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FIA EUROPE - NETTING AND COLLATERAL OPINIONS PROJECT

BY MAIL

December 11, 2015

FIA Europe
36-38 Botolph Lane, 2nd Floor
London EC3R 8DE
United Kingdom

Dear Sirs,

FIA Europe netting and collateral opinions

We refer to our opinion dated December 12, 2013 in respect of the laws of Ontario and the federal laws of Canada applicable in Ontario ("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 January 31, 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.

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- 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, 3.3, 3.7.2, 3.10.1, 3.10.3 and 3.10.4 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.

Sincerely,



Stikeman Elliott LLP

SCHEDULE 1

Paragraph 3.1.1 of the Collateral Opinion considers the relevance of location of the debtor and describes location as the jurisdiction in which the debtor has its place of business, or if it has more than one place of business, the jurisdiction of the chief executive office. The Ontario government passed amendments to the PPSA in 2006, which come into force on December 31, 2015, that change the definition of “location of the debtor.” The following chart sets out the location for each entity type:

Type of Debtor Entity	Location of Debtor
Corporation, limited partnership or organization organized under the laws of a Canadian province or territory, as disclosed in a public record	Province or territory of organization
Corporation existing under Canadian federal law, as disclosed in a public record	Registered office or head office as set out in its constating documents (such as its special Act, letters patent or articles) or, if not found in such constating documents, in its by-laws
Partnership (other than a limited partnership), with a partnership agreement explicitly governed by Canadian provincial or territorial law	Province or territory the laws of which are specified in the partnership agreement as the governing law
Trustees acting for a trust	If the trust instrument states it is governed by the laws of a Canadian province or territory, that province or territory. Otherwise, the jurisdiction in which the administration of the trust is principally carried out
Individual	Location of principal residence
Organization organized under the laws of a U.S. state or territory, as disclosed in a public record	That U.S. state or territory
Organization organized under U.S. federal law, as disclosed in a public record	The U.S. State designated by U.S. law; or the U.S. State designated by the organization, if it is so authorized by U.S. law; or the District of Columbia, if neither of the foregoing is applicable
None of the above (e.g. non-Canadian corporations, Canadian branches of a non-Canadian bank)	Chief executive office of the debtor location

There are detailed transitional rules under the PPSA. The former method of determining location will apply with respect to determining the law relevant to validity of the security interest for any security interest that arises under a “prior security agreement”.¹ A prior security agreement is one entered into prior to December 31, 2015. Amending, renewing or extending the security agreement does not change its status as a prior security agreement, although

¹ Ontario PPSA, s.7.2(5).

adding a new class of collateral would. The new method will apply to any agreement entered into on or after December 31, 2015. Because other jurisdictions in Canada still apply a chief executive office test, it would be prudent to consider validity of the security interest in both the jurisdiction of the chief executive office and registered office if they are in different places.²

With respect to paragraph 3.2, we note that the transition rules with respect to the changes to Ontario law described above can be read as requiring a new financing statement to be filed within five years of December 31, 2015 for any registration made prior to that date even if the registration has not expired and there was no change in the relevant debtor location as a result of the change in law. Consequently, if a party is relying on a registration made prior to December 31, 2015, it should file a new registration before December 31, 2020.

This issue as addressed in the Collateral Opinion is also relevant to the title transfer of cash as addressed in the Netting Opinion, although that issue is not addressed in detail in the Netting Opinion.

² Note that several Canadian banks have their registered offices in a jurisdiction different from their chief executive office.