CLIFFORD
CHANCE

CLIFFORD CHANCE US LLP
31 WEST 52ND STREET
NEW YORK, NY 10019-6131
TEL +1 212 878 8000
FAX +1 212 878 8375
www.cliffordchance.com

December 10, 2015

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

FIA EUROPE - NETTING AND COLLATERAL OPINIONS PROJECT

Dear Sirs,

We refer to our opinion dated December 19, 2013 in respect of the federal laws of the United States and laws of the State of New York ("**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 September 19, 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 4.1, 5.1, 5.5.2, 9.1, 9.3, and 9.4 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.

Clifford Chance US LLP

SCHEDULE 1

a. All references in the Opinions to the New York Superintendent of Banks shall be replaced with the New York Superintendent of Financial Services.

b. Paragraphs 6.4.1 through 6.4.4 (in respect of New York Branches) of the Netting Opinion are replaced in their entirety as follows:

6.4.1. In the event of an insolvency of an N.Y. Insured Branch, the New York Superintendent of Financial Services (the "**Superintendent**") may elect to appoint the FDIC as a receiver for such branch, in which case our opinions in paragraph 5 and discussion in paragraph 6 on the enforceability of the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-off Provisions, Clearing Module Set-off Provision and Addendum Set-Off Provision with respect to such N.Y. Insured Branch would be the same as those with respect to Banks subject to the FDIC conservatorship or receivership (as described under 6.3 above) subject to the discussion on multibranch netting under 6.4.4 below.[1]

In the event of an insolvency of a New York Branch that is not FDIC-insured or if the Superintendent does not elect to appoint the FDIC as receiver or conservator with respect of an N.Y. Insured, our opinions in paragraph 5 on the enforceability of the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-off Provisions, Clearing Module Set-off Provision and Addendum Set-Off Provision Branch would apply if and to the extent the Transactions qualify as "qualified financial contracts," as such term is defined in the NYBL ("**NYBL QFCs**"). Under the NYBL, NYBL QFCs include "securities contracts", "repurchase agreements" and "forward contracts" (as used in the NYBL).[2]

If a non-U.S. bank has a Federal Branch and a New York Branch, our discussions under paragraph 3.3.1 above (regarding the OCC's authority to appoint a receiver for federal and state-chartered branches) and this paragraph 6.4 will apply.

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[1] We further note that the FDIC may also appoint itself as a receiver or conservator for a N.Y. Insured Branch or replace a receiver or conservator appointed by the Superintendent under certain circumstances. 12 U.S.C. § 1821(c)(4), (10).

[2] Under Section 618-a(2)(e)(i) of the NYBL "**qualified financial contract**" means any securities contract, commodity contract, forward contract (including spot and forward foreign exchange), repurchase agreement, swap agreement, and any similar agreement, any option to enter into any such agreement. (None of the foregoing terms is defined in N.Y. banking law or regulation.) Under the NYBL a "qualified financial contract" also includes any combination of the foregoing, and any master agreement for such agreements, as well as other agreements determined by the Superintendent to be qualified financial contracts, **provided that** such agreements satisfy certain documentary requirements.

6.4.2. Section 619.1(d)(2)(i) of the NYBL provides that the Superintendent's taking possession of a New York Branch does not operate as a stay or as an injunction against the termination of a "qualified financial contract" in accordance with its terms. In addition, Section 619.1(d)(2)(i) of the NYBL provides that the Superintendent's taking possession of a New York Branch shall not act as an injunction against "any right to offset or net out any termination value, payment amount, or other transfer obligation arising under . . . qualified financial contracts . . ."

6.4.3 Under Section 618-a.1 of the NYBL, after taking possession of a N.Y. Branch, the Superintendent may "repudiate" any contract to which the N.Y. Branch is a party if the Superintendent in his or her discretion determines that the performance of that contract is burdensome and the repudiation of that contract would promote the orderly administration of the institution's affairs.[3] However, the NYBL specifies that any master agreement for NYBL QFCs, together with all supplements thereto, shall be treated as one "qualified financial contract".[4] Thus, if the Superintendent repudiates any of the Transactions under the Agreement, the Superintendent would be required to repudiate all Transactions under the Agreement.

6.4.4. Under Section 606(4)(a) of the NYBL, the Superintendent may take possession of the business and property in New York of a foreign bank with a New York-licensed branch when the foreign bank is insolvent, in liquidation in its home jurisdiction, or under certain other circumstances. Only the claims of creditors who have entered into transactions with a New York Branch of a foreign bank may be satisfied out of business and property of the foreign bank located in New York.[5]

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[3] The Superintendent however has no authority either to assume or repudiate any qualified financial contract that is subject to a multibranch netting agreement. In particular, Section 618-a of the NYBL provides as follows:

> "Notwithstanding any other provision contained in [the NYBL], in liquidating a branch or agency of a foreign banking corporation, the superintendent shall not assume or repudiate any qualified financial contract that the branch or agency entered into which is subject to a multibranch netting agreement or arrangement that provides for netting present or future payment obligations or payment entitlements (including termination or close-out values relating to the obligations or entitlements) among the parties to the contract and agreement or arrangement and the superintendent shall not be required to assume or repudiate any other qualified financial contract that the branch or agency entered into..."

Where qualified financial contracts are terminated either by the counterparty or another receiver of the foreign bank, such as the home country receiver, the liability of the Superintendent is as described in paragraph 6.6.2.1. below.

[4] NYBL § 618-a.2(e)(i).

[5] NYBL § 606(4)(a). Where the N.Y. branch takes FDIC–insured deposits, the Superintendent may elect to appoint the FDIC as receiver and the resulting proceedings would be the same as those applicable to a Bank.

While the NYBL sets out a "separate entity" approach to the treatment of assets of a N.Y. Branch similar to the IBA with respect to a Federal Branch, NYBL also expressly addresses the treatment of multibranch netting agreements in an NYBL insolvency proceeding for a N.Y. Branch and limits the power of the Superintendent to take any action with respect to multibranch NYBL QFCs.[6] In particular, Section 618-a.2(c) of the NYBL requires the Superintendent to calculate any close-out amounts due under a multibranch netting contract both on the global basis, considering all amounts owed by or to the foreign parent bank of the N.Y. branch ("**Global Net Payment Obligation**" or "**Global Net Payment Entitlement**", as applicable), and on the local basis limited to the amount owed to or by the N.Y. Branch after netting only the transactions entered into by the New York Branch ("**Local Net Payment Obligation**" or "**Local Net Payment Entitlement**", as applicable).[7] In the event that netting under an NYBL QFC results in a net payment entitlement to the New York Branch, the Superintendent's claim against the Non-Defaulting Party would be limited to the lesser of (i) the Global Net Payment Entitlement and (ii) the Local Net Payment Entitlement. The liability of the Non-Defaulting Party to the Superintendent will be "reduced by any amount otherwise paid to or received by the Superintendent or any other liquidator or receiver of [the foreign parent of the New York Branch] in respect of the [Global Net Payment Entitlement] ... which, if added to the liability of the party... would exceed the [Global Net Payment Entitlement.]" and "the fair market value or the amount of any proceeds of collateral that secures and has been applied to satisfy the obligations of the party" pursuant to such NYBL QFC.[8]

We note, however, that under Section 618-a.2(c) of the NYBL, upon a repudiation or in connection with a termination or liquidation of an NYBL QFC in accordance with its terms, the Superintendent shall not be liable for more than the amount owed by the New York Branch after netting only the Transactions entered into by the other Party with the New York Branch. Where the net amount owed under the Agreement, calculated on a multibranch basis, exceeds such amount, the other Party's claim may be pursued against the foreign bank's head office or otherwise outside of the NYBL proceedings.

We believe that the same result should arise if the Superintendent appoints the FDIC as receiver.[9]

Claims from other offices, agencies or branches of, and affiliates of the foreign bank are excluded from the ring-fence.

6 NYBL §§ 618-a - 622.

7 NYBL § 618-a.2(c).

8 *Id.*

9 See NYBL § 634, 12 U.S.C. § 1821(c)(3)(B).