

Our ref TKM/605815/24730601v5

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

4 February 2013

Netting Analyser Library

You have asked us to give an opinion in respect of the laws of laws of the Cayman Islands ("**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 below).

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 This opinion is given in respect of a party which is:

- (a) a company, including any exempted, ordinary resident, segregated portfolio, ordinary non-resident and limited duration company, incorporated under the Companies Law (2012 Revision) (the "**Companies Law**") of the Cayman Islands (a "**Company**") and any previous revision of the Companies Law;
- (b) a branch established or located in the Cayman Islands of a company incorporated or organised outside the Cayman Islands;
- (c) an exempted limited partnership (an "**Exempted Limited Partnership**") established under the Exempted Limited Partnership Law (2012 Revision) (the "**Exempted Limited Partnership Law**") and a limited partnership established under the Partnership Law (2011 Revision) (the "**Partnership Law**"), each established in the Cayman Islands (together, a "**Partnership**"); and
- (d) a trust or unit trust established under Cayman Islands law with a trustee incorporated in the Cayman Islands (a "**Trust**"),

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 The rules applicable to the entity types listed below will depend upon the form such party takes. There are no special rules applicable to such parties as such (and such parties do not take any special forms and are not established as special entity types in the Cayman Islands) except to the extent that such entities are regulated in the Cayman Islands when the insolvency provisions described below will be applicable. This opinion is also given in respect of Parties that are any of the following:
 - (a) banks/financial institutions;
 - (b) investment firms/broker dealers;
 - (c) insurance companies/providers;
 - (d) funds;
 - (e) pension entities; and
 - (f) building societies.
- 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 This opinion is given only as to, and based on, circumstances and matters existing on the date hereof and known to us and as to the laws of the Cayman Islands as the same are in force at the date hereof. We express no opinion with regard to any systems of law other than the laws of the Cayman Islands applied by the Courts of the Cayman Islands. To the extent that the laws of England or the State of New York may be relevant, we have made no independent investigation thereof and our opinion is subject to the effect of such laws.
- 1.5 In this opinion letter:
 - (a) "**Security Interest**" means the security interest created pursuant to the Security Interest Provisions;
 - (b) "**Equivalent Agreement**" means an agreement:
 - (i) which is governed by the law of England and Wales;
 - (ii) which has broadly similar function to any of the Agreements listed in Annex 1;
 - (iii) which contains the Core Provisions (with no amendments, or with Non-material Amendments); and
 - (iv) 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;

- (c) A "**Non-material Amendment**" means an amendment having the effect of one of the amendments set out at Annex 3;
- (d) "**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.
- (e) in other instances other than those referred to at (c) 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.
- (f) "**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).
- (g) terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;
- (h) 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;
- (i) certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2; and
- (j) 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 no provision of the Agreement that is necessary for the giving of this Opinion has been altered in any material respect.
- 2.12 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement.
- 2.13 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.
- 2.14 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.
- 2.15 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 and shall be governed by a law other than the law of the Cayman Islands.
- 2.16 That any cash comprising the Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.
- 2.17 That at the time at which the Agreement and each Transaction is entered into under the Agreement, neither Party is insolvent.
- 2.18 That the requirements of the law governing the transfer of securities are complied with.
- 2.19 That the choice of the governing law of the Agreement has been made in good faith and would be regarded as a valid and binding selection which will be upheld by the courts of the jurisdiction of governing law.
- 2.20 That nothing under the governing law or any other applicable law (other than the laws of the Cayman Islands) affects or will affect the validity of the Agreement or any Transaction.

- 2.21 That each of the Parties has entered into the Agreement and each Transaction entered into under the Agreement as principal for its own account.
- 2.22 That none of the provisions of the Proceeds of Crime Law, 2008, relating to money laundering or the Misuse of Drugs Law (2010 Revision) relating to drug trafficking are relevant to the Transactions entered into under 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

- (a) 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.
- (b) Subject to the discussion in (d) below, 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.
- (c) 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.
- (d) Where the Counterparty is a Company, Section 97(1) of the Companies Law provides:

"When a winding up order is made or a provisional liquidator is appointed, no suit, action or other proceedings, including criminal proceedings, shall be proceeded with or commenced against the company except with the leave of the Court and subject to such terms as the Court may impose."

This prohibition in our view extends to judicial proceedings and does not include security enforcement methods which do not require an order of the court in the Cayman Islands. Furthermore, subject to any debts preferred by law as discussed below, Section 142 of the Companies Law provides that secured creditors may enforce their security notwithstanding that a winding up order has been made in respect of the Security Collateral Provider.

It should also be noted that Section 96 of the Companies Law provides that, at any time after the presentation of a winding up petition and before a winding up order has been made, the Company or any creditor or contributory may (a) where any action or proceeding against the Company, including a criminal proceeding, is pending in a summary court, the Court, the Court of Appeal or the Privy Council, apply to the court in which the action or proceeding is pending for a stay of proceedings therein, and (b) where any action or proceeding is pending against the Company in a foreign court, apply to the Court for an injunction to restrain further proceedings therein, and the court to which application is made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit.

On a voluntary winding up there is no automatic moratorium. The Court does however have discretion to impose a moratorium on a blanket or a case by case

basis. In practice, the court would only exercise its discretion if there was any doubt about the Company's solvency.

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 In the event of the insolvency of a Counterparty, the rights of a non-defaulting party as set forth in the Agreement may be affected by the following insolvency provisions of Cayman Islands law:

- (a) Voidable Preference under the Companies Law - the enforceability of set-off or netting against a Company and any insolvent partner may, in certain circumstances, be qualified if, for example, the pre-conditions for a voidable preference under Section 145(1) of the Companies Law were present. In accordance with Section 145(1), every conveyance or transfer of property or charge therein, every payment, every obligation and every judicial proceeding made, incurred, taken or suffered by any Company or Exempted Limited Partnership which is unable to pay its debts as they become due from its own monies in favour of any creditor with a view to giving such creditor a preference over the other creditors will be invalid if made within, incurred, taken or suffered within six months immediately preceding the commencement of a liquidation. Furthermore, in accordance with Section 145(2) and for the purposes of Section 145(1), if any such payment has made to a related party of the Company, such payment shall automatically be deemed to have been made with a view to giving such creditor a preference. For this purpose, a creditor shall be treated as a "related party" if it has the ability to control the Company or exercise significant influence over the Company in making financial and operating decisions. Sections 145 (1) and (2) shall only apply to Exempted Limited Partnerships upon an involuntary dissolution of such Exempted Limited Partnership.
- (b) Transactions at an undervalue under the Companies Law – in accordance with Section 146(2) of the Companies Law, every disposition of property made at an undervalue by or on behalf of a Company or Exempted Limited Partnership with intent to defraud its creditors shall be voidable at the instance of its official liquidator. The burden of establishing an intent to defraud for the purposes of section 146 (2) shall be upon the official liquidator.
- (c) If in the course of the winding up of a Company it appears that any business of the Company has been carried on with intent to defraud creditors of the Company or creditors of any other person or for any fraudulent purpose the liquidator may apply to the Court for a declaration under Section 147(1) of the Companies Law.
- (d) Fraudulent Preference under the Bankruptcy Law - Section 111(1) of the Bankruptcy Law (1997 Revision) (the "**Bankruptcy Law**") deals with fraudulent preference in the context of partnerships (and other persons subject to bankruptcy proceedings such as individuals) and applies when the relevant step is made, incurred, taken or suffered within 6 months before the provisional order takes effect. In the case of Exempted Limited Partnerships, the provisions relating to voidable preferences set out in 8.1 should instead apply.

- (e) It should be noted that a provisional order referred to in 4.1 (d) is deemed to have effect from the first "act of bankruptcy" committed by the debtor within 6 months preceding the date of presentation of the bankruptcy petition (provided at that time the debtor was indebted to a creditor(s) in an amount sufficient to support a petition (CIS\$40) and such debt or debts were still outstanding at the date of the provisional order). The effect of a provisional order is to vest all the bankrupt's property in the Trustee with the result that any disposition made by the partnership from the first act of bankruptcy is void. However, Section 118 of the Bankruptcy Law validates certain transactions (including the payment of debtors, conveyance of property and grant of security) occurring prior to the filing of the petition but after the first act of bankruptcy provided the other party had no notice of any act of bankruptcy which could have formed the basis of a petition at the time the petition was filed. Any act of bankruptcy must have occurred within 6 months of the presentation of the petition to form the basis of that petition.
- (f) Fraudulent Disposition under the Fraudulent Dispositions Law (1996 Revision) - Under the Fraudulent Dispositions Law (1996 Revision) every disposition of property made with an intent to defraud (which means an intention wilfully to defeat an obligation owed to another creditor) and at an undervalue shall be voidable at the instance of the creditor thereby prejudiced. It should be noted however that there is no "suspect period" in the case of this provision and that it would apply where the debtor is located in the Cayman Islands or outside the Cayman Islands and to any form of debtor (company, partnership, trust, individual etc.).
- (g) It should also be noted that a creditor of a Cayman Islands company may have a compromise or arrangement imposed upon him under Section 86(1) of the Companies Law if a majority in number representing three fourths in value of the creditors (or class of creditors including the affected creditor) have approved the compromise or arrangement and it has been sanctioned by the Grand Court of the Cayman Islands. Although this is not a mandatory insolvency provision it is a circumstance in which a creditor of a Cayman Islands company may be made subject to an arrangement or compromise affecting his rights without his consent. It would not however affect the enforcement of netting or security rights.
- (h) In the context of proceedings taken against a partner of a partnership under the Bankruptcy Law, there are specific provisions in the Bankruptcy Law which allow a trustee in bankruptcy to disclaim onerous contracts. Whilst we believe that disclaimer could apply to rights of set off, we do not believe that it could apply to different parts of the same contract and any such disclaimer would apply only to entire contracts i.e. the Agreement as a whole.
- 4.2 Section 99 of the Companies Law provides that, when a winding up order has been made in respect of a Company, any disposition of the Company's property and any transfer of shares or alteration in the status of the Company's members made after the commencement of the winding up is, unless the Court otherwise orders, void. If the counterparty and the Company enter into Transactions or the Company makes a payment under a Transaction after the commencement of the Company's winding up without the approval of the Grand Court, such Transaction or payment would be void.
- 4.3 Section 140(1) of the Companies Law provides for the mandatory *pari passu* distribution of assets to unsecured creditors in a voluntary winding-up. Section 140(1) is subject to Section 140(2) which provides that the *pari passu* distribution and collection of assets is without prejudice to and after taking into account and giving effect to any rights of set off or netting of claims (including without limitation any bilateral or any multi-lateral set off or netting arrangements) between the Company and any person or persons (whether

conferred by agreement or law), subject to any agreement between the Company and any person or persons to waive or limit the same.

4.4 In accordance with Section 141(1) of the Companies Law, certain debts owed by an insolvent Company shall be paid in priority to all other debts. Section 141(2) further provides that, in the case of an insolvent Company, preferred debts shall:

- (a) rank equally amongst themselves and be paid in full unless the assets available, after having exercised any rights of set off or netting of claims, are insufficient to meet them in which case they shall abate in equal proportions, and
- (b) so far as the assets of the Company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures secured by, or holders of any floating charge created by the Company, and be paid accordingly out of any property comprised in or subject to that charge.

In accordance with Section 140(2) of the Companies Law, the payment of such debts by a Company is without prejudice to and after taking into account and giving effect to any rights of set off or netting of claims.

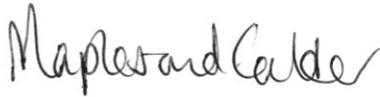
4.5 There are no other material issues relevant to the issues raised by this opinion which we wish to draw to your attention except to note that:

- (a) The term "enforceable" means that the obligations assumed by a Party under the Agreement are of a type which the courts of the Cayman Islands enforce. It does not mean that those obligations will necessarily be enforced in all circumstances in accordance with their terms, including the following general limitations:
 - (i) enforcement may be limited by general principles of equity for example, equitable remedies such as specific performance for the delivery of physical securities may not be available, inter alia, where damages are considered to be an adequate remedy; and
 - (ii) claims may become barred under statutes of limitation or may become subject to defences of counterclaims, estoppel, laches and similar defences (the defence of set off is considered in detail above).
- (b) Nominal Cayman Islands stamp duty will be payable if an original Agreement is executed in or brought into the Cayman Islands - payment of such duty is required for the Agreement to be admitted in evidence in the courts of the Cayman Islands.
- (c) The obligations of a party under the Agreement which involve the government of any country which is currently the subject of United Nations sanctions (an "**Affected Country**"), any person or body resident in, incorporated in or constituted under the laws of any Affected Country or any persons or body controlled by any of the foregoing or by any person acting on behalf of any of the foregoing may be subject to restrictions pursuant to such restrictions as implemented under the laws of the Cayman Islands.
- (d) We have reservations as to the ability of a party to obtain interest on judgments at a default rate after judgment in the courts of the Cayman Islands.
- (e) The determination or calculation of Margin and other amounts under the Agreement might be held by a Cayman Islands court not to be binding in the event of manifest error or if it could be shown to have an unreasonable or arbitrary basis.

- (f) We do not believe that an alteration contemplated in the definition of "Equivalent Agreement" above would constitute a material alteration for this purpose. We express no view on whether an alteration not contemplated in the definition of Equivalent Agreement would or would not constitute a material alteration of the Agreement.

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

Yours faithfully,

A handwritten signature in cursive script that reads "Maples and Calder".

Maples and Calder

**ANNEX 1
FORM OF FOA AGREEMENTS**

- 1 Professional Client Agreement (2007 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2007**")
- 2 Professional Client Agreement (2009 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2009**")
- 3 Professional Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2011**")
- 4 Retail Client Agreement (2007 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2007**")
- 5 Retail Client Agreement (2009 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2009**")
- 6 Retail Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2011**")
- 7 Eligible Counterparty Agreement (2007 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2007**")
- 8 Eligible Counterparty Agreement (2009 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2009**")
- 9 Eligible Counterparty Agreement (2011 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2011**")

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

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

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

ANNEX 2
DEFINED TERMS RELATING TO THE AGREEMENTS

- 1 The "**Eligible Counterparty Agreements**" means each of the Eligible Counterparty Agreement 2007, the Eligible Counterparty Agreement 2009 and the Eligible Counterparty Agreement 2011 (each as listed and defined at Annex 1).
- 2 The "**Professional Client Agreements**" means each of the Professional Client Agreement 2007, the Professional Client Agreement 2009 and the Professional Client Agreement 2011 (each as listed and defined at Annex 1).
- 3 The "**Retail Client Agreements**" means each of the Retail Client Agreement 2007, the Retail Client Agreement 2009 and the Retail Client Agreement 2011 (each as listed and defined at Annex 1).
- 4 An "**Equivalent 2011 Agreement without Core Rehypothecation Clause**" means an Equivalent Agreement in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 but which does not contain the Rehypothecation Clause.
- 5 "**Core Provisions**" means:
- (a) with respect to all Equivalent Agreements, the Security Interest Provisions; and
 - (b) with respect to Equivalent Agreements that are in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 (but not with respect to an Equivalent 2011 Agreement without Core Rehypothecation Clause), the Rehypothecation Clause.
- 6 "**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.