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**FIA EUROPE - NETTING AND  
COLLATERAL OPINIONS PROJECT**

Date 11 December 2015

Dear Sirs

**FIA Europe netting and collateral opinions**

We refer to our opinion dated 17 December 2013 in respect of the laws of Australia (which for the purposes of the opinion were taken to be a reference to the laws of the States, the Territories and the Commonwealth of Australia) ("this jurisdiction") related to the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision contained in a FOA Netting Agreement or a Clearing Agreement (the "Netting Opinion") and to our opinion dated 4 February 2013 in respect of the laws of this jurisdiction related to the Security Interests given under the Agreements or under an Equivalent Agreement (the "Collateral Opinion"). The Netting Opinion and the Collateral Opinion are further referred to as the "Opinions".

You have asked us to confirm in this letter ("this letter") that our Opinions remain valid as at the date of this letter and to give an opinion in respect of the laws of this jurisdiction, to supplement our Netting Opinion, in respect of the Two-Way Margining Provisions (as defined in paragraph 3.1.1 below).

**1. DEFINITIONS**

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

**2. CONFIRMATION**

2.1 On the terms of reference and subject to the assumptions and qualifications set forth in the Opinions, we confirm the following.

2.1.1 Since the date of the Opinions there have not been any material changes in relevant legislation or rules or guidance of relevant regulatory bodies or similar authorities, or otherwise, in this jurisdiction, which would have the result that

the Opinions would require material amendment if the Opinions were issued as at the date of this letter.

- 2.1.2 The changes made in the FOA Clearing Module (other than by inclusion of the Two-Way Margining Provisions) since the date of the Netting Opinion, as shown in the blackline in Appendix 1 to this letter, are not material changes which would have the result that the Netting Opinion would require material amendment if the Netting Opinion were to apply to a version of the FOA Clearing Module including such changes.
- 2.1.3 The changes made by inclusion of the Two-Way Margining Provisions in the FOA Clearing Module are not material changes which would have the result that the Netting Opinion would require material amendment if the Netting Opinion were to apply to an FOA Clearing Module including the Two-Way Margining Provisions.
- 2.1.4 As at the date of this letter, we are not aware of any pending developments in relevant legislation, or rules or guidance of relevant regulatory bodies or similar authorities, or otherwise, in this jurisdiction, which would have the result that the wording of the Opinions would require material amendment.
- 2.2 For the purpose of the confirmations given in this paragraph 2, "**material amendment**" means an amendment that has the effect of requiring us to change our opinions or related assumptions or qualifications in the Opinions.

### 3. RESTATED OPINION

- 3.1 On the basis of the confirmations given in paragraph 2, we hereby restate the opinions given in paragraph 3 of the Netting Opinion on the terms of reference, and subject to the assumptions and qualifications, set forth in the Netting Opinion, *except that* for the purpose of such opinions, terms of reference, assumptions and qualifications:
  - 3.1.1 a new definition of "Two-Way Margining Provisions" shall be included as follows:
    - (a) "**Two-Way Margining Provisions**" shall mean:
      - (i) the provisions set out in Part 1 (*Self-Contained Margining Provisions*) of Appendix 2 to this letter, to be included as an additional Annex or Schedule to the FOA Clearing Module, providing for two-way margining; or
      - (ii) the provisions set out in Part 2 (*Modify and Override Margining Provisions*) of Appendix 2 to this letter, to be included as an additional Annex or Schedule to the FOA Clearing Module, providing for two-way margining; or
      - (iii) any modified version of the provisions referred to in paragraph (i) or (ii) above provided that (i) it includes at least those parts

of Part 1 (*Self-Contained Margining Provisions*) or Part 2 (*Modify and Override Margining Provisions*) of Appendix 2 to this letter, as applicable, which are highlighted in yellow and (ii) any amendments to such highlighted parts are Non-material Amendments;

3.1.2 the definitions of "Core Provisions", "FOA Clearing Module", "FOA Netting Provision", "Margin Cash Set-Off Clause", "Title Transfer Netting Provisions" and "Title Transfer Provisions" in the Netting Opinion shall be extended as follows:

- (a) **"Core Provisions"** shall also mean, in relation to paragraphs 3.2 (*Recognition of choice of law*), 3.3 (*Enforceability of FOA Netting Provision*), sub-paragraph 3.7.2 of paragraph 3.7 (*Enforceability of the FOA Set-Off provisions*) and sub-paragraphs 3.10.1, 3.10.3 and 3.10.4 of paragraph 3.10 (*Enforceability of the Title Transfer Provisions*) of the Netting Opinion, those parts of the Two-Way Margining Provisions which are highlighted in yellow in Part 1 (*Self-Contained Margining Provisions*) or Part 2 (*Modify and Override Margining Provisions*) of Appendix 2 to this letter, as applicable, incorporated into a Clearing Agreement together with any defined term required properly to construe such provisions, in such a way as to preserve the essential sense and effect of the highlighted parts;
- (b) **"FOA Clearing Module"** shall also mean an FOA Clearing Module (as defined in the Netting Agreement) including the Two-Way Margining Provisions;
- (c) **"FOA Netting Provision"** shall also mean the FOA Netting Provision (as defined in the Netting Agreement) as amended by the Two-Way Margining Provisions;
- (d) **"Margin Cash Set-Off Clause"** shall also mean the Margin Cash Set-Off Clause (as defined in the Netting Agreement) as amended by the Two-Way Margining Provisions;
- (e) **"Title Transfer Netting Provisions"** shall also mean (in each case subject to any selections or amendments required to be made on the face of the document in the relevant form referred to in Annex 1 of the Netting Opinion):
  - (i) clause 5 of the Two-Way Margining Provisions set out in Part 1 (*Self-Contained Margining Provisions*) of Appendix 2 to this letter (or any modified version of such clause provided that it includes at least those parts of the clause which are highlighted in yellow); or

- (ii) the Title Transfer Netting Provisions (as defined in the Netting Opinion) as amended by the Two-Way Margining Provisions set out in Part 2 (*Modify and Override Margining Provisions*) of Appendix 2 to this letter (or any modified version of such provisions provided that it includes at least those parts of Part 2 (*Modify and Override Margining Provisions*) of Appendix 2 to this letter which are highlighted in yellow);
- (f) "**Title Transfer Provisions**" shall also mean (in each case subject to any selections or amendments required to be made on the face of the document in the relevant form referred to in Annex 1 of the Netting Opinion):
  - (i) clauses 5 and 7.2 of the Two-Way Margining Provisions set out in Part 1 (*Self-Contained Margining Provisions*) of Appendix 2 to this letter (or any modified version of such clauses provided that it includes at least those parts of the clauses which are highlighted in yellow); or
  - (ii) the Title Transfer Provisions (as defined in the Netting Opinion) as amended by the Two-Way Margining Provisions set out in Part 2 (*Modify and Override Margining Provisions*) of Appendix 2 to this letter (or any modified version of such provisions provided that it includes at least those parts of Part 2 (*Modify and Override Margining Provisions*) of Appendix 2 to this letter which are highlighted in yellow).

3.2 The provisions of paragraph 3.1 above supplement and extend, rather than replace, the definitions contained in the Netting Opinion.

**4. MINOR AMENDMENTS**

4.1 Without prejudice to the confirmations in paragraph 2.1 and the opinion in paragraph 3 above, we have set out in Schedule 1 some minor amendments to our Opinions.

**5. RELIANCE**

5.1 We hereby consent to members of FIA Europe (other than associate members) and their affiliates which have subscribed to FIA Europe's opinions library and whose terms of subscription give them access to this letter (as evidenced by the records maintained by FIA Europe and each a "**subscribing member**") relying on this letter. This letter may not, without our prior written consent, be relied upon by or be disclosed to any other person save that it may be disclosed without such consent to:

5.1.1 the officers, employees, auditors and professional advisers of any addressee or any subscribing member;

5.1.2 any person to whom disclosure is required to be made by applicable law or court order or pursuant to the rules or regulations of any supervisory or regulatory body or in connection with any judicial proceedings; and

5.1.3 any competent authority supervising a subscribing member or its affiliates

on the basis that (i) such disclosure is made solely to enable any such person to be informed that a letter has been issued and to be made aware of its terms but not for the purposes of reliance, and (ii) we do not assume any duty or liability to any person to whom such disclosure is made and in preparing this letter we have not had regard to the interests of any such person.

5.2 This letter was prepared by us on the basis of instructions from FIA Europe in the context of the netting and collateral requirements of the Basel III capital rules in the EU and US and we have not taken instructions from, and this letter does not take account of the specific circumstances of, any subscribing member. In preparing this letter, we had no regard to any other purpose to which this letter may be put by any subscribing member.

5.3 By permitting subscribing members to rely on this letter as stated above, we accept responsibility to such subscribing members for the matters specifically referred to in this letter in the context stated in the preceding paragraph, but we do not have or assume any client relationship in connection therewith or assume any wider duty to any subscribing member or their affiliates. This letter has not been prepared in connection with, and is not intended for use in, any specific transaction.

5.4 Furthermore this letter is given on the basis that any limitation on the liability of any other adviser to FIA Europe or any subscribing member, whether or not we are aware of that limitation, will not adversely affect our position in any circumstances.

Yours faithfully

*Clifford Chance*

**Clifford Chance**

*Contact: Caroline Jury*

## SCHEDULE 1

1. Paragraph 4.7 (*Porting*) of the Netting Opinion is amended by inserting the name "*Chicago Mercantile Exchange Inc.*" after the reference to "*Austraclear Limited*" and before the reference to "*IMB Ltd*".
2. Paragraph 4.9 (*Amendments to the Banking Act*) is amended by inserting the following new paragraph 4.9.4:

*"4.9.4 The Australian Government has recently announced their intention to amend the Relevant Laws to introduce a resolution stay regime, expected to be broadly consistent with the criteria for protocol-eligible regimes under the ISDA Stay Protocol and which amendments are expected to clarify the way in which close-out rights are stayed on the appointment of a statutory manager or judicial manager in respect of an authorised deposit taking institution. The amendment would be aimed at providing certainty where the Relevant Laws, as applied by the Relevant Courts, govern both the resolution regime and the relevant contract. At present there is no indication as to when legislation will be introduced or finalised. When the legislative changes are proposed, their impact on the opinions expressed in this letter will need to be considered."*