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14 February 2013

Your Ref

Our Ref RW/ 010026.0217

Doc ID 4129504_2

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Dear Sirs

NETTING ANALYSER LIBRARY

Collateral Opinion - Anguilla

You have asked us to give an opinion in respect of the laws of the Anguilla ("**this jurisdiction**") in respect of the Security Interests given under Agreements in the forms specified in Annex 1 to this opinion letter (each an "**Agreement**") or under an Equivalent Agreement (as defined below). Terms used in this opinion letter and not otherwise defined herein shall have the meanings ascribed to them in the Agreement. References to "**Core Provisions**" include Core Provisions that have been modified by Non-Material Amendments.

We understand that your fundamental requirement is for the effectiveness of the Security Interest Provisions of the Agreement to be substantiated by a written and reasoned opinion. Our opinion on the validity of the Security Interest Provisions is given in paragraph 3 of this opinion letter.

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

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 Subject as provided at paragraph 1.2, this opinion is given in respect of

1.1.1 persons which are:

(a) companies ("**IBCs**")[1] incorporated under the International Business Companies Act (c. I20) (the "**IBC Act**");

[1] Identified by any of the following in the last part of the name: "Limited" or "Ltd.", "Corporation" or "Corp.", "Incorporated" or 'Inc.", "Sendiran Berhad" or "Sdn Bhd", "Société à Responsabilité Limitée" or "SARL", "Société Anonyme" or "S.A.", "Sociedad Anonima" or "S.A.", "Besloten Vennootschap" or "B.V.", "Gesellschaft mit beschrankter

(b) companies ("**LLCs**")[2] incorporated under the Limited Liability Company Act (c. L65) (the "**LLC Act**"); and

(c) companies ("**CACs**")[3] incorporated or registered under the Companies Act (c. C65) (the "**Companies Act**") (but not protected cell companies which are dealt with separately in Schedule 1 (*Protected cell companies*)); and

1.1.2 Banks/financial institutions either (i) incorporated under the LLC Act or the Companies Act and licensed as a domestic bank under the Banking Act (c. B10) (the "**Banking Act**") or (ii) incorporated under Companies Act and licensed as an offshore bank or trust company under the Trust Companies and Offshore Banking Act (c. T60) (the "**TCOBA**")[4]

insofar as each may act as a counterparty (a "**Counterparty**") providing Collateral (as defined in paragraph 1.3) to a member firm of the Futures and Options Association (each a "**Firm**") under an Agreement.

1.2 However, this opinion is also given in respect of Counterparties providing Collateral to a Firm that are any of the following, subject to the terms of reference, definitions, modifications and additional assumptions and qualifications (if any) set out in the applicable Schedule:

1.2.1 Protected cell companies incorporated or registered as such under the Protected Cell Companies Act, 2004 (the "**PCC Act**") (Schedule 1 (*Protected cell companies*));

1.2.2 Investment firms/broker dealers incorporated under the IBC Act, the LLC Act or the Companies Act or organised under the Partnership Act (c. P5) (the "**Partnership Act**") or the Limited Partnership Act (c. P5) (the "**Limited Partnership Act**") and licensed to carry out investment business under the Securities Act (c. S13) (the "**Securities Act**") (Schedule 5 (*Investment firms/broker dealers*));

1.2.3 Partnerships organised under the Partnership Act or the Limited Partnership Act (Schedule 2 (*Partnerships*));

1.2.4 Insurance companies/providers incorporated under Companies Act and licensed under the Insurance Act (c. I16) (the "**Insurance Act**") (Schedule 6 (*Insurance companies/providers*));

1.2.5 Individuals (Schedule 4 (*Individuals*));

Haftung" or "GmbH", "Naamloze Vennootschap" or "N.V." or any expression approved by the Registrar of Companies as denoting the existence of a body corporate with limited liability.

[2] Identified by inclusion of the following in the name: "Limited Liability Company" or "LLC".

[3] Identified by any of the following in the last part of the name: "Limited" or "Ltd.", "Corporation" or "Corp.", "Incorporated" or 'Inc.", "Sendiran Berhad" or "Sdn Bhd", "Société à Responsabilité Limitée" or "SARL", "Société Anonyme" or "S.A.", "Sociedad Anonima" or "S.A.", "Besloten Vennootschap" or "B.V.", "Gesellschaft mit beschrankter Haftung" or "GmbH", "Naamloze Vennootschap" or "N.V." or any expression approved by the Registrar of Companies as denoting the existence of a body corporate with limited liability.

[4] The Banking Act regulates domestic banking under the auspices of the Eastern Caribbean Central Bank. The TCOBA regulates offshore banking and trust companies under the auspices of the Inspector of Trust Companies and Offshore Banks.

1.2.6 Funds incorporated under the IBC Act, the LLC Act or the Companies Act or organised under the Partnership Act or the Limited Partnership Act and where relevant licensed as mutual funds under the Mutual Funds Act (c. M107) (the "**Mutual Funds Act**") (Schedule 7 (*Funds*));

1.2.7 Parties organised as companies, partnerships or individuals acting as trustees of trusts settled in the Anguilla and regulated by the Trusts Act (c. T70) (the "**Trusts Act**") (the "**VISTA**") (Schedule 3 (*Trusts*));

1.2.8 Charitable trusts/bodies organised organised as companies, partnerships or trusts (Schedule 8 (*Charitable trusts/bodies*)); and

1.2.9 Pension entities incorporated under the IBC Act, the LLC Act or the Companies Act or organised under the Partnership Act or the Limited Partnership Act and where relevant licensed as mutual funds under the Mutual Funds Act (Schedule 10 (*Pension entities*)),

insofar as each may act as a Counterparty to a Firm under an Agreement.

1.3 This opinion is given in respect of cash and account-held securities which are the subject of the Security Interest Provisions ("**Collateral**"). The amount and value of such Collateral may fluctuate from time to time on a day to day, and possibly intra-day basis.

1.4 In this opinion letter:

1.4.1 "**Security Interest**" means the security interest created pursuant to the Security Interest Provisions;

1.4.2 "**Equivalent Agreement**" means an agreement:

(a) which is governed by the law of England and Wales;

(b) which has broadly similar function to any of the Agreements listed in Annex 1;

(c) which contains the Core Provisions (with no amendments, or with Non-material Amendments); and

(d) which neither contains (nor is modified, amended, or superseded by) any other provision which may invalidate, adversely affect, modify, amend, supersede, conflict with, provide alternatives to, compromise or fetter the operation, implementation, enforceability and effectiveness of all or part of the Core Provisions (in each case, excepting Non-material Amendments);

References to the "**Agreement**" in this letter (other than specific cross references to clauses in such Agreement and references in the first paragraph of this letter) shall be deemed also to apply to an Equivalent Agreement;

1.4.3 A "**Non-material Amendment**" means an amendment having the effect of one of the amendments set out at Annex 3;

1.4.4 "**enforcement**" means, in the relation to the Security Interest, the act of:

(i) sale and application of proceeds of the sale of Collateral against monies owed, or

(ii) appropriation of the Collateral,

in either case in accordance with the Security Interest Provisions.

1.4.5 in other instances other than those referred to at 1.4.4 above, 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.

1.4.6 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;

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

1.4.8 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2; and

1.4.9 headings in this opinion letter are for ease of reference only and shall not affect its interpretation.

2. ASSUMPTIONS

We assume the following:

2.1 That the Agreement is legally binding and enforceable against both Parties under its governing laws.

2.2 That the Security Interest Provisions are enforceable under the governing law of the Agreement to create a Security Interest.

2.3 That the Security Interest Provisions are effective under the law of the place where the Collateral is located to create an enforceable security interest.

2.4 That no provision of the Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect. In our view, an alteration contemplated in the definition of "Equivalent Agreement" above would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in the definition of Equivalent Agreement would or would not constitute a material alteration of the Agreement.

2.5 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Agreement; to perform its obligations under the Agreement; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.

2.6 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 Agreement and Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the Agreement in this jurisdiction.

2.7 That the Agreement has been properly executed by both Parties.

2.8 That the Agreement is entered into prior to the commencement of liquidation or any other insolvency proceedings in respect of either Party.

2.9 At the time at which the Agreement is entered into, neither Party has actual notice of the insolvency of the other party.

2.10 The Agreement has been entered into, and each of the transactions referred to therein is carried out, by each of the parties thereto in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.

2.11 That the Agreement accurately reflects the true intentions of each Party.

2.12 That no provisions of the Agreement, or a document of which the Agreement forms part, or any other arrangement between the Parties, invalidate the enforceability or effectiveness of the Security Provisions or the Rehypothecation Clause under the governing law of the Agreement.

2.13 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement.

2.14 That all acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreement and the creation and perfection of the security interests thereunder pursuant to laws of any jurisdiction other than this jurisdiction have been duly fulfilled, performed and effected.

2.15 That there are no provisions of the laws of any jurisdiction (apart from this jurisdiction) which would be contravened by the execution or the delivery of the Agreement.

2.16 That any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions shall at all relevant times be located outside this jurisdiction.

2.17 That any cash comprising the Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.

2.18 That neither Party has been made subject to United Nations or European Union sanctions as implemented under the laws of Anguilla.

2.19 That transactions do not involve, shares, stock, debt instruments, units or derived financial instruments of a company, limited partnership, unit trust or other business entity organised in Anguilla, Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia and Saint Vincent or the Grenadines or debt instruments of their respective governments (together "**Eastern Caribbean Financial Instruments**").

3. OPINIONS

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

3.1 Valid Security Interest

3.1.1 Following the occurrence of an Event of Default, including as a result of the opening of any Insolvency Proceedings, the Non-Defaulting Party would be entitled to enforce the Security Interest in respect of the Collateral.

3.1.2 There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.

3.1.3 Following exercise of the Firm's rights under the Security Interest Provisions, the Firm's rights in respect of the proceeds of realisation of the Collateral would rank ahead of the interests of the Counterparty therein. However Anguilla has statutory priority provisions (see Annex 6 (*Security interests*)) in respect of security interests created by IBCs which would ordinarily be applied by an Anguillan court to determine the priority of creditors of an IBC secured by the same assets. Where contractual provisions conflict with these priority provisions, an Anguillan court would ordinarily apply the Anguillan rules in preference to the contractual provisions (whether the governing law of the Agreement were Anguillan law or otherwise) and may do so even where the Netting Act applies. We believe the better view is that the Netting Act should be construed to protect the right to enforce such collateral arrangement even where a security interest exists over the collateral that would have priority under the statutory priority rules set out in the IBC Act: however there is no judicial guidance available to support this interpretation and an Anguillan court might therefore find otherwise.

3.2 Further acts

No further acts, conditions or things would be required by the law of this jurisdiction to be done, fulfilled or performed under the laws of this jurisdiction in order to enable the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.

4. QUALIFICATIONS

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

4.1 See Annex 5 (*Netting and set-off*) for a summary of statutory provisions relating to the close-out of financial contracts in Anguilla.

4.2 See Annex 6 (*Security interests*) for a summary of the law relating to the creation, perfection and priority of security interests in Anguilla.

4.3 Under Anguilla conflicts of laws principles, which are substantially the same as those under English law, the ability to substitute collateral is a matter for the governing law of the Agreement. Although the right of substitution without consent would suggest characterisation

of a security interest as a floating charge[5], this should not be the case where consent of the collateral taker is required for substitution. Again Anguilla law is the same as English law in this respect.

4.4 The Securities Act regulates among other things the provision of dealership services, advice on securities and custodial services in Anguilla. There is some ambiguity as to whether the provision of such services to Anguillan entities generally are intended to be regulated rather than merely where the underlying securities are those of member states or participating governments[6]. The Securities Act takes the form of a licensing regime. Therefore breach of the Securities Act will not invalidate a transaction, but may cause the offending institution to be liable for a fine by the Eastern Caribbean Securities Regulatory Commission.

4.5 We do not believe there is any reason in principle why an Anguillan court would seek to interfere with a right of re-use or rehypothecation if it is valid as a matter of the governing law. The position under Anguillan law with regard to this issue is the same as the position under English law: the courts of equity were historically hostile towards any provision which might interfere with a mortgagor's right to have the property re-conveyed to it, but it is now accepted that parties may agree that a secured party is to have power of sale even without default and such an agreement is not void as impairing the equity of redemption which simply attaches to the proceeds of sale. However where neither governing law nor *lex situs* of the collateral is Anguilla we consider it unlikely that an Anguillan court would be required to consider the question.

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

Yours faithfully
HARNEY WESTWOOD & RIEGELS

[5] An important point to note is that the IBC registration regime is not affected by this characterisation. However a floating charge may lose its priority to a subsequent fixed charge where there is no prohibition or restriction on the power of the security provider to create any future charge ranking in priority to or equally with the charge. In addition concerns may arise in respect of non-corporate entities (see Schedules 2 to 4).

[6] It is tolerably clear that the Securities Act is intended to regulate (at least) (i) dealership services, advice on securities and custodial services conducted within Anguilla and (ii) any activities that involve Eastern Caribbean Financial Instruments.

SCHEDULE 1
Protected cell companies

For the purposes of this Schedule 1 (*Protected cell companies*), "**PCC**" means a CAC incorporated or registered with the approval of the Anguilla Financial Services Commission as a protected cell company under the Protected Cell Companies Act, 2004 (the "**PCC Act**"). A PCC is a specific type of CAC which is formed with one or more cells. The PCC Act contains provisions restricting the allocation of assets or liabilities between two or more protected cell accounts and the general account depending on the regulatory treatment of the relevant entity[7] and provisions which, in the absence of an express governing law, may deem Anguillan law to govern a transaction with a PCC. Without specific approval from the Financial Services Commission, only insurance companies[8] may be organised as PCCs.

Subject to our comments in respect of the segregation of assets and liabilities above, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are protected cell companies.

[7] All contracts are deemed to contain a statement that the rights of each party to the contract (other than the PCC) shall not extend to, and each party to the contract (other than the PCC) shall not have recourse to, assets of the PCC linked to any other protected cell account or the general account, unless otherwise expressly agreed in writing by the parties to any transaction thereunder (a) by virtue of a governing instrument or contract and (b) in the case of a mutual fund only (see definition below) where the documents referred to in (a) clearly indicate an intention of the parties to extend liability to more than one protected cell account or the general account and contain a specific reference to subsections 8(4) and 13(5) of the PCC Act.

[8] See Schedule 7 (*Insurance companies*).

SCHEDULE 2
Partnerships

For the purposes of this Schedule 2 (*Partnerships*), "**Partnership**" means a partnership organised under the Partnership Act or a limited partnership organised under the Limited Partnership Act. Partnerships are not separate legal entities under Anguillan law.

Subject to the modifications and additions set out in this Schedule 2 (*Partnerships*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Partnerships.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

1. ADDITIONAL QUALIFICATIONS

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

1.1 The registration and statutory priority rules summarised in Annex 6 (*Security interests*) in respect of IBCs are not applicable to partnerships and questions of priority would generally be determined in accordance with the common law (which under conflicts of law rules would generally mandate the *lex situs* for determining priority). There is some question as to whether security created under a document executed by a partner on behalf of the partnership should be registered against the partner where the partner is itself an IBC. The generally accepted view is that registration is not appropriate where the assets are not beneficially owned by the IBC (as is the case where it acts as partner), but equally there is nothing to prevent registration against the partner and undoubtedly some secured lenders will have chosen to do so.

1.2 We have reservations as to the ability of unincorporated entities to create valid floating (as opposed to fixed) charges. While we take the view that characterisation as a floating charge is unlikely given the requirement for consent to substitution, if there is any question as to the degree of control over the secured assets of the secured party, care should be taken when dealing with partnerships.

SCHEDULE 3
Trusts

For the purposes of this Schedule 3 (*Trusts*), "**Trustee**" means a company, partnership or individual acting as trustees of a trust settled in Anguilla and regulated by the Trusts Act.

Subject to the modifications and additions set out in this Schedule 3 (*Trusts*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Trustees.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

1. ADDITIONAL ASSUMPTIONS

1.1 That the trustees are entitled to recourse against trust assets in respect of any liability arising under transactions entered into as trustee.

1.2 If any trustees are providing trust services in or from Anguilla that they are duly licensed under the TCOBA.

1.3 That the trust instrument confers sufficiently wide power on the trustees to enter into Transactions.

1.4 Where the proper law of the trust is Anguillan law, that the trust instrument has been stamped with applicable Anguillan trust duty (failing which it may be inadmissible in an Anguillan court).

2. ADDITIONAL QUALIFICATIONS

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

2.1 The registration and statutory priority rules summarised in Annex 6 (*Security interests*) in respect of IBCs are not applicable to trusts and questions of priority would generally be determined in accordance with the common law (which under conflicts of law rules would generally mandate the *lex situs* for determining priority). There is some question as to whether security created under a document executed by a trustee on behalf of the trust should be registered against the trustee where the trustee is itself an IBC. The generally accepted view is that registration is not appropriate where the assets are not beneficially owned by the IBC (as is the case where it acts as trustee), but equally there is nothing to prevent registration against the trustee and undoubtedly some secured lenders will have chosen to do so.

2.2 We have reservations as to the ability of unincorporated entities to create valid floating (as opposed to fixed) charges. While we take the view that characterisation as a floating charge is unlikely given the requirement for consent to substitution, if there is any question as to the degree of control over the secured assets of the secured party, care should be taken when dealing with trusts.

SCHEDULE 4
Individuals

For the purposes of this Schedule 4 (*Individuals*), "***Individual***" means an individual who is subject to the Bankruptcy Act (cap B15.) (the "**Bankruptcy Act**") of Anguilla.

Subject to the modifications and additions set out in this Schedule 4 (*Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Individuals.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

1. ADDITIONAL QUALIFICATIONS

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

1.1 The registration and statutory priority rules summarised in Annex 6 (*Security interests*) in respect of IBCs are not applicable to individuals and questions of priority would generally be determined in accordance with common law (which under conflicts of law rules would generally mandate the *lex situs* for determining priority).

1.2 We have reservations as to the ability of unincorporated entities to create valid floating (as opposed to fixed) charges. While we take the view that characterisation as a floating charge is unlikely given the requirement for consent to substitution, if there is any question as to the degree of control over the secured assets of the secured party, care should be taken when dealing with individuals.

SCHEDULE 5
Investment firms/broker dealers

For the purposes of this Schedule 5 (*Investment firms/broker dealers*), "**Investment firm/broker dealer**" means an entity organised as a company, partnership or trust and licensed to carry on investment business under the Securities Act.

Subject to any modifications and additions set out in, where appropriate, Schedule 2 (*Partnerships*) or Schedule 3 (*Trusts*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Investment firms/broker dealers.

SCHEDULE 6
Insurance companies/providers

For the purposes of this Schedule 6 (*Insurance companies/providers*), "**Insurance company**" means an insurance company organised as a CAC (including as a protected cell company) and licensed under the Insurance Act.

Subject to any modifications and additions set out in, where appropriate, Schedule 1 (*Protected cell companies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Insurance companies.

SCHEDULE 7
Funds

For the purposes of this Schedule 7 (*Funds*), "**Fund**" means an entity organised as a company (including as a protected cell company), partnership or trust for investment purposes and "**Mutual Fund**" means a Fund regulated as a mutual fund[9] under the Mutual Funds Act.

Subject to any modifications and additions set out in, where appropriate, Schedule 1 (*Protected cell companies*), Schedule 2 (*Partnerships*) or Schedule 3 (*Trusts*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Funds whether licensed as Mutual Funds or not.

[9] A mutual fund is an entity which (a) collects and pools investor funds for the purpose of collective investment and (b) issues shares that entitle the holder to receive on demand or within a specified period after demand an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the entity. Investment funds which are not mutual funds are not subject to additional licensing requirements.

SCHEDULE 8
Charitable trusts/bodies

For the purposes of this Schedule 8 (*Charitable trusts/bodies*), "**Charitable body**" means an entity organised as a company, partnership or trust for charitable purposes. It excludes any organisation licensed under the TCOBA and any charitable or non-charitable purpose trust where the trustee is licensed under the TCOBA[10].

Subject to any modifications and additions set out in, where appropriate, Schedule 2 (*Partnerships*) or Schedule 3 (*Trusts*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Charitable bodies.

[10] In other words, this schedule applies only to true charities, not financial structures that use charitable purposes to achieve orphan status.

SCHEDULE 9
Pension entities

For the purposes of this Schedule 9 (*Pension entities*), "**Pension entity**" means an entity organised as a company (including as a protected cell company), partnership or trust for collective investment of pension contributions, which may be regulated as a Mutual Fund[11] under the Mutual Funds Act.

Subject to any modifications and additions set out in, where appropriate, Schedule 1 (*Protected cell companies*), Schedule 2 (*Partnerships*) or Schedule 3 (*Trusts*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Pension Entities whether licensed as Mutual Funds or not.

[11] See Schedule 8.

ANNEX 1
FORM OF FOA AGREEMENTS

1. Professional Client Agreement (2007 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2007**")

2. Professional Client Agreement (2009 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2009**")

3. Professional Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2011**")

4. Retail Client Agreement (2007 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2007**")

5. Retail Client Agreement (2009 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2009**")

6. Retail Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2011**")

7. Eligible Counterparty Agreement (2007 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2007**")

8. Eligible Counterparty Agreement (2009 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2009**")

9. Eligible Counterparty Agreement (2011 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2011**")

For the avoidance of doubt none of the forms of the Agreements listed at this Annex 1 include or incorporate the Title Transfer Securities and Physical Collateral Annex to the Netting Modules published by the Futures and Options Association.

Where the form of any Agreement listed in this Annex 1 (as published by the Futures and Options Association) (the "**FOA Published Form Agreement**") expressly contemplates the election of certain variables and alternatives, the Agreements listed above shall be deemed to include any such document in respect of which the parties have made such expressly contemplated elections (and have made any deletions required by such elections, where such deletions are expressly contemplated in the event of such election by the applicable FOA Published Form Agreement).

Each of the Agreements listed in this Annex 1 may be deemed to include Agreements identical to the relevant FOA Published Form Agreement, save for the substitution of Two Way Clauses in place of the equivalent terms in the FOA Published Form Agreement.

ANNEX 2
DEFINED TERMS RELATING TO THE AGREEMENTS

1. The "**Eligible Counterparty Agreements**" means each of the Eligible Counterparty Agreement 2007, the Eligible Counterparty Agreement 2009 and the Eligible Counterparty Agreement 2011 (each as listed and defined at Annex 1).

2. The "**Professional Client Agreements**" means each of the Professional Client Agreement 2007, the Professional Client Agreement 2009 and the Professional Client Agreement 2011 (each as listed and defined at Annex 1).

3. The "**Retail Client Agreements**" means each of the Retail Client Agreement 2007, the Retail Client Agreement 2009 and the Retail Client Agreement 2011 (each as listed and defined at Annex 1).

4. An "**Equivalent 2011 Agreement without Core Rehypothecation Clause**" means an Equivalent Agreement in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 but which does not contain the Rehypothecation Clause.

5. "**Core Provisions**" means:

   (a) with respect to all Equivalent Agreements, the Security Interest Provisions; and

   (b) with respect to Equivalent Agreements that are in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 (but not with respect to an Equivalent 2011 Agreement without Core Rehypothecation Clause), the Rehypothecation Clause.

6. "**Insolvency Proceedings**" means insolvency, bankruptcy or analogous proceedings (where, for the purposes of paragraph 3 of this opinion, the occurrence of such proceedings in respect of the Counterparty falls within the definition of Event of Default under the Agreement).

7. "**Rehypothecation Clause**" means:

   (i) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.13 (***Rehypothecation***);

   (ii) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.15 (***Rehypothecation***);

   (iii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.13 (***Rehypothecation***); and

   (iv) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (iii) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

8. "**Security Interest Provisions**" means:

(a) the "**Security Interest Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.6 (***Security interest***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.6 (***Security interest***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.7 (***Security interest***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.8 (***Security interest***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.8 (***Security interest***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.9 (***Security interest***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.6 (***Security interest***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.6 (***Security interest***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.7 (***Security interest***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

(b) the "**Power to Charge Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.10 (***Power to charge***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.10 (***Power to charge***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.10 (***Power to charge***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.12 (***Power to charge***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.12 (***Power to charge***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.12 (***Power to charge***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.10 (***Power to charge***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.10 (***Power to charge***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.10 (***Power to charge***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

(c) the "**Power of Sale Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.11 (***Power of sale***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.11 (***Power of sale***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.11 (***Power of sale***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.13 (***Power of sale***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.13 (***Power of sale***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.13 (***Power of sale***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.11 (***Power of sale***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.11 (***Power of sale***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.11 (***Power of sale***); and

(x) in relation to an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

(d) the "**Power of Appropriation Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.12 (***Power of appropriation***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.12 (***Power of appropriation***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.12 (***Power of appropriation***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.14 (***Power of appropriation***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.14 (***Power of appropriation***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.14 (***Power of appropriation***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.13 (***Power of appropriation***)

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.13 (***Power of appropriation***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.12 (***Power of appropriation***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

(e) the "**Lien Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.13 (***General lien***);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.13 (***General lien***);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.14 (***General lien***);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.15 (***General lien***);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.15 (***General lien***);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.16 (***General lien***);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.12 (***General lien***);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.12 (***General lien***);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.14 (***General lien***); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes); and

(f) the "**Client Money Additional Security Clause**", being:

(i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);

(ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 7.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);

(v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 6.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);

(viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 6.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);

(ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 6.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement); and

(x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes).

9. "**Two Way Clauses**" means each of the Futures and Options Association's Short-Form Two-Way Clauses 2007, the Short-Form Two-Way Clauses 2009, the Short-Form Two-Way Clauses 2011, the Long-Form Two-Way Clauses 2007, the Long-Form Two-Way Clauses 2009 and the Long-Form Two-Way Clauses 2011.

ANNEX 3
NON-MATERIAL AMENDMENTS

1. Any change to the numbering or order of a provision or provisions or the drafting style thereof (e.g., addressing the other party as "you", "Counterparty", "Party A/Party B") provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.

2. Any change to a provision or provisions by defining certain key terms (e.g., party, exchange, currency, defaulting party or non-defaulting party) and using these terms in large caps throughout the Agreement provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.

3. An addition to the list of events that constitute an Event of Default (e.g. without limitation, the failure to deliver securities or other assets, 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 or a specified master agreement), such change may or may not be coupled with a grace period or the serving of a written notice on the Defaulting Party by the Non-Defaulting Party, such change may be expressed to apply to one only of the Parties.

4. Any change to an Insolvency Event of Default (i) introducing a grace period for the filing of a petition for bankruptcy proceedings (of e.g. 15 or 30 days), (ii) modifying or deleting any such grace period, (iii) requiring that the filing of the petition is not frivolous, vexatious or otherwise unwarranted or (iv) that the non-defaulting party has reasonable grounds to conclude that the performance by the defaulting party of its obligations under the Agreement, Transactions, or both, is endangered.

5. Any change to an Insolvency Event of Default more particularly describing (i) the relevant procedures that would or would not constitute such event of default or termination event (ii) the relevant officers the appointment of which would or would not constitute such Insolvency Event of Default.

6. Any change to an Insolvency Event of Default extending its scope to events occurring with respect to the credit support provider, an affiliate, a custodian or trustee of a Party.

7. Any change to an Insolvency Event of Default replacing such event of default with a provision aligned to Section 5(a)(vii) of the 1992 or 2002 ISDA Master Agreement (or relevant part thereof).

8. Any change to the Agreement requiring the Non-defaulting Party when exercising its rights under the Security Interest Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.

9. Any change clarifying that the Non-defaulting Party must, or may not, notify the other party of its exercise of rights under the Security Interest Provisions or other provision.

ANNEX 5
NETTING AND SET-OFF

1.1 Prior to the Netting Act 2006 (the "**Netting Act**") there were no specific legislative mandatory set-off provisions applicable to Anguillan companies. The Bankruptcy Act applies only to personal insolvency and there is no legislative authority for the proposition that it should be extended to legal entities other than natural persons. In the absence of decided law on the subject it remained possible that a court would by interpolation take the view that Bankruptcy Act set off provisions applied to Anguillan companies. Alternatively a court might simply have given directions that the contractual position be followed notwithstanding insolvency, or that English common law rules of set off applied.

1.2 The Netting Act, based on the ISDA model netting act, therefore brought clarity to a previously ambiguous area of Anguillan law. Under the Netting Act, the provisions of a netting agreement are enforceable in accordance with their terms against the insolvent party and, where applicable, against a guarantor or other person providing security for the insolvent party and will not be stayed, avoided or otherwise limited by any action of the liquidator, by any other provision of law relating to bankruptcy, reorganisation, composition with creditors, receivership, or any other insolvency proceeding the insolvent party may be subject to or by any other provision of law that may be applicable to the insolvent party, subject to the conditions contained in the applicable netting agreement. For the purposes of determining whether an agreement is a netting agreement:

"**netting agreement**" means:

(a) any agreement between two parties that provides for netting of present or future payment or delivery obligations or entitlements arising under or in connection with one or more qualified financial contracts entered into thereunder by the parties to the agreement (a **"master netting agreement**";

(b) any master agreement between two parties that provides for netting of the amounts due under two or more master netting agreements (a "**master-master netting agreement**"); and

(c) any collateral arrangement related to an agreement referred to in paragraph (a) or (b),

"**netting**" means the occurrence of any or all of the following:

(a) the termination or acceleration of any payment or delivery obligations or entitlements under one or more qualified financial contracts entered into under a netting agreement;

(b) the calculation or estimation of a close-out value, market value, liquidation value or replacement value in respect of each obligation or entitlement terminated or accelerated under paragraph (a);

(c) the conversion of any values calculated or estimated under paragraph (b) into a single currency; and

(d) the offset of any values calculated under paragraph (b), as converted under paragraph (c), and

"**qualified financial contract**" means a contract, including any terms and conditions incorporated into any such financial contract, pursuant to which payment or delivery obligations that have a market or an exchange price are due to be performed at a certain time or within a certain period of time, without limitation:

(a) a currency, cross-currency or interest rate swap agreement;

(b) a basis swap agreement;

(c) a spot, future, forward or other foreign exchange agreement;

(d) a cap, collar or floor transaction;

(e) a commodity swap;

(f) a forward rate agreement;

(g) a currency or interest rate future;

(h) a currency or interest rate option;

(i) equity derivatives, such as equity or equity index swaps, equity options and equity index options;

(j) credit derivatives, such as credit default swaps, credit default basket swaps, total return swaps and credit default options;

(k) energy derivatives, such as electricity derivatives, oil derivatives, coal derivatives and gas derivatives;

(l) weather derivatives, such as weather swaps or weather options;

(m) bandwidth derivatives;

(n) freight derivatives;

(o) carbon emissions derivatives;

(p) a spot, future, forward or other commodity contract;

(q) a repurchase or reverse repurchase agreement;

(r) an agreement to buy, sell, borrow or lend securities, such as a securities lending transaction;

(s) a title transfer collateral arrangement;

(t) an agreement to clear or settle securities transactions or to act as a depository for securities;

(u) any other agreement similar to any agreement or contract referred to in paragraphs (a) to (t) with respect to reference items or indices relating to, without limitation, interest rates, currencies, commodities, energy products, electricity, equities, weather, bonds and other debt instruments and precious metals;

(v) any derivative or option in respect of, or combination of, one or more agreements or contracts referred to in paragraphs (a) to (u); and

(w) any agreement or contract designated as a qualified financial contract by regulations made by the Governor in Council on the advice of the [Anguillan Financial Services] Commission.

ANNEX 6
SECURITY INTERESTS

1.1 Creation

The Anguillan courts would generally recognise the validity of a security interest if that security interest was valid under the governing law of the relevant Agreement. Subject to what follows therefore the security interest would be enforceable in the Anguilla.

The laws of Anguilla do not impose any additional requirements of form or otherwise for the recognition or validity of a security interest created by an Anguillan entity (except where the security is over shares in a IBC[12]).

We have reservations as to the ability of unincorporated entities to create valid floating (as opposed to fixed) charges.

1.2 Perfection

Under Anguillan rules of private international law, the relevant law governing the perfection of a security interest granted in an asset is the law of the place of the location of the asset at the time such security interest attaches to the asset.

(a) Cash will be considered to be located in the place where the entity with which the cash is deposited is located[13].

(b) Anguilla law would ordinarily consider the location of a directly held, registered certificated security to be the place where the register is located and that of a directly held, bearer, physically certificated security to be the place where the certificate is located. For the purposes of determining matters relating to title and jurisdiction, the location of the ownership of shares, debt obligations or other securities of an IBC is the Anguilla.

(c) In relation to securities held indirectly or on a fungible basis with or through a custodian or securities depository a Anguilla court is likely to adopt the "place of the relevant intermediary approach" ("**PRIMA**")[14].

(d) In the case of contract rights a Anguilla court would, subject to certain restrictions such as public policy issues and any attempt to contract out of statutory provisions regarding title and location of shares debts and securities, look to the governing law of the underlying contract for issues of perfection.

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[12] f the Eligible Collateral were to comprise shares in an IBC, in order to create a valid mortgage or charge the IBC Act requires that there must be a written instrument which clearly indicates (a) the intention to create a mortgage or charge and (b) the amount secured by the mortgage or charge or how that amount is to be calculated. Where the collateral comprises bearer shares in an IBC, the share certificates must be deposited with the mortgagee or chargee. Please note however our qualification with respect to Eastern Caribbean .

[13] *Arab Bank v Barclays Bank (Dominion, Colonial and Overseas) 1954 AC 495*

[14] As set out in the Hague Convention of 5 July 2006 on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary.

1.3 **Priority**

An Anguilla court would apply Anguillan rules[15] as summarised below to questions of priority.

(a) Fixed security takes priority over floating security save for cases described in (b) below.

(b) Security interests created by an IBC before 16 October 2000 have priority over all security interests created on or after 16 October 2000, and as between themselves, rank in order of creation. Where an IBC has opted to be governed by the registration provisions of the IBC Act relating to registration at the Companies Registry[16], all security interests recorded in the register of registered charges at the Companies Registry take priority over all security interests which have not been entered in the register (except for security interests created prior to 16 October 2000) and as between themselves recorded securities rank in order of their entry into the register, whether fixed or floating.

(c) Priorities between unregistered security interests created before 16 October 2000 and between security interests created by CACs, LLCs, Partnerships and Trusts are determined by the common law[17]. The rules can be summarised as follows:

(i) a security interest in the nature of a legal estate acquired for value without notice of a security interest in the nature of an equitable interest takes priority over that equitable interest;

(ii) as between themselves, security interests which are in the nature of a legal estate rank in order of creation; and

(iii) as between themselves, security interests which are in the nature of equitable interests rank in order of the giving of notice to the holder of the legal estate[18].

If it is a CAC that creates the security interest, there is a statutory requirement for filing in a private register of mortgages, debentures and charges. Failure to comply with such

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[15] We note that there is a possibility that an Anguilla court would not consider itself the appropriate forum for enforcement proceedings in respect of the collateral located outside Anguilla. Therefore, it will be a matter for the conflict of laws rules applicable in the jurisdiction in which enforcement is sought as to whether Anguillan priority rules would be relevant. Further, even if the Anguillan court accepts such jurisdiction, as ultimate enforcement proceedings in respect of the collateral will by necessity take place in the jurisdiction of the location of the asset, it will be a matter for the conflict of laws rules applicable in such jurisdiction as to whether Anguillan priority rules or an Anguillan court judgment based on Anguillan priority rules would be relevant to enforcement.

[16] In the case of a CAC, there is a statutory requirement for filing in a private register of mortgages debentures and charges. Failure to comply with such requirement renders directors and officers liable to a fine but has no effect on the validity, effectiveness and priority of the security interest.

[17] We believe the correct analysis is that, where an Anguillan court would apply common law rules (as opposed to statutory priority rules) they would also look to other principles of substantive law. Therefore in practice, the complexities inherent in the common law rules would prove academic as an Anguillan court would defer questions of priority to the *lex situs* through application of conflict of laws rules. We note however that this point has never been tested in the Anguillan courts.

[18] *Dearle v Hall* (1828) 3 Russ 1. As a matter of Anguillan law the priority of unregistered security interests created in both contract rights and in securities held indirectly or on a fungible basis with or through a custodian or securities depository would theoretically be determined by notice rather than creation. There is some question however as to how notice is achieved in relation to investment securities: Goode (Legal Problems of Investment Securities, p159 and p170) for example argues that *Dearle v Hall* is inapplicable.

requirement renders directors and officers liable to a fine but has no effect on the validity, effectiveness or priority of the security interest. No registration regime exists for LLCs. Were an Anguillan court to accept jurisdiction we believe it would apply common law rules (including conflicts of law rules) to determine questions of priority between security interests granted by CACs and LLCs in the same collateral.