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FIA EUROPE - NETTING OPINIONS PROJECT
Pro forma legal opinion for netting agreement

Dear Sirs,

FIA Europe netting opinion issued in relation to the FOA Netting Agreement

You have asked us to give an opinion in respect of the laws of the Dubai International Financial Centre (the "DIFC" or "this jurisdiction") in respect of the enforceability and validity of the FOA Netting Provision contained in a FOA Netting Agreement or a Clearing Agreement.

We understand that your fundamental requirement is for the enforceability of the FOA Netting Provision to be substantiated by a written and reasoned opinion. Our opinions on the enforceability of the FOA Netting Provision is given in paragraph 3 of this opinion letter.

Further, this opinion letter covers the enforceability of the FOA Set-Off Provisions, the Clearing Module Set-Off Provision and the Title Transfer Provisions.

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 Subject as provided at paragraph 1.2 and 1.3, this opinion is given in respect of:

1.1.1 persons which are companies limited by shares or limited liability companies incorporated under DIFC Law No. 2 of 2009 (the "Companies Law");

- 1.1.2 banks incorporated under the Companies Law and regulated by the Dubai Financial Services Authority (the "**DFSA**") pursuant to DIFC Law No. 1 of 2004 (the "**Regulatory Law**"); and
- 1.1.3 branches in this jurisdiction of foreign banks and other corporations which are registered as recognised companies under the Companies Law.

1.2 This opinion is also given in respect of Parties that are any of the following:

- 1.2.1 Investment firms/broker dealers incorporated under the Companies Law and regulated by the DFSA pursuant to the Regulatory Law;
- 1.2.1 Limited liability partnerships incorporated under DIFC Law No. 5 of 2004 (the "**Limited Liability Partnership Law**"); and
- 1.2.2 Insurance companies/providers incorporated under the Companies Law and regulated by the DFSA pursuant to the Regulatory Law.

1.3 This opinion is not given in respect of Parties which are individuals, partnerships (other than those referred to in paragraph 1.2.1 above), funds (other than funds which take the form of companies referred to in paragraphs 1.1.1 above), public bodies including municipalities, building societies, charitable bodies (non-profit incorporated organisations), or trusts whether they are incorporated or formed under the laws of this jurisdiction or are incorporated or formed under the laws of another jurisdiction with a branch or branches located in this jurisdiction. This is because:

- 1.3.1 individuals are not subject to the Insolvency Law or the Insolvency Regulations (as defined below) and there are no specific requirements under the laws of this jurisdiction governing the bankruptcy of individuals. Further, the DIFC is a financial free zone whose residents are primarily businesses and it would in practice be very unlikely that an individual in this jurisdiction would be a Party to a FOA Netting Agreement or a Clearing Agreement;
- 1.3.2 partnerships (other than limited liability partnerships) are not subject to the Insolvency Law or the Insolvency Regulations (as defined below) and there are no specific requirements under the laws of this jurisdiction governing the insolvency of such partnerships. Further, as there are a very limited number of partnerships established in this jurisdiction, it would in practice be very unlikely that a partnership in this jurisdiction would be a Party to a FOA Netting Agreement or a Clearing Agreement;
- 1.3.3 funds (other than funds which take the form of companies referred to in paragraphs 1.1.1 above) are not subject to the Insolvency Law or the Insolvency Regulations (as defined below) and there are no specific requirements under the laws of this jurisdiction governing the insolvency of such funds. We are not aware of any pension funds established in the DIFC and hedge funds are not recognised as a separate form of entity, and would

generally be established as a company under the Companies Law or as a partnership;

- 1.3.4 there are no municipalities in the DIFC, and the governing bodies of the DIFC are the subject of specific legislation, which does not impose specific requirements in the event of the insolvency of these bodies;
- 1.3.5 there are no building societies in the DIFC and building societies are not recognised as a separate type of legal entity;
- 1.3.6 charitable bodies (non-profit incorporated organisations) are only permitted to engage in a limited range of permitted activities (which would not generally include entering into a FOA Netting Agreement or a Clearing Agreement) and are subject to a specialist insolvency regime; and
- 1.3.7 trusts or persons acting as trustees are not subject to the Insolvency Law or the Insolvency Regulations (as defined below) and there are no specific requirements under the laws of this jurisdiction governing the insolvency or bankruptcy of trusts or trustees.

1.4 This opinion is given in respect of the FOA Netting Agreement and the Clearing Agreement when the FOA Netting Agreement and the Clearing Agreement are expressed to be governed by English law.

1.5 This opinion covers all types of Transaction other than any Transaction which is an "investment entitlement" within the meaning of DIFC Law No. 9 of 2005 (the **Personal Property Law**) which is subject to the control of an Authorised Market Institution (as defined in the Regulatory Law). In broad terms, an "investment entitlement" is a contract made on, subject to the rules of or made by a person who in making such a Transaction was in respect of that Transaction subject to the rules of, one of the authorised exchanges in the DIFC (i.e. either the Dubai Mercantile Exchange or NASDAQ Dubai). We reserve our opinion in relation to such transactions because, under Regulation 7 of the Insolvency Regulations, the provisions of the Business Rules of the Authorised Market Institution relating to the finality of acquisitions or dispositions effected pursuant to such Business Rules would apply and take priority over the provisions of DIFC Law No. 2 of 2015 (the **Netting Law**) (as described below and in Annex 6 (*Netting and set-off*)) under Article 6(3) of the Netting Law. Transactions made through the Dubai Mercantile Exchange are cleared by the clearing house of the Chicago Mercantile Exchange (CME Clearing) and, therefore, a different insolvency regime from that prescribed by the Insolvency Law and Insolvency Regulations would apply to such Transactions. As far as we are aware, NASDAQ Dubai does not currently clear derivatives transactions so we have not considered the Business Rules of NASDAQ Dubai.

1.6 This opinion is given in respect of only such of those Transactions which are capable, under their governing laws, of being terminated and liquidated in accordance with the FOA Netting Provision.

- 1.7 The opinions set out in paragraphs 3.7 and 3.8 are given only in relation to Margin which is located outside this jurisdiction.
- 1.8 A person incorporated or organised in this jurisdiction may be a Party to a Clearing Agreement only in the capacity of "Client" (as defined in the FOA Clearing Module or the ISDA/FOA Clearing Addendum). Our opinion does not apply in respect of a person incorporated or organised in this jurisdiction who is Party to a Clearing Agreement as "Firm" (as defined in the FOA Clearing Module) or "Clearing Member" (as defined in the ISDA/FOA Clearing Addendum).
- 1.9 In this opinion, 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.
- 1.10 A reference in this opinion to a Transaction is a reference, in relation to the FOA Netting Agreement to a Transaction (as defined therein) and, in relation to FOA Clearing Module and ISDA/FOA Clearing Addendum to a Client Transaction (as defined therein).

1.11 **Definitions**

Terms used in this opinion letter and not otherwise defined herein shall have the meanings ascribed to them in the FOA Netting Agreement or the Clearing Agreement, unless the context specifies otherwise. Where, in a FOA Netting Agreement or, as the case may be, a Clearing Agreement, a defined term has been changed but the changed term bears the same meaning as a term defined in a FOA Published Form Agreement or this opinion letter, this opinion letter may be read as if terms used herein were the terms as so changed.

- 1.11.1 "**Insolvency Proceedings**" means the procedures listed in paragraph 3.1;
- 1.11.2 "**Insolvency Representative**" means a liquidator, administrator, receiver or analogous or equivalent official in this jurisdiction; and
- 1.11.3 A reference to a "**paragraph**" is to a paragraph of this opinion letter.
- 1.11.4 Annex 3 contains further definitions of terms relating to the FOA Netting Agreement and the Clearing Agreement.

2. **ASSUMPTIONS**

We assume:

- 2.1 That no provision of the FOA Netting Agreement or Clearing Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect, including by reason of a Mandatory CCP Provision. In our view, an alteration contemplated in Part 2 (Non-material Amendments) of Annex 4 hereto would not constitute a material alteration for this purpose unless the

alteration has been set out by us in Section 5 of Annex 5. We express no view whether an alteration not contemplated in Part 2 (*Non-material Amendments*) of Annex 4 would or would not constitute a material alteration.

- 2.2 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions or, as the case may be the Firm/CCP Transactions and CM/CCP Transactions are legal, valid, binding and enforceable against both Parties under their governing laws.
- 2.3 That each Party has the capacity, power and authority under all applicable law(s) to enter into the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; to perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions; and that each Party has taken all necessary steps to execute, deliver and perform the FOA Netting Agreement or, as the case may be, the Clearing Agreement.
- 2.4 That each Party has obtained, complied with the terms of and maintained all authorizations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and the Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the FOA Netting Agreement or, as the case may be, the Clearing Agreement in this jurisdiction.
- 2.5 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement is entered into prior to the commencement of any insolvency proceedings under the laws of any jurisdiction against either Party.
- 2.6 That no provision of the FOA Netting Agreement or, as the case may be, the Clearing Agreement, or a document of which the FOA Netting Agreement or, as the case may be, the Clearing Agreement forms part, or any other arrangement between the Parties, or any Mandatory CCP Provision, constitutes an Adverse Amendment.
- 2.7 The FOA Netting Agreement or, as the case may be, the Clearing 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.
- 2.8 That the FOA Netting Agreement or, as the case may be, the Clearing Agreement accurately reflects the true intentions of each Party.
- 2.9 That each Party, when transferring Margin pursuant to the Title Transfer Provisions has effectively transferred all right title and interest in the Margin according to the laws of the jurisdiction where the Margin is located.

3. OPINION

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 Insolvency Proceedings

The insolvency provisions in the DIFC apply to companies and limited liability partnerships.

The only bankruptcy, composition, rehabilitation (e.g. liquidation, administration, receivership or voluntary arrangement) or other insolvency laws and procedures to which a Party would be subject in this jurisdiction are the following: voluntary arrangements under Part 2 of DIFC Law No. 3 of 2009 (the "Insolvency Law"); receivership under Part 3 of the Insolvency Law; winding up proceedings under Part 4 of the Insolvency Law; and, in relation to a company which is or has been authorised by the DFSA, compulsory winding up proceedings under Art. 93 of DIFC Law No. 1 of 2004 (the "Regulatory Law").

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings without the need for any additions.

3.2 Recognition of choice of law

3.2.1 The choice of English law to govern the FOA Netting Agreement or, as the case may be, the Clearing Agreement will be recognised in this jurisdiction even if neither Party is incorporated or established in England.

3.2.2 An Insolvency Representative or court in this jurisdiction would have regard exclusively to English law, as appropriate, as the governing law of the FOA Netting Agreement or, as the case may be, of the Clearing Agreement, in determining the contractual validity of the (i) FOA Netting Provision and the FOA Set-Off Provisions or, as the case may be, of the Clearing Module Set-Off Provision, and (ii) the Title Transfer Provisions.

3.3 Enforceability of FOA Netting Provision

In relation to a FOA Netting Agreement and in relation to a Clearing Agreement where the Client is a Defaulting Party, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings:

- (a) the Non-Defaulting Party would be entitled immediately to exercise its rights under the FOA Netting Provision; and

(b) the Non-Defaulting Party would be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of individual Transactions.

We are of this opinion because there is no rule or law of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into the FOA Netting Agreement or, as the case may be, the Clearing Agreement on the terms of the FOA Netting Provision or would render such terms ineffective.

In addition, Article 8 of the Netting Law (see Annex 6 (*Netting and set-off*)) provides that the provisions of a netting agreement will be enforceable in accordance with their terms, including against an insolvent party. This would apply to Transactions which constituted "qualified financial instruments" as set out in Annex 6 (*Netting and set-off*). Provided that a Transaction undertaken subject to a FOA Netting Agreement or Clearing Agreement is a "qualified financial instrument" listed in Annex 6, it would fall within the scope of Article 8.

Additionally, if the Netting Law does not apply, we believe that a court in this jurisdiction would uphold the freedom of the parties to determine the terms of their contract and would seek to give effect to the FOA Netting Provision. Under Article 8(1) of DIFC Law No. 6 of 2004 (the "**Contract Law**"), any person of competent legal capacity is free to enter into a contract and determine its content.

Further, 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 exercise of such rights by the Non-Defaulting Party and Article 13 of the Netting Law provides that no stay, injunction, avoidance, moratorium or similar proceeding or order, whether issued by a court, administrative agency, liquidator or otherwise, will limit or delay application of otherwise enforceable netting provisions.

No amendments to the FOA Netting Provision are necessary in order for the opinions expressed in this paragraph 3.3 to apply.

3.4 Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to FOA Netting Provision

In relation to a Clearing Agreement, the opinions expressed at paragraph 3.3 above in relation to the FOA Netting Provision are not affected by the use of the FOA Clearing Module or the ISDA/FOA Clearing Addendum in conjunction with the FOA Netting Agreement. In a case where a Party, who would (but for the use of the FOA Clearing Module or the ISDA/FOA Clearing Agreement) be the Defaulting Party for the purposes of the FOA Netting Agreement, acts as Firm (as defined in the FOA Clearing Module) or Clearing Member (as defined in the ISDA/FOA Clearing Addendum), the question as to whether the FOA Netting Provision will, to the extent inconsistent with the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision, be superseded by the Clearing Module Netting

Provision or, as the case may be, the Addendum Netting Provision would be determined under the governing law of the Clearing Agreement.

3.5 Enforceability of the FOA Set-Off Provisions

3.5.1 In relation to a FOA Netting Agreement which includes the FOA Set-Off Provisions, the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms, so that following an Event of Default, the Non-Defaulting Party would be immediately entitled to exercise its rights under either or both of the FOA Set-Off Provisions, and in particular so that, upon the exercise of such rights:

- (a) where the FOA Set-Off Provisions include the General Set-Off Clause:
 - (i) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party would be set off against the Liquidation Amount (where such Liquidation Amount is owed by the Defaulting Party); or
 - (ii) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party would be set off against the Liquidation Amount (where such Liquidation Amount is owed by the Non-Defaulting Party); or
- (b) where the FOA Set-Off Provisions comprise the Margin Cash Set-Off Clause only, the value of any cash margin owed by the Firm to the Client would be set-off against the Liquidation Amount (where such Liquidation Amount is owed by the Client).

Non-insolvency set-off

In relation to an Event of Default which arises outside insolvency, we are of this opinion because there is no rule or law of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into a FOA Netting Agreement including the FOA Set-Off Provisions or would render such terms ineffective and, under Art. 8(1) of the Contract Law, any person of competent legal capacity is free to enter into a contract and determine its content. Art. 91 of the Contract Law expressly recognises contractual set-off, which it defines as "*a duty or option granted by contract whereby a debtor must or may set-off his cross claim in discharge of the creditor's primary claim, being a set-off created by contract in circumstances where, in the absence of the contract, there would be no right of set-off*".

Netting agreements

Article 8 of the Netting Law (see Annex 6 (*Netting and set-off*)) provides that the provisions of a netting agreement, including the FOA Set-Off Provisions, will be enforceable in accordance with their terms, including against an

insolvent party. This would apply to Transactions which constituted "qualified financial instruments" as set out in Annex 6 (*Netting and set-off*). Provided that a Transaction undertaken subject to a FOA Netting Agreement or Clearing Agreement is a "qualified financial instrument" listed in Annex 6, it would fall within the scope of Article 8.

In addition, Article 11 of the Netting Law provides that applicable insolvency laws limiting the exercise of rights to set off, offset or net out obligations, payment amounts or any such values between an insolvent party and another party will not apply to the relevant provisions of a netting agreement (which would include the FOA Set-off Provisions in relation to a Transaction undertaken subject to a FOA Netting Agreement or Clearing Agreement which was a "qualified financial instrument" listed in Annex 6).

Insolvency set-off other than under the Netting Law

If the Netting Law does not apply, in relation to an Event of Default which arises in the event of the insolvency of a Party that is a company or a limited liability partnership incorporated in the DIFC, under the laws of this jurisdiction, the aggregation or set-off of amounts representing terminated mutual obligations would be implemented under Regulation 5.25 of the DIFC Insolvency Regulations 2009 (the "**Insolvency Regulations**") (a "**Statutory Insolvency Set-Off**"). Statutory Insolvency Set-Off would result in a net amount payable between the parties in respect of such amounts, subject to the inclusion in any Statutory Insolvency Set-Off of other mutual obligations between the parties. Regulation 5.25 is mandatory and cannot be excluded by contract so the FOA Set-Off Provisions may be overridden to the extent of inconsistency with Statutory Insolvency Set-Off. The date of the set-off would be the date on which the counterparty went into insolvent liquidation or, if the liquidation was immediately preceded by an administration, on the date that the counterparty entered administration.

Regulation 5.25 applies where, before a counterparty goes into liquidation, there have been "*mutual credits, mutual [d]ebts or other mutual dealings between the company and any creditor of the company proving or claiming to prove for a debt in the liquidation*", within the meaning of the Insolvency Regulations. Under Regulation 5.25, an account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sums due from one party shall be set off against the sums due from the other. Only the balance (if any) of the account owed to the creditor is provable in the liquidation. In terms of Regulation 5.25, the reference above to mutual credits, mutual debts or other mutual dealings does not include the Debts (as defined below) listed at paragraph 4.5 below.

In our view, Regulation 5.25 would apply in any winding-up or administration under DIFC law of a DIFC company or limited liability partnership, and would result in any mutual credits and debts under the FOA Set-Off

Provisions being set off against each other. However, please note that the DIFC courts have yet to give a ruling on the issues set out above, and our analysis is based on our view of the manner in which we believe the DIFC courts would seek to interpret the relevant DIFC laws.

No amendments to the General Set-Off Clause and the Margin Cash Set-Off Clause are necessary in order for the opinions expressed in this paragraph 3.5.1 to apply.

3.5.2 In relation to a Clearing Agreement which includes the FOA Set-Off Provisions and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision (and in which the FOA Set-Off Provisions are not Disapplied Set-Off Provisions), the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms, so that following an Event of Default in respect of the Client, the Firm or, as the case may be, the Clearing Member would (to the extent that set-off is not already covered by the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision) be immediately entitled to exercise its rights under either or both of the FOA Set-Off Provisions, and in particular so that, upon the exercise of such rights:

- (a) where the FOA Set-Off Provisions includes the General Set-Off Clause:
 - (i) the value of any cash balance owed by the Firm or, as the case may be, the Clearing Member to the Client would be set off against the Liquidation Amount (where such Liquidation Amount is owed by the Client); or
 - (ii) the value of any cash balance owed by the Client to the Firm or, as the case may be, the Clearing Member would be set off against the Liquidation Amount (where such Liquidation Amount is owed by the Firm or, as the case may be, the Clearing Member); or
- (b) where the FOA Set-Off Provisions comprise the Margin Cash Set-Off Clause only, the value of any cash margin owed by the Firm or, as the case may be, the Clearing Member to the Client would be set-off against the Liquidation Amount (where such Liquidation Amount is owed by the Client).

We are of this opinion for the reasons set out at 3.5.1 above.

No amendments to the General Set-Off Clause and the Margin Cash Set-Off Clause are necessary in order for the opinions expressed in this paragraph 3.5.2 to apply.

3.6 Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision

In relation to a Clearing Agreement which includes the Clearing Module Set-Off Provision (whether or not the FOA Set-Off Provisions are Disapplied Set-Off Provisions, insofar as constituting part of the Clearing Agreement), the Clearing Module Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that the Firm would be immediately entitled to exercise its rights under the Clearing Module Set-Off Provision, and in particular, if there has been an Event of Default in respect of the Client or a CCP Default, so that the value of any cash balance owed by one Party to the other would be set off against any Available Termination Amount owed by the Party entitled to receive the cash balance, insofar as not already brought into account as part of the Relevant Collateral Value.

We are of this opinion for the reasons set out at 3.5.1 above.

No amendments to the Clearing Module Set-Off Provision are necessary in order for the opinions expressed in this paragraph 3.6 to apply.

3.7 Enforceability of the Title Transfer Provisions

- 3.7.1 In relation to a FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions where the Client is a Defaulting Party, following the specification or deemed occurrence of a Liquidation Date, the Non-Defaulting Party would be immediately (and without fulfilment of any further condition) entitled to exercise its rights under the Title Transfer Provisions, so that the Default Margin Amount (as calculated pursuant to the terms of the Title Transfer Provisions) would be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision.
- 3.7.2 The questions in relation to the FOA Netting Agreement (with Title Transfer Provisions) or a Clearing Agreement which includes the Title Transfer Provisions, (x) whether Transfers of Margin would be characterised as outright transfers of title or creating a security or other interest, and (y) whether Margin Transferred may be used without restriction, would, under the conflicts of laws rules of this jurisdiction, be determined by reference to the governing law of the FOA Netting Agreement (with Title Transfer Provisions) and a Clearing Agreement which includes the Title Transfer Provisions, and/or by reference to the governing law of the place where the Margin is located.

We are of this opinion because Article 8 of the Netting Law (see Annex 6 (*Netting and set-off*)) provides that the provisions of a netting agreement, including a collateral arrangement such as a title transfer collateral arrangement, will be enforceable in accordance with their terms, including against an insolvent party. This would include all collateral arrangements related to or forming part of Transactions which constituted “qualified financial instruments” as set out in Annex 6 (*Netting and set-off*). This would include the Title Transfer Provisions under a FOA Netting Agreement or

Clearing Agreement in relation to a Transaction undertaken subject to the FOA Netting Agreement or Clearing Agreement which was a "qualified financial instrument" listed in Annex 6.

Further, DIFC Law No. 10 of 2005 (the "**Application Law**") states that the existence, validity, effect, interpretation and performance of a contract, or any term thereof, including any requirements as to formality, shall be determined by the law which governs it and an express choice of governing law in a contract shall be effective against all affected thereby. Additionally, in relation to the Title Transfer Provisions, Article 15 of the Application Law provides that the law of the jurisdiction where the property is located governs (i) the validity of transfer of the property; and (ii) the effect of the proprietary rights of the parties thereto and of those claiming under them in respect thereof.

In relation to Margin which is non-cash collateral, Article 15 of the Application Law is subject to Article 16, which sets out the more detailed rules applicable to securities (including debt securities). Specifically, Article 16 recognises that securities may be held either directly or through a clearing system, custodian, or other investment intermediary (in which case the investor holds "investment entitlements" representing the securities in question rather than the securities themselves), and provides that:

- (a) where the securities are held directly, the validity and extent of any third party property interest in the securities is governed by the law of the jurisdiction under which the issuer of the securities is organised or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer (the "**Issuer's Jurisdiction**"); and
- (b) where the securities are held through an investment intermediary, the validity and extent of any third party property interest in the relevant investment entitlements are governed by:
 - (i) the jurisdiction in which the investment account is expressed to be maintained in the agreement governing the account, if any;
 - (ii) if paragraph (i) does not apply, the jurisdiction in which the office identified in an account statement as the office serving the account is situated; or
 - (iii) if paragraphs (i) and (ii) do not apply, the jurisdiction in which the head office of the investment intermediary is situated,

the "**Investment Intermediary's Jurisdiction**".

Based on the above, we would expect the following laws (including their respective conflict of law provisions) to apply:

- (a) for cash held in an account, the first of: (i) the jurisdiction in which the account is expressed to be maintained in the agreement governing the account, if any; (ii) the jurisdiction in which the office identified in an account statement as the office serving the account is situated, if any; or (iii) the jurisdiction in which the head office of the bank holding the account is situated;
- (b) for directly held bearer debt securities, the Issuer's Jurisdiction;
- (c) for directly held registered debt securities, the Issuer's Jurisdiction;
- (d) for directly held dematerialized debt securities, the Investment Intermediary's Jurisdiction (in this context, the securities depository operating the register would be likely to be viewed as the relevant investment intermediary); and
- (e) for indirectly held debt securities, the Investment Intermediary's Jurisdiction (in this context, the custodian or other intermediary through which the securities are held would be likely to be viewed as the relevant investment intermediary).

No amendments to the Title Transfer Provisions are necessary in order for the opinions expressed in this paragraph 3.7 to apply.

3.8 Use of security interest margin not detrimental to Title Transfer Provisions

In relation:

- 3.8.1 to a FOA Netting Agreement (with Title Transfer Provisions) and to a Clearing Agreement which includes the Title Transfer Provisions and the Non-Cash Security Interest Provisions (used with or without the Rehypothecation Clause) and/or the Client Money Additional Security Clause - whether the Default Margin Amount (as calculated pursuant to the terms of the Title Transfer Provisions) would be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision; and
- 3.8.2 to the Clearing Agreement which includes the Title Transfer Provisions - whether the value of the Transferred Margin would be taken into account as part of the Relevant Collateral Value,

would be determined by reference to the governing law of the FOA Netting Agreement (with Title Transfer Provisions) and a Clearing Agreement which includes the Title Transfer Provisions, or by reference to the governing law of the place where the collateral is located or, for non-cash collateral, by reference to Article 16 of the Personal Property Law, as set out at paragraph 3.7 above. We are of this opinion for

the reasons set out at paragraph 3.7 above. Further, our opinion at paragraph 3.7 remains true in relation to such a FOA Netting Agreement or Clearing Agreement.

3.9 Single Agreement

The courts in this jurisdiction have yet to determine whether, under the laws of this jurisdiction it is necessary that the Transactions and the FOA Netting Agreement or, as the case may be, the Clearing Agreement are part of a single agreement in order for the termination and liquidation under the FOA Netting Provision to be enforceable. In our opinion, the courts in this jurisdiction would hold that, under the laws of this jurisdiction, it is not necessary that the Transactions and the FOA Netting Agreement or, as the case may be, the Clearing Agreement are part of a single agreement in order for the termination and liquidation under the FOA Netting Provision to be effective. We are of this opinion because there is no rule or law of this jurisdiction which would, in our view, require mutual obligations to form part of a single agreement.

Art. 68 of the Insolvency Law permits a liquidator of a Defaulting Party established as a company under the Companies Law or as a limited liability partnership under the Limited Liability Partnerships Law to disclaim onerous property, including unprofitable contracts. In our view, the FOA Netting Agreement or, as the case may be, the Clearing Agreement and Transactions would be treated as part of a single agreement for this purpose and a liquidator would not be able to 'cherry pick' profitable Transactions and disclaim only unprofitable Transactions as onerous. However, as stated above, this issue is yet to be tested under the laws of this jurisdiction. If the Netting Law applies to the FOA Netting Agreement or, as the case may be, the Clearing Agreement and the Transactions constitute qualified financial instruments for the purposes of the Netting Law (see Annex 6 (*Netting and set-off*)), a court in this jurisdiction would apply Article 15(3) of the Netting Law, which provides that a netting agreement and all qualified financial instruments to which the netting agreement applies shall constitute a single agreement.

3.10 Automatic Termination

It is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provision to ensure the effectiveness of netting under the FOA Netting Agreement in the event of bankruptcy, liquidation, or other similar circumstances although, in relation to any Transactions which could constitute a Debt (as defined below), please note the qualification at paragraph 4.5 below.

3.11 Multibranch Parties

We do not consider that the use of the FOA Netting Agreement or, as the case may be, the Clearing Agreement by a Party with branches in a number of different jurisdictions, including some where netting may not be enforceable, would jeopardise the enforceability of the FOA Netting Provision, the FOA Set-Off Provisions, the

Clearing Module Set-Off Provision or the Title Transfer Provisions insofar as the laws of this jurisdiction are concerned.

3.12 **Insolvency of Foreign Parties**

Where a Party is incorporated or formed under the laws of another jurisdiction and an Event of Default occurs in respect of such Party (a "**Foreign Defaulting Party**") and has established a registered branch in the DIFC (a "**Recognised Company**") pursuant to Art. 115 of the Companies Law, the Foreign Defaulting Party can be subject to Insolvency Proceedings in this jurisdiction under Art. 83(2) of the Insolvency Law.

Where the Foreign Defaulting Party is not a Recognised Company, under Art. 82 of the Companies Law the courts in this jurisdiction are permitted to assist a foreign court in the jurisdiction in which the Foreign Insolvent Party is the subject of insolvency proceedings. We interpret Art. 82 to mean that a Foreign Defaulting Party, which is not a Recognised Company, may not be subject to Insolvency Proceedings in this jurisdiction.

3.13 **Special legal provisions for market contracts**

Other than Transactions subject to Regulation 7 of the Insolvency Regulations, as described at paragraph 1.5 above, there are no special provisions of law which would affect the opinions given in this paragraph 3 which would apply to a Transaction between two Parties as a result of the fact that such Transaction was entered into on, or is back-to-back with a Transaction entered into on an exchange (in this or another jurisdiction), or is cleared at, or is back-to-back with a Transaction to be cleared by a central counterparty.

4. **QUALIFICATIONS**

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

- 4.1 This memorandum does not address the position in the United Arab Emirates (the "**UAE**") (excluding the DIFC) other than at 4.8 below. The DIFC is a financial free zone located in the Emirate of Dubai with its own system of civil and commercial laws, its own courts and its own financial services regulator.
- 4.2 The laws of this jurisdiction have only been enacted since 2004 and, as of February 2015, there are no reported decisions of the courts in this jurisdiction which deal with the provisions of the laws of this jurisdiction which are the subject of this Opinion.
- 4.3 A Transaction could be set aside under Art. 97 of the Insolvency Law (and related provisions) (a) if it constitutes a transaction at an undervalue with a person (that is, if it makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the Counterparty to receive no consideration, or consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the Counterparty), (b) if the court is not satisfied that (i) the Counterparty entered into the transaction in good

faith and for the purpose of carrying out its business and (ii) at the time the Counterparty entered into the transaction there were reasonable grounds for believing that the transaction would benefit the Counterparty and (c) the transaction was entered into at a time in the period of 2 years ending with the onset of insolvency or at a time between the presentation of a petition for the making of an administration order in relation to the Counterparty and the making of such an order on that petition.

4.4 A Transaction could be set aside under Art. 98 of the Insolvency Law (and related provisions) (a) if it constitutes a preference given to a person (that is, (i) that person is one of the Counterparty's creditors or a surety or guarantor for any of the Counterparty's debts or other liabilities, and (ii) the Counterparty does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the Counterparty going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done) and the Counterparty giving the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in (ii) above (we note that there is a presumption that a Counterparty which has given a preference to a person connected with the Counterparty (other than by reason only of being its employee) at the time the preference was given has been influenced in deciding to give it by such a desire) and (b) the transaction was entered into within a prescribed period from the onset of insolvency (2 years in the case of a preference given to a connected person and 6 months in any other cases). However, if the Netting Law applies to the Transaction and the Transaction has been entered into under a netting agreement (as defined in the Netting Law), under Article 12 of the Netting Law, the Transaction may only be set aside on the grounds of it constituting a preference if it has been entered into by the insolvent party with actual intent to hinder, delay or defraud any person to which the insolvent party was indebted or became indebted, on or after the date the Transaction was entered into.

4.5 In the event of the insolvency of a Party that was a company or limited liability partnership, under the laws of this jurisdiction, the provisions of Regulation 5.25 of the Insolvency Regulations do not apply to an amount which arises under a Transaction (a "**Debt**") entered into at certain times and accordingly a court in this jurisdiction might not allow such amounts to be included in an aggregation pursuant to the FOA Netting Provision or a Statutory Insolvency Set-Off. The provisions of Regulation 5.25 would not apply to the following:

- (a) any Debt arising out of an obligation incurred at a time when the creditor had actual notice that (i) a meeting of creditors had been summoned or (ii) a petition for the winding up of the company was pending;
- (b) any Debt arising out of an obligation where: (i) the liquidation was immediately preceded by administration proceedings (an "**Administration**"); and (ii) at the time the obligation was incurred the creditor had actual notice that an application for an Administration order was pending or a person had given notice of intention to appoint an administrator;

- (c) any Debt arising out of an obligation incurred during an Administration which immediately preceded the liquidation; and
- (d) any Debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into: (i) after the company went into liquidation; (ii) at a time when the creditor had actual notice that a meeting of creditors had been summoned or that a winding up petition was pending; (iii) where the liquidation was immediately preceded by an Administration, at a time when the creditor had actual notice that an application for an Administration order was pending or a person had given notice of intention to appoint an administrator; or (iv) during an Administration which immediately preceded the liquidation.

However, this would not impair the effectiveness of the netting under the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, or a set-off under the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision in respect of amounts due in respect of Transactions which were not Debts.

4.6 Dubai Law No. 12 of 2004 (the "**Judicial Authority Law**") provides that a court in this jurisdiction will apply the laws of this jurisdiction except where the parties to a dispute have explicitly agreed that another law should govern and the law that is chosen does not conflict with public policy or public morals. Although it has yet to be tested before a court in this jurisdiction, it is, in our view, highly unlikely that a court in this jurisdiction would hold that the laws of England and Wales conflict with public policy or public morals.

4.7 The choice of English law by the parties may, however, not be upheld in all circumstances. Art. 8 of the Law on the Application of Civil and Commercial Laws in the DIFC provides that the governing law employed to determine the rights and liabilities as between parties in a civil or commercial matter is the one first ascertained in accordance with the following provisions:

- (a) First, under DIFC laws so far as there is any regulatory content (at least in respect of those regulatory issues arising within the territorial scope of the DIFC jurisdiction);
- (b) Secondly, under the laws of any jurisdiction other than DIFC laws if expressly chosen by any DIFC law (Parts 5 & 6 of the Application Law designate laws of jurisdictions (other than DIFC laws) for matters relating to property interests and transfers, security interests, the validity of securities and investment entitlements and the existence, validity and interpretation of trusts);
- (c) Thirdly, under the laws of any jurisdiction if agreed between the relevant parties to the matter;

- (d) Fourthly, under the laws of any jurisdiction which appears to the court to be most closely related to the facts and parties to the matter; and
- (e) Finally, under the laws of England and Wales.

In our view, the effect of Art. 8 is that the choice of English law to govern the FOA Netting Agreement, or, as the case may be, the Clearing Agreement would be upheld by a court in this jurisdiction outside the insolvency of a DIFC counterparty. However, in the event of the insolvency of a DIFC counterparty, the relevant DIFC laws (as set out in this opinion) would be applied by a court in this jurisdiction.

4.8 There is a risk that a party seeking to challenge the validity or enforceability of the FOA Netting Agreement or, as the case may be, the Clearing Agreement would seek to rely on the anti-gambling provisions in the UAE Penal Code, which applies in this jurisdiction pursuant to Article 3 of the Financial Free Zone Law No. 8 of 2004 (the "**Free Zone Law**"), the UAE Federal law that lead to the creation of this jurisdiction. The courts in this jurisdiction (the "**DIFC Courts**") have yet to determine whether the Transactions are valid or enforceable in this jurisdiction. In our view, it is highly likely that the DIFC Courts would uphold the validity and enforceability of the Transactions because: (i) Article 7 of the Netting Law provides that a qualified financial instrument shall not be void or unenforceable by reason of being, or having the characteristics of, a wager, lottery, gambling or gaming contract; (ii) there is one reported decision where a Dubai court (outside the DIFC) upheld a derivatives contract, the UAE Penal Code not rendering the contract invalid and unenforceable; (iii) there are three Abu Dhabi cases in which the validity of a derivatives contract was not upheld, but illegality for want of compliance with the UAE Penal Code is mentioned in only one of these decisions; and (iv) in a more recent decision of the Abu Dhabi Supreme Court a foreign exchange derivative transaction was upheld. The focus of the Dubai and Abu Dhabi courts in the reported decisions has generally been on UAE legal provisions (other than the UAE Penal Code) which do not apply in this jurisdiction; and the regulatory regime in this jurisdiction provides for the licensing of firms to carry on activities in relation to derivative contracts. The extent to which the DIFC Courts have jurisdiction to hear and determine matters in relation to the UAE Penal Code is unclear. The Judicial Authority Law only grants the DIFC Courts jurisdiction in relation to "*civil and commercial*" matters and a challenge to a Transaction under the UAE Penal Code may not constitute a "*civil or commercial*" matter for the purposes of the Judicial Authority Law. However, we are aware that, in a recent judgment (see *TVM Capital Healthcare Partners LTD –v- Ali Akbar Hashemi* [CA-006-2014]), the DIFC Court of Appeal made *obiter* remarks considering the scope of an unrelated provision of the UAE Penal Code and did not decline jurisdiction to hear a claim made under that provision, although this was not in the context of a derivatives transaction.

4.9 In a winding-up or an administration under DIFC law, the aggregation or set-off of amounts representing terminated mutual obligations may be implemented by way of Statutory Insolvency Set-Off pursuant to Regulation 5.25 of the Insolvency Regulations. This applies where, before a Counterparty goes into liquidation, there have been "*mutual credits, mutual Debts or other mutual dealings between the*

company and any creditor of the company proving or claiming to prove for a debt in the liquidation", within the meaning of the Insolvency Regulations. Under Regulation 5.25, an account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sums due from one party shall be set off against the sums due from the other. Only the balance (if any) of the account owed to the creditor is provable in the liquidation. A sum shall be regarded as being due to or from the Counterparty whether it is payable at present or in the future; whether the obligation by virtue of which it is payable is certain or contingent or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion. In addition, if any obligation to or from the Counterparty does not bear a certain value, for example, because it is subject to any contingency, Regulation 5.22 provides that the liquidator shall estimate the value of the relevant debt and inform the creditor as to his estimate and the amount provable in the liquidation is that estimate for the time being. Regulation 5.26 provides that a debt incurred or payable in a currency other than US Dollars shall be converted into US Dollars at the official exchange rate prevailing on the date when the company went into liquidation or, if the liquidation was immediately preceded by an administration, on the date that the company entered administration.

- 4.10 If the obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement are not "*mutual*" between the Parties they may not be eligible for inclusion in a netting or set-off pursuant to the FOA Netting Provision, the FOA Set-Off Provisions or the Clearing Module Set-Off Provision. For these purposes, under the laws of this jurisdiction, obligations would not be regarded as "*mutual*" if they were Debts (as defined above) listed at paragraph 4.5 above. However, the inclusion of amounts in respect of non-mutual obligations would not impair the effectiveness of the netting under the FOA Netting Provision or a set-off under the FOA Set-Off Provisions or the Clearing Module Set-Off Provision in respect of amounts due in respect of Transactions which are mutual.
- 4.11 In relation to the opinion given at 3.11, subject to the powers of an insolvency official under Regulation 5.50 of the Insolvency Regulations to disclaim onerous transactions, which applies irrespective of where the transactions may have been entered into, there is no danger that an Insolvency Representative of a Defaulting Party could treat the obligations in respect of Transactions entered into in this jurisdiction separately from other obligations arising under the FOA Netting Agreement or, as the case may be, the Clearing Agreement or other Transactions. We are of this opinion because, under Art. 61 and Schedule 2 of the Insolvency Law the functions of a liquidator of a company (or a limited liability partnership) which is being wound up by a court in this jurisdiction and an administrative receiver, respectively, are to ensure that the assets of the company, *inter alia*, are got or otherwise secured and realised. We interpret this to mean that an Insolvency Representative of an Insolvent Party could include all obligations arising under the Transactions, regardless of where they were entered into, in the calculation of amounts owed to and from an Insolvent Party.
- 4.12 If a Party that is authorised by the DFSA to effect or carry out contracts of insurance (each an "**Insurer**") becomes insolvent, the DIFC Insolvency (Insurers) Regulations

2009 ("**Insurance Insolvency Regulations**") must be read together with the Insolvency Regulations. The Insurance Insolvency Regulations includes provisions which may affect the operation of Statutory Insolvency Set-Off, in particular, requirements that assets and liabilities relating to the General Insurance Business and the Long-Term Insurance Business (both as defined in the DFSA Rules) of the Insurer are treated separately in insolvency and provisions which may affect the valuation of any Transactions which are held to be General Insurance Policies or Long-Term Insurance Policies (both as defined in the DFSA Rules). Under Regulation 3 of the Insurance Insolvency Regulations if, at the liquidation date, it is unclear whether particular assets and liabilities can be attributed to the insurance business of the Insurer, the liquidator must determine the attribution of these liabilities and may attribute only part of a liability or value of an asset to the insurance business. Whether particular Transactions should be viewed as part of the General Insurance Business or Long-Term Insurance Business of an Insurer and the effect of any such determination by the courts of this jurisdiction on the operation of Statutory Insolvency Set-Off is yet to be considered by a court in this jurisdiction. However, in our view, in determining these issues, a court in this jurisdiction would be minded to apply Regulation 5.25 as stated on its terms.

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

This opinion is given for the sole benefit of FIA Europe and each member (excluding associate members) of FIA Europe which subscribes to FIA Europe's Netting Analyser service (and whose terms of subscription give access to this opinion) (as "**FIA Members**").

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

- (a) the officers, employees, auditors and professional advisers of any addressee or any subscribing member;
- (b) any person to whom disclosure is required to be made by applicable law or court order or pursuant to the rules or regulations of any supervisory or regulatory body or in connection with any judicial proceedings; and
- (c) any competent authority supervising a subscribing member or its affiliates

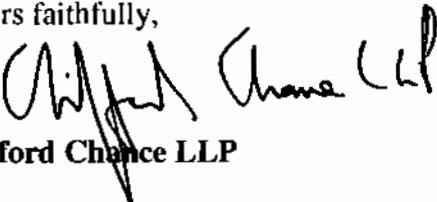
on the basis that (i) such disclosure is made solely to enable any such person to be informed that an opinion has been given and to be made aware of its terms but not for the purposes of reliance, and (ii) we do not assume any duty or liability to any person to whom such disclosure is made and in preparing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

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

By permitting subscribing members to rely on this Opinion as stated above, Clifford Chance LLP accepts responsibility to such subscribing members for the matters specifically opined upon in this Opinion in the context stated in the preceding paragraph, but Clifford Chance LLP does not have or assume any client relationship in connection therewith or assume any wider duty to any subscribing member or their affiliates. This Opinion has not been prepared in connection with, and is not intended for use in, any specific transaction.

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

Yours faithfully,


Clifford Chance LLP

ANNEX 1
FORMS OF FOA NETTING AGREEMENTS

1. Master Netting Agreement - One-Way (1997 version) (the "**One-Way Master Netting Agreement 1997**")
2. Master Netting Agreement - Two-Way (1997 version) (the "**Two-Way Master Netting Agreement 1997**")
3. Default, Netting and Termination Module (One-Way Netting) (2007 version) (the "**Long-Form One-Way Clauses 2007**")
4. Short Form Default, Netting and Termination Module (One-Way Netting) (2007 version) (the "**Short-Form One-Way Clauses 2007**")
5. Short Form Default, Netting and Termination Module (One-Way Netting) (2009 version) (the "**Short-Form One-Way Clauses 2009**")
6. Short Form Default, Netting and Termination Module (One-Way Netting) (2011 version) (the "**Short-Form One-Way Clauses 2011**")
7. Default, Netting and Termination Module (Two-Way Netting) (2007 version) (the "**Long-Form Two-Way Clauses 2007**")
8. Default, Netting and Termination Module (Two-Way Netting) (2009 version) (the "**Long-Form Two-Way Clauses 2009**")
9. Default, Netting and Termination Module (Two-Way Netting) (2011 version) (the "**Long-Form Two-Way Clauses 2011**")
10. Short Form Default, Netting and Termination Module (Two-Way Netting) (2007 version) (the "**Short-Form Two-Way Clauses 2007**")
11. Short Form Default, Netting and Termination Module (Two-Way Netting) (2009 version) (the "**Short-Form Two-Way Clauses 2009**")
12. Short Form Default, Netting and Termination Module (Two-Way Netting) (2011 version) (the "**Short-Form Two-Way Clauses 2011**")
13. Professional Client Agreement (2007 Version), including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2007**")

14. Professional Client Agreement (2009 Version), including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2009**")
15. Professional Client Agreement (2011 Version) including Module G (Margin and Collateral) (the "**Professional Client (with Security Provisions) Agreement 2011**")
16. Professional Client Agreement (2007 Version), excluding Module G (*Margin and Collateral*) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2007**")
17. Professional Client Agreement (2009 Version), excluding Module G (*Margin and Collateral*) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2009**")
18. Professional Client Agreement (2011 Version), excluding Module G (*Margin and Collateral*) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Professional Client (with Title Transfer Provisions) Agreement 2011**")
19. Retail Client Agreement (2007 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2007**")
20. Retail Client Agreement (2009 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2009**")
21. Retail Client Agreement (2011 Version) including Module G (Margin and Collateral) (the "**Retail Client (with Security Provisions) Agreement 2011**")
22. Retail Client Agreement (2007 Version), excluding Module G (*Margin and Collateral*) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2007**")
23. Retail Client Agreement (2009 Version), excluding Module G (*Margin and Collateral*) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2009**")
24. Retail Client Agreement (2011 Version), excluding Module G (*Margin and Collateral*) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2011**")

Annex to the Netting Module (2007 or 2011 Version) (the "**Retail Client (with Title Transfer Provisions) Agreement 2011**")

25. Eligible Counterparty Agreement (2007 Version) including Module G (*Margin*) (the "**Eligible Counterparty (with Security Provisions) Agreement 2007**")
26. Eligible Counterparty Agreement (2009 Version) including Module G (*Margin*) (the "**Eligible Counterparty (with Security Provisions) Agreement 2009**")
27. Eligible Counterparty Agreement (2011 Version) including Module G (*Margin*) (the "**Eligible Counterparty (with Security Provisions) Agreement 2011**")
28. Eligible Counterparty Agreement (2007 Version) excluding Module G (*Margin*) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2007**")
29. Eligible Counterparty Agreement (2009 Version) excluding Module G (*Margin*) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2009**")
30. Eligible Counterparty Agreement (2011 Version) excluding Module G (*Margin*) but incorporating the Title Transfer Securities and Physical Collateral Annex to the Netting Module (2007 or 2011 Version) (the "**Eligible Counterparty (with Title Transfer Provisions) Agreement 2011**")

Where a 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), provided that any election made does not constitute an Adverse Amendment.

Each of the Agreements listed at items 13 to 30 of this Annex 1 may be deemed to include FOA Netting 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, in which case references to the Insolvency Events of Default and FOA Netting Provision in respect of such FOA Netting Agreements shall mean the Insolvency Events of Default and FOA Netting Provision in relation to the Two Way Clauses.

ANNEX 2
LIST OF TRANSACTIONS

The following groups of Transactions may be entered into under the FOA Netting Agreements or Clearing Agreements:

(A) (Futures and options and other transactions) Transactions as defined in the FOA Netting Agreements or Clearing Agreements:

- (i) a contract made on an exchange or pursuant to the rules of an exchange;
- (ii) a contract subject to the rules of an exchange; or
- (iii) a contract which would (but in terms of maturity only) be a contract made on, or subject to the rules of, an exchange and which, at the appropriate time, is to be submitted for clearing as a contract made on, or subject to the rules of, an exchange,

in any of cases (i), (ii) and (iii) being a future, option, contract for difference, spot or forward contract of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof; or

- (iv) a transaction which is back-to-back with any transaction within paragraph (i), (ii) or (iii) of this definition, or
- (v) any other Transaction which the parties agree to be a Transaction;

(B) (fixed income securities) Transactions relating to a fixed income security or under which delivery of a fixed income security is contemplated upon its formation;

(C) (equities) Transactions relating to an equity or under which delivery of an equity is contemplated upon its formation;

(D) (commodities) Transactions relating to, or under the terms of which delivery is contemplated, of any base metal, precious metal or agricultural product.

(E) (OTC derivatives) Transactions which fall within paragraphs (4) to (10) of Section C of Annex 1 to Directive 2004/39/EC¹, including (but not limited to) interest rate swaps, credit default swaps, derivatives on foreign exchange, and equity derivatives, provided that, where the Transaction is subject to the Terms of a Clearing Agreement,

¹ Non-EU counsel should discuss with Clifford Chance if clarification is needed.

the Transaction (or a transaction which is back-to-back with the Transaction) is eligible to be cleared by a central counterparty.

ANNEX 3
DEFINITIONS RELATING TO THE AGREEMENTS

"Addendum Netting Provision" means (subject to any selections or amendments required or permitted to be made on the face of the ISDA/FOA Clearing Addendum):

- (a) Clause 8(b) (Clearing Member Events), 8(c) (CCP Default) and 8(d) (*Hierarchy of Events*) of the ISDA/FOA Clearing Addendum; or
- (b) any modified version of such clauses provided that it includes at least those parts of paragraph 6 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

together with the defined terms required properly to construe such Clauses.

"Addendum Set-Off Provision" means (subject to any selections or amendments required or permitted to be made on the face of the ISDA/FOA Clearing Addendum):

- (a) Clause 8(e) (*Set-Off*) of the ISDA/FOA Clearing Addendum, where constituted as part of a Clearing Agreement; or
- (b) any modified version of such clause provided that it includes at least those parts of paragraph 8 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

together with the defined terms required properly to construe such Clause.

"Adverse Amendments" means (a) any amendment to a Core Provision and/or (b) any other provision in an agreement that may invalidate, adversely affect, modify, amend, supersede, conflict or be inconsistent with, provide an alternative to, override, compromise or fetter the operation, implementation, enforceability or effectiveness of a Core Provision (in each case in (a) and (b) above, excepting any Non-material Amendment).

"Clearing Agreement" means an agreement:

- (a) on the terms of the FOA Netting Agreement when used (i) in conjunction with the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum, or (ii) in conjunction with a Clearing Module Netting Provision and/or an Addendum Netting Provision and with or without a Clearing Module Set-Off Provision and/or an Addendum Set-Off Provision;
- (b) which is governed by the law of England and Wales; and
- (c) which contains an Addendum Inconsistency Provision, a Clearing Module Inconsistency Provision, or another provision with equivalent effect to either of them.

"Clearing Module Netting Provision" means (subject to any selections or amendments required or permitted to be made on the face of the FOA Clearing Module):

- (a) Clause 5.2 (*Firm Events*), 5.3 (*CCP Default*) and 5.4 (*Hierarchy of Events*) of the FOA Clearing Module; or
- (b) any modified version of such clauses provided that it includes at least those parts of paragraph 6 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

together with the defined terms required properly to construe such Clauses.

"Clearing Module Set-Off Provision" means (subject to any selections or amendments required or permitted to be made on the face of the FOA Clearing Module):

- (a) Clause 5.5 (*Set-Off*) of the FOA Clearing Module; or
- (b) any modified version of such clause provided that it includes at least those parts of paragraph 7 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

together with the defined terms required properly to construe such Clause.

"Client" means, in relation to a FOA Netting Agreement or a Clearing Agreement, the Firm's or, as the case may be, Clearing Member's counterparty under the relevant FOA Netting Agreement or Clearing Agreement.

"Client Money Additional Security Clause" means:

- (a) 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);
- (b) 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);
- (c) 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);
- (d) 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);

- (e) 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);
- (f) 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);
- (g) 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);
- (h) 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);
- (i) 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); or
- (j) any modified version of such clauses provided that it includes at least those parts of paragraph 3 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

"Core Provision" means those parts of the clauses or provisions specified below in relation to a paragraph of this opinion letter (and/or any equivalent paragraph in any Schedule to this opinion letter), which are highlighted in Annex 4:

- (a) for the purposes of paragraph 3.3 (*Enforceability of FOA Netting Provision*) and 3.4 (*Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to FOA Netting Provision*), the Insolvency Events of Default Clause and the FOA Netting Provision;
- (b) for the purposes of paragraph 3.5 (*Enforceability of the FOA Set-Off Provisions*), the Insolvency Events of Default Clause, the FOA Netting Provision and either or both of the General Set-off Clause and the Margin Cash Set-off Clause;
- (c) for the purposes of paragraph 3.6 (*Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision*), the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Available Termination Amount", "Disapplied Set-Off Provisions", "Firm/CCP Transaction Value" and

"Relevant Collateral Value", the Clearing Module Set-Off Provision and the FOA Set-Off Provisions; and

(d) for the purposes of paragraph 3.7.1, (i) in relation to a FOA Netting Agreement, the Insolvency Events of Default Clause, the FOA Netting Provision and the Title Transfer Provisions; and (ii) in relation to a Clearing Agreement, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value" or, as the case may be, the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Title Transfer Provisions;

in each case, incorporated into a FOA Netting Agreement or a Clearing Agreement together with any defined terms required properly to construe such provisions, in such a way as to preserve the essential sense and effect of the highlighted parts.

References to "**Core Provisions**" include Core Provisions that have been modified by Non material Amendments and necessary amendments set out in Section 1 of Annex 5.

"Defaulting Party" includes, in relation to the One-Way Versions, the Party in respect of which an Event of Default entitles the Non-Defaulting Party to exercise rights under the FOA Netting Provision.

"Eligible Counterparty Agreements" means each of the Eligible Counterparty (with Security Provisions) Agreement 2007, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2007, the Eligible Counterparty (with Security Provisions) Agreement 2009, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2009, the Eligible Counterparty (with Security Provisions) Agreement 2011 or the Eligible Counterparty (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1).

"Firm" means, in relation to a FOA Netting Agreement or a Clearing Agreement which includes a FOA Clearing Module, the Party providing the services under the relevant FOA Netting Agreement or Clearing Agreement which includes a FOA Clearing Module.

"FOA Clearing Module" means the FOA Client Cleared Derivatives Module as first published on 9 October 2013 or any subsequent published version up to the date of this opinion letter.

"FOA Netting Agreement" means an agreement:

- (a) on the terms of the forms specified in Annex 1 to this opinion letter or which has broadly similar function to any of them, when not used in conjunction with the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum and/or a Clearing Module Netting Provision and/or an Addendum Netting Provision;
- (b) which is governed by the law of England and Wales; and
- (c) which contains the Insolvency Events of Default Clause and the FOA Netting Provision, with or without the FOA Set-Off Provisions, and with or without the Title Transfer Provisions, with no Adverse Amendments.

"FOA Netting Agreements (with Title Transfer Provisions)" means each of the Professional Client (with Title Transfer Provisions) Agreement 2007, the Professional Client (with Title Transfer Provisions) Agreement 2009, the Professional Client (with Title Transfer Provisions) Agreement 2011, the Retail Client (with Title Transfer Provisions) Agreement 2007, the Retail Client (with Title Transfer Provisions) Agreement 2009, the Retail Client (with Title Transfer Provisions) Agreement 2011, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2007, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2009 and the Eligible Counterparty (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1) or a FOA Netting Agreement which has broadly similar function to any of the foregoing.

"FOA Netting Provision" means (in each case subject to any selections or amendments required or permitted to be made on the face of the document in the relevant form referred to in Annex 1):

- (a) in relation to the terms of the Long Form One-Way Clauses 2007 and the Long Form Two-Way Clauses, Clause 2.2 (***Liquidation Date***), Clause 2.4 (***Calculation of Liquidation Amount***) and Clause 2.5 (***Payer***);
- (b) in relation to the terms of the Short Form One-Way Clauses and the Short Form Two-Way Clauses, Clause 2.1 (***Liquidation Date***), Clause 2.3 (***Calculation of Liquidation Amount***) and Clause 2.4 (***Payer***);
- (c) in relation to the terms of the Master Netting Agreements, Clause 4.2, Clause 4.4 and Clause 4.5;
- (d) in relation to the terms of the Eligible Counterparty Agreements, Clause 10.1 (***Liquidation Date***), Clause 10.3 (***Calculation of Liquidation Amount***) and Clause 10.4 (***Payer***);

- (e) in relation to the terms of the Retail Client Agreements, Clause 11.2 (*Liquidation Date*), Clause 11.4 (*Calculation of Liquidation Amount*) and Clause 11.5 (*Payer*);
- (f) in relation to the terms of the Professional Client Agreements, Clause 11.2 (*Liquidation Date*), Clause 11.4 (*Calculation of Liquidation Amount*) and Clause 11.5 (*Payer*); or
- (g) any modified version of such clauses provided that it includes at least those parts of paragraph 1 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

"**FOA Published Form Agreement**" means a document listed at Annex 1 in the form published by FIA Europe on its website as at the date of this opinion.

"**FOA Set-Off Provisions**" means:

- (a) the "**General Set-off Clause**", being:
 - (i) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2007 and Professional Client Agreement (with Security Provisions) 2009, clause 15.11 (*Set-off*);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2011, clause 15.13 (*Set-off*);
 - (iii) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2007 and the Retail Client Agreement (with Security Provisions) 2009, clause 15.12 (*Set-off*);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2011, clause 15.13 (*Set-off*);
 - (v) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2007 and the Eligible Counterparty Agreement (with Security Provisions) 2009, clause 14.8 (*Set-off*);
 - (vi) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2011, clause 14.10 (*Set-off*);
 - (vii) in the case of the Agreements in the form of One-Way Master Netting Agreement (1997 version), clause 5 (*Set-Off*);
 - (viii) in the case of the Agreements in the form of Two-Way Master Netting Agreement (1997 version), clause 5 (*Set-Off*); or

- (ix) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and/or

(b) the "**Margin Cash Set-off Clause**", being:

- (i) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2007 and the Professional Client Agreement (with Security Provisions) 2009, clause 8.5 (*Set-off on default*);
- (ii) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2011, clause 8.4 (*Set-off upon default or termination*);
- (iii) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2007 and the Retail Client Agreement (with Security Provisions) 2009, clause 8.7 (*Set-off on default*),
- (iv) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2011, clause 8.6 (*Set-off upon default or termination*);
- (v) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2007 and the Eligible Counterparty Agreement (with Security Provisions) 2009, clause 7.5 (*Set-off on default*);
- (vi) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2011, clause 7.4 (*Set-off upon default or termination*); or
- (vii) any modified version of such clauses provided that it includes at least those parts of paragraph 3 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

"Insolvency Events of Default Clause" means (in each case subject to any selections or amendments required or permitted to be made on the face of the document in the relevant form referred to in Annex 1):

- (i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1 (b) to (d) (inclusive) and Clause 1 (h) and (i);

- (ii) in relation to the terms of the Short Form One-Way Clauses and Short Form Two-Way Clauses, Clauses 1.1 (a) to (c) (inclusive);
- (iii) in relation to the terms of the Master Netting Agreements, Clause 4.1 (i) to (iii) (inclusive);
- (iv) in relation to the terms of the Eligible Counterparty Agreements, Clause 9.1 (a) to (c) (inclusive);
- (v) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1(a) to (c) (inclusive); or
- (vi) any modified version of such clauses provided that it includes at least those parts of paragraph 4(a) of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

"ISDA/FOA Clearing Addendum" means the ISDA/FOA Client Cleared OTC Derivatives Addendum as first published on 11 June 2013, or any subsequent published versions up to the date of this opinion letter.

"Long Form Two-Way Clauses" means each of the Long-Form Two-Way Clauses 2007, the Long-Form Two-Way Clauses 2009 and the Long-Form Two-Way Clauses 2011 (each as listed and defined at Annex 1).

"Margin" means any cash collateral provided to a Party and any cash or non-cash collateral comprising Acceptable Margin provided to a Party pursuant to the Title Transfer Provisions which (in either case) has been credited to an account provided by the Party which is the transferee.

"Master Netting Agreements" means each of the One-Way Master Netting Agreement 1997 and the Two-Way Master Netting Agreement 1997 (each as listed and defined at Annex 1).

"Non-Cash Security Interest Provisions" means:

- (a) the **"Non-Cash 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***); or
- (x) any modified version of such clauses provided that it includes at least those parts of paragraph 1 of Part 3 (***Security Interest Provisions***) of Annex 4 which are highlighted in yellow; and

(b) 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**); or
- (x) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

"Non-Defaulting Party" includes, in relation to the One-Way Versions, the Party entitled to exercise rights under the FOA Netting Provision and, in relation to the FOA Set-Off Provisions, the Party entitled to exercise rights under the FOA Set-Off Provisions.

"Non-material Amendment" means an amendment having the effect of one of the amendments set out at Annex 4.

"One-Way Versions" means the Long Form One-Way Clauses 2007, the Short Form One-Way Clauses, the One-Way Master Netting Agreement 1997, and the FOA Netting Provision as published in the Retail Client Agreements and the Professional Client Agreements in each case in the form of a FOA Published Form Agreement.

"Party" means a party to a FOA Netting Agreement or a Clearing Agreement.

"Professional Client Agreements" means each of the Professional Client (with Security Provisions) Agreement 2007, the Professional Client (with Title Transfer Provisions) Agreement 2007, the Professional Client (with Security Provisions) Agreement 2009, the Professional Client (with Title Transfer Provisions) Agreement 2009, the Professional Client (with Security Provisions) Agreement 2011 or the Professional Client (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1).

"Rehypothecation Clause" means:

- (a) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.13 (**Rehypothecation**);

- (b) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.15 (***Rehypothecation***);
- (c) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.13 (***Rehypothecation***); or

any modified version of such clauses provided that it includes at least those parts of paragraph 4 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

"Retail Client Agreements" means each of the Retail Client (with Security Provisions) Agreement 2007, the Retail Client (with Title Transfer Provisions) Agreement 2007, the Retail Client (with Security Provisions) Agreement 2009, the Retail Client (with Title Transfer Provisions) Agreement 2009, the Retail Client (with Security Provisions) Agreement 2011 or the Retail Client (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1).

"Short Form One Way-Clauses" means each of the Short-Form One-Way Clauses 2007, the Short-Form One-Way Clauses 2009 and the Short-Form One-Way Clauses 2011 (each as listed and defined at Annex 1).

"Short Form Two Way-Clauses" means each of the Short-Form Two-Way Clauses 2007, the Short-Form Two-Way Clauses 2009 and the Short-Form Two-Way Clauses 2011 (each as listed and defined at Annex 1).

"Title Transfer Provisions" means (in each case subject to any selections or amendments required or permitted to be made on the face of the document in the relevant form referred to in Annex 1):

- (a) clauses 5 and 7.2 of the Title Transfer and Physical Collateral Annex to the Netting Module (2007 or 2011 Version); or
- (b) any modified version of such clauses provided that it includes at least those parts of paragraph 5 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

"Two Way Clauses" means each of the Long-Form Two Way Clauses and the Short-Form Two Way Clauses.

ANNEX 4

PART 1 CORE PROVISIONS

For the purposes of the definition of Core Provisions in Annex 3, the wording highlighted in yellow below shall constitute the relevant Core Provision:

1. FOA Netting Provision:

- a) **"Liquidation date:** Subject to the following sub-clause, at any time following the occurrence of an Event of Default in relation to a party, then the other party (the "Non-Defaulting Party") may, by notice to the party in default (the "Defaulting Party"), specify a date (the "Liquidation Date") for the termination and liquidation of Netting Transactions in accordance with this clause.
- b) **Calculation of Liquidation Amount:** Upon the occurrence of a Liquidation Date:
 - i. (neither party shall be obliged to make any further payments or deliveries under any Netting Transactions which would, but for this clause, have fallen due for performance on or after the Liquidation Date and such obligations shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Liquidation Amount;
 - ii. the Non-Defaulting Party shall as soon as reasonably practicable determine (discounting if appropriate), in respect of each Netting Transaction referred to in paragraph (i), the total cost, loss or, as the case may be, gain, in each case expressed in the Base Currency specified by the Non-Defaulting Party as such in the Individually Agreed Terms Schedule as a result of the termination, pursuant to this Agreement, of each payment or delivery which would otherwise have been required to be made under such Netting Transaction; and
 - iii. the Non-Defaulting Party shall treat each such cost or loss to it as a positive amount and each such gain by it as a negative amount and aggregate all such amounts to produce a single, net positive or negative amount, denominated in the Non-Defaulting Party's Base Currency (the "Liquidation Amount").

c) **Payer:** If the Liquidation Amount is a positive amount, the Defaulting Party shall pay it to the Non-Defaulting Party and if it is a negative amount, the Non-Defaulting Party shall pay it to the Defaulting Party. The Non-Defaulting Party shall notify the Defaulting Party of the Liquidation Amount, and by which Party it is payable, immediately after the calculation of such amount."

2. **General Set-Off Clause:**

"**Set-off:** Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) owed by you to us against any amount (whether actual or contingent, present or future) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained."

3. **Margin Cash Set-Off Clause:**

"**Set-off upon default or termination:** If there is an Event of Default or this Agreement terminates, we may set off the balance of cash margin owed by us to you against your Obligations (as reasonably valued by us) as they become due and payable to us and we shall be obliged to pay to you (or entitled to claim from you, as appropriate) only the net balance after all Obligations have been taken into account. [The net amount, if any, payable between us following such set-off, shall take into account the Liquidation Amount payable under the Netting Module of this Agreement.]"

4. **Insolvency Events of Default Clause:**

"The following shall constitute Events of Default:

- i. a party commences a voluntary case or other procedure seeking or proposing liquidation, reorganisation, moratorium, or other similar relief with respect to itself or to its debts under any bankruptcy, insolvency, regulatory, or similar law or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian, examiner or other similar official (each a "Custodian") of it or any substantial part of its assets, or takes any corporate action to authorise any of the foregoing;
- ii. an involuntary case or other procedure is commenced against a party seeking or proposing liquidation, reorganisation, or moratorium, or other similar relief with respect to it or its debts under any bankruptcy,

insolvency, regulatory, or similar law or seeking the appointment of a Custodian of it or any substantial part of its assets."

5. Title Transfer Provisions:

- a) **Default:** If a Liquidation Date is specified or deemed to occur as a result of an Event of Default, the Default Margin Amount as at that date will be deemed to be [a gain (if we are the Non-Defaulting Party) or a cost (if you are the Non-Defaulting Party)] [a gain by us] for the purposes of calculating the Liquidation Amount. For this purpose, "Default Margin Amount" means the amount, calculated in the Base Currency of the aggregate value as at the relevant Liquidation Date (as determined by us) of the Transferred Margin.
- b) **Clean title:** Each party agrees that all right, title and interest in and to any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest which it Transfers to the other party shall vest in the recipient free and clear of any security interest, lien, claims, charges, encumbrance or other restriction. Notwithstanding the use of terms such as "Margin" which are used to reflect terminology used in the market for such transactions, nothing in these provisions is intended to create or does create in favour of either party a mortgage, charge, lien, pledge, encumbrance or other security interest in any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest Transferred hereunder."

6. Clearing Module Netting Provision / Addendum Netting Provision:

- a) [Firm Trigger Event/CM Trigger Event]

Upon the occurrence of a [Firm Trigger Event/CM Trigger Event], the Client Transactions in the relevant Cleared Transaction Set will, except to the extent otherwise stated in the [Core Provisions of the] relevant Rule Set, be dealt with as set out below:

- (a) each Client Transaction in the relevant Cleared Transaction Set will automatically terminate [upon the occurrence of a Firm Trigger Event] [at the same time as the related CM/CCP Transaction is terminated or Transferred] and, following such termination, no further payments or deliveries in respect of such Client Transaction [as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount

payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.22 Section 8(b)(ii)];

- (b) the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or the relevant part thereof;
- (c) the applicable Cleared Set Termination Amount will be determined by Client on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the date on which the [Firm/CM] Trigger Event occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the day on which the relevant Client Transactions [had all been/were] terminated (in either case, provided that, if [Firm/Clearing Member] gives notice to Client requiring it to determine such amount and Client does not do so within two Business Days of such notice being effectively delivered, [Firm/Clearing Member] may determine the applicable Cleared Set Termination Amount) and, in either case, will be an amount equal to the sum, but without duplication, of (A) the Aggregate Transaction Value, (B) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (C) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (D) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[or any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributed] [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included [Clauses 5.2.2(c)(4) to 5.2.2(c)(C)] [Sections 8(b)(ii)(3)(A) to 8(b)(ii)(3)(C)],

together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]);

- (d) if a Cleared Set Termination Amount is a positive number, it will be due from [Firm/Clearing Member] to Client and if a Cleared Set Termination Amount is a negative number, the absolute value of the Cleared Set Termination Amount will be due from Client to [Firm/Clearing Member], and in each case will be payable in accordance with this [Module/Addendum].

b) CCP Default

Upon the occurrence of a CCP Default, the Client Transactions in the relevant Cleared Transaction Set will, except to the extent otherwise stated in the [Core Provisions of the relevant] Rule Set, be dealt with as set out below:

1. each Client Transaction in the relevant Cleared Transaction Set will automatically terminate at the same time as the related [Firm/CM]/CCP Transaction and following such termination no further payments or deliveries in respect of such Client Transaction[as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.3 Section 8(c)];
2. the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or relevant part thereof;
3. the applicable Cleared Set Termination Amount will be determined by [Firm/Clearing Member] on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the date on which the CCP Default occurred, or (y) if there were outstanding Client Transactions

immediately prior to the occurrence of a CCP Default, the day on which the relevant Client Transactions had all been terminated and, in either case, will be an amount equal to the sum, but without duplication, of (1) the Aggregate Transaction Value, (2) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (3) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (4) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[and any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included in [Clauses 5.3.3(1) to 5.3.3(3)] [Sections 8(c)(iii)(1) to 8(c)(iii)(3)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing member]);

4. if a Cleared Set Termination Amount is a positive number, it will be due from [Firm/Clearing Member] to Client and if a Cleared Set Termination Amount is a negative number, the absolute value of the Cleared Set Termination Amount will be due from Client to [Firm/Clearing Member], and in each case will be payable, in accordance with this [Module/Addendum].

c) Hierarchy of Events

[If Client Transactions are capable of being terminated pursuant to more than one [Clause/Section], then the [clause/section] in respect of which a party first

exercises any right to terminate Client Transactions (or, the [clause/section] pursuant to which Client Transactions are otherwise terminated, if earlier) will prevail for the purposes of the relevant Client Transactions.]

Or

[If Client Transactions are capable of being terminated pursuant to more than one [Clause/Section], then the [clause/section] in respect of which a party first exercises any right to terminate Client Transactions (or, the [clause/section] pursuant to which Client Transactions are otherwise terminated, if earlier) will prevail for the purposes of the relevant Client Transactions.]

Or

[If Client Transactions are capable of being terminated pursuant to more than one [Clause/Section], then the [clause/section] in respect of which a party first exercises any right to terminate Client Transactions (or, the clause pursuant to which Client Transactions are otherwise terminated, if earlier) will prevail for the purposes of the relevant Client Transactions.]

d) Definitions

"Aggregate Transaction Value" means, in respect of the termination of Client Transactions of a Cleared Transaction Set, an amount (which may be positive or negative or zero) equal to the aggregate of the [Firm/CM]/CCP Transaction Values for all Client Transactions in the relevant Cleared Transaction Set or, if there is just one [Firm/CM]/CCP Transaction Value in respect of all such Client Transactions, an amount (which may be positive or negative or zero) equal to such [Firm/CM]/CCP Transaction Value.

"[Firm/CM]/CCP Transaction Value" means, in respect of a terminated Client Transaction or a group of terminated Client Transactions, an amount equal to the value that is determined in respect of or otherwise ascribed to the related [Firm/CM]/CCP Transaction or group of related [Firm/CM]/CCP Transactions in accordance with the relevant Rule Set following a [Firm/CM] Trigger Event or CCP Default (to the extent such Rule Set contemplates such a value in the relevant circumstance). If the value determined in respect of or otherwise ascribed to the related [Firm/CM]/CCP Transaction(s) under the relevant Rule Set reflects a positive value for [Firm/Clearing Member] vis-à-vis the Agreed CCP, the value determined in respect of such terminated Client Transaction(s) will reflect a positive value for Client vis-à-vis [Firm/Clearing

Member] (and will constitute a positive amount for any determination under this [Module/Addendum]) and, if the value determined in respect of the related terminated [Firm/CCP]/CCP Transaction(s), under the relevant Rule Set reflects a positive value for the relevant Agreed CCP vis-à-vis [Firm/Clearing Member], the value determined in respect of [or otherwise ascribed to] such terminated Client Transaction(s) will reflect a positive value for [Firm/Clearing Member] vis-à-vis Client (and will constitute a negative amount for any determination under this [Module/Addendum]). The value determined in respect of or otherwise ascribed to the related [Firm/CM]/CCP Transaction(s) under the relevant Rule Set may be equal to zero.

"Relevant Collateral Value" means, in respect of the termination of Client Transactions in a Cleared Transaction Set, the value (without applying any "haircut" but otherwise as determined in accordance with the [Agreement/Collateral Agreement]) of all collateral that:

- (a) is attributable to such Client Transactions;
- (b) has been transferred by one party to the other in accordance with the [Agreement/Collateral Agreement or pursuant to Section 10(b)] and has not been returned at the time of such termination or otherwise applied or reduced in accordance with the terms of the [Agreement/relevant Collateral Agreement]; and
- (c) is not beneficially owned by, or subject to any encumbrances or any other interest of, the transferring party or of any third person.

The Relevant Collateral Value will constitute a positive amount if the relevant collateral has been transferred by Client to [Firm/Clearing Member] and it or equivalent collateral has not been returned at the time of termination or otherwise applied or reduced in accordance with the terms of the [Agreement/Collateral Agreement] and a negative amount if the relevant collateral has been transferred by [Firm/Clearing Member] to Client and it or equivalent collateral has not been returned at the time of termination or otherwise applied or reduced in accordance with the terms of the [Agreement/Collateral Agreement].

7. Clearing Module Set-Off Provision

Firm may at any time and without notice to Client, set-off any Available Termination Amount against any amount (whether actual or contingent, present or future) owed by

Firm to Client under the Clearing Agreement or otherwise. For these purposes, Firm may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained.

This Clause shall apply to the exclusion of all Disapplied Set-off Provisions in so far as they relate to Client Transactions; provided that, nothing in this Clause shall prejudice or affect such Disapplied Set-off Provisions in so far as they relate to transactions other than Client Transactions under the Agreement.

8. Addendum Set-Off Provision

- (i) Any Available Termination Amount will, at the option of (A) Client, in the case of an Available Termination Amount due in respect of a CM Trigger Event and without prior notice to Clearing Member, be reduced by its set-off against any other termination amount payable by Clearing Member to Client under the Clearing Agreement at such time ("CM Other Amounts"), or (B) either party, in the case of an Available Termination Amount due in respect of a CCP Default, and without prior notice to the other party, be reduced by its set-off against any other termination amount payable by or to X (where "X" means, in the case of Section 8(i)(A), Client or, in the case of Section 8(i)(B), the party electing to set off) under the Clearing Agreement at such time ("EP Other Amounts" and together with CM Other Amounts, "Other Amounts"), provided that in the case of Section 8(i)(A) or Section 8(i)(B), at the time at which X elects to set off, where Clearing Member is X, a CM Trigger Event has not occurred and is not continuing or, where Client is X, an event of default, termination event or other similar event, howsoever described, in respect of Client in the Agreement, has not occurred and is not continuing. To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party promptly after effecting any set-off under Section 8(i)(A) or Section 8(i)(B).
- (ii) For the purposes of this Section 8(ii):
 - (A) all or part of the Available Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other amount is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency;

- (B) if any Other Amounts are unascertained, X may in good faith estimate such Other Amounts and set off in respect of the estimate, subject to the relevant party accounting to the other when such Other Amounts are ascertained; and
- (C) a "termination amount" may, for the avoidance of doubt, be another Cleared Set Termination Amount or another termination amount due under the Agreement including, in either case, any such amount that has previously been reduced in part by set-off pursuant to this Section 8(e).

(iii) Nothing in this Section 8(e) will be effective to create a charge or other security interest. This Section 8(e) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which Client or Clearing Member is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise), provided that, notwithstanding anything to the contrary in the Clearing Agreement or any related Collateral Agreement, no party may exercise any rights of set-off in respect of Excluded Termination Amounts.

PART 2
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", using synonyms, changing the order of the words) 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 for the purposes of correct cross-referencing or 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. A change which provides that the agreement applies to existing Transactions outstanding between the parties on the date the agreement takes effect.
4. Any change to the scope of the agreement clarifying that certain transactions (e.g., OTC derivatives governed by an ISDA Master Agreement) shall not be transactions or contracts for purposes of the agreement.
5. 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), where such addition 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, and such addition may be expressed to apply to one only of the Parties.
6. 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.
7. 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.

8. 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.
9. 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).
10. In the case of any agreement incorporating the Two-Way Clauses, any change to the Insolvency Events of Default which has the effect of providing that when one or several specified events (which would constitute Insolvency Events of Default) occur in relation to one specified Party, such event shall not constitute an Event of Default under the agreement.
11. Any change to the agreement requiring the Non-Defaulting Party when exercising its rights under the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.
12. Any change modifying the currency of Liquidation Amount, Available Termination Amount, Cleared Set Termination Amount or of any amount relevant to the FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions.
13. Any change to the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision clarifying that (i) any account subject to set-off must be owned by the same party or (ii) the Non-Defaulting Party must, or may, notify the other party of its exercise of rights under such provision or other provision.
14. Any change to the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision (a) clarifying (i) at which time set-off may be exercised by a Party (with or without limitation), (ii) the amounts that may be set-off (with or without limitation, whether in relation to the agreement(s) under which such amounts arise or to the parties from which they are due), (iii) the use of currency

conversion in case of cross-currency set-off, (iv) the application or disapplication of any grace period to set-off; or (b) allowing the combination of a Party's accounts.

15. Any change to the FOA Netting Provision adding or taking from the amounts to be taken into account for the calculation of the Liquidation Amount.
16. Any addition to any of the Core Provisions that leaves both the plain English sense and legal effect of such provision unchanged.
17. Any change converting the Core Provisions of the FOA Netting Provision to a 'one-way' form in the style of the One-Way Master Netting Agreement 1997 (in which only the default of one Party is contemplated).
18. Including multiple forms of netting provision in respect of Client Transactions, in any of the following combinations:
 - more than one ISDA/FOA Clearing Addendum or Addendum Netting Provision
 - more than one FOA Clearing Module or Clearing Module Netting Provision
 - one or more ISDA/FOA Clearing Addendum or Addendum Netting Provision and one or more FOA Clearing Module or Clearing Module Netting Provisionprovided that the agreement specifies unambiguously that only one such netting provision shall apply in respect of any given Client Transaction.
19. Including the Title Transfer Provisions together with provisions which create a security interest over cash and/or non-cash margin, provided that the agreement unambiguously specifies the circumstances in which the security interest or the Title Transfer provisions apply in respect of any given item of margin so that it is not possible for both the security interest and the Title Transfer Provisions to apply simultaneously to the same item of margin.
20. Adding to the definition of "Firm Trigger Event" or, as the case may be, "CM Trigger Event" (or defined terms equivalent thereto) any further events of default in relation to the Firm or, as the case may be, the Clearing Member, including those in the definition of Events of Default appearing in a FOA Published Form Agreement (including as modified in accordance with paragraph 5 above).
21. Any change to the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision providing that any applicable Cleared Set Termination Amount will be determined by the Firm or, as the case may be, the Clearing Member

in any event (even in the case of a Firm Trigger Event or, as the case may be, a CM Trigger Event).

22. Any change to the FOA Netting Provision providing that any applicable Liquidation Amount will be determined by the Defaulting Party.
23. Any addition to the Clearing Module Netting Provision or the Addendum Netting Provision providing that, if any Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin has been ported to another clearing member of the Agreed CCP Service following a Firm Trigger Event or CM Trigger Event, the Party in charge of the calculation of the Cleared Set Termination Amount can ascribe an appropriately reduced value (including zero) to the Client Transaction and related margin or collateral corresponding to the Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin so ported.

PART 3 **SECURITY INTEREST PROVISIONS**

1. Security Interest Clause

"As a continuing security for the performance of the Secured Obligations under or pursuant to this Agreement, you grant to us, with full title guarantee, a first fixed security interest in all non-cash margin now or in the future provided by you to us or to our order or under our direction or control or that of a Market or otherwise standing to the credit of your account under this Agreement or otherwise held by us or our Associates or our nominees on your behalf."

2. Power of Sale Clause

"If an Event of Default occurs, we may exercise the power to sell all or any part of the margin. The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to any exercise by us of our rights to consolidate mortgages or our power of sale. We shall be entitled to apply the proceeds of sale or other disposal in paying the costs of such sale or other disposal and in or towards satisfaction of the Secured Obligations."

3. Client Money Additional Security Clause

"As a continuing security for the payment and discharge of the Secured Obligations you grant to us, with full title guarantee, a first fixed security interest in all your money that we may cease to treat as client money in accordance with the Client Money Rules. You agree that we shall be entitled to apply that money in or towards satisfaction of all or any part of the Secured Obligations which are due and payable to us but unpaid."

4. Rehypothecation Clause

"You agree and authorise us to borrow, lend, appropriate, dispose of or otherwise use for our own purposes, from time to time, all non-cash margin accepted by us from you and, to the extent that we do, we both acknowledge that the relevant non-cash margin will be transferred to a proprietary account belonging to us (or to any other account selected by us from time to time) by way of absolute transfer and such margin will become the absolute property of ours (or that of our transferee) free from any security interest under this Agreement and from any equity, right, title or interest of yours. Upon any such rehypothecation by us you will have a right against us for the delivery of property, cash, or securities of an identical type, nominal value, description and amount to the rehypothecated non-cash margin, which, upon being delivered back to

you, will become subject to the provisions of this Agreement. We agree to credit to you, as soon as reasonably practicable following receipt by us, and as applicable, a sum of money or property equivalent to (and in the same currency as) the type and amount of income (including interest, dividends or other distributions whatsoever with respect to the non-cash margin) that would be received by you in respect of such non-cash margin assuming that such non-cash margin was not rehypothecated by us and was retained by you on the date on which such income was paid.".

ANNEX 5
NECESSARY OR DESIRABLE AMENDMENTS

1. Necessary amendments

None

2. Desirable amendments

None

3. Additional wording to be treated as part of the Core Provisions

None

4. Additional events for the purposes of paragraph 3.1:

None

5. Alterations which constitute material alterations:

None

ANNEX 6
NETTING AND SET-OFF

1.1 Under the Netting Law, which is based on the ISDA Model Netting Act 2006, the provisions of a netting agreement (including a collateral arrangement) governed by the laws of this jurisdiction or entered into by a Party incorporated, registered or organised under the laws of this jurisdiction are enforceable in accordance with their terms, including against an insolvent party and, where applicable, against a guarantor or other person providing security for the insolvent party and will not be stayed, avoided or otherwise limited by any action of a liquidator, by any other provision of law relating to bankruptcy, reorganisation, composition with creditors, receivership, or any other insolvency proceeding the insolvent party may be subject to or by any other provision of law that may be applicable to the insolvent party, subject to the conditions contained in the applicable netting agreement.

1.2 For the purposes of determining whether an agreement is a netting agreement:

"collateral arrangement" means any margin, collateral or security arrangement or other credit enhancement related to or forming part of a netting agreement or one or more qualified financial instruments entered into thereunder or to which a netting agreement applies, including (without limitation):

- (a) a pledge, mortgage, charge or any other form of security interest in collateral, whether possessory or non- possessory;
- (b) a title transfer collateral arrangement; and
- (c) any guarantee, letter of credit or reimbursement obligation by or to a party to one or more qualified financial instruments, in respect of one or more of those qualified financial instruments;

"netting agreement" means:

- (a) any agreement between two parties that provides for netting of present or future payment or delivery obligations or entitlements or obligations, or entitlements to make, receive or require payments or deliveries, arising under or in connection with one or more qualified financial instruments entered into under the agreement by the parties to the agreement (a "**master netting agreement**");
- (b) any master agreement between two parties that provides for netting of the amounts due under two or more master netting agreements (a "**master-master netting agreement**"); and
- (c) any collateral arrangement related to or forming part of one or more agreement referred to in paragraph (a) or (b);

“netting” means the occurrence of any or all of the following:

- (a) the termination, liquidation and/or acceleration of any payment or delivery obligations or entitlements, or obligations or entitlements to make, receive or require payments or deliveries, under one or more qualified financial instruments entered into under a netting agreement or to which a netting agreement applies;
- (b) the calculation or estimation of a close-out value, market value, liquidation value, replacement value or other relevant value (including the value of any damages which may arise from a party's failure to enter into a transaction required to be entered into under or pursuant to provisions of a netting agreement of the kind referred to in Article 9 of the Netting Law) in respect of each obligation or entitlement or group of obligations or entitlements terminated, liquidated and/or accelerated under (a);
- (c) the determination of the net balance of the values calculated under (b), as converted under (c), whether by operation of set-off or otherwise; and
- (d) entry by the parties into a transaction pursuant to or by virtue of which such a net balance becomes payable directly or as part of the consideration for an asset or the provision for the payment of damages relating to any non-performance of any such transaction;

“qualified financial instrument” means any financial agreement, contract or transaction, including any terms and conditions incorporated by reference in any such financial agreement, contract or transaction, pursuant to which payment or delivery obligations are due to be performed or title to commodities or assets is to be transferred for consideration at a certain time or within a certain period of time and whether or not subject to any condition or contingency or pursuant to which obligations to make payments or deliveries, or to transfer title to commodities or assets, in either case for consideration at a certain time or within a certain period of time and whether or not subject to any condition or contingency, are to be entered into or incurred including, without limitation:

- (a) a currency, cross-currency, interest rate swap or profit rate swap;
- (b) a basis swap;
- (c) a spot, future, forward or other foreign exchange transaction;
- (d) a cap, collar or floor transaction;
- (e) a commodity swap;
- (f) a forward rate agreement;

- (g) a currency or interest rate future;
- (h) a currency or interest rate option;
- (i) an equity derivative, such as an equity or equity index swap, equity forward, equity option or equity index option;
- (j) a derivative relating to bonds or other debt securities or to a bond or debt security index, such as a total return swap, index swap, forward, option or index option;
- (k) a credit derivative, such as a credit default swap, credit default basket swap, total return swap or credit default option;
- (l) an energy derivative, such as an electricity derivative, oil derivative, coal derivative or gas derivative;
- (m) a weather derivative, such as a weather swap or weather option;
- (n) a bandwidth derivative;
- (o) a freight derivative;
- (p) an emissions derivative, such as an emissions allowance or emissions reduction transaction;
- (q) an economic statistics derivative, such as an inflation derivative;
- (r) a property index derivative;
- (s) a spot, future, forward or other securities or commodities transaction;
- (t) a securities contract, including a margin loan and an agreement to buy, sell, borrow or lend securities, such as a securities repurchase or reverse repurchase agreement, a securities lending agreement or a securities buy/sell back agreement, including any such contract or agreement relating to mortgage loans, interests in mortgage loans or mortgage related securities;
- (u) a commodities contract, including an agreement to buy, sell, borrow or lend commodities, such as a commodities repurchase or reverse repurchase agreement, a commodities lending agreement or a commodities buy/sell back agreement;
- (v) a collateral arrangement;
- (w) an agreement to clear or settle securities transactions or to act as a depository for securities;

- (x) any other agreement, contract or transaction similar to any agreement, contract or transaction referred to in paragraphs (a) to (w) with respect to one or more reference items or indices relating to (without limitation) interest rates, currencies, commodities, energy products, electricity, equities, weather, bonds and other debt instruments, precious metals, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial or economic consequence, or economic or financial indices or measures of economic or financial risk or value;
- (y) any swap, forward, option, contract for differences or other derivative in respect of, or combination of, one or more agreements or contracts referred to in paragraphs (a) to (x) above or (z) or (aa) below;
- (z) any Shari'a compliant contract or undertaking (including a murabaha, musawama or wa'ad) which individually or together with any other such contract or undertaking has or is entered into with a view to having an economic effect similar to any instrument of a kind described in any of (a) to (y) above or (aa) below; and
- (aa) any agreement, contract or transaction designated as such by the DFSA, by written and published notice, such designation being revocable by the DFSA by further written and published notice,

but does not include insurance or reinsurance contracts entered into by an appropriately licensed insurance company as part of its insurance business, and

"title transfer collateral arrangement" means a margin, collateral or security arrangement related to a netting agreement based on the transfer of title to collateral, whether by outright transfer or by way of security, including (without limitation) a sale and repurchase agreement, securities lending agreement, securities buy/sell-back agreement or an irregular pledge.

- 1.3 If a netting agreement contains provisions relating to agreements, contracts or transactions that are not qualified financial instruments, the netting agreement will be a netting agreement for the purposes of the Netting Law only with respect to those agreements, contracts or transactions that fall within the definition of "qualified financial instrument".
- 1.4 If a collateral arrangement contains provisions relating to agreements, contracts or transactions that are not a netting agreement or qualified financial instruments, the collateral arrangement will be a collateral arrangement for the purposes of the Netting Law only with respect to those agreements contracts or transactions that fall within the definition of "qualified financial instrument" or "netting agreement" or that are agreements, contracts or transactions to which a netting agreement applies.