

YOUR REFERENCE

IN REPLY PLEASE QUOTE

DATE

70-40531117/HZS

14 February 2013

### NETTING ANALYSER LIBRARY

The Futures and Options Association  
2nd Floor  
36-38 Botolph Lane  
London EC3R 8DE

Dear Sirs

#### CCP Opinion in relation to Japan Securities Clearing Corporation

You have asked us to give an opinion in respect of the laws of Japan ("**this jurisdiction**") as to collateral arrangements in relation to Japan Securities Clearing Corporation (the "**Clearing House**") as between the Clearing House and its clearing members (*seisan sankasha*) (each a "**Member**"). Please note that the Clearing House clears (i) the exchange traded derivative transactions, (ii) over-the-counter credit default swap transactions and (iii) over-the-counter credit default swap transactions. However, no over-the-counter derivative transactions under the form agreement published by the Futures and Options Association is eligible for clearing at the Clearing House and therefore the scope of this Opinion Letter is limited to the matters in respect of the exchange traded derivative transactions only.

We understand that your requirement is for understanding collateral arrangements and certain other items in respect of the Clearing House.

Since there is no netting or set-off provision in the Clearing House Documentation (as defined below), we are not in a position to opine the enforceability or validity of netting or set-off provision.

References herein to "**this opinion**" are to the opinion given in Section 3.

C L I F F O R D

C H A N C E

1. TERMS OF REFERENCE

- 1.1 Except where otherwise defined herein, terms defined in the Rules of the Clearing House have the same meaning in this opinion letter.
- 1.2 The opinions given in Section 3 relate to the Clearing House Documentation as at the date of this opinion. We express no opinion as to any provisions of the Clearing House Documentation other than those on which we expressly opine.
- 1.3 This opinion letter and the opinions given in Section 3 are governed by Japanese law and relate only to Japanese law as applied by the Japanese courts as at today's date. We express no opinion in this opinion letter on the laws of any other jurisdiction.
- 1.4 The opinions given in Section 3.5 are given only in relation to Non-cash Collateral comprising securities recorded and cleared through the JASDEC System or the BOJ System pursuant to the Book-Entry Transfers Act.

1.5 Definitions

In this opinion, unless otherwise indicated:

- (a) "**Assessment Liability**" means a liability of a Member to pay an amount to the Clearing House in respect of a fund or charge in case of default by any Member (including a contribution to the assets or capital of the Clearing House, or to any default or similar fund maintained by the Clearing House); but excluding:
- (i) any obligations to provide margin or collateral to the Clearing House, where calculated at any time by reference to Contracts open at that time;
  - (ii) membership fees, fines and charges;
  - (iii) reimbursement of costs incurred directly or indirectly on behalf of or for the Member or its own clients;
  - (iv) indemnification for any taxation liabilities;
  - (v) payment or delivery obligations under Contracts; or
  - (vi) any payment of damages awarded by a court or regulator for breach of contract, in respect of any tortious liability or for breach of statutory duty.
- (b) "**BOJ**" means the Bank of Japan;

C L I F F O R D

C H A N C E

- (c) "**BOJ System**" means the clearing system of the Japanese government bonds managed by the BOJ pursuant to the Book-Entry Transfers Act;
- (d) "**Book-Entry Transfers Act**" means the Act Concerning Book-Entry Transfers of Corporate Bonds, Shares, etc. of Japan (*shasai kabushiki tou no furikae ni kansuru horitsu*) (Act No. 75 of 2001, as amended);
- (e) "**Business Rules**" means the business rule (*gyomu houhou sho*) of the Clearing House in respect of clearing and settlement of the transactions traded at certain exchanges;
- (f) "**Clearing Agreement**" means the clearing participant agreement entered into between each Member and the Clearing House substantially in the form attached hereto at Annex 1 or an Equivalent Clearing Agreement;
- (g) "**Clearing House Documentation**" means the Clearing Agreement and Rules;
- (h) "**Collateral Funds**" means clearing fund (*seisan kikin*), margin for when-issued transaction (*baibai shouko kin*), security money for facilitating delivery versus payment settlement (*kessai sokushin tanpo kin*) and margin relating the futures and option contracts (*torihiki shouko kin*), each as defined in the Rules;
- (i) "**Contract**" means each of a contract relating to the transactions set forth in Items (1) through (11) of Paragraph 3 of Article 3 of the Business Rule which is registered at the Clearing House;
- (j) "**Default Day**" means the date of the occurrence of the relevant default in respect of the Defaulting Member (including a day on which the Clearing House deems there is a real possibility of default);
- (k) "**Defaulting Member**" means a Member who does not perform the settlement of Contracts for clearing or in respect of whom the Clearing House deems there is a real possibility that such Member does not perform the settlement of Contracts for clearing;
- (l) "**Equivalent Clearing Agreement**" means any agreement or other document entered into by or on behalf of a Member pursuant to which such Member agrees to be bound by the Rules as a Member but which contains no other provisions which may be relevant to the matters opined on in this opinion letter;

C L I F F O R D

C H A N C E

- (m) "JASDEC" means Japan Securities Depository Center, Incorporated;
- (n) "JASDEC System" means the depository and clearing system of securities managed by JASDEC pursuant to the Book-Entry Transfers Act;
- (o) "Non-cash Collateral" means the non-cash collateral provided to the Clearing House as margin under the Clearing House Documentation;
- (p) "Party" means the Clearing House or the relevant Member;
- (q) "Rules" means the rules of the Clearing House in respect of clearing and settlement of the transactions traded at certain exchanges (including the Business Rules) in force as at the date of this opinion;
- (r) "cash" means cash credited to a bank account as opposed to notes and coins;
- (s) references to the word "enforceable" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy;
- (t) a reference to "FIEA" is to the Financial Instrument and Exchange Act (*kinyu shouhin torihiki hou*) (Law No. 25 of 1948, as amended);
- (u) references to a "section" or to a "paragraph" are (except where the context otherwise requires) to a section or paragraph of this opinion (as the case may be); and
- (v) a Party which is insolvent for the purposes of any insolvency law or otherwise subject to the Insolvency Proceedings (as defined below) is called the "Insolvent Party" and the other Party is called the "Solvent Party".

## 2. ASSUMPTIONS

We assume the following:

- 2.1 That the Clearing House Documentation and Contracts are legally binding and enforceable against both Parties under their governing laws.
- 2.2 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Clearing House Documentation and Contracts; to perform its obligations under the Clearing House Documentation and Contracts; and that each

C L I F F O R D

C H A N C E

Party has taken all necessary steps to execute and deliver and perform the Clearing House Documentation and Contracts.

- 2.3 That each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the Clearing House Documentation and Contracts and to ensure the legality, validity, enforceability or admissibility in evidence of the Clearing House Documentation in this jurisdiction.
- 2.4 That both Parties have properly executed the Clearing Agreement.
- 2.5 That the Clearing House Documentation has been entered into prior to the commencement of any insolvency procedure under the laws of any jurisdiction in respect of either Party.
- 2.6 That each Party acts in accordance with the powers conferred by the Clearing House Documentation and Contracts; and that each Party performs its obligations under the Clearing House Documentation and each Contract in accordance with their respective terms.
- 2.7 That there are not any other agreements, instruments or arrangements between the Parties which modify or supersede the terms of the Clearing Agreement.
- 2.8 That the Member is at all relevant times solvent and not subject to insolvency proceedings under the laws of any jurisdiction.
- 2.9 That the obligations assumed under the Clearing House Documentation and Contracts are mutual between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owing by it and is solely entitled to the benefit of obligations owed to it.
- 2.10 That any cash provided as margin is Japanese Yen.
- 2.11 That at the time of payment of any cash or securities as margin: (a) a Member is the legal and beneficial owner of cash and securities, (b) the Member has not assigned, sold, disposed of or created any encumbrance or security interest over cash or securities, (c) no security interest, encumbrance or third party interest whatsoever exists over or in respect of cash or securities; and (d) no attachment, provisional attachment, provisional execution, procedure for collection of tax delinquency or any other similar legal administration procedure has been made or taken in respect of cash or securities.
- 2.12 That the legal title to cash provided as margin has been validly transferred to the Clearing House.

## C L I F F O R D

## C H A N C E

- 2.13 That cash provided as margin is deposited in the Clearing House's deposit account (*yotakuguchi*) which is segregated from other assets of the Clearing House.
- 2.14 That securities provided as margin has been validly transferred by way of security assignment (*jyoto tanpo*) to the Clearing House.
- 2.15 That securities provided as margin are deposited in the account exclusively for collateral (*tanpo senyou guchi*) or the holding account (*hoyu guchi*) (collectively, the "Collateral Account") in the self account (*jiko guchi*) under the JASDEC System or in the separate management account (*bunbetsu kanri guchi*) (the "Separate Account") in the proprietary ledger (*jiko guchi*) under the BOJ System as applicable.
- 2.16 That the Collateral Account and the Separate Account are segregated from the own assets of the Clearing House.
- 2.17 That cash and securities provided as margin are designated as each Member's asset.
- 2.18 That no provision of the Clearing House Documentation that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect.
- 2.19 That the notice of set-off is given by the Member to the Clearing House and the following requirements under Article 505.1 of the Civil Code (*min po*) (Law No. 89 of 1896, as amended, the "Civil Code") are satisfied:
- 2.19.1 obligations of the same type (i.e. payment obligations) are owing between two parties; and
  - 2.19.2 such obligations are due and payable.

### 3. OPINION

On the basis of the foregoing terms of reference and assumptions and subject to the qualifications set out in Section 4 below, we are of the following opinions.

#### 3.1 Insolvency Proceedings

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which the Clearing House could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion, are:

- 3.1.1 the special liquidation (*tokubetsu seisan*) proceedings (the "Special Liquidation Proceedings");
- 3.1.2 the bankruptcy (*hasan*) proceedings (the "Bankruptcy Proceedings");

- 3.1.3 the corporate reorganisation (*kaisha kosei*) proceedings (the "**Corporate Reorganisation Proceedings**"); and
- 3.1.4 the civil rehabilitation (*minji saisei*) proceedings (the "**Civil Rehabilitation Proceedings**").

These procedures are together called "**Insolvency Proceedings**".

The legislation applicable to Insolvency Proceedings is (as amended up to the date hereof, the "**Japanese Insolvency Acts**");

- 3.1.5 in relation to Special Liquidation Proceedings, Articles 510 to 574 of the Companies Act (*kaisha ho*) (Law No. 86 of 2005, as amended);
- 3.1.6 in relation to Bankruptcy Proceedings, the Bankruptcy Act (*hasan ho*) (Law No. 75 of 2004, as amended);
- 3.1.7 in relation to Corporate Reorganisation Proceedings, the Corporate Reorganisation Act (*kaisha kosei ho*) (Law No. 154 of 2002, as amended); and
- 3.1.8 in relation to Civil Rehabilitation Proceedings, the Civil Rehabilitation Act (*minji saisei ho*) (Law No. 225 of 1999, as amended).

### 3.2 **Special provisions of law**

Article 156-11-2 of the FIEA as the special provisions of law, applies to Contracts by virtue of the fact that the Contracts are, or relate to, exchange-traded derivative products which fall within the definition of the Eligible Transactions (*taisho torihiki*) (as defined therein) and are cleared through a central counterparty which is the Financial Instruments Clearing Organisation (*kinyu shohin torihiki seisan kikan*) (as defined therein).

Article 156-11-2 of the FIEA only applies to the case where the Insolvency Proceedings are commenced in respect of a Member (not the Clearing House).

### 3.3 **Recognition of choice of law**

The Rules do not contain any choice of law provisions.

### 3.4 **Cash Collateral**

If the Collateral Funds are cash, payments made by a Member to the Clearing House as cash margin constitute an absolute transfer of cash, so that, in the event of Insolvency Proceedings relating to the Clearing House, such cash would be treated as the property of the Clearing House available to its creditors generally.

In this case, the amount of cash so provided would constitute a debt owed by the Clearing House to the Member subject to the Member satisfying the requirements under the Clearing House Documentation and the Japanese Insolvency Acts and the Insolvency Proceedings. The Member may set off its debt owed to the Clearing House against such debt owed by the Clearing House pursuant to Article 505.1 of the Civil Code subject to the restrictions under the Japanese Insolvency Acts (as discussed in paragraph 4.2 below).

However, there is a possibility that the Japanese courts decide that such cash does not constitute the bankruptcy estate or property of the Clearing House in the case of the Insolvency Proceedings of the Clearing House on the basis that, among others, (i) such cash is deposited in the Clearing House's deposit account (*yotakuguchi*) which is segregated from other assets of the Clearing House, (ii) such cash is designated as each Member's asset, and (iii) the Clearing House may use such cash for the purposes set out in the Rule only, although there is no express provision in the FIEA or any other statute to treat such cash as property of each Member.

### 3.5 Non-cash Collateral

If the Collateral Funds are securities, such securities provided to the Clearing House as cover for margin and constituting Non-cash Collateral would be treated as the property of the Clearing House and would not be returnable to the Member, in the Insolvency Proceedings relating to the Clearing House. In this case, the amount equal to the value of the Non-cash Collateral would constitute a debt owed by the Clearing House to the Member subject to the Member satisfying the requirements under the Clearing House Documentation and the Japanese Insolvency Acts and the Insolvency Proceedings. The Member may set off its debt owed to the Clearing House against such debt owed by the Clearing House pursuant to Article 505.1 of the Civil Code subject to the restrictions under the Japanese Insolvency Acts (as discussed in paragraph 4.2 below).

This is because under the Rules, a Member is required to complete the book-entry transfer of the Non-cash Collateral which is provided by the Member as margin to the Collateral Account in the self account (*jiko guchi*) or the Separate Account in the proprietary ledger (*jiko guchi*) of the Clearing House's account from the proprietary ledger (*hoyuu ran*) of a Member's account in accordance with the Book-Entry Transfers Act and the procedure under the JASDEC System or the BOJ System as applicable.

However, there is a possibility that the Japanese courts decide that such securities do not constitute the bankruptcy estate or property of the Clearing House in the Insolvency Proceedings of the Clearing House on the basis that, among others, (i)



such securities are deposited in the Collateral Account and the Separate Account which are segregated from the own assets of the Clearing House, (ii) such securities are designated as each Member's asset, (iii) such securities have been validly transferred by way of security assignment (*kyoto tanpo*) to the Clearing House, and (iv) the Clearing House may use such securities for the purposes set out in the Rule only although there is no express provision in the FIEA or any other statute to treat such securities as property of each Member.

### 3.6 Members' Assessment Liabilities

A Member's Assessment Liability is as follows:

In the event that the Clearing House has suffered loss as a result of the non-performance of the settlement of the Contracts for clearing by a Defaulting Member and that any portion of the loss still remains uncompensated even after (i) the Collateral Funds and other amount deposited by the Defaulting Member (Article 78, Paragraph 1 and 2 of the Business Rules) and the participant bond (*shinnin kin*) which the Defaulting Member has deposited with the relevant financial instrument trade exchange (Article 78, Paragraph 3 of the Business Rules), (ii) the third party guarantee against loss provided by the relevant stock exchanges and (iii) the Clearing House's surplus fund (*shoken torihiki tou kessai hoshu jyunbikin*) applied to such loss (Article 78, Paragraph 4 of the Business Rules), all Members other than the Defaulting Member existing as of the Default Day shall pay the special clearing charge (*tokubetsu seisan ryo*) to the Clearing House in accordance with Article 79, Paragraph 1 and 2 of the Business Rules. The potential scope of the special clearing charge may be the amount of any losses incurred by the Clearing House caused by Defaulting Member that are not covered by the funds available under (i) through (iii), but there is no explicit cap on the special clearing charge.

If a Member does not pay the special clearing charge, such Member shall be regarded as having failed to perform the settlement of Contracts for clearing on the Default Day with respect to such unpaid amount. In such case, the Collateral Funds and other amount deposited by such Member shall be applied to such unpaid amount of the special clearing charge (Article 79, Paragraph 4 of the Business Rules).

Please note, however, the description above is the summary of the Member's Assessment Liabilities. The details of the Member's Assessment Liabilities are provided for in the Rule.

#### 4. QUALIFICATIONS

The opinions in this opinion letter are subject to the following qualifications:

##### 4.1 Limitations arising from Insolvency Law

4.1.1 The opinions set out in this opinion letter are subject to any limitations arising from insolvency, liquidation, bankruptcy, receivership, reorganisation, rehabilitation, rearrangement, avoidance and similar laws affecting the rights of creditors and/or secured creditors generally such as general prohibition of enforcement of an unsecured claim outside the Insolvency Proceedings.

4.1.2 Any provision which confers or waives, or purports to confer or waive, a right of set-off or similar right may be ineffective against an insolvency trustee or similar officer or creditor.

##### 4.2 Statutory Right of Set-Off in Insolvency Proceedings

###### 4.2.1 Statutory Right of Set-Off

(i) In any Insolvency Proceedings commenced in respect of the Insolvent Party, the Solvent Party would be granted a statutory right to set off any obligations owed to it by the Insolvent Party against any obligations owed by it to the Insolvent Party at the time of:

- (a) the issuance of the court decision for commencement (the "**Commencement Decision**") in relation to Bankruptcy Proceedings (Article 67 of the Bankruptcy Act);
- (b) the Commencement Decision in relation to Special Liquidation Proceedings (there is no express provision in this regard, but Articles 517 and 518 of the Companies Act allow set-off as mentioned in paragraph 4.2.2 below);
- (c) the Commencement Decision in relation to Corporate Reorganisation Proceedings (Article 48 of the Corporate Reorganisation Act); or
- (d) the Commencement Decision in relation to Civil Rehabilitation Proceedings (Article 92 of the Civil Rehabilitation Act),

(ii) in each case, as applicable, provided that:

- (a) (in the case of Bankruptcy Proceedings or Special Liquidation Proceedings) the Solvent Party must exercise its statutory right of set off against the bankruptcy trustee (*hasan kanzainin*) or the special liquidator (*tokubetsu seisan nin*) before the end of

the Bankruptcy Proceedings or the Special Liquidation Proceedings, as the case may be; or

- (b) (in the case of Corporate Reorganisation Proceedings or Civil Rehabilitation Proceedings):
  - (i) the obligations which the Solvent Party is seeking to set off must be due and payable or declared due and payable before the end of the period for proof of claims (the "**Window Period**"); and
  - (ii) the Solvent Party must exercise its rights of set-off during the Window Period (or the automatic set-off must occur during the Window Period).

#### 4.2.2 **Limitation of Set-Off in Insolvency Proceedings**

- (i) Notwithstanding the above, the set-off made by the Solvent Party will be avoided or set aside, and the statutory right of set-off may not be exercised, in the following cases pursuant to Articles 71 and 72 of the Bankruptcy Act, Articles 517 and 518 of the Companies Act, Articles 49 and 49.2 of the Corporate Reorganisation Act and Articles 93 and 93.2 of the Civil Rehabilitation Act:
  - (a) if the Solvent Party incurs an obligation to the Insolvent Party after the Commencement Decision in relation to the relevant Insolvency Proceeding;
  - (b) if the Solvent Party incurs an obligation to the Insolvent Party after the Insolvent Party has become unable to pay its debts as they fall due (*shiharai funou*), where the Solvent Party has the intention to set off such obligation of the Insolvent Party against obligations it owes, and is aware of the inability of the Insolvent Party to pay its debts as they fall due (*shiharai funou*) at the time of incurring of the relevant obligation;
  - (c) if the Solvent Party incurs an obligation to the Insolvent Party before the Commencement Decision in relation to the relevant Insolvency Proceedings but after the payments of the Insolvent Party have been suspended generally (*shiharai teishi*), with the knowledge thereof; except where the Insolvent Party has not become unable to pay its debts as they fall due (*shiharai funou*) at that time;
  - (d) if the Solvent Party incurs an obligation to the Insolvent Party after the application for the Commencement Decision in relation to the relevant Insolvency Proceedings has been filed, with the knowledge thereof;

*provided that* the prohibition against set-off described in paragraphs 4.2.2(b) through 4.2.2(d) above shall not apply where the Solvent Party incurred such obligation to the Insolvent Party after the relevant event (in the case of paragraph 4.2.2(b), the Insolvent Party's inability to pay (*shiharai funou*); in the case of paragraph 4.2.2(c), the Insolvent Party's general suspension of payments (*shiharai teishi*); or in the case of paragraph 4.2.2(d), application for the Commencement Decision, in relation to an Insolvency Proceeding, has been filed:

- (i) by operation of law;
- (ii) by any cause which arose before the Solvent Party was aware that the Insolvent Party had become unable to pay its debts as they fell due (*shiharai funou*), that payments of the Insolvent Party had been suspended generally (*shiharai teishi*) or that an application for a Commencement Decision in relation to an Insolvency Proceeding had been made; or
- (iii) by any cause which arose at least one year before the Commencement Decision in relation to the relevant Insolvency Proceeding;
- (e) if any obligation sought to be set off owed by the Insolvent Party to the Solvent Party arose as a result of an assignment, transfer, novation or otherwise to the Solvent Party after the Commencement Decision in relation to the relevant Insolvency Proceeding;
- (f) if any obligation sought to be set off owed by the Insolvent Party to the Solvent Party arose as a result of an assignment, transfer, novation or otherwise to the Solvent Party after the Insolvent Party has become unable to pay its debts as they fall due (*shiharai funou*), with the Solvent Party's knowledge thereof;
- (g) if any obligation sought to be set off owed by the Insolvent Party to the Solvent Party arose as a result of an assignment, transfer, novation or otherwise to the Solvent Party prior to the Commencement Decision in relation to the relevant Insolvency Proceedings, but after the payments of the Insolvent Party have been suspended generally (*shiharai teishi*), with the knowledge of the Solvent Party thereof; except where the Insolvent Party has not become unable to pay its debts as they fall due (*shiharai funou*) at that time; or
- (h) if any obligation sought to be set off owed by the Insolvent Party to the Solvent Party arose as a result of an assignment, transfer, novation or otherwise to the Solvent Party after the application for the Commencement Decision of the relevant

Insolvency Proceedings has been filed, with the knowledge of the Solvent Party thereof;

*provided that* the prohibition against set off described in paragraphs 4.2.2(f) through 4.2.2(h) above shall not apply where the Insolvent Party incurred such obligation after the relevant event (in the case of paragraph 4.2.2(f), the Insolvent Party's inability to pay (*shiharai funou*); in the case of paragraph 4.2.2(g), the Insolvent Party's general suspension of payments (*shiharai teishi*); or described in the case of paragraph 4.2.2(h), the application for the Commencement Decision of the relevant Insolvency Proceedings has been filed:

- (i) by operation of law;
- (ii) by any cause which arose before the Solvent Party was aware that the Insolvent Party had become unable to pay its debts as they fell due (*shiharai funou*), that payments of the Insolvent Party had been suspended generally (*shiharai teishi*) or that an application for a Commencement Decision in relation to a relevant Insolvency Proceeding had been made;
- (iii) by any cause which arose at least one year before the Commencement Decision in relation to the relevant Insolvency Proceeding; or
- (iv) by a contract between the Solvent Party and the Insolvent Party.

#### 4.3 Other Qualifications

- 4.3.1 Any provision of an agreement or document may be amended or waived by oral agreement between the parties, notwithstanding any provision to the contrary.
- 4.3.2 Any provision which constitutes, or purports to constitute, a restriction on the exercise of any statutory power by any person may be ineffective.
- 4.3.3 Any provision stating that a failure or delay, on the part of any person, in exercising any right or remedy under any instrument or agreement shall not operate as a waiver of such right or remedy may not be effective.
- 4.3.4 Any question as to whether or not any provision of any agreement or instrument which is illegal, invalid or void may be severed from the other provisions thereof in order to save those other provisions would be determined by a Japanese court in its discretion.

- 4.3.5 In this opinion letter, Japanese legal concepts are expressed in the English language and not in their original Japanese language. The concepts concerned may not be identical to the concepts described by the equivalent English terminology as they exist under the laws of other jurisdictions. Therefore, this opinion letter may only be relied upon under the express condition that any issues of interpretation arising with respect to such concepts will be governed by Japanese law and be brought before a Japanese court.
- 4.3.6 We express no opinion as to the existence of any property or assets to be transferred pursuant to the Clearing House Documentation, whether any such property or assets is owned by the transferor thereof or validly transferred to the transferee or whether the same is or may become subject to any equities, rights or interests in favour of any other person ranking in priority to the transferee thereof. Under conflicts of law principles of this jurisdiction, generally the law of the country where property is situated will determine the manner and effectiveness of any purported transfer of title in that property.
- 4.3.7 Ultimately the question of whether or not any particular action satisfies any provision of law would be decided by the Japanese courts and our views are based on our interpretation of the relevant laws having regard to appropriate precedents and other research and our view of a reasonable application of that interpretation of the law to the facts stated. It should of course be noted that a court may, for whatever reason, take a different view (whether reasonable or not).
- 4.3.8 A liquidator, administrator, administrative receiver or analogous or equivalent official in this jurisdiction or court in this jurisdiction would have regard to the Japanese Insolvency Acts and public order and the good morals doctrine in this jurisdiction in determining the enforceability or effectiveness of the collateral arrangements.

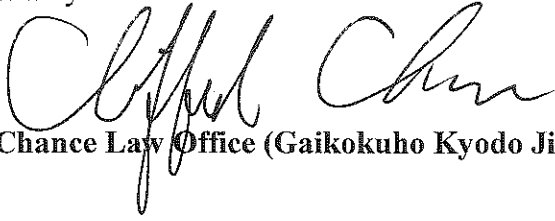
There are no other material issues relevant to the issues addressed in this opinion which we wish to draw to your attention.

This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options Association's opinions library (and whose terms of subscription give them access to this opinion). This opinion may not be relied upon by any other person unless we otherwise specifically agree with that person in writing, although we consent to it being shown to such Futures and Options Association members' affiliates (being members of such persons' groups, as defined by the UK Financial Services and Markets Act 2000) and to any competent authority supervising such member firms and their affiliates in connection with their compliance with their obligations under prudential regulation.

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C H A N C E

Yours faithfully

A handwritten signature in cursive script, appearing to read "Clifford Chance". The signature is written in black ink and is positioned above the printed name of the law office.

Clifford Chance Law Office (Gaikokuho Kyodo Jigyo)

Annex 1: Form of Clearing Agreement

Reference Translation

(For domestic corporations)

Clearing Participant Agreement

Date:            /        /

(MM) / (DD) / (YYYY)

To President & CEO of Japan Securities Clearing Corporation

Address

Trade Name or Corporate Name

Name of the Representative

(Seal)

We, *(Name of your company)*, as a *(type of clearing participant)* of Japan Securities Clearing Corporation (hereinafter referred to as "JSCC"), hereby agree that:

1. We shall abide by and comply with rules, such as JSCC's Business Rules, currently existing and to be established or amended in the future (hereinafter referred to as the "Rules").
2. We shall submit to such measures taken by JSCC in accordance with the Rules, as revocation of our clearing qualifications or suspension of assumption of obligations.
3. In cases where we renounce or forfeit clearing qualifications, we shall bear any and all responsibilities concerning such renunciation or forfeiture, and shall not cause any inconvenience for JSCC, other clearing participants, non-clearing participants that designated us as their Designated Clearing Participant and customers.
4. In cases where we receive notice from JSCC concerning an amendment of the content of this Agreement, we shall be deemed to have consented to such change if we file no objection by the prescribed date.
5. The Tokyo District Court shall be the exclusive court of jurisdiction for any litigation between us and JSCC.



Supplementary Provisions

This revised agreement shall come into effect on February 2, 2004.

This English translation of the Clearing Participant Agreement has been prepared solely for reference purposes and shall not have any binding force. The original Japanese text shall be definitive when construing or interpreting the meaning of any provision.

Reference Translation

(For Foreign corporations)

Clearing Participant Agreement

Date:            /        /

(MM) / (DD) / (YYYY)

To President & CEO of Japan Securities Clearing Corporation

Address

Trade Name or Corporate Name

Name of the Representative

(Seal)

We, (*Name of your company*), as a (*type of clearing participant*) of Japan Securities Clearing Corporation (hereinafter referred to as "JSCC"), hereby agree that:

1. We shall abide by and comply with rules, such as JSCC's Business Rules, currently existing and to be established or amended in the future (hereinafter referred to as the "Rules").
2. We shall submit to such measures taken by JSCC in accordance with the Rules, as revocation of our clearing qualifications or suspension of assumption of obligations.
3. In cases where we renounce or forfeit clearing qualifications, we shall bear any and all responsibilities concerning such renunciation or forfeiture, and shall not cause any inconvenience for JSCC, other clearing participants, non-clearing participants that designated us as their Designated Clearing Participant and customers.
4. In cases where we receive notice from JSCC concerning an amendment of the content of this Agreement, we shall be deemed to have consented to such change if we file no objection by the prescribed date.
5. Notice given by and between JSCC and us (including documents delivered by either party to the other party) shall be prepared in Japanese. In addition, any amount of money shall be presented in Japanese yen.
6. The Tokyo District Court shall be the exclusive court of jurisdiction for any litigation between us and JSCC.

Supplementary Provisions

This revised agreement shall come into effect on February 2, 2004.

This English translation of the Clearing Participant Agreement has been prepared solely for reference purposes and shall not have any binding force. The original Japanese text shall be definitive when construing or interpreting the meaning of any provision.