

**NETTING ANALYSER LIBRARY**  
**legal collateral opinion – Non Situs Version**

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

12/03/2013

Dear Sirs

**FOA Collateral Opinion**

You have asked us to give an opinion in respect of the laws of Cyprus ("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 Subject as provided at paragraph 1.2, this opinion is given in respect of

1.1.1 persons which are Cyprus companies incorporated under Cyprus Companies Law Cap 113 ("Companies Law"), as amended,

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 However, this opinion is also given in respect of Counterparties providing Collateral to a Firm that are any of the following, subject to the terms of reference, definitions, modifications and additional assumptions and qualifications set out in the applicable Schedule:

- 1.2.1 Banks/financial institutions incorporated under Banking Laws 66(I)/1997, as amended (“Banking Laws”) as per **Schedule 1** attached hereto;
- 1.2.2 Investment firms operating in accordance with Investment Service and activities Law 144 (I)/2007 (“IS Law”) as per **Schedule 2** attached hereto;
- 1.2.3 Partnerships organised under Partnerships and Business Names Law, Cap 116 as amended (“Partnership Law”) as per **Schedule 3** attached hereto;
- 1.2.4 Insurance companies incorporated under the Insurance Services and Related Issues Law 35(I)/2002 (“Insurance Laws”) as per **Schedule 4** attached hereto;
- 1.2.5 Individuals as per **Schedule 5** attached hereto;
- 1.2.6 Entities (the “**Funds**”) organised as International Collective Investment Schemes in accordance with 47(I)/1999 as amended (“ICIS Law”) as per **Schedule 6** attached hereto;
- 1.2.7 Undertakings for Collective Investment in Transferable Securities (UCITS) pursuant to Law 225(I)/2002 as per **Schedule 7** attached hereto;
- 1.2.8 Parties acting as trustees of local Trusts established under the Trustees Law or International Trusts established pursuant to the International Trusts Law of 69(I)/1992 as per **Schedule 8** attached hereto;
- 1.2.9 Parties acting as trustees of Charitable Trusts in accordance with the Charities Law, Cap41 and established pursuant to the aforementioned Trustees Law Cap.193 or the International Trusts Law 69(I)/1992 as per **Schedule 9** attached hereto;
- 1.2.10 Cooperative Companies operating under the Cooperative Companies Law 22/1985 (the “**Cooperative Societies Law**”) as per **Schedule 10** attached hereto.

insofar as each may act as a Counterparty to a Firm under an Agreement.

- 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 In this opinion letter:

- 1.4.1 “**Security Interest**” means the security interest created pursuant to the Security Interest Provisions;
- 1.4.2 “**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;

- 1.4.3 A "**Non-material Amendment**" means an amendment having the effect of one of the amendments set out at Annex 3;
- 1.4.4 "**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.
- 1.4.5 in other instances other than those referred to at 0 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.
- 1.4.3 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;
- 1.4.4 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;
- 1.4.5 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2;
- 1.4.6 headings in this opinion letter are for ease of reference only and shall not affect its interpretation;

1.4.7 References to “**Core Provisions**” include Core Provisions that have been modified by Non-Material Amendments (as defined herein); and

1.4.10 “**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)

## 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.
- 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 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 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 that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect. In our view, an alteration contemplated in the definition of "Equivalent Agreement" above would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in the definition of Equivalent Agreement would or would not constitute a material alteration of 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

- 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 the 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. QUALIFICATIONS

The opinions in this opinion letter are subject to the following qualifications:

- 4.1 Even though the EU Directive on Financial Collateral Arrangements (Directive 2002/47/EC) has been transposed into Cyprus law by virtue of the Financial Collateral Law 43(I)/2004, remains subject to judicial interpretation by Cyprus Courts. As far as we are aware, there has not been to date any Cyprus case law on the matters concerning the Financial Collateral Law 43(I)/2004 (including (i) the transposition of the relevant directive into national law, or (ii) the recognition and enforceability of a foreign financial collateral created under the laws of another EU Member State transposing the aforementioned EU Directive) and the subject matter of this Opinion.
- 4.2 EU Insolvency Regulation Reg. 1346/2000 is directly applicable in Cyprus and concerns insolvency proceedings of EU entities other than insurance undertakings, credit institutions, investment firms and collective investment schemes.
- 4.3 Under the Bankruptcy Law the insolvency representative is authorised to exercise certain specified powers as of right and other designated powers with the permission of the committee of inspection appointed under the Bankruptcy Law. The former includes the right to sell and transfer all or part of the property of the insolvent party by private contract. Whether or not the insolvency representative will be able to set aside the Agreement or any acts carried out under it, will depend on whether he can prove fraud.
- 4.4 In the case of insolvency proceedings, section 299 of the Companies Law in conjunction with section 35 of the Bankruptcy Law would override any provisions of the Agreement to the extent they grant a right of set-off in excess of insolvency set-off under the aforementioned laws. The combined effect of 299 of the Companies Law and Section 35 of the Bankruptcy Law would be that so long as there is mutuality of claims, an account must be taken of what is due from one party to the other and the resulting balance will be payable to the one party if the resulting balance is owed by the other party or will be provable in the liquidation of that party. Please note that we have not found anything under Cypriot law to prevent the mutuality of claims whether or not claims are settled in the same currency.

Section 11 of the Financial Collateral Law 43(I)/2004 hereinafter referred as the **“Financial Collateral Law”**), when applicable, provides that the law of the country where the security in the form of titles filed in a registry is applicable in matters relating to (i) the legal nature and results of collateral security filed in a registry; (ii) the fulfilment of the typical and procedural preconditions in relation to the validity of the collateral security against third parties; (iii) whether the ownership rights or the rights of any person in connect to the security in the titles filed in the registry has

priority or follows another competing claim or whether it has been obtained in good faith; and (iv) the formalities necessary to liquidate the security in titles filed in a registry as a result of occurrence of an event of default.

A judgment obtained in the court of a European Union Member State will be recognized and enforced in Cyprus pursuant to the rules established by EC Regulation 44/2001 or EC Regulation 1346/2006 (as the case may be).

The Financial Collateral Law applies in instances where the collateral taker and the collateral provider each belong to one of the following categories:

- (a) a public authority (excluding publicly guaranteed undertakings unless they fall under points (b) to (e)) including: (i) public sector bodies charged with or intervening in the management of public debt, and (ii) public sector bodies authorised to hold accounts for customers.
- (b) the Central Bank of Cyprus, as provided in the Central Bank of Cyprus Laws of 2002 to 2007, a Central Bank of any other state, the European Central Bank, the Bank for International Settlements, a multilateral development bank as referred to the Bank Regulations for the calculation of capital requirements of 2006 to 2010, the International Monetary Fund and the European Investment Bank.
- (c) a financial institution subject to supervision including: (i) a credit institution (as defined in the Banking Laws or listed in Section 2 of the EU act titled Directive 2006/48 as amended by EC Directive 2010/78 and as may be amended or replaced from time to time); (ii) an investment firm as defined in the IS Law; (iii) a credit institution as defined in the Banking Laws; (iv) an insurance undertaking as defined in the Insurance Laws; (v) an undertaking of collective investment in transferable securities, as defined in the Open-Ended Undertakings for Collective Investment in Transferable Securities (UCITS) Laws of 2004 and 2008; and (vi) a management company as defined in The Open – Ended Undertakings for Collective Investments in Transferable Securities Laws of 2004 and 2008.
- (d) in connection to payment and securities settlement systems, a central counterparty, settlement agent and clearing house as defined in the Irrevocability of Payment Systems and Securities Settlement Systems Law of 2003.
- (e) other relevant foundations under supervision and which have activities in the futures, options and derivatives markets to the extent not covered by

Irrevocability of Payment Systems and Securities Settlement Systems Law of 2003 and a legal person who acts as a trustee or in a representative capacity on behalf of anyone or more persons that includes any bondholders or holders of other forms of securitised debt or any institution as defined in points (a) to (d).

(f) a legal person, including businesses without a share capital and partnerships, provided that the other party is an institution as defined in points (a) to (e).

On the understanding that the Firm is a secured creditor, we consider that the Security Interest Provisions will be enforceable provided they are interpreted and/or exercised in accordance with section 35 of the Bankruptcy Law and the 2<sup>nd</sup> Schedule of the Bankruptcy Law. The matter will ultimately be decided by the courts.

Section 35 of the Bankruptcy Law provides that where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order shall be made under the Bankruptcy Law, and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set *off* against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set off against the property of a debtor in any case where he had at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor, and available against him.

With respect to the mode of proving debts, the right of proofs by secured and other creditors and the admission and rejection of proofs, the 2<sup>nd</sup> Schedule of the Bankruptcy Law provides that if a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized. If a secured creditor surrenders his security to the official receiver trustee for the general benefit of the creditors, he may prove for his whole debt. If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

4.5 Cyprus insolvency law provides that various transactions carried out by an insolvent company or other relevant entity prior to the commencement of its winding up are voidable by the relevant insolvency official. Such voidable transactions fall, broadly speaking, into two categories: (a) transactions such as voluntary conveyances which tend to defraud creditors generally; and (b) fraudulent preferences. A voluntary

conveyance is the transfer of property, otherwise than in good faith and for valuable consideration, within two years prior to the transferor's bankruptcy or ten years unless the transferee can show that at the time of the transfer the company was able to pay its debts without the aid of the transferred property. A fraudulent preference occurs where an insolvent party, at a time when it was unable to pay its debts in full, has transferred property to one of its creditors with a view to giving such creditor a preference over other creditors – in such a case the relevant insolvency official may avoid the transaction and claim the property for the benefit of the creditors generally. Under the Companies Law, any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property made or done by or against a company within six months before the commencement of its winding up shall, if deemed a fraudulent preference by the liquidator, be deemed invalid accordingly. The onus rests on those who claim to avoid the transaction to establish what the debtor really intended and that the real intention was to prefer. This onus is generally only discharged when the court, on review of all the circumstances, is satisfied that the dominant intention to prefer was present.

Pursuant to section 303 of the Companies Law, where a company is being wound up, a floating charge on the undertaking or property of the company created within 12 months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid by the company at the time of or subsequent to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent annum or such other rate as may for the time being be prescribed by the Auditor-General.

Pursuant to section 305 of the Companies Law, where a creditor has issued execution against the goods or immovable property of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of execution or attachment against the liquidator in the winding up of the company unless he has completed execution or attachment before the commencement of the winding up.

4.7 According to the Fraudulent Transfers Avoidance Law, CAP 62 of the laws of Cyprus, every gift, sale, pledge, mortgage, or other transfer or disposal of any movable or immovable property made by any person with intent to hinder or delay his creditors or any of them in recovering their debts from it will be deemed to be fraudulent and will be invalid against such creditors. Notwithstanding such gift, sale, pledge, mortgage, transfer or disposal, the property purported to be transferred or otherwise dealt with may be seized and sold to satisfy any judgment debt due from the person who made the gift, sale, pledge, mortgage or other transfer or disposal. Any gift, sale, pledge, mortgage, or other transfer or disposal of any movable or immovable property which is made fraudulently with intent to hinder or delay the creditors or any of them in their recovery from a debtor, whether made before or after the commencement of an action or other proceedings wherein the right to recover the debt has been established, may be set aside by an order of the court on the application of any judgment creditors. In any application made under the Fraudulent Transfers Avoidance Law to set aside a transfer of any property made otherwise than in exchange for any money or other property of equivalent value or for good

consideration, the burden of proof will lie on the parties to such transaction to show that it was made bona fide and not with the intent to hinder or delay creditors.

4.8 Section 90 of the Companies Law requires every charge (including amendments and assignments or other change) provided by a Cyprus company be registered with the Registrar of Cyprus Companies within the prescribed time frame provided in the said section. The said section applies to the following charges:

- A charge for the purpose of securing any issue of debentures;
- A charge on uncalled share capital;
- A charge on book debts of the company;
- A floating charge on the undertaking or property of the company;
- A charge on calls made but not paid;
- A charge on a ship;
- A charge on goodwill, patent, licence under a patent, trade mark, copyright or license over copyright;
- Charge on any other movable property created or evidenced by an instrument where the company retains possession of such property;
- Charge on immovable property.

The said section does not apply to (i) the pledging of shares in companies and (ii) agreements for the provision of financial collateral within the meaning of the Financial Collateral Law, as may be amended from time to time.

4.9 The Collateral Securities Law expressly excludes from its scope of application claims against consumers as defined in section 2 of the Consumer Contracts Law of 2010 or of a very small or small business as defined in Article 1 and Article 2, paragraphs 2 and 3 of the schedule to the Act of the European Communities titled “Establishment of the Commission of 6<sup>th</sup> of May 2003 in connection to the definition of the very small, the small and the medium size business (2003/361/EC) save for instances where the security provider or the beneficiary of the security with respect to the relevant claim is the Central Bank of Cyprus, as provided in the Central Bank of Cyprus Laws of 2002 to 2007, a Central Bank of any other state, the European Central Bank, the Bank for International Settlements, a multilateral development bank as referred to the Bank Regulations for the calculation of capital requirements of 2006 to 2010, the International Monetary Fund and the European Investment Bank.

4.10 A claimant and/or creditor may be required to prove his debt to the satisfaction of the administrator of a legal or natural person within the frame of the insolvency process.

4.11 A Cyprus Court may decline to recognise a foreign jurisdiction clause that purports to deviate from mandatory Cyprus or EU law.

4.12 In the case of termination resulting from an event of default other than for insolvency proceedings of a corporate entity a Cyprus court would apply the governing law of the agreement provided that this is not contrary to Cypriot law and public policy. In the event of an event of default not caused by insolvency proceedings we have found nothing to suggest that the enforceability or effectiveness of close out netting would be contrary to Cypriot law or public policy.

4.13 A judgment obtained in the court of a European Union Member State will be recognized and enforced in Cyprus pursuant to the rules established by the Regulation (EC) No. 44/2001 or EC Regulation 1346/2006 (as the case may be). A judgement obtained in a non-European Union Member State, may be enforced in Cyprus under common law by bringing an action on the judgement, unless a relevant bilateral treaty is in place. Cyprus is party to the New York Convention relating to the recognition of Arbitration awards.

EC Regulation 539/2008 on the law applicable to contractual obligations is directly applicable in Cyprus.

4.14 Save as provided herein, we have not made any enquiries or investigations concerning the solvency of any party nor do we opine on the accuracy of any representations or warranties given in the Agreement.

4.15 Where an asset or right which is the subject of security or other obligation situated outside of Cyprus, the courts of Cyprus may take into account the law of the place where the asset or right is legally situated as the governing law of the asset or right despite the choice of the governing law to the contrary.

4.16 it may not be possible to force any party to continue with a contract once the contract itself has provided for its termination.

4.17 The Firm and the Counterparty were at the date of its entry into the Agreement solvent and able to pay its debts as they fell due and its entry into and performance of its obligations under and in accordance with the Agreement will not render it insolvent and unable to pay its debts as they fall due.

4.18 That any law, other than Cyprus law, which may apply to the Agreements (or the transactions contemplated thereby) would not be such as to affect any conclusion stated in this Opinion

4.19 The Stamp Duty Law of Cyprus (Law 19/1963) as amended (“Stamp Duty Law”) provides (free translation), inter alia, that “every document mentioned in Appendix 1 to the Stamp Duty Law shall be chargeable with duty if it relates to any asset located in Cyprus or to matters or things to be done or performed in Cyprus irrespective of the place where such document is created. Non-payment of stamp duty does not invalidate the document or the transaction contemplated thereby, but the document may not be adduced as evidence before a Cyprus court without payment of stamp duty and any applicable penalty for late payment.

Any document which is subject to stamp duty has, in principle, to be stamped within thirty days from the date of the first signing; however, any document created outside of Cyprus and subject to stamp duty in accordance with the provisions of the Stamp Duty Law, irrespective of whether it has been stamped adequately or not in accordance with the law of the country where the said document was created, will not be considered as created or enforceable in Cyprus, until it has been properly stamped with the due stamp duty in accordance with the Stamp Duty Law; it is understood that any not stamped or inadequately stamped document, which was first signed outside of Cyprus will be considered first signed on the date it was received in Cyprus and may be stamped at any time within thirty days from the said receipt, with the payment of the unpaid stamp duty.

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

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 give 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 its being shown to members of the 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,

*ANDREAS NEOCLEOUS & CO LLC*

ANDREAS NEOCLEOUS & CO. LLC

## SCHEDULE 1 BANKS

Subject to the modifications and additions set out in this Schedule 1 (*Bank*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Banks. For the purposes of this Schedule 1 (Bank), "*Bank*" means a banking institution under The Banking Law

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

### 1. ADDITIONAL QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

The Banking Business Law provides, *inter alia*, that in relation to a Cypriot bank the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such set-off is permitted by applicable law.

In the case where the insolvent party is a Cypriot bank, please note that the Banking Business Law of Cyprus provides that Cypriot law rules relating to voidness, voidability or unenforceability of credit agreements detrimental to creditors as a whole shall not apply if the beneficiary of such agreement can prove that (i) such agreement is governed by the laws of another EU member state (other than Cyprus), and (ii) the law of that EU member state does not provide any means of challenging that agreement. This provision is not drafted so as not to apply to credit arrangements / security interests in assets located within the EEA.

## SCHEDULE 2 Investment firms

Subject to the modifications and additions set out in this Schedule 2 (Investment firms), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are **Investment firms operating under IS Law**. For the purposes of this Schedule 2, **Investment firm means an entity operating under IS Law**.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

### 1. ADDITIONAL QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

Based on the Cooperative Companies Law, in the absence of specific provisions in the said law and regulations adopted there under, the priorities under which matters relating to fraudulent transfers and priority of payment of debts, the provisions of the Companies Law, shall apply.

The Banking Business Law provides, *inter alia*, that in relation to a Cypriot bank the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such set-off is permitted by applicable law.

In the case where the insolvent party is a Cypriot bank, note that the Banking Business Law of Cyprus provides that Cypriot law rules relating to voidness, voidability or unenforceability of credit agreements detrimental to creditors as a whole shall not apply if the beneficiary of such agreement can prove that (i) such agreement is governed by the laws of another EU member state (other than Cyprus), and (ii) the law of that EU member state does not provide any means of challenging that agreement. This provision is not drafted so as not to apply to credit arrangements / security interests in assets located within the EEA.

## **SCHEDULE 3** **PARTNERSHIPS**

Subject to the modifications and additions set out in this Schedule 3 Partnerships, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Partnerships. For the purposes of this Schedule 3 "Partnerships" means a partnership established under the Partnerships Law.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

### **1. ADDITIONAL QUALIFICATIONS**

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

Based on the Partnerships Law, Cap116, a Partnership is the relationship created between persons who perform activities jointly with intent to profit. The unlimited partners are jointly and severally responsible for the debts of the partnership (while a partner) and after the death of a partner his assets remain subject to the usual course of administration with respect to any remaining debts and obligations provided his personal debts have been previously satisfied.

## **SCHEDULE 4 Insurance companies**

Subject to the modifications and additions set out in this Schedule 4 (Insurance companies), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are **Insurance companies organised under the Insurance Laws**. For the purposes of this Schedule 4 (**Insurance company means an entity organised under the Insurance Laws**).

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

### **1. ADDITIONAL QUALIFICATIONS**

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

Section 152 and 152A of the Insurance Laws makes reference to section 299 of the Companies Law for the purpose of announcement, verification and acceptance of claims.

Section 152A (7) of the Insurance Laws provides that sections 301, 302 and 303 of the Companies Law in relation to which agreements are void, voidable or partially void because they are harmful to the total number of creditors, are applied by analogy save in the instance that the person who benefited proves that: (i) the said agreement is governed by the laws of another member state and;(ii) the said law does not provide in the particular instance for the challenging of the transaction.

## **SCHEDULE 5 INDIVIDUALS**

Subject to the modifications and additions set out in this Schedule 5 (*Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Individuals. For the purposes of this Schedule 5 (*Individuals*), "Individuals" means a natural person to whom the Bankruptcy Law is applicable.

Except where the context otherwise requires, references in this Schedule to "paragraph" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "sections" are to sections of this Schedule.

### **1. ADDITIONAL QUALIFICATIONS**

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

Individuals are effectively excluded from the scope of the Financial Collateral Law 43(I)/2004 which transposes EC Directive 2002/47 into Cyprus law.

## SCHEDULE 6 Funds

Subject to the modifications and additions set out in this Schedule 6 (Funds), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are **Funds organised under the ICIS Law**. For the purposes of this Schedule 6 (**Fund means a fund organised under the ICIS Law**),

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

### 1. ADDITIONAL QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

In so far as Funds that take the form of a partnership, it should be noted that partnerships under the Partnerships Law Based on the Partnerships Law, Cap116, a Partnership is the relationship created between persons who perform activities jointly with intent to profit. The unlimited partners are jointly and severally responsible for the debts of the partnership (while a partner) and after the death of a partner his assets remain subject to the usual course of administration with respect to any remaining debts and obligations provided his personal debts have been previously satisfied.

In so far as Funds in the form of an International Trust represented by its Trustee, it is noted that a Cyprus trust does not have its own separate legal personality. Instead the trust property is held by the trustee. The rights of a Trustee to invest funds may be restricted by the relevant instrument of trust. Additionally:

Based on the Cyprus Civil Procedure Rules, if the plaintiff sues, or any defendant is sued in a representative capacity, the endorsement on the writ of summons must show in what representative capacity the plaintiff or the defendant sues or is sued.

Pursuant to the Trustees Law, a trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability or bankrupt or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying:

Provided that

- (a) nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made;
- (b) the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

Pursuant to the Trustees Law, a trustee shall be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, or of any banker, broker or other person with whom any trust money or securities may be deposited, not for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own willful default.

Pursuant to the Trustees Law, if it appears to the Court that a trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Law, but has acted honestly and reasonably and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve him either wholly or partly from personal liability for the same.

The Trustees Law and every order purporting to be made under the said Trustees Law, shall be a complete indemnity to all persons for any acts done pursuant thereto, and it shall not be necessary for any person to inquire concerning the propriety of the order, or whether the Court by which the order was made had jurisdiction to make it.

Pursuant to the Trustees Law, a trustee, executor or administrator acting under any order or direction made or given by the Court under the provisions of the Administration of Estates Law Cap 189, or any other Law amending or substituted for the same shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor or administrator in the subject matter of the said application unless he has been guilty of fraud or willful concealment or misrepresentation in connection with the obtaining of such order or direction.

With reference to *Halsbury's laws of England, 4<sup>th</sup> edition Volume 48, paragraph 931*, it is noted that a trustee may be considered as personally liable on the contracts into which he enters unless he excludes personal liability by express stipulation, and the knowledge of those dealing with him that he is contracting in his capacity as trustee is immaterial. Accordingly, where a trustee trades or otherwise deals with trust property he is deemed, as against all persons other than the beneficiaries, to do so on his own account and is consequently personally liable for all debts incurred in the course of the trade or dealing and may be made bankrupt in this respect (Ex-parte Garland (1804) 10 Ves 110; Re Johnson, Shearman v Robinson (1880) 15 Ch D 548). It is nevertheless noted that the contents of this paragraph have not yet been expressly confirmed by any Cyprus case-law to date.

## SCHEDULE 7 UCITS

Subject to the modifications and additions set out in this Schedule 7 (UCITS), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are UCITS organised under Law 78(I)/2012 ("UCITS Law"). For the purposes of this Schedule 7 (UCITS means a scheme organised under UCITS Law).

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

### 1. ADDITIONAL QUALIFICATIONS

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

Section 4(1) (c) (v) and (vi) of the Financial Collateral Law which implements EC Directive 2002/47 has not yet been amended to reflect the entry into force of the relatively recent UCITS Law (published in the official gazette in 2012). As a result it continues to refer (for the purpose of its scope of application) to the previous law regulating UCITS (which has been abolished).

**SCHEDULE 8** Parties acting as trustees of LOCAL Trusts OPERATING UNDER THE TRUSTEES LAW Cap.193 or of International Trusts established in accordance and pursuant to the International Trusts Law of 69(I)/1992

Subject to the modifications and additions set out in this Schedule 8 (*Trustees*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are *Trustees*. For the purposes of this Schedule 8 (Trustees), "*Trustees*" means a natural or legal person that acts a trustee of a local trust operating under the Trustees Law or an International Trust established under the International Trusts Law.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

**1. ADDITIONAL QUALIFICATIONS**

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

A Cyprus trust does not have its own separate legal personality. Instead the trust property is held by the trustee.

The rights of a Trustee to invest funds may be restricted by the relevant instrument of trust.

Based on the Cyprus Civil Procedure Rules, if the plaintiff sues, or any defendant is sued in a representative capacity, the indorsement must on the writ of summons must show in what representative capacity the plaintiff or the defendant sues or is sued.

Pursuant to the Trustees Law, a trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability or bankrupt or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying:

Provided that

(a) nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made;

(b) the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

Pursuant to the Trustees Law, a trustee shall be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, or of any banker,

broker or other person with whom any trust money or securities may be deposited, not for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own willful default.

Pursuant to the Trustees Law, if it appears to the Court that a trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Law, but has acted honestly and reasonably and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve him either wholly or partly from personal liability for the same.

The Trustees Law and every order purporting to be made under the said Trustees Law, shall be a complete indemnity to all persons for any acts done pursuant thereto, and it shall not be necessary for any person to inquire concerning the propriety of the order, or whether the Court by which the order was made had jurisdiction to make it.

Pursuant to the Trustees Law, a trustee, executor or administrator acting under any order or direction made or given by the Court under the provisions of the Administration of Estates Law Cap 189, or any other Law amending or substituted for the same shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor or administrator in the subject matter of the said application unless he has been guilty of fraud or willful concealment or misrepresentation in connection with the obtaining of such order or direction.

With reference to *Halsbury's laws of England, 4<sup>th</sup> edition Volume 48, paragraph 931*, it is noted that a trustee may be considered as personally liable on the contracts into which he enters unless he excludes personal liability by express stipulation, and the knowledge of those dealing with him that he is contracting in his capacity as trustee is immaterial. Accordingly, where a trustee trades or otherwise deals with trust property he is deemed, as against all persons other than the beneficiaries, to do so on his own account and is consequently personally liable for all debts incurred in the course of the trade or dealing and may be made bankrupt in this respect (Ex parte Garland (1804) 10 Ves 110; Re Johnson, Shearman v Robinson (1880) 15 Ch D 548). It is nevertheless noted that the contents of this paragraph have not yet been expressly confirmed by any Cyprus case-law to date.

## **SCHEDULE 9 Parties acting as trustees of CHARITABLE Trusts ESTABLISHED UNDER THE TRUSTEES LAW Cap.193 or THE International Trusts LAW OR THE TRUSTEES LAW**

Subject to the modifications and additions set out in this Schedule 9 (*Trustees of Charitable Trusts*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are *Trustees*. For the purposes of this Schedule 9 (Trustees of Charitable Trusts), "***Trustees of Charitable Trusts***" means a natural or legal person that acts a trustee of a Charitable Trust or an International Charitable Trust established under the Trustees Law or the International Trusts Law respectively.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

### **1. ADDITIONAL QUALIFICATIONS**

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

A Cyprus trust does not have its own separate legal personality. Instead the trust property is held by the trustee.

The rights of a Trustee to invest funds may be restricted by the relevant instrument of trust.

Based on the Cyprus Civil Procedure Rules, if the plaintiff sues, or any defendant is sued in a representative capacity, the indorsement must on the writ of summons must show in what representative capacity the plaintiff or the defendant sues or is sued.

Pursuant to the Trustees Law, a trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability or bankrupt or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying:

Provided that

(a) nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made;

(b) the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

Pursuant to the Trustees Law, a trustee shall be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, or of any banker,

broker or other person with whom any trust money or securities may be deposited, not for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own willful default.

Pursuant to the Trustees Law, if it appears to the Court that a trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Law, but has acted honestly and reasonably and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve him either wholly or partly from personal liability for the same.

The Trustees Law and every order purporting to be made under the said Trustees Law, shall be a complete indemnity to all persons for any acts done pursuant thereto, and it shall not be necessary for any person to inquire concerning the propriety of the order, or whether the Court by which the order was made had jurisdiction to make it.

Pursuant to the Trustees Law, a trustee, executor or administrator acting under any order or direction made or given by the Court under the provisions of the Administration of Estates Law Cap 189, or any other Law amending or substituted for the same shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor or administrator in the subject matter of the said application unless he has been guilty of fraud or willful concealment or misrepresentation in connection with the obtaining of such order or direction.

With reference to *Halsbury's laws of England, 4<sup>th</sup> edition Volume 48, paragraph 931*, it is noted that a trustee may be considered as personally liable on the contracts into which he enters unless he excludes personal liability by express stipulation, and the knowledge of those dealing with him that he is contracting in his capacity as trustee is immaterial. Accordingly, where a trustee trades or otherwise deals with trust property he is deemed, as against all persons other than the beneficiaries, to do so on his own account and is consequently personally liable for all debts incurred in the course of the trade or dealing and may be made bankrupt in this respect (Ex-part Garland (1804) 10 Ves 110; Re Johnson, Shearman v Robinson (1880) 15 Ch D 548). It is nevertheless noted that the contents of this paragraph have not yet been expressly confirmed by any Cyprus case-law to date.

## **SCHEDULE 10** **COOPERATIVE COMPANIES**

Subject to the modifications and additions set out in this Schedule 10 Cooperative Companies, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Cooperative Companies. For the purposes of this Schedule 10 Cooperative Companies means a Cooperative Company in accordance with the Cooperative Companies Law.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule.

### **2. ADDITIONAL QUALIFICATIONS**

Furthermore, the qualifications at paragraph 4 are deemed modified as follows.

Based on the Cooperative Companies Law, in the absence of specific provisions in the said law and regulations adopted there under, the priorities under which matters relating to fraudulent transfers and priority of payment of debts, the provisions of the Companies Law, shall apply.

**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.