

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

26 February 2013

Dear Sirs,

FOA Collateral Opinion

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 Security Interests given under Agreements in the forms specified in Annex 1 to this opinion letter (each an "**Agreement**") or under an Equivalent Agreement (as defined below).

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

We understand that your fundamental requirement is for the effectiveness of the Security Interest Provisions of the Agreement to be substantiated by a written and reasoned opinion. Our opinion on the validity of the Security Interest Provisions is given in paragraph 3 of this opinion letter.

References herein to "*this opinion*" are to the opinions given in paragraph 3.

1. TERMS OF REFERENCE AND DEFINITIONS

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

- 1.1.1 generally, in respect of Parties which are companies incorporated under DIFC Law No. 2 of 2009 (the "**Companies Law**"); and**
- 1.1.2 generally, in respect of Parties incorporated or formed under the laws of another jurisdiction which are companies, companies authorised to carry on banking business or companies authorised to carry on insurance business and which have a branch or branches located in this jurisdiction,**

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 This opinion is also given in respect of Counterparties providing Collateral to a Firm that are any of the following:

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

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

- 1.3 This opinion is not given in respect of Parties which are partnerships, pension funds, hedge funds, public bodies including municipalities, building societies, non-profit incorporated organisations, charitable bodies 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 partnerships (other than limited liability partnerships) are not subject to the Insolvency Law or the Insolvency Regulation (as defined below);
- 1.3.2 we are not aware of any pension funds established in the DIFC;
- 1.3.3 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 would be subject to specific legislation;
- 1.3.5 non-profit incorporated organisations are only permitted to engage in a limited range of permitted activities (which would not generally include entering into an Agreement) and are subject to a specialist insolvency regime; and
- 1.3.6 charitable bodies or trusts would, unless established as companies under the Companies Law, not be subject to the Insolvency Law or the Insolvency Regulation (as defined below).

1.4 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.

1.5 In this opinion letter:

1.5.1 "**Security Interest**" means the security interest created pursuant to the Security Interest Provisions;

1.5.2 "**Equivalent Agreement**" means an agreement:

- (a) which is governed by the law of England and Wales;
- (b) which has broadly similar function to any of the Agreements listed in Annex 1;
- (c) which contains the Core Provisions (with no amendments, or with Non-material Amendments); and
- (d) which neither contains (nor is modified, amended, or superseded by) any other provision which may invalidate, adversely affect, modify, amend, supersede, conflict with, provide alternatives to, compromise or fetter the operation, implementation, enforceability and effectiveness of all or part of the Core Provisions (in each case, excepting Non-material Amendments);

References to the "**Agreement**" in this letter (other than specific cross references to clauses in such Agreement and references in the first paragraph of this letter) shall be deemed also to apply to an Equivalent Agreement;

1.5.3 A "**Non-material Amendment**" means an amendment having the effect of one of the amendments set out at Annex 3;

1.5.4 "**enforcement**" means, in the relation to the Security Interest, the act of:

- (i) sale and application of proceeds of the sale of Collateral against monies owed, or
- (ii) appropriation of the Collateral,

in either case in accordance with the Security Interest Provisions.

1.5.5 in other instances other than those referred to at 1.5.4 above, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy.

1.5.6 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;

- 1.5.7 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;
- 1.5.8 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2; and
- 1.5.9 headings in this opinion letter are for ease of reference only and shall not affect its interpretation.

1.6 References to "**Core Provisions**" include Core Provisions that have been modified by Non-Material Amendments (as defined herein).

2. ASSUMPTIONS

We assume the following:

- 2.1 That the Agreements are legally binding and enforceable against both Parties under their governing laws.
- 2.2 That the Security Interest Provisions are enforceable under the governing law of the Agreement to create a Security Interest.
- 2.3 That the Security Interest Provisions are effective under the law of the place where the Collateral is located to create an enforceable security interest.
- 2.4 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Agreement; to perform its obligations under the Agreement; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.
- 2.5 That each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the Agreement and Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the Agreement in this jurisdiction.
- 2.6 That the Agreement has been properly executed by both Parties.#
- 2.7 That the Agreement is entered into prior to the commencement of any insolvency proceedings. 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**"). There are currently no provisions governing the insolvency or bankruptcy of individuals, partnerships or limited partnerships.

- 2.8 That the Agreement has been entered into, and each of the transactions referred to therein is carried out, by each of the parties thereto in good faith, for the benefit of each of them respectively, on arms' length commercial terms and for the purpose of carrying on, and by way of, their respective businesses.
- 2.9 That the Agreement accurately reflects the true intentions of each Party.
- 2.10 That no provisions of the Agreement, or a document of which the Agreement forms part, or any other arrangement between the Parties, invalidate the enforceability or effectiveness of the Security Provisions or the Rehypothecation Clause under the governing law of the Agreement.
- 2.11 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement.
- 2.12 That all acts, conditions or things required to be fulfilled, performed or effected in connection with the Agreement and the creation and perfection of the security interests thereunder pursuant to laws of any jurisdiction other than this jurisdiction have been duly fulfilled, performed and effected.
- 2.13 That there are no provisions of the laws of any jurisdiction (apart from this jurisdiction) which would be contravened by the execution or the delivery of the Agreement.
- 2.14 That any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions shall at all relevant times be located outside this jurisdiction.
- 2.15 That any cash comprising the Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.
- 2.16 That the Firm is an entity which in the ordinary course of business transacts investments or holds investments by way of custody or security.
- 2.17 That no provision of the Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect. In our view, an alteration contemplated in the definition of "Equivalent Agreement" above would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in the definition of "Equivalent Agreement" would or would not constitute a material alteration of the Agreement.

3. OPINIONS

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

3.1 Valid Security Interest

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

- 3.1.2 There is no rule or law of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the right of the Non-Defaulting Party to enforce the Security Interest in respect of the Collateral.
- 3.1.3 Following exercise of the Firm's rights under the Security Interest Provisions, the ranking of the Firm's rights to the proceeds of realisation of the Collateral in relation to the interests of the Counterparty and any other person would be a matter to be determined under the law of the place where the Collateral is situated.

3.2 **Further acts**

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

4. **QUALIFICATIONS**

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

4.1 **Moratorium**

- 4.1.1 DIFC Law No. 3 of 2009 (the "**Insolvency Law**") and the Insolvency Regulations (together, "**Insolvency Legislation**") impose certain restrictions on the enforcement of claims or security interests once insolvency proceedings have commenced. Generally speaking:
 - (a) once a winding-up order has been made in respect of a DIFC company or limited liability partnership (a "**LLP**"), no action may be commenced or proceeded with against that entity or its assets, except with the leave of the DIFC courts and subject to such terms as the DIFC courts may impose; and
 - (b) where a DIFC company or LLP is subject to a moratorium, secured creditors may not take any steps to enforce security interests in respect of that entity's property except with the consent of the DIFC courts and subject to such terms as the DIFC courts may impose.
- 4.1.2 However, notwithstanding the restrictions described in the previous paragraph, we take the view that a DIFC insolvency official would not be entitled to challenge any enforcement of an Eligible Security Interest in Financial Collateral (as defined in paragraph 4.1.4 below) following the commencement of insolvency proceedings against the Counterparty, and that, should a DIFC insolvency official nevertheless attempt to do so, a DIFC court should reject that attempt and uphold the Firm's right to enforce its security interests under the Eligible Security Interest.
- 4.1.3 We take this view because Regulation 7.2.3 of the Insolvency Regulations states that "an Eligible Security Interest in Financial Collateral may be

enforced notwithstanding any provision of [the Insolvency Legislation] reversing, voiding, disclaiming or staying, or enabling or empowering a reversal, voiding, disclaimer, or stay relating to, or imposing any other requirement on, enforcement of security interests", provided that the Eligible Security Interest attaches to the relevant Financial Collateral prior to the commencement of insolvency proceedings.

4.1.4 In this context:

- (a) financial assets held in an investment account and/or money constitute "**Financial Collateral**" where they secure an Eligible Security Interest; and
- (b) a security interest granted by a non-natural person in favour of a secured party which in the ordinary course of business transacts investments or holds investments by way of custody or security constitutes an "**Eligible Security Interest**".

4.1.5 A natural person cannot grant an Eligible Security Interest in Financial Collateral, and a moratorium might arise where the Non-Defaulting Party seeks to enforce the Security Interest against an individual. The insolvency provisions in the DIFC apply to companies and limited liability partnerships. There are currently no provisions governing the insolvency or bankruptcy of individuals, partnerships or limited partnerships.

4.2 Right of Sale

- 4.2.1 Art. 18(1) of the Insolvency Law gives the administrative receiver of a DIFC company or LLC the power to apply to the DIFC court for an order authorising the receiver to dispose of charged property where this "would be more likely to promote a more advantageous realisation of the company's assets than would otherwise be effected." Any order under Art. 18(1) must direct that "(a) the net proceeds of any disposal and (b) such sum as may be required to make good the deficiency between the net proceeds of the disposal and the net amount which would be realised on a sale of the property in the open market by a willing vendor shall be applied towards discharging the sums secured by the security."
- 4.2.2 In our view, a DIFC court would be unlikely to grant such an order in relation to Financial Collateral that is subject to an Eligible Security Interest, provided that the Eligible Security Interest has attached to the relevant Financial Collateral prior to the commencement of insolvency proceedings. This is because Regulation 7.2.3 of the Insolvency Regulations states that "an Eligible Security Interest in Financial Collateral may be enforced notwithstanding any provision of [the Insolvency Legislation] reversing, voiding, disclaiming or staying, or enabling or empowering a reversal, voiding, disclaimer, or stay relating to, or imposing any other requirement on, enforcement of security interests".

4.3 Security interests granted over all or substantially all of the Counterparty's property

4.3.1 Art. 99 of the Insolvency Law allows for a security interest granted over all or substantially all of the assets of a DIFC company or LLC to be set aside where:

- (a) it was created in favour of a person connected with the Counterparty after a date falling two years prior to the onset of insolvency;
- (b) it was created after a date falling one year prior to the onset of insolvency and the Counterparty either was, or became as a result of the transaction in respect of which the security interest was created, unable to pay its debts as they fell due; or
- (c) the security interest was created after the commencement of a company voluntary arrangement.

4.4 Transactions at an undervalue

4.4.1 A Security Interest 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.

4.5 Preferences

4.5.1 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 prior to the onset of insolvency (2 years in the case of a preference given to a connected person and 6 months in any other cases).

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

This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options Association's opinions library (and whose terms of subscription give them access to this opinion). This opinion may not be relied upon by any other person unless we otherwise specifically agree with that person in writing, although we consent to 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,

A handwritten signature in black ink, appearing to read "Christopher G. Goss".

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; or (ii) the relevant officers the appointment of which would or would not constitute such Insolvency Event of Default.
6. Any change to an Insolvency Event of Default extending its scope to events occurring with respect to the credit support provider, an affiliate, a custodian or trustee of a Party.
7. Any change to an Insolvency Event of Default replacing such event of default with a provision aligned to Section 5(a)(vii) of the 1992 or 2002 ISDA Master Agreement (or relevant part thereof).
8. Any change to the Agreement requiring the Non-defaulting Party when exercising its rights under the Security Interest Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.

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