



To: The Futures & Options Association
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Doc. no. 1107792-6

Copenhagen, 22 January 2013

Dear Sirs

Netting Analyser Library

You have asked us to give an opinion in respect of the laws of Denmark (“**this jurisdiction**”) in respect of the Security Interests given under Agreements in the forms specified in Annex 1 to this opinion letter (each an “**Agreement**”) or under an Equivalent Agreement (as defined below). References to “**Core Provisions**” include Core Provisions that have been modified by Non-Material Amendments (as defined herein).

Terms used in this opinion letter and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

We understand that your fundamental requirement is for the effectiveness of the Security Interest Provisions of the Agreement to be substantiated by a written and reasoned opinion. Our opinion on the validity of the Security Interest Provisions is given in paragraph 4 of this opinion letter.

References herein to “*this opinion*” are to the opinions given in paragraph 4.

1 Terms of Reference and definitions

1.1 This opinion is given in respect of Counterparties providing Collateral to a Firm that are any of the following, subject to the terms of reference, definitions, modifications and additional assumptions and qualifications set out in any Schedule specified below as being applicable to a Party of such type:

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- (a) a public authority (excluding publicly guaranteed undertakings unless they fall under paragraphs 1.1(b) to 1.1(e)) please refer to Schedule 1¹;
- (b) a central bank², the European Central Bank, the Bank for International Settlements, Multilateral Development Bank as defined in Article 1 (19) of Directive 2000/12/EC, the International Monetary Fund and the European Investment Bank;
- (c) a financial institution subject to prudential supervision³ including:
 - (i) a credit institution as defined in Article 1 (1) of Directive 2000/12/EC⁴, including the institutions listed in Article 2 (3) of that Directive,
 - (ii) an investment firm as defined in Article 1 (2) of Directive 2004/39/EC⁵,

¹ In Denmark, this would e.g. include the Danish State and local authorities such as a municipality (in Danish: "kommune") or a region

² In Denmark, the central bank is "Danmarks Nationalbank".

³ A "financial institution" subject to prudential supervision and incorporated or organised in Denmark would cover:

- (a) a bank (in Danish: "pengeinstitut") in the form of (i) a commercial bank (in Danish: "bank") organised in Denmark as a public limited company (in Danish: "aktieselskab") under the Danish Companies Act (in Danish: "Selskabsloven"), Consolidation Act No. 322 of 11 April 2011 as amended (the "**Companies Act**") or an earlier statute, (ii) a savings bank (in Danish: "sparekasse") organised in Denmark as an independent institution (in Danish: "selvejende institution") and (iii) a credit cooperative (in Danish: "andelskasse") organised in Denmark as a credit cooperative (in Danish: "andelskasse") and, in case of each of (i), (ii) and (iii), authorised by the Danish Financial Supervisory Authority (in Danish: "Finanstilsynet") under the Financial Business Act or under an earlier statute,
- (b) a mortgage-credit institution (in Danish: "realkreditinstitut") organised in Denmark as a public limited company under the Companies Act or an earlier statute and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute,
- (c) Danmarks Skibskredit A/S organised in Denmark as a public limited company under the Companies Act or an earlier statute and subject to the supervision by the Danish Financial Supervisory Authority under the Act on a Ship Finance Institute, Consolidation Act No. 886 of 8 August 2011 as amended,
- (d) an investment company (in Danish: "fondsmæglerselskab") organised in Denmark as a public limited company under the Companies Act or an earlier statute and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute,
- (e) an investment management company (in Danish: "investeringsforvaltningsselskab") organised in Denmark as a public limited company under the Companies Act or an earlier statute and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute, and
- (f) an insurance company (in Danish: "forsikringsselskab") organised in Denmark as either (i) a public limited company under the Companies Act or an earlier statute, (ii) a mutual company (in Danish: "gensidigt selskab") or (iii) a pension fund (in Danish: "tværgående pensionskasse") and, in case of each of (i), (ii) and (iii), authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute.

⁴ In Denmark, the term "credit institution" would cover banks and mortgage-credit institutions.



- (iii) a finance institution as defined in Article 1 (5) of Directive 2000/12/EC⁶,
 - (iv) an insurance undertaking as defined in Article 1 (a) of Directive 92/49/EEC and a life assurance undertaking as defined in Article 1 (a) of Directive 92/96/EEC⁷,
 - (v) an undertaking for collective investments in transferable securities (UCITS) as defined in Article 1 (2) of Directive 85/611/EEC⁸, or
 - (vi) an investment management company as defined in Article 1 (a)(2) of Directive 85/611/EEC;
- (d) a central counterparty, a settlement agent or a clearing house, as defined respectively in Article 2 (c), (d) and (e) of Directive 98/26/EC, including similar institutions regulated under national law acting in the futures, options and derivative markets to the extent not covered by that Directive;
- (e) a person, other than a natural person, who acts in a trust or representative capacity on behalf of any one or more persons, including any bondholders or holders of other forms of debt

⁵ In Denmark, the term “investment firm” would cover an investment company.

⁶ In Denmark, the term “finance institution” would cover, for example, leasing companies and factoring companies, which under Danish law are generally not subject to prudential supervision. Furthermore, the term would cover investment companies and investment administration companies, which are subject to prudential supervision, cf. footnote 4 above.

⁷ In Denmark, the term “insurance undertaking” or “life assurance undertaking” would cover

- (a) (i) a pension insurance company (in Danish: “pensionsforsikringsselskab”) organised in Denmark as a public limited company under the Companies Act or an earlier statute, (ii) a lateral pension fund (in Danish: “tværgående pensionskasse” organised in Denmark as a private foundation, (iii) a company pension fund (in Danish: “firmapensionskasse”) organised in Denmark as a private foundation, (iv) an insurance company (in Danish: “forsikringsselskab”) organised in Denmark as a public limited company under the Companies Act and, in case of each of (i), (ii), (iii) and (iv), authorised by the Danish Financial Supervisory Authority under the Danish Financial Business Act or under an earlier statute; and
- (b) Arbejdsmarkedets Tillægspension (“ATP”) organised in Denmark as a self-owned institution regulated under the ATP Act, Consolidation Act No. 942 of 2 October 2009.

⁸ A “UCITS” would cover a mutual fund which is organised in Denmark as an investment association (in Danish: “investeringsforening”), a company for investment of variable capital (SI-KAV) or a securities fund (in Danish: “værdipapirfond”) and authorised by the Danish Financial Supervisory Authority under the Danish Investment Associations Act (in Danish: “lov om investeringsforeninger m.v.”), Consolidation Act no. 935 of 17 September 2012 as amended (the “**Investment Associations Act**”). A mutual fund, including a hedge fund which is organised in Denmark as a special purpose association (in Danish: “specialforening”), a restricted association (in Danish: “fåmandsforening”) or a hedge association (in Danish: “hedgeforening”) and authorised by the Danish Financial Supervisory Authority under the Investment Association Act or a professional association (in Danish: “professionel forening”) organised in Denmark as an association and registered with the Danish Financial Supervisory Authority under the Investment Association Act will in our view qualify as a “financial institution subject to prudential supervision” even though it is not covered by any of indents (i) to (vi).



instruments or any institution as defined in paragraphs 1.1(a) to 1.1(d);

- (f) a person, other than a natural person, who is not covered by items 1.1(a) to 1.1(e) above, including unincorporated undertakings and partnership⁹; and
- (g) a one man business organised in Denmark under the Danish Act on Undertakings Carrying on Business for Profit.

insofar as each may act as a counterparty (a "**Counterparty**") providing Collateral (as defined in paragraph 1.3) to a member firm of the Futures and Options Association (each a "**Firm**") under an Agreement.

1.2 Our opinion does not cover individuals who are not conducting business activities.

1.3 This opinion is given in respect of cash and account-held securities which are the subject of the Security Interest Provisions ("**Collateral**"). The amount and value of such Collateral may fluctuate from time to time on a day to day, and possibly intra-day basis.

1.4 In this opinion letter:

- (a) "**Counterparty**" means such Party as may be referred to as "*you*" in an Agreement.
- (b) "**Firm**" means the Party referred to as "*we*" or "*us*" in an Agreement.

⁹ 1.1(f) would for example cover (a) a public limited company (in Danish: "aktieselskab") organised in Denmark under the Companies Act or an earlier company statute, (b) a private limited company (in Danish: "anpartsselskab") organised in Denmark under the Companies Act or an earlier statute, (c) an association for professional investors organised as an association in Denmark but not registered with the Danish Financial Supervisory Authority, (d) a non-approved restricted association (in Danish: "ikkegodkendt fãmandsforening") organised as an association in Denmark which has not been approved by the Danish Financial Supervisory Authority but has elected to be registered with the Danish Supervisor Authority in accordance with the Investment Associations Act, (e) a limited partnership (in Danish: "kommanditselskab") organised in Denmark under the Danish Act on Undertakings Carrying on Business for Profit (in Danish: "Lov om visse erhvervsdrivende virksomheder"), Consolidation Act no. 599 of 19 May 2010 as amended (the "**Act on Undertakings Carrying on Business for Profit**"), (f) a partnership (in Danish: "interessentskab") organised in Denmark under the Act on Undertakings Carrying on Business for Profit and (g) a one-man business organised in Denmark under the Act on Undertakings Carrying on Business for Profit, (h) an association with limited liability (in Danish: "forening med begrænset ansvar") organised in Denmark under the Act on Undertakings Carrying on Business for Profit, (i) company with limited liability (in Danish: "selskab med begrænset ansvar") organised in Denmark under the Act on Undertakings Carrying on Business for Profit, (j) a co-operative society with limited liability (in Danish: "andelsselskab med begrænset ansvar") organised in Denmark under the Act on Undertakings Carrying on Business for Profit and (k) a commercial fund (in Danish: "erhvervsdrivende fond") organised in Denmark under the Act on Commercial Funds, Consolidation Act No. 560 of 19 May 2010. 1.1(f) would also cover state-owned companies and other state-owned entities (if not covered by any of the other categories).



- (c) "**Security Interest**" means the security interest created pursuant to the Security Interest Provisions;
- (d) "**Equivalent Agreement**" means an agreement:
 - (i) which is governed by the law of England and Wales;
 - (ii) which has broadly similar function to any of the Agreements listed in Annex 1;
 - (iii) which contains the Core Provisions (with no amendments, or with Non-material Amendments); and
 - (iv) which neither contains (nor is modified, amended, or superseded by) any other provision which may invalidate, adversely affect, modify, amend, supersede, conflict with, provide alternatives to, compromise or fetter the operation, implementation, enforceability and effectiveness of all or part of the Core Provisions (in each case, excepting Non-material Amendments).
- (e) References to the "**Agreement**" in this letter (other than specific cross references to clauses in such Agreement and references in the first paragraph of this letter) shall be deemed also to apply to an Equivalent Agreement;
- (f) A "**Non-material Amendment**" means an amendment having the effect of one of the amendments set out at Annex 3;
- (g) "**enforcement**" means, in the relation to the Security Interest, the act of:
 - (i) sale and application of proceeds of the sale of Collateral against monies owed, or
 - (ii) appropriation of the Collateral,in either case in accordance with the Security Interest Provisions.
- (h) "**Insolvency Proceedings**" means insolvency, bankruptcy or analogues proceedings (where, for the purposes of paragraph 4 of this opinion the occurrence of such proceedings in respect of the Counterparty falls within the definition of Event of Default under the Agreement).

1.4.1 in other instances other than those referred to at 1.4(g) above, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in ac-



cordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy;

- 1.4.2 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;
- 1.4.3 any reference to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been amended or re-enacted on or before the date of this opinion letter;
- 1.4.4 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2; and
- 1.4.5 headings in this opinion letter are for ease of reference only and shall not affect its interpretation.

2 Assumptions

2.1 We assume the following:

- (a) That the Agreements are legally binding and enforceable against both Parties under their governing laws.
- (b) That the Security Interest Provisions are enforceable under the governing law of the Agreement to create a Security Interest.
- (c) That the Security Interest Provisions are effective under the law of the place where the Collateral is located to create an enforceable security interest.
- (d) That each Party has the capacity, power and authority under all applicable law(s) to enter into the Agreement; to perform its obligations under the Agreement; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.
- (e) That each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the Agreement and Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the Agreement in this jurisdiction.
- (f) That the Agreement has been properly executed by both Parties.



- (g) That the Agreement is entered into prior to the commencement of any bankruptcy, composition, rehabilitation (e.g. liquidation, administration, receivership or voluntary arrangement), reconstruction, or administration of an insolvent estate after a deceased person in respect of either Party.
- (h) The Agreement has been entered into, and each of the transactions referred to therein is carried out, by each of the parties thereto in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.
- (i) That the Agreement accurately reflects the true intentions of each Party.
- (j) That no provisions of the Agreement, or a document of which the Agreement forms part, or any other arrangement between the Parties, invalidate the enforceability or effectiveness of the Security Provisions or the Rehypothecation Clause under the governing law of the Agreement.
- (k) That no provision of the Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect. In our view, an alteration contemplated in the definition of "Equivalent Agreement" above would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in the definition of Equivalent Agreement would or would not constitute a material alteration of the Agreement.
- (l) That there is no other agreement, instrument or other arrangement between the Parties which modifies or supersedes the Agreement.
- (m) That all acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreement and the creation and perfection of the security interests thereunder pursuant to laws of any jurisdiction other than this jurisdiction have been duly fulfilled, performed and effected.
- (n) That there are no provisions of the laws of any jurisdiction (apart from this jurisdiction) which would be contravened by the execution or the delivery of the Agreement.
- (o) That any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions shall at all relevant times be located outside this jurisdiction.



- (p) That any cash comprising the Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.
- (q) That any Collateral provided which is not cash Collateral is securities comprised by Section 2, Subsection 1, Nos. 1-3 of Consolidation Act No 885 of 17 August 2012 on Securities Trading (the “**Securities Trading Act**”) (an unofficial translation of the Danish Securities Trading Act Section 2, Subsection 1, Nos. 1-3 is enclosed as Annex 4).
- (r) That the Agreement is entered into on or after 1 January 2004.

3 Background

In December 2003, the Danish Parliament adopted Act No. 1171 of 19 December 2003 amending the Danish Securities Trading Act which implemented Directive 2002/47/EC of 6 June 2002 on Financial Collateral Arrangements (the “**Financial Collateral Directive**”) into Danish law. The provisions on financial collateral arrangements are found in Chapter 18a of the Securities Trading Act having effect on agreements entered into on or after 1 January 2004.

Financial collateral arrangements are defined in Section 58a, Subsection 1 of the Securities Trading Act as an agreement between parties referred to in Section 58b (which correspond with those listed in paragraphs 1.1) regarding provision of collateral for financial obligations (as defined in Section 58e and further described in paragraph 5.2 below), consisting of collateral covered by Section 58f (as further described in paragraph 5.3 below). By provision of collateral is meant both a title transfer collateral arrangement and a security collateral arrangement. According to Section 58a, Subsection 2 of the Securities Trading Act, in order to be covered by Chapter 18a of the Securities Trading Act a financial collateral arrangement must be evidenced in writing or in a legally equivalent manner.

Each Agreement would constitute a financial collateral arrangement for the purpose of Chapter 18a of the Securities Trading Act to the extent that the underlying Transactions constitute financial obligations.

Article 1(5) of the Financial Collateral Directive provides that the Directive applies to financial collateral once it has been provided and if that provision can be evidenced in writing, the reference to writing for these purposes would include recording by electronic means and any other durable medium, cf. Article 2(3) of the Financial Collateral Directive. Section 58, Subsection 1 of the Securities Trading Act stipulates e.g. that Chapter 18a of the Securities Trad-



ing Act applies to financial collateral once it has been provided but does not explicitly require that the provision be evidenced in writing. The preparatory remarks to Section 58 of the Securities Trading Act explicitly mention that Section 58 implements Article 1(5) of the Financial Collateral Directive into Danish law.

Based on the explicit requirements in Articles 1(5) and 3(2) of the Financial Collateral Directive and on the fact that the person who wishes to claim that an agreement has been entered into must be able to present evidence to this effect including on the terms of the agreement, all individual transactions whereby collateral is provided must in our view be confirmed in writing or in a legally equivalent manner.

We interpret the reference in the preparatory remarks to Section 58 of the Securities Trading Act to the effect that Section 58 implements Article 1(5) of the Financial Collateral Directive to mean that the provision under Danish law of financial collateral as defined in Section 58f of the Securities Trading Act will – due to the requirements under Danish law for perfection of such financial collateral – be required to be in writing within the meaning of the Financial Collateral Directive. The preparatory remarks are, however, not clear on this point.

4 Opinions

On the basis of the foregoing terms of reference and assumptions and subject to the qualifications set out in paragraph 4 below, we are of the following opinion.

4.1 Valid Security Interest

4.1.1 Following the occurrence of an Event of Default, including as a result of the opening of any Insolvency Proceedings, the Non-Defaulting Party would be entitled to enforce the Security Interest in respect of the Collateral.

Inter partes, the only requirement under Danish law is that the contract clearly stipulates that the parties have agreed to enter into a pledge or a security agreement. The Security Interest Provisions satisfy this requirement. Accordingly, the courts of Denmark will recognise the validity of a Security Interest under the Security Interest Provisions, provided that the security interest is validly created under the governing law of the Agreement and provided that the Collateral deliverable under Security Interest Provisions has been clearly specified. The Collateral actually pledged under the Security Interest Provisions must be clearly identifiable at any time. This requirement will be complied with if the Firm prior to the assignment of the Collateral establishes and maintains a record of the specific details of the individual securities pledged from time to time. There



are no formal requirements applicable to this record, although it should be sent to the Counterparty.

Furthermore, the relevant act of security must be complied with in connection with each pledge of Collateral. If the Firm has obtained a valid and perfected Security Interest in the Collateral under the laws of such jurisdiction where the Collateral is located or deemed to be located, the Security Interest will be recognised under Danish law as a valid Security Interest. The Firm will not be required to take any further action in Denmark to establish, perfect, continue, or enforce this security interest or comply with any other requirement.

- 4.1.2 There is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.

Assuming that the Firm has obtained a valid and perfected Security Interest in the Collateral under the laws where such Collateral is located or deemed to be located, and assuming that the Collateral constitutes financial collateral for the purposes of the Securities Trading Act, cf. paragraph 5.3 below, the formalities that the Firm must observe in exercising its right as a Firm under the Agreement are the following:

As regards realisation, Section 58j of the Securities Trading Act, which implemented Article 4 of the Financial Collateral Directive into Danish law, provides that a financial collateral arrangement may contain a provision to the effect that the Firm can realise the financial collateral immediately upon an enforcement event. This constitutes a deviation from the general principle under Danish law, cf. Section 538a, Subsection 2 of the Danish Administration of Justice Act, according to which the Firm in respect of Collateral located in this jurisdiction is obliged to give the Counterparty a notice before realisation (sale) of eight days, unless immediate sale is necessary to avoid or limit a loss in value of the Collateral.

In respect of cash Collateral, realisation takes place by setting off the value of the cash Collateral provided in or using it to redeem the secured obligations, cf. Section 58j, Subsection 3 of the Securities Trading Act.

Realisation of securities Collateral takes place by sale of the Collateral, cf. Section 58j, Subsection 4 of the Securities Trading Act. Section 58j, Subsection 4 further provides that the Firm and the Counterparty may agree that liquidation of the Collateral can take place by the Firm taking possession of the Collateral, i.e. selling it to it-



self, provided that the agreement contains principles for the valuation of the Collateral.

Section 58j, Subsection 1 provides that realisation may, subject to the terms of the financial collateral arrangement, take place without e.g. prior approval from public authorities or others, without prior notice to the Counterparty and without any prescribed manner. According to Section 91, Subsection 2, of the Danish Bankruptcy Act, the Firm will in case of insolvency of the Counterparty be obliged to notify the bankruptcy estate prior to any liquidation of the Collateral provided and the bankruptcy estate is entitled to require a valuation of such Collateral. Although not explicitly mentioned in the preparatory remarks to the Securities Trading Act, we believe that Section 91 of the Danish Bankruptcy Act will not apply to financial collateral arrangements.

Realisation of Collateral must be conducted in a commercially reasonable manner, cf. Section 58d of the Securities Trading Act. If the realisation of Collateral is not conducted in a commercially reasonable manner, the Firm may be liable to pay damages to the Counterparty or the Counterparty's bankruptcy estate.

4.1.3 Following exercise of the Firm's rights under the Security Interest Provisions, the ranking of the Firm's rights to the proceeds of realisation of the Collateral in relation to the interests of the Counterparty and any other person would be a matter to be determined under the law of the place where the Collateral is located.

4.2 **Further acts**

No further acts, conditions or things would be required by the law of this jurisdiction to be done, fulfilled or performed under the laws of this jurisdiction in order to enable the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.

5 Qualifications

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

5.1 Avoidance

The pledge by the Counterparty to the Firm under the Agreement may be set aside (declared void) in accordance with Section 70 of the Danish Bankruptcy Act if the Security Interest was not granted to the Firm when the debt was incurred, or if the act of security was effected with unnecessary delay after the creation of the debt, always provided that the act of security was later than a date falling three months before the petition for bankruptcy was filed (the "**Relevant Date**"). Any delay in the perfection of the Security Interest not caused by the processing of the filing of the perfection or any other required act of security will be deemed to constitute an



unnecessary delay. The three-month period (or two years if between related parties) preceding the Relevant Date is considered the “**Suspect Period**” and all transfers of security for pre-existing debts made within that period may be set aside by the liquidator. The applicability of Section 70 is not dependent on the knowledge of the Firm of the impending bankruptcy.

The requirement that the Security Interest must be granted to the Firm when the debt was incurred is unconditional as any unnecessary delay will have the effect that the Security Interest may be subject to be set aside under Section 70 of the Danish Bankruptcy Act.

Substitution of collateral

According to Section 58m of the Securities Trading Act, which implemented Article 8(3) of the Financial Collateral Directive into Danish law, a pledgor may by way of agreement with the secured party substitute financial collateral with other financial collateral of substantially the same value. If the replacement financial collateral has been provided at the latest simultaneously with the pledgor regaining its right to dispose over the substituted financial collateral, then the replacement financial collateral may only be voided if the substituted financial collateral was voidable.

Therefore, the substitution of the securities Collateral during the Suspect Period will not invalidate the Collateral, if the replacement securities Collateral are of substantially the same value as the substituted securities Collateral, provided that the substitute securities Collateral are posted either simultaneously with or prior to the release of the securities Collateral. If the securities Collateral are released prior to the posting of the replacement securities Collateral, such posting of the replacement securities Collateral will be considered as the provision of new financial Collateral and thus subject to being set aside under Section 70 of the Danish Bankruptcy Act. In order to remove any risk of invalidation of the replacement securities Collateral, the Firm must ensure that no release of securities Collateral is to take place unless it is simultaneous with the posting of the replacement securities Collateral. If the replacement securities Collateral are of substantially greater value than the securities Collateral released, the entire excess (but only the excess) securities Collateral may likewise be subject to being set aside under Section 70 of the Danish Bankruptcy Act.

In relation to the provision of cash Collateral over money credited to a bank account, new deposits made by the Counterparty will automatically form part of the Collateral, if the agreement on such financial collateral is drawn up in a way that the Collateral include deposits made at the specified bank account at any time. In our view such additional deposits will not be viewed as substitution of Collateral and will therefore in our view not be covered by the crite-



ria of “substantially same value” in Section 58m of the Securities Trading Act. Therefore, any additional Collateral may be challenged pursuant to Section 70 of the Danish Bankruptcy Act. Even if the deposit cannot be challenged according to Section 70, it may be challenged as a voidable payment, if the Firm has received the additional deposit under such circumstances that the deposit can be compared to a direct payment. According to Section 67 of the Danish Bankruptcy Act, a payment that has materially reduced the debtor’s ability to satisfy his debts and did not appear as ordinary is voidable, if it took place during the Suspect Period. In this situation “ordinary” means that the deposit has been made as a normal part of the operations of the Counterparty, and not only with a view to creating a payment possibility for the Firm in anticipation of the bankruptcy.

The preparatory remarks to Section 58m of the Securities Trading Act do not contain any further guidance as to what constitutes collateral of “substantially” the same value.

The Firm and the Counterparty are able to validly that the Counterparty may exchange Collateral without specific consent of the Firm. The absence of consent to the exchange from the Firm does not affect the Transferee’s security interest in the Collateral, unless the absence of consent can be said to have the effect that the Counterparty has not been deprived of his right of disposal over the Collateral. In most cases, it is likely that the absence of consent will have the effect that the Counterparty has not been deprived of his right of disposal. It is therefore advisable that the Counterparty’s right of substitution is made effectively conditional upon the consent of the Firm. We note that under the Agreements, the Counterparty is not entitled to substitute Collateral without the prior consent of the Firm.

Posting of additional Collateral

According to Section 58l, Subsection 1 of the Securities Trading Act, which implemented Article 8(3) of the Financial Collateral Directive into Danish law, a financial collateral arrangement may include a provision to the effect that the parties are obliged to provide collateral or additional collateral in order to take account of changes in the value of the collateral or amount of the financial obligations covered by the agreement, provided that the changes have occurred after the agreement was entered into and provided that the changes are caused by circumstances relating to market conditions. It transpires from Section 58l, Subsection 2 that if the Collateral provided pursuant to Section 58l, Subsection 1 has been provided without unnecessary delay after the Firm could demand such Collateral to be provided pursuant to the terms of the Agreement, then the Collateral cannot be voided pursuant to Sections 70 and 72 in the Danish Bankruptcy Act.



However, the Collateral may be voided pursuant to Section 72 of the Danish Bankruptcy Act if the Collateral, when taking the circumstances in respect of the Collateral into consideration, did not appear ordinary. In this situation “ordinary” means that the provision of the Collateral has been made as a normal part of the operations of the Counterparty, and not only with a view to providing further Collateral to the Firm in anticipation of the bankruptcy.

If, on the other hand, the Collateral is not provided without unnecessary delay after the Firm could demand such Collateral to be provided pursuant to the terms of the Agreement or if the Collateral is provided for pre-existing debts, then the Collateral will be subject to the voidance rules in Sections 70 and 72 in the Danish Bankruptcy Act. Under these circumstances the occurrence of Insolvency Proceedings may have as a consequence that the posting of additional Collateral from the Counterparty to the Firm be set aside in accordance with Section 70 of the Danish Bankruptcy Act if the act of perfection was taken later than the Relevant Date. If the additional Collateral exceeds the increase in the mark-to-market value, the excess collateral may be subject to being set aside under Section 70 of the Danish Bankruptcy Act.

Section 58l, Subsection 2 of the Securities Trading Act does not limit the scope of Section 74 of the Danish Bankruptcy Act. Section 74 of the Danish Bankruptcy Act is the “general clause” of the Danish voidance rules and stipulates that any disposition which unduly favours a creditor to the detriment of the other creditors, or whereby the debtor’s property is prevented from serving the purpose of satisfaction of the creditors, or whereby his debts are increased to the detriment of the creditors, may be declared void if the debtor was or, through the disposition, became insolvent, and the party favoured knew or ought to have known about the debtor’s insolvency and the circumstances that made the disposition improper. It is the bankruptcy estate, which must prove that the favoured party knew or ought to have known about the debtor’s insolvency and the circumstances that made the disposition improper. If these requirements are met, then the Collateral may be in risk of invalidation.

Right of use

According to Section 58g, Subsection 1 of the Securities Trading Act, which implemented Article 5 of the Financial Collateral Directive into Danish law, a security transfer financial collateral arrangement may include provisions on rights of use whereby the collateral taker, in accordance with the terms of such security transfer financial collateral arrangement, may transfer the collateral provided to a third party by way of a title transfer or a transfer by way of security. It transpires from Section 58g, Subsection 2 that if a collateral taker has exercised a right to use financial collateral, then the collateral taker must redeliver equivalent collateral at the latest



at the point in time where the secured obligations become due. The redelivered collateral is deemed to be provided in accordance with the financial collateral arrangement at the same time as the original collateral which has as a consequence that the redelivered collateral cannot be declared void pursuant to Section 70 of the Danish Bankruptcy Act in case of the security collateral provider's bankruptcy.

Section 58g, Subsection 3 of the Securities Trading Act provides that any redelivery of collateral pursuant to Section 58g, Subsection 2 can only be declared void under the conditions in Section 74 of the Danish Bankruptcy Act. Section 74 of the Danish Bankruptcy Act is the "general clause" of the Danish invalidation rules and stipulates that any disposition which unduly favours a creditor to the detriment of the other creditors, or whereby the debtor's property is prevented from serving the purpose of satisfaction of the creditors, or whereby his debts are increased to the detriment of the creditors, may be declared void if the debtor was or, through the disposition, became insolvent, and the party favoured knew or ought to have known about the debtor's insolvency and the circumstances that made the disposition improper. It is the bankruptcy estate, which must prove that the favoured party knew or ought to have known about the debtor's insolvency and the circumstances that made the disposition improper.

It transpires from the above that, as a matter of Danish law, the Firm and the Counterparty can agree that the Firm has broad rights with respect to the use of the Collateral, e.g. rehypothecating or pledging the securities without affecting the validity of a validly created and perfected pledge. Any creditor or contracting party must respect such an agreement between the Counterparty and the Firm, provided that the appropriate act of perfection as applicable under Danish principles of *lex rei sitae* has been complied with.

5.2 Financial obligations

It follows from Section 58a, Subsection 1 of the Securities Trading Act that the financial collateral rules in Chapter 18a of the Securities Trading Act is available for financial collateral arrangements only. These are defined as agreements between parties referred to in Section 58b of the Securities Trading Act regarding provision of collateral for financial obligations (as defined in Section 58e), consisting of collateral covered by Section 58f.

Section 58e, Subsection 2 of the Securities Trading Act defines "financial obligations" as obligations which give right to cash settlement or delivery of securities. However, if both parties in an agreement regarding close-out netting are covered by paragraph 1.1(f) to 1.1(g) above, then only obligations stemming from foreign exchange and securities trading, trading on commodities exchanges



and lending and borrowing shall be considered financial obligations, cf. Section 58e, Subsection 3 of the Securities Trading Act.

The definition of financial obligations contains reference to the term “securities” which is defined in Section 2 of the Securities Trading Act. By way of Act No. 108 of 7 February 2007, the Danish Parliament adopted a bill which implemented into Danish law, *inter alia*, Directive 2004/39/EC on Markets for Financial Instruments (“MiFID”). Act No. 108 of 7 February 2007 entailed a change of Section 2 of the Securities Trading Act whereby the definition of securities is expanded in accordance with MiFID to include financial instruments which were previously not qualified as securities under Danish law. The new Section 2 of the Securities Trading Act entered into force on 1 November 2007.

The definition of securities is broad and includes most financial instruments, including:

- transferable securities which are negotiable on the capital market, including shares, bonds or other forms of securitised debts, other securities giving the right to acquire or sell such shares or bonds or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures,
- money-market instruments, including treasury bills, certificates of deposit and commercial papers, excluding instruments of payment,
- units in collective investment undertakings and professional associations,
- options, futures, swaps, forward rate agreements and other derivative contracts relating to securities, currencies, interest rates or yields,
- options, futures, swaps, forward rate agreements and other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties,
- options, futures, swaps, and other derivative contracts relating to commodities that can be physically settled provided that they are traded on a regulated market or a multilateral trading facility or otherwise have the characteristics of derivative financial instruments,
- derivative instruments for the transfer of credit risk,



- financial contracts for differences (CFDs),
- options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission permissions or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties, and
- negotiable mortgage deeds regarding real property or movables.

Pursuant to Section 2, Subsection 2 of the Securities Trading Act, the Danish Financial Supervisory Authority is authorised to decide that other instruments and contracts shall be covered by all or parts of the rules governing securities in the Securities Trading Act.

There are to our knowledge no administrative rulings from the Danish Financial Supervisory Authority directly applicable to the interpretation of the current wording of Section 2 of the Securities Trading Act (in our view most of the rulings from the Danish Financial Supervisory Authority (previously the Danish Securities Council) regarding the interpretation of the previous wording of Section 2 of the Securities Trading Act are no longer relevant as the subsections to which they refer have been changed).

It is further stated in Section 58e, Subsection 1 of the Securities Trading Act that it shall be clear from a financial collateral arrangement which of the present or future, actual or contingent or prospective financial obligations of the parties or any third parties are covered by the arrangement.

5.3 Financial collateral

According to Section 58f of the Securities Trading Act financial collateral in a financial collateral arrangement may only consist of cash meaning money credited to an account, credit claims or securities covered by Section 2, Subsection 1, Nos. 1-3 of the Securities Trading Act as set out in [Annex 4](#).

According to Section 58f, Subsection 3 the Counterparty's own shares, shares in affiliated undertakings within the meaning of Directive 83/349/EEC, and shares in undertakings whose exclusive purpose is to own means of production that are essential for the Transferor's business or own real property are excluded from the scope of financial collateral. Furthermore, cash credited to an account, which cannot be attached by creditors (pensions, client accounts etc.) is excluded from the scope of financial collateral, cf. Section 58f, Subsection 4 of the Securities Trading Act.



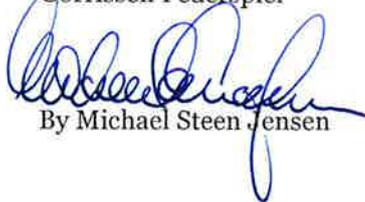
6 Other issues

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

7 Addressees

This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options Association's opinions library (and whose terms of subscription give them access to this opinion). This opinion may not be relied upon by any other person unless we otherwise specifically agree with that person in writing, although we consent to it being shown to such Futures and Options Association members' affiliates (being members of such persons' groups, as defined by the UK Financial Services and Markets Act 2000) and to any competent authority supervising such member firms and their affiliates in connection with their compliance with their obligations under prudential regulation

Yours faithfully,
Gorrissen Federspiel



By Michael Steen Jensen



SCHEDULE 1 – PUBLIC AUTHORITIES

Subject to the modifications and additions set out in this Schedule 1, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are public authorities.

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

1 Modifications to opinions

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion:

Insolvency Proceedings: Public Authorities

The Danish Bankruptcy Act is generally not considered applicable on the Danish State, including ministries and government authorities forming part of the Danish State and such entities cannot be made subject to bankruptcy proceedings in accordance with the Bankruptcy Act.

The Danish Act on Local Government, Consolidation Act No. 885 of 29 August 2012, with later amendments (the "**Local Government Act**"), regulates the activities of Danish municipalities. The Danish Bankruptcy Act does, however, not include any express provisions on whether a Danish municipality may be the subject of bankruptcy proceedings in accordance with the Bankruptcy Act or any other similar proceedings under Danish law.

However, it is the general view among Danish scholars that a Danish municipality cannot become subject to Insolvency Proceedings under the Danish Bankruptcy Act because it forms part of the administrative structure of the Danish State.

2 Additional qualifications

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

Our analysis on the validity and enforceability of the close-out netting provisions, the Set-Off Provisions and the Title Transfer Provisions of the Agreement is subject to the general qualification that it in our opinion is highly unlikely that a Insolvency Event can occur under Danish law with respect to a Danish municipality.



SCHEDULE 2 – ONE-MAN BUSINESSES

Subject to the modifications and additions set out in this Schedule 2, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Natural Persons. For the purposes of this Schedule 2, "Natural Persons" comprises individuals conducting business as a one-man business organised in Denmark under the Act on Undertakings Carrying on Business for Profit.

Our opinion does not cover individuals which are not conducting business activities.

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

1 Modification to opinions

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule), we are of the following opinion:

Insolvency Proceedings: Natural Persons

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is a Natural Person could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

- (a) a reconstruction carried out under the supervision and authority of one or more supervisors appointed by the bankruptcy court (in Danish: "rekonstruktion"), and
- (b) a full bankruptcy under the supervision and authority of one or more trustees appointed by the bankruptcy court (in Danish: "konkurs").

Natural Persons may, in addition to the above, become subject to the following insolvency proceedings:

- (c) the administration of the insolvent estate of a deceased person carried out pursuant to the rules set out in the Danish Act on Administration of Estates of Deceased Persons, Consolidation Act No. 383 of 22 May 1996 as amended, and under the supervision of the bankruptcy court (in Danish: "insolvent dødsboskifte"), and
- (d) a debt restructuring carried out under the supervision of the bankruptcy court (in Danish: "gældssanering").



ANNEX 1 - FORM OF FOA AGREEMENTS

1. Professional Client Agreement (2007 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2007**")
2. Professional Client Agreement (2009 Version), including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2009**")
3. Professional Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Professional Client Agreement 2011**")
4. Retail Client Agreement (2007 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2007**")
5. Retail Client Agreement (2009 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2009**")
6. Retail Client Agreement (2011 Version) including Module G (*Margin and Collateral*) (the "**Retail Client Agreement 2011**")
7. Eligible Counterparty Agreement (2007 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2007**")
8. Eligible Counterparty Agreement (2009 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2009**")
9. Eligible Counterparty Agreement (2011 Version) including Module G (*Margin*) (the "**Eligible Counterparty Agreement 2011**")

For the avoidance of doubt none of the forms of the Agreements listed at this Annex 1 include or incorporate the Title Transfer Securities and Physical Collateral Annex to the Netting Modules published by the Futures and Options Association.

Where the form of any Agreement listed in this Annex 1 (as published by the Futures and Options Association) (the "**FOA Published Form Agreement**") expressly contemplates the election of certain variables and alternatives, the Agreements listed above shall be deemed to include any such document in respect of which the parties have made such expressly contemplated elections (and have made any deletions required by such elections, where such deletions are expressly contemplated in the event of such election by the applicable FOA Published Form Agreement).

Each of the Agreements listed in this Annex 1 may be deemed to include Agreements identical to the relevant FOA Published Form Agreement, save for the substitution of Two Way Clauses in place of the equivalent terms in the FOA Published Form Agreement.



ANNEX 2 - DEFINED TERMS RELATING TO THE AGREEMENTS

1. The "**Eligible Counterparty Agreements**" means each of the Eligible Counterparty Agreement 2007, the Eligible Counterparty Agreement 2009 and the Eligible Counterparty Agreement 2011 (each as listed and defined at Annex 1).
2. The "**Professional Client Agreements**" means each of the Professional Client Agreement 2007, the Professional Client Agreement 2009 and the Professional Client Agreement 2011 (each as listed and defined at Annex 1).
3. The "**Retail Client Agreements**" means each of the Retail Client Agreement 2007, the Retail Client Agreement 2009 and the Retail Client Agreement 2011 (each as listed and defined at Annex 1).
4. An "**Equivalent 2011 Agreement without Core Rehypothecation Clause**" means an Equivalent Agreement in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 but which does not contain the Rehypothecation Clause.
5. "**Core Provisions**" means:
 - (a) with respect to all Equivalent Agreements, the Security Interest Provisions; and
 - (b) with respect to Equivalent Agreements that are in the form of the Eligible Counterparty Agreement 2011, Retail Client Agreement 2011 or Professional Client Agreement 2011 (but not with respect to an Equivalent 2011 Agreement without Core Rehypothecation Clause), the Rehypothecation Clause.
6. "**Rehypothecation Clause**" means:
 - (i) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.13 (**Rehypothecation**);
 - (ii) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.15 (**Rehypothecation**);
 - (iii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.13 (**Rehypothecation**); and
 - (iv) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (iii) of this definition (except insofar as



variations may be required for internal cross-referencing purposes);

7. **"Security Interest Provisions"** means:

(a) the **"Security Interest Clause"**, being:

- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.6 (***Security interest***);
- (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.6 (***Security interest***);
- (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.7 (***Security interest***);
- (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.8 (***Security interest***);
- (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.8 (***Security interest***);
- (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.9 (***Security interest***);
- (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.6 (***Security interest***);
- (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.6 (***Security interest***);
- (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.7 (***Security interest***); and
- (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);

(b) the **"Power to Charge Clause"**, being:



- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.10 (**Power to charge**);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.10 (**Power to charge**);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.10 (**Power to charge**);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.12 (**Power to charge**);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.12 (**Power to charge**);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.12 (**Power to charge**);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.10 (**Power to charge**);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.10 (**Power to charge**);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.10 (**Power to charge**); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (c) the "**Power of Sale Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.11 (**Power of sale**);



- (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.11 (***Power of sale***);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.11 (***Power of sale***);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.13 (***Power of sale***);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.13 (***Power of sale***);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.13 (***Power of sale***);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.11 (***Power of sale***);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.11 (***Power of sale***);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.11 (***Power of sale***); and
 - (x) in relation to an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (d) the "**Power of Appropriation Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.12 (***Power of appropriation***);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.12 (***Power of appropriation***);



- (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.12 (**Power of appropriation**);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.14 (**Power of appropriation**);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.14 (**Power of appropriation**);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.14 (**Power of appropriation**);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.13 (**Power of appropriation**);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.13 (**Power of appropriation**);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.12 (**Power of appropriation**); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (e) the "**Lien Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.13 (**General lien**);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.13 (**General lien**);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.14 (**General lien**);



- (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.15 (**General lien**);
 - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.15 (**General lien**);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.16 (**General lien**);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.12 (**General lien**);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.12 (**General lien**);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.14 (**General lien**); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes); and
- (f) the "**Client Money Additional Security Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (**Additional security**) at module F Option 4 (where incorporated into such Agreement);
 - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (**Additional security**) at module F Option 1 (where incorporated into such Agreement);
 - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (**Additional security**) at module F Option 1 (where incorporated into such Agreement);
 - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 7.8 (**Additional security**) at module F Option 4 (where incorporated into such Agreement);



- (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);
 - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);
 - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 6.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);
 - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 6.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);
 - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 6.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement); and
 - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes).
8. **"Two Way Clauses"** means each of the Futures and Options Association's Short-Form Two-Way Clauses 2007, the Short-Form Two-Way Clauses 2009, the Short-Form Two-Way Clauses 2011, the Long-Form Two-Way Clauses 2007, the Long-Form Two-Way Clauses 2009 and the Long-Form Two-Way Clauses 2011.



ANNEX 3 - NON-MATERIAL AMENDMENTS

1. Any change to the numbering or order of a provision or provisions or the drafting style thereof (e.g., addressing the other party as “you”, “Counterparty”, “Party A/Party B”) provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
2. Any change to a provision or provisions by defining certain key terms (e.g., party, exchange, currency, defaulting party or non-defaulting party) and using these terms in large caps throughout the Agreement provided in each case that the plain English sense and legal effect both of each such provision and of the Agreement as a whole (including the integrity of any cross references and usage of defined terms) remains unchanged.
3. An addition to the list of events that constitute an Event of Default (e.g. without limitation, the failure to deliver securities or other assets, a force majeure, cross default or downgrading event the death or incapacity of a Party or its general partner any default under a specified transaction or a specified master agreement), such change may or may not be coupled with a grace period or the serving of a written notice on the Defaulting Party by the Non-Defaulting Party, such change may be expressed to apply to one only of the Parties.
4. Any change to an Insolvency Event of Default (i) introducing a grace period for the filing of a petition for bankruptcy proceedings (of e.g. 15 or 30 days), (ii) modifying or deleting any such grace period, (iii) requiring that the filing of the petition is not frivolous, vexatious or otherwise unwarranted or (iv) that the non-defaulting party has reasonable grounds to conclude that the performance by the defaulting party of its obligations under the Agreement, Transactions, or both, is endangered.
5. Any change to an Insolvency Event of Default more particularly describing (i) the relevant procedures that would or would not constitute such event of default or termination event (ii) the relevant officers the appointment of which would or would not constitute such Insolvency Event of Default.
6. Any change to an Insolvency Event of Default extending its scope to events occurring with respect to the credit support provider, an affiliate, a custodian or trustee of a Party.
7. Any change to an Insolvency Event of Default replacing such event of default with a provision aligned to Section 5(a)(vii) of the 1992 or 2002 ISDA Master Agreement (or relevant part thereof).
8. Any change to the Agreement requiring the Non-defaulting Party when exercising its rights under the Security Interest Provisions (or



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other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.

9. Any change clarifying that the Non-defaulting Party must, or may not, notify the other party of its exercise of rights under the Security Interest Provisions or other provision.



ANNEX 4 - THE DANISH SECURITIES TRADING ACT

Section 2, subsection 1, nos. 1-3 of the Danish Securities Trading Act has the following wording (unofficial translation):

Section 2, subsection 1, nos. 1-3:

“The provisions of this Act with respect to securities shall apply to the following instruments:

1. *negotiable securities (except for payment instruments) that can be traded on the capital markets, including*
 - (a) *shares in companies and other securities equivalent to shares in companies, partnerships and other businesses, and share certificates,*
 - (b) *bonds and other securities equivalent to these and certificates for such securities,*
 - (c) *any other securities of which securities as mentioned in a) or b) can be acquired or sold, or give rise to a cash settlement, the amount of which is fixed with securities, currencies, interest rates or returns, commodities indexes and other indexes and targets as reference,*
2. *money market instruments, including treasury bills, certificates of deposits and commercial papers, with the exception of payment instruments,*
3. *holdings in collective investment schemes covered by the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act, and holdings in other institutions for collective investments,”*



Annex 5 – Certain counterparty types

Description	Legal form(s)
<p><u>Bank/Credit Institution.</u></p>	<ul style="list-style-type: none"> - A bank (in Danish: “pengeinstitut”) in the form of (i) a commercial bank (in Danish: “bank”) organised in Denmark as a public limited company under the Danish Companies Act (ii) a savings bank (in Danish: “sparekasse”) organised in Denmark as an independent institution (in Danish: “selvejende institution”) and (iii) a credit cooperative (in Danish: “andelskasse”) organised in Denmark as a credit cooperative (in Danish: “andelskasse”) and, in case of each of (i), (ii) and (iii), authorised by the Danish Financial Supervisory Authority under the Danish Financial Business Act or under an earlier statute - a mortgage-credit institution (in Danish: “realkreditinstitut”) organised in Denmark as a public limited company under the Companies Act or an earlier statute and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute - Danmarks Skibskredit A/S organised in Denmark as a public limited company under the Companies Act and subject to the supervision by the Danish Financial Supervisory Authority under the Act on a Ship Finance Institute, Consolidation Act No. 886 of 8 august 2011 as amended
<p><u>Central Bank.</u></p>	<ul style="list-style-type: none"> - Danmarks Nationalbank
<p><u>Commercial fund.</u></p>	<ul style="list-style-type: none"> - A commercial fund organised in Denmark under the Act on Commercial Funds, Consolidation Act No. 560 of 19 May 2010



Description	Legal form(s)
<p><u>Company.</u></p>	<ul style="list-style-type: none"> - A public limited company (in Danish: “Aktieselskab” or “A/S”) organised in Denmark under the Companies Act or under an earlier statute - a private limited company (in Danish: “anpartsselskab” or “ApS”) organised in Denmark under the Companies Act or under an earlier statute - company with limited liability (in Danish “selskab med begrænset ansvar”) organised in Denmark under the Act on Undertakings Carrying on Business for Profit
<p><u>Insurance Company.</u></p>	<ul style="list-style-type: none"> - An insurance company (in Danish: “forsikringselskab”) organised in Denmark as either (i) a public limited company (in Danish: “aktieselskab” or “A/S”), (ii) mutual company (in Danish: “gensidigt selskab”) or (iii) a pension fund (in Danish: “tværgående pensionskasse”) and, in case of each of (i), (ii) and (iii), authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute.
<p><u>Investment Firm.</u></p>	<ul style="list-style-type: none"> - An investment company (in Danish: “fondsmæglerselskab”) organised in Denmark as a public limited company under the Companies Act or under an earlier statute and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute - an investment management company (in Danish: “investeringsforvaltningselskab”) organised in Denmark as a public limited company under the Companies Act or under an earlier statute and authorised by the Danish Financial Supervisory Authority under



Description	Legal form(s)
	the Financial Business Act or under an earlier statute
<p><u>Investment Fund.</u></p>	<ul style="list-style-type: none"> - An investment association (UCITS) (in Danish: “investeringsforening”) organised in Denmark and authorised by the Danish Financial Supervisory Authority under the under the Investment Associations Act - a company for investment of variable capital (SIKAV) or a securities fund (in Danish: “værdipapirfond”) and authorised by the Danish Financial Supervisory Authority under the Danish Investment Associations Act - a special purpose association (in Danish: “specialforening”) organised in Denmark and authorised by the Danish Financial Supervisory Authority under the under the Investment Associations Act - a restricted association (in Danish: “fåmandsforening”) organised in Denmark and authorised by the Danish Financial Supervisory Authority under the under the Investment Associations Act - hedge association (in Danish “hedgeforening”) and authorised by the Danish Financial Supervisory Authority under the Investment Association Act - a professional association (in Danish: “professionel forening”) organised in Denmark and authorised by the Danish Financial Supervisory Authority under the under the Investment Associations Act - an association for professional investors organised in Denmark as an association (in Danish: “forening”) but not registered with the Danish Financial



Description	Legal form(s)
	<p>Supervisory Authority</p> <ul style="list-style-type: none"> - a non-approved restricted association (in Danish “ikkegodkendt f�amandsforening”) organised in Denmark as an association, not approved by the Danish Financial Supervisory Authority but registered with the Danish Financial Supervisory Authority - an association with limited liability (in Danish “forening med begr�anset ansvar”)
<u>Local Authority.</u>	<ul style="list-style-type: none"> - A municipality (in Danish: “kommune”) - a region (in Danish: “region”)
<u>Other persons.</u>	<ul style="list-style-type: none"> - A one-man business organised in Denmark under the Act on Undertakings Carrying on Business for Profit Consolidation Act no. 599 of 19 May 2010 as amended
<u>Partnership.</u>	<ul style="list-style-type: none"> - A limited partnership (in Danish: “Kommanditselskab” or “K/S”) organised in Denmark under the Danish Act on Undertakings Carrying on Business for Profit - a partnership (in Danish: “interessentskab” or “I/S”) organised in Denmark under the Danish Act on Undertakings Carrying on Business for Profit - a co-operative society with limited liability (in Danish: “andelsselskab med begr�anset ansvar”)
<u>Pension Fund.</u>	<ul style="list-style-type: none"> - A pension insurance company (in Danish: “pensionsforsikringsselskab”) organised in Denmark as a public limited company under the Companies Act or under an earlier statute and authorised by the Danish Financial Supervisory



Description	Legal form(s)
	<p>Authority under the Financial Business Act or under an earlier statute</p> <ul style="list-style-type: none"> - a lateral pension fund (in Danish: “tværgående pensionskasse”) organised in Denmark as a private foundation and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute - a company pension fund (in Danish: “firmapensionskasse”) organised in Denmark as a private foundation and authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute - an insurance company (in Danish: “forsikringsselskab”) organised in Denmark as a public limited company under the Companies Act or an earlier statute authorised by the Danish Financial Supervisory Authority under the Financial Business Act or under an earlier statute - Arbejdsmarkedets Tillægspension (“ATP”) organised in Denmark as a self-owned institution and regulated under the ATP Act, Consolidation Act No. 942 of 2 October 2009 (as amended)
<u>Public authority.</u>	<ul style="list-style-type: none"> - The Danish State - Ministries - Government Agencies
<u>Public-Owned Entity.</u>	<ul style="list-style-type: none"> - E.g. a state-owned company (in Danish: “statsligt aktieselskab”) or a partnership in which the Danish state participates.