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Dear Sirs

FOA Collateral Opinion

You have asked us to give an opinion in respect of the laws of England and Wales ("**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 English Companies (including English companies which are banks);

1.1.2 foreign companies; and

1.1.3 in respect of paragraph 3.3, the entities referred to in such paragraph,

insofar as each may act as a counterparty (a "**Counterparty**") providing Collateral (as defined in paragraph 1.4) to a member firm of the Futures and Options Association (each a "**Firm**") under an Agreement.

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

- 1.2.1 individuals (Schedule 1);
- 1.2.2 building societies (Schedule 2);
- 1.2.3 OEICs (excluding umbrella companies) (Schedule 3A);
- 1.2.4 OEICs (sub-funds) (Schedule 3B);
- 1.2.5 insurers (Schedule 4);
- 1.2.6 partnerships (Schedule 5);
- 1.2.7 LLPs (Schedule 6);
- 1.2.8 Counterparties acting as Trustees of a Trust (other than a Charitable Trust, or Pension Scheme) (Schedule 7);
- 1.2.9 Counterparties acting as Trustees of pension schemes (Schedule 8);
- 1.2.10 Counterparties acting as Trustees of a Charitable Trust Schedule 9);
- 1.2.11 Charitable Companies (Schedule 10); and
- 1.2.12 Local Authorities acting in the capacity of Administering Authority of a pension fund (Schedule 11),

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

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

- 1.4 For these purposes and subject as follows:
- 1.4.1 "**CASS**" means the Client Assets Sourcebook of the FSA Handbook of Rules and Guidance;
 - 1.4.2 an "**English company**" is a company which is formed and registered under the Companies Act 2006 or the former Companies Acts (as defined in section 1171 of the Companies Act 2006) and does not include a company formed and registered under any of the former Companies Acts in what was then Ireland and includes companies which are banks that have permission to accept deposits by virtue of Part IV of the Financial Services and Markets Act 2000 ("**FSMA**"). Please note that certain other types of person, not covered by this opinion, may also have permission to accept deposits, including building societies and credit unions within the meaning of section 1 of the Credit Unions Act 1979. An "**English company**" does not include a company formed and registered under any of the former Companies Acts in what was then Ireland;
 - 1.4.3 a "**foreign company**" is a company (other than a "*Societas Europaea*" established pursuant to EU Council Regulation No. 2157/2001 of 8 October 2001 on the European Company Statute) which is incorporated or formed under the laws of another jurisdiction with a branch or branches established or located in this jurisdiction;
 - 1.4.4 "**FOA Published Form Agreement**" means a document listed at Annex 1 in the form published by the Futures and Options Association on its website as at the date of this opinion;
 - 1.4.5 a reference to the "**Cross-Border Insolvency Regulations**" is to the Cross-Border Insolvency Regulations 2006;
 - 1.4.6 a reference to an "**EEA Credit Institution**" is to an EEA Credit Institution as defined in the Credit Institutions (Reorganisation and Winding Up) Regulations 2004 (the "**Credit Institutions Regulations**"), which means an EEA undertaking which qualifies as a credit institution under Directive 2000/12/EC but which is not a UK Credit Institution;
 - 1.4.7 a reference to a "**UK Credit Institution**" is to a UK Credit Institution as defined in the Credit Institutions Regulations, which means an undertaking

whose head office is in the United Kingdom with permission under Part IV of FSMA to accept deposits or to issue electronic money, but does not include insurance companies or credit unions within the meaning of section 31 of the Credit Unions Act 1979;

- 1.4.8 a reference to the "**EU Insolvency Regulation**" is to EU Council Regulation No. 1346/2000 on insolvency proceedings;
 - 1.4.9 a reference to the "**FCA Regulations**" is to the Financial Collateral Arrangements (No. 2) Regulations 2003;
 - 1.4.10 "**FSA**" means the UK Financial Services Authority and its successors;
 - 1.4.11 "**Investment Bank SARs**" means the Investment Bank Special Administration Regulations 2011;
 - 1.4.12 a "**Party**" means a party to the Agreement; and
 - 1.4.13 the opinions are not (except under Schedule 4) given in respect of any person which has permission under Part IV of FSMA to carry out contracts of insurance.
- 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 "Insolvency Proceedings" means insolvency, bankruptcy or analogous proceedings (where, for the purposes of paragraph 3 of this opinion, the occurrence of such proceedings in respect of the Counterparty falls within the definition of Event of Default under the Agreement) and in relation to a UK bank (meaning a "bank" as defined in section 2 of the Banking Act 2009), references to administration and liquidation (and their cognate terms) include bank administration and bank insolvency (and their cognates); and in relation to a UK investment bank (meaning an "investment bank" to which the Investment Bank SARs apply) these terms include investment bank special administration, special administration (bank insolvency) and special administration (bank administration);

1.5.5 "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; and 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 references to "Core Provisions" include Core Provisions that have been modified by Non-Material Amendments;

- 1.5.7 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;
- 1.5.8 any reference to any legislation (whether primary legislation or regulations or other subordinate 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;
- 1.5.9 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2; and
- 1.5.10 headings in this opinion letter are for ease of reference only and shall not affect its interpretation.
- 1.6 For the purpose of issuing this opinion letter we have reviewed only the form of Agreements referred to at Annex 1 to this opinion letter.
- 1.7 This opinion letter relates solely to matters of English law and does not consider the impact of any laws (including insolvency laws) other than English law, even where, under English law, any foreign law falls to be applied. This opinion letter and the opinions given in it are governed by English law and relate only to English law as applied by the English courts as at today's date. All non-contractual obligations and any other matters arising out of or in connection with this opinion letter are governed by English law. We express no opinion in this opinion letter on the laws of any other jurisdiction.
- 1.8 The opinions given in this opinion letter are given on the basis of the assumptions set out in paragraph 2 and are subject to the qualifications and qualifications set out in paragraph 4 to this opinion letter. The opinions given in this opinion letter are strictly limited to the matters stated in paragraph 3 and do not extend to any other matters.

2. ASSUMPTIONS

We assume the following:

- 2.1 That the Agreements are legally binding and enforceable against both Parties under their governing laws. However, this assumption is not made in relation to the Security Interest Provisions or Rehypothecation Clause (except insofar, in each case, as amended by any Non-material Amendment).

- 2.2 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 more specifically, the Collateral does not belong to a client of a Counterparty which is subject to CASS 6.3.5R unless CASS 6.3.6R applies); and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.
- 2.3 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.
- 2.4 That the Agreement has been properly executed by both Parties.
- 2.5 That the Agreement is entered into prior to the commencement of any insolvency, bankruptcy or analogous proceedings in respect of either Party.
- 2.6 That any party to the Agreement which is at any time carrying on, or purporting to carry on, a regulated activity in the United Kingdom within the meaning of FSMA will at all relevant times be doing so in circumstances which do not contravene the general prohibition set out in section 19 of FSMA.
- 2.7 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.
- 2.8 That the Agreement accurately reflects the true intentions of each Party.
- 2.9 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 Interest Provisions or Rehypothecation Clause under the governing law of the Agreement. However, this assumption does not apply with regard to the content of FOA Published Form Agreements for the purposes of our opinion at paragraph 3.5.
- 2.10 That there is no other agreement, instrument or other arrangement between the Firm and the Counterparty which modifies or supersedes the Agreement.

- 2.11 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 England have been duly fulfilled, performed and effected.
- 2.12 That there are no provisions of the laws of any jurisdiction (apart from England) which would be contravened by the execution or the delivery of the Agreement.
- 2.13 That, except with respect to our opinion at paragraph 3.3, any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions may be located either within or outside this jurisdiction.
- 2.14 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.
- 2.15 That any cash comprising the Collateral is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.

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 The Security Interest Provisions would create a valid security interest over the Collateral.
- 3.1.2 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.
- 3.1.3 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 to enforce the Security Interest by the Non-Defaulting Party.

3.1.4 Following exercise of the Firm's rights under the Security Interest Provisions, the Firm's rights in respect of the proceeds of realisation of the Collateral would rank ahead of the interests of the Counterparty and any other person therein.

3.2 Further acts

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

3.3 Foreign Collateral Providers

Moreover, the opinions given at paragraphs 3.1 and 3.2 also apply in respect of any Counterparty that is not established or resident in this jurisdiction, where any accounts and the assets expressed to be subject to a Security Interest pursuant to the Security Provisions are located within this jurisdiction.

3.4 Right of re-use

With respect to the Eligible Counterparty Agreement 2011, the Retail Client Agreement 2011, the Professional Client Agreement 2011 (or an Equivalent Agreement in the form of one of the foregoing), the Rehypothecation Clause would be effective in accordance with its terms, such that that Firm is entitled to borrow, lend, appropriate, dispose of or otherwise use for its own purposes all non-cash Collateral, subject to the further rights and obligations set out in the Rehypothecation Clause.

The opinion given at this paragraph 3.4 does not apply in respect of an Equivalent 2011 Agreement without Core Rehypothecation Clause.

3.5 No Incompatibility

No FOA Published Form Agreement contains any terms that contradict, or are incompatible with, the Security Interest Provisions or Rehypothecation Clause of that same FOA Published Form Agreement such that any such contradictions or incompatibilities would affect our opinions at this paragraph 3 as applied to such FOA Published Form Agreement. However, this opinion is given on the basis that the FOA Published Form Agreement has been normally completed with the selection of any contemplated variables, alternatives and electives in an internally consistent and logical manner.

4. QUALIFICATIONS

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

4.1 Registration of Security

4.1.1 Registration at the Registrar of Companies

- (a) In relation to a Counterparty that is an English company, pursuant to section 874 of the Companies Act 2006, the Agreement (together with prescribed particulars of the charges constituted by the Security Interest Provisions therein) must be delivered to the UK Registrar of Companies for registration within twenty-one days after the date of creation of the charges constituted by the Security Provisions (which, in most cases, will be the date on which the Agreement was originally entered into by the Parties). Otherwise, the charges will be void against the liquidator or administrator or any creditor of such Counterparty.
- (b) In relation to a Counterparty that is an overseas company (within the meaning of the Companies Act 2006 and being, broadly, a foreign company, if the charges constituted by the Security Interest Provisions were created on or after 1 October 2011, the Agreement would not need to be delivered to the Registrar of Companies for registration.
- (c) However, in relation to a Counterparty that is an overseas company, if the charges constituted by the Security Interest Provisions were created prior to 1 October 2011 and the Security Interest covered property situated in the UK or the Counterparty had registered particulars of a UK establishment with the Registrar of Companies, then the Agreement (together with prescribed particulars of the charges constituted by the Security Provisions therein) may have been subject to a requirement to deliver to the Registrar of Companies for registration within twenty-one days after the date of creation of the charges constituted by the Security Interest Provisions (which, in most cases, would have been the date on which the Agreement was originally entered into by the Parties). If such registration were required and had not properly been effected, the charges will be void against the liquidator or administrator or any creditor of such Counterparty.

(d) The qualifications in this paragraph 4.1.1 are subject to our qualification at paragraphs 4.1.2 and 4.1.3 relating to financial collateral arrangements (which may render any such registration with the Registrar of Companies unnecessary).

4.1.2 *Financial Collateral Arrangement (where "relevant account" is located in England or Wales)*

Insofar as the non-cash assets expressed to be subject to a Security Interest in the Security Interest Provisions comprises "*financial collateral*" comprised of "*book entry securities collateral*" (as defined in the FCA Regulations), and cash constituting collateral under the Client Money Additional Security Clause and to the extent that such assets are in the "possession" or "control" (as such terms are used in the FCA Regulations) of the Firm, the Agreement should be regarded as a financial collateral arrangement (as defined in the FCA Regulations).

Consequently, if the Agreement were regarded by a court as a financial collateral arrangement, any question relating to proprietary effects, requirements for perfecting the Agreement and for rendering them effective against third parties, and the steps required for realisation of the secured assets, would be governed by the domestic law of the country in which the "*relevant account*" (as defined in the FCA Regulations) is maintained.

Where the Security Interest constitutes a financial collateral arrangement no acts and conditions would need to be done or fulfilled under the laws of this jurisdiction (including without limitation, registration at the Registrar of Companies as referred to at paragraph 4.1.1) in order to ensure the recognition, effectiveness and perfection of the Firm's Security Interest in the Collateral and to enable the Firm to enforce that Security Interest in accordance with the Agreement.

A statutory definition of "*possession*" in respect of financial collateral for the purposes of the FCA Regulations has been introduced. This definition states that: "*possession of financial collateral in the form of cash or financial instruments includes the case where financial collateral has been credited to an account in the name of the collateral-taker or a person acting on his behalf (whether or not the collateral-taker, or person acting on his behalf, has credited the financial collateral to an account in the name of the collateral-*

provider on his, or that person's, books) provided that any rights the collateral-provider may have in relation to that financial collateral are limited to the right to substitute financial collateral of the same or greater value or to withdraw excess financial collateral".

The FCA Regulations are silent on the meaning of "control". In two non-binding decisions of the High Court, *Gray v G-T-P Group Ltd, Re F2G Realisations Limited (in Liquidation)* [2010] EWHC 1772 (Ch) and *Re Lehman Brothers International Europe (in administration)* [2012] EWHC 2997 (Ch), the courts found that the collateral taker must have, in addition to 'administrative' control, a legal right to prevent the collateral provider from dealing with the collateral. We express no view as to whether the Agreement contains legal rights sufficient to satisfy the interpretation of "control" set out in these decisions.

- 4.1.3 If the Security Interest were deemed not to be a security financial collateral arrangement on the basis of "control" and/or "possession" for the purposes of the FCA Regulations, the issues outlined at paragraph 4.2.3 and 4.3 below will be of relevance and will qualify our opinions set out at paragraph 3. We specifically would like to draw attention to the following:
- (a) a moratorium may apply, preventing the enforcement of a charge without leave of the court or, where relevant, the consent of the administrator (under paragraphs 43 and 44 of Schedule B1 to the Insolvency Act 1986);
 - (b) where the Counterparty is an English Company (or overseas company in the circumstances outlined at paragraph 4.1.1(c)) the Security Interest would be void against a liquidator, administrator or creditor of the chargor unless it has been registered under section 860 of the Companies Act 2006 as discussed at paragraph 4.1.1; and
 - (c) the Firm would not have the benefit of Regulation 16 of the FCA Regulations, which provides that rights of use over financial collateral provided under a financial collateral arrangements are effective in accordance with their terms.

4.1.4 *Financial Collateral Arrangement (where "relevant account" is located within the EEA, outside England and Wales)*

Moreover, it is possible that an arrangement could qualify as a financial collateral arrangement pursuant to the relevant laws of another EEA jurisdiction that, like the FCA Regulations, implements the Directive on Financial Collateral Arrangements 2002/65/EC (an "EU FCA **Implementing Measure**"), but not under the laws of this jurisdiction. If the Collateral is posted to accounts maintained in another jurisdiction, there are arguments that whether the firm has "*possession*" or "*control*" will be determined pursuant to the laws of the *lex situs* jurisdiction, including where (as a matter of English law) the "*relevant account*" is treated as located in England or Wales.

4.2 **Limitations Arising From Insolvency Law**

4.2.1 As a consequence of the decision in *National Westminster Bank plc -v- Spectrum Plus Limited* [2005] UK HL 41, it is possible that fixed security interests expressed to be created by the Agreement could be characterised as floating charges. The risk of recharacterisation of the Security Interest as a floating charge depends on whether the Firm has the requisite degree of control over the Collateral. (For these purposes, 'control' has a different meaning from that discussed in paragraph 4.1.2 above). To the extent that the Counterparty is able to deal with the assets subject to the Security Interest without the Firm's consent, the court is likely to hold that the Security Interest constitutes a floating charge. If the Security Interest is characterised as a floating charge then the risks set out below might apply:

- (a) the floating charge would, in certain circumstances, rank behind the preferential debts (within the meaning of section 386 of the Insolvency Act 1986); and
- (b) the Counterparty would be able to grant fixed charges and effect other dispositions of the relevant assets which would rank higher than the Firm's Security Interest.

4.2.2 Furthermore, to the extent that the Security Interest is not a "financial collateral arrangement" pursuant to the FCA Regulations the following issues (which are disapplied by the FCA Regulations in respect of financial collateral arrangements) may apply:

- (i) under paragraphs 43 and 44 of Schedule B1 to the Insolvency Act 1986, a moratorium may apply which prevents enforcement of a charge without leave of the court or, where relevant, the consent of the administrator;
- (ii) under section 245 of the Insolvency Act 1986 a floating charge on a company's undertaking or property may be invalid if created within the period of 12 months before the onset of insolvency (being, in broad terms, the earliest of: the date of initiation of proceedings for administration, liquidation or winding-up; or the date of the company entering administration; or, where the court has made a recognition order in respect of a foreign proceeding under the Cross-Border Insolvency Regulations 2006, the date of opening of the foreign proceeding);
- (iii) as described at paragraph 4.1.1, under section 874 of the Companies Act 2006 a floating charge created by an English company (and in certain historical circumstances, an overseas company) is void against a liquidator, an administrator and a creditor of the company unless registered with the Registrar of Companies pursuant to section 860 of the Companies Act within 21 days of its creation;
- (iv) under paragraph 99 of Schedule B1 to the Insolvency Act 1986, the expenses of an administration, and under section 176ZA of the Insolvency Act 1986, the expenses of a winding-up, may rank ahead of a floating charge;
- (v) under paragraphs 70 and 71 of Schedule B1 to the Insolvency Act 1986, an administrator may seek leave of the court to realise property subject to a charge;
- (vi) under section 127 of the Insolvency Act 1986, in a winding up by a court of a company, any disposition of such company's property (including the creation of a Security Interest) made after the commencement of the winding up is, unless the court otherwise orders, void; and

- (vii) under section 176A of the Insolvency Act 1986, where a floating charge relates to the property of a company which has gone into liquidation, administration or in respect of which there is a provisional liquidator or receiver, the liquidator, administrator or receiver (as applicable) shall make a prescribed part of the company's net property available for the satisfaction of unsecured debts and shall not distribute that part to the persons who purportedly have the benefit of a floating charge, except insofar as such part exceeds the amount required for the satisfaction of the unsecured debts.

4.2.3 In addition to the above, the opinion set out in paragraph 3.1 (*Valid Security Interest*) of this opinion letter is subject to the following:

- (a) the security interest created by a company pursuant to the Agreement may be held to be wholly or partly invalid as a result of any of the following sections of the Insolvency Act 1986 (if the circumstances described in any of these sections is applicable):
 - (i) section 127 (see paragraph 4.2.2(i) above, this being disappplied in the case of financial collateral arrangements under the FCA Regulations);
 - (ii) section 238 which provides that, if during the period of two years prior to going into liquidation or administration, a company has entered into a transaction with any person at an undervalue (which may include the creation of the Security Interest), the court may, on the application of the company's liquidator or administrator, make an order to restore the position to what it would have been if the relevant transaction had not been entered into. A company enters into a transaction at an undervalue if:
 - (a) it makes a gift or otherwise enters into a transaction on terms that provide for the obligor to receive no consideration; or
 - (b) it enters into a transaction for a 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 company.

The court will not set aside the transaction if it is satisfied that:

- (c) the company entered the transaction in good faith and for the purpose of carrying on its business; and
- (d) at the time of entering the transaction there were reasonable grounds for believing that the transaction would benefit the company.

There will be no transaction at an undervalue where the company is solvent at the time of, and after entering into, the transaction;

- (iii) section 239, which provides that, if during the period of six months prior to going into liquidation or administration a company has given a preference to one of its creditors then the court may, on the application of the company's liquidator or administrator, make an order to restore the position to what it would have been if the company had not given the preference. A preference is established where:

- (a) the recipient of the preference is one of the company's creditors, or a surety or guarantor for any debts or other liabilities of the company;
- (b) the company has done anything or suffered anything to be done which, in the event of the obligor going into insolvent liquidation, has the effect of putting the recipient into a better position than he would otherwise have enjoyed; and
- (c) the company giving the preference was influenced by a desire to put the creditor in an improved position.

Further, a preference will be set aside only if the company was influenced in deciding to give it by a desire to produce, in

relation to the other party to the transaction, the effect mentioned in sub-paragraph (b).

The relevant period for giving a preference is extended to two years if it is given to a person who is connected with the company, and there will be a presumption that the company was influenced as mentioned in the previous sub-paragraph. There will be no preference where the company is solvent at the time of, and after giving, the preference.

- (iv) section 245 (see paragraph 4.2.2(ii) above, this being disapplied in the case of financial collateral arrangements under the FCA Regulation); and
 - (v) section 426, which provides that a court with insolvency law jurisdiction in England has a discretion to apply the law of one of a list of specified jurisdictions to the insolvency of an entity if so requested by the competent court of that other jurisdiction. Those specified jurisdictions are currently the other parts of the United Kingdom, the Channel Islands, the Isle of Man, Anguilla, Australia, the Bahamas, Bermuda, Botswana, Brunei, Canada, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Ireland, Malaysia, Montserrat, New Zealand, South Africa, St. Helena, Turks and Caicos Islands, Tuvalu and the Virgin Islands. In exercising its discretion, the English court must have regard to the rules of private international law. In any case where the EU Insolvency Regulation applies and if the specified jurisdiction concerned is any of the Channel Islands, Isle of Man, or Ireland, the English court's powers under section 426 of the Insolvency Act 1986 would be displaced insofar as inconsistent with the EU Insolvency Regulation.
- 4.2.4 Where a Party is not a credit institution, an investment undertaking holding funds or securities for third parties, or a collective investment undertaking, and the centre of its main interests is in an EU Member State other than the United Kingdom or Denmark, the EU Insolvency Regulation will apply. In such a case the English courts have no jurisdiction in respect of insolvency proceedings other than receivership and, where the Party has a sufficient connection to England and Wales, schemes of arrangement, except in a case

where the Party has an establishment (within the meaning in the EU Insolvency Regulation) in this jurisdiction, and then only to implement certain secondary proceedings governed by English law in relation to the assets situated (or deemed under the EU Insolvency Regulation to be situated) in this jurisdiction. Where the EU Insolvency Regulation applies, the law of the Member State opening insolvency proceedings shall determine the conditions for the opening of those proceedings, their conduct and closure and, in particular, this shall determine the rules relating to voidness, voidability or unenforceability of legal acts detrimental to all creditors (except where the person benefitting from such detrimental act provides such act is subject to the law of another EU Member State and that such law does not allow challenge of such act);

However, where secondary insolvency proceedings are opened in this jurisdiction (i.e. in respect of assets located in this jurisdiction), the English courts shall apply English law to such secondary proceedings.

In any event, pursuant to article 5.1 of the EU Insolvency Regulation third parties' rights in rem in respect of assets located in another Member State shall be unaffected by the opening of the proceedings.

- 4.2.5 Under the Cross-Border Insolvency Regulations, a court may recognise a foreign insolvency proceeding, and in consequence of such recognition may limit the application of English insolvency law, or apply certain of such provisions at times, or in circumstances, where they would not otherwise be available. In particular, where the court has made a recognition order in respect of a foreign main proceeding under the Cross-Border Insolvency Regulations in respect of the Counterparty, the effects of an insolvency proceeding will be restricted to assets located in Great Britain.
- 4.2.6 Under article 48(7) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories ("**EMIR**") an amount may be paid direct to a person who is a "client" (as defined in EMIR) by a central counterparty, notwithstanding that that amount, or a sum calculated so as to take account of that amount, is owed to the client by the Defaulting Party. We express no view as to the effectiveness of the Security Interest to apply to any sum owing between the Parties which is, or relates to an amount paid or payable in the future by virtue of article 48(7).

4.3 **Right of re-use**

Regulation 16 of the FCA Regulations provides that, where a security financial collateral arrangement provides for the collateral taker to use and dispose of any financial collateral provided under the arrangement, as if it were the owner of it, the collateral-taker may do so in accordance with the terms of the arrangement. To the extent the non-cash Collateral that is subject to the Security Interest is not a "financial collateral arrangement" pursuant to the FCA Regulations, the Firm would not have the benefit of Regulation 16 with respect to the effectiveness of the Rehypothecation Clause. This might expose the Firm to the risk of successful challenge of the exercise of its purported rights pursuant to the Rehypothecation Clause.

4.4 **Effectiveness of Security**

4.4.1 We express no opinion as to:

- (a) whether any Counterparty has good legal or other title to the assets or rights which are expressed to be subject to the Security Interest, or as to the existence or value of any such assets or rights;
- (b) whether the Security Interest constitutes a legal or equitable security interest or a fixed or specific (rather than a floating) charge;
- (c) whether any events in relation to the Collateral or issuer of Collateral may devalue the Collateral or impair the Firm's ability to enjoy such Collateral or the full value thereof (for example, where such Collateral loses value following a default or failure of the issuer thereof or is compulsorily acquired as a result of a share transfer pursuant to the Banking Act 2009 (the "**Banking Act**") or other nationalisation measure);
- (d) whether the Agreement breaches any other agreement or instrument.

4.4.2 In respect of our opinions at paragraph 3.1.4 (including as applied by paragraph 3.3 to a Counterparty that is not established or resident in this jurisdiction):

- (a) where Insolvency Proceedings under the law of this jurisdiction applies to the Counterparty, the Firm's rights in respect of the proceeds of realisation of the Collateral may rank behind i) expenses (including

without limitation corporation tax) of the relevant Insolvency Proceeding and insolvency officer, ii) preferential debts and iii) rights of unsecured creditors up to £600,000 if the Counterparty's net property is £10,000 or more;

- (b) we express no opinion as to whether any other creditor of, or claimant in respect of, the Counterparty or its assets could assert superior title in respect of the Collateral, for example on the grounds of its prior acquisition of an interest in the Collateral, its acquisition of legal title to the Collateral or its having a fixed charge interest over the Collateral; and
- (c) insofar as the Collateral is located in this jurisdiction, and the firm has not obtained the 'legal estate' in the Collateral, the Firm's priority rights may be displaced by a subsequent purchaser (including a person taking a charge or other interest in the collateral).

4.4.3 In respect of our opinion at paragraph 3.1.4, where Collateral is situated outside this jurisdiction, then the ranking of the Firm's rights under the Security Interest Provisions in respect of the Collateral and the proceeds of realisation thereof compared with other creditors may be further affected or compromised by provisions of the law of, or of laws having effect in, the jurisdiction where such Collateral is located.

4.5 Banking Act 2009

- 4.5.1 The Banking Act contains various provisions which might affect the effectiveness of the Security Interest Provisions. In particular, Part I of the Banking Act provides for various remedies for a failing UK Bank, which include the ability of the Treasury or the Bank of England to cause the transfer of securities issued by a UK Bank or building society, or property of a UK Bank or building society, to another person, by means of a "share transfer order", a "share transfer instrument", or a "property transfer instrument".
- 4.5.2 Section 75 of the Banking Act gives power to the Treasury to change the law (except the Banking Act itself) for the purpose of enabling the powers granted to the FSA, the Treasury and the Bank of England under Part I of the Banking Act to be used effectively. Such changes might affect private law rights and might be used with retrospective effect. Furthermore, under sections 23 and 40,

a share transfer instrument or order, or a property transfer instrument, may include incidental, consequential or transitional provisions which might have an impact on private law rights.

- 4.5.3 A property transfer instrument may apply to only part of a UK Bank's assets and liabilities (such a transfer being referred to as a "partial property transfer"). This may be the case because the property transfer instrument concerned expressly applies to only part of the UK Bank's business or because it is ineffective in relation to foreign property, which may include Transactions, or obligations arising under Transactions, which are governed by the laws of a non-UK jurisdiction. Article 5 of the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 address the risk that a property transfer instrument may have the effect of disassociating secured obligations from security (e.g. transferring the one but not the other), by requiring that liabilities owed to or by the bank and security relating to them may not be separated pursuant to the transfer. However, the remedies for contravention are weak. Therefore, if a property transfer instrument is abused so as to affect the enforceability of the Firm's Security Interest, the Firm may not have adequate remedies on which to rely.
- 4.5.4 Pursuant to section 34(7) of the Banking Act, where a property transfer instrument makes provision in respect of property held on trust, it may also make provision about (a) the terms on which the property is to be held after the instrument takes effect and (b) how any powers, provisions and liabilities in respect of the property are to be exercisable or have direct effect after the instrument takes effect. In particular, where cash collateral that is subject to the Security Interest created pursuant to the Client Money Additional Security Clause is also subject to a statutory trust pursuant to CASS, section 34(7) would give the Bank of England, Treasury or FSA (as the case may be) broad powers to alter the terms on which such assets are held, which may affect the enforceability of the Security Interests.

4.6 Client Assets Rules

- 4.6.1 CASS 6.3.5R provides that, in relation to a third party with which a FSA authorised firm deposits safe custody assets belonging to a client, such firm must ensure that any agreement with that third party relating to the custody of those assets does not include the grant to that party, or to any other person, of a lien or a right of retention or sale over the safe custody assets, or a right of

set-off over any client money derived from those safe custody assets. Where the Counterparty is itself subject to CASS 6, and it posts its own clients' assets as collateral with the Firm, CASS 6.3.5R would raise concerns as to the lawfulness of the creation of, and therefore the enforceability of, any Security Interest over such assets pursuant to the Security Provision.

- 4.6.2 CASS 7A addresses "primary pooling events" and "secondary pooling events". Very broadly, a primary pooling event is a failure of an FSA authorised firm that holds client money whereas a secondary pooling event is the failure of a third party to which client money held by an FSA authorised firm has been transferred. If a Primary Pooling Event occurs in relation to the Firm, or in relation to client money received by the Firm a Secondary Pooling Event occurs, the amount of client money available as Collateral may be reduced owing to a reduction in the Counterparty's own entitlement to such client money.

4.7 **Investment Bank SARs**

Regulation 12 of the Investment Bank SARs provides for a *pro rata* allocation of shortfalls among persons whose securities are held as client assets by an investment bank.

Regulation 12(3) and (4) of the Investment Bank SARs provides that any person with a security interest over securities held in the client omnibus account of an investment bank (which is undergoing an investment bank special administration pursuant to the Investment Bank SARs) on behalf of a particular client shall be entitled to participate in distributions in respect of those securities in accordance with their entitlement as against that particular client, but will also be subject to the sharing of shortfalls, so that such security interest holders shall not be entitled to claim in aggregate in excess of the distribution to which that particular client would have been entitled.

Regulation 12(3) and (4) may be relevant:

- (a) where the Counterparty is an investment bank which is undergoing an investment bank special administration and where the assets over which security has been created pursuant to the Security Interest Provisions are held in such Counterparty's client omnibus account; or

- (b) where the Firm itself is subject to investment bank special administration and has taken security (pursuant to the Security Interest Provisions) over assets held for clients in its own client omnibus account.

If Regulation 12(3) and (4) applies in relation to securities provided to the Firm as Collateral, the amount of such securities available as Collateral may be reduced by reason of the shortfall.

4.8 Dormant Accounts

A bank or building society may be able to transfer the liability it owes to the account holder in respect of an account which has been dormant for a period of 15 years to an authorised reclaim fund in accordance with the provisions of the Dormant Bank and Building Society Accounts Act 2008. Any such transfer would transfer the liability associated with a dormant bank account, but not the account itself. Therefore, where the Security Interest is created over an account (which is dormant for the purposes of the Dormant Bank and Building Society Accounts Act 2008) and the deposit liability is transferred pursuant to such act, the Security Interest would remain over the dormant account and not over the transferred deposit liability. In effect the Firm may lose the benefit of the Security Interest insofar as it applied to the deposit formerly associated with such secured dormant account.

4.9 Other Qualifications

- 4.9.1 Where any party to the Agreement is vested with a discretion or may determine a matter in its opinion, that party may be required to exercise its discretion in good faith, reasonably and for a proper purpose, and to form its opinion in good faith and on reasonable grounds.
- 4.9.2 The opinions expressed in this opinion letter are subject to the effects of any United Nations, European Union or UK sanctions or other similar measures implemented or effective in the United Kingdom with respect to any party to the Agreement which is, or is controlled by or otherwise connected with, a person resident in, incorporated in or constituted under the laws of, or carrying on business in a country to which any such sanctions or other similar measures apply, or is otherwise the target of any such sanctions or other similar measures.

- 4.9.3 Any provision of the Agreement stating that a failure or delay, on the part of any party, in exercising any right or remedy under the Agreement shall not operate as a waiver of such right or remedy may not be effective.

5. ADDRESSEES AND PURPOSE

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,



Clifford Chance LLP

SCHEDULE 1

INDIVIDUALS

Subject to the modifications and additions set out in this Schedule 1 (*Individuals*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Counterparties which are individuals. For the purposes of this Schedule 1 (*Individuals*), an "**individual**" is an individual who has the centre of his or her main interests in this jurisdiction for the purposes of the EU Insolvency Regulation.

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 TERMS OF REFERENCE AND DEFINITIONS

The following additional terms of reference and definitions shall apply:

"**Bills of Sale Acts**" means the Bills of Sale Act 1878 and the Bills of Sale Act (1878) Amendment Act 1882.

2. MODIFICATION TO THE OPINIONS

The opinion at paragraph 3.4 does not apply.

3. ADDITIONAL QUALIFICATIONS

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

- 3.1 Pursuant to section 344 of the Insolvency Act 1986, where a person is engaged in any business and makes a "general assignment" to another person of his existing or future book debts, or any class of them, and is subsequently adjudged bankrupt, the assignment is void against the trustee of his estate as regards any book debts which were not paid before the presentation of the bankruptcy petition, unless the assignment has been registered under the Bills of Sale Acts. The Client Money Additional Security Clause might constitute a charge over, and therefore an assignment of, a class of book debts. If this is the case, the Client Money Additional Security Clause would be void against the trustees of a Counterparty's estate, if it had not been registered properly pursuant to the Bills of Sale Acts. We express no view as to whether the Security Interest should be regarded as a 'general' assignment of book debts in relation to collateral comprised of one or more cash balances.

- 3.2 The lack of a comprehensive registration system in relation to security created by an individual means that it is not possible to assume that significant creditors of the individual will be on notice of any security created by virtue of having checked the individual's records. In addition, registration of a bill of sale in relation to chattels does not constitute constructive or deemed notice to third parties. This means that security created by an individual is likely to be far more vulnerable to other parties taking a legitimate interest in the property concerned.
- 3.3 In a bankruptcy of an individual, any dispositions of the insolvent Party's property (which would include the creation of a security interest pursuant to the Security Provisos) made after the day of presentation of a bankruptcy petition in respect of such Party are void under section 284 of the Insolvency Act 1986 unless the court otherwise orders.
- 3.4 Under section 339 of the Insolvency Act 1986, a transaction entered into by an individual at any time within a specified period ending on presentation of a bankruptcy petition on which the individual is adjudged bankrupt with a person on terms that provide for the bankrupt to receive either no consideration, consideration of marriage or the formation of a civil partnership, or a 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 such individual, may be set aside as a transaction at an undervalue, if at the time the Agreement is entered into that individual was insolvent within the meaning of section 341(3) of the Insolvency Act 1986 or became insolvent within the meaning of that section in consequence of the transaction. Where the bankrupt is an "associate", other than an employee, of the solvent Party, within the meaning of section 435 of the Insolvency Act 1986, insolvency will be presumed for this purpose. Transactions entered into on arm's length terms and at the then prevailing market rates are unlikely to constitute transactions at an under value; however, this matter is a question of fact in each case.
- 3.5 Under section 340 of the Insolvency Act 1986 anything done or suffered to be done by an individual within a specified period ending on the date of the presentation of a bankruptcy petition on which the individual is adjudged bankrupt be set aside as a voidable preference. The thing done or suffered will be liable to be set aside if at the time it was done or suffered that individual was insolvent within the meaning of section 341(3) of the Insolvency Act 1986 or became insolvent within the meaning of that section in consequence of the thing done or suffered, and that thing has the effect of putting any person in a better position, in the event of that individual's bankruptcy,

than that person would have been in if the thing had not been done. However, the court would not make such an order if it was satisfied that the individual who gave the preference was not influenced to give it by a desire to put that person in such better position. Where the bankrupt is an "associate", other than an employee, of the solvent Party, within the meaning of section 435 of the Insolvency Act 1986, such an influence will be presumed for this purpose.

- 3.6 There is provision in the Insolvency Act 1986 for individual voluntary arrangements in respect of individuals to be agreed by creditors of the insolvent Party. A creditor can be bound by the arrangement even if he has not been given notice of the creditors' meeting to approve the arrangement. Approval at the creditors' meeting does not require unanimity of the affected creditors, whether or not present at the meeting.
- 3.7 Where an interim order is made in respect of a Counterparty under section 252 of the Insolvency Act, such order shall impose a moratorium such that during the period for which it is in force, no proceedings, execution or other legal process may be commenced or continued and no distress may be levied against the Counterparty except with the leave of the court.

4. MODIFICATION TO QUALIFICATIONS

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

4.1 The following paragraphs are deemed deleted:

- (a) paragraph 4.1;
- (b) paragraphs 4.2.1 to 4.2.3; and
- (c) paragraph 4.5.

4.2 Paragraph 4.3 shall be deemed deleted and replaced with the following:

"4.3 Right of re-use

Regulation 16 of the FCA Regulations provides that, where a security financial collateral arrangement provides for the collateral taker to use and dispose of any financial collateral provided under the arrangement, as if it were the owner of it, the collateral-taker may do so in accordance with the terms of the arrangement.

However, pursuant to the FCA Regulations, only arrangements to which both parties are non-natural person can be financial collateral arrangements. These arrangements to which an individual is party cannot be financial collateral arrangements. The Collateral is therefore not part of a financial collateral arrangement and regulation 16 of the FCA does not therefore apply.

This exposes the Firm to the risk of successful challenge of the exercise of its purported rights pursuant to the Rehypothecation Clause."

SCHEDULE 2 BUILDING SOCIETIES

Subject to the modifications set out in this Schedule 2 (Building Societies), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Counterparties which are Building Societies. For the purposes of this Schedule 2 (Building Societies), a "**Building Society**" means a building society formed and registered under the Building Societies Act 1986 (the "**Building Societies Act**") or formed under previous building societies legislation and deemed to be registered by the Building Societies Act.

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

1. ADDITIONAL QUALIFICATIONS

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

- 1.1 A Building Society is (until the relevant provisions of the Financial Services Act 2012 come into force) prohibited from creating a floating charge on the whole or part of its undertaking or property by section 9B of the Building Societies Act. Any charge created by a Building Society that is a floating charge, even if it is a financial collateral arrangement, is void. As discussed in paragraph 4.2.1, the Security Interest may be characterised as a floating charge. It is therefore essential that a charge created by a Building Society is a fixed charge created in a manner where the risk of recharacterisation as a floating charge is minimised.

2. MODIFICATIONS TO QUALIFICATIONS

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

- 2.1 References in paragraph 4 to a "*company*" shall be construed so as to read "*Building Society*".
- 2.2 At Paragraph 4.2.1, the words "*If the Security Interest is characterised as a floating charge then the risks set out below might apply:*" and the entirety of paragraphs 4.2.1(a) and (b) shall be deemed deleted and replaced with the words "*If the Security Interest is characterised as a floating charge, then the Security Interest would be void (by virtue of section 9B of the Building Societies Act)*".

- 2.3 The following paragraphs shall be deemed deleted:
- 2.3.1 paragraph 4.1.1;
 - 2.3.2 paragraph 4.1.3(b);
 - 2.3.3 paragraphs 4.2.2(ii), (iii), and (vii);
 - 2.3.4 paragraph 4.2.3(a)(iv).
- 2.4 References to "administration" and "winding up" and their cognate terms include references to building society special administration and building society insolvency respectively (and their cognate terms).

SCHEDULE 3A
OEICS (EXCLUDING UMBRELLA COMPANIES)

Subject to the modifications and additions set out in this Schedule 3A (*OEICs (Excluding Umbrella Companies)*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are OEICs. For the purposes of this Schedule 3A (*OEICs (Excluding Umbrella Companies)*), an "OEIC" means an open-ended investment company (as defined in the Open-Ended Investment Companies Regulations (2001) (the "**OEIC Regulations**")) but excluding umbrella companies (as defined in the OEIC Regulations) which have separate sub-funds (as also defined in the OEIC Regulations).

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 QUALIFICATIONS

1.1 Paragraph 4 shall be construed such as references to a "*company*" shall be read as being to an "*OEIC wound up (or otherwise treated as the context may require) as an unregistered company*" and all references to administration shall be disapplied.

1.2 The following paragraphs shall be deemed deleted:

1.2.1 4.1.1;

1.2.2 4.1.3(a) and (b);

1.2.3 4.2.2(i), (iii) and (v).

SCHEDULE 3B
OEICS (SUB-FUNDS)

Subject to the modifications and additions set out in this Schedule 3B (*OEICs (Sub-Funds)*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Sub-Funds of open-ended investment companies. For the purposes of this Schedule 3B (*OEICs (Sub Funds)*), "**Sub-Fund**" has the meaning given to it in the Open-Ended Investment Companies Regulations (2001) (the "**OEIC Regulations**"). For the purposes of this Schedule 3B (*OEICs (Sub-Funds)*), "**Umbrella Company**" means the umbrella company (as such term is defined in the OEIC Regulations) to which the relevant Sub-Fund pertains.

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

1. ADDITIONAL QUALIFICATIONS

- 1.1 On 20 December 2011 the OEIC Regulations were amended in order to provide for a "protected cell regime" for umbrella companies. Under that regime, each Sub-Fund of an Umbrella Company is generally treated as a separate legal entity, and the assets of a particular Sub-Fund belong exclusively to that Sub-Fund and cannot be used to discharge any liabilities of the Umbrella Company or any other person, except where they were incurred on behalf of (or are attributable to) that Sub-Fund. Regulation 11A(3) of the OEIC Regulations provides that any provision (including a provision of a contract) shall be void to the extent that it is inconsistent with the foregoing.
- 1.2 Accordingly, any security interest or other right arising under the Security Interest Provisions in respect of any Collateral which has been provided from (or is attributable to) one Sub-Fund will not be enforceable in respect of liabilities attributable to another Sub-Fund.
- 1.3 Given the points made above, we consider that a Firm should ensure that the Sub-Fund with which they are entering into Transactions with is clearly identified and that the Agreement clearly provides that it only applies in relation to Transactions entered into in respect of that Sub-Fund. Where the Firm is entering into Transactions with more than one Sub-Fund of an Umbrella Fund, we recommend that separate Agreements are entered into in respect of each Sub-Fund.

2. MODIFICATIONS TO QUALIFICATIONS

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

- 2.1 Paragraph 4 shall be construed so that references to a "*company*" shall be read as being to a "*Sub-Fund or its Umbrella Company wound up (or otherwise treated as the context may require) as an unregistered company*" and all references to administration shall be disapplied.
- 2.2 The following paragraphs shall be deemed deleted:
 - 2.2.1 4.1.1;
 - 2.2.2 4.1.3(a) and (b);
 - 2.2.3 4.2.2(i), (iii) and (v).

SCHEDULE 4

INSURERS

Subject to the modifications and additions set out in this Schedule 4 (*Insurers*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Counterparties which are Insurers. For the purpose of this Schedule 4 (*Insurers*), an "**Insurer**" means either a UK insurer within the meaning of the Insurers (Reorganisation and Winding Up) Regulations 2004 (the "**Insurers Winding Up Regulations**") or an EEA insurer within the meaning of the Insurers Winding Up Regulation which is incorporated and registered under the laws of this jurisdiction or formed under the laws of another jurisdiction (other than Scotland) with a branch or branches established or located in this jurisdiction.

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 TERMS OF REFERENCE AND DEFINITIONS

The following additional term of reference shall apply:

- 1.1 the opinion does not apply to any insurance undertakings that are friendly societies, nor in respect of the Lloyds Insurance Market.
- 1.2 Paragraph 1.4.13 is disapplied for the purposes of this Schedule.

SCHEDULE 5

PARTNERSHIPS

Subject to the modifications and additions set out in this Schedule 5 (*Partnerships*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Counterparties which are "**Partnerships**". For the purposes of this Schedule 5 (*Partnership*), a Partnership means a partnership within the meaning of section 1 of the Partnership Act 1890 or a limited partnership within the meaning of section 4 of the Limited Partnerships Act 1907, and which is organised, established or formed under the laws of this jurisdiction.

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

1. ADDITIONAL QUALIFICATIONS

- 1.1 In the case of Partnerships whose partners are all individuals (as defined at Schedule 1 (*Individuals*)), the additions to the qualifications set out at section 3 of Schedule 1 (*Individuals*) shall apply as if set out herein, with references to 'individual' read as references to the individuals constituting the Partnership.
- 1.2 A general partnership can provide security over the assets of the partnership through a contract with a third party through one or more of its partners. The exception to this granting of security is in relation to floating charges where there are any individual rather than corporate partners. If the partners are incorporated companies, rather than individuals, the registration requirements of the Companies Act as detailed in paragraph 4.1.1 will apply. If the Partnership is a partnership of individuals, and the security is over chattels or book debts, the security must be registered as a bill of sale as detailed in sections 3.1 and 3.2 of Schedule 1 (*Individuals*). This process is incompatible with the granting of floating charges as for each change in the secured property the creditor would need to update the registered schedule of secured assets. Accordingly, we express no view as to the effectiveness of the Security Interest insofar as it creates a floating change in a case of a Partnership of individuals.

2. MODIFICATIONS TO QUALIFICATIONS

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

- 2.1 Paragraph 4 shall be construed such as references to a "*company*" shall be read as being to a Partnership.
- 2.2 The following paragraphs shall be deemed deleted:
 - 2.2.1 4.1.1;
 - 2.2.2 4.1.3(a) and (b); and
 - 2.2.3 4.2.2(iii).
- 2.3 In the case of Partnerships whose partners are all individuals (as defined at Schedule 1 (*Individuals*)), it is possible for the Partnership to implement an insolvency procedures by joint petition by the partners for bankruptcy, without winding-up of the partnership. In such a case, the modifications to the qualifications set out at sections 3 and 4 of Schedule 1 (*Individuals*) shall apply as if set out herein, but with the references to 'individual' read as referring to the partners jointly. Furthermore in such a case, sections 3.6 and 3.7 of Schedule 1 (*Individuals*) shall not apply.

SCHEDULE 6 LLPS

Subject to the modifications and additions set out in this Schedule 6 (*LLPs*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Counterparties which are *LLPs*. For the purposes of this Schedule 6 (*LLPs*), an "**LLP**" means a limited liability partnership within the meaning in section 1 of the Limited Liability Partnerships Act 2000 which is registered under the laws of this jurisdiction.

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 QUALIFICATIONS

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

1.1 Paragraph 4 shall be construed as follows:

- (a) references to an "*English company*" shall be read as being to an "*LLP*";
and
- (b) references to the "*Companies Act 2006*" shall be read as being to the "*Companies Act 2006 (as applied to LLPs by the Limited Liability Partnerships Act 2000, Limited Liability Partnerships Regulations 2001 and other relevant subordinate legislation)*".

SCHEDULE 7
**TRUSTEES OF TRUSTS (OTHER THAN CHARITABLE TRUSTS AND PENSION
SCHEMES)**

Subject to the modifications set out in this Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes)*), the opinions, assumptions and qualifications set out in this opinion letter (as modified and added to pursuant to Schedule 1 (*Individuals*) in the case of a Trustee that is an Individual) will also apply in respect of Counterparties which are acting as Trustees of a Trust (other than a Charitable Trust or Pension Scheme).

For the purpose of this Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes)*), a "**Trust**" means an express trust validly constituted under English law; "**Trustee**" means a person who is an individual, an English company or a foreign company and acting as trustee of a Trust; "**AUT**" means an authorised unit trust scheme (as defined in Section 237(3) of FSMA) in respect of which an authorisation order has been made pursuant to Section 242 of FSMA; and "**Umbrella AUT**" means an AUT which is an umbrella as defined in the FSA Handbook of Rules and Guidance.

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 (or of Schedule 1 (*Individuals*) in the case of a Trustee that is an individual, as applicable).

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 To the extent this opinion relates to Trustees, it is given in respect of a Party which, in entering into the Agreement, acts as Trustee in respect of a single Trust. Where a Party acts as Trustee of more than one Trust, no opinion is expressed in relation to the Agreement except to the extent that the terms of the Agreement apply separately in relation to each Trust. The opinions are not given in respect of any Trust which is a pension scheme, statutory trust, a Charitable Trust, or a trust for sale.

1.2 A Defaulting Party may for the purposes of this opinion be regarded as acting as Trustee only if it comprises a single trustee or a body of trustees, and references in this opinion to a Trustee include a body of persons acting jointly as Trustee.

2. ADDITIONAL ASSUMPTIONS

We assume the following:

- 2.1 That the appointment of each Party acting as a Trustee is valid and effective both under the laws of this jurisdiction and under the terms of the relevant Trust.
- 2.2 That each Party has the capacity, power and authority under the terms of any applicable Trust of which a Party is a Trustee to enter into the Agreement and Transactions; to perform its obligations under the Agreement and Transactions; and that each Party has taken all necessary steps to execute, deliver and perform the Agreement.
- 2.3 That the Trustee(s) has entered into the Agreement and each Transaction and has provided all Collateral in its capacity as Trustee of the same Trust or, in the case of an umbrella AUT, as Trustee of the same sub-fund.

3. ADDITIONAL QUALIFICATIONS

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

- 3.1 In the event that a UK bank that is a Trustee is subject to a "property transfer instrument" as further described in paragraph 4.5.3 of this opinion letter, section 34(7) of the Banking Act 2009 allows the instrument to provide for the transfer to take effect free from any trust, liability or other encumbrance, to allow the terms on which any property is held on trust to be modified or to allow the trust to be extinguished. It is unclear on the face of the Act whether these provisions were intended to extend to client property held on trust by a UK bank as Trustee, or else only to property that the UK bank has itself placed on trust; however, there remains a risk that the provisions could be used to either modify or extinguish a beneficiary's rights in property held on trust on their behalf by a UK bank. This might have the effect of compromising the Security Provisions by requiring the transfer of and release of security over Margin posted by a Trustee that is a UK bank. However, any such use of a property transfer instrument would subject to the beneficiary's right to property under Article 1 of Protocol 1 of the European Convention on Human Rights and in our view this is unlikely to be used to compromise the effectiveness of the Security Provisions in such way.
- 3.2 In relation to AUT, it is possible for the AUT to become subject to a scheme of arrangement pursuant to the provisions of the FSA's COLL sourcebook. In broad terms, a scheme of arrangement for these purposes enables all or part of the property of a fund to become the property of another collective investment scheme, with the consent of a majority of the unit-holders in the AUT. We express no view as to the

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effectiveness of the Security Interest if a scheme of arrangement is implemented in relation to an asset of the AUT comprising Collateral.

SCHEDULE 8 TRUSTEES OF PENSION SCHEMES

Subject to the further additions and modifications set out in this Schedule 8 (*Trustees of Pension Schemes*), the opinions, assumptions and qualifications set out in this opinion letter (as modified and added to pursuant to Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes)*)) will also apply in respect of Counterparties which are acting as Trustees of Pension Schemes.

For the purposes of this Schedule 8 (*Trustees of Pension Schemes*), a "**Pension Scheme**" means an occupational pension scheme within the meaning of section 1 of the Pension Schemes Act 1993 and which is established as a trust under the laws of this jurisdiction and which is not established by or pursuant to any enactment and which is not sectionalised such that the assets of one section of the scheme may not be used for the purposes of another section of the scheme (and for the avoidance of doubt, excluding personal pension schemes within the meaning of section 1 aforesaid).

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 or of Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes)*), as applicable.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

The words "*a pension scheme*," are deemed deleted from Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes)*) for the purpose of this Schedule 8.

1.1 In addition, the following additional terms of reference and definitions shall apply:

"**Regulations**" means the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006;

"**Regulation 2(1)**" means Regulation 2(1) of the Regulations; and

"**PPF**" means the Board of the Pension Protection Fund established under the Pensions Act 2004.

2. ADDITIONAL QUALIFICATION

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

- 2.1 Under regulation 5(1) of the Occupational Pension Schemes (Investment) Regulations 2005, a trustee of a Pension Scheme must not act as a guarantor in respect of the obligations of another person where the liability under the guarantee is liable to be satisfied out of the assets of the Pension Scheme. There is a risk that a security interest granted by a Trustee of a Pension Scheme in respect of the obligations of another person is deemed to have been granted in breach of regulation 5(1) of the Occupational Pension Schemes (Investment) Regulations 2005 and is therefore unenforceable.
- 2.2 Where a party that is the Trustee of a Scheme and the sponsoring employer or employers of the Scheme enter into an insolvency proceeding, the liabilities of the Scheme (i.e. the liabilities of the Trustee of the Scheme) may transfer to the PPF. In such a case, any Agreement entered into by the Trustee would normally transfer by operation of law to the PPF. Regulation 2(1) provides that in such circumstances:

"... [if] the Board considers that a contract relating to the property, rights or liabilities of the [Scheme] contains terms or conditions that the [PPF] considers to be onerous (whether triggered by the insolvency event in relation to the [Scheme] or otherwise) the [PPF] may (a) disapply any such term or condition; or (b) substitute for the term condition, a term or condition that the [PPF] considers to be reasonable."

In principle the PPF could disapply the Security Interest Provisions in an Agreement by use of Regulation 2(1). However, on 8 March 2010, the PPF published guidance on the exercise of its powers under Regulation 2(1) and that guidance contains several statements which, taken together, in our view, make it unlikely that the PPF would make an attempt to disapply the Security Interest Provisions in an Agreement.

Under Regulation 2(1), the test as to whether a contract term is "onerous" is not objective – it is for the PPF to "consider" that the term is "onerous". As such, if the PPF did attempt to apply Regulation 2(1) to the Security Interest Provisions, a Court could not simply overturn this decision on the basis that the Court did not agree. The process for challenge would need to be by way of judicial review, which can only succeed in certain circumstances.

SCHEDULE 9 TRUSTEES OF CHARITABLE TRUSTS

Subject to the further additions and modifications set out in this Schedule 9 (*Trustees of Charitable Trusts*), the opinions, assumptions and qualifications set out in this opinion letter (as modified and added to pursuant to Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes)*)) will also apply in respect of Counterparties which are acting as Trustees of Charitable Trusts.

For the purposes of this Schedule 9 (*Trustees of Charitable Trusts*), a "**Charitable Trust**" means an express trust validly constituted under English law, which is established for a charitable purpose pursuant to the Charities Act 2011 and of which the trustee is a person who is an English company or a foreign company.

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 or of Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes)*), as applicable.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

The words "*a Charitable Trust*," are deemed deleted from Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes)*) for the purposes of this Schedule 9.

2. ADDITIONAL QUALIFICATIONS

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

The Charities Act 2011 grants the Charities Commission certain wide powers, in circumstances where, having instituted an inquiry under section 46 of that Act in relation to a Charitable Trust, it is satisfied that (a) there is or has been misconduct or mismanagement in the administration of the Charitable Trust; or (b) it is necessary or desirable to act for the purpose of protecting the property of the Charitable Trust or securing proper application of the purposes of the Charitable Trust of that property or of property coming to the Charitable Trust. It is possible that action taken by the Charity Commission pursuant to such powers might compromise the effectiveness of the Security Provisions, for example by requiring the release of security over specific assets of the Charitable Trust.

SCHEDULE 10 CHARITABLE COMPANIES

Subject to the additions set out in this Schedule 10 (*Charitable Companies*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Counterparties which are Charitable Companies.

For the purposes of this Schedule 10 (*Charitable Companies*), a "**Charitable Company**" means an English company or a foreign company, which is established for a charitable purpose pursuant to the Charities Act 2011, but excludes a charitable incorporated organisation under Part 11 of the Charities Act 2011.

1. ADDITIONAL QUALIFICATIONS AND MODIFICATIONS TO QUALIFICATIONS

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

The Charities Act 2011 grants the Charities Commission certain wide powers, in circumstances where, having instituted an inquiry under section 46 of that Act in relation to a Charitable Company, it is satisfied that (a) there is or has been misconduct or mismanagement in the administration of the Charitable Company; or (b) it is necessary or desirable to act for the purpose of protecting the property of the Charitable Company or securing proper application of the purposes of the Charitable Company of that property or of property coming to the Charitable Company. It is possible that action taken by the Charity Commission pursuant to such powers might compromise the effectiveness of the Security Provisions, for example by requiring the release of security over specific assets of the Charitable Company.

SCHEDULE 11

LOCAL AUTHORITY AS ADMINISTERING AUTHORITY OF PENSION FUND

Subject to the modifications and additions set out in this Schedule 11 (*Local Authority as Administering Authority of Pension Fund*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of a Counterparty which is a local authority acting as Administering Authority of a pension fund.

For the purposes of this Schedule 11 (*Local Authority as Administering Authority of Pension Fund*), an "**Administering Authority**" has the meaning ascribed to it in the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 (the "**Local Government Pension Scheme Management Regulations**").

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 TERMS OF REFERENCE AND DEFINITIONS

1.1 The following additional terms of reference and definitions shall apply:

"**Statement of Investment Principles**" means a statement of investment principles produced by a Party in its capacity as Administering Authority of a pension fund in order to comply with the regulatory requirements specified in the Local Government Pension Scheme Management Regulations" in respect of such pension fund.

2. ADDITIONAL ASSUMPTIONS

We assume the following.

2.1 That the entry by any Party which is a local authority acting as Administering Authority of a pension fund into the Agreement constitutes an "investment" within the meaning of regulation 3 of the Local Government Pension Scheme Management Regulations and that it has otherwise been entered into in accordance with the procedures under those Regulations.

2.2 That the entry by any Party which is a local authority acting as Administering Authority of a pension fund into the Agreement or any Transaction does not infringe in any way the restrictions on investments set out in Schedule 1 (Table of Limits on Investments) to the Local Government Pension Scheme Management Regulations.

- 2.3 That any Party which is a local authority acting as Administering Authority of a pension fund has produced and maintains in place a Statement of Investment Principles.
- 2.4 That the Agreement and any Transactions entered into by a Party which is a local authority are entered into by such Party in its capacity as and for the purposes of pursuing its function as an Administering Authority of a pension fund and that such Agreement and such Transactions were, at the time such Agreement and such Transactions were entered into and have remained at all times, in compliance with the terms of its Statement of Investment Principles.
- 2.5 That any Party which is a local authority acting as an Administering Authority is, and has at all times subsequent to entering into the Agreement, been the Administering Authority of no more than one pension fund.

3. **ADDITIONAL QUALIFICATIONS**

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

- 3.1 Local authorities may be established under or otherwise have constitutions governed by a range of different statutes, orders and other legislative and non legislative bodies of law documents and measures (the "**Constitutional Laws**"). We have not reviewed any such Constitutional Laws (save to the extent specifically identified in this opinion letter). Any such Constitutional Laws may further restrict the effectiveness of the Security Provisions or have other impacts upon the Agreement and the Parties' rights and obligations thereunder.

**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 a FOA Published Form Agreement expressly contemplates the election of certain variables and alternatives, the Agreements listed above shall be deemed to include any such document in respect of which the parties have made such expressly contemplated elections (and have made any deletions required by such elections, where such deletions are expressly contemplated in the event of such election by the applicable FOA Published Form Agreement).

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) 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 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);
- (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 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).
8. "Two Way Clauses" means each of the Futures and Options Association's Short-Form Two-Way Clauses 2007, the Short-Form Two-Way Clauses 2009, the Short-Form Two-Way Clauses 2011, the Long-Form Two-Way Clauses 2007, the Long-Form Two-Way Clauses 2009 and the Long-Form Two-Way Clauses 2011.

ANNEX 3
NON-MATERIAL AMENDMENTS

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

8. Any change to the Agreement requiring the Non-defaulting Party when exercising its rights under the Security Interest Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.
9. Any change clarifying that the Non-defaulting Party must, or may not, notify the other party of its exercise of rights under the Security Interest Provisions or other provision.