

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

3 April 2013

Dear Sirs,

Netting Analyser Library – legal opinion on FOA Collateral

We have acted as your legal advisers for the purpose of rendering an opinion on certain matters of the laws of Curacao ("**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).

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 Parties which are:

- 1.1.1 individuals residing in Curacao whether with a Dutch citizenship or the citizenship of another jurisdiction;
- 1.1.2 limited liability companies (*naamloze vennootschappen*) incorporated under the laws of Curacao;
- 1.1.3 private limited liability companies (*besloten vennootschappen*) incorporated under the laws of Curacao;
- 1.1.4 foundations (*stichtingen*), including private fund foundations (*stichtingen particulier fonds*), incorporated under the laws Curacao;
- 1.1.5 cooperations (*coöperaties*) incorporated under the laws of Curacao;

ARUBA

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- 1.1.6 mutual insurance associations (*onderlinge waarborgmaatschappijen*) incorporated under the laws of Curacao;
- 1.1.7 associations (*verenigingen*) incorporated under the laws of Curacao;
- 1.1.8 Banks/credit institutions (*banken/kredietinstellingen*) doing business in this jurisdiction which are licensed to do so ("**Banks**");
- 1.1.9 Investment institutions (*beleggingsinstellingen*) doing business in this jurisdiction which are licensed to do so ("**Investment Institutions**");
- 1.1.10 Certain partnerships organised under the laws of this jurisdiction. Public partnerships (*openbare vennootschappen*), private partnerships<sup>1</sup> (*stille vennootschappen*) but only insofar as the relevant private partnership agreement stipulates unqualified joint & several liability of each partner, and limited partnerships<sup>2</sup> (*commanditaire vennootschappen*) but only with respect to the ordinary partners as jointly and separately liable for the obligations of the partnership, and not with respect to the limited partners;
- 1.1.11 Insurance companies/providers doing business in this jurisdiction which are licensed to do so ("**Insurance Companies**");
- 1.1.12 Individuals residing outside this jurisdiction operating or conducting a business or profession in this jurisdiction through a permanent establishment in this jurisdiction;
- 1.1.13 Funds organised under the laws of this jurisdiction;
- 1.1.14 Parties acting as trustees of Trusts organized under the laws of this jurisdiction;
- 1.1.15 Corporate pension funds doing business in this jurisdiction which are licensed to do so; and
- 1.1.16 Brokers, dealers & hedge funds doing business in this jurisdiction through a permanent establishment in this jurisdiction,

insofar as each may act as a counterparty (a "**Counterparty**") providing Collateral (as defined in paragraph 1.1) to a member firm of the Futures and Options Association (each a "**Firm**") under an Agreement.

The partnerships listed above in paragraph 1.1.10 are subject to title 13 of Book 7 of the Civil Code of Curacao ("**CCC**"). The legal entities listed above in paragraphs 1.1.1

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<sup>1</sup> In a private partnership partners are, in principle, not jointly and severally liable unless the partnership agreement so stipulates.

<sup>2</sup> A limited partnership has both ordinary and limited partners. Ordinary partners are jointly and severally liable. Limited partners are not liable, except for under certain specific circumstances, which exception, for the purposes of this opinion, we assume not to apply.

through 1.1.7 are subject to Book 2 of the CCC. Banks are subject to the National Ordinance on the Supervision of Banking and Credit Institutions 1994, as amended from time to time (the “**Banking Ordinance**”). Insurance Companies are subject to the National Ordinance on the Supervision of Insurance Companies 1990, as amended from time to time (the “**Insurance Supervision Ordinance**”). Investment Institutions are subject to the National Ordinance on the Supervision of Investment Institutions and Administrators 2002, as amended from time to time (the “**NOSIIA**”). Pension Funds are subject to the National Ordinance on Corporate Pension Funds 1985, as amended from time to time (the “**Corporate Pension Fund Ordinance**”). Banks, Insurance Companies and Investment Institutions insofar as organized as (private) limited liability companies incorporated under the laws of Curacao and Pension Funds organised as associations or foundations under the laws of Curacao are also subject to Book 2 of the CCC. Trusts organized under the laws of Curacao are subject to Book 3 of the CCC. All of the persons above sub 1.1.1 through 1.1.16 inclusive are subject to the Bankruptcy Decree of Curacao as amended from time to time (the “**Bankruptcy Decree**”).

This opinion does not cover, public bodies or governmental agencies. However, if and to the extent the Country of Curacao is shareholder, member or director of any of the legal entities listed above in paragraphs 1.1.2 up to and including 1.1.16, those legal entities fall under the scope of the Bankruptcy Decree and also this opinion.

1.2 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.

1.3 In this opinion letter:

1.3.1 “**Security Interest**” means the security interest created pursuant to the Security Interest Provisions;

1.3.2 “**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;

- 1.3.3 A "**Non-material Amendment**" means an amendment having the effect of one of the amendments set out at Annex 3;
- 1.3.4 "**Core Provisions**" include Core Provisions that have been modified by Non-Material Amendments;
- 1.3.5 Insolvency Proceedings mean the following laws and procedures:
- (i) bankruptcy (*faillissement*) and (provisional) suspension of payment proceedings (*voorlopige surséance van betaling*) as such terms are used in the Bankruptcy Decree;
  - (ii) emergency measures (*noodregeling*) as governed by the Banking Ordinance;
  - (iii) emergency measures (*noodregeling*) as governed by the Insurance Supervision Ordinance;
  - (iv) special measures as governed by the NOSIA; and
  - (v) the appointment of an administrator (*bewindvoerder*) under the Corporate Pension Fund Ordinance.
- 1.3.6 "**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.
- 1.3.7 In other instances other than those referred to at 1.3.6 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;
- 1.3.8 Terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;
- 1.3.9 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;

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

1.3.11 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

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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 the Non-Defaulting Party will not seek to invoke, give effect to or enforce its rights as holder of the Security Interest before the courts of this jurisdiction, notwithstanding the fact that the accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions are at all relevant times be located outside this jurisdiction.
- 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 no provision of the Agreement (whether it is an Equivalent Agreement as described at paragraph 1 or an Agreement as described at Annex 1), that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect.

### 3. **OPINIONS**

On the basis of the foregoing terms of reference and assumptions and subject to the reservations 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 such 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.

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. **RESERVATIONS**

4.1 We note that the concept of fraudulent preference or similar concepts under any applicable laws may affect the validity and binding effect of the Agreement and the Transactions.

4.2 The Curacao courts may stay or refer proceedings if concurrent proceedings are being brought elsewhere.

4.3 There are no other material issues relevant to the issues addressed in this opinion which we wish to draw to your attention.

5. **TERMS AND CONDITIONS AND RELIANCE**

This opinion, which is strictly limited to the matters stated herein and which is not to be read as extending by implication to any other matter, is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribed to the Futures and Opinions Association's library (and whose terms of subscription give them access to this option). 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 UK Financial Services and Market Act 2000) and to the competent authority supervising such member firms and their affiliates in connection with their compliance with their obligations under prudential regulation. This opinion is governed by and to be construed in accordance with Curacao law and any action, arising out of it, is to be determined by the competent court in Curacao which shall have exclusive jurisdiction in relation thereto. The partnership VanEps Kunneman VanDoorne has limited its liability to any proceeds available under the partnership's professional liability insurance, and reliance by anyone on this opinion will be deemed acceptance of such choice of law and forum and limitation of liability. We do not assume any obligation to advise you (or any other person entitled to rely on this opinion) of any subsequent change in, or in the interpretation of, Curacao law. This opinion may not be relied upon by any person other than the Futures and Options Association unless we otherwise specifically agree with

that other person in writing, although we consent to its being shown to members of the Futures and Option Association and to the Financial Services Authority in connection with the Compliance of such members with their obligations under prudential regulation.

Yours faithfully,

VANEPS KUNNEMAN VANDOORNE

  
R.J. Celedijn  
Loco F.W. Lunsingh Scheurleer

F.W. Lunsingh Scheurleer

**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.