

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

25 February 2013

Dear Sirs

## NETTING ANALYSER LIBRARY

You have asked us to give an opinion in respect of the laws of Estonia ("**this jurisdiction**") in respect of the Security Interests given under Agreements in the forms specified in Annex 1 to this opinion letter (each an "**Agreement**") or under an Equivalent Agreement (as defined below).

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

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

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

### 1. TERMS OF REFERENCE AND DEFINITIONS

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

1.1.1 persons which are **limited liability companies** (in Estonian: *aktsiaselts* or *osajühing*) incorporated under the Commercial Code of 1995; and

1.1.2 **partnerships** (*täisühing*) organised under the Commercial Code of 1995,

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

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

- 1.2.1 **Credit institutions** incorporated under the Credit Institutions Act of 1999 (Schedule A);
- 1.2.2 **Investment firms** incorporated under the Securities Market Act of 2002 (Schedule B);
- 1.2.3 **Insurance companies** incorporated under the Insurance Activities Act of 2005 (Schedule C);
- 1.2.4 **Individuals** acting as merchants (Schedule D);
- 1.2.5 **Asset management companies** incorporated under the Investment Funds Act of 2004 managing UCITS funds or Estonian pension funds (Schedule E);
- 1.2.6 Sovereign and public sector entities, namely **the State, local municipalities** and the **central bank of Estonia** (Schedules F, G and H, respectively),

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

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

- 1.4 In this opinion letter:

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

- 1.4.2 "**Equivalent Agreement**" means an agreement:

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

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

References to the "**Core Provisions**" include Core Provisions that have been modified by Non-Material Amendments;

- 1.4.3 **"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);
- 1.4.4 A **"Non-material Amendment"** means an amendment having the effect of one of the amendments set out at Annex 3;
- 1.4.5 **"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.
- 1.4.6 in other instances other than those referred to at 1.4.5 above, references to the word **"enforceable"** and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy.
- 1.4.7 terms defined or given a particular construction in the Agreement have the same meaning in this opinion letter unless a contrary indication appears;
- 1.4.8 any reference to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been amended or re-enacted on or before the date of this opinion letter;
- 1.4.9 certain terms relating specifically to the Agreement or to the provisions thereof are set out at Annex 2; and
- 1.4.10 headings in this opinion letter are for ease of reference only and shall not affect its interpretation.

## 2. ASSUMPTIONS

We assume the following:

- 2.1 That the Agreements are legally binding and enforceable against both Parties under their governing laws.
- 2.2 That the Security Interest Provisions are enforceable under the governing law of the Agreement to create a Security Interest.
- 2.3 That the Security Interest Provisions are effective under the law of the place where the Collateral is located to create an enforceable security interest.
- 2.4 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Agreement; to perform its obligations under the Agreement; and that

each Party has taken all necessary steps to execute, deliver and perform the Agreement.

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

### **3. OPINIONS**

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

#### **3.1 Valid Security Interest**

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

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

3.1.3 Following exercise of the Firm's rights under the Security Interest Provisions, the 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.

### **4. QUALIFICATIONS**

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

4.1 Save when the Agreement together with Transactions thereunder constitutes a Financial Collateral Arrangement (as defined below), enforceability of the Security Interest in respect of the Collateral may be limited as follows:

4.1.1 After filing for judicial reorganisation and until adoption of reorganisation plan, the Secured Claims will be put on stay and it may affect the Firm's right to enforce the Security Interest (Judicial Reorganisation Act of 2008, § 6 as interpreted in the Supreme Court 9 May 2011 judgement in case No. 3-2-1-25-11 (paragraphs 56-7));

4.1.2 Bankruptcy court may impose injunctions on Counterparty's assets before declaration of bankruptcy of the Counterparty and prohibit disposal of such assets (Bankruptcy Act of 2004, §§ 18 and 20);

4.1.3 All assets belonging to the Counterparty at the moment of declaration of bankruptcy will become part of bankruptcy estate and can be disposed of only by the bankruptcy trustee (Bankruptcy Act of 2004, §§ 35(1) and 36);

4.1.4 The provision of the Security Interest and enforcement of the Security Interest is subject to claw-back with the suspect period ranging from three months to

three years depending on circumstances (Bankruptcy Act of 2004, §§ 110, 113 and 114),

where qualifications in paragraphs 4.1.1 to 4.1.4 may have no extra-territorial application with the exception of qualification in paragraph 4.1.4 which may apply to Collateral located in another EU Member State by virtue of Regulation 1346/2000 (the Cross-border Insolvency Regulation) (Article 5(4) in conjunction with Articles 4(2)(m), 16 and 25).

For the sake of clarity, if the Agreement together with Transactions thereunder constitutes a Financial Collateral Arrangement, this paragraph 4.1 does not apply (based on Article 7 of Directive 2002/47/EC (the “**Financial Collateral Directive**”). It should be noted that Article 7 (‘Recognition of close-out netting provisions’) of the Financial Collateral Directive has not been expressly transposed into laws of this jurisdiction. However, in such situation the courts of Estonia are expected to interpret domestic law in accordance with the EU law. Furthermore, preparatory materials of the Bill implementing the Financial Collateral Directive suggest that Article 7 has been fully transposed into laws of this jurisdiction.

“**Financial Collateral Arrangement**” is an arrangement where Eligible Collateral Provider provides Collateral constituting a financial collateral within the meaning of the Financial Collateral Directive to Eligible Collateral Taker.

“**Eligible Collateral Taker**” means among others the following persons: credit institution, investment firm, asset management company, investment fund, insurance company, sovereign, local or regional government, and central bank (§ 314<sup>1</sup>(1) of the Law of Property Act of 1993 alone and in conjunction with § 6(2)p1 and 2 of the Securities Market Act of 2002).

“**Eligible Collateral Provider**” means in addition to any Eligible Collateral Taker a company which, according to the latest annual report or consolidated accounts, meet at least two of the following criteria: (i) an average number of employees during the financial year exceeds 250, or (ii) the annual balance sheet total exceeds EURm 43, or (iii) the annual turnover exceeds EURm 50 (§ 314<sup>1</sup>(1) of the Law of Property Act of 1993).

If the Firm and the Counterparty meet the requirements set out for an Eligible Collateral Taker and Eligible Collateral Provider respectively and the demand for margin made by the Firm is evidenced in writing, the Security Interest Provisions shall constitute a Financial Collateral Arrangement.

- 4.2 Where the Security Interest Provisions do not constitute a Financial Collateral Arrangement, the demand for margin made by the Firm must be in writing and direct or indirect possession of the Collateral must be transferred for perfection of security interest under the Security Interest Provisions.

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,

**Tark Grunte Sutkiene**

A handwritten signature in blue ink, appearing to be 'Hannes Vallikivi', written over a faint, illegible stamp or background.

Hannes Vallikivi  
Attorney at law

## **SCHEDULE A**

### **Credit institutions**

Subject to the modifications and additions set out in this Schedule A (Credit institutions), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are credit institutions. For the purposes of this Schedule A (Credit institutions), "**Credit institution**" means a credit institution (*krediiasutus*) incorporated and licensed under the Credit Institutions Act of 1999.

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**

The qualifications at paragraph 4 are deemed modified as follows.

The limitation set out in paragraph 4.1.1 is not applicable to Credit institutions. Extra-territorial application of the limitation set out in paragraph 4.1.4 does not apply to Credit institutions.



## **SCHEDULE B**

### **Investment firms**

Subject to the modifications and additions set out in this Schedule B (Investment firms), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are investment firms. For the purposes of this Schedule B (Investment firms), "**Investment firm**" means an investment firm (*investeerimisühing*) incorporated and licensed under the Securities Market Act of 2002.

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**

The qualifications at paragraph 4 are deemed modified as follows.

The limitation set out in paragraph 4.1.1 is not applicable to Investment firms. Extra-territorial application of the limitation set out in paragraph 4.1.4 does not apply to Investment firms.

## **SCHEDULE C**

### **Insurance companies**

Subject to the modifications and additions set out in this Schedule C (Insurance companies), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are insurance companies. For the purposes of this Schedule C (Insurance companies), "**Insurance company**" means an insurance company (*kindlustusandja*) incorporated and licensed under the Insurance Activities Act of 2005.

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**

The qualifications at paragraph 4 are deemed modified as follows.

The limitation set out in paragraph 4.1.1 is not applicable to Insurance companies. Extra-territorial application of the limitation set out in paragraph 4.1.4 does not apply to Insurance companies.

## **SCHEDULE D**

### **Individuals**

Subject to the modifications and additions set out in this Schedule D (Individuals), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are individuals. For the purposes of this Schedule D (Individuals), "**Individual**" means a natural person domiciled in Estonia and acting as merchant.

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 ASSUMPTIONS**

We assume that the Individual is not deemed to be a consumer.

#### **2. MODIFICATIONS TO QUALIFICATIONS**

The qualifications at paragraph 4 are deemed modified as follows.

The limitation set out in paragraph 4.1.1 is not applicable to Individuals.

The carve-out relating to Financial Collateral Arrangement is not applicable to Individuals.

For the sake of clarity, subject to limitation on extra-territorial application, the limitations set out in paragraphs 4.1.2 to 4.1.3 apply to Individuals.

## **SCHEDULE E**

### **Asset management company**

Subject to the modifications and additions set out in this Schedule E (Asset management companies), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are asset management companies managing UCITS funds or Estonian pension funds. For the purposes of this Schedule E (Asset management companies), "**Asset management company**" means an asset management company (*fondivalitseja*) incorporated and licensed under the Investment Funds Act of 2004 managing UCITS funds or Estonian pension funds.

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**

The qualifications at paragraph 4 are deemed modified as follows.

The limitation set out in paragraph 4.1.1 is not applicable to Asset management companies. Extra-territorial application of the limitation set out in paragraph 4.1.4 does not apply to Asset management companies.

## **SCHEDULE F**

### **The State**

Subject to the modifications and additions set out in this Schedule F (the State), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of the Republic of Estonia. For the purposes of this Schedule F (the State), "**State**" means the Republic of Estonia acting through its ministries or other authorised institutions.

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**

Qualifications at paragraph 4 are not applicable to the State.

## **SCHEDULE G**

### **Municipalities**

Subject to the modifications and additions set out in this Schedule G (Municipalities), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Estonian municipalities. For the purposes of this Schedule G (Municipalities), "**Municipality**" means a local government unit (*kohalik omavalitsusüksus*) acting pursuant to the Local Government Act of 1993.

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**

Qualifications at paragraph 4 are not applicable to Municipalities.

## **SCHEDULE H**

### **The Central bank**

Subject to the modifications and additions set out in this Schedule H (the Central bank), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of the Central bank of Estonia. For the purposes of this Schedule H (the Central bank), "**Central bank**" means the Central bank of Estonia (*Eesti Pank*) acting pursuant to the Bank of Estonia Act of 1993.

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**

The limitation set out in paragraph 4.1.1 is not applicable to the Central bank.

For the sake of clarity, the Central bank qualifies as an Eligible Collateral Provider.

**ANNEX 1**  
**FORM OF FOA AGREEMENTS**

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

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

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

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



**ANNEX 2**  
**DEFINED TERMS RELATING TO THE AGREEMENTS**

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

- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.6 (*Security interest*);
  - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.6 (*Security interest*);
  - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.7 (*Security interest*);
  - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.8 (*Security interest*);
  - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.8 (*Security interest*);
  - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.9 (*Security interest*);
  - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.6 (*Security interest*);
  - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.6 (*Security interest*);
  - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.7 (*Security interest*); and
  - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (b) the "**Power to Charge Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.10 (*Power to charge*);
  - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.10 (*Power to charge*);
  - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.10 (*Power to charge*);
  - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.12 (*Power to charge*);
  - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.12 (*Power to charge*);
  - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.12 (*Power to charge*);

- (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.10 (*Power to charge*);
  - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.10 (*Power to charge*);
  - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.10 (*Power to charge*); and
  - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (c) the "**Power of Sale Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.11 (*Power of sale*);
  - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.11 (*Power of sale*);
  - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.11 (*Power of sale*);
  - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.13 (*Power of sale*);
  - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.13 (*Power of sale*);
  - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.13 (*Power of sale*);
  - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.11 (*Power of sale*);
  - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.11 (*Power of sale*);
  - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.11 (*Power of sale*); and
  - (x) in relation to an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (d) the "**Power of Appropriation Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.12 (*Power of appropriation*);

- (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.12 (*Power of appropriation*);
  - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.12 (*Power of appropriation*);
  - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.14 (*Power of appropriation*);
  - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.14 (*Power of appropriation*);
  - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.14 (*Power of appropriation*);
  - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.13 (*Power of appropriation*);
  - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.13 (*Power of appropriation*);
  - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.12 (*Power of appropriation*); and
  - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes);
- (e) the "**Lien Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.13 (*General lien*);
  - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.13 (*General lien*);
  - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.14 (*General lien*);
  - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.15 (*General lien*);
  - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.15 (*General lien*);
  - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.16 (*General lien*);
  - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.12 (*General lien*);

- (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.12 (*General lien*);
  - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.14 (*General lien*); and
  - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as a clause referred to in any of the foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes); and
- (f) the "**Client Money Additional Security Clause**", being:
- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
  - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
  - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
  - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 7.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
  - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
  - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
  - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 6.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);
  - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);
  - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement); and
  - (x) in the case of an Equivalent Agreement, a clause that is identically the same in form and language as the clauses referred to in any of the

foregoing paragraphs (i) to (ix) of this definition (except insofar as variations may be required for internal cross-referencing purposes).

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

### ANNEX 3 NON-MATERIAL AMENDMENTS

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

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