMRA Netting Provisions would not be challenged with respect to the Bank of Slovenia, because there can be no insolvency proceeding instituted against the Bank of Slovenia (such insolvency proceeding could be, as a matter of speculation, so without any legal basis yet for this, instituted only upon adoption of a legislation regulating insolvency~~

⁵³ —To avoid any misunderstanding, regardless of shall not be understood to imply regardless whether covered by the ZFZ or not.

~~proceedings of the Bank of Slovenia). Please see Core Opinion, paragraph 1.2, with regard to our analysis on the application of the insolvency regulation to the Bank of Slovenia. Otherwise, in general we believe that the GMRA Netting Provisions will be upheld by the courts here. We thus believe that the definition of the set off as provided under the Obligation Code would not affect enforceability of the GMRA Netting Provisions in respect of the Bank of Slovenia.~~

~~(k)(i)~~ (i) The ZFZ was adopted to implement the European Parliament and Council Directive 2002/47/EC on financial collateral arrangements. The ZFZ applies to cash or financial instruments provided as collateral (financial collateral arrangements) by way of “title transfer” or “security interest” between selected entities in the financial markets.⁵⁴ The effect of the ZFZ is to allow the effectiveness of such arrangements notwithstanding certain provisions of law applicable on insolvency which could otherwise restrict their enforceability or provide for them to be set aside.

~~(+)(ii)~~ (ii) A “title transfer financial collateral arrangement” is, broadly, an agreement, under the Directive 2002/47/EC including a repurchase agreement^{55, 56}, evidenced in writing, where:

~~(+)(1)~~ (1) the purpose of the agreement is to secure or otherwise cover the relevant financial obligations owed to the collateral-taker;

~~(+)(2)~~ (2) the collateral-provider transfers legal and beneficial ownership or a security interest in financial collateral to a collateral-taker on terms that when the relevant financial obligations are discharged the collateral-taker must transfer legal and beneficial ownership of equivalent financial collateral to the collateral-provider or discharge its security interest; and

~~(+)(3)~~ (3) the collateral-provider and the collateral-taker is either a bank, large commercial company (as defined in footnote 1 to the Core Opinion) or securities dealer under Slovenian law or an entity which falls into a category of the legal entities listed in Article 1(2) of the Council Directive 2002/47/EC on financial collateral arrangements.

⁵⁴ We assume that GMRA transactions are entered into on the financial markets because their subject is trading with financial instruments. In addition, this statement can be supported also by recital 13 of the Directive, as provided ~~under~~in the footnote ~~42~~immediately below.

⁵⁵ ~~See recital 13 of the Directive 2002/47/EC on financial collateral arrangements, which states as one of the purposes for adopting of the directive, elimination of the risk of repurchase transactions being recharacterised as security interests.~~

⁵⁶ See recital 13 of the Directive 2002/47/EC on financial collateral arrangements, which states as one of the purposes for adoption of the directive, elimination of the risk of repurchase transactions being recharacterised as security interests. Such reference is, however, not repeated in the ZFZ. Nevertheless, we are confident the wording of the Directive can be successfully used to support the argument to apply ZFZ to repurchase agreements in front of local courts.

- (m)(iii) Article 11 of the ZFZ provides that the financial collateral arrangements as well as any rights attached to such arrangement remain valid also during the insolvency proceedings.
- (n)(iv) Article 12 of the ZFZ expressly allows the close out netting due to the early termination to remain in full force and effect during the insolvency proceedings. We believe that such provision also prevents the insolvency administrator from electing which of open executor contracts at the moment of commencement of insolvency proceeding shall be terminated or not, since otherwise, the insolvency administrator would prevent the effective operation of the close out netting provisions.
- (o)(v) According to Article 13 the effectiveness of the financial collateral arrangement or provision of financial collateral is not affected if entered into or provided before the moment the filing of an application for start or before issuance of the decision on start of Insolvency Proceedings. –If the financial collateral arrangement or its provision was entered into or made on the same day but later then a filing of an application for start or before issuance of the decision on start of Insolvency Proceedings, its effectiveness is still not affected if the collateral taker proves that it was not aware and could not be aware of the start of such proceedings or filing of application at the time it entered into or was provided with such arrangements
- (p)(vi) –A “close-out netting provision”, as defined under Article 3(9) of the ZFZ means that at the moment the conditions are met for realization of the collateral: (i) the obligations of the parties are accelerated to become immediately due; (ii) non-monetary obligations are converted into monetary obligations; and (iii) obligations are subject to ~~the close-out netting in accordance with their current value~~set off in accordance with their current value. As such the definition of netting appears to be broader than the one provided under Articles 24a and 483.1 of the ZFPPIP. With respect to our considerations under paragraph (b)(i) above, we believe that the GMRA Netting Provisions fall within the scope of the close out netting provision of 3(9) of the ZFZ.
- (q)(vii) Although the ZFZ does not expressly define or address early termination, we believe that early termination will be valid under the ZFZ. This statement is supported by the provision of Articles 11 and 12 of the ZFZ. Under Article 11, the financial collateral agreement and rights acquired thereon remain valid regardless of the start of Insolvency Proceedings, which implies that early termination provision, as provided in the GMRA can not be treated as invalid, if agreed between the parties to the agreement. Furthermore, Article 12 of the ZFZ confirms the effectiveness of the "close out netting provision due to early termination" also in case of commencement of Insolvency Proceedings. As a result, the ZFZ thus assumes that early termination remains valid despite the commencement of Insolvency Proceedings, otherwise it would not be mentioned in Article 12 and there would be no close out netting applicable. In addition, under Article 3(9) of the ZFZ the condition for realization of the

collateral arises at the moment of contracting parties' default or at any other similar moment, agreed between the parties or provided under the law, which inter alia allows the close out netting to take place. Therefore, the ZFZ allows the parties to agree on the reasons for realization of the collateral, including also the reasons for the implementation of the close out netting meaning thus, to agree also on early termination. Because the close out netting remains valid also during the Insolvency Proceedings, we believe the same would apply also to the early termination provision which triggers it.

~~(viii)~~ (viii) The financial collateral arrangements entered into before adoption of the ZFZ, are not affected by the provisions of the ZFZ, meaning that the provisions and benefits of the ZFZ cannot be used for the purpose of such previous arrangements.

~~(s)~~ (ix) With regard to the above, we believe that the GMRA Netting Provisions will remain valid and therefore be enforceable, as provided in the GMRA, even if Insolvency Proceedings are opened against a large commercial company, bank or a securities dealer in Slovenia in relation to the GMRA ~~transactions.~~ Transactions. As stated above, Insolvency Proceedings cannot be opened with regard to the Bank of Slovenia⁵⁷, thus at the moment, insolvency rules with regard to the Bank of Slovenia are not applicable.

~~(e) 3~~ 3 ~~— In the case of an Agency Transaction the GMRA Netting Provisions will apply so that the netting is affected between the principal and the other party. The GMRA Netting Provisions of paragraph 10~~ Use of the GMRA with branches of a party in foreign jurisdiction, would not jeopardize the validity of the GMRA Netting Provisions. This statement is subject to the following considerations.

(i) Under the general insolvency rules of the ZFPPIPP, bankruptcy proceedings can only be initiated against legal entities. Although Chapter 8 of the ZFPPIPP (Insolvency Proceedings with International Elements) regulates under its Article 474 also separate local insolvency proceedings with respect to assets or establishment of a foreign insolvent debtor in Slovenia, we do not believe that this shall provide for a special rule that would allow such local proceedings to be initiated in Slovenia separately against such assets or establishment.

(ii) It appears that the purpose of such provision is only procedural and not substantive, since according to our understanding such rules only regulate proceedings and assistance in case of foreign insolvency proceedings or concurrent local and foreign proceedings but do not provide an additional

⁵⁷ The Bank of Slovenia has on the basis of the provisions of the ZBS-1 established the registry of financial assets that is maintained by the Bank of Slovenia, however, only to secure obligations with respect to the Bank of Slovenia, ECB and central banks of other member states of the European System of Central Banks. The financial assets that are subject to entry into such registry consists of credit claims and other financial assets. The rights to financial collateral with respect to a financial asset that is entered into such registry maintained by the Bank of Slovenia are obtained by entry of financial collateral arrangement into such registry of financial collateral. Such entry into the registry by the Bank of Slovenia is possible only subject to prior notice of the financial collateral taker to the debtor, which is evidenced to the Bank of Slovenia.

substantive legal basis for the possibility to start insolvency proceedings outside of situations provided otherwise under the ZFPPIPP. Hence, we do not believe that the provision of Article 474 can be interpreted in a manner to deviate from other provisions of the ZFPPIPP allowing institution of insolvency proceedings under the ZFPPIPP only with respect to legal entities. Our view is supported with the provisions of Articles 446 and 455 of the ZFPPIPP. Article 446 for the purposes of Chapter 8 of the ZFPPIPP expressly defines a local insolvency proceeding as a local insolvency proceeding conducted by a local court in accordance with other chapters of the ZFPPIPP, and, similarly, Article 455 of the ZFPPIPP grants the right of a foreign insolvency administrator to apply for commencement of Slovenian insolvency proceedings, however, clearly stating, that such proceedings can be commenced only with respect to other provisions of the ZFPPIPP.⁵⁸ Consequently, it appears that the scope of such provision regulating separate insolvency proceedings in Slovenia is limited to the situations covered under the Regulation that expressly allows the institution of separate proceedings (which is however not applicable to banks and securities dealers) and to situations where foreign insolvency proceedings are instituted against a debtor and assistance is requested here, but this does not provide an additional ground for the commencement of local insolvency proceedings against a local branch, if such proceeding are not possible under the ZFPPIPP's (or any other laws') substantive provisions.

(iii) As a result, we do not believe that any special bankruptcy proceedings can be instituted in Slovenia with regard to branches of banks and securities dealers (no compulsory settlement can be instituted against banks or securities dealers), because there does not appear to be any legal basis for such proceedings.

(f) Neither the ZBan-1 nor the ZFPPIPP contain provisions that would limit the bankruptcy estate of a Slovenian bank only to its assets located in Slovenia. Instead, pursuant to Article 224 of the ZFPPIPP bankruptcy estate of an insolvent debtor that is applicable pursuant to Article 319 of the ZBan-1 also with respect to banks, shall consist of all assets of the bankrupt debtor. Because a branch is not a legal entity, we believe that a branch of a local bank would under Slovenian law fall within the scope of the bank's bankruptcy estate, regardless of whether it exists in Slovenia or elsewhere.

(i) As a result, bankruptcy of a local bank, including its branches elsewhere, shall be subject to the provisions of the ZBan-1 and the ZFPPIPP and there is no provision under local law that would affect our considerations due to the fact that the transactions were booked through a branch of a local bank located elsewhere.

⁵⁸ Provisions of such referred chapters allow institution of insolvency proceedings only with respect to a legal entity, but not with regard to branches. See Articles 135 and 223 of the ZFPPIPP. Note that for the purposes of this opinion insolvency proceeding with regard to individuals (natural persons) are not relevant, nevertheless, such proceeding that can be instituted also under the ZFPPIPP do not mean that it would allow the court to institute insolvency proceeding against a branch of a corporate, bank or of a securities dealer. The Bank of Slovenia can not have any branches.

(ii) Moreover, at least under Slovenian law, we do not believe that any secondary insolvency proceedings may be opened in Slovenia with regard to a local bank's branch in a foreign jurisdiction that is an EU member or EEC member state.

(1) The ZBan-1 transposed the provisions of Directive 2001/24/EC, under which the administrative or judicial authorities of the Member State in which a credit institution is authorized (the so called home country authority approach) are authorized to implement reorganization measures or winding-up proceedings in respect of that credit institution, including its branches.

(2) We believe that the rules of Articles 3 and 9 of the Directive 2001/24/EC were transposed in the Slovenian legislation by the provisions of Article 272 of the ZBan-1. This (although ambiguously located in the chapter dealing with compulsory liquidation) provides for a direct effect of decisions of competent authorities of the EU/EEC⁵⁹ member states on opening of proceedings that have the same effect as decision on termination of a bank under the ZBan-1 with respect to a branch of such bank in Slovenia. The definition of decision on termination of a bank under the ZBan-1 is then provided in its Article 346.1 as a decision on either opening of compulsory liquidation or on establishment of conditions for opening of bankruptcy proceedings. Consequently, any decision of an EEC member state's home authority shall have a direct effect in Slovenia with regard to a branch of such bank, once final in such an EEC member state and on the basis of the Directive 2001/24/EC the same shall apply also vice versa.

(3) Under Article 217 of the ZBan-1 the Bank of Slovenia is authorized to supervise the conduct of a bank's business in the EEC and elsewhere and under Article 280 of the ZBan-1 it is authorized to adopt any surveillance measure against a branch of a local bank in another EEC member state. Also Articles 318 and further of the ZBan-1 which contain bankruptcy provisions with regard to the banks here deal solely with the banks registered in Slovenia, but not with branches of such banks. The same rule applies also in case of compulsory liquidation. Article 323 of the ZBan-1 deals only with the bankruptcy of a bank which has a branch in another EEC member state and applies for this purpose by analogy the provisions applicable to compulsory liquidation concerning Slovenian branches of banks registered in other EEC member states.

(4) Article 486 of the ZFPPIPP, referring also to banks, again stipulates that any decision of the EU Home Member state's authority on

⁵⁹ We understand that the scope of the Directive 2001/24/EC was extended to all EEC countries, on the basis of the Decision of the EEA Joint Committee No 167/2002 of 6 December 2002 amending Annex IX (Financial services) to the EEA Agreement. Hence the provisions of the Directive 2001/24/EC appear to be binding to all EEC countries not only to EU member states.

reorganization and winding up shall have a direct effect, without any formalities, also in Slovenia and we would assume that the same would apply also to other EEC jurisdictions. It does not, however, provide for any separate basis for starting of secondary proceedings against branches of EEC banks situated in Slovenia, which appears to be also in line with the Directive 2001/24/EC. Notably ZFPPIPP in its introductory provisions clearly provides that it regulates insolvency proceedings of legal entities, without referring to branches, and pursuant to general rules branches are not recognized to have the capability of being parties in litigation proceedings.

(5) Consequently, we believe that Slovenian law adopted the so called universal approach with regard to insolvency proceedings relating to banks, under which only the home state authority of a bank can initiate insolvency proceedings against a bank, thus such insolvency proceedings cannot be instituted by other authorities, at least not under Slovenian and EU legislation. In such proceedings Slovenian insolvency law shall be applied under Slovenian law, as well as under the Directive 2001/24/EC (see its Article 10). As a result, we do not think that there would be any change to our conclusions with respect to GMRA Netting provisions of this opinion to the extent a branch of a local bank is located elsewhere in EU member states.

(iii) To the extent that a branch of a local bank is located elsewhere (outside of EU or EEC), it depends on the country where such branch of a local bank is located, whether any separate proceedings could be instituted there, and what shall be the effects of such proceedings on GMRA Netting Provisions and our considerations above, regarding which we are unable to opine. Under Slovenian law at least, bankruptcy of a local bank shall extend to all its assets, thus also to its branches, wherever located, so in general we would assume that our considerations shall remain unaffected with regard to Slovenian insolvency proceedings, but may nevertheless be affected by any actions of authorities in a state where a branch of the local bank is located.

(g) With respect to securities dealers, we do not believe that any separate insolvency proceedings can be instituted against a branch of such entity in Slovenia. Neither Regulation nor Directive 2001/24/EC are namely applicable to such entities. Only a minor part of the insolvency rules applicable to an investment firm is regulated under the ZTFI, which cross-refers partially to the provisions of the ZBan-1. Thus, subject to our considerations under (e) above, we do not believe that there is a legal basis for commencement of separate insolvency proceedings in Slovenia with regard to local branches of securities dealers here. We are unable to opine whether such separate insolvency proceedings can be instituted abroad with regard to branches of securities dealers abroad. Assuming however that the law of the main proceedings does not uphold the GMRA Netting Provisions in case of insolvency, we believe that actions of a foreign insolvency administrator could affect upholding of the GMRA Netting Provisions entered through such branches.

- (h) With regard to large commercial companies, the provisions of the Regulation shall be applicable. As a result, secondary proceedings can be instituted in Slovenia with regard to branch of such foreign commercial company here, and subject to the provisions of the Regulation, the same shall be true also (at least) elsewhere in the EU. As discussed under paragraph 2 above, under Slovenian ZFPPIPP, the Slovenian court shall apply English law to both early termination and set off provisions which are contemplated under the GMRA Netting Provisions. Notwithstanding the above, due to the direct applicability of EC regulation in the member states⁶⁰, the Slovenian court would have to apply also the provisions of the Regulation, as discussed under paragraph 2(a)(i) of Appendix 1, Part II of this opinion. The provisions of the Regulation dealing with set-off and those dealing with the interaction between primary and secondary proceedings referred to in paragraph 2(a) of Appendix 1, Part II are not clear. The following is a summary of how we consider a Slovenian court would apply the Regulation with regard to set-off. No opinion is given on how any court other than a Slovenian court would apply the Regulation. There is no court decision known yet which would involve court's reasoning on the application of the Regulation.
- (i) Article 4(1) provides that, save as otherwise provided in the Regulation, the law applicable to EU Regulation Insolvency Proceedings referred to in paragraph 2(a) of Appendix 1, Part II above and their effects shall be that of the Member State within the territory of which such proceedings are opened.
- (ii) The Regulation specifically states that “the opening of EU Regulation Insolvency Proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the debtor, where such set-off is permitted by the law applicable to the insolvent debtor’s claim” (Article 6(1)).
- (iii) Article 4(2)(d) provides that any set-off is subject to the conditions under which set-offs may be invoked imposed by the law of the Member State where the EU Regulation Insolvency Proceedings are opened, but this would seem to be subject to Article 6 (as set-off would seem to be otherwise provided for in Article 6).
- (iv) Article 4(2)(m) provides that the laws of the State of the opening of proceedings shall determine “the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all creditors”.
- (v) (Article 6(2) provides that Article 6(1) shall not preclude actions for voidness, voidability or unenforceability as referred to in Article 4(2)(m).
- (vi) While the interaction between Article 6 and Article 4(2)(m) is not clear, the position would seem to be as follows:

⁶⁰ See Article 249.2 of the EC Treaty.

(1) to the extent set-off is permitted in the jurisdiction of the Member State in which the relevant EU Regulation Insolvency Proceedings are opened, set-off should not be affected;

(2) to the extent that set-off is not permitted in the jurisdiction of the Member State in which the relevant EU Regulation Insolvency Proceedings are opened it may nevertheless be permitted if (i) it is permitted by the law applicable to the insolvent debtor's claim under the conflict of laws principles of the jurisdiction of the Member State in which the relevant EU Regulation Insolvency Proceedings are opened, unless (ii) permitting the set-off would be regarded, under the laws of that jurisdiction, as contravening rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all creditors (i.e. within Article 4(2)(m)).

(vii) The precise interaction between main and secondary proceedings in the event of conflicting legal systems' approach on insolvency is unclear. Although the Regulation does allow the secondary proceedings to be stayed at the request of the liquidator in the main proceedings, any such request being very difficult to refuse, this remains subject to such liquidator taking any suitable measure to guarantee the interests of the creditors in the secondary proceedings. It is unclear what result would follow were set-off applied by operation of law in the Member State where secondary proceedings are opened but not permitted by the applicable law in the main proceedings.

(i) If a CPMA is entered into between the parties, it appears that the Slovenian courts in Insolvency Proceedings will need to apply the provision of Article 483.1 ZFPPIPP relating to netting and the provision of the second paragraph of the same Article dealing with repurchase agreements could not be applicable. In this instance the close out netting provisions will according to our understanding be governed by the CPMA presumably involving also other types of transactions as well as repurchase agreements. Given our consideration under paragraph (b) above, we however believe that the result shall be the same – the Slovenian court would need to consider the effects of Insolvency Proceedings under the netting provisions of the CPMA in accordance with the governing (English) law of the CPMA.

(i) Similar considerations as with regard to the CPMA apply also with regard to forward transactions, if entered into pursuant to the Annex I to the GMRA. It is questionable whether the local courts would in that case apply Article 483.2, since the Transactions will not be only repurchase agreements. Nevertheless, as with regard to the CPMA, this shall not prevent the courts applying the governing law of the GMRA with respect to effects of insolvency on the GMRA Netting Provisions on the basis of Article 483.1 of the ZFPPIP with regard to such forward transactions, subject to our considerations under paragraph 2(b)(iii) and further of this opinion above.

3 In the case of an Agency Transaction entered into (i) with respect to the GMRA 1995, as specified in Annex IV thereto; (ii) with respect to the GMRA 2000, as specified in the

Agency Annex thereto, the GMRA Netting Provisions will apply so that the netting is effected between the principal and the other party. The GMRA Netting Provisions will be effective as between the Agent in its capacity as agent for each Principal and the other party and will create an obligation on the part of the other party and the Principal to pay a single net amount in the Base Currency in respect of all ~~transactions~~ Transactions entered into under the ~~GMRA Agreement~~ Agreement between the other party and the Agent acting as agent for that Principal in isolation from other transactions between the other party and the Agent. We specifically understand Agency Annex still to provide for mutuality of obligations of the parties with regard to netting, hence without establishing the netting of the obligations among different parties to the agreement (i.e. multilateral netting).

4 ~~4~~—The conversion of any cash payment obligation into the Base Currency would be valid under the laws of ~~the Republic of~~ Slovenia and such a provision is not inconsistent with the public policy of ~~the Republic of~~ Slovenia. This statement is subject to the ~~conditions mentioned under the 2 above.~~⁶⁴ following considerations:

(a) ~~5~~—Subject to our considerations under paragraph 2 of this opinion above, we believe that the conversion of the cash payment obligation into the Base Currency, presents one of the elements of the netting arrangement governed by Article 483.1, thus shall be covered by the netting arrangement of Article 483.1, assuming that one of the parties is a foreign entity. As a result, the Slovenian court, if assuming jurisdiction over the matter, shall consider effects of conversion provision of GMRA Netting Provisions under the governing law of the GMRA.

(b) If the local court subject to our considerations under 2(d) above still applies Slovenian law, and therefore reviews the GMRA Netting Provisions pursuant to the ZFZ provisions, we still believe that the conversion of cash payment obligation into the Base Currency shall be treated as part of the close out netting arrangement that shall not be affected by the commencement of insolvency proceedings (as discussed under paragraph 2(d) and further above).

(c) Although we were not asked to opine whether the local court or insolvency official would enforce such claim in insolvency proceeding in a Base Currency other than local currency (that is EUR), still according to our opinion that enforcement or proving of such claim in other than local currency with respect to Slovenian Relevant Entity after commencement of insolvency proceedings will not be enforced. Instead, we believe that with the commencement of insolvency proceedings, any such claim nominated in a Base Currency will need to be converted into the local currency at the official statutory exchange rate in order to be enforced against the insolvent Slovenian Relevant Entity.

(i) Namely, it does not appear that enforcement of a claim in a Base Currency presents a part of a netting arrangement under Article 24a and 483.1 of the

⁶⁴—~~This statement does not consider situation where a party and a counterpart under the GMRA are both Slovenian entities (i.e. a GMRA entered into, and transactions made solely, between Slovenian entities) within Slovenia.~~

ZFPPIPP; instead it appears that such a claim is the result of an execution of a netting arrangement. Therefore, we do not believe that the effects of insolvency would apply also with regard to enforcement of a claim in a Base Currency as otherwise discussed above with regard to netting arrangements and their elements.

(ii) The aforementioned can be further supported by the provisions of the Articles 164a and 264a of the ZFPPIPP stating that any net claim resulting from the execution of a netting arrangement shall be paid in accordance with the general rules applicable to claims of creditors, subject to the terms and conditions of the insolvency proceedings and shall be reported by such creditor in the bankruptcy proceedings. Such a rule indicates that the legislature did not intend to treat such net claims differently, as opposed to those that are still subject to (close-out) netting and obviously intended to cover such claims, if existing, with the applicable effects of the insolvency proceedings.

(iii) One of the statutory effects of the insolvency proceedings is also the conversion of claims against an insolvent debtor into the local currency (euro) to the extent nominated in other currencies at the official rates as published or determined and published by the Bank of Slovenia (Slovenia's central bank) at the moment of commencement of the bankruptcy proceedings. The Bank of Slovenia publishes exchange rates for euro and for those other currencies the exchange rates of which are determined by the European Central Bank, and determinates (and publishes) exchange rates with regard to other foreign currencies. Thus, with regard to those currencies for which the exchange rates are determined by the European Central Bank, exchange rates as determined by the European Central Bank as per the date of commencement of insolvency proceedings will be decisive with respect to conversion of claims to euro.

5 The GMRA Netting Provisions would be upheld notwithstanding that the Default Market Value may be calculated as late as (i) close of business on the second dealing day in the appropriate market after the day of the relevant Event of Default under GMRA 1995 ~~or; (ii) with respect to the GMRA 2000,~~ as late as close of business on the fifth dealing day in the appropriate market after the day of the relevant Event of Default (or the date on which the non-Defaulting Party became aware of the Event of Default) or, in certain circumstances, at some time thereafter ~~under GMRA 2000.~~ ~~As mentioned under Appendix 1, Part III, paragraph 2, we believe that GMRA Netting Provisions would be unobjectionable if performed in commercially reasonable manner, which applies in particular to the calculation of the Default Market Value. We would argue that the time period allowed for the calculation of the Default Market Value allows the non-Defaulting party to act in commercially reasonable manner, so as to avoid calculation being done immediately after occurrence of an Event of Default, regardless of the market conditions at that time. Thus, the provision as such, despite of the time gap between the day of Event of Default and calculation date, would allow for the commercially reasonable calculation of the Default Market value; or (iii) with respect to the GMRA 2011, as soon as reasonably practicable after the Early Termination Date; subject to the following considerations.~~

- (a) Subject to our considerations under section 2 of this opinion above, we believe that the calculation of the Default Market Value presents one of the elements of the netting arrangement as governed by Article 483.1, thus shall be covered by the netting arrangement of Article 483.1, assuming that one of the parties is a foreign entity. As a result, the Slovenian court, if assuming jurisdiction over the matter, shall consider effects of conversion provision of GMRA Netting Provisions under the governing law of the GMRA.
- (b) If the local court subject to our considerations under 2(d) above still applies Slovenian law, and therefore reviews the GMRA Netting Provisions pursuant to the ZFZ provisions, we still believe that calculation of the Default Market Value shall be treated as part of the close out netting arrangement that shall not be affected by the commencement of insolvency proceedings (as discussed under sections 2(d) and further above).
- (c) Notwithstanding to above, according to our understanding, calculation of the Default Market Value would in case of any GMRA mean that the determining party (ie, non-Defaulting Party) will determine Default Market Value, however, always acting in good faith and using commercially reasonable procedure in order to produce a commercial reasonable result. We also understand that any surplus from such calculation of the Default Market Value and consequent set off of the sums due shall result in the balance to be paid to the counterparty, even if such counterparty is a Defaulting Party. In this regard, the right to set off such balance against any other obligation of the counterparty under Paragraph 10(n) of the GMRA in our opinion does not mean that the right of any of the parties (Defaulting or Non-defaulting) to be paid the balance would be violated (ie, that this would institute so called "walk away clause"). Set off, as least under Slovenian law, does not mean that there is no right to receive payment, but just opposite, it confirms that each of the parties has a valid right to claim performance from counterparty, thus such right to set off pursuant to Paragraph 10(n) in our opinion does not prevent our considerations above with regard to surplus to be paid b any of the parties to a counterparty. See also our considerations with respect to Paragraph 10(n) of the GMRA 2011 under paragraph 3(ii) and further of Appendix 1, Part V further below.
- (d) It is namely our understanding that the Determining Party when determining Default Market Value shall always act in good faith and using commercially reasonable procedure in order to produce a commercial reasonable result. This overarching principle shall apply to all actions of determining party when determining obligations of the counterparty, including but not limited to calculation date of the Default Market Value.
- (e) As a result, we believe that the determination of Default Market Value does not mean determination of obligation solely by one party to the agreement that may be prohibited under Slovenian law, instead, subject to our understanding above, it presents criteria for determination of the obligation by the determining party (whichever that may be). Thus, the determining party is not allowed to act simply according to its discretion, instead it is bound by the commercially reasonable practice

as provided by the parties in the GMRA beforehand. Consequently, we believe that such determination of the Default Market Value should not be treated by the Slovenian courts as violation of the public order in Slovenia.

Part IV

GMRA 1995 and GMRA 2000 Annexes

- 1 The use by the parties of any of the annexes to the GMRA 1995 and GMRA 2000 specified in Appendix 1 to this opinion will not affect the substance of our opinion on the provisions of the GMRA 1995 and GMRA 2000 and their effect under ~~the Republic of~~ Slovenia law, nor will it affect the substance of our opinion on the validity of the GMRA 1995 and GMRA 2000 as a whole under ~~the Republic of~~ Slovenia law.

Part V

Core Provisions of the GMRA

- 1(a) We have been asked to identify any provisions of the GMRA— that we regard as so essential to the GMRA that a material alteration thereof could affect the conclusions reached in this opinion (each such provision a **Core Provision** and together the **Core Provisions**).
- (b) We have also been asked to confirm that any modification to any provision of the GMRA that is not a Core Provision (each such provision a **Modifiable Provision** and together the **Modifiable Provisions**) would not affect the conclusions reached in this opinion.
- (c) We have also been asked to confirm that the conclusions reached in this opinion would not change as a result of the inclusion of additional provisions (**Additional Provisions**) in a schedule provided by an annex to the GMRA. For the purposes of this paragraph 1(c) and paragraph 2, we assume that none of the Additional Provisions included would have the effect of modifying or affecting the operation or implementation of any Core Provision. The GMRA Netting Provisions in relation to forward transactions, are however, considered under paragraph 2(j) of Appendix 1, Part III above.
- (d) We have also been asked to confirm that the alterations set forth in ~~the Appendix-1, Part VII~~ to this opinion (the **Amendments to ~~the~~ Core Provisions**) to Core Provisions, as identified below, of the GMRA—~~1995—~~ the GMRA 2000 and the GMRA ~~2000~~2011, would not change the conclusions reached in this opinion.

2 ~~2~~ — We believe that the following provisions contained in the GMRA are Core Provisions:⁶²⁶³

- provisions under paragraph 1 (a) with regard to definition of Securities
- provision of paragraph 6(h),
- provisions of paragraph 10 (a) (iv), (b) to (c) in the GMRA 1995 ~~and~~, provisions of paragraph 10 (a) (vi), (b) to (e) of the GMRA 2000 and provisions of paragraph 10 (a) (vi), (b) to (f) of the GMRA 2011;
- provision of paragraph 13;
- provision of paragraph 17: with respect to the choice of (English) law and jurisdiction

3 ~~3~~ — We believe that modifications to any Modifiable Provisions would not affect the conclusions reached in this opinion in relation to the GMRA so long as any such modification would not have the effect of modifying or affecting the operation or implementation of any Core Provision. This statement is subject to the following considerations:

- (i) With regard to Modifiable Provision relating to paragraph 3(c) [any change to the effect that one party (e.g. the Buyer) has to perform its obligations first], as well as with regard to any agreement on pre-collateralisation [whereby one delivery must occur before the other] in general shall not affect our considerations. Outside of insolvency we believe that such provisions shall be

⁶² ~~Basically those provisions, which give rise to the application of the foreign law and the ZFZ, are defined as the core provisions. It is important to note that the parties entering into the GMRA shall be those identified under paragraph 1 of Appendix 1, Part II of the opinion. Branches of large commercial companies are not regulated under the ZFZ. Nevertheless, entry into a GMRA with the branch of a large commercial company, would actually mean to enter into it with the parent company itself since branches of (large commercial) companies are not legal entities and enter into the agreements only behalf of the founding company itself (because they present only a part of the founding company). See Article 31 of the Law on Commercial Companies-1. Thus, the effectiveness of the GMRA's provisions shall be considered in relation to the large commercial company itself.~~

⁶³ Basically those provisions, which give rise to the application of the foreign law and the ZFZ, are defined as the core provisions, as well as those that relate to applicability of foreign (English) law and submission of the parties to jurisdiction of foreign (English) courts. Definition of Securities treated as a core provision, because the ZFZ is at the moment applicable only to collateral arrangements securing the transfer of financial instruments or payment of cash. It is important to note that the parties entering into the GMRA shall be those identified under paragraph 1 of Appendix 1, Part II of the opinion, i.e. Relevant Entities. Branches of large commercial companies are not regulated under the ZFZ. Nevertheless, entry into a GMRA with the branch of a large commercial company, would actually mean entering into it with the parent company itself since branches of (large commercial) companies are not legal entities and enter into the agreements only behalf of the founding company itself (because they present only a part of the founding company). See Article 31 of the Law on Commercial Companies-1. Thus, the effectiveness of the GMRA's provisions shall be considered in relation to the large commercial company itself.

enforceable. In case of insolvency of a Slovenian Relevant Entity (but for the Bank of Slovenia), the replacing of simultaneous performance principle, may, depending on the concrete circumstances (who performs first and timing of such performance, nature of performance, etc.), trigger challenges to such prior performances by the bankruptcy administrator or other creditors.

(1) Under the ZFPPIPP, the bankruptcy administrator or a creditor for the account of the bankrupt debtor may challenge any action or omission of the debtor in the suspect period (starting 12 months before the motion for the initiation of bankruptcy proceedings was first brought, and ending with the formal initiation of bankruptcy proceedings over the debtor; in case compulsory settlement proceedings were initiated over the debtor (compulsory settlement precludes bankruptcy but if compulsory settlement fails, bankruptcy follows), this period extends back 12 months before the motion for the initiation of compulsory settlement proceedings was first brought)⁶⁴ provided that:

- as a result of such action or omission either (i) net assets of the debtor were diminished so that claims of other creditors can only be settled in a lower portion than if the action or omission had not occurred (e.g. price below market price) or (ii) the person for the benefit of which the action or omission was done, acquired a more favourable position for settlement of its claim towards the debtor; and
- the person for the benefit of which the action or omission was done, at the time of such action or omission, knew or should have known of the debtor's insolvency.

(2) The condition under the second alignment above does not apply if no consideration or minor consideration was given in the transaction – in knowledge on the insolvency is assumed instead. Condition under the first alignment above is presumed to be fulfilled if the action or omission was done in fulfilment of an agreement under which the creditor has discharged its obligation before the bankrupt debtor, unless such fulfilment is customary, according to market practice, if the creditor as a result of the action or omission obtained the right of priority payment in bankruptcy proceedings for a claim that arose prior to the action or omission, or if the action or omission was done in violation of rules applicable in the case of compulsory settlement proceedings. Condition under the second alignment is presumed to be fulfilled if the creditor's claim was settled before it was mature, or settled in a manner which is not customary, or the action or omission

⁶⁴ Application of ZFZ to transactions would further limit such risk. See our considerations as to effects of ZFZ application to transactions discussed under paragraph 2(d) of Appendix 1, Part III above.

was done in the last 3 months before the motion for the bankruptcy proceedings (or compulsory settlement proceedings) was first brought.

(ii) With regard to the Modifiable Provision relating to Paragraph 10c [any change providing that the payment of an amount that is due as a result of the calculation described in Paragraph 10(c)(ii) may be set-off against certain other obligations] it shall be noted that such set off, if any, would not be covered by the provisions of the netting arrangement as provided under Article 483.1 in relation to rules for the netting arrangement contained in Article 24a of the ZFPPIP, as considered under paragraph 2(b)(i) and (b)(iii) of Appendix 1, Part III above. Our considerations below apply also to Paragraph 10(n) of the GMRA 2011 regulating the right to set off of any amount payable under Paragraph 10 (d) of the GMRA 2011.

(1) It does not appear that enforcement of a claim for the balance presents a part of a netting arrangement as defined under Article 24a and 483.1 of the ZFPPIP. Instead it appears that such a claim is the result of an execution of a netting arrangement after set off of the sums due from one party to other under Paragraph 10(d) has already been made, whereas a balance owned by one party to another (assuming the sums of the parties are not equal in value) still needs to be settled (see Paragraph 10(d)(ii) of the GMRA). As such it does not appear that such claim could fall within the meaning of the netting arrangement, where the net balance determination appears to be the last phase of the netting, hence netting arrangement does not cover obligations of the parties afterwards, including but not limited to obligations of the parties on how the outstanding sum of the balance received from operation of a netting arrangement needs to be settled.⁶⁵ Therefore, we do not believe that the effects of insolvency would apply also with regard to enforcement of a balance claim as discussed above with regard to netting arrangements and their elements.

(2) The aforementioned can be further supported by the provisions of Articles 164a and 264a of the ZFPPIP stating that any net claim resulting from the execution of a netting arrangement shall be paid in accordance with the general rules applicable to claims of creditors, subject to the terms and conditions of the approved compulsory settlement or subject to the terms of the bankruptcy proceedings and shall be reported by such creditor in the bankruptcy proceedings. Such a rule indicates that the legislature did not intend to treat such net claims differently as opposed to those that are still subject to (close-out) netting and obviously intended to cover such claims, if existing, with the applicable effects of the insolvency proceedings.

⁶⁵ See our discussion of the ZFPPIP's netting arrangement definition (*dogovor o izravnavi*) under paragraph 2(b)(i) and (b)(iii) of Appendix 1, Part III above.

(3) Hence it is unlikely that any such set off of the balance resulting from operation of Paragraph 10(c)(ii) of the GMRA against any other obligations of the insolvent Slovenian Relevant Entity, provided that the Insolvency Proceedings for such insolvent party have commenced, will be enforceable in front of a Slovenian court, in particular if such other obligations that shall be subject to set off existed before commencement of insolvency proceedings for such insolvent party. ZFPPIP specifically prohibits set off of any obligations existing before commencement of the insolvency proceedings against obligations came into existence after commencement of the Insolvency Proceedings, whereas. It does not appear that such set off could rely on the netting arrangement safe harbours provided in Articles 483.1 and 24a of the ZFPPIP.

(4) The question is, however, whether Article 483.2 of the ZFPPIP, assuming that one of the parties to the GMRA is a foreign party, would allow the court to consider such set off provision as a part of repurchase agreement, and therefore apply the governing law to the GMRA (ie, English law) with respect to the effects of insolvency proceedings on such set off. In the absence of any jurisprudence on the same, we believe there is significant risk that the court assumes the narrower view on the scope of the Article 483.2 and excludes set off from its coverage.

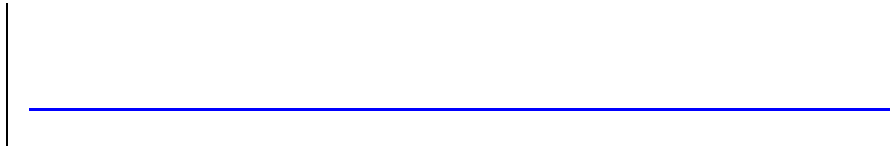
4 We believe that the conclusions reached in this opinion in relation to the GMRA would not change because of the inclusion of Additional Provisions in a Schedule provided by an annex to the GMRA subject to the assumption in paragraph 1(c).

5 We believe that the Amendments to ~~the~~ Core Provisions or any similar alteration to a Core Provision, as identified above, of the GMRA ~~–~~ would not change the conclusions reached in this opinion (for the avoidance of doubt we give no opinion as to the validity or enforceability of the items referred to in Appendix 1, Part VII and assume that none of the Amendments to ~~the~~ Core Provisions invalidates or adversely affects the binding effect of any Core Provision).

Part VI

Transactions entered into as agent pursuant to the GMRA 1995 and GMRA 2000

1 A court in ~~the Republic of~~ Slovenia would uphold the provisions of the Agency Annex in the GMRA 1995 and GMRA 2000 in accordance with their terms.



Part VII

**Amendments to Core Provisions
of the ~~1995 Global Master Repurchase Agreement~~
GMRA 1995**

General Remark: Pursuant to the assumption of the legal opinions on the enforceability of the ~~Global Master Repurchase Agreement~~ GMRA prepared for ICMA, modifications made by the Annexes (i.e., Buy/Sell Back Annex, Agency Annex, Bills of Exchange Annex, EMU Annex, Equities Annex, Net Paying Securities Annex, and ~~Italian Annex and Japanese Securities Annex~~⁶⁶) in the form published by ICMA⁶⁷, the Gilts Annex in the form published by the Bank of England, and the Japanese Annex in the form published by the Japanese Securities Dealers Association⁶⁸ are covered by the opinions.

<u>Paragraph 1(a)</u>
any amendment to expand the applicability of the GMRA to transactions that have been effected before the date of the GMRA, irrespective of whether they have been entered into under a prior master agreement that has been superseded by the GMRA or not;
any amendment to expand the applicability of the GMRA to transactions in which one party agrees to sell to the other equities, U.S. Treasury Instruments or Net Paying Securities;
<u>Paragraph 2</u>
Definition of "Act of Insolvency": any change to cover additional cases under Paragraph 2(a);
Definition of "Act of Insolvency": any modification to Paragraph 2(a) more specifically describing the terms "trustee", "administrator" or "analogous officer" used in sub-clause (iii) or (v), e.g., adding any such officer;
Definition of "Act of Insolvency": any modification to Paragraph 2(a) more specifically describing a proceeding intended to be covered by the term "analogous proceeding" used in sub-clause (iv) or (vi), e.g., adding any such proceeding;
Definition of "Act of Insolvency": any change to Paragraph 2(a)(iv) deleting the third parenthetical in the sixth and seventh <u>and eighth</u> line;
Definition of "Act of Insolvency": any change to Paragraph 2(a)(iv) broadening the scope of the third parenthetical in the sixth and seventh <u>and eighth</u> line, e.g., by more specifically describing a proceeding intended to be covered by the term "analogous proceeding" or by adding any such proceeding;
Definition of "Act of Insolvency": any change to Paragraph 2(a)(iv) providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Act of Insolvency;
Definition of "Act of Insolvency": any modification of the 30 day period contained in sub-clauses (iv) of Paragraph 2(a);
Definition of "Act of Insolvency": any change to Paragraph 2(a)(iv) inserting the words "provided that this definition shall not apply to any proceedings which are of a frivolous or vexatious nature" after the word "filing";

	Definition of “Act of Insolvency”: any change to Paragraph 2(a)(iv) requiring that the presentation or filing of the petition must be made in good faith or a commercially reasonable manner;
	Definition of “Equivalent Securities”: any change to Paragraph 2(o) broadening the scope of such definition to cover a conversion, subdivision or consolidation of Purchased Securities;
	Definition of “equivalent to”: any change to Paragraph 2(p) pursuant to which Securities will be equivalent to other Securities notwithstanding that those Securities have been re-denominated in Euro or the nominal value of the Securities has changed in connection with such re-denomination;
	Paragraph 3(c) (no amendments)
	Paragraph 6(a)
	any amendment modifying the enumeration of book entry systems (e.g., adding the book entry system of the Federal Reserve Bank of New York) in the second sentence under (ii);
	any change providing that transfers pursuant to Paragraph 6(a) are to be effected in compliance with a particular Act (e.g., the U.S. Uniform Commercial Code) or the applicable provisions of a specified jurisdiction (which shall be deemed to include any method of transfer mutually agreed between the Seller and the Buyer) or the applicable requirements and procedures of a specified securities clearance system; Definition of “Pricing Rate”: any change to Paragraph 2(ee) broadening the scope of such definition to cover a negative percentage rate;
	Paragraph 6(e) (no amendments)
	Paragraph 6(f) (no amendments)
	Paragraph 10(a) (other than Paragraph 10(a)(iv))
	any modification adding further events that constitute an Event of Default as defined in Paragraph 10(a) (e.g., without limitation, the failure to deliver Purchased Securities or Equivalent Securities on the applicable date, a force majeure, cross default or downgrading event, the death or incapacity of a party or its general partner, any Default under a Specified Transaction), such change may or may not be coupled with a grace period or the serving of a Default Note on the Defaulting Party by the non-Defaulting Party;
	any change broadening the scope of Paragraph 10(a)(i) to the effect that the failure by any party, whether Buyer or Seller, to make any payment under the GMRA constitute an Event of Default, such change may or may not be coupled with a grace period;
	any deletion of, addition to or modification of the scope of the enumerated Events of Default contained in Paragraph 10(a)(vii);

	the stipulation of a grace period or the modification of the grace period with respect to the Events of Default in Paragraph 10(a)
	In an Agreement entered into between a Party subject to the insolvency laws of [country] (the "[country] Party") and a Party not subject to the insolvency laws of [country] (the "Non-[country] Party"), any change to paragraph 10(a) that applies only with respect to the Non-[country] Party, such changes may or may not be coupled with other changes of Paragraph 10(a);
	<u>Paragraph 10(a)(iv)</u>
	any change providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Event of Default;
	any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required in the cases mentioned in the parenthetical, irrespective of whether this change applies to all or only one or more of such cases; such changes may or may not be coupled with other changes of Paragraph 10(a)(iv) or the definition "Act of Insolvency";
	any change eliminating the requirement that the non-Defaulting Party serves a Default Notice on the Defaulting Party, irrespective of whether this change applies to all or only one or more certain cases of an Act of Insolvency; such changes may or may not be coupled with other changes of Paragraph 10(a)(iv) or the definition "Act of Insolvency";
	any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required only if the relevant petition is presented or filed in a court or before an agency, or the relevant receiver, administrator, liquidator, trustee or analogous officer has been appointed by a court or agency in the jurisdiction where the Defaulting Party is incorporated, irrespective of whether this change applies to all or only one or more of the proceedings or officers specified in Paragraph 2(a)(iv) or (v); such changes may or may not be coupled with a change in Paragraph 2(a)(iv) or (v);
	any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is not required, if the Defaulting Party is governed by a legal system that does not permit termination to take place after certain cases of an Act of Insolvency have occurred;
	any change to the effect that certain events are treated in the same way as an Act of Insolvency or as an Act of Insolvency, for which no Default Notice is required;
	In an Agreement GMRA entered into between a Party Relevant Entity subject to the insolvency laws of [country] Slovenia (the " [country] "Slovenia Party") and a Party party not subject to the insolvency laws of [country] Slovenia (the "Non- [country] "Slovenia Party"), any change to paragraph Paragraph 10(a) (iv) that applies only with respect to the Non- [country] Slovenia Party, such changes may or may not be coupled with other changes of Paragraph 10(a) (iv) ;
	<u>Paragraph 10(b)</u> (no amendments)
	(no amendments)
	<u>Paragraph 10(c)</u>
	any change providing that the payment of an amount that is due as a result of the calculation described in Paragraph 10(c)(ii) may be set-off against certain other obligations;

	<p>any change providing for a separate netting of Transactions that, under applicable law, cannot <u>the Default Market Value and the amount of any Cash Margin to be netted against one another transferred and the Repurchase Price to be paid shall be established in performing the calculations contemplated by Paragraph 10(c)(ii);</u> <u>good faith and in a commercially reasonable manner;</u></p>
	<p>any amendment providing that the payment by the Non-Defaulting Party of an amount that is due as a result the calculation described in Paragraph 10(c)(ii) shall be subject to the Defaulting Party having satisfied all of its obligations (under the GMRA or otherwise) to the Non-Defaulting Party; these amendments may or may not include payments to, or obligations of, Affiliates of one party or of both parties; <u>any change providing for a separate netting of Transactions that, under applicable law, cannot be netted against one another in performing the calculations contemplated by Paragraph 10(c)(ii);</u></p>
	<p>any amendment to Paragraph 10(c) clarifying <u>providing</u> that the <u>payment by the Non-Defaulting Party of an amount that is due as a result of the calculation described in Paragraph 10(c)(ii) represents a genuine pre-estimate of shall be subject to the Defaulting Party having satisfied all losses and damages and/or its obligations (under the GMRA or that such amount is otherwise) to the Non-Defaulting Party; these amendments may or may not a penalty</u> <u>include payments to, or obligations of, Affiliates of one party or of both parties;</u></p>
	<p><u>Paragraph 10(e)</u></p>
	<p>any deletion of, addition to or modification of Paragraph 10(e);</p>
	<p><u>Paragraph 10(f)</u></p>
	<p>any deletion of, addition to or modification of Paragraph 10(f);</p>
	<p><u>Paragraph 10(g)</u></p>
	<p>any deletion of Paragraph 10(g), or any modification to such provision e.g., establishing an obligation of the Defaulting Party to indemnify the other party against additional losses, damages, expenses etc.;</p>
	<p><u>Paragraph 10(h)</u></p>
	<p>any deletion of Paragraph 10(h) or any modification of such provision to the effect that either party can claim any sum, or certain components, of consequential loss or damage in the event of a failure by the other party to perform any of its obligations under this GMRA; <u>any amendment to Paragraph 10(c) clarifying that the amount due as a result of the calculation described in Paragraph 10(c)(ii) represents a genuine pre-estimate of all losses and damages and/or that such amount is not a penalty;</u></p>
	<p><u>Paragraph 13</u></p>
	<p>any amendment to expand the applicability of the GMRA to transactions that have been effected before the date of the GMRA, irrespective of whether they have been entered into under a prior master agreement, that has been superseded by the GMRA, or not;</p>

any amendment to add at the end of Paragraph 13 after the word “hereunder” and before the “.” the following:
“, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted, and (iii) that each party shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transaction hereunder.”

~~[Paragraph 15]~~

~~any amendment to the first sentence providing that a particular existing agreement survives;~~

~~any amendment to the second sentence clarifying that each paragraph of an Annex to the GMRA shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph;~~

~~any amendment to the second sentence (i) clarifying that each paragraph to an Annex of the GMRA shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph and (ii) stipulating that the parties shall endeavour to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close a possible to that of the invalid, illegal or unenforceable provision.~~

~~any amendment to the second sentence to the effect that circumstances such as an illegality, invalidity or unenforceability of a provision of the GMRA or any of the Annexes thereto shall not affect its remaining provisions except to the extent necessary to delete the illegal, invalid or unenforceable provision, unless the deletion of such provision substantially impairs the benefits of the remaining portions of the GMRA; provided that, without limitation, the deletion of Paragraph 1, 2(a), 3, 6, 10 or 13 and any provisions of the Annexes, which correspond to such Paragraphs, would substantially impair the benefits of the remaining portions of the GMRA;~~

~~Paragraph 16(a)
(no amendments)~~

Paragraph 17

any change providing that all terms and phrases which are used in the GMRA and which are expressly defined by reference to statutory provisions of a specified jurisdiction shall be governed by and/or construed in accordance with the laws of such jurisdiction (and without regard to its choice of law principles);

any change to the effect that the courts of England have exclusive jurisdiction, such changes may or may not provide that the exclusiveness of the courts of England apply to one party only and that the other party retains its right to take proceedings in the courts of any other country of competent jurisdiction;

in an ~~Agreement~~ [GMRA](#) entered into between a party incorporated, organised or resident in England (the “English Party”) and a party which is not an English Party (the “Non-English Party”), any change to the effect that (i) the fourth sub-paragraph of Paragraph 17 applies to the English Party only and, with respect to the Non-English Party, the courts of England have exclusive jurisdiction, (ii) the English Party may in its absolute discretion take proceedings in the courts of any other country which may have jurisdiction, (iii) the Non-English Party irrevocably waives any objections to the jurisdiction of any court referred to in (i) and (ii) and irrevocably agrees that a judgement or order of any of such courts in connection with the GMRA or any Transaction is conclusive and binding on it and may enforced against it in the courts of any other jurisdiction;

Amendments to Core Provisions
of the GMRA 2000 ~~TBMA/ISMA Global Master Repurchase Agreement~~

General Remark: Pursuant to the assumption of the legal opinions on the enforceability of the ~~Global Master Repurchase Agreement~~ GMRA prepared for ICMA, modifications made by the Annexes (i.e., Buy/Sell Back Annex, Agency Annex, Bills of Exchange Annex, Equities Annex, Canadian Annex and Italian Annex⁶⁸) in the form published by ICMA⁶⁹, the Gilts Annex in the form published by the Bank of England, and the Japanese Annex in the form published by the Japanese Securities Dealers Association⁷⁰ are covered by the opinions.

<u>Paragraph 1(a)</u>
any amendment to expand the applicability of the GMRA to transactions that have been effected before the date of the GMRA, irrespective of whether they have been entered into under a prior master agreement that has been superseded by the GMRA or not;
any amendment to expand the applicability of the GMRA to transactions in which one party agrees to sell to the other equities, U.S. Treasury Instruments or Net Paying Securities;
<u>Paragraph 2</u>
Definition of “Act of Insolvency”: any change to cover additional cases under Paragraph 2(a);
Definition of “Act of Insolvency”: any modification to Paragraph 2(a) more specifically describing the terms “trustee”, “administrator” or “analogous officer” used in sub-clause (iii) or (v), e.g., adding any such officer;
Definition of “Act of Insolvency”: any modification to Paragraph 2(a) more specifically describing a proceeding intended to be covered by the term “analogous proceeding” used in sub-clause (iv) or (vi), e.g., adding any such proceeding;
Definition of “Act of Insolvency”: any change to Paragraph 2(a)(iv) deleting the third parenthetical in the seventh and eighth <u>and ninth</u> line;
Definition of “Act of Insolvency”: any change to Paragraph 2(a)(iv) broadening the scope of the third parenthetical in the seventh and eighth <u>and ninth</u> line, e.g., by more specifically describing a proceeding intended to be covered by the term “analogous proceeding” or by adding any such proceeding;
Definition of “Act of Insolvency”: any change to Paragraph 2(a)(iv) providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Act of Insolvency;
Definition of “Act of Insolvency”: any modification of the 30 day period contained in sub-clauses (iv) of Paragraph 2(a);
Definition of “Act of Insolvency”: any change to Paragraph 2(a)(iv) inserting the words “provided that this definition shall not apply to any proceedings which are of a frivolous or vexatious nature” after the word “filing”;
Definition of “Act of Insolvency”: any change to Paragraph 2(a)(iv) requiring that the presentation or filing of the petition must be made in good faith or a commercially reasonable manner;

	Definition of "Equivalent Securities": any change to Paragraph 2(s) broadening the scope of such definition to cover a conversion, subdivision or consolidation of Purchased Securities;
	Definition of "equivalent to": any change to Paragraph 2(t) pursuant to which Securities will be equivalent to other Securities notwithstanding that those Securities have been re-denominated in Euro or the nominal value of the Securities has changed in connection with such re-denomination;
	Paragraph 3(c) (no amendments)
	Paragraph 6(a)
	any amendment modifying the enumeration of book entry systems (e.g., adding the book entry system of the Federal Reserve Bank of New York) in the second sentence under (ii);
	any change providing that transfers pursuant to Paragraph 6(a) are to be effected in compliance with a particular Act (e.g., the U.S. Uniform Commercial Code) or the applicable provisions of a specified jurisdiction (which shall be deemed to include any method of transfer mutually agreed between the Seller and the Buyer) or the applicable requirements and procedures of a specified securities clearance system; Definition of "Pricing Rate": any change to Paragraph 2(ee) broadening the scope of such definition to cover a negative percentage rate;
	Paragraph 6(e) (no amendments)
	Paragraph 6(f) (no amendments)
	Paragraph 10(a) (other than Paragraph 10(a)(vi))
	any modification adding further events that constitute an Event of Default as defined in Paragraph 10(a) (e.g., without limitation, the failure to deliver Purchased Securities or Equivalent Securities on the applicable date, a force majeure, cross default or downgrading event, the death or incapacity of a party or its general partner, any Default under a Specified Transaction), such change may or may not be coupled with a grace period or the serving of a Default Note on the Defaulting Party by the non-Defaulting Party;
	any change broadening the scope of Paragraph 10(a)(i) to the effect that the failure by any party, whether Buyer or Seller, to make any payment under the GMRA constitute an Event of Default, such change may or may not be coupled with a grace period;
	any deletion of, addition to or modification of the scope of the enumerated Events of Default contained in Paragraph 10(a)(ix);
	the stipulation of a grace period or the modification of the grace period with respect to the Events of Default in Paragraph 10(a);

	<p>In an Agreement entered into between a Party subject to the insolvency laws of [country] (the "[country] Party") and a Party not subject to the insolvency laws of [country] (the "Non-[country] Party"), any change to Paragraph 10(a) that applies only with respect to the Non-[country] Party, such changes may or may not be coupled with other changes of Paragraph 10(a);</p>
	<p><u>Paragraph 10(a)(vi)</u></p>
	<p>any change providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Event of Default;</p>
	<p>any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required in the cases mentioned in the parenthetical, irrespective of whether this change applies to all or only one or more of such cases; such changes may or may not be coupled with other changes of Paragraph 10(a)(vi) or the definition "Act of Insolvency";</p>
	<p>any change eliminating the requirement that the non-Defaulting Party serves a Default Notice on the Defaulting Party, irrespective of whether this change applies to all or only one or more certain cases of an Act of Insolvency; such changes may or may not be coupled with other changes of Paragraph 10(a)(vi) or the definition "Act of Insolvency";</p>
	<p>any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is required only if the relevant petition is presented or filed in a court or before an agency, or the relevant receiver, administrator, liquidator, trustee or analogous officer has been appointed by a court or agency in the jurisdiction where the Defaulting Party is incorporated, irrespective of whether this change applies to all or only one or more of the proceedings or officers specified in Paragraph 2(a)(vi) or (vii); such changes may or may not be coupled with a change in Paragraph 2(a)(vi) or (vii);</p>
	<p>any change to the effect that the serving of a Default Notice on the Defaulting Party by the non-Defaulting Party is not required, if the Defaulting Party is governed by a legal system that does not permit termination to take place after certain cases of an Act of Insolvency have occurred;</p>
	<p>any change to the effect that certain events are treated in the same way as an Act of Insolvency or as an Act of Insolvency, for which no Default Notice is required;</p>
	<p>In an Agreement entered into between a Party subject to the insolvency laws of [country] Slovenia (the "[country] Slovenia Party") and a Party not subject to the insolvency laws of [country] Slovenia (the "Non-[country] Slovenia Party"), any change to paragraph Paragraph 10(a)(vi) that applies only with respect to the Non-[country] Slovenia Party, such changes may or may not be coupled with other changes of Paragraph 10(a)(vi);</p>
	<p><u>Paragraph 10(b)</u> (no amendments)</p>
	<p>(no amendments)</p>
	<p><u>Paragraph 10(c)</u></p>
	<p>any change providing that the payment of an amount that is due as a result of the calculation described in Paragraph 10(c)(ii) may be set-off against certain other obligations;</p>

	<p>any change providing for a separate netting of Transactions that, under applicable law, cannot <u>the Default Market Value and the amount of any Cash Margin to be netted against one another</u> transferred and the Repurchase Price to be paid shall be established in performing the calculations contemplated by Paragraph 10(c)(ii); <u>good faith and in a commercially reasonable manner;</u></p>
	<p>any amendment providing that the payment by the Non-Defaulting Party of an amount that is due as a result the calculation described in Paragraph 10(c)(ii) shall be subject to the Defaulting Party having satisfied all of its obligations (under the GMRA or otherwise) to the Non-Defaulting Party; these amendments may or may not include payments to, or obligations of, Affiliates of one party or of both parties; <u>any change providing for a separate netting of Transactions that, under applicable law, cannot be netted against one another in performing the calculations contemplated by Paragraph 10(c)(ii);</u></p>
	<p>any amendment to Paragraph 10(c) clarifying <u>providing</u> that the <u>payment by the Non-Defaulting Party of an amount that is</u> due as a result of the calculation described in Paragraph 10(c)(ii) represents a genuine pre-estimate of <u>shall be subject to the Defaulting Party having satisfied all losses and damages and/or its obligations (under the GMRA or that such amount is otherwise) to the Non-Defaulting Party; these amendments may or may not a penalty</u> include payments to, or obligations of, Affiliates of one party or of both parties;</p>
	<p><u>Paragraph 10(e)</u></p>
	<p>any deletion of, addition to or modification of Paragraph 10(e);</p>
	<p><u>Paragraph 10(h)</u></p>
	<p>any deletion of, addition to or modification of Paragraph 10(h);</p>
	<p><u>Paragraph 10(i)</u></p>
	<p>any deletion of Paragraph 10(i), or any modification to such provision e.g., establishing an obligation of the Defaulting Party to indemnify the other party against additional losses, damages, expenses etc.;</p>
	<p><u>Paragraph 10(j)</u></p>
	<p>any deletion of Paragraph 10(j) or any modification of such provision to the effect that either party can claim any sum, or certain components, of consequential loss or damage in the event of a failure by the other party to perform any of its obligations under this Agreement; <u>any amendment to Paragraph 10(c) clarifying that the amount due as a result of the calculation described in Paragraph 10(c)(ii) represents a genuine pre-estimate of all losses and damages and/or that such amount is not a penalty;</u></p>
	<p><u>Paragraph 13</u></p>
	<p>any amendment to expand the applicability of the Agreement to transactions that have been effected before the date of the Agreement <u>GMRA</u>, irrespective of whether they have been entered into under a prior master agreement, that has been superseded by the Agreement <u>GMRA</u>, or not;</p>

any amendment to add at the end of Paragraph 13 after the word “hereunder” and before the “.” the following:
“, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted, and (iii) that each party shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transaction hereunder.”

~~[Paragraph 15]~~

~~any amendment to the first sentence providing that a particular existing agreement survives;~~

~~any amendment to the second sentence clarifying that each paragraph of an Annex to the Agreement shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph;~~

~~any amendment to the second sentence (i) clarifying that each paragraph to an Annex of the Agreement shall be treated as separate from any other paragraph and shall be enforceable notwithstanding the unenforceability of any such other paragraph and (ii) stipulating that the parties shall endeavour to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close a possible to that of the invalid, illegal or unenforceable provision.~~

~~any amendment to the second sentence to the effect that circumstances such as an illegality, invalidity or unenforceability of a provision of the Agreement or any of the Annexes thereto shall not affect its remaining provisions except to the extent necessary to delete the illegal, invalid or unenforceable provision, unless the deletion of such provision substantially impairs the benefits of the remaining portions of the Agreement; provided that, without limitation, the deletion of Paragraph 1, 2(a), 3, 6, 10 or 13 and any provisions of the Annexes, which correspond to such Paragraphs, would substantially impair the benefits of the remaining portions of the Agreement;~~

~~Paragraph 16(a)
(no amendments)~~

Paragraph 17

any change providing that all terms and phrases which are used in the ~~Agreement~~GMRA and which are expressly defined by reference to statutory provisions of a specified jurisdiction shall be governed by and/or construed in accordance with the laws of such jurisdiction (and without regard to its choice of law principles);

any change to the effect that the courts of England have exclusive jurisdiction, such changes may or may not provide that the exclusiveness of the courts of England apply to one party only and that the other party retains its right to take proceedings in the courts of any other country of competent jurisdiction;

in ~~an Agreement~~a GMRA entered into between a party incorporated, organised or resident in England (the “English Party”) and a party which is not an English Party (the “Non-English Party”), any change to the effect that (i) the ~~fourth~~fifth sub-paragraph of Paragraph 17 applies to the English Party only and, with respect to the Non-English Party, the courts of England have exclusive jurisdiction, (ii) the English Party may in its absolute discretion take proceedings in the courts of any other country which may have jurisdiction, (iii) the Non-English Party irrevocably waives any objections to the jurisdiction of any court referred to in (i) and (ii) and irrevocably agrees that a judgment or order of any of such courts in connection with the ~~Agreement~~GMRA or any Transaction is conclusive and binding on it and may enforced against it in the courts of any other jurisdiction;

Amendments to Core Provisions of the GMRA 2011

<u>Paragraph 1(a)</u>
<u>any amendment to expand the applicability of the GMRA to transactions that have been effected before the date of the GMRA, irrespective of whether they have been entered into under a prior master agreement that has been superseded by the GMRA or not;</u>
<u>Paragraph 2</u>
<u>Definition of “Act of Insolvency”: any change to cover additional cases under Paragraph 2(a);</u>
<u>Definition of “Act of Insolvency: any modification to Paragraph 2(a) more specifically describing “enforcement measures” used in sub-clause (ii), e.g., adding any such measure;</u>
<u>Definition of “Act of Insolvency”: any modification to Paragraph 2(a) more specifically describing the terms “trustee”, “administrator”, “receiver”, “liquidator”, “conservator”, “custodian” or “analogous officer” used in sub-clause (iv) or (vi), e.g., adding any such officer;</u>
<u>Definition of “Act of Insolvency”: any modification to Paragraph 2(a) more specifically describing a proceeding intended to be covered by the term “analogous proceeding” used in sub-clause (v) or (vii), e.g., adding any such proceeding;</u>
<u>Definition of “Act of Insolvency”: any change to Paragraph 2(a)(v) deleting the third parenthetical in the eighth, ninth, tenth and eleventh lines;</u>
<u>Definition of “Act of Insolvency”: any change to Paragraph 2(a)(v) broadening the scope of the third parenthetical in the eighth, ninth, tenth and eleventh lines, e.g., by more specifically describing a proceeding intended to be covered by the term “analogous proceeding” or by adding any such proceeding;</u>
<u>Definition of “Act of Insolvency”: any change to Paragraph 2(a)(v) providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Act of Insolvency;</u>
<u>Definition of “Act of Insolvency”: any modification of the 15 day period contained in sub-clauses (ii) or (v) of Paragraph 2(a);</u>
<u>Definition of “Act of Insolvency”: any change to Paragraph 2(a)(v) inserting the words “provided that this definition shall not apply to any proceedings which are of a frivolous or vexatious nature” after the word “filing”;</u>
<u>Definition of “Act of Insolvency”: any change to Paragraph 2(a)(v) requiring that the presentation or filing of the petition must be made in good faith or a commercially reasonable manner;</u>
<u>Definition of “Competent Authority”: any change to Paragraph 2(i) to the effect that any regulator, supervisor or similar official with any insolvency, rehabilitative or regulatory jurisdiction over a party constitutes a “Competent Authority”, such change may or may not be limited to certain specified jurisdictions or to those jurisdiction where the head office or any Designated Office is located;</u>
<u>Definition of “Competent Authority”: any change to Paragraph 2(i) to more specifically describing the term “any similar official”;</u>

	Definition of "Equivalent Securities": any change to Paragraph 2(u) broadening the scope of such definition to cover a conversion, subdivision or consolidation of Purchased Securities;
	Paragraph 10(a)(vi)
	any change providing that certain acts or proceedings (e.g., without limitation, a permitted reorganization as defined under Section 93 of the United Kingdom Building Societies Act 1986) do not constitute an Event of Default;
	in an GMRA entered into between a Relevant Entity subject to the insolvency laws of Slovenia (the "Slovenia Party") and a party not subject to the insolvency laws of Slovenia (the "Non-Slovenia Party"), any change to Paragraph 10(a)(vi) that applies only with respect to the Non-Slovenia Party, such changes may or may not be coupled with other changes of Paragraph 10(a)(vi);
	Paragraph 10(b)
	any deletion of, addition to or modification of the words "which is the presentation of a petition for winding-up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party";
	any change to the second sentence providing for its application to events added to the GMRA as additional Events of Default;
	any change to the second sentence to the effect that "Automatic Early Termination" shall only apply in respect of an Act of Insolvency if the relevant proceeding is instituted by, or the relevant petition is presented to a Competent Authority or in the jurisdiction of its head office; such changes may or may not be coupled with a change to Paragraph 2(a) or to Paragraph 2(i);
	any change to the second sentence to the effect that, if "Automatic Early Termination" is specified in Annex I with respect to the Defaulting Party, certain events are treated in the same way as an Act of Insolvency;
	any change to the second sentence to the effect that "Automatic Early Termination" shall apply if the Defaulting Party is governed by a legal system that does not permit termination to take place after an Act of Insolvency has occurred;
	in an GMRA entered into between a Relevant Entity subject to the insolvency laws of Slovenia (the "Slovenia Party") and a party not subject to the insolvency laws of Slovenia (the "Non-Slovenia Party"), any change to Paragraph 10(b) that applies only with respect to the Non-Slovenia Party, such changes may or may not be coupled with other changes of Paragraph 10(b);
	Paragraph 10(d)
	any change providing that the Default Market Value and the amount of any Cash Margin to be transferred and the Repurchase Price to be paid shall be established in good faith and in a commercially reasonable manner;
	any change providing for a separate netting of Transactions that, under applicable law, cannot be netted against one another in performing the calculations contemplated by Paragraph 10(d)(ii);
	any amendment providing that the payment by the Non-Defaulting Party of an amount that is due as a result the calculation described in Paragraph 10(d)(ii) shall be subject to the Defaulting Party having satisfied all of its obligations (under the GMRA or otherwise) to the Non-Defaulting Party; these amendments may or may not include payments to, or obligations of, Affiliates of one party or of both parties;

	<p><u>any amendment to Paragraph 10(d) clarifying that the amount due as a result of the calculation described in Paragraph 10(d)(ii) represents a genuine pre-estimate of all losses and damages and/or that such amount is not a penalty;</u></p>
	<p><u>Paragraph 13</u></p>
	<p><u>any amendment to expand the applicability of the GMRA to transactions that have been effected before the date of the GMRA, irrespective of whether they have been entered into under a prior master agreement, that has been superseded by the GMRA, or not;</u></p>
	<p><u>any amendment to add at the end of Paragraph 13 after the word “hereunder” and before the “.” the following: “, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted, and (iii) that each party shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transaction hereunder.”</u></p>
	<p><u>Paragraph 17</u></p>
	<p><u>any change providing that all terms and phrases which are used in the GMRA and which are expressly defined by reference to statutory provisions of a specified jurisdiction shall be governed by and/or construed in accordance with the laws of such jurisdiction (and without regard to its choice of law principles);</u></p>
	<p><u>any change to the effect that the exclusiveness of the courts of England apply to one party only and that the other party retains its right to take proceedings in the courts of any other country of competent jurisdiction;</u></p>
	<p><u>in a GMRA entered into between a party incorporated, organised or resident in England (the “English Party”) and a party which is not an English Party (the “Non-English Party”), any change to the effect that (i) the English Party may in its absolute discretion take proceedings in the courts of any other country which may have jurisdiction, (ii) the Non-English Party irrevocably waives any objections to the jurisdiction of any court referred to in (i) and irrevocably agrees that a judgement or order of any of such courts in connection with the GMRA or any Transaction is conclusive and binding on it and may enforced against it in the courts of any other jurisdiction;</u></p>
	<p><u>any change to the second sub-paragraph of Paragraph 17 (beginning with “The English courts shall have ...”) deleting the word “exclusive” or replacing the words “exclusive jurisdiction” with “non-exclusive jurisdiction”;</u></p>