The *Saeima*1 has adopted and

the President has proclaimed the following law:

**Law on Close-out Netting Applicable to Qualified Financial Transactions**

**Section 1. Purpose of the Law**

The purpose of the Law is:

1) to ensure financial market stability by limiting the systemic risk which may be caused by legal protection, insolvency, or liquidation proceedings against any market participant;

2) to protect the parties to a close-out netting agreement (hereinafter – the contracting parties) in case legal protection, insolvency, or liquidation proceedings are carried out in respect of any of the parties;

3) to promote the development of the financial instrument market in Latvia.

**Section 2. Scope of Application of the Law**

(1) This Law prescribes the application of close-out netting to qualified financial transactions.

(2) In the case of application of a crisis prevention measure or crisis management measure or in the case of any event directly related to the application of such measure, this Law shall be applied insofar as it has not been laid down otherwise in the Law on Recovery of Activities and Resolution of Credit Institutions and Investment Firms.

(3) This Law shall not apply to those participants in the payment and financial instrument settlement systems and indirect participants whose activities are regulated by the law On Settlement Finality in Payment and Financial Instrument Settlement Systems if the abovementioned participants execute the transfer orders related to the qualified financial transactions within the scope of the relevant systems.

**Section 3. Subjects of the Law**

(1) The Law governs the procedures for the application of close-out netting only in cases where the parties to the close-out netting agreement are:

1) the Republic of Latvia, a derived public person thereof, a State administration institution, or subjects of other Member States equivalent to these institutions (also institutions responsible for the administration of public debt or participating in its administration, and institutions entitled to hold cash accounts or financial instruments on behalf of a client);

2) Latvijas Banka, central banks of other countries, the European Central Bank, the Bank for International Settlements, the International Monetary Fund;

3) the following multilateral development banks:

a) the International Bank for Reconstruction and Development;

b) the International Finance Corporation;

c) the Inter-American Development Bank;

d) the Asian Development Bank;

e) the African Development Bank;

f) the Council of Europe Development Bank;

g) the Nordic Investment Bank;

h) the Caribbean Development Bank;

i) the European Bank for Reconstruction and Development;

j) the European Investment Bank;

k) the European Investment Fund;

l) the Multilateral Investment Guarantee Agency;

m) the International Finance Facility for Immunisation;

n) the Islamic Development Bank;

o) the International Development Association;

p) the Asian Infrastructure Investment Bank;

4) the following persons licensed or regulated to operate in the financial market in the Republic of Latvia or in another Member State of the European Union, the European Economic Area, or the Organisation for Economic Co-operation and Development (hereinafter – the Member State):

a) credit institutions;

b) investment firms;

c) insurance companies;

d) reinsurance companies;

e) managers of alternative investment funds;

f) pension funds and the management companies thereof;

g) regulated market operators;

h) payment institutions;

i) electronic money institutions;

j) investment management companies;

k) other licensed or regulated financial institutions which perform activities in accordance with the laws and regulations of the Republic of Latvia or the legal acts of another Member State governing financial services;

5) the central counterparty registered in the Member State.

(2) This Law also prescribes the procedures for the application of close-out netting when one of the following conditions is in effect:

1) one of the contracting parties is the person referred to in Paragraph one of this Section, but the other is a private individual who is not a consumer within the meaning of the Consumer Rights Protection Law, a legal person or another person, or an association of such persons;

2) both contracting parties are legal persons which meet two of the following size requirements at the level of the company of the particular contracting party at the moment of entering into the close-out netting agreement, based on the last two reporting years (current and previous reporting year):

a) the balance sheet total is EUR 43 000 000;

b) the net turnover is EUR 50 000 000;

c) the average number of employees is 250.

**Section 4. Close-out Netting**

(1) Close-out netting is the provisions of a bilateral agreement concluded in writing (close-out netting agreement) the application of which, upon occurrence of an enforcement event (an event, agreed by the contracting parties in the close-out netting agreement, upon occurrence of which the contracting parties apply close-out netting), may be commenced either by a notice given by one contracting party to the other, or automatically, and as a result thereof upon mutual recalculation, netting, or other legally equivalent actions:

1) mutual claims and liabilities of the contracting parties arising from the close-out netting agreement are replaced by a mutual obligation to pay amounts which are determined according to the provisions of the close-out netting agreement, including taking into account the market value of the initial claims and liabilities of the contracting parties at the moment of application of the close-out netting;

2) a calculation is prepared regarding the amounts which one contracting party shall repay to the other contracting party in accordance with Paragraph one, Clause 1 of this Section, and the calculated amounts are converted into a single currency;

3) the contracting party the payable sum of which is larger pays to the other contracting party only the excess of the payable sum of the other contracting party (net balance).

(2) Within the meaning of this Law, an agreement which includes the provisions in relation to transactions which are not qualified financial transactions shall also be considered a close-out netting agreement, provided that such agreement is considered a close-out netting agreement only in relation to the qualified financial transactions.

**Section 5. Qualified Financial Transactions**

(1) Qualified financial transactions shall be the following financial agreements, contracts, or transactions according to which liabilities are due to be fulfilled at a certain time or during a certain period of time, whether or not subject to any conditions:

1) transactions in relation to the financial instruments indicated in Section 3, Paragraph two, Clauses 4, 5, 6, 7, 8, 9, and 10 of the Financial Instrument Market Law;

2) spot transactions in relation to currencies, securities, or commodities which are referred to in Article 7(2) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

(2) The Financial and Capital Market Commission has the right to issue provisions determining which type of transaction is to be recognised as a qualified financial transaction in addition to the transactions referred to in Paragraph one of this Law.

**Section 6. Application of Close-out Netting**

(1) Close-out netting may be applied to the legal protection, insolvency, or liquidation proceedings of any contracting party, and it shall not affect the enforcement of close-out netting.

(2) In applying close-out netting, no provisions included in the laws and regulations applying to legal protection, insolvency, or liquidation proceedings, including to relationship with creditors, management or retention of resources, or any other measure related to insolvency, shall be applicable.

(3) The exceptions specified in this Law in relation to the application of the provisions included in the laws and regulations to the legal protection, insolvency, and liquidation proceedings are not applied to the excess of the payable sum (net balance) referred to in Section 4, Paragraph one, Clause 3 of this Law.

(4) Section 4, Paragraph two of this Law shall not preclude the application of close-out netting to financial collateral in accordance with the Financial Collateral Law.

**Section 7. Non-application of Individual Legal Norms Governing Legal Protection, Insolvency, and Liquidation Proceedings**

(1) The rights of the insolvency administrator specified in the Insolvency Law and the Credit Institution Law to unilaterally withdraw from a contract shall not limit the application of close-out netting.

(2) The legal effect of the provisions of a close-out netting agreement shall not be affected by the limitations of netting, set-off of claims and liabilities or limitations equivalent thereto specified in the Insolvency Law and the Credit Institution Law.

(3) Close-out netting may not be declared invalid or cancelled only because it has been applied:

1) in the case of liquidation of the contracting party according to the decision of the participants thereof on the termination of operation (voluntary liquidation) or on the basis of a decision of the administrative institution or a court ruling – within any time period prior to the day when the notification of the Enterprise Register of the Republic of Latvia regarding the termination of operation and initiation of liquidation of the contracting party is published;

2) in the case of insolvency proceedings – within any time period prior to the day of the proclamation of the insolvency proceedings of the contracting party;

3) within the time period specified in the law or regulation governing the liquidation or insolvency proceedings of commercial companies (also credit institutions) prior to the day of initiation of such proceedings on which it may be requested to declare the concluded transactions invalid.

(4) Close-out netting is valid and binding on the third parties also in case when it has been applied after setting in of the time period referred to in Paragraph three of this Section.

**Section 8. Cross-border Close-out Netting**

In case of a cross-border insolvency procedure as an enforcement event, close-out netting shall be applicable to a participant in the group of the contracting parties in accordance with the procedures laid down in Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings or in accordance with the legal acts of the relevant country governing insolvency procedures in respect of a participant in such group of the contracting parties whose home (registration) country is any of the countries of the Organisation for Economic Co-operation and Development or the European Economic Area which is not a Member State of the European Union.

**Informative Reference to a European Union Directive**

The Law contains legal norms arising from Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency).

The Law has been adopted by the *Saeima* on 30 September 2021.

President E. Levits

Rīga, 15 October 2021