

April 15, 2013

Ref: 2747.0012

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Legal collateral opinion – Non Situs Version

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

Dear Sirs

Re: FOA Collateral Opinion

You have asked us to give an opinion in respect of the laws of Barbados ("**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). References to "**Core Provisions**") include Core Provisions that have been modified by Non-Material Amendments (as defined herein).

Terms used in this opinion letter and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

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 entities in each case incorporated, organised, established, licensed, regulated or formed under the laws of Barbados and branches established or located in Barbados of entities of the type referred to in paragraph 1.2 which are incorporated, organised, established or formed outside Barbados,

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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 set out in the applicable Schedule:

- 1.2.1 Banks and financial institutions incorporated under the *Companies Act*, Cap. 308 of the laws of Barbados and licensed under the *Financial Institutions Act*, Cap. 324A of the laws of Barbados or the *International Financial Institutions Act*, Cap. 325 of the laws of Barbados ("Barbados Financial Institutions") (Schedule 2);
- 1.2.2 Insurance companies incorporated under the *Companies Act*, Cap. 308 of the laws of Barbados and licensed as exempt insurance companies under the *Exempt Insurance Act*, Cap. 308A of the laws of Barbados or licensed as a qualifying insurance companies under the *Insurance Act* Cap. 310 of the laws of Barbados ("Barbados Insurers") (Schedule 1);
- 1.2.3 Companies incorporated or registered under the *Companies Act*, Cap. 308 of the laws of Barbados and licensed as International Business Companies under the *International Business Companies Act*, Cap. 77 of the laws of Barbados (Schedule 3);
- 1.2.4 Societies with restricted liability organised, and International Societies with Restricted Liability organised and licensed under the *Societies with Restricted Liability Act*, Cap. 318B of the laws of Barbados (Schedule 4);
- 1.2.5 Investment firms/broker dealers incorporated under the *Companies Act*, Cap. 308 of the laws of Barbados and registered as brokers, dealers, traders, underwriters or investment advisers, and securities companies under the *Securities Act*, Cap. 318 of the laws of Barbados (Schedule 5);
- 1.2.6 Partnerships incorporated, continued or registered under the *Companies Act*, Cap. 308 of the laws of Barbados (Schedule 6);
- 1.2.7 Individuals being persons resident in Barbados under the laws of Barbados, (Schedule 7);
- 1.2.8 Mutual Funds existing in the form of registered unit trusts, companies, partnerships or societies and licensed to carry on mutual fund business in or from Barbados under the *Mutual Funds Act*, Cap. 320B of the laws of Barbados, (Schedule 8);

- 1.2.9 Parties acting as trustees of Trusts (pursuant to the *Trustees Act*, Cap. 250 of the laws of Barbados), in respect of trusts governed under the laws of Barbados, (Schedule 9); and
- 1.2.10 Charities registered under the *Charities Act*, Cap. 243 of the laws of Barbados for charitable objects or purposes (Schedule 10);

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 "**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).

1.4.5 **"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.

1.4.6 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.

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

1.4.8 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;

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

1.4.10 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 Agreements are legally binding and enforceable against both Parties under their 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 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.

- 2.5 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.
- 2.6 That the Agreement has been properly executed by both Parties.
- 2.7 That the Agreement is entered into prior to the commencement of any Insolvency Proceedings in respect of either Party.
- 2.8 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.
- 2.9 That the Agreement accurately reflects the true intentions of each Party.
- 2.10 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.
- 2.11 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement.
- 2.12 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.
- 2.13 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.
- 2.14 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.
- 2.15 That any cash comprising the Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.
- 2.16 That each party to the Agreement has been duly incorporated and that each party thereto is validly existing and in good standing under the laws of their respective jurisdictions of domicile, and that no proceedings have been commenced under the laws of their respective jurisdictions of domicile (or elsewhere), for the winding-up of their respective businesses.

- 2.17 That the Transactions as contemplated by the Agreement do not constitute an *actio pauliana*,¹ and that each of the Transactions contemplated thereby has not been entered into by any party with the intent to defraud, delay or hinder creditors of such party.
- 2.18 That all applicable laws (other than the laws of Barbados), recognise as valid and enforceable the Security Interest created in favour of the Firm as contemplated in the Agreement.
- 2.19 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."

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 ranking of the Firm's rights to the proceeds of realisation of the Collateral in relation to the interests of the Counterparty and any other person would be a matter to be determined under the law of the place where the Collateral is situated.

¹ Describes a transaction of the type which constitutes a fraud on creditors. Generally it includes transactions entered into with the intent to defraud, delay or hinder creditors (which have been given explicit statutory expression), but encompasses any transaction which is deemed to constitute either by application of principles of insolvency law, corporate law or general common-law a fraud on the creditors.

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 Based on the assumption that under the laws of England and Wales (being the proper law of the Agreement), a valid and effective security interest is created over the Collateral, under the laws of Barbados (a) the Security Interest created by the Counterparty over the Collateral must be registered in the corporate Register of Charges, maintained by the Registrar of Companies in Barbados, in accordance with the *Companies Act*, as a condition of the validity of such Security Interest; and (b) notice of the assignment of all debts and other *choses in action* (which constitute part of the Collateral the subject of the Agreement) to the respective obligors thereunder, is required to perfect such Security Interest.
- 4.2 Subject to (a) the filing of two original counterparts of the Agreement, together with a Statement of Charge outlining the particulars thereof, with the Registrar of Companies in Barbados within twenty-eight (28) days of the creation of the Security Interest thereunder, and (b) the giving of notice to a relevant obligor (when applicable), the priority of Security Interest is determined by the order of the creation of the security interests.
- 4.3 The term “**enforceable**” as used in this opinion means that the obligations of a party under a specified document are of a type which the Barbados courts enforce. It does not mean that those obligations will necessarily be enforced in all circumstances in accordance with their terms. In particular:
 - 4.3.1 enforcement may be limited by any winding-up, administration, bankruptcy, insolvency, reorganisation, moratorium or similar laws affecting creditors’ rights generally;
 - 4.3.2 claims may become barred by prescription, limitation or lapse of time, or may be or become subject to defences of set-off or counterclaim;
 - 4.3.3 where obligations are to be performed in a jurisdiction outside Barbados, these may not be enforceable in Barbados to the extent that performance would be illegal under the laws of that jurisdiction;
 - 4.3.4 enforcement may be restricted by the principles relating to the frustration of contracts by events happening after their execution; and
 - 4.3.5 enforcement may be limited to the extent that performance would be illegal or contrary to public policy under the laws of Barbados or any other applicable jurisdiction and a

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Barbados court may take into account the law of the place of performance in relation to the manner of performance and to the steps to be taken in the event of defective performance.

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 (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 its being shown to members of the Futures and Options Association and their 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 such affiliates in connection with their compliance with their obligations under prudential regulation.

Yours faithfully,

Per: 

CHANCERY CHAMBERS

SCHEDULE 1 *BARBADOS INSURERS*

Subject to the modifications and additions set out in this Schedule 1 (*Barbados Insurers*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Barbados Insurers. For the purposes of this Schedule 1 (*Barbados Insurers*), "***Barbados Insurers***" means insurance companies or providers incorporated under the *Companies Act*, Cap. 308 of the laws of Barbados and licensed as exempt insurance companies under the *Exempt Insurance Act*, Cap. 308A of the laws of Barbados or licensed as insurance companies under the *Insurance Act* Cap. 310 of the laws of Barbados.

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. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The Barbados Insurer is a legal entity, which may be organised as a corporation, partnership or in some other legal form (for example, a friendly society or industrial & provident society in the UK), that are licensed to carry on insurance business, and are typically subject to a special regulatory regime and a special insolvency regime in order to protect the interests of policyholders.

2. ADDITIONAL ASSUMPTIONS

We assume:

2.1.1 That on the execution and delivery thereof, each party to the Agreement is solvent and has not committed any "act of bankruptcy" (within the meaning of the *Bankruptcy and Insolvency Act*);²

² Under the *Bankruptcy and Insolvency Act*, each of the following acts constitutes an "act of bankruptcy" by a body corporate:

- (a) in Barbados or elsewhere, a conveyance or assignment of property to a trustee or trustees for the benefit of the creditors of the Company generally (whether or not an assignment authorised under the *Bankruptcy and Insolvency Act*);
- (b) in Barbados or elsewhere, making a fraudulent conveyance, gift, delivery or transfer of its property or any part thereof;
- (c) in Barbados or elsewhere, making a conveyance or transfer of or the creation of a charge over its property or any part thereof, which would under the *Bankruptcy and Insolvency Act* be void as a fraudulent preference;
- (d) permitting (i) execution or other process for the seizure of the goods under process in an action in any court to remain unsatisfied for a period of 21 days, or (ii) the sale of property by the Marshal, or where on execution there is an endorsement by Marshal that no property exists to levy, seize or take;

2.1.2 That immediately prior to the execution and delivery of the Agreement no party thereto is insolvent and that (a) there has not been any assignment filed with the with the Supervisor of Insolvency pursuant to the *Bankruptcy and Insolvency Act*, by or in respect of any such party (b) there has not been any proposal for a composition, for an extension of time or for a scheme of arrangement under the *Bankruptcy and Insolvency Act*, by or in respect of any such party, (c) there has not been any notice of intention to file a proposal lodged with the Supervisor of Insolvency pursuant to the *Bankruptcy and Insolvency Act*, by or in respect of any such party, (d) there has not been any petition presented for a receiving order under the *Bankruptcy and Insolvency Act*, by or in respect of any such party, and (e) no winding up proceedings under any of the *Insurance Act*, or the *Exempt Insurance Act*, have been commenced by or in respect of any such party.

2.2.1 There is no restriction under either of the *Exempt Insurance Act* or the *Insurance Act*, which restricts or limits the statutory and corporate authority and capacity of the Barbados Insurer to enter into the Agreement in respect of any of the Transactions, by restricting or proscribing classes of investments available to companies licensed under the *Exempt Insurance Act*, or the *Insurance Act*.

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 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 provided that requirements for perfection outlined in paragraph 4 are satisfied.

3.2 As the chargee thereof, the Firm is not restricted from granting a sub-security interest in and over (re-hypothecating) the whole or any part of the Collateral in which it has been granted a security interest under the Agreement; provided that the Firm may not re-hypothecate or grant a security interest in the whole or any part of the Collateral greater than the security interest granted by the Counterparty in the Agreement. Under Barbados law, the re-hypothecation or

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- (e) exhibiting to any meeting of creditors a financial statement evidencing insolvency, or admitting in writing its inability to pay its debts;
 - (f) filed in any court in Barbados or elsewhere, a declaration of its inability to pay its debts, or presented a bankruptcy petition against itself;
 - (g) assigning, removing, secreting or disposing of property (or attempting thereto), with intent to delay, defraud or defeat creditors;
 - (h) giving notice to any creditors that it has suspended or is about to suspend payment of its debts; and
 - (i) defaulting on any proposal made to creditors under the *Bankruptcy and Insolvency Act*; and
 - (j) ceasing to meet liabilities as they become due.

grant of a security interest in the whole or any part of the Collateral will not render invalid or unenforceable the security interest in the whole or any part of the Collateral which has been granted in favour of Firm under the Agreement.

3.3 Each of the *Insurance Act* and the *Exempt Insurance Act* imposes a stay in respect of judicial actions, and the execution of writs, summons or other processes by secured creditors in respect of the enforcement of security interests except with the prior leave of the court. As noted there is the absence of substantive rules applicable to the Barbados Insurer in respect of winding-up proceedings under the *Insurance Act* or the *Exempt Insurance Act*; however it is highly likely that the courts will grant leave for judicial actions, and the execution of writs, summons or other processes by secured creditors for the enforcement of a security interest, as such will lead to an orderly winding up of the business and affairs of the Barbados Insurer.

4. **ADDITIONAL QUALIFICATIONS**

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

4.1.1 There are certain statutory provisions which are relevant for consideration and which may impact on the categories or classes of investments available to companies licensed under the *Exempt Insurance Act*, or the *Insurance Act* as a qualifying insurance company, which may affect the ability of the Barbados Insurer to enter into derivative transactions generally or a specific transaction, including *inter alia* (a) the restrictions on the categories of assets and liabilities available for the purpose of the calculation of the financial solvency of the Barbados Insurer under each of the *Exempt Insurance Act*, or the *Insurance Act*; (b) the requirement that in respect of long term insurance business conducted by a Barbados Insurer licensed under the *Insurance Act*, the Barbados Insurer is required to maintain a certain portion of its assets in a statutory fund and the limitation in respect of such assets to the securities specified in the Second Schedule to the *Insurance Act*; (c) the restriction on dealing by a trustee of the statutory fund except with the approval of the Financial Services Commission; (d) the ability of the Financial Services Commission to assume judicial management of a Barbados Insurer or to commence proceedings for its winding up in circumstances where the Financial Services Commission is of the view that the “*insurance business of the company is not being conducted in accordance with sound insurance principles and practice*” or that such action is in the best interests of the policy holders, or otherwise in the public interest.

4.1.2 Transactions entered into between the Firm and the Barbados Insurer, with a genuine commercial purpose in good faith and at arms length, in the form of the Agreement will not constitute gaming or wagering contracts, such as will prima facie support a finding that the “*insurance business of the company is not being conducted in accordance with sound insurance principles and practice.*”

4.1.3 To mitigate against the risks noted above, the Barbados Insurer may be required to give a representation to the effect that its execution of the Agreement or the entry into and performance of its obligations under any Transaction governed by the Agreement, (a) will not cause the Barbados Insurer to be unable to pay its liabilities within the meaning of the *Exempt Insurance Act* or the *Insurance Act* (as the case may be), or (b) will not cause a breach of any terms or condition of its licence with respect to the maintenance of assets or reserves, or (c) cause the Barbados Insurer to believe that such will cause the Financial Services Commission to assume judicial management of the Barbados Insurer or to commence proceedings for the winding up of the Barbados Insurer.

4.2.1 Assuming the completion of the perfection requirements as outlined in paragraph 4, under the laws of Barbados, the Security Interest over the Collateral charged under the Agreement will be a good and valid perfected security interest in the collateral owned by the Counterparty, in favour of a Firm as security for the obligations purported to be secured thereby.

4.2.2 On completion of the filing of two original counterparts of the Agreement, together with a Statement of Charge outlining the particulars thereof, with the Registrar of Companies in Barbados within twenty-eight (28) days of the creation of the Security Interest thereunder, there is no requirement to make any amended or substituted filing in respect of any changes in the Collateral charged by the Agreement.

5. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

5.1.1 In the event that the Security Interest created by a Barbados Insurer under the Agreement is for a purpose other than securing liabilities in respect of insurance and reinsurance obligations, the prior approval of the Financial Services Commission (acting in the authority and stead of the Supervisor of Insurance) is required as a condition of the licence issued to the Barbados Insurer.

5.1.2 There are statutory conditions of the issue of a licence under the *Exempt Insurance Act*, to the effect that a licensee may not without prior consent of the Minister of Finance (acting through the Financial Services Commission), charge the whole or any part of its assets, except in circumstances where that charge is to secure insurance or reinsurance obligations of the Barbados Insurer. These statutory conditions have been applied *mutatis mutandis* (pursuant to the general regulatory authority of the Financial Services Authority), to qualifying insurance companies licensed under the *Insurance Act*.

5.1.3 In the event that the licence and business plan of the Barbados Insurer include the authority to transact general insurance business in the form of financial insurance and reinsurance (including specifically the assumption and ceding of risks by alternative forms of risk-transfer, through the securitisation of insurance policies or portfolios, or classes or category of risks, by way of financial derivative instruments), the Agreement is *prima facie* entered into to secure insurance

or reinsurance obligations of the Barbados Insurer, and as such no prior permission is required. Where the Transaction is entered into as an investment transaction, which is incidental to the insurance business of the Barbados Insurer, the prior permission of the Financial Services Commission must be obtained.

5.1.4 To obtain the necessary regulatory permission the Barbados Insurer will usually submit a letter to the Financial Services Commission, together with copies of the relevant Transaction documents. Permission is usually granted within two (2) weeks of the submission of the request.

Taxes and Duties

5.2.1 Except for the stamp duty in the amount adjudicated in accordance with the *Stamp Duty Act*, payable in respect of the Agreement, no further stamp duties or other taxes are payable under the laws of Barbados in connection with the execution and delivery of any of the Agreement, or to ensure the legality, validity, enforceability or admissibility in evidence of the Agreement, or to preserve or protect the security afforded and to be afforded by the Agreement.³

5.2.2 Stamp duty is a documentary tax charged upon instruments; it is not a tax upon transactions or upon persons. For the purposes of the *Stamp Duty Act*, an instrument is defined to include every written document; thus any transaction which is effected orally or arises solely from the conduct of the parties is not subject to stamp duty.

5.2.3 The territorial limits of the stamp duty is defined incidentally; the *Stamp Duty Act* section 34(4) prescribes that stamp duty is chargeable in respect of (a) an instrument executed in Barbados, and (b) an instrument, wheresoever executed to any property situate in or to any matter or thing done or to be done in Barbados. In most cases, it is anticipated that with a Barbados Insurer, the Agreement will be executed in Barbados. The performance of the Agreement is interpreted as being required to be performed in Barbados (there being some element of performance of that obligation in Barbados). As a consequence, even if the Agreement is not executed in Barbados, and the Collateral is situate outside of Barbados, the Agreement is *prima facie* subject to stamp duty.

5.2.4 An instrument which is not properly stamped is nonetheless effective; but remains (except in criminal proceedings) inadmissible in evidence, or available for any purpose whatsoever. The failure to stamp is inherently remediable and does not affect the validity of the document. It is understood that current practice is to admit an unstamped document subject to counsel's undertaking to have the instrument stamped. In a security instrument such as the

³ In the case of licensees under the *Exempt Insurance Act* and the *Insurance Act* (qualifying insurance companies) the rate of stamp duty is currently BDS\$10.00 (approx. US\$5.00) per document. In the case of all other Barbados Insurers, there is an *ad valorem* rate as specified in the Schedule to the *Stamp Duty Act*.

Agreement, the onus of payment of the stamp duty is on chargee or mortgagee, and is usually completed in the normal course of registration as described in paragraph 4.

Exchange Control

5.3.1 There are exchange control (foreign currency control) restrictions in Barbados. Specific classes of companies are exempt from the restrictions against (a) ownership of foreign property, and (b) dealing in foreign cash and securities. Counterparties licensed as Barbados Insurers are exempt from these restrictions.

5.3.2 Assuming that the Counterparty is licensed under the *Exempt Insurance Act*, or the *Insurance Act* as a qualifying insurance company, the Counterparty will be exempt from the *Exchange Control Act* and any other applicable exchange control (foreign currency) controls restrictions against (a) ownership of foreign property, and (b) dealing in foreign cash and securities, so that there would be no restriction on the payment by the Counterparty of any of its obligations under the Agreement in an agreed upon foreign currency.

5.3.3 The standard market practice is for the Counterparty (a) to give representations and warranties to the effect that (a) no authorisation or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution and delivery by the Counterparty of the Agreement, and (ii) that the execution, delivery and performance by the Counterparty of the Agreement does not violate or conflict with, any provision of the corporate instruments, by-laws, the licence or business plan of the Barbados entity, or any law, rule or regulation in Barbados, applicable to the Counterparty; and (b) to provide independently evidence of its exemption from the *Exchange Control Act* by tendering a copy of the licence issued under the relevant statute.

SCHEDULE 2

BARBADOS FINANCIAL INSTITUTIONS

Subject to the modifications and additions set out in this Schedule 2 (*Barbados Financial Institutions*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Barbados Financial Institutions. For the purposes of this Schedule 2 (*Barbados Financial Institutions*), "***Barbados Financial Institution***" means banks and financial institutions incorporated under the *Companies Act*, Cap. 308 of the laws of Barbados and licensed under the *Financial Institutions Act*, Cap. 324A of the laws of Barbados or the *International Financial Services Act*, Cap. 325 of the laws of Barbados.

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. **MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

1.1 The Barbados Financial Institution is a legal entity, which may be organised as a corporation, partnership or in some other form, that conducts commercial banking activities, that is, whose core business typically involves (a) taking deposits from private individuals and/or corporate entities and (b) making loans to private individual and/or corporate borrowers. This type of entity is sometimes referred to as a "commercial bank" or, if its business also includes investment banking and trading activities, a "universal bank". (If the entity only conducts investment banking and trading activities, then it falls within the "Investment Firm/Broker Dealer" category below.) This type of entity is referred to as a "credit institution" in European Community (EC) legislation. This category may include specialised types of bank, such as a mortgage savings bank (provided that the relevant entity accepts deposits and makes loans), or such an entity may be considered in the local jurisdiction to constitute a separate category of legal entity (as in the case of a building society in the United Kingdom (UK)).

2. **ADDITIONAL ASSUMPTIONS**

We assume:

2.1.1 There is no restriction under either of the *International Financial Services Act* or the *Financial Institutions Act*, which restricts or limits the statutory and corporate authority and capacity of the Barbados Financial Institution to enter into the Agreement and any transactions governed thereby, by restricting or proscribing classes of investments available to companies licensed under the *International Financial Services Act* or the *Financial Institutions Act*.

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 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 provided that the requirements for perfection outlined in paragraph 4 are satisfied.

3.2 As the chargee thereof, the Firm is not restricted from granting a sub-security interest in and over (re-hypothecating) the whole or any part of the Collateral in which it has been granted a security interest under the Agreement; provided that the Firm may not re-hypothecate or grant a security interest in the whole or any part of the Collateral greater than the security interest granted by the Counterparty in the Agreement. Under Barbados law, the re-hypothecation or grant of a security interest in the whole or any part of the Collateral will not render invalid or unenforceable the security interest in the whole or any part of the Collateral which has been granted in favour of Firm under the Agreement.

3.3 Each of the *Financial Institutions Act* and the *International Financial Services Act* impose a stay in respect of execution against the assets by secured creditors in respect of the enforcement of security interests except with the prior leave of the court. As noted there is the absence of substantive rules applicable to the Barbados Financial Institution in respect of winding-up proceedings under the *Financial Institutions Act* and the *International Financial Services Act*. However, it is highly likely that the courts will grant leave for the execution or other processes by secured creditors for the enforcement of a security interest, as such will lead to an orderly winding up of the business and affairs of the Barbados Financial Institution.

4. ADDITIONAL QUALIFICATIONS

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

4.1.1 There are certain statutory provisions which are relevant for consideration and which may impact or may limit the capacity of a Barbados Financial Institution from entering into the transactions as contemplated by the Agreement including *inter alia* (a) the restrictions on banking business prescribed under the *International Financial Services Act* and the *Financial Institutions Act*, which limits financial exposures (b) the financial capital requirements which are mandated under the *International Financial Services Act* and the *Financial Institutions Act*, or otherwise applicable by virtue of administrative fiat dealing specifically with credit and risk exposures in accordance with prudential banking standards adopted pursuant to the Basle II Accord on banking and financial regulation, and (c) the ability of the Central Bank of Barbados

to suspend the licence of a Barbados Financial Institution, to restrict the banking business of a Barbados Financial Institution, to seize control of the operations by commencing judicial proceedings for the appointment of a custodian of a Barbados Financial Institution, to commence proceedings for the winding up of a Barbados Financial Institution in circumstances where the Central Bank of Barbados is of the view that the Barbados Financial Institution is carrying on its business in “*an unlawful manner or is engaged in unsound financial practice*” or the Barbados Financial Institution is in “*an unsound financial condition.*”

4.1.2 To mitigate against the risks noted above, the Barbados Insurer may be required to give a representation to the effect that its execution of the Agreement or the entry into and performance of its obligations under any Transaction governed by the Agreement, (a) will not cause breach of any statutory limitation as to financial exposure to be assumed by the Barbados Financial Institution, or (b) will not cause a breach of any terms or condition of its licence with respect to the maintenance of assets or reserves, or (c) cause the Barbados Financial Institution to believe that such will cause the Central Bank of Barbados to seize control of the operations by commencing judicial proceedings for the appointment of a custodian of the Barbados Financial Institution or commence proceedings for the winding up of the Barbados Financial Institution.

4.2.1 Assuming the completion of the perfection requirements as outlined in paragraph 4, under the laws of Barbados, the Security Interest over the Collateral charged by the Agreement will be a good and valid perfected security interest in the collateral owned by the Counterparty, in favour of the Firm as security for the obligations purported to be secured thereby.

4.2.2 On completion of the filing of two original counterparts of the Agreement, together with a Statement of Charge outlining the particulars thereof, with the Registrar of Companies in Barbados within twenty-eight (28) days of the creation of the Security Interest, there is no requirement to make any amended or substituted filing in respect of any changes in the Collateral charged by the Agreement.

5. **MODIFICATIONS TO QUALIFICATIONS**

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

Taxes and Duties

5.1.1 Except for the stamp duty in the amount adjudicated in accordance with the *Stamp Duty Act*, payable in respect of the Agreement, no further stamp duties or other taxes are payable under the laws of Barbados in connection with the execution and delivery of any of the

Agreement, or to ensure the legality, validity, enforceability or admissibility in evidence of any thereof, or to preserve or protect the security afforded and to be afforded by the Agreement.⁴

5.1.2 Stamp duty is a documentary tax charged upon instruments; it is not a tax upon transactions or upon persons. For the purposes of the *Stamp Duty Act*, an instrument is defined to include every written document; thus any transaction which is effected orally or arises solely from the conduct of the parties is not subject to stamp duty.

5.1.3 The territorial limits of the stamp duty is defined incidentally; the *Stamp Duty Act* section 34(4) prescribes that stamp duty is chargeable in respect of (a) an instrument executed in Barbados, and (b) an instrument, wheresoever executed to any property situate in or to any matter or thing done or to be done in Barbados. In most cases, it is anticipated that with a Barbados Financial Institution, the Agreement will be executed in Barbados. The performance of the Agreement is interpreted as being required to be performed in Barbados (there being some element of performance of that obligation in Barbados). As a consequence, even if the Agreement is not executed in Barbados, and the Collateral is situate outside of Barbados, the Agreement is *prima facie* subject to stamp duty.

5.1.4 An instrument which is not properly stamped is nonetheless effective; but remains (except in criminal proceedings) inadmissible in evidence, or available for any purpose whatsoever. The failure to stamp is inherently remediable and does not affect the validity of the document. It is understood that current practice is to admit an unstamped document subject to counsel's undertaking to have the instrument stamped. In a security instrument such as the Agreement, the onus of payment of the stamp duty is on chargee or mortgagee, and is usually completed in the normal course of registration as described in paragraph 4.

Exchange Control

5.2.1 There are exchange control (foreign currency control) restrictions in Barbados. Specific classes of companies are exempt from the restrictions against (a) ownership of foreign property, and (b) dealing in foreign cash and securities. Counterparties licensed as international business companies or international societies with restricted liability are exempt from these restrictions.

5.2.2 Assuming that the Counterparty is licensed under the *Financial Institutions Act* or the *International Financial Services Act*, the Counterparty will be exempt from the *Exchange Control Act* and any other applicable exchange control (foreign currency) controls restrictions against (a) ownership of foreign property, and (b) dealing in foreign cash and securities, so that

⁴ In the case of licensees under the *Financial Institutions Act* or the *International Financial Institutions Act*, the rate of stamp duty is currently BDS\$10.00 (approx. US\$5.00) per document. In all other cases, there is an *ad valorem* rate as specified in the Schedule to the *Stamp Duty Act*.

there would be no restriction on the payment by the Counterparty of any of its obligations under the Agreement in an agreed upon foreign currency.

5.2.3 The standard market practice is for the Counterparty (a) to give representations and warranties to the effect that (a) no authorisation or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution and delivery by the Counterparty of the Agreement, and (ii) that the execution, delivery and performance by the Counterparty of the Agreement does not violate or conflict with, any provision of the corporate instruments, by-laws, the licence or business plan of the Barbados entity, or any law, rule or regulation in Barbados, applicable to the Counterparty; and (b) to provide independently evidence of its exemption from the *Exchange Control Act* by tendering a copy of the licence issued under the relevant statute.

SCHEDULE 3

BARBADOS INTERNATIONAL BUSINESS COMPANIES

Subject to the modifications and additions set out in this Schedule 3 (*Barbados International Business Companies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are *Barbados International Business Companies*. For the purposes of this Schedule 3 (*Barbados International Business Companies*), "*Barbados International Business Companies*" means Companies incorporated or registered under the *Companies Act*, Cap. 308 of the laws of Barbados and licensed as International Business Companies under the *International Business Companies Act*, Cap. 77 of the laws of Barbados

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. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 *Barbados International Business Companies* include:

1.1.1 Companies incorporated or registered under the *Companies Act*, Cap. 308 of the laws of Barbados and licensed as International Business Companies under the *International Business Companies Act*, Cap. 77 of the laws of Barbados.

2. ADDITIONAL ASSUMPTIONS

We assume:

2.1 (a) that the Counterparty is not specifically restricted by its corporate instruments from entering into the transactions governed by the Agreement, or (b) where the corporate instruments or the terms and conditions of any regulatory licence of the Counterparty specifically restrict the business of the Counterparty, that the Transactions do not constitute the carrying on of a business by the Counterparty outside of the permitted scope of business of the Counterparty and (c) that the Counterparty will have the necessary corporate power to enter into and to execute the Agreement and the Transactions governed therein.

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 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 provided that requirements for perfection outlined in paragraph 4 are satisfied.

3.2. As the chargee thereof, the Firm is not restricted from granting a sub-security interest in and over (re-hypothecating) the whole or any part of the Collateral in which it has been granted a security interest under the Agreement; provided that the Firm may not re-hypothecate or grant a security interest in the whole or any part of the Collateral greater than the security interest granted by the Counterparty in the Agreement. Under Barbados law, the re-hypothecation or grant of a security interest in the whole or any part of the Collateral will not render invalid or unenforceable the security interest in the whole or any part of the Collateral which has been granted in favour of Firm under the Agreement.

3.3.1 The *Bankruptcy and Insolvency Act* imposes stays in respect of proceedings (whether judicial or extra-judicial), by secured creditors in respect of the enforcement of security interests (and the limitation or exclusion of the rights, power and authority of an insolvent person over its assets). If a proposal or a notice of an intention to make a proposal (for composition, extension of time, or scheme of arrangement), has been filed, the Firm (as the secured creditor) cannot enforce its security over the assets of the Counterparty except in cases where (a) the Firm had sought to enforce its security interest against the secured assets of the Counterparty prior to the filing of the notice of an intention to make a proposal with the Financial Services Commission acting in the authority and stead of the Supervisor of Insolvency (the "Financial Services Commission"), (b) the Firm had given notice of its intention to realise the security interest at least ten (10) days prior to either (i) the filing of the notice of an intention to make a proposal with the Financial Services Commission or (ii) the filing of the proposal with the Financial Services Commission (where no notice had been filed), (c) the Firm had given notice of its intention to realise the security interest and the Counterparty had consented to the enforcement action, or (d) the proposal filed with the Financial Services Commission has not been made to the Firm or was not consented to by the Firm. The stay remains in force and effect until the trustee is discharged or the Counterparty adjudicated bankrupt in accordance with the *Bankruptcy and Insolvency Act*.

3.3.2 In the event of the adjudication of bankruptcy under the *Bankruptcy and Insolvency Act*, the rights of the Firm (as the secured creditor) to enforce its security over the assets of the Counterparty generally remain unfettered, and may only be limited by judicial order for a period not exceeding six (6) months from the date that debt is due. The policy of the *Bankruptcy and Insolvency Act* in the case of bankruptcy is not to interfere with secured creditors except in so far as may be necessary to protect the estate as to any surplus on the assets covered by the security, and there must be cogent reasons to compel the court to issue an order delaying and interfering with right of a secured creditor to realise the security interest.

3.3.3 Generally the creation of the Security Interest over the Collateral pursuant to the Agreement will be binding upon the trustee in bankruptcy of a Counterparty. Where there is a

security interest created over the Collateral under the Agreement, the Collateral would remain assets of the Counterparty, but the Security Interest created in favour of the Firm would not be capable of being set aside or invalidated at the instigation of any creditor, liquidator, administrator, trustee or similar official or appointee, including such parties who wish to take such actions in connection with any bankruptcy, insolvency, organisation or moratorium laws affecting the Counterparty, except in the permitted cases of avoidance of the Agreement under the *Bankruptcy and Insolvency Act* (as described in the paragraph below).

3.3.4 The *Bankruptcy and Insolvency Act* provides that an assignment or charge may be void as against the trustee in bankruptcy, if made with a view to giving any one creditor (related to the assignor), a preference over another creditor, and the Counterparty is adjudged bankrupt within three (3) months (twelve (12) months in the case of related party transactions), of the date of such assignment or charge. The *Bankruptcy and Insolvency Act* however provides protection for *good faith* transactions; namely transactions for valuable consideration, which occur prior to any receiving order under the *Bankruptcy and Insolvency Act*, or prior to the Firm having notice of any act of bankruptcy committed by Counterparty prior to the date of the Transaction. The *Bankruptcy and Insolvency Act* further provides that transactions involving the acquisition or disposition of the property of an adjudged bankrupt made within the period that is twelve (12) months before the statutory prescribed period are voidable if a determination is made by the court that the bankrupt did not give or receive (as the case may be), the fair market value in consideration for such transferred property on an application for review of such transaction as the instance of the trustee in bankruptcy; the statutory prescribed period is the date commencing from the initial bankruptcy event and ending on the date of bankruptcy. There are no reasons, of which we are aware, that would render the Agreement negotiated at arms-length, voidable at the instance of a party as other than a good faith transaction.

4. **ADDITIONAL QUALIFICATIONS**

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

4.1.1 Assuming the completion of the perfection requirements as outlined in paragraph 4, under the laws of Barbados, the Security Interest over the Collateral charged by the Agreement will be a good and valid perfected security interest in the collateral owned by the Counterparty, in favour of the Firm as security for the obligations purported to be secured thereby.

4.1.2 On completion of the filing of two original counterparts of the Agreement, together with a Statement of Charge outlining the particulars thereof, with the Registrar of Companies in Barbados within twenty-eight (28) days of the creation of the Security Interest thereunder, there is no requirement to make any amended or substituted filing in respect of any changes in the Collateral charged by the Agreement.

5. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

Taxes and Duties

5.1.1 Except for the stamp duty in the amount adjudicated in accordance with the *Stamp Duty Act*, payable in respect of the Agreement, no further stamp duties or other taxes are payable under the laws of Barbados in connection with the execution and delivery of any of the Agreement, or to ensure the legality, validity, enforceability or admissibility in evidence of any thereof, or to preserve or protect the security afforded and to be afforded by the Agreement.⁵

5.1.2 Stamp duty is a documentary tax charged upon instruments; it is not a tax upon transactions or upon persons. For the purposes of the *Stamp Duty Act*, an instrument is defined to include every written document; thus any transaction which is effected orally or arises solely from the conduct of the parties is not subject to stamp duty.

5.1.3 The territorial limits of the stamp duty is defined incidentally; the *Stamp Duty Act* section 34(4) prescribes that stamp duty is chargeable in respect of (a) an instrument executed in Barbados, and (b) an instrument, wheresoever executed to any property situate in or to any matter or thing done or to be done in Barbados. In most cases, it is anticipated that with a Barbados International Business Company, the Agreement will be executed in Barbados. The performance of the Agreement is interpreted as being required to be performed in Barbados (there being some element of performance of that obligation in Barbados). As a consequence, even if the Agreement is not executed in Barbados, and the Collateral is situate outside of Barbados, the Agreement is *prima facie* subject to stamp duty.

5.1.4 An instrument which is not properly stamped is nonetheless effective; but remains (except in criminal proceedings) inadmissible in evidence, or available for any purpose whatsoever. The failure to stamp is inherently remediable and does not affect the validity of the document. It is understood that current practice is to admit an unstamped document subject to counsel's undertaking to have the instrument stamped. In a security instrument such as the Agreement, the onus of payment of the stamp duty is on chargee or mortgagee, and is usually completed in the normal course of registration as described in paragraph 4.

Exchange Control

5.2.1 There are exchange control (foreign currency control) restrictions in Barbados. Specific classes of companies are exempt from the restrictions against (a) ownership of foreign property,

⁵ In the case of licensees under the *International Business Companies Act*, the rate of stamp duty is currently BDS\$10.00 (approx. US\$5.00) per document. In all other cases, there is an *ad valorem* rate as specified in the Schedule to the *Stamp Duty Act*.

and (b) dealing in foreign cash and securities. Counterparties licensed as international business companies are exempt from these restrictions.

5.2.2 Absent the general exclusion of application of the *Exchange Control Act* (as in the case of a company which is not licensed as an international business company), a specific exemption must be obtained from the Exchange Control Authority.

5.2.3 Assuming that the Counterparty is licensed under the *International Business Companies Act*, the Counterparty will be exempt from the *Exchange Control Act* and any other applicable exchange control (foreign currency) controls restrictions against (a) ownership of foreign property, and (b) dealing in foreign cash and securities, so that there would be no restriction on the payment by the Counterparty of any of its obligations under the Agreement in an agreed upon foreign currency.

5.2.4 The standard market practice is for the Counterparty (a) to give representations and warranties to the effect that (a) no authorisation or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution and delivery by the Counterparty of the Agreement, and (ii) that the execution, delivery and performance by the Counterparty of the Agreement does not violate or conflict with, any provision of the corporate instruments, by-laws or the licence of the Barbados entity, or any law, rule or regulation in Barbados, applicable to the Counterparty; and (b) to provide independently evidence of its exemption from the *Exchange Control Act* by tendering a copy of the licence issued under the relevant statute.

SCHEDULE 4
BARBADOS SOCIETIES WITH RESTRICTED LIABILITY

Subject to the modifications and additions set out in this Schedule 4 (*Barbados Societies with Restricted Liability*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are *Barbados Societies with Restricted Liability*. For the purposes of this Schedule 4 (*Barbados Societies with Restricted Liability*), "*Barbados Societies with Restricted Liability*" means domestic societies with restricted liability organised under the *Societies with Restricted Liability Act, Cap. 318B* of the laws of Barbados and international societies with restricted liability organised and licensed under the *Societies with Restricted Liability Act*.

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. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 *Barbados Societies with Restricted Liability* include:

1.1.1 Societies with Restricted Liability organised under the *Societies with Restricted Liability Act, Cap. 318B* of the laws of Barbados and International Societies with Restricted Liability organised and licensed under the *Societies with Restricted Liability Act*.

2. ADDITIONAL ASSUMPTIONS

We assume:

2.1 (a) that the Counterparty is not specifically restricted by its corporate instruments from entering into the transactions governed by the Agreement, or (b) where the corporate instruments or the terms and conditions of any regulatory licence of the Counterparty specifically restrict the business of the Counterparty, that the Transactions do not constitute the carrying on of a business by the Counterparty outside of the permitted scope of business of the Counterparty and (c) that the Counterparty will have the necessary corporate power to enter into and to execute the Agreement and the Transactions governed therein.

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 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 provided that requirements for perfection outlined in paragraph 4 are satisfied.

3.2 As the chargee thereof, the Firm is not restricted from granting a sub-security interest in and over (re-hypothecating) the whole or any part of the Collateral in which it has been granted a security interest under the Agreement; provided that the Firm may not re-hypothecate or grant a security interest in the whole or any part of the Collateral greater than the security interest granted by the Counterparty in the Agreement. Under Barbados law, the re-hypothecation or grant of a security interest in the whole or any part of the Collateral will not render invalid or unenforceable the security interest in the whole or any part of the Collateral which has been granted in favour of Firm under the Agreement.

3.3.1 The *Bankruptcy and Insolvency Act* imposes stays in respect of proceedings (whether judicial or extra-judicial), by secured creditors in respect of the enforcement of security interests (and the limitation or exclusion of the rights, power and authority of an insolvent person over its assets). If a proposal or a notice of an intention to make a proposal (for composition, extension of time, or scheme of arrangement), has been filed, the Firm (as the secured creditor) cannot enforce its security over the assets of the Counterparty except in cases where (a) the Firm had sought to enforce its security interest against the secured assets of the Counterparty prior to the filing of the notice of an intention to make a proposal with the Financial Services Commission acting in the authority and stead of the Supervisor of Insolvency (the "Financial Services Commission"), (b) the Firm had given notice of its intention to realise the security interest at least ten (10) days prior to either (i) the filing of the notice of an intention to make a proposal with the Financial Services Commission or (ii) the filing of the proposal with the Financial Services Commission (where no notice had been filed), (c) the Firm had given notice of its intention to realise the security interest and the Counterparty had consented to the enforcement action, or (d) the proposal filed with the Financial Services Commission has not been made to the Firm or was not consented to by the Firm. The stay remains in force and effect until the trustee is discharged or the Counterparty adjudicated bankrupt in accordance with the *Bankruptcy and Insolvency Act*.

3.3.2 In the event of the adjudication of bankruptcy under the *Bankruptcy and Insolvency Act*, the rights of the Firm (as the secured creditor) to enforce its security over the assets of the Counterparty generally remain unfettered, and may only be limited by judicial order for a period not exceeding six (6) months from the date that debt is due. The policy of the *Bankruptcy and Insolvency Act* in the case of bankruptcy is not to interfere with secured creditors except in so far as may be necessary to protect the estate as to any surplus on the assets covered by the security, and there must be cogent reasons to compel the court to issue an order delaying and interfering with right of a secured creditor to realise the security interest.

3.3.3 Generally the creation of the Security Interest over the Collateral pursuant to the Agreement will be binding upon the trustee in bankruptcy of a Counterparty. Where there is a

security interest created over the Collateral under the Agreement, the Collateral would remain assets of the Counterparty, but the Security Interest created in favour of the Firm would not be capable of being set aside or invalidated at the instigation of any creditor, liquidator, administrator, trustee or similar official or appointee, including such parties who wish to take such actions in connection with any bankruptcy, insolvency, organisation or moratorium laws affecting the Counterparty, except in the permitted cases of avoidance of the Agreement under the *Bankruptcy and Insolvency Act* (as described in the paragraph below).

3.3.4 The *Bankruptcy and Insolvency Act* provides that an assignment or charge may be void against the trustee in bankruptcy, if made with a view to giving any one creditor (related to the assignor), a preference over another creditor, and the Counterparty is adjudged bankrupt within three (3) months (twelve (12) months in the case of related party transactions), of the date of such assignment or charge. The *Bankruptcy and Insolvency Act* however provides protection for *good faith* transactions; namely transactions for valuable consideration, which occur prior to any receiving order under the *Bankruptcy and Insolvency Act*, or prior to the Firm having notice of any act of bankruptcy committed by Counterparty prior to the date of the Transaction. The *Bankruptcy and Insolvency Act* further provides that transactions involving the acquisition or disposition of the property of an adjudged bankrupt made within the period that is twelve (12) months before the statutory prescribed period are voidable if a determination is made by the court that the bankrupt did not give or receive (as the case may be), the fair market value in consideration for such transferred property on an application for review of such transaction as the instance of the trustee in bankruptcy; the statutory prescribed period is the date commencing from the initial bankruptcy event and ending on the date of bankruptcy. There are no reasons, of which we are aware, that would render the Agreement negotiated at arms-length, voidable at the instance of a party as other than a good faith transaction.

4. **ADDITIONAL QUALIFICATIONS**

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

4.1.1 Assuming the completion of the perfection requirements as outlined in paragraph 4, under the laws of Barbados, the Security Interest over the Collateral charged by the Agreement will be a good and valid perfected security interest in the collateral owned by the Counterparty, in favour of the Firm as security for the obligations purported to be secured thereby.

4.1.2 On completion of the filing of two original counterparts of the Agreement, together with a Statement of Charge outlining the particulars thereof, with the Registrar of Companies in Barbados within twenty-eight (28) days of the creation of the Security Interest thereunder, there is no requirement to make any amended or substituted filing in respect of any changes in the Collateral charged by the Agreement.

5. **MODIFICATIONS TO QUALIFICATIONS**

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

Taxes and Duties

5.1.1 Except for the stamp duty in the amount adjudicated in accordance with the *Stamp Duty Act*, payable in respect of the Agreement, no further stamp duties or other taxes are payable under the laws of Barbados in connection with the execution and delivery of any of the Agreement, or to ensure the legality, validity, enforceability or admissibility in evidence of any thereof, or to preserve or protect the security afforded and to be afforded by the Agreement.⁶

5.1.2 Stamp duty is a documentary tax charged upon instruments; it is not a tax upon transactions or upon persons. For the purposes of the *Stamp Duty Act*, an instrument is defined to include every written document; thus any transaction which is effected orally or arises solely from the conduct of the parties is not subject to stamp duty.

5.1.3 The territorial limits of the stamp duty is defined incidentally; the *Stamp Duty Act* section 34(4) prescribes that stamp duty is chargeable in respect of (a) an instrument executed in Barbados, and (b) an instrument, wheresoever executed to any property situate in or to any matter or thing done or to be done in Barbados. In most cases, it is anticipated that with a Barbados Society with Restricted Liability, the Agreement will be executed in Barbados. The performance of the Agreement is interpreted as being required to be performed in Barbados (there being some element of performance of that obligation in Barbados). As a consequence, even if the Agreement is not executed in Barbados, and the Collateral is situate outside of Barbados, the Agreement is *prima facie* subject to stamp duty.

5.1.4 An instrument which is not properly stamped is nonetheless effective; but remains (except in criminal proceedings) inadmissible in evidence, or available for any purpose whatsoever. The failure to stamp is inherently remediable and does not affect the validity of the document. It is understood that current practice is to admit an unstamped document subject to counsel's undertaking to have the instrument stamped. In a security instrument such as the Agreement, the onus of payment of the stamp duty is on chargee or mortgagee, and is usually completed in the normal course of registration as described in paragraph 4.

Exchange Control

5.2.1 There are exchange control (foreign currency control) restrictions in Barbados. Specific classes of companies are exempt from the restrictions against (a) ownership of foreign property,

⁶ In the case of international societies with restricted liability the rate of stamp duty is currently BDS\$10.00 (approx. US\$5.00) per document. In the case of societies with restricted liability which are not licensed as international societies, there is an *ad valorem* rate as specified in the Schedule to the *Stamp Duty Act*.

and (b) dealing in foreign cash and securities. Counterparties licensed as international business companies or international societies with restricted liability are exempt from these restrictions.

5.2.2 Absent the general exclusion of application of the *Exchange Control Act* (as in the case of a society with restricted liability organised but not licensed under the *Societies with Restricted Liability Act*), a specific exemption must be obtained from the Exchange Control Authority.

5.2.3 Assuming that the Counterparty is an international society with restricted liability licensed under the *Societies with Restricted Liability Act*, the Counterparty will be exempt from the *Exchange Control Act* and any other applicable exchange control (foreign currency) controls restrictions against (a) ownership of foreign property, and (b) dealing in foreign cash and securities, so that there would be no restriction on the payment by the Counterparty of any of its obligations under the Agreement in an agreed upon foreign currency.

5.2.4 The standard market practice is for the Counterparty (a) to give representations and warranties to the effect that (a) no authorisation or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution and delivery by the Counterparty of the Agreement, and (ii) that the execution, delivery and performance by the Counterparty of the Agreement does not violate or conflict with, any provision of the corporate instruments, by-laws, the licence or business plan of the Barbados entity, or any law, rule or regulation in Barbados, applicable to the Counterparty; and (b) to provide independently evidence of its exemption from the *Exchange Control Act* by tendering a copy of the licence issued under the relevant statute.

SCHEDULE 5

BARBADOS INVESTMENT FIRMS/BROKER DEALERS

Subject to the modifications and additions set out in this Schedule 5 (*Barbados Investment Firms/Broker Dealers*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are *Barbados Investment Firms/Broker Dealers*. For the purposes of this Schedule 5 (*Barbados Investment Firms/Broker Dealers*), "***Barbados Investment firms/broker dealers***" means Investment firms/broker dealers incorporated under the *Companies Act*, Cap. 308 of the laws of Barbados and registered as brokers, dealers, traders, underwriters or investment advisers, and securities companies under the *Securities Act*, Cap. 318A of the laws of Barbados.

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. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 ***Barbados Investment firms/broker dealers*** include:

1.1.1 Investment firms/broker dealers incorporated under the *Companies Act*, Cap. 308 of the laws of Barbados and registered as brokers, dealers, traders, underwriters or investment advisers, and securities companies under the *Securities Act*, Cap. 318A of the laws of Barbados.

2. ADDITIONAL ASSUMPTIONS

We assume:

2.1 (a) that the Counterparty is not specifically restricted by its corporate instruments from entering into the transactions governed by the Agreement, or (b) where the corporate instruments or the terms and conditions of any regulatory licence of the Counterparty specifically restrict the business of the Counterparty, that the Transactions do not constitute the carrying on of a business by the Counterparty outside of the permitted scope of business of the Counterparty and (c) that the Counterparty will have the necessary corporate power to enter into and to execute the Agreement and the Transactions governed therein.

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 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 provided that requirements for perfection outlined in paragraph 4 are satisfied.

3.2 As the chargee thereof, the Firm is not restricted from granting a sub-security interest in and over (re-hypothecating) the whole or any part of the Collateral in which it has been granted a security interest under the Agreement; provided that the Firm may not re-hypothecate or grant a security interest in the whole or any part of the Collateral greater than the security interest granted by the Counterparty in the Agreement. Under Barbados law, the re-hypothecation or grant of a security interest in the whole or any part of the Collateral will not render invalid or unenforceable the security interest in the whole or any part of the Collateral which has been granted in favour of Firm under the Agreement.

3.3.1 The *Bankruptcy and Insolvency Act* imposes stays in respect of proceedings (whether judicial or extra-judicial), by secured creditors in respect of the enforcement of security interests (and the limitation or exclusion of the rights, power and authority of an insolvent person over its assets). If a proposal or a notice of an intention to make a proposal (for composition, extension of time, or scheme of arrangement), has been filed, the Firm (as the secured creditor) cannot enforce its security over the assets of the Counterparty except in cases where (a) the Firm had sought to enforce its security interest against the secured assets of the Counterparty prior to the filing of the notice of an intention to make a proposal with the Financial Services Commission acting in the authority and stead of the Supervisor of Insolvency (the "Financial Services Commission"), (b) the Firm had given notice of its intention to realise the security interest at least ten (10) days prior to either (i) the filing of the notice of an intention to make a proposal with the Financial Services Commission or (ii) the filing of the proposal with the Financial Services Commission (where no notice had been filed), (c) the Firm had given notice of its intention to realise the security interest and the Counterparty had consented to the enforcement action, or (d) the proposal filed with the Financial Services Commission has not been made to the Firm or was not consented to by the Firm. The stay remains in force and effect until the trustee is discharged or the Counterparty adjudicated bankrupt in accordance with the *Bankruptcy and Insolvency Act*.

3.3.2 In the event of the adjudication of bankruptcy under the *Bankruptcy and Insolvency Act*, the rights of the Firm (as the secured creditor) to enforce its security over the assets of the Counterparty generally remain unfettered, and may only be limited by judicial order for a period not exceeding six (6) months from the date that debt is due. The policy of the *Bankruptcy and Insolvency Act* in the case of bankruptcy is not to interfere with secured creditors except in so far as may be necessary to protect the estate as to any surplus on the assets covered by the security, and there must be cogent reasons to compel the court to issue an order delaying and interfering with right of a secured creditor to realise the security interest.

3.3.3 Generally the creation of the Security Interest over the Collateral pursuant to the Agreement will be binding upon the trustee in bankruptcy of a Counterparty. Where there is a

security interest created over the Collateral under the Agreement, the Collateral would remain assets of the Counterparty, but the Security Interest created in favour of the Firm would not be capable of being set aside or invalidated at the instigation of any creditor, liquidator, administrator, trustee or similar official or appointee, including such parties who wish to take such actions in connection with any bankruptcy, insolvency, organisation or moratorium laws affecting the Counterparty, except in the permitted cases of avoidance of the Agreement under the *Bankruptcy and Insolvency Act* (as described in the paragraph below).

3.3.4 The *Bankruptcy and Insolvency Act* provides that an assignment or charge may be void as against the trustee in bankruptcy, if made with a view to giving any one creditor (related to the assignor), a preference over another creditor, and the Counterparty is adjudged bankrupt within three (3) months (twelve (12) months in the case of related party transactions), of the date of such assignment or charge. The *Bankruptcy and Insolvency Act* however provides protection for *good faith* transactions; namely transactions for valuable consideration, which occur prior to any receiving order under the *Bankruptcy and Insolvency Act*, or prior to the Firm having notice of any act of bankruptcy committed by Counterparty prior to the date of the Transaction. The *Bankruptcy and Insolvency Act* further provides that transactions involving the acquisition or disposition of the property of an adjudged bankrupt made within the period that is twelve (12) months before the statutory prescribed period are voidable if a determination is made by the court that the bankrupt did not give or receive (as the case may be), the fair market value in consideration for such transferred property on an application for review of such transaction as the instance of the trustee in bankruptcy; the statutory prescribed period is the date commencing from the initial bankruptcy event and ending on the date of bankruptcy. There are no reasons, of which we are aware, that would render the Agreement negotiated at arms-length, voidable at the instance of a party as other than a good faith transaction.

4. **ADDITIONAL QUALIFICATIONS**

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

4.1.1 Assuming the completion of the perfection requirements as outlined in paragraph 4, under the laws of Barbados, the Security Interest over the Collateral charged by the Agreement will be a good and valid perfected security interest in the collateral owned by the Counterparty, in favour of the Firm as security for the obligations purported to be secured thereby.

4.1.2 On completion of the filing of two original counterparts of the Agreement, together with a Statement of Charge outlining the particulars thereof, with the Registrar of Companies in Barbados within twenty-eight (28) days of the creation of the Security Interest thereunder, there is no requirement to make any amended or substituted filing in respect of any changes in the Collateral charged by the Agreement.

5. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

Taxes and Duties

5.1.1 Except for the stamp duty in the amount adjudicated in accordance with the *Stamp Duty Act*, payable in respect of the Agreement, no further stamp duties or other taxes are payable under the laws of Barbados in connection with the execution and delivery of any of the Agreement, or to ensure the legality, validity, enforceability or admissibility in evidence of any thereof, or to preserve or protect the security afforded and to be afforded by the Agreement.⁷

5.1.2 Stamp duty is a documentary tax charged upon instruments; it is not a tax upon transactions or upon persons. For the purposes of the *Stamp Duty Act*, an instrument is defined to include every written document; thus any transaction which is effected orally or arises solely from the conduct of the parties is not subject to stamp duty.

5.1.3 The territorial limits of the stamp duty is defined incidentally; the *Stamp Duty Act* section 34(4) prescribes that stamp duty is chargeable in respect of (a) an instrument executed in Barbados, and (b) an instrument, wheresoever executed to any property situate in or to any matter or thing done or to be done in Barbados. In most cases, it is anticipated that with a Barbados Investment firm/broker dealer, the Agreement will be executed in Barbados. The performance of the Agreement is interpreted as being required to be performed in Barbados (there being some element of performance of that obligation in Barbados). As a consequence, even if the Agreement is not executed in Barbados, and the Collateral is situate outside of Barbados, the Agreement is *prima facie* subject to stamp duty.

5.1.4 An instrument which is not properly stamped is nonetheless effective; but remains (except in criminal proceedings) inadmissible in evidence, or available for any purpose whatsoever. The failure to stamp is inherently remediable and does not affect the validity of the document. It is understood that current practice is to admit an unstamped document subject to counsel's undertaking to have the instrument stamped. In a security instrument such as the Agreement, the onus of payment of the stamp duty is on chargee or mortgagee, and is usually completed in the normal course of registration as described in paragraph 4.

Exchange Control

5.2.1 There are exchange control (foreign currency control) restrictions in Barbados. Specific classes of companies are exempt from the restrictions against (a) ownership of foreign property,

⁷ There is an *ad valorem* rate as specified in the Schedule to the *Stamp Duty Act*.

and (b) dealing in foreign cash and securities. Counterparties licensed as international business companies or international societies with restricted liability are exempt from these restrictions.

5.2.2 Absent the general exclusion of application of the *Exchange Control Act*, as in the case of a Barbados Investment firm/broker dealer, a specific exemption must be obtained from the Exchange Control Authority.

5.2.3 The standard market practice is for the Counterparty (a) to give representations and warranties to the effect that (a) no authorisation or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution and delivery by the Counterparty of the Agreement, and (ii) that the execution, delivery and performance by the Counterparty of the Agreement does not violate or conflict with, any provision of the corporate instruments, by-laws, the licence or business plan of the Barbados entity, or any law, rule or regulation in Barbados, applicable to the Counterparty; and (b) to provide independently evidence of its exemption from the *Exchange Control Act* by tendering a copy of the licence issued under the relevant statute.

SCHEDULE 6
BARBADOS PARTNERSHIPS

Subject to the modifications and additions set out in this Schedule 6 (*Barbados Partnerships*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are *Barbados Partnerships*. For the purposes of this Schedule 6 (*Barbados Partnerships*), "***Barbados Partnerships***" means Partnerships incorporated, continued or registered under the *Companies Act*, Cap. 308 of the laws of Barbados.

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. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 ***Barbados Partnerships*** include:

1.1.1 Partnerships incorporated, continued or registered under the *Companies Act*, Cap. 308 of the laws of Barbados.

2. ADDITIONAL ASSUMPTIONS

We assume:

2.1 (a) that the Counterparty is not specifically restricted by its corporate instruments from entering into the transactions governed by the Agreement, or (b) where the corporate instruments or the terms and conditions of any regulatory licence of the Counterparty specifically restrict the business of the Counterparty, that the Transactions do not constitute the carrying on of a business by the Counterparty outside of the permitted scope of business of the Counterparty and (c) that the Counterparty will have the necessary corporate power to enter into and to execute the Agreement and the Transactions governed therein.

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 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 provided that requirements for perfection outlined in paragraph 4 are satisfied.

3.2 As the chargee thereof, the Firm is not restricted from granting a sub-security interest in and over (re-hypothecating) the whole or any part of the Collateral in which it has been granted a security interest under the Agreement; provided that the Firm may not re-hypothecate or grant a security interest in the whole or any part of the Collateral greater than the security interest granted by the Counterparty in the Agreement. Under Barbados law, the re-hypothecation or grant of a security interest in the whole or any part of the Collateral will not render invalid or unenforceable the security interest in the whole or any part of the Collateral which has been granted in favour of Firm under the Agreement.

3.3.1 The *Bankruptcy and Insolvency Act* imposes stays in respect of proceedings (whether judicial or extra-judicial), by secured creditors in respect of the enforcement of security interests (and the limitation or exclusion of the rights, power and authority of an insolvent person over its assets). If a proposal or a notice of an intention to make a proposal (for composition, extension of time, or scheme of arrangement), has been filed, the Firm (as the secured creditor) cannot enforce its security over the assets of the Counterparty except in cases where (a) the Firm had sought to enforce its security interest against the secured assets of the Counterparty prior to the filing of the notice of an intention to make a proposal with the Financial Services Commission acting in the authority and stead of the Supervisor of Insolvency (the "Financial Services Commission"), (b) the Firm had given notice of its intention to realise the security interest at least ten (10) days prior to either (i) the filing of the notice of an intention to make a proposal with the Financial Services Commission or (ii) the filing of the proposal with the Financial Services Commission (where no notice had been filed), (c) the Firm had given notice of its intention to realise the security interest and the Counterparty had consented to the enforcement action, or (d) the proposal filed with the Financial Services Commission has not been made to the Firm or was not consented to by the Firm. The stay remains in force and effect until the trustee is discharged or the Counterparty adjudicated bankrupt in accordance with the *Bankruptcy and Insolvency Act*.

3.3.2 In the event of the adjudication of bankruptcy under the *Bankruptcy and Insolvency Act*, the rights of the Firm (as the secured creditor) to enforce its security over the assets of the Counterparty generally remain unfettered, and may only be limited by judicial order for a period not exceeding six (6) months from the date that debt is due. The policy of the *Bankruptcy and Insolvency Act* in the case of bankruptcy is not to interfere with secured creditors except in so far as may be necessary to protect the estate as to any surplus on the assets covered by the security, and there must be cogent reasons to compel the court to issue an order delaying and interfering with right of a secured creditor to realise the security interest.

3.3.3 Generally the creation of the Security Interest over the Collateral pursuant to the Agreement will be binding upon the trustee in bankruptcy of a Counterparty. Where there is a security interest created over the Collateral under the Agreement, the Collateral would remain assets of the Counterparty, but the Security Interest created in favour of the Firm would not be capable of being set aside or invalidated at the instigation of any creditor, liquidator,

administrator, trustee or similar official or appointee, including such parties who wish to take such actions in connection with any bankruptcy, insolvency, organisation or moratorium laws affecting the Counterparty, except in the permitted cases of avoidance of the Agreement under the *Bankruptcy and Insolvency Act* (as described in the paragraph below).

3.3.4 The *Bankruptcy and Insolvency Act* provides that an assignment or charge may be void as against the trustee in bankruptcy, if made with a view to giving any one creditor (related to the assignor), a preference over another creditor, and the Counterparty is adjudged bankrupt within three (3) months (twelve (12) months in the case of related party transactions), of the date of such assignment or charge. The *Bankruptcy and Insolvency Act* however provides protection for *good faith* transactions; namely transactions for valuable consideration, which occur prior to any receiving order under the *Bankruptcy and Insolvency Act*, or prior to the Firm having notice of any act of bankruptcy committed by Counterparty prior to the date of the Transaction. The *Bankruptcy and Insolvency Act* further provides that transactions involving the acquisition or disposition of the property of an adjudged bankrupt made within the period that is twelve (12) months before the statutory prescribed period are voidable if a determination is made by the court that the bankrupt did not give or receive (as the case may be), the fair market value in consideration for such transferred property on an application for review of such transaction as the instance of the trustee in bankruptcy; the statutory prescribed period is the date commencing from the initial bankruptcy event and ending on the date of bankruptcy. There are no reasons, of which we are aware, that would render the Agreement negotiated at arms-length, voidable at the instance of a party as other than a good faith transaction.

4. **ADDITIONAL QUALIFICATIONS**

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

4.1.1 Assuming the completion of the perfection requirements as outlined in paragraph 4, under the laws of Barbados, the Security Interest over the Collateral charged by the Agreement will be a good and valid perfected security interest in the collateral owned by the Counterparty, in favour of the Firm as security for the obligations purported to be secured thereby.

4.1.2 On completion of the filing of two original counterparts of the Agreement, together with a Statement of Charge outlining the particulars thereof, with the Registrar of Companies in Barbados within twenty-eight (28) days of the creation of the Security Interest thereunder, there is no requirement to make any amended or substituted filing in respect of any changes in the Collateral charged by the Agreement.

5. **MODIFICATIONS TO QUALIFICATIONS**

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

Taxes and Duties

5.1.1 Except for the stamp duty in the amount adjudicated in accordance with the *Stamp Duty Act*, payable in respect of the Agreement, no further stamp duties or other taxes are payable under the laws of Barbados in connection with the execution and delivery of any of the Agreement, or to ensure the legality, validity, enforceability or admissibility in evidence of any thereof, or to preserve or protect the security afforded and to be afforded by the Agreement.⁸

5.1.2 Stamp duty is a documentary tax charged upon instruments; it is not a tax upon transactions or upon persons. For the purposes of the *Stamp Duty Act*, an instrument is defined to include every written document; thus any transaction which is effected orally or arises solely from the conduct of the parties is not subject to stamp duty.

5.1.3 The territorial limits of the stamp duty is defined incidentally; the *Stamp Duty Act* section 34(4) prescribes that stamp duty is chargeable in respect of (a) an instrument executed in Barbados, and (b) an instrument, wheresoever executed to any property situate in or to any matter or thing done or to be done in Barbados. In most cases, it is anticipated that with a Barbados Partnership, the Agreement will be executed in Barbados. The performance of the Agreement is interpreted as being required to be performed in Barbados (there being some element of performance of that obligation in Barbados). As a consequence, even if the Agreement is not executed in Barbados, and the Collateral is situate outside of Barbados, the Agreement is *prima facie* subject to stamp duty.

5.1.4 An instrument which is not properly stamped is nonetheless effective; but remains (except in criminal proceedings) inadmissible in evidence, or available for any purpose whatsoever. The failure to stamp is inherently remediable and does not affect the validity of the document. It is understood that current practice is to admit an unstamped document subject to counsel's undertaking to have the instrument stamped. In a security instrument such as the Agreement, the onus of payment of the stamp duty is on chargee or mortgagee, and is usually completed in the normal course of registration as described in paragraph 4.

Exchange Control

5.2.1 There are exchange control (foreign currency control) restrictions in Barbados. Specific classes of companies are exempt from the restrictions against (a) ownership of foreign property, and (b) dealing in foreign cash and securities. Counterparties licensed as international business companies or international societies with restricted liability are exempt from these restrictions.

⁸ There is an *ad valorem* rate as specified in the Schedule to the *Stamp Duty Act*.

5.2.2 Absent the general exclusion of application of the *Exchange Control Act* (as in the case of a Barbados Partnership), a specific exemption must be obtained from the Exchange Control Authority.

5.2.3 The standard market practice is for the Counterparty (a) to give representations and warranties to the effect that (a) no authorisation or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution and delivery by the Counterparty of the Agreement, and (ii) that the execution, delivery and performance by the Counterparty of the Agreement does not violate or conflict with, any provision of the corporate instruments, by-laws, the licence or business plan of the Barbados entity, or any law, rule or regulation in Barbados, applicable to the Counterparty; and (b) to provide independently evidence of its exemption from the *Exchange Control Act* by tendering a copy of the licence issued under the relevant statute.

SCHEDULE 7
BARBADOS INDIVIDUALS

Subject to the modifications and additions set out in this Schedule 7 (*Barbados Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are *Individuals*. For the purposes of this Schedule 7 (*Barbados Individuals*), "*Barbados Individuals*" means persons resident in Barbados.

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. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 *Barbados Individuals* include:

1.1.1 Individuals deemed resident in Barbados under the laws of Barbados.

2. ADDITIONAL ASSUMPTIONS

We assume:

None.

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 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 provided that requirements for perfection outlined in paragraph 4 are satisfied.

3.2 As the chargee thereof, the Firm is not restricted from granting a sub-security interest in and over (re-hypothecating) the whole or any part of the Collateral in which it has been granted a security interest under the Agreement; provided that the Firm may not re-hypothecate or grant a security interest in the whole or any part of the Collateral greater than the security interest granted by the Counterparty in the Agreement. Under Barbados law, the re-hypothecation or grant of a security interest in the whole or any part of the Collateral will not render invalid or unenforceable the security interest in the whole or any part of the Collateral which has been granted in favour of Firm under the Agreement.

3.3.1 The *Bankruptcy and Insolvency Act* imposes stays in respect of proceedings (whether judicial or extra-judicial), by secured creditors in respect of the enforcement of security interests (and the limitation or exclusion of the rights, power and authority of an insolvent person over its assets). If a proposal or a notice of an intention to make a proposal (for composition, extension of time, or scheme of arrangement), has been filed, the Firm (as the secured creditor) cannot enforce its security over the assets of the Counterparty except in cases where (a) the Firm had sought to enforce its security interest against the secured assets of the Counterparty prior to the filing of the notice of an intention to make a proposal with the Financial Services Commission acting in the authority and stead of the Supervisor of Insolvency (the "Financial Services Commission"), (b) the Firm had given notice of its intention to realise the security interest at least ten (10) days prior to either (i) the filing of the notice of an intention to make a proposal with the Financial Services Commission or (ii) the filing of the proposal with the Financial Services Commission (where no notice had been filed), (c) the Firm had given notice of its intention to realise the security interest and the Counterparty had consented to the enforcement action, or (d) the proposal filed with the Financial Services Commission has not been made to the Firm or was not consented to by the Firm. The stay remains in force and effect until the trustee is discharged or the Counterparty adjudicated bankrupt in accordance with the *Bankruptcy and Insolvency Act*.

3.3.2 In the event of the adjudication of bankruptcy under the *Bankruptcy and Insolvency Act*, the rights of the Firm (as the secured creditor) to enforce its security over the assets of the Counterparty generally remain unfettered, and may only be limited by judicial order for a period not exceeding six (6) months from the date that debt is due. The policy of the *Bankruptcy and Insolvency Act* in the case of bankruptcy is not to interfere with secured creditors except in so far as may be necessary to protect the estate as to any surplus on the assets covered by the security, and there must be cogent reasons to compel the court to issue an order delaying and interfering with right of a secured creditor to realise the security interest.

3.3.3 Generally the creation of the Security Interest over the Collateral pursuant to the Agreement will be binding upon the trustee in bankruptcy of a Counterparty. Where there is a security interest created over the Collateral under the Agreement, the Collateral would remain assets of the Counterparty, but the Security Interest created in favour of the Firm would not be capable of being set aside or invalidated at the instigation of any creditor, liquidator, administrator, trustee or similar official or appointee, including such parties who wish to take such actions in connection with any bankruptcy, insolvency, organisation or moratorium laws affecting the Counterparty, except in the permitted cases of avoidance of the Agreement under the *Bankruptcy and Insolvency Act* (as described in the paragraph below).

3.3.4 The *Bankruptcy and Insolvency Act* provides that an assignment or charge may be void as against the trustee in bankruptcy, if made with a view to giving any one creditor (related to the assignor), a preference over another creditor, and the Counterparty is adjudged bankrupt within three (3) months (twelve (12) months in the case of related party transactions), of the date of

such assignment or charge. The *Bankruptcy and Insolvency Act* however provides protection for *good faith* transactions; namely transactions for valuable consideration, which occur prior to any receiving order under the *Bankruptcy and Insolvency Act*, or prior to the Firm having notice of any act of bankruptcy committed by Counterparty prior to the date of the Transaction. The *Bankruptcy and Insolvency Act* further provides that transactions involving the acquisition or disposition of the property of an adjudged bankrupt made within the period that is twelve (12) months before the statutory prescribed period are voidable if a determination is made by the court that the bankrupt did not give or receive (as the case may be), the fair market value in consideration for such transferred property on an application for review of such transaction as the instance of the trustee in bankruptcy; the statutory prescribed period is the date commencing from the initial bankruptcy event and ending on the date of bankruptcy. There are no reasons, of which we are aware, that would render the Agreement negotiated at arm's length, voidable at the instance of a party as other than a good faith transaction.

4. **ADDITIONAL QUALIFICATIONS**

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

4.1.1 Assuming the completion of the perfection requirements as outlined in paragraph 4, under the laws of Barbados, the Security Interest over the Collateral charged by the Agreement will be a good and valid perfected security interest in the collateral owned by the Counterparty, in favour of the Firm as security for the obligations purported to be secured thereby.

4.1.2 On completion of the filing of two original counterparts of the Agreement, together with a Statement of Charge outlining the particulars thereof, with the Registrar of Companies in Barbados within twenty-eight (28) days of the creation of the Security Interest thereunder, there is no requirement to make any amended or substituted filing in respect of any changes in the Collateral charged by the Agreement.

5. **MODIFICATIONS TO QUALIFICATIONS**

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

Taxes and Duties

5.1.1 Except for the stamp duty in the amount adjudicated in accordance with the *Stamp Duty Act*, payable in respect of the Agreement, no further stamp duties or other taxes are payable under the laws of Barbados in connection with the execution and delivery of any of the Agreement, or to ensure the legality, validity, enforceability or admissibility in evidence of any thereof, or to preserve or protect the security afforded and to be afforded by the Agreement.⁹

⁹ Stamp duty is calculated based on the *ad valorem* rate as specified in the Schedule to the *Stamp Duty Act*.

5.1.2 Stamp duty is a documentary tax charged upon instruments; it is not a tax upon transactions or upon persons. For the purposes of the *Stamp Duty Act*, an instrument is defined to include every written document; thus any transaction which is effected orally or arises solely from the conduct of the parties is not subject to stamp duty.

5.1.3 The territorial limits of the stamp duty is defined incidentally; the *Stamp Duty Act* section 34(4) prescribes that stamp duty is chargeable in respect of (a) an instrument executed in Barbados, and (b) an instrument, wheresoever executed to any property situate in or to any matter or thing done or to be done in Barbados. In most cases, it is anticipated that with a Barbados International Business Company, the Agreement will be executed in Barbados. The performance of the Agreement is interpreted as being required to be performed in Barbados (there being some element of performance of that obligation in Barbados). As a consequence, even if the Agreement is not executed in Barbados, and the Collateral is situate outside of Barbados, the Agreement is *prima facie* subject to stamp duty.

5.1.4 An instrument which is not properly stamped is nonetheless effective; but remains (except in criminal proceedings) inadmissible in evidence, or available for any purpose whatsoever. The failure to stamp is inherently remediable and does not affect the validity of the document. It is understood that current practice is to admit an unstamped document subject to counsel's undertaking to have the instrument stamped. In a security instrument such as the Agreement, the onus of payment of the stamp duty is on chargee or mortgagee, and is usually completed in the normal course of registration as described in paragraph 4.

Exchange Control

5.2.1 There are exchange control (foreign currency control) restrictions in Barbados. Specific classes of companies are exempt from the restrictions against (a) ownership of foreign property, and (b) dealing in foreign cash and securities. Counterparties licensed as international business companies are exempt from these restrictions. A specific exemption must be obtained from the Exchange Control Authority.

5.2.2 The standard market practice is for the Counterparty (a) to give representations and warranties to the effect that (a) no authorisation or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution and delivery by the Counterparty of the Agreement, and (ii) that the execution, delivery and performance by the Counterparty of the Agreement does not violate or conflict with, any provision of the corporate instruments, by-laws or the licence of the Barbados entity, or any law, rule or regulation in Barbados, applicable to the Counterparty; and (b) to provide independently evidence of its exemption from the *Exchange Control Act* by tendering a copy of the licence issued under the relevant statute.

SCHEDULE 8
BARBADOS MUTUAL FUNDS

Subject to the modifications and additions set out in this Schedule 8 (*Barbados Mutual Funds*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are *Barbados Mutual Funds*. For the purposes of this Schedule 8 (*Barbados Mutual Funds*), "*Barbados Mutual Funds*" means mutual funds existing in the form of registered unit trusts, companies, partnerships or societies and licensed to carry on mutual fund business in or from Barbados under the *Mutual Funds Act*, Cap. 320B of the laws of Barbados.

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. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 *Barbados Mutual Funds* include:

1.1.1 Registered unit trusts, companies, partnerships or societies established in Barbados and licensed to carry on mutual fund business in or from Barbados under the *Mutual Funds Act*, Cap. 320B of the laws of Barbados

2. ADDITIONAL ASSUMPTIONS

We assume:

2.1 (a) that the Counterparty is not specifically restricted by its corporate instruments from entering into the transactions governed by the Agreement, or (b) where the corporate instruments or the terms and conditions of any regulatory licence of the Counterparty specifically restrict the business of the Counterparty, that the Transactions do not constitute the carrying on of a business by the Counterparty outside of the permitted scope of business of the Counterparty and (c) that the Counterparty will have the necessary corporate power to enter into and to execute the Agreement and the Transactions governed therein.

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 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 provided that requirements for perfection outlined in paragraph 4 are satisfied.

3.2 As the chargee thereof, the Firm is not restricted from granting a sub-security interest in and over (re-hypothecating) the whole or any part of the Collateral in which it has been granted a security interest under the Agreement; provided that the Firm may not re-hypothecate or grant a security interest in the whole or any part of the Collateral greater than the security interest granted by the Counterparty in the Agreement. Under Barbados law, the re-hypothecation or grant of a security interest in the whole or any part of the Collateral will not render invalid or unenforceable the security interest in the whole or any part of the Collateral which has been granted in favour of Firm under the Agreement.

3.3.1 The *Bankruptcy and Insolvency Act* imposes stays in respect of proceedings (whether judicial or extra-judicial), by secured creditors in respect of the enforcement of security interests (and the limitation or exclusion of the rights, power and authority of an insolvent person over its assets). If a proposal or a notice of an intention to make a proposal (for composition, extension of time, or scheme of arrangement), has been filed, the Firm (as the secured creditor) cannot enforce its security over the assets of the Counterparty except in cases where (a) the Firm had sought to enforce its security interest against the secured assets of the Counterparty prior to the filing of the notice of an intention to make a proposal with the Financial Services Commission acting in the authority and stead of the Supervisor of Insolvency (the "Financial Services Commission"), (b) the Firm had given notice of its intention to realise the security interest at least ten (10) days prior to either (i) the filing of the notice of an intention to make a proposal with the Financial Services Commission or (ii) the filing of the proposal with the Financial Services Commission (where no notice had been filed), (c) the Firm had given notice of its intention to realise the security interest and the Counterparty had consented to the enforcement action, or (d) the proposal filed with the Financial Services Commission has not been made to the Firm or was not consented to by the Firm. The stay remains in force and effect until the trustee is discharged or the Counterparty adjudicated bankrupt in accordance with the *Bankruptcy and Insolvency Act*.

3.3.2 In the event of the adjudication of bankruptcy under the *Bankruptcy and Insolvency Act*, the rights of the Firm (as the secured creditor) to enforce its security over the assets of the Counterparty generally remain unfettered, and may only be limited by judicial order for a period not exceeding six (6) months from the date that debt is due. The policy of the *Bankruptcy and Insolvency Act* in the case of bankruptcy is not to interfere with secured creditors except in so far as may be necessary to protect the estate as to any surplus on the assets covered by the security, and there must be cogent reasons to compel the court to issue an order delaying and interfering with right of a secured creditor to realise the security interest.

3.3.3 Generally the creation of the Security Interest over the Collateral pursuant to the Agreement will be binding upon the trustee in bankruptcy of a Counterparty. Where there is a security interest created over the Collateral under the Agreement, the Collateral would remain assets of the Counterparty, but the Security Interest created in favour of the Firm would not be capable of being set aside or invalidated at the instigation of any creditor, liquidator,

administrator, trustee or similar official or appointee, including such parties who wish to take such actions in connection with any bankruptcy, insolvency, organisation or moratorium laws affecting the Counterparty, except in the permitted cases of avoidance of the Agreement under the *Bankruptcy and Insolvency Act* (as described in the paragraph below).

3.3.4 The *Bankruptcy and Insolvency Act* provides that an assignment or charge may be void as against the trustee in bankruptcy, if made with a view to giving any one creditor (related to the assignor), a preference over another creditor, and the Counterparty is adjudged bankrupt within three (3) months (twelve (12) months in the case of related party transactions), of the date of such assignment or charge. The *Bankruptcy and Insolvency Act* however provides protection for *good faith* transactions; namely transactions for valuable consideration, which occur prior to any receiving order under the *Bankruptcy and Insolvency Act*, or prior to the Firm having notice of any act of bankruptcy committed by Counterparty prior to the date of the Transaction. The *Bankruptcy and Insolvency Act* further provides that transactions involving the acquisition or disposition of the property of an adjudged bankrupt made within the period that is twelve (12) months before the statutory prescribed period are voidable if a determination is made by the court that the bankrupt did not give or receive (as the case may be), the fair market value in consideration for such transferred property on an application for review of such transaction as the instance of the trustee in bankruptcy; the statutory prescribed period is the date commencing from the initial bankruptcy event and ending on the date of bankruptcy. There are no reasons, of which we are aware, that would render the Agreement negotiated at arms-length, voidable at the instance of a party as other than a good faith transaction.

4. **ADDITIONAL QUALIFICATIONS**

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

4.1.1 Assuming the completion of the perfection requirements as outlined in paragraph 4, under the laws of Barbados, the Security Interest over the Collateral charged by the Agreement will be a good and valid perfected security interest in the collateral owned by the Counterparty, in favour of the Firm as security for the obligations purported to be secured thereby.

4.1.2 On completion of the filing of two original counterparts of the Agreement, together with a Statement of Charge outlining the particulars thereof, with the Registrar of Companies in Barbados within twenty-eight (28) days of the creation of the Security Interest thereunder, there is no requirement to make any amended or substituted filing in respect of any changes in the Collateral charged by the Agreement.

5. **MODIFICATIONS TO QUALIFICATIONS**

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

Taxes and Duties

5.1.1 A mutual fund authorised to carry on business under the *Mutual Funds Act*, and an investor in any such mutual fund are exempt from the provisions of the *Stamp Duty Act* and the *Property Transfer Tax Act* with respect to transactions concerning the acquisition or transfer of shares in mutual funds.

5.1.2 Except for the stamp duty in the amount adjudicated in accordance with the *Stamp Duty Act*, payable in respect of the Agreement, no further stamp duties or other taxes are payable under the laws of Barbados in connection with the execution and delivery of any of the Agreement, or to ensure the legality, validity, enforceability or admissibility in evidence of any thereof, or to preserve or protect the security afforded and to be afforded by the Agreement.

5.1.3 Stamp duty is a documentary tax charged upon instruments; it is not a tax upon transactions or upon persons. For the purposes of the *Stamp Duty Act*, an instrument is defined to include every written document; thus any transaction which is effected orally or arises solely from the conduct of the parties is not subject to stamp duty.

5.1.4 The territorial limits of the stamp duty is defined incidentally; the *Stamp Duty Act* section 34(4) prescribes that stamp duty is chargeable in respect of (a) an instrument executed in Barbados, and (b) an instrument, wheresoever executed to any property situate in or to any matter or thing done or to be done in Barbados. In most cases, it is anticipated that with a Barbados Mutual Fund Company, the Agreement will be executed in Barbados. The performance of the Agreement is interpreted as being required to be performed in Barbados (there being some element of performance of that obligation in Barbados). As a consequence, even if the Agreement is not executed in Barbados, and the Collateral is situate outside of Barbados, the Agreement is *prima facie* subject to stamp duty.

5.1.5 An instrument which is not properly stamped is nonetheless effective; but remains (except in criminal proceedings) inadmissible in evidence, or available for any purpose whatsoever. The failure to stamp is inherently remediable and does not affect the validity of the document. It is understood that current practice is to admit an unstamped document subject to counsel's undertaking to have the instrument stamped. In a security instrument such as the Agreement, the onus of payment of the stamp duty is on chargee or mortgagee, and is usually completed in the normal course of registration as described in paragraph 4.

Exchange Control

5.2.1 There are exchange control (foreign currency control) restrictions in Barbados. Specific classes of companies are exempt from the restrictions against (a) ownership of foreign property, and (b) dealing in foreign cash and securities. Counterparties licensed as international business companies are exempt from these restrictions.

5.2.2 Assuming that the Counterparty is licensed under the *Mutual Funds Act*, the Counterparty will be exempt from the *Exchange Control Act* and any other applicable exchange control (foreign currency) controls restrictions against (a) ownership of foreign property, and (b) dealing in foreign cash and securities, so that there would be no restriction on the payment by the Counterparty of any of its obligations under the Agreement in an agreed upon foreign currency.

5.2.3 The standard market practice is for the Counterparty (a) to give representations and warranties to the effect that (i) no authorisation or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution and delivery by the Counterparty of the Agreement, and (ii) that the execution, delivery and performance by the Counterparty of the Agreement does not violate or conflict with, any provision of the corporate instruments, by-laws or the licence of the Barbados entity, or any law, rule or regulation in Barbados, applicable to the Counterparty; and (b) to provide independently evidence of its exemption from the *Exchange Control Act* by tendering a copy of the licence issued under the relevant statute.

SCHEDULE 9
BARBADOS TRUSTS

Subject to the modifications and additions set out in this Schedule 9 (*Barbados Trusts*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are persons acting as Trustees of *Barbados Trusts*. For the purposes of this Schedule 9 (*Barbados Trusts*), "*Barbados Trusts*" means Parties acting as Trustees of Trusts (pursuant to the *Trustees Act*, Cap. 250 of the laws of Barbados), in respect of trusts governed under the laws of Barbados

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. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 *Barbados Trusts* include:

- i) Trusts governed by the *International Trusts Act*, Cap 245.
- ii) All other Trusts governed by the laws of Barbados.

2. ADDITIONAL ASSUMPTIONS

We assume:

2.1 (a) that the Counterparty is not specifically restricted by its trust deed from entering into the transactions governed by the Agreement, or (b) where the trust deed or the terms and conditions of any regulatory licence of the Counterparty specifically restrict the business of the Counterparty, that the Transactions do not constitute the carrying on of a business by the Counterparty outside of the permitted scope of business of the Counterparty and (c) that the Counterparty will have the necessary corporate power to enter into and to execute the Agreement and the Transactions governed therein.

2.2 that the Transactions are executed by the Trustee(s) in accordance with their duties under Part II of the *Trustees Act*, Cap. 250 of the laws of Barbados, whereby (a) the Trustee(s) shall have regard to the need for diversification of investments of the trust in so far as appropriate to the circumstances of the trust and (b) the Trustee(s) is/are not authorised to invest in bearer securities unless those securities are purchased through a bank and until sold retained at all times by the bank for safe custody and collection of income.

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 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 provided that requirements for perfection outlined in paragraph 4 are satisfied.

3.2 As the chargee thereof, the Firm is not restricted from granting a sub-security interest in and over (re-hypothecating) the whole or any part of the Collateral in which it has been granted a security interest under the Agreement; provided that the Firm may not re-hypothecate or grant a security interest in the whole or any part of the Collateral greater than the security interest granted by the Counterparty in the Agreement. Under Barbados law, the re-hypothecation or grant of a security interest in the whole or any part of the Collateral will not render invalid or unenforceable the security interest in the whole or any part of the Collateral which has been granted in favour of Firm under the Agreement.

3.3.1 The *Bankruptcy and Insolvency Act* imposes stays in respect of proceedings (whether judicial or extra-judicial), by secured creditors in respect of the enforcement of security interests (and the limitation or exclusion of the rights, power and authority of an insolvent person over its assets). If a proposal or a notice of an intention to make a proposal (for composition, extension of time, or scheme of arrangement), has been filed, the Firm (as the secured creditor) cannot enforce its security over the assets of the Counterparty except in cases where (a) the Firm had sought to enforce its security interest against the secured assets of the Counterparty prior to the filing of the notice of an intention to make a proposal with the Financial Services Commission acting in the authority and stead of the Supervisor of Insolvency (the "Financial Services Commission"), (b) the Firm had given notice of its intention to realise the security interest at least ten (10) days prior to either (i) the filing of the notice of an intention to make a proposal with the Financial Services Commission or (ii) the filing of the proposal with the Financial Services Commission (where no notice had been filed), (c) the Firm had given notice of its intention to realise the security interest and the Counterparty had consented to the enforcement action, or (d) the proposal filed with the Financial Services Commission has not been made to the Firm or was not consented to by the Firm. The stay remains in force and effect until the Trustee is discharged or the Counterparty adjudicated bankrupt in accordance with the *Bankruptcy and Insolvency Act*.

3.3.2 In the event of the adjudication of bankruptcy under the *Bankruptcy and Insolvency Act*, the rights of the Firm (as the secured creditor) to enforce its security over the assets of the Counterparty generally remain unfettered, and may only be limited by judicial order for a period not exceeding six (6) months from the date that debt is due. The policy of the *Bankruptcy and Insolvency Act* in the case of bankruptcy is not to interfere with secured creditors except in so far as may be necessary to protect the estate as to any surplus on the assets covered by the security, and there must be cogent reasons to compel the court to issue an order delaying and interfering with right of a secured creditor to realise the security interest.

3.3.3 Generally the creation of the Security Interest over the Collateral pursuant to the Agreement will be binding upon the trustee in bankruptcy of a Counterparty. Where there is a security interest created over the Collateral under the Agreement, the Collateral would remain assets of the Counterparty, but the Security Interest created in favour of the Firm would not be capable of being set aside or invalidated at the instigation of any creditor, liquidator, administrator, trustee or similar official or appointee, including such parties who wish to take such actions in connection with any bankruptcy, insolvency, organisation or moratorium laws affecting the Counterparty, except in the permitted cases of avoidance of the Agreement under the *Bankruptcy and Insolvency Act* (as described in the paragraph below).

3.3.4 The *Bankruptcy and Insolvency Act* provides that an assignment or charge may be void as against the trustee in bankruptcy, if made with a view to giving any one creditor (related to the assignor), a preference over another creditor, and the Counterparty is adjudged bankrupt within three (3) months (twelve (12) months in the case of related party transactions), of the date of such assignment or charge. The *Bankruptcy and Insolvency Act* however provides protection for *good faith* transactions; namely transactions for valuable consideration, which occur prior to any receiving order under the *Bankruptcy and Insolvency Act*, or prior to the Firm having notice of any act of bankruptcy committed by Counterparty prior to the date of the Transaction. The *Bankruptcy and Insolvency Act* further provides that transactions involving the acquisition or disposition of the property of an adjudged bankrupt made within the period that is twelve (12) months before the statutory prescribed period are voidable if a determination is made by the court that the bankrupt did not give or receive (as the case may be), the fair market value in consideration for such transferred property on an application for review of such transaction as the instance of the trustee in bankruptcy; the statutory prescribed period is the date commencing from the initial bankruptcy event and ending on the date of bankruptcy. There are no reasons, of which we are aware, that would render the Agreement negotiated at arms-length, voidable at the instance of a party as other than a good faith transaction.

4. **ADDITIONAL QUALIFICATIONS**

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

4.1.1 Assuming the completion of the perfection requirements as outlined in paragraph 4, under the laws of Barbados, the Security Interest over the Collateral charged by the Agreement will be a good and valid perfected security interest in the collateral owned by the Counterparty, in favour of the Firm as security for the obligations purported to be secured thereby.

4.1.2 On completion of the filing of two original counterparts of the Agreement, together with a Statement of Charge outlining the particulars thereof, with the Registrar of Companies in Barbados within twenty-eight (28) days of the creation of the Security Interest thereunder, there is no requirement to make any amended or substituted filing in respect of any changes in the Collateral charged by the Agreement.

5. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

Taxes and Duties

5.1.1 Except for the stamp duty in the amount adjudicated in accordance with the *Stamp Duty Act*, payable in respect of the Agreement, no further stamp duties or other taxes are payable under the laws of Barbados in connection with the execution and delivery of any of the Agreement, or to ensure the legality, validity, enforceability or admissibility in evidence of any thereof, or to preserve or protect the security afforded and to be afforded by the Agreement.¹⁰

5.1.2 Stamp duty is a documentary tax charged upon instruments; it is not a tax upon transactions or upon persons. For the purposes of the *Stamp Duty Act*, an instrument is defined to include every written document; thus any transaction which is effected orally or arises solely from the conduct of the parties is not subject to stamp duty.

5.1.3 The territorial limits of the stamp duty is defined incidentally; the *Stamp Duty Act* section 34(4) prescribes that stamp duty is chargeable in respect of (a) an instrument executed in Barbados, and (b) an instrument, wheresoever executed to any property situate in or to any matter or thing done or to be done in Barbados. In most cases, it is anticipated that with a Barbados Trust, the Agreement will be executed in Barbados. The performance of the Agreement is interpreted as being required to be performed in Barbados (there being some element of performance of that obligation in Barbados). As a consequence, even if the Agreement is not executed in Barbados, and the Collateral is situate outside of Barbados, the Agreement is *prima facie* subject to stamp duty.

5.1.4 An instrument which is not properly stamped is nonetheless effective; but remains (except in criminal proceedings) inadmissible in evidence, or available for any purpose whatsoever. The failure to stamp is inherently remediable and does not affect the validity of the document. It is understood that current practice is to admit an unstamped document subject to counsel's undertaking to have the instrument stamped. In a security instrument such as the Agreement, the onus of payment of the stamp duty is on chargee or mortgagee, and is usually completed in the normal course of registration as described in paragraph 4.

¹⁰ In the case of International Trusts governed by the *International Trusts Act*, the rate of stamp duty is currently BDS\$10.00 (approx. US\$5.00) per document. In all other cases, there is an *ad valorem* rate as specified in the Schedule to the *Stamp Duty Act*. the rate of stamp

Exchange Control

5.2.1 There are exchange control (foreign currency control) restrictions in Barbados. Specific classes of entities are exempt from the restrictions against (a) ownership of foreign property, and (b) dealing in foreign cash and securities. Where the Barbados Trust is an International Trust they are exempt from these restrictions.

5.2.2 Absent the general exclusion of application of the *Exchange Control Act* (as in the case of a Barbados Trust which is an International Trust), a specific exemption must be obtained from the Exchange Control Authority.

5.2.3 Assuming that the Barbados Trust is an International Trust, the Counterparty will be exempt from the *Exchange Control Act* and any other applicable exchange control (foreign currency) controls restrictions against (a) ownership of foreign property, and (b) dealing in foreign cash and securities, so that there would be no restriction on the payment by the Counterparty of any of its obligations under the Agreement in an agreed upon foreign currency.

5.2.4 The standard market practice is for the Counterparty (a) to give representations and warranties to the effect that (i) no authorisation or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution and delivery by the Counterparty of the Agreement, and (ii) that the execution, delivery and performance by the Counterparty of the Agreement does not violate or conflict with, any provision of the corporate instruments, by-laws or the licence of the Barbados entity, or any law, rule or regulation in Barbados, applicable to the Counterparty; and (b) to provide independently evidence of its exemption from the *Exchange Control Act* by tendering a copy of the licence or certificate of registration issued under the relevant statute.

SCHEDULE 10
BARBADOS CHARITIES

Subject to the modifications and additions set out in this Schedule 10 (*Barbados Charities*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are *Barbados Charities*. For the purposes of this Schedule 10 (*Barbados Charities*), "*Barbados Charities*" means any institution, corporate or not, which is established for charitable objects or purposes, is intended to and does operate for the public benefit, and is subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.

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. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 *Barbados Charities* includes:

1.1.1 Any institution, including any society, trust or undertaking which is established for charitable objects or purposes, is intended to and does operate for the public benefit, and is subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.

2. ADDITIONAL ASSUMPTIONS

We assume:

2.1 (a) that the Counterparty is not specifically restricted by its corporate instruments from entering into the transactions governed by the Agreement, or (b) where the corporate instruments or the terms and conditions of any regulatory licence of the Counterparty specifically restrict the business of the Counterparty, that the Transactions do not constitute the carrying on of a business by the Counterparty outside of the permitted scope of business of the Counterparty and (c) that the Counterparty will have the necessary corporate power to enter into and to execute the Agreement and the Transactions governed therein.

3. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion.

3.1 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 provided that requirements for perfection outlined in paragraph 4 are satisfied.

3.2 As the chargee thereof, the Firm is not restricted from granting a sub-security interest in and over (re-hypothecating) the whole or any part of the Collateral in which it has been granted a security interest under the Agreement; provided that the Firm may not re-hypothecate or grant a security interest in the whole or any part of the Collateral greater than the security interest granted by the Counterparty in the Agreement. Under Barbados law, the re-hypothecation or grant of a security interest in the whole or any part of the Collateral will not render invalid or unenforceable the security interest in the whole or any part of the Collateral which has been granted in favour of Firm under the Agreement.

3.3.1 The *Bankruptcy and Insolvency Act* imposes stays in respect of proceedings (whether judicial or extra-judicial), by secured creditors in respect of the enforcement of security interests (and the limitation or exclusion of the rights, power and authority of an insolvent person over its assets). If a proposal or a notice of an intention to make a proposal (for composition, extension of time, or scheme of arrangement), has been filed, the Firm (as the secured creditor) cannot enforce its security over the assets of the Counterparty except in cases where (a) the Firm had sought to enforce its security interest against the secured assets of the Counterparty prior to the filing of the notice of an intention to make a proposal with the Financial Services Commission acting in the authority and stead of the Supervisor of Insolvency (the "Financial Services Commission"), (b) the Firm had given notice of its intention to realise the security interest at least ten (10) days prior to either (i) the filing of the notice of an intention to make a proposal with the Financial Services Commission or (ii) the filing of the proposal with the Financial Services Commission (where no notice had been filed), (c) the Firm had given notice of its intention to realise the security interest and the Counterparty had consented to the enforcement action, or (d) the proposal filed with the Financial Services Commission has not been made to the Firm or was not consented to by the Firm. The stay remains in force and effect until the trustee is discharged or the Counterparty adjudicated bankrupt in accordance with the *Bankruptcy and Insolvency Act*.

3.3.2 In the event of the adjudication of bankruptcy under the *Bankruptcy and Insolvency Act*, the rights of the Firm (as the secured creditor) to enforce its security over the assets of the Counterparty generally remain unfettered, and may only be limited by judicial order for a period not exceeding six (6) months from the date that debt is due. The policy of the *Bankruptcy and Insolvency Act* in the case of bankruptcy is not to interfere with secured creditors except in so far as may be necessary to protect the estate as to any surplus on the assets covered by the security, and there must be cogent reasons to compel the court to issue an order delaying and interfering with right of a secured creditor to realise the security interest.

3.3.3 Generally the creation of the Security Interest over the Collateral pursuant to the Agreement will be binding upon the trustee in bankruptcy of a Counterparty. Where there is a security interest created over the Collateral under the Agreement, the Collateral would remain assets of the Counterparty, but the Security Interest created in favour of the Firm would not be capable of being set aside or invalidated at the instigation of any creditor, liquidator, administrator, trustee or similar official or appointee, including such parties who wish to take

such actions in connection with any bankruptcy, insolvency, organisation or moratorium laws affecting the Counterparty, except in the permitted cases of avoidance of the Agreement under the *Bankruptcy and Insolvency Act* (as described in the paragraph below).

3.3.4 The *Bankruptcy and Insolvency Act* provides that an assignment or charge may be void as against the trustee in bankruptcy, if made with a view to giving any one creditor (related to the assignor), a preference over another creditor, and the Counterparty is adjudged bankrupt within three (3) months (twelve (12) months in the case of related party transactions), of the date of such assignment or charge. The *Bankruptcy and Insolvency Act* however provides protection for *good faith* transactions; namely transactions for valuable consideration, which occur prior to any receiving order under the *Bankruptcy and Insolvency Act*, or prior to the Firm having notice of any act of bankruptcy committed by Counterparty prior to the date of the Transaction. The *Bankruptcy and Insolvency Act* further provides that transactions involving the acquisition or disposition of the property of an adjudged bankrupt made within the period that is twelve (12) months before the statutory prescribed period are voidable if a determination is made by the court that the bankrupt did not give or receive (as the case may be), the fair market value in consideration for such transferred property on an application for review of such transaction as the instance of the trustee in bankruptcy; the statutory prescribed period is the date commencing from the initial bankruptcy event and ending on the date of bankruptcy. There are no reasons, of which we are aware, that would render the Agreement negotiated at arms-length, voidable at the instance of a party as other than a good faith transaction.

4. **ADDITIONAL QUALIFICATIONS**

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

4.1.1 Assuming the completion of the perfection requirements as outlined in paragraph 4, under the laws of Barbados, the Security Interest over the Collateral charged by the Agreement will be a good and valid perfected security interest in the collateral owned by the Counterparty, in favour of the Firm as security for the obligations purported to be secured thereby.

4.1.2 On completion of the filing of two original counterparts of the Agreement, together with a Statement of Charge outlining the particulars thereof, with the Registrar of Companies in Barbados within twenty-eight (28) days of the creation of the Security Interest thereunder, there is no requirement to make any amended or substituted filing in respect of any changes in the Collateral charged by the Agreement.

5. **MODIFICATIONS TO QUALIFICATIONS**

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

Taxes and Duties

5.1.1 Except for the stamp duty in the amount adjudicated in accordance with the *Stamp Duty Act*, payable in respect of the Agreement, no further stamp duties or other taxes are payable

under the laws of Barbados in connection with the execution and delivery of any of the Agreement, or to ensure the legality, validity, enforceability or admissibility in evidence of any thereof, or to preserve or protect the security afforded and to be afforded by the Agreement.

5.1.2 Stamp duty is a documentary tax charged upon instruments; it is not a tax upon transactions or upon persons. For the purposes of the *Stamp Duty Act*, an instrument is defined to include every written document; thus any transaction which is effected orally or arises solely from the conduct of the parties is not subject to stamp duty.

5.1.3 The territorial limits of the stamp duty is defined incidentally; the *Stamp Duty Act* section 34(4) prescribes that stamp duty is chargeable in respect of (a) an instrument executed in Barbados, and (b) an instrument, wheresoever executed to any property situate in or to any matter or thing done or to be done in Barbados. In most cases, it is anticipated that with a Barbados Charity, the Agreement will be executed in Barbados. The performance of the Agreement is interpreted as being required to be performed in Barbados (there being some element of performance of that obligation in Barbados). As a consequence, even if the Agreement is not executed in Barbados, and the Collateral is situate outside of Barbados, the Agreement is *prima facie* subject to stamp duty.

5.1.4 An instrument which is not properly stamped is nonetheless effective; but remains (except in criminal proceedings) inadmissible in evidence, or available for any purpose whatsoever. The failure to stamp is inherently remediable and does not affect the validity of the document. It is understood that current practice is to admit an unstamped document subject to counsel's undertaking to have the instrument stamped. In a security instrument such as the Agreement, the onus of payment of the stamp duty is on chargee or mortgagee, and is usually completed in the normal course of registration as described in paragraph 4.

Exchange Control

5.2.1 There are exchange control (foreign currency control) restrictions in Barbados. Specific classes of entities are exempt from the restrictions against (a) ownership of foreign property, and (b) dealing in foreign cash and securities. A specific exemption must be obtained from the Exchange Control Authority.

5.2.2 The standard market practice is for the Counterparty to give representations and warranties to the effect that (i) no authorisation or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution and delivery by the Counterparty of the Agreement, and (ii) that the execution, delivery and performance by the Counterparty of the Agreement does not violate or conflict with, any provision of the corporate instruments, by-laws or the licence of the Barbados entity, or any law, rule or regulation in Barbados, applicable to the Counterparty.

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).

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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. "**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);

7. **"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).

8. **"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.