

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

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22 October 2014

Dear Sirs,

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

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

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

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

**1. TERMS OF REFERENCE AND DEFINITIONS**

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

- 1.1.1 persons which are *limited liability companies incorporated by quotas ("Limitada") and joint stock companies ("S.A.")* incorporated under the **Macau Commercial Code**;
- 1.1.2 banks incorporated under the Financial System Act approved by Decree-Law no. 32/93/M, dated 5 July 1993 ("FSA"); and
- 1.1.3 branches in this jurisdiction of foreign banks and other corporations.

1.2 This opinion is also given in respect of Parties that are any of the following, subject to the terms of reference, definitions, modifications and additional assumptions and qualifications set out in the Schedules to this opinion applicable to that type of entity:

- 1.2.1 Macau Financial Intermediaries licensed under the FSA (Schedule 2);
- 1.2.2 Partnerships organised under Sections 331 – 347 of the **Macau Commercial Code** (Schedule 3);

- 1.2.3 Insurance companies incorporated under the Insurance Ordinance, approved by Decree-Law no. 27/97/M dated 30 June 1997 ("IO") (Schedule 4);
- 1.2.4 Individuals over 18 years of age acting as merchants (Schedule 5);
- 1.2.5 Investment Funds incorporated under the Decree-Law no. 83/99/M dated 29 November 1999 ("IMIF") (Schedule 6);
- 1.2.6 Public sector entities with financial autonomy, governed by the Administrative Procedures Code, approved by Decree-Law no. 57/99/M dated 11 October 1999 ("APC"), the Public Financial Administration Regulation, approved by the Administrative Regulation no. 6/2006, dated 24 April 2006 ("PFAR") – ruling the administration, supervision and responsibility for the financial activity of the public sector, including the public institutions with administrative or financial autonomy, and the Decree-Law no. 66/1993 dated 20 December 1993, listing the Macau public entities with financial autonomy (Schedule 7);
- 1.2.7 Charitable Foundations organised under the **Macau Civil Code** (Schedule 8); and
- 1.2.8 Pension funds incorporated and managed pursuant to the **Private Pension Funds Act**, approved by Decree-Law no. 6/99/M dated 8 February 1999 and amended by Law no. 10/2001 dated 2 July 2001 (Schedule 9).

- 1.3 This opinion is given in respect of the FOA Netting Agreement and the Clearing Agreement when the FOA Netting Agreement and the Clearing Agreement are expressed to be governed by English law.
- 1.4 This opinion covers all types of Transaction identified in Annex 2.
- 1.5 This opinion is given in respect of only such of those Transactions which are capable, under their governing laws, of being terminated and liquidated in accordance with the FOA Netting Provision.
- 1.6 The opinions set out in paragraphs 3.7 and 3.8 are given only in relation to Margin which is located outside this jurisdiction.
- 1.7 A person incorporated or organised in this jurisdiction may be a Party to a Clearing Agreement only in the capacity of "Client" (as defined in the FOA Clearing Module or the ISDA/FOA Clearing Addendum). Our opinion does not apply in respect of a person incorporated or organised in this jurisdiction who is Party to a Clearing Agreement as "Firm" (as defined in the FOA Clearing Module) or "Clearing Member" (as defined in the ISDA/FOA Clearing Addendum).
- 1.8 In this opinion, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy.

1.9 A reference in this opinion to a Transaction is a reference, in relation to the FOA Netting Agreement to a Transaction (as defined therein) and, in relation to FOA Clearing Module and ISDA/FOA Clearing Addendum to a Client Transaction (as defined therein).

#### 1.10 **Definitions**

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

1.10.1 "**Insolvency Proceedings**" means the procedures listed in paragraph 3.1 and the particular proceedings applicable to each Party as described in the Schedules hereto;

1.10.2 "**Insolvency Representative**" means a liquidator, administrator, receiver or analogous or equivalent official in this jurisdiction;

1.10.3 A reference to a "**paragraph**" is to a paragraph of this opinion letter; and

1.10.4 A "**suspect period**" is a period prior to bankruptcy or insolvency being declared, during which the bankruptcy/insolvency Court could set aside certain acts or contracts (subject to the verification of the legal requirements the Insolvency Representative of the Macau Counterparty can challenge and declare of no effect, amongst others not relevant, the following suspect acts or contracts), such as payments of non-matured debts or payment of matured debts within one year prior to the Bankruptcy Ruling or declaration of insolvency with amounts that would normally not be used for such settlement (Section 1106, b), Civil Procedures Code) – a "**suspect transaction**".

1.10.5 "**Bankruptcy Ruling**" means the decision rendered by a Court of this jurisdiction declaring a Party bankrupt.

1.10.6 Annex 3 contains further definitions of terms relating to the FOA Netting Agreement and the Clearing Agreement.

#### 2. ASSUMPTIONS

We assume:

2.1 That no provision of the FOA Netting Agreement or Clearing Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect, including by reason of a Mandatory CCP Provision. In our view, an alteration contemplated in Part 2 (Non-material Amendments) of Annex 4 hereto would not constitute a material alteration for this purpose unless the alteration has been set out by us in Section 5 of Annex 5. We express no view

whether an alteration not contemplated in Part 2 (*Non-material Amendments*) of Annex 4 would or would not constitute a material alteration.

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

### 3. OPINION

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

### 3.1 Insolvency Proceedings

The only bankruptcy, composition, rehabilitation (e.g. liquidation, administration, receivership or voluntary arrangement) or other insolvency laws and procedures to which a Party would be subject in this jurisdiction are the following:

Subject to the specifications set out in each of the Schedules hereto, the Insolvency Proceedings to which a Party can be subject in this jurisdiction are set out below.

- 3.1.1 Extrajudicial Liquidation, by appointed liquidators (or the directors) within a maximum term of two years, following dissolution (Section 318 ss., Commercial Code);
- 3.1.2 Judicial Liquidation in view of its dissolution (Section 1034 ss., Civil Procedures Code – “CPC”);
- 3.1.3 Bankruptcy (Section 1043 ss., CPC):
  - (a) The process may be initiated by petition filed within 2 years from the verification of any of the causes of bankruptcy, by any of following:
    - (i) any creditor, irrespective of the nature of its credit and priority – the creditors can only file the petition for bankruptcy based on the incapability of the debtor to satisfy its obligations after the 15 days deadline for the debtor to voluntarily present itself to the competent court and request for a creditors’ assembly;
    - (ii) the Macau Public Prosecutor, within its official powers;
    - (iii) the debtor (individual entrepreneur or corporate entity), after 15 days from the date it failed to satisfy its obligations without filing the application for the assembly of its creditors.
  - (b) The petition requirements will vary depending on the petitioner/applicant (Section 1085 of the CPC) and the grounds may be one of the following:
    - (i) Non-payment of one or more debts that, because of its amount or circumstances, demonstrates the incapability of the debtor to punctually satisfy its obligations;
    - (ii) Evasion by the individual entrepreneur or, in the case of a corporate entity, of its directors and/or other representatives, due to its indebtedness and without appointment of a substitutive representative;
    - (iii) Desertion of the registered office or directorship’s office;
    - (iv) Dissipation/disposal or deviation of assets, simulation of credits or any other abusive procedure revealing the intention of the debtor to dissipate its patrimony and/or become bankrupt.

- (c) As relevant, the submission of a petition for bankruptcy proceedings by a creditor (the law does not distinguish between local and foreign creditors for this purpose) shall be justified on the relevant prerequisites and shall describe the origin, nature and amount of the credit, as well as the need (if any) to have the bankruptcy declared without the prior hearing of the debtor, by providing all the existing evidence and applying for any additional evidence it may require.
- (d) The hearing will take place within 10 days following the petition (if the petition was submitted by the debtor or if it was required and justified not to hear the debtor in advance), or within 10 days of the debtor's reply in the other cases. If sufficient proof of the indebtedness is made, the Bankruptcy Ruling will be granted in writing with the minutes of the hearing, or, if the Judge considers the situation to be complex, it may be given separately in writing within 10 days.
- (e) The Bankruptcy Ruling shall necessarily determine (i) the seizure of all books, accounts and assets of the bankrupt, even if previously seized, pledged or by other means kept by a third party; (ii) the new official address of the bankrupt, (iii) the appointment of a liquidator (the "**Liquidator**") to take over the management and conservation of the bankrupt's documents, assets and others (unless appointed before) and (iv) the deadline for the submission of any claims against the bankrupt's assets. The Bankruptcy Ruling will also cause (v) immediate maturity of all the bankrupt's debts; (vi) ending of the accruement of interests over the bankrupt's debts; (vii) the conversion into Macau local currency (Pataca – for reference as of the date of this opinion letter HKD\$1 = MOP\$1.032) of the amount of any debts in foreign currency, at the official exchange rate of the Bankruptcy Ruling date.
- (f) Upon the Bankruptcy Ruling, creditors may claim their credits against the bankrupt by submitting evidence of debt to the Macau Court, specifying the nature, amount and source of the credit and any existing guarantees (Section 1140, CPC). The deadline established for submission of the petitions will be the one set in the Bankruptcy Ruling, which is published in the Macau Official Gazette, and it will start on the date of such publication.
- (g) The current preferential credits/creditors under Macau law are described and graduated under the following order of privilege (Section 739, CC, ex vi 1152, CPC):
  - (i) Court Expenses in the interest of creditors for the recovery, conservation or liquidation of certain assets - special priority over all others to be paid from the assets subject to recovery, conservation or liquidation (Sections 733 and 738, CC).
  - (ii) Macau Government taxes;

- (iii) Civil liability credits (over the respective insurance payment, if any);
- (iv) Intellectual property rights (over the covered assets);
- (v) Credits with general indistinct privilege, by the following order:
  - i. Personal medical expenses or expenses with dependent relatives for the past 6 months (individual's insolvency);
  - ii. Primary own expenses or expenses with dependent relatives for the past 6 months (upon individuals' insolvency);
  - iii. Employee's credits for their salaries for the past 6 months.

(h) The credits equally privileged shall rank *pari passu* amongst themselves and be paid on a *pro rata* basis. Credits with general indistinct privilege shall not preclude third parties' enforceable rights over the assets covered by the privilege.

Other than as above mentioned, the credits under a Transaction would generally rank at least *pari passu* with all other unsecured creditors, without prejudice to the Title Transfer enforceability opinion set out in paragraph 3.7.

The credits under a Transaction, in bankruptcy proceedings, will be paid from the remainder of the assets (after all privileged credits are paid), on a *pro rata* basis.

#### 3.1.4 Preventive Proceedings (to avoid declaration of bankruptcy)

- a) Judicial composition between creditors proposed by the bankrupt to reduce or modify the total or part of the debtor's obligations, which modification may be limited to a simple moratorium ("Concordata" - Section 1055, ss. CPC);
- b) Creditors' Agreement for the incorporation of a limited liability companies incorporated by quotas ("Limitada") to continue the bankrupt's activity, which quotas are represented by the value of the credits after deduction of the debts of the creditors not subscribing the agreement; the company keep the bankrupt's assets in what exceeds the payment of privileged credits (Section 1075, ss. CPC). It is the same type of company as in paragraph 1.1.1. One solution provided in the bankruptcy proceedings is to create a limited liability company by quotas (the same type as in paragraph 1.1.1) in order to keep the company afloat.

This solution is applicable to all companies/commercial entrepreneurs

that are in bankruptcy proceedings.

- c) Insolvency of debtors who are natural persons and not commercial entrepreneurs, when their debts are higher than their assets (Section 1185, ss. CPC).

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

### 3.2 Recognition of choice of law

- 3.2.1 The choice of English law to govern the FOA Netting Agreement or, as the case may be, the Clearing Agreement will be recognised in this jurisdiction if there is a serious interest of the Parties in such choice or provided that the law chosen has a relevant connection with any of the elements of the Agreement (Section 40, Civil Code – “CC”). If neither Party is incorporated or established in England there should be another relevant connection of the Agreement with such laws, such as the place of execution of the Agreement, Margin location, or a serious interest of the Parties, otherwise the choice of law may not be effective.

The “serious interest” is evaluated on a case by case basis by the Courts of Macau. In our opinion, the experience of the laws of England in the regulation of the FOA Netting Agreements, the FOA Clearing Module or ISDA/FOA Clearing Addendum, as internationally recognized and accepted, will imply that the choice of such laws represent a serious interest of the Parties and recognized as a valid choice of law to govern such agreements with the Macau Counterparty.

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

Nonetheless, if any provision of the FOA Netting Agreement or, as the case may be, of the Clearing Agreement, is considered by a Macau court to be in violation of any of Macau public policy rules and/or principles, then the choice of English law and jurisdiction shall not preclude the application of Macau public policy rules. In our view, the provisions opined on in paragraphs 3.3, to 3.8 of this opinion are not manifestly in violation of with public policy rules of Macau.

The choice of English law will also not exclude the application of Macau laws in matters such as the capacity, authority and insolvency/ bankruptcy of the Macau Counterparties, exclusively governed by Macau laws as the personal law of Macau Parties, as well as in respect of any collaterals under which a

security on assets located in Macau which are subject to registration under Macau laws.

### 3.3 Enforceability of FOA Netting Provision

3.3.1 In relation to a FOA Netting Agreement and in relation to a Clearing Agreement where the Client is a Defaulting Party, subject to paragraph 3.10, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following an Event of Default, including as a result of the opening of any Insolvency Proceedings

- (a) the Non-Defaulting Party would be entitled immediately to exercise its rights under the FOA Netting Provision; and
- (b) the Non-Defaulting Party would be entitled to receive or obliged to pay only the net sum of the positive and negative mark-to-market values of individual Transactions.

We are of this opinion because:

3.3.2 As opined in paragraph 3.2.1 and 3.2.2, the choice of English law to govern the FOA Netting Agreement will be recognised by the Courts in this jurisdiction, subject to the public policy considerations set out therein. Therefore, following an Event of Default which occurs prior to the Bankruptcy Ruling, the FOA Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms to the extent it is immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms under English law.

3.3.3 Furthermore, in our opinion, Macau Courts are likely to uphold and enforce the Single Agreement nature of the FOA Netting Agreement, particularly the application of the same contractual framework linking to the various single transactions entered into to the extent that should an Event of Default occur it may affect the whole of the Transactions then in course between the two parties. The provision of separate netting sets for each CCP service under the Clearing Agreement does not impair in our opinion the single agreement nature of the Clearing Agreement.

In respect of Insolvency Proceedings, when it results from the financial situation of the Defaulting Party that it was clearly unlikely that timely payment by the bankrupt's estate of the contractual obligations under the Transactions subject to Netting would take place, the Netting could be considered prejudicial to the Macau Bankrupt Counterparty's assets for establishing a "preference" which would otherwise not exist. That is so because the Non-Defaulting Party would have to submit the claim of its credits to the Macau Liquidator in the bankruptcy proceedings and the credits would generally rank *pari passu* with other unsecured credits (without prejudice to the Title Transfer enforceability opinion set out in paragraph 3.7), in which case any of the Liquidator or other interested party (such as another creditor) may challenge its

enforceability.

Once a Bankruptcy Ruling has been rendered, the Defaulting Party, Netting and Set-off are no longer possible (Section 1101 CPC) (as described in paragraph 3.10).

Further, there is no rule of the laws of this jurisdiction which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Non-Defaulting Party.

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

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

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

#### **3.5 Enforceability of the FOA Set-Off Provisions**

3.5.1 In relation to a FOA Netting Agreement which includes the FOA Set-Off Provisions, the FOA Set-Off Provisions will be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms, so that following an Event of Default, subject to paragraph 3.10, the Non-Defaulting Party would be immediately entitled to exercise its rights under either or both of the FOA Set-Off Provisions, and in particular so that, upon the exercise of such rights:

- (a) where the FOA Set-Off Provisions include the General Set-Off Clause:
  - (i) the value of any cash balance owed by the Non-Defaulting Party to the Defaulting Party would be set off against the Liquidation Amount (where such Liquidation Amount is owed by the Defaulting Party); or
  - (ii) the value of any cash balance owed by the Defaulting Party to the Non-Defaulting Party would be set off against the Liquidation Amount (where such Liquidation Amount is owed by the Non-Defaulting Party); or

- (b) where the FOA Set-Off Provisions comprise the Margin Cash Set-Off Clause only, the value of any cash margin owed by the Firm to the Client would be set-off against the Liquidation Amount (where such Liquidation Amount is owed by the Client).

We are of this opinion because:

- (c) As opined in paragraph 3.2.1 and 3.2.2, the choice of English law to govern the FOA Netting Agreement will be recognised by the Courts in this jurisdiction, subject to the public policy considerations set out therein. Therefore, following an Event of Default which occurs prior to the Bankruptcy Ruling, the FOA Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms to the extent it is immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms under English law.
- (d) Furthermore, as explained in paragraph 3.3.3, Macau Courts are likely to uphold and enforce the Single Agreement nature of the FOA Netting Agreement, and under the laws of this jurisdiction (Section 838 CC) reciprocal obligations can be fulfilled by way of set-off.

Once a Bankruptcy Ruling has been rendered, the Defaulting Party, Netting and Set-off are no longer possible (Section 1101 CPC) (as described in paragraph 3.10).

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

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

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

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

We are of this opinion because

- (c) the opinion expressed in paragraph 3.5.1(c) applies accordingly;
- (d) there are no rules in the laws of Macau that would prohibit or restrict the FOA Set-Off Provisions in relation to a Clearing Agreement;

Once a Bankruptcy Ruling has been rendered, the Defaulting Party, Netting and Set-off are no longer possible (Section 1101 CPC) (as described in paragraph 3.10).

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

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

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

We are of this opinion because:

- 3.6.1 The opinion expressed in paragraph 3.5.1(c) applies accordingly.
- 3.6.2 Under clause 5.5 of the FOA Clearing Module, Client is not entitled to any set-off rights (as it would be under the FOA Set-Off Provisions) and the Firm's set-off rights are limited to setting off any Available Transaction Termination Amount payable by Client to Firm against any amount owed by Firm to Client under the Clearing Agreement, which is related to the creation

of separate netting sets per Cleared Transaction Set upon a Firm Trigger Event or a CCP Default (respectively clause 5.2 and 5.3 of the Clearing Module).

In this case, with the separation of assets and provisions into different CPP accounts to avoid exposure to positions recorded in different accounts, it is less likely that there may be challenges that assets put in such accounts are not to be used to the preferential payment of the respective CCP transactions, and thus the enforceability of set-off in such cases is not likely to be challenged.

Once a Bankruptcy Ruling has been rendered, the Defaulting Party, Netting and Set-off are no longer possible (Section 1101 CPC) (as described in paragraph 3.10).

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

### 3.7 Enforceability of the Title Transfer Provisions

3.7.1 In relation to a FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions where the Client is a Defaulting Party, following the specification or deemed occurrence of a Liquidation Date, the Non-Defaulting Party would be immediately (and without fulfilment of any further condition) entitled to exercise its rights under the Title Transfer Provisions, so that the Default Margin Amount (as calculated pursuant to the terms of the Title Transfer Provisions) would be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision.

3.7.2 The questions in relation to the FOA Netting Agreement (with Title Transfer Provisions) or a Clearing Agreement which includes the Title Transfer Provisions, (x) whether Transfers of Margin would be characterised as outright transfers of title or creating a security or other interest, and (y) whether Margin Transferred may be used without restriction, would, under the conflicts of laws rules of this jurisdiction, be determined by reference to the governing law of the FOA Netting Agreement (with Title Transfer Provisions) and a Clearing Agreement which includes the Title Transfer Provisions, and/or by reference to the governing law of the place where the Margin is located.

We are of this opinion because, except in the case of "suspect transactions", nothing under the laws of this jurisdiction impede or prohibit the Title Transfer Provisions to operate.

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

In relation:

3.8.1 to a FOA Netting Agreement (with Title Transfer Provisions) and to a Clearing Agreement which includes the Title Transfer Provisions and the Non-Cash Security Interest Provisions (used with or without the Rehypothecation Clause) and/or the Client Money Additional Security Clause - whether the

Default Margin Amount (as calculated pursuant to the terms of the Title Transfer Provisions) would be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision; and

3.8.2 to the Clearing Agreement which includes the Title Transfer Provisions - whether the value of the Transferred Margin would be taken into account as part of the Relevant Collateral Value,

would be determined by reference to the governing law of the FOA Netting Agreement (with Title Transfer Provisions) and a Clearing Agreement which includes the Title Transfer Provisions, or by reference to the governing law of the place where the collateral is located. Further, our opinion at paragraph 3.7 remains true in relation to such a FOA Netting Agreement or Clearing Agreement.

### 3.9 Single Agreement

Under the laws of this jurisdiction it is necessary that the Transactions and the FOA Netting Agreement or, as the case may be, the Clearing Agreement are part of a single agreement in order for the termination and liquidation under the FOA Netting Provision to be enforceable. In our view, the FOA Netting Agreement or, as the case may be, the Clearing Agreement, and Transactions are part of a single agreement.

### 3.10 Automatic Termination

It is necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provision to ensure the effectiveness of netting under the FOA Netting Agreement in the event of bankruptcy, liquidation, or other similar circumstances.

This need arises from the application of Section 1101 of the CPC which provides that, once the Bankruptcy Ruling has been issued, it is not possible to perform the Netting or Set-Off of the values due by each Party to the other any longer. In addition, should the Macau Counterparty be declared bankrupt, FOA's credits would automatically be deemed matured and stop accruing interests as at the date the Bankruptcy Ruling.

### 3.11 Multibranch Parties

We do not consider that the use of the FOA Netting Agreement or, as the case may be, the Clearing Agreement by a Party with branches in a number of different jurisdictions, including some where netting may not be enforceable, would jeopardise the enforceability of the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Title Transfer Provisions in so far as the laws of this jurisdiction are concerned, providing that such FOA Netting Provisions, FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Title Transfer Provisions are enforceable under the jurisdiction where the assets are located. However, an Insolvency Representative of a Defaulting Party could treat the obligations in respect of Transactions entered into by a branch located in Macau separately from other obligations arising under the FOA Netting Agreement or other

Transactions, namely when the Netting, Set-Off and Title Transfer were effected during the “suspect period” and when there are privileged credits in the jurisdiction which settlement is affected by such Netting, Set-Off and Title Transfer provisions.

### 3.12 Insolvency of Foreign Parties

Where a Party is incorporated or formed under the laws of another jurisdiction and an Event of Default occurs in respect of such Party (a "Foreign Defaulting Party") there can be no separate Insolvency Proceedings in this jurisdiction in relation to the Foreign Defaulting Party and the authorities in this jurisdiction would defer to the proceedings in the Foreign Defaulting Party's home jurisdiction, providing that when the Defaulting Party is a Macau branch, the assets of the local branch would primarily cover its own obligations.

### 3.13 Special legal provisions for market contracts

There are no special provisions of law which would affect the opinions given in this paragraph 3 which would apply to a Transaction between two Parties as a result of the fact that such Transaction was entered into on, or is back-to-back with a Transaction entered into on an exchange (in this or another jurisdiction), or is cleared at, or is back-to-back with a transaction to be cleared by a central counterparty.

## 4. QUALIFICATIONS

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

### 4.1 General qualifications

The opinions in this opinion letter are subject to the following qualifications. For purposes of clarity, please be aware that the qualifications apply to the entities referred in 1.2. When the following paragraphs refer to one specific type of entity, it shall be deemed not to comprise the entities in 1.2, but only the one referred to in that paragraph.

#### 4.1.1 Macau Corporate Entities

Capacity of Macau corporate entities to enter into any Transactions results from the principle of speciality that governs corporate legal entities' capacity. According to this principle, legal entities do not have the legal capacity to enter into any type of contracts and to exercise legal acts generally without regard to the subject of such contracts or acts. Instead, legal entities' capacity normally comprises the rights and obligations required, useful or convenient to the pursuance of its business purpose, except for those excluded under statute or that derive from the specific nature of an entity (Section 177, no. 1, ComC).

Accordingly, the capacity of private corporate legal entities shall be assessed from their respective articles of association ("AA"), which may be obtained from the Macau Companies Registry with an updated Certificate of Registration. The AA will also determine the internal form of approval of administration acts and the binding arrangements, also reflected in the

### Certificate of Registration.

It can be said that, normally, when Transactions are entered into by the Macau legal entities for hedging purposes, the Transaction would be within their legal capacity and deemed a normal management act. Instead, when Transactions are entered into for pure speculative purposes they will not be deemed to be in the interest of the entity or covered within the normal management acts of the administration. Normally Transactions should be justified based upon hedging purposes and, to safeguard such justification, approved by resolution of the board of directors - in companies incorporated by shares - or by the shareholders - in companies incorporated by quotas.

#### 4.1.2 Limitations to Enforcement

Up to the present moment no court decision has been taken by Macau Courts nor is there any specific doctrine supporting this matter in Macau, thus there is still some margin of discretion in the judicial approach and qualification of Transactions under a single Agreement nature (within similar terms as a current account) or to qualify each Transaction as a separable transaction with the necessary consequences to be reflected in relation to the validity and enforceability of the Netting Provisions and Set-Off provisions, or even a combination between the two. In our opinion, Macau Courts are likely to uphold and enforce the Single Agreement nature of the FOA Netting Agreement and the Clearing Agreement, particularly the application of the same contractual framework linking to the various single transactions entered into to the extent that should an Event of Default occur it may affect the whole of the Transactions then in course between the two parties. The Netting provisions providing for a single lump-sum termination amount would also be enforceable under Macau laws as made prior to the Macau Counterparty being subject to a Bankruptcy Ruling, unless it results that it was clearly unlikely that timely payment of such contractual obligations by the bankrupt's estate would take place, in which case any of the Liquidator or other interested party (such as another creditor) may challenge its enforceability.

As per the rules of the CC, (Sections 838 ss) when two persons are reciprocally creditor and debtor they can set-off their obligations by means of Netting/Set-Off agreement. The Set-off becomes effective by means of declaration of one party to the other (Section 839). This declaration is ineffective if made subject to a condition (where the declaration is made conditional on the occurrence of a future event) or a term (where the effects of the declaration are delayed until the occurrence of a future event or cease its effects upon the occurrence of such event).

It is also worth noting that the declaration above referred (Section 839 of the CC) is of essence for the Netting and Set-off to be fully enforceable and as a matter of certainty the Firm should be aware that, although the Netting and Set-Off is established in the Agreements without the need for a notice to the Defaulting Party, it is "good policy" to make such declaration for certainty, security and effectiveness of the Netting and Set-off.

Enforcement of the FOA Netting Agreement or the Clearing Agreement against Macau Counterparties may be limited by the effect of laws governing bankruptcy, insolvency, liquidation and reorganization, or by other laws of general application in Macau SAR relating to or affecting the rights of creditors generally.

Generally, regardless of any agreement of the parties to the contrary under the relevant Agreement, by force of Macau statute, once a Bankruptcy Ruling in relation to the Macau Counterparty is in place, the Non-Defaulting Party's credits would automatically be deemed matured and stop accruing interests as at the date of the Bankruptcy Ruling. Also from that date onwards, Macau statute determines that Set-Off is not allowed. Finally, Macau statute determines that debts in a currency other than the Macau currency shall be converted into Macau currency at the exchange rate applicable at the date of the Bankruptcy Ruling.

Regarding insolvency, the same rules and interpretation should apply.

Regarding liquidation, this is a phase which does not entail bankruptcy of the company, thus the rules above referred do not apply. During this stage, there is the obligation for the liquidators to fulfil the companies' obligations, and carry out any businesses already initiated at the date of beginning of liquidation. It can be a decision of the liquidators to file for bankruptcy during the liquidation, if the assets are not sufficient for the company to be able to meet its obligations with its creditors (Section 318 ss of the Commercial Code).

#### 4.1.3 Foreign Judgments Recognition

A judgment obtained in an English or New York court can be enforceable in the courts of Macau, however the enforcement is not automatic. In the absence of any International Treaties or Judiciary Cooperation Agreements between either one of such jurisdictions and Macau, the general rule of the CPC shall apply, determining that a foreign judgment will be enforceable in Macau only after revision and confirmation procedures (Sections 680 and 1199, CPC), by the Macau Court of Appeal, which in principle do not involve re-trial on the merits.

Pursuant to Section 1200, CPC, a judgement obtained against a Macau counterparty in the courts of a foreign jurisdiction would be recognised and enforced by the courts in Macau, provided that:

- (i) There are no doubts on the authenticity of the document supporting the foreign court's decision and the decision is intelligible;
- (ii) The judgment given by the foreign court is final and conclusive;
- (iii) The jurisdiction of the foreign court was not attained through fraud and the decision of the foreign court does not respect to matters of the exclusive jurisdiction of the Macau courts (rights over real estate located in Macau SAR,

capacity and bankruptcy of Macau counterparties and matters deemed of public interest);

(iv) There is no previous judgment of, or proceedings pending in Macau courts between the same parties to decide on the same matter as that decided by the foreign court, except if the foreign court reserved the jurisdiction;

(v) The defendant was properly served and the right to contradict and to equal treatment of the parties within the foreign proceedings was observed; and

(vi) The recognition or enforcement of the foreign judgment in Macau would not be contrary to public policy in Macau.

A judgment issued by a foreign court would normally be enforced upon official verification of the non-existence of the requirements referred above, which assessment shall be made officially by the Macau Court. Upon initial verification of the enforcement requirements, the Macau Counterparty is summoned and has the right to oppose solely based upon the referred arguments, in which case the revision and confirmation will no longer be just formal but it will include a retrial on the merits (Section 1202, no.2, CPC).

#### 4.1.4 Reasonable use of discretion

Where a party is vested with discretion or may determine a matter in its opinion, Macau law requires that such discretion be exercised reasonably or that such opinion is based upon reasonable grounds.

#### 4.1.5 Limitations to Enforcement on currency differences

Clauses providing for a separate cause of action in respect to the negative difference between the original currency of an obligation and the payment received in settlement in other currency (judgement currency), may be deemed unenforceable in Macau courts to the extent that under the law of the jurisdiction where the proceedings were filed it was possible for the Firm to claim the obligation in the original currency, as is the case in Macau jurisdiction, because it shall be deemed that any award made by a court of competent jurisdiction in respect to an obligation at matter shall totally cover the obligation claimed.

#### 4.1.6 Risk of Recharacterisation

Following exercise of the Firm's rights under the Non-Cash Security Interest Provisions, the ranking of the Firm's rights to the proceeds of realisation of the Collateral in relation to the interests of the Counterparty and any other person would be a matter to be determined under the law of the place where the Collateral is situated, or subject to registration, provided that the rights under the Non-Cash Security Interest Provisions are fully recognized and enforceable in such jurisdiction, or otherwise if falling under a "suspect

period", as defined under paragraph 1.10.4, there may be the following risk:

- a) That the Liquidator of the Defaulting Party may void the acts or contracts proven to have been executed or undertaken *mala fide* and to prejudice other creditors' rights (Sections 1105 and 1106 of the CPC and Section 605 CC). Proof of prejudice to the bankrupt Defaulting Party's assets and consequently to other creditors' rights may be made by demonstrating that it was clearly unlikely that timely payment of the underlying contractual obligations would have otherwise taken place and that such transfer was excessive in relation to the value of the obligations to be fulfilled and may therefore be seen as favouring of a certain creditor – the Non-Defaulting Party. If the Liquidator is able to make such proof in relation to any transfer of Collateral, then the transferred assets may be attached to the bankrupt's estate.
- b Under Macau bankruptcy legal provisions (Sections 1043 to 1184 CPC) there are various levels of "operations" that may be qualified as "suspect transactions", such as (i) payments of non-matured debts or payment of matured debts within the year preceding the Bankruptcy Ruling with amounts that would normally not be used for such settlement, (ii) the obligations undertaken by the Transferor/ bankrupt during the 2 years preceding the Bankruptcy Ruling, if manifestly exceeding the obligations undertaken by the other party, or (iii) real guarantees (such as pledge over assets located in or subject to registration in Macau) granted by title executed subsequently to the date of the guaranteed obligation, within the year preceding the Bankruptcy Ruling, or the guarantees executed simultaneously with the underlying obligations within the 90 days preceding the Bankruptcy Ruling.

Transactions during the "suspect period" are under a legal assumption of being made "*mala fide*". If any creditor or the liquidator opposes to a Transaction by proving that such Transaction effectively prejudiced other creditors' rights, the relevant transferred assets will revert to the "bankrupt's estate". Only those Transactions falling under the definition of "suspect transactions" as set out in paragraph 1.10.4 would be affected.

#### 4.1.7 Netting following commencement of Insolvency Proceedings

Where an obligation has been entered into (including under a Transaction or a transfer of Margin under the Title Transfer Provisions) after the commencement of Insolvency Proceedings in relation to a Party, any amount which is due in respect of such an obligation may not be capable of inclusion in the netting under the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, or a set-off under the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision, but this would not impair the effectiveness of the netting under the FOA Netting Provision, the Clearing Module Netting Provision, the

Addendum Netting Provision, or a set-off under the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision in respect of amounts due in respect of Transactions entered into before the commencement of such Insolvency Proceedings.

#### 4.1.8 Non-mutual obligations

If the obligations under the FOA Netting Agreement or, as the case may be, the Clearing Agreement are not "mutual" between the Parties they may not be eligible for inclusion in a netting or set-off pursuant to the FOA Netting Provision, the FOA Set-Off Provisions or the Clearing Module Set-Off Provision. For these purposes, under the laws of this jurisdiction, obligations would not be regarded as "mutual" only if one of the Parties would be prevented from exercising the rights awarded to it under mandatory provisions of the CC in the event of non-performance, delayed performance or defective performance of a contract and such non-performance, delayed performance or defective performance was caused by gross negligence or wilful default of the other Party (Section 798 CC). These rights are essentially the right to terminate if the other Party has definitely breached or refused to perform the contract and the right to be compensated for losses in case of default.

However, the inclusion of amounts in respect of non-mutual obligations would not impair the effectiveness of the netting under the FOA Netting Provision or a set-off under the FOA Set-Off Provisions or the Clearing Module Set-Off Provision in respect of amounts due in respect of Transactions which are mutual.

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

*This opinion is given for the sole benefit of FIA Europe and members of FIA Europe (other than associate members) and their affiliates which have subscribed to FIA Europe's opinions library and whose terms of subscription give them access to this opinion (as evidenced by the records maintained by FIA Europe and each a "subscribing member").*

*This opinion may not, without our prior written consent, be relied upon for any other purpose or be disclosed to or relied upon by any other person save that it may be disclosed without such consent to:*

- a) any person to whom disclosure is required to be made by applicable law or court order or pursuant to the rules or regulations of any supervisory or regulatory body or in connection with any judicial proceedings;*
- c) the officers, employees, auditors and professional advisers of any addressee or any subscribing member; and*
- d) any competent authority supervising a subscribing member in connection with their compliance with their obligations under prudential regulation*

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

We accept responsibility to FIA Europe and the subscribing members in relation to the matters opined on in this opinion. However, the provision of this opinion is not to be taken as implying that we assume any other duty or liability to the subscribing members. The provision of this opinion does not create or give rise to any client relationship between this firm and the subscribing members.

Yours faithfully,



Rita Martins



Julia Brockman

## SCHEDULE 1

### Macau Banks/ Financial Institutions

Subject to the modifications and additions set out in this Schedule 1 – Macau Banks, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Macau Banks. For the purposes of this Schedule 1, "**Macau Banks/ Financial Institutions**" means "an undertaking whose principal activity is to grant credit facilities, to acquire holdings, to engage in investment activities, or to act as intermediary in the money, financial or foreign exchange markets" (Section 1 (a), FSA) and any agency, branch, or office of representation of overseas banks (Section 1 e) f) and g).

Macau Banks/ Financial Institutions are governed by the terms of the FSA and subject to the supervision of the Monetary Authority of Macau –"AMCM".

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

Paragraph 1.10.1 is deemed deleted and replaced with the following:

*"Insolvency Proceedings" means the procedures listed in paragraph 3.1, with the following addition/modification of Schedule 1 – Macau Banks:*

*"Only the bankruptcy proceedings described in 3.1.3 apply to Macau licensed Banks and branches of overseas Banks, with the particularities of the statutory recovery procedures described in the FSA"*

#### 2. MODIFICATIONS TO OPINIONS

On the basis of the terms of reference and assumptions and subject to the qualifications (in each case set out in this opinion letter as modified, or added to, by this Schedule 1), we are of the following opinion.

Paragraph 3.1 is deleted and replaced with the following:

#### **Insolvency Proceedings: Banks**

3.1 The only Insolvency Proceedings to which a Party which is a Macau Bank or Branch of an overseas Bank could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

*"Bankruptcy as described in 3.1.3, subject to the following statutory conservatory measures:*

*Intervention in the management by the regulatory entity (AMCM) as a bankruptcy prevention proceeding.*

*Whenever the situation of a credit institution is so unstable that it may jeopardize the fulfilment of its obligations to depositors or other creditors, or if it puts at risk the confidence in the financial system, by initiative of the Chief Executive of Macau and upon advice from AMCM, one or more delegates or an administrative committee may be appointed for this purpose.*

*From the moment when intervention begins and until it has ceased, it shall not be possible to file for or order bankruptcy, nor to sign any creditors' agreements unless so requested by the delegate or delegates or the administrative committee or unless they do not oppose the Bankruptcy Ruling or the signing of creditors' agreement. When intervention has been implemented, the period for the legal summons of the creditors under the preventive means to avoid bankruptcy shall only end thirty days after the intervention has been lifted (Section 97).*

*Intervention is deemed to have ended upon expiry of the term of appointment of the delegates or members of the administrative committee expires or a final judicial decision confirms the bankruptcy covenant, creditors' agreement or Bankruptcy Ruling. If, after intervention has been implemented, an application is made for a judicial summons of the creditors in order to prevent bankruptcy, the duration of appointment of the delegate or delegates or administrative committee shall be automatically extended until judicial confirmation of the bankruptcy covenant, other voluntary agreement or the Bankruptcy Ruling is not subject to appeal.*

*The above provisions shall apply, with the necessary modifications, to Macau branches of banks incorporated overseas. In the case of the universal liquidation of a credit institution incorporated overseas, the Liquidators of the local branch may propose to a meeting of the creditors that they join this procedure, but the transfer of any assets or local property rights is subject to prior authorization from AMCM and shall only be granted after all debts with the Administration of Macau have been settled. It is a form of stabilizing the system or a bankruptcy prevention proceeding. Primarily, to avoid bankruptcy or to avoid this bankruptcy to damage the financial system.*

Paragraph 3.12 shall therefore be modified to include the following reference:

*"In the case of the universal liquidation of a credit institution incorporated overseas, the Liquidators of the local branch may propose to a meeting of the creditors that they join this procedure, but the transfer of any assets or local property rights is subject to prior authorization from AMCM and shall only be granted after all debts with the Administration of Macau have been settled."*

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

### 3. ADDITIONAL QUALIFICATIONS

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

  


**4.1.9 Universal Liquidation of Company incorporated overseas and transfer of assets**

*In the case of the universal liquidation of a credit institution incorporated overseas, the Liquidators of the local branch may propose to a meeting of the creditors that they join this procedure, but the transfer of any assets or local property rights is subject to prior authorization from AMCM and shall only be granted after all debts arising out of the Macau branch activity have been settled."*

**4. MODIFICATIONS TO QUALIFICATIONS**

4.1.1. *Macau banks and Macau branches of foreign banks are ruled by the FSA, as mentioned above, thus any limitation to their entering into Transactions would result from the FSA and/or their own AA. Macau Banks are expressly authorized as investors in their own name, as well as on behalf of third parties. They are generally authorised to enter into Transactions with any entity, onshore or offshore, subject to the observation of prudential rules, such as minimum liquidity requirements, minimum solvency ratio and capital adequacy ratio, as defined by supervising entity AMCM from time to time. The degrees of risk to be undertaken by Banks are also defined by notices of AMCM issued from time to time, also depending on the financial regulation of the Counterparties with whom the local Banks deal and depending if the securities are transacted in international stock exchanges or not.*

## SCHEDULE 2

### **Macau Investment Brokers (Macau Financial Intermediaries)**

1. Macau Financial Intermediaries are licensed in Macau pursuant to the FSA, Sections 116 – 120 and governed also by various other sections of the FSA, which application is extended to them *ex vi* Section 120.

They have a limited scope of activity, being only authorized to purchase or sell, on behalf of third parties, securities and other instruments transacted in the money, financial or foreign exchange markets, or to accept investors' orders relating to these instruments. In the pursuance of their activity they are subject to the supervision of the Monetary Authority of Macau – AMCM.

2. Accordingly, Macau Financial Intermediaries would not have the capacity to enter into Transactions under their own name but solely on behalf of third parties according to their respective instructions and authority given to them by the financial investors and thus they should be excluded from the possible Macau Counterparties to enter into the Agreement and Transactions.
3. We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, without the need for any additions.”

### SCHEDULE 3

#### Macau Insurance Companies

Subject to the modifications and additions set out in this Schedule 3 – Macau Insurance Companies, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Macau Insurance Companies. For the purposes of this Schedule 3 – “**Macau Insurance Companies**” means “*entities duly licensed in Macau to perform insurance activity*”.

Insurance companies are governed by the Insurance Ordinance (“IO”) and subject to authority of the Insurance Supervision Department of AMCM, which is also expressed by the Notices published and circulars addressed from time to time to the entities subject to its supervision.

Although Macau Insurance Companies are not prohibited from entering into Transactions, Section 4, IO states that the sole object of insurers shall be to carry on the activity referred to in Section 2 paragraph a), IO, as follows:

“*In this Ordinance, unless the context otherwise requires:*

- a) Insurance activity - means the regular performance of acts relating to the acceptance and fulfillment of insurance or reinsurance contracts or insurance operations, including any related or supplementary acts and contracts, namely those relating to salvage, reconstruction of and repair to damaged immovable property and vehicles, maintenance of clinical services and application of technical provisions, reserves and capital, excluding insurance intermediary business, under the terms of the applicable legislation;*
- h) Insurance operations - means the management of pension funds and operations relating to capitalisation;”*

Accordingly, insurance companies are restricted to the application of technical provisions, reserves and capital, for the purpose of hedging its risks, subject to the limits to the definition of the assets that guarantee the technical reserves, imposed by the insurance regulator (the Insurance Department of AMCM) from time to time by Notice (as determined in the Notice No. 004/2012-AMCM). On the other hand, while a manager of a pension fund a Macau insurance company may also invest in Transactions (as stated in Notices nos. 013/2001 and 014/2001-AMCM) strictly for the purpose of hedging its positions, without leverage.

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

Paragraph 1.10.1 is deemed deleted and replaced with the following:

“*Insolvency Proceedings*” means the procedures listed in paragraph 3.1, with the additions/ modification of Schedule C – Macau Insurance Companies;

*"Only the liquidation and bankruptcy proceedings described in 3.1.1, 3.1.2 and 3.1.3 apply to Macau Insurance Companies or branches of Insurers, with the particularities of the statutory recovery procedures and liquidation described in the IO."*

## **2. ADDITIONAL ASSUMPTIONS**

We assume the following:

*"2.10 That in entering into the Agreement the Counterparty respects the limits to the definition of the assets that guarantee the technical reserves, and that the Transactions are entered into solely for the purposes of hedging the management risks."*

## **3. MODIFICATIONS TO OPINIONS**

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

Paragraph 3.1 is deleted and replaced by the following:

### **Insolvency Proceedings: Macau Insurance Companies**

3.1 The only Insolvency Proceedings to which a Party which is a Macau Insurance Company could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

*"Liquidation and bankruptcy proceedings described in 3.1.1, 3.1.2 and 3.1.3 apply to Macau Insurance Companies or branches of Insurers, with the particularities of the statutory recovery procedures and liquidation described in the IO"*

*Intervention in the management by the regulatory entity (AMCM), as a bankruptcy prevention proceeding:*

*Where as a result of the application of the financial recovery plans pursuant to the provisions of Articles 67 and 71, or as a consequence of non-compliance with the same, the insurer fails repeatedly to present sufficient financial guarantees according to the terms of the Insurance Ordinance, the Chief Executive of Macau on advice from AMCM, may suspend the authorization of the Insurance Company to enter into any new contracts or to carry out new insurance operations, prohibit or restrict free disposal of the insurer's assets, prohibit the commercialisation of new products and nominate one or more delegates or an administrative committee.*

*The seriousness of the financial situation of an insurer may determine, as a sequence of the terms of intervention, the revocation of the authorisation to conduct the respective activity. The revocation of authorisation shall determine the liquidation of the insurer.*

*The appointment of one or more delegates or of the administrative committee shall*

*determine the suspension of all the measures against the insurer, including fiscal executions and those which relate to the collection of preferential or privileged credits. The Chief Executive of Macau shall define the powers, effects and the remuneration of the delegate or of the administrative committee and the period of intervention by Order published in the Official Gazette.*

#### Winding-up and liquidation of Macau Insurance Companies

In case of winding up, the credits arising from insurance contracts or operations enjoy credit privilege over movable or immovable assets pertaining to the technical reserves and shall be graded in the first position.

Paragraph 3.1.1 shall be completed as follows:

#### *“Procedure for extrajudicial liquidation*

*The liquidators shall be appointed by the Chief Executive of Macau or, in the absence of such appointment, the members of the Board of Directors will become the liquidators, empowered to conduct all acts necessary for the winding up, during the time fixed for the winding-up. The Chief Executive of Macau will also approve the final accounts and the report prepared by the liquidators (Section 116, IO).*

*The winding up of the branches of insurers with head office overseas, including the nomination of the respective liquidator, shall be communicated to AMCM within a period of 3 working days from the date of occurrence of any of the said events. This procedure shall apply solely to the operations relating to Macau and the assets pertaining to such operations, irrespective of their location.*

*The insurers in the process of winding up shall not undertake new insurance operations or effect new contracts, renew or extend the existing policies or increase the respective amounts.*

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

#### **4. MODIFICATIONS TO QUALIFICATIONS**

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

*“4.1.1 Macau Insurance Companies only have the capacity to enter into Transactions for the purpose of hedging its risks, subject to the limits to the definition of the assets that guarantee the technical reserves, imposed by the Insurance Supervision Department of AMCM from time to time by Notice, and, while managers of a Macau pension fund also strictly for the purpose of hedging the fund's assets and respective risks.”*

## SCHEDULE 4

### Macau Partnerships

Subject to the modifications and additions set out in this Schedule 4 Macau Partnerships, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Macau Partnerships. For the purposes of this Schedule 4 "Macau Partnerships" means a *commercial enterprise in which the responsibility is non-limited and in which partners are before its creditors, fully and subsidiary responsible for the enterprise, and equally amongst them.*

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

Paragraph 1.10.1 is deemed deleted and replaced with the following:

*"Insolvency Proceedings" means the procedures listed in paragraph 3.1, with the following addition/modification:*

*"Only the liquidation and bankruptcy proceedings described in 3.1.1, 3.1.2 and 3.1.3 apply to Macau partnerships"*

#### 2. MODIFICATIONS TO OPINIONS

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

Paragraph 3.1 is deleted and replaced with the following:

#### Insolvency Proceedings: Macau Partnerships

3.1 The only Insolvency Proceedings to which a Party which is a Macau Partnership could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

*"Only the liquidation and bankruptcy proceedings described in 3.1.1, 3.1.2 and 3.1.3 apply to Macau partnerships."*

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

#### 3. ADDITIONAL QUALIFICATIONS

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

#### **4.1.10 Personal and real estate guarantees**

*Pursuant to Section 177/3 ComC it is forbidden to the companies to give personal or real estate guarantees to third parties debts, unless there is a company's self-interest expressed in a reasoned declaration by the Board of Directors in written form.*

### **4. MODIFICATIONS TO QUALIFICATIONS**

Furthermore, the qualifications at paragraph 4.1.1 are deemed modified as follows:

*4.1.1 Capacity of Macau corporate entities (including Macau Partnerships) to enter into Transactions, results from the principle of speciality that governs corporate legal entities' capacity. According to this principle, legal entities do not have the legal capacity to enter into any type of contracts and to exercise legal acts generally without regard to the subject of such contracts or acts. Instead, legal entities' capacity normally comprises the rights and obligations required, useful or convenient to the pursuance of its business purpose, except for those excluded under statute or that derive from the specific nature of an entity.*

*Accordingly, the capacity of private corporate legal entities shall be assessed from their respective articles of association ("AA"), which may be obtained from the Macau Companies Registry with an updated Certificate of Registration. The AA will also determine the internal form of approval of administration acts and the binding arrangements, also reflected in the Certificate of Registration.*

*It can be said that, normally, when Transactions are entered into by the Macau legal entities for hedging purposes, the transaction would be within their legal capacity and deemed a normal management act. Instead, when Transactions are entered into for pure speculative purposes they will not be deemed to be in the interest of the entity or covered within the normal management acts of the administration. Normally Transactions should be justified based upon hedging purposes and, to safeguard such justification, approved by one director. All partners are directors and all have, if no contrary clause is in the AA, equal and independent powers. The director (any of them) can bind the partnership with its signature, and other directors can oppose to the decisions of others, and the majority of directors decides on this opposition (Section 346, ComC).*

*Furthermore, these partnerships are dissolved if the number of partners comes down to one, within 3 months from this reduction (Section 347, no.1, ComC).*

## SCHEDULE 5

### Macau Individuals

Subject to the modifications and additions set out in this Schedule 5 – Macau Individuals, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Macau Individuals. For the purposes of this Schedule 5, "Individuals" means "*natural persons over 18 years of age, which are Macau permanent residents and exercising their activity in Macau as individual entrepreneurs.*"

The capacity of the individual entrepreneur is regulated by the terms of the CC and the responsibility for the debts of the commercial entrepreneur is set in the Macau Commercial Code.

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

Paragraph 1.10.1 is deemed deleted and replaced with the following:

*"Bankruptcy Proceedings" means the procedures listed in paragraph 3.1.3."*

#### 2. MODIFICATIONS TO OPINIONS

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

Paragraph 3.1 is deleted and replaced with the following:

#### Insolvency Proceedings: Macau Individuals

3.1 The only Insolvency Proceedings to which a Party which is a Macau Individual could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

*"3.1.3 Bankruptcy (Section 1043 ss., CPC):*

*The process may be initiated by petition filed within 2 years from the verification of any of the causes of bankruptcy, by any of following:*

*(a) any creditor, independently of the nature of its credit and priority – the creditors can only file the petition for bankruptcy based on the incapability of the debtor to satisfy its obligations after the 15 days deadline for the debtor to voluntarily present itself to the competent court and request for a creditors' assembly;*

*(b) the Macau Public Prosecutor, within its official powers;*

*(c) the debtor (individual entrepreneur or corporate entity), after 15 days from the date it failed to satisfy its obligations without filing the application for the assembly of its creditors.*

*The petition requirements will vary depending on the petitioner/applicant (Section 1085 of the CPC) and the grounds may be one of the following:*

*(a) Non-payment of one or more debts that, because of its amount or circumstances, demonstrates the incapability of the debtor to punctually satisfy its obligations;*

*(b) Run-off by the individual entrepreneur or, in the case of a corporate entity, its directors and/or other representatives, due to its indebtedness and without appointment of a substitutive representative;*

*(c) Desertion of the registered office or directorship's office;*

*(d) Dissipation/disposal or deviation of assets, simulation of credits or any other abusive procedure revealing the intention of the debtor to dissipate its patrimony and/or become bankrupt.*

*As relevant, the submission of a petition for Bankruptcy proceedings by a Creditor (the law does not distinguish between local and foreign creditors for this purpose) shall be justified on the relevant prerequisites and shall describe the origin, nature and amount of the credit, as well as the need (if any) to obtain the Bankruptcy Ruling without the prior hearing of the debtor, by providing all the existing evidence and applying for any additional evidence it may require.*

*The hearing will take place within 10 days following the petition (if the petition was submitted by the debtor or if it was required and justified not to hear the debtor in advance), or within 10 days of the debtor's reply in the other cases. If sufficient proof of the indebtedness is made, the Bankruptcy Ruling will be granted in writing with the minutes of the hearing, or, if Mr. Justice considers the situation to be complex, it may be given separately in writing within 10 days.*

*The Bankruptcy Ruling shall necessarily determine (i) the seizure of all books, accounts and assets of the bankrupt, even if previously seized, pledged or by other means kept by a third party; (ii) the new official address of the bankrupt, (iii) the appointment of a Liquidator (the "Liquidator") to take over the management and conservation of the bankrupt's documents, assets and others (unless appointed before) and (iv) the deadline for the submission of any claims against the bankrupt's assets. The Bankruptcy Ruling will also cause (v) immediate maturity of all the bankrupt's debts; (vi) ending of the accrued interests over the bankrupt's debts; (vii) the conversion into Macau local currency (Pataca – for reference presently HKD\$1 = MOP\$1.032) of the amount of any debts in foreign currency, at the official exchange rate of the Bankruptcy Ruling date.*

*Upon the Bankruptcy Ruling, creditors may claim their credits against the bankrupt by submitting evidence of debt to the Macau Court, specifying the*

*nature, amount and source of the credit and any existing guarantees (Section 1140, CPC). The deadline established for submission of the petitions will be the one set in the Bankruptcy Ruling, which is published in the Macau Official Gazette, and it will start on the date of such publication.*

*The current preferential credits/creditors under Macau law are described and graduated under the following order of privilege (Section 739, CC, ex vi 1152, CPC):*

*(a) Court Expenses in the interest of creditors for the recovery, conservation or liquidation of certain assets - special priority over all others to be paid from the assets subject to recovery, conservation or liquidation (Sections 733 and 738, CC).*

*(b) Macau Government taxes;*

*(c) Civil liability credits (over the respective insurance payment, if any);*

*(d) Intellectual property rights (over the covered assets);*

*(e) Credits with general indistinct privilege, by the following order:*

*i. Personal medical expenses or expenses with dependent relatives for the past 6 months (individual's insolvency);*

*ii. Primary own expenses or expenses with dependent relatives for the past 6 months (upon individuals' insolvency);*

*iii. Employee's credits for their salaries for the past 6 months.*

*The credits equally privileged shall rank pari passu amongst themselves and be paid on a pro rata basis. Credits with general indistinct privilege shall not preclude third parties' enforceable rights over the assets covered by the privilege.*

*Other than as above mentioned, the credits under a Transaction would generally rank at least pari passu with all other unsecured creditors, without prejudice to the Title Transfer enforceability opinion set out in paragraph 3.7 of the opinion letter.*

*The credits under a Transaction, in bankruptcy proceedings, will be subject to be paid with the remainder of the assets (after all privileged credits are paid), on a pro rata basis.*

*Preventive Proceedings (within bankruptcy - to avoid declaration of bankruptcy)*

*3.1.3.1 Judicial composition between creditors proposed by the bankrupt to reduce or modify the total or part of the debtor's obligations, which modification may be limited to a simple moratorium ("Concordata" - Section 1055, ss. CPC);*

*3.1.3.2 Creditors' Agreement for the incorporation of a limited liability company incorporated by quotas ("Limitada") to continue the bankrupt's activity, which quotas are represented by the value of the credits after deduction of the debts of the creditors not subscribing the agreement; the company keep the bankrupt's assets in what exceeds the payment of privileged credits (Section 1075, ss. CPC);*

*In the case of individual entrepreneurs, there are the following particulars in bankruptcy proceedings:*

*If a commercial entrepreneur is married in a regime of common property of assets, the common assets in the first place, and then the own assets of each of the spouses, shall be liable for any obligations resulting from the exercise of his enterprise that surpass the goods allocated to its use.*

*The commercial debts of a commercial entrepreneur are presumed to be contracted in the exercise of his enterprise. The assets that compose the enterprise of an individual commercial entrepreneur and, in their lack or insufficiency, his private assets, are liable for such entrepreneur's debts, contracted in the exercise of his enterprise. Before the liquidation of a commercial enterprise, a private creditor can only execute the assets used in the commercial enterprise in case of lack or insufficiency of other assets of the entrepreneur.*

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

### **3. ADDITIONAL QUALIFICATIONS**

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

*4.1.1 For married individual entrepreneurs, whose marital regime is that of common property of assets the spouse must also execute any and all transaction documents which imply the transfer, other form of disposition or charge of assets. If the regime is of separate property of assets, the spouse's signature is not required."*

## SCHEDULE 6

### Macau Investment Funds

Subject to the modifications and additions set out in this Schedule 6 – Macau Investment Funds, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Macau Investment Funds. For the purposes of this Schedule 6, "**Macau Investment Funds**" means "*autonomous collection of assets comprising a portfolio diversified according to a principle for spreading risks, and generated by the investment of capital obtained from the public, with their purchase of participation units representing the value of that collection of assets.*"

Investment funds constituted/ domiciled in Macau are subject to restrictions and limitations of the IMIF. The management of investment funds shall comply with the conditions and prudential limits referred to in IMIF, namely in what respects to the nature of assets that can be included in their portfolio, the forbidden acquisitions and the prudential limits in their management.

Pursuant to Section 30, IMIF, the management of investment funds must be prudent, subordinated to criteria of great professional diligence and capacity and carried out in the best interest of participants. It further states that the managing entities of investment funds can use financial instruments to hedge the risk, namely futures and options, with the purpose of the adequate administration of the portfolios. Accordingly, entering into Transactions shall respect such limits and restrictions and be subordinated to the hedging of risks.

The fund manager shall ensure that the safekeeping of the fund abroad is committed to suitable entities, duly authorised and submitted to supervision of competent authorities. The same custodian shall keep the assets of a same fund localised abroad in a certain financial market place.

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

Paragraph 1.10.1 is deemed deleted and replaced with the following:

*"Insolvency Proceedings" means the procedures listed in paragraph 3.1.1, with the additions/ modifications in Schedule 6 – Macau Investment Funds"*

#### 2. MODIFICATIONS TO OPINIONS

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

Paragraph 3.1 is deleted and replaced with the following:

**Insolvency Proceedings: Macau Investment Funds**

3.1 The only Insolvency Proceedings to which a Party which is a Macau Investment Fund could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows (Sections 16 – 18, IMIF):

"Voluntary Liquidation"

*Participants in open-end funds cannot demand their liquidation or distribution. Participants in closed-end funds can demand their liquidation so long as:*

- a) *Provision has been made for this eventuality in the management regulations;*
- b) *The management regulations make provision for listing the respective participation units on a stock exchange and this has not occurred within 12 months counted from the constitution of the fund;*
- c) *After listing on a stock exchange, the participation units have been removed and are not returned for listing within a period of 6 months.*

"Compulsory liquidation"

*AMCM may order the compulsory liquidation of a fund when:*

- a) *There is repeated violation of the management regulations or the failure to observe, over long periods of time, the prudential limits and values established in present law;*
- b) *Operations in violation of article 12 have been executed;*
- c) *The value of the participation units is less than 50% of the initial issuing value when the fund was constituted;*
- d) *Any other situation occurs that can affect seriously the participant's interest.*

*Notification of the decision of compulsory liquidation shall imply the immediate suspension of subscriptions and redemption, and the commencement of liquidation procedures.*

Liquidation proceedings:

1. *The liquidation of investment funds shall follow the terms referred to in the management regulations, and should be conducted by the respective fund manager, or in case of its impeachment, by a person expressly appointed for this purpose by AMCM.*
2. *The notice of liquidation is compulsory published, with a previous minimum period of 60 days since its beginning, in the Official Gazette and in two newspapers with major circulation in the Territory, being one in each of the official languages.*
3. *AMCM, after hearing the liquidator and the depository, sets a period for the conclusion of liquidation proceedings.*

*4. Following expiry of the deadline referred to in the preceding paragraph, the liquidator must submit the liquidation accounts to AMCM for its approval.*

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

### **3. ADDITIONAL QUALIFICATIONS**

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

#### **"4.1.11 Depository's Bankruptcy**

*If the depository of the Investment Fund becomes bankrupt, the securities deposited cannot be included in their proceeds and all securities must be separated and submitted to AMCM which, after checking them and consulting the fund manager, shall submit them to another reliable depository."*

#### **"4.1.12 Counterparty's respect of limits imposed by AMCM**

*This opinion is subject to the Counterparty which is a Macau Investment Fund respecting the limits imposed upon it by AMCM from time to time and that the Transactions are entered into solely for the purposes of reducing investment risk and for efficient portfolio management."*

### **4. MODIFICATIONS TO QUALIFICATIONS**

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

*4.1.1 Macau Investment Funds have the capacity to enter into Transactions for the purpose of efficient portfolio management. It is recommended that the entering into the Agreement and Transactions under it be approved by resolution of the board of directors of the management company, declaring that it is for the purpose of reducing investment risk and for efficient portfolio management, namely to replicate, without leverage, the underlying assets".*

## SCHEDULE 7

### Macau public entities

Subject to the modifications and additions set out in this Schedule 7 – Macau public entities with financial autonomy, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Macau public entities with financial autonomy. For the purposes of this Schedule 7 "**Macau public entities with financial authority**" means "*a few Macau public entities that have legal capacity, financial and administrative autonomy, and which pursuance of the respective activity and management is subject to compliance with their statutes, own annual investment plans and budget and the Public Financial Administration Regulation (PFAR).*"

Macau public entities with financial autonomy are subject to a strict legality principle and to the supervision by the Chief Executive of Macau. As examples of some of these entities that have from time to time entered into derivatives transactions, we would mention the Monetary Authority of Macau (AMCM). AMCM is a Macau public legal entity with administrative, financial and patrimonial autonomy, its nature being a public institution, created by Decree-Law No. 39/89/M dated 12<sup>th</sup> June, and governed by its statutes, as approved under the AMCM Statutes.

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

Paragraph 1.10.1 is deleted.

#### 2. ADDITIONAL ASSUMPTIONS

We assume the following:

*"2.11 That in entering into the Agreement the Counterparty respects the limits imposed upon it by its own statutes and annual plans, as well as the PFAR, and that the Transactions are entered into solely for the purposes of efficient management and hedging of its liabilities."*

#### 3. MODIFICATIONS TO OPINIONS

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

*"Macau sovereign and public entities are not subject to standard bankruptcy/insolvency/liquidation rules. Their liabilities shall be covered by their own patrimony, firstly, and secondly by the official annual budget."*

#### 4. MODIFICATIONS TO QUALIFICATIONS

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

**" 4.1.1 Public Entities**

*The capacity of public entities to enter into Transactions is subject to the Public Financial Administration Regulation, the Administrative Procedures Code, public administration principles and remaining regulations. It is limited by the speciality principle under strict legality terms and subject to the respective supervising entities. In relation to Macau public entities there should be a relevant and clear material relation between the investment to be entered into and the public entity's legal purposes.*

*The purposes of the entity can be verified from its statutes, approved by law or dispatch of the governmental body creating the public entity at matter and published in Macau Official Gazette. In general, for Macau public entities to enter into Transactions (in exceptional situations duly justified) they require the prior authorization of the respective supervising entity(ies), which may be generically contained in their annual budget for the respective year or which may be attained on ad hoc basis, specifically supporting the grounds of their respective interest in such Transactions.*

*The authority to authorize expenses on account of the financial budget privative of the public entities with financial autonomy lies with the respective Board of Directors, which authority will be limited to MOP 250,000.00 (two hundred and fifty thousand Patacas) for services to be contracted without the formalities of public tender (Section 56, PFAR). Furthermore, the approval of expenses that cover over one year has to be approved by the Macau Chief Executive and subject to favorable opinion of the Macau Financial Bureau.*

*Public entities must allocate the values recorded in each category of its financial budget according to the official annual budget and should not undertake any obligations in excess of the authorized amounts (Section 7, PFAR) and record the details of all agreements entered into and the amounts payable under each agreement and changes (Section 14, PFAR) – no payments may be made by them without previous registration of the details of the obligations undertaken.*

*"4.1.2 Public entities with financial autonomy are not subject to Macau bankruptcy/insolvency/liquidation laws, given that they are governmental bodies, and therefore, as a matter of Macau law, do not have a limited share capital upon which their liability could be limited. As financially autonomous their assets are the ones to firstly respond for their debts. Nonetheless, their financial undertakings and liability are also further guaranteed by the Macau SAR Government.*

*There are no provisions under Macau laws and regulations establishing the possibility of wind up of AMCM if unable to pay its debts. The Macau regime is preventive and in case of financial difficulties the Macau Government will take action in advance, to prevent any "insolvency" situation of AMCM and other public entities. In the specific case of AMCM's, as the pillar of the financial system its stability is absolutely essential to Macau, thus the likelihood of getting into an "insolvency"*

*situation is virtually non-existent."*

## SCHEDULE 8

### Macau Foundations

The opinions, assumptions and qualifications set out in this opinion letter will not apply in respect of Parties which are Macau Foundations.

For the purposes of this Schedule 8, "**Macau Foundation**" means "*legal entities based on assets, with goals of social interest*" (Section 173, CC).

Macau Foundations are established by a unilateral act of the founder, which affects to a determined social goal a certain amount/quality of assets, being that a competent entity has to recognize the social interest of the foundation. The goals it undertakes are intended to be socially useful, so the foundations are bound to these specific goals, according to their act of incorporation and to their articles of association.

The articles of association (AA) of the foundation will designate the corporate bodies, amongst which there must be a corporate body of administration and a supervisory council. The "body of administration" manages and represents the foundation, thus makes decisions on behalf of the foundation. Unless the AA stipulate otherwise, there has to be a majority within the present and in case of draw, the president has a qualified vote.

It is important to note that dissolution of the foundation can be made on grounds that its real/actual goal is different from the goal intended in the act of incorporation.

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

Paragraph 1.10.1 is deemed deleted and replaced with the following:

*"Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 8 – Macau Foundations, with the following addition/modification:*

*"Only the bankruptcy and insolvency proceedings described in 3.1.3.1 and 3.1.4 apply to Macau foundations"*

#### 2. ADDITIONAL ASSUMPTIONS

We assume the following:

*"2.12 That the entering into the Agreement the Transactions are strictly for the purposes of hedging the assets of the foundation in view of better pursuing its goals."*

#### 3. MODIFICATIONS TO OPINIONS

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

this Schedule), we are of the following opinion.

Paragraph 3.1 is deleted and replaced with the following:

#### **Insolvency Proceedings: Macau Foundation**

*3.1 The only Insolvency Proceedings to which a Party which is a Macau Foundation could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:*

*"Bankruptcy and insolvency proceedings as described in 3.1.3.1 and 3.1.4 apply to Macau foundations.*

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

#### **4. ADDITIONAL OPINIONS**

The Foundation which is in a situation where the value of its assets falls lower than its liabilities (Section 1185, no. 1, CPC) can be declared insolvent.

- Insolvency is presumed when two executive actions or judicial apprehension of assets ("*Arresto*") have occurred;
- It can also be the initiative of the foundation to present itself to insolvency (articles 1186 and 1188, CPC);
- It is possible to have a *concordata* (article 1194), which consists in a reduction or modification of the global or part of the debtor's debts;
- The general applicable laws on bankruptcy stated in 3.1.3 apply, except in the part related to commercial enterprise.

#### **5. MODIFICATIONS TO QUALIFICATIONS**

Furthermore, the qualifications at paragraph 4.1.1 are deemed modified as follows:

##### **"4.1.1 Macau Foundations**

*Macau Foundations are intended to be socially useful, thus the foundations are bound by these specific goals, according to their act of incorporation and to their articles of association. In the former, it has to be specified not only the goal of the foundation but also the assets which are destined to the pursuance of the goals of the foundation.*

## SCHEDULE 9

### Macau Pension Funds

Subject to the modifications and additions set out in this Schedule 9 – Macau Pension Funds, the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are Macau Pension Funds. For the purposes of this Schedule 9 – "Macau Pension Funds" means "*autonomous assets solely for the purpose of financing one or more pension plans*" (Section 3, Private Pension Funds Act).

Private Pension Funds have the capacity to enter into Transactions, subject to certain limitations, further identified. A resolution approving the Transactions and stating that it is for hedging purposes is recommended, namely because there are specific guidelines from AMCM determining that Funds should only enter into Transactions "*for the purpose of reducing investment risk and for efficient portfolio management, namely to replicate, without leverage, the underlying assets*" – Notice no. 16/2011-AMCM (A.6). Private pension funds shall be managed by insurers authorized to transact life insurance in Macau, or by companies set up specifically to manage pension funds (Section 5, no. 1, The Private Pension Funds Act). Pursuant to Section 5, no. 2, of the Private Pension Funds Act, the constitution, establishment and operation of pension funds managers is regulated by the provisions of the Insurance Ordinance.

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

Paragraph 1.10.1 is deemed deleted and replaced with the following:

*"Insolvency Proceedings" means the procedures listed in paragraph 3.1.1, with the additions/ modifications of Schedule 9 – Macau Private Pension Funds".*

*"Only the proceedings described in 3.1.1 apply to Macau Private Pension Funds, with the specificities of the Private Pension Funds Act."*

#### 2. ADDITIONAL ASSUMPTIONS

We assume the following:

*"2.13 That in entering the Agreement the Counterparty which is a Macau Private Pension Fund respects the limits imposed upon it by AMCM from time to time and that the Transactions are entered into solely for the purposes of reducing investment risk and for efficient portfolio management."*

#### 3. MODIFICATIONS TO OPINIONS

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

Paragraph 3.1 is deleted and replaced with the following:

### **Insolvency Proceedings: Macau Private Pension Funds**

3.1 The only Insolvency Proceedings to which a Party which is a Macau Private Pension Fund could be subject under the laws of this jurisdiction, and which is relevant for the purposes of this opinion letter, is as follows:

*"Extra-judicial liquidation as described in 3.1.1, subject to the following statutory proceedings:*

*Pursuant to Section 27 of the Private Pension Funds Act, If the associates fail to pay the contributions to which they have committed themselves, the management company shall take the initiative to request the associates to set right the situation. However, if the situation is not set right and if, within a period of one year, an adequate plan to rectify the situation is not submitted to AMCM, winding up procedure of the fund shall follow.*

*The progress of the plan shall be monitored by the management company, which is obliged to send to AMCM a half-yearly report on the respective development. In case of noncompliance with the said rectification plan, immediate winding up of the fund shall follow.*

*In case the current pecuniary payments are not being duly financed, the management company shall propose to the AMCM the winding up of the fund if the associate does not deposit the necessary contributions within a maximum period of 180 days from the date of verification of the said situation.*

*In addition to the cases mentioned in the preceding paragraphs, pension funds shall also be wound up if there are no participants or beneficiaries or when the respective object of the fund, for whatever reason, becomes redundant. The winding up of a pension fund shall be carried out by means of a winding-up agreement between the associates and the management company, after obtaining the necessary prior approval from AMCM, and such agreement shall be subject to publication in the Official Gazette.*

*In case of disagreement between the associates and the management company regarding the terms for the winding up of the fund, or in case there is any opposition to the said terms from any of the interested parties, the liquidation of the fund shall be carried out by AMCM. In this case, the provisions regulating the liquidation of insurance companies shall be applicable with necessary adaptations.*

*Upon liquidation of a pension fund, the respective fund assets shall be used, up to their financial limits, to settle the following preferential credits, by order, having recourse to proportional distribution where deemed necessary:*

- a) *Payments still outstanding as per the contracts or orders for the acquisition of assets for the fund;*

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- b) Pecuniary payments due to the beneficiaries of the fund;*
- c) Other expenses related to the fund as per the respective management contract;*
- d) Amounts of individual account of each participant, in case of open pension funds, which shall be applied according to the rules set out in the management regulation;*
- e) Amount of acquired rights of the participants existing on the date of winding up.*

*The final net positive balance, if any, ascertained during the liquidation process set out above shall be used as agreed upon jointly by the management companies and associates after obtaining prior approval from AMCM.*

*The unilateral revocation of the deed of constitution by the management company shall only be admissible in exceptional cases, namely when the pension plan is not being financed in accordance with established rules and where there is documentary proof that it is impossible to obtain the agreement of the associates. This unilateral revocation shall be subject to publication in the Official Gazette.*

*The terms of liquidation of a pension fund, under the charge of the respective management company, shall have to be defined in the liquidation agreement or in the unilateral revocation mentioned above."*

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

#### **4. MODIFICATIONS TO QUALIFICATIONS**

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

##### ***"4.1.1 Macau Private Pension Funds***

*Macau Private Pension Funds have the capacity to enter into Transactions, subject to certain limitations. It is recommended that the entering into the Agreement and Transactions under it be approved by resolution of the board of directors of the management company, declaring that it is for the purpose of reducing investment risk and for efficient portfolio management, namely to replicate, without leverage, the underlying assets".*

**ANNEX 1**  
**FORMS OF FOA NETTING AGREEMENTS**

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

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

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

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

Where a FOA Published Form Agreement expressly contemplates the election of certain variables and alternatives, the Agreements listed above shall be deemed to include any such document in respect of which the parties have made such expressly contemplated elections (and have made any deletions required by such elections, where such deletions are expressly contemplated in the event of such election by the applicable FOA Published Form Agreement), provided that any election made does not constitute an Adverse Amendment.

Each of the Agreements listed at items 13 to 30 of this Annex 1 may be deemed to include FOA Netting Agreements identical to the relevant FOA Published Form Agreement, save for the substitution of Two Way Clauses in place of the equivalent terms in the FOA Published Form Agreement, in which case references to the Insolvency Events of Default and FOA Netting Provision in respect of such FOA Netting Agreements shall mean the Insolvency Events of Default and FOA Netting Provision in relation to the Two Way Clauses.

**ANNEX 2**  
**LIST OF TRANSACTIONS**

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

- (A) (Futures and options and other transactions) Transactions as defined in the FOA Netting Agreements or Clearing Agreements:
  - (i) a contract made on an exchange or pursuant to the rules of an exchange;
  - (ii) a contract subject to the rules of an exchange; or
  - (iii) a contract which would (but in terms of maturity only) be a contract made on, or subject to the rules of, an exchange and which, at the appropriate time, is to be submitted for clearing as a contract made on, or subject to the rules of, an exchange,  
in any of cases (i), (ii) and (iii) being a future, option, contract for difference, spot or forward contract of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof; or
  - (iv) a transaction which is back-to-back with any transaction within paragraph (i), (ii) or (iii) of this definition, or
  - (v) any other Transaction which the parties agree to be a Transaction;
- (B) (fixed income securities) Transactions relating to a fixed income security or under which delivery of a fixed income security is contemplated upon its formation;
- (C) (equities) Transactions relating to an equity or under which delivery of an equity is contemplated upon its formation;
- (D) (commodities) Transactions relating to, or under the terms of which delivery is contemplated, of any base metal, precious metal or agricultural product.
- (E) (OTC derivatives) Transactions which fall within paragraphs (4) to (10) of Section C of Annex 1 to Directive 2004/39/EC, including (but not limited to) interest rate swaps, credit default swaps, derivatives on foreign exchange, and equity derivatives, provided that, where the Transaction is subject to the Terms of a Clearing Agreement, the Transaction (or a transaction which is back-to-back with the Transaction) is eligible to be cleared by a central counterparty.

**ANNEX 3**  
**DEFINITIONS RELATING TO THE AGREEMENTS**

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

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

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

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

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

**"Clearing Agreement"** means an agreement:

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

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

- (a) Clause 5.2 (*Firm Events*), 5.3 (CCP Default) and 5.4 (*Hierarchy of Events*) of the FOA Clearing Module; or

(b) any modified version of such clauses provided that it includes at least those parts of paragraph 6 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow, together with the defined terms required properly to construe such Clauses.

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

(a) Clause 5.5 (*Set-Off*) of the FOA Clearing Module; or

(b) any modified version of such clause provided that it includes at least those parts of paragraph 7 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow, together with the defined terms required properly to construe such Clause.

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

**"Client Money Additional Security Clause"** means:

(a) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);

(b) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);

(c) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);

(d) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 7.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);

(e) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);

(f) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 7.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);

(g) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 6.8 (*Additional security*) at module F Option 4 (where incorporated into such Agreement);

(h) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009,

clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement);

- (i) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 6.9 (*Additional security*) at module F Option 1 (where incorporated into such Agreement); or
- (j) any modified version of such clauses provided that it includes at least those parts of paragraph 3 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

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

- (a) for the purposes of paragraph 3.3 (*Enforceability of FOA Netting Provision*) and 3.4 (*Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to FOA Netting Provision*), the Insolvency Events of Default Clause and the FOA Netting Provision;
- (b) for the purposes of paragraph 3.5 (*Enforceability of the FOA Set-Off Provisions*), the Insolvency Events of Default Clause, the FOA Netting Provision and either or both of the General Set-off Clause and the Margin Cash Set-off Clause;
- (c) for the purposes of paragraph 3.6 (*Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision*), the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Available Termination Amount", "Disapplied Set-Off Provisions", "Firm/CCP Transaction Value" and "Relevant Collateral Value", the Clearing Module Set-Off Provision and the FOA Set-Off Provisions; and
- (d) for the purposes of paragraph 3.7.1, (i) in relation to a FOA Netting Agreement, the Insolvency Events of Default Clause, the FOA Netting Provision and the Title Transfer Provisions; and (ii) in relation to a Clearing Agreement, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value" or, as the case may be, the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Title Transfer Provisions;

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

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

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

Netting Provision.

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

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

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

**"FOA Netting Agreement"** means an agreement:

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

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

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

- (a) in relation to the terms of the Long Form One-Way Clauses 2007 and the Long Form Two-Way Clauses, Clause 2.2 (*Liquidation Date*), Clause 2.4 (*Calculation of Liquidation Amount*) and Clause 2.5 (*Payer*);

- (b) in relation to the terms of the Short Form One-Way Clauses and the Short Form Two-Way Clauses, Clause 2.1 (***Liquidation Date***), Clause 2.3 (***Calculation of Liquidation Amount***) and Clause 2.4 (Payer);
- (c) in relation to the terms of the Master Netting Agreements, Clause 4.2, Clause 4.4 and Clause 4.5;
- (d) in relation to the terms of the Eligible Counterparty Agreements, Clause 10.1 (***Liquidation Date***), Clause 10.3 (***Calculation of Liquidation Amount***) and Clause 10.4 (Payer);
- (e) in relation to the terms of the Retail Client Agreements, Clause 11.2 (***Liquidation Date***), Clause 11.4 (***Calculation of Liquidation Amount***) and Clause 11.5 (Payer);
- (f) in relation to the terms of the Professional Client Agreements, Clause 11.2 (***Liquidation Date***), Clause 11.4 (***Calculation of Liquidation Amount***) and Clause 11.5 (Payer); or
- (g) any modified version of such clauses provided that it includes at least those parts of paragraph 1 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

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

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

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

Agreement (1997 version), clause 5 (*Set-Off*);

- (viii) in the case of the Agreements in the form of Two-Way Master Netting Agreement (1997 version), clause 5 (*Set-Off*); or
- (ix) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and/or

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

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

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

- (i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1 (b) and (c) (inclusive);
- (ii) in relation to the terms of the Short Form One-Way Clauses and Short Form Two-Way Clauses, Clauses 1.1 (b) and (c) (inclusive);
- (iii) in relation to the terms of the Master Netting Agreements, Clause 4.1 (ii) and (iii) (inclusive);

- (iv) in relation to the terms of the Eligible Counterparty Agreements, Clause 9.1 (b) and (c) (inclusive);
- (v) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1(b) and (c) (inclusive); or
- (vi) any modified version of such clauses provided that it includes at least those parts of paragraph 4(a) of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and

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

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

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

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

**"Non-Cash Security Interest Provisions"** means:

- (a) the **"Non-Cash Security Interest Clause"**, being:
  - (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.6 (*Security interest*);
  - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.6 (*Security interest*);
  - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.7 (*Security interest*);
  - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.8 (*Security interest*);
  - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.8 (*Security interest*);
  - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.9 (*Security interest*);
  - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.6 (*Security interest*);

- (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.6 (*Security interest*);
- (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.7 (*Security interest*); or
- (x) any modified version of such clauses provided that it includes at least those parts of paragraph 1 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow; and

(b) the "**Power of Sale Clause**", being:

- (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.11 (*Power of sale*);
- (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.11 (*Power of sale*);
- (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.11 (*Power of sale*);
- (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.13 (*Power of sale*);
- (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.13 (*Power of sale*);
- (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.13 (*Power of sale*);
- (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.11 (*Power of sale*);
- (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.11 (*Power of sale*);
- (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.11 (*Power of sale*); or
- (x) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow.

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

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

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

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

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

**"Rehypothecation Clause"** means:

- (a) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.13 (***Rehypothecation***);
- (b) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.15 (***Rehypothecation***);
- (c) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.13 (***Rehypothecation***); or

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

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

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

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

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

- (a) clauses 5 and 7.2 of the Title Transfer and Physical Collateral Annex to the Netting Module (2007 or 2011 Version); or

(b) any modified version of such clauses provided that it includes at least those parts of paragraph 5 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

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

## ANNEX 4

### PART 1 CORE PROVISIONS

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

#### 1. FOA Netting Provision:

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

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

"Set-off: Without prejudice to any other rights to which we may be entitled, we may

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

3. Margin Cash Set-Off Clause:

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

4. Insolvency Events of Default Clause:

"The following shall constitute Events of Default:

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

5. Title Transfer Provisions:

- a) **Default:** If a Liquidation Date is specified or deemed to occur as a result of an Event of Default, the Default Margin Amount as at that date will be deemed to be [a gain (if we are the Non-Defaulting Party) or a cost (if you are the Non-Defaulting Party)] [a gain by us] for the purposes of calculating the Liquidation Amount. For this purpose, "**Default Margin Amount**" means the amount, calculated in the Base Currency of the aggregate value as at the relevant Liquidation Date (as determined by us) of the Transferred Margin.
- b) **Clean title:** Each party agrees that all right, title and interest in and to any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest which it Transfers to the other party shall vest in the recipient free and clear of

any security interest, lien, claims, charges, encumbrance or other restriction. Notwithstanding the use of terms such as "Margin" which are used to reflect terminology used in the market for such transactions, nothing in these provisions is intended to create or does create in favour of either party a mortgage, charge, lien, pledge, encumbrance or other security interest in any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest Transferred hereunder."

**6. Clearing Module Netting Provision / Addendum Netting Provision:**

a) [Firm Trigger Event/CM Trigger Event]

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

(a) each Client Transaction in the relevant Cleared Transaction Set will automatically terminate [upon the occurrence of a Firm Trigger Event] [at the same time as the related CM/CCP Transaction is terminated or Transferred] and, following such termination, no further payments or deliveries in respect of such Client Transaction [as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.22 Section 8(b)(ii)];

(b) the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or the relevant part thereof;

(c) the applicable Cleared Set Termination Amount will be determined by Client on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the date on which the [Firm/CM] Trigger Event occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the day on which the relevant Client Transactions [had all been/were] terminated (in either case, provided that, if [Firm/Clearing Member] gives notice to Client requiring it to determine such amount and Client does not do so within two Business Days of such notice being effectively delivered, [Firm/Clearing Member] may determine the applicable Cleared Set Termination Amount) and, in either case, will be an amount equal to the sum, but without duplication, of (A) the Aggregate Transaction Value, (B) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client

Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (C) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (D) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[ or any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributed] [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included [Clauses 5.2.2(c)(4) to 5.2.2(c)(C)] [Sections 8(b)(ii)(3)(A) to 8(b)(ii)(3)(C)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]);

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

b) CCP Default

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

1. each Client Transaction in the relevant Cleared Transaction Set will automatically terminate at the same time as the related [Firm/CM]/CCP Transaction and following such termination no further payments or deliveries in respect of such Client Transaction[ as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.3 Section 8(c)];
2. the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and

Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or relevant part thereof;

3. the applicable Cleared Set Termination Amount will be determined by [Firm/Clearing Member] on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the date on which the CCP Default occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the day on which the relevant Client Transactions had all been terminated and, in either case, will be an amount equal to the sum, but without duplication, of (1) the Aggregate Transaction Value, (2) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (3) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (4) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[ and any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included in [Clauses 5.3.3(1) to 5.3.3(3)] [Sections 8(c)(iii)(1) to 8(c)(iii)(3)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing member]);
4. if a Cleared Set Termination Amount is a positive number, it will be due from [Firm/Clearing Member] to Client and if a Cleared Set Termination Amount is a negative number, the absolute value of the Cleared Set Termination Amount will be due from Client to [Firm/Clearing Member], and in each case will be payable, in accordance with this [Module/Addendum].

c) Hierarchy of Events

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

pursuant to which Client Transactions are otherwise terminated, if earlier) will prevail for the purposes of the relevant Client Transactions.]

Or

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

Or

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

d) Definitions

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

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

Transaction(s) under the relevant Rule Set may be equal to zero.

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

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

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

## 7. Clearing Module Set-Off Provision

Firm may at any time and without notice to Client, set-off any Available Termination Amount against any amount (whether actual or contingent, present or future) owed by Firm to Client under the Clearing Agreement or otherwise. For these purposes, Firm may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained.

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

## 8. Addendum Set-Off Provision

- (i) Any Available Termination Amount will, at the option of (A) Client, in the case of an Available Termination Amount due in respect of a CM Trigger Event and without prior notice to Clearing Member, be reduced by its set-off against any other termination amount payable by Clearing Member to Client under the Clearing Agreement at such time ("CM Other Amounts"), or (B) either party, in the case of an Available Termination Amount due in respect of

a CCP Default, and without prior notice to the other party, be reduced by its set-off against any other termination amount payable by or to X (where "X" means, in the case of Section 8(i)(A), Client or, in the case of Section 8(i)(B), the party electing to set off) under the Clearing Agreement at such time ("EP Other Amounts" and together with CM Other Amounts, "Other Amounts"), provided that in the case of Section 8(i)(A) or Section 8(i)(B), at the time at which X elects to set off, where Clearing Member is X, a CM Trigger Event has not occurred and is not continuing or, where Client is X, an event of default, termination event or other similar event, howsoever described, in respect of Client in the Agreement, has not occurred and is not continuing. To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party promptly after effecting any set-off under Section 8(i)(A) or Section 8(i)(B).

- (ii) For the purposes of this Section 8(ii):
  - (A) all or part of the Available Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other amount is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency;
  - (B) if any Other Amounts are unascertained, X may in good faith estimate such Other Amounts and set off in respect of the estimate, subject to the relevant party accounting to the other when such Other Amounts are ascertained; and
  - (C) a "termination amount" may, for the avoidance of doubt, be another Cleared Set Termination Amount or another termination amount due under the Agreement including, in either case, any such amount that has previously been reduced in part by set-off pursuant to this Section 8(e).
- (iii) Nothing in this Section 8(e) will be effective to create a charge or other security interest. This Section 8(e) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which Client or Clearing Member is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise), provided that, notwithstanding anything to the contrary in the Clearing Agreement or any related Collateral Agreement, no party may exercise any rights of set-off in respect of Excluded Termination Amounts.

**PART 2**  
**NON-MATERIAL AMENDMENTS**

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

9. Any change to an Insolvency Event of Default replacing such event of default with a provision aligned to Section 5(a)(vii) of the 1992 or 2002 ISDA Master Agreement (or relevant part thereof).
10. In the case of any agreement incorporating the Two-Way Clauses, any change to the Insolvency Events of Default which has the effect of providing that when one or several specified events (which would constitute Insolvency Events of Default) occur in relation to one specified Party, such event shall not constitute an Event of Default under the agreement.
11. Any change to the agreement requiring the Non-Defaulting Party when exercising its rights under the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions (or other provisions) or making determinations to act in good faith and/or a commercially reasonable manner.
12. Any change modifying the currency of Liquidation Amount, Available Termination Amount, Cleared Set Termination Amount or of any amount relevant to the FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions.
13. Any change to the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision or the Addendum Set-Off Provision clarifying that (i) any account subject to set-off must be owned by the same party or (ii) the Non-Defaulting Party must, or may, notify the other party of its exercise of rights under such provision or other provision.
14. Any change to the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision (a) clarifying (i) at which time set-off may be exercised by a Party (with or without limitation), (ii) the amounts that may be set-off (with or without limitation, whether in relation to the agreement(s) under which such amounts arise or to the parties from which they are due), (iii) the use of currency conversion in case of cross-currency set-off, (iv) the application or disapplication of any grace period to set-off; or (b) allowing the combination of a Party's accounts.
15. Any change to the FOA Netting Provision or the Clearing Module Netting Provision adding or taking from the amounts to be taken into account for the calculation of the Liquidation Amount.
16. Any addition to any of the Core Provisions that leaves both the plain English sense and legal effect of such provision unchanged.
17. Any change converting the Core Provisions of the FOA Netting Provision to a 'one-way' form in the style of the One-Way Master Netting Agreement 1997 (in which only the default of one Party is contemplated).
18. Including multiple forms of netting provision in respect of Client Transactions, in any

of the following combinations:

- more than one ISDA/FOA Clearing Addendum or Addendum Netting Provision
- more than one FOA Clearing Module or Clearing Module Netting Provision
- one or more ISDA/FOA Clearing Addendum or Addendum Netting Provision and one or more FOA Clearing Module or Clearing Module Netting Provision

provided that the agreement specifies unambiguously that only one such netting provision shall apply in respect of any given Client Transaction

19. Including the Title Transfer Provisions together with provisions which create a security interest over cash and/or non-cash margin, provided that the agreement unambiguously specifies the circumstances in which the security interest or the Title Transfer provisions apply in respect of any given item of margin so that it is not possible for both the security interest and the Title Transfer Provisions to apply simultaneously to the same item of margin.
20. Adding to the definition of "Firm Trigger Event" or, as the case may be, "CM Trigger Event" (or defined terms equivalent thereto) any further events of default in relation to the Firm or, as the case may be, the Clearing Member, including those in the definition of Events of Default appearing in a FOA Published Form Agreement (including as modified in accordance with paragraph 5 above).
21. Any change to the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision providing that any applicable Cleared Set Termination Amount will be determined by the Firm or, as the case may be, the Clearing Member in any event (even in the case of a Firm Trigger Event or, as the case may be, a CM Trigger Event).
22. Any change to the FOA Netting Provision providing that any applicable Liquidation Amount will be determined by the Defaulting Party.
23. Any addition to the Clearing Module Netting Provision or the Addendum Netting Provision providing that, if any Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin has been ported to another clearing member of the Agreed CCP Service following a Firm Trigger Event or CM Trigger Event, the Party in charge of the calculation of the Cleared Set Termination Amount can ascribe an appropriately reduced value (including zero) to the Client Transaction and related margin or collateral corresponding to the Firm/CCP Transaction or CM/CCP Transaction and its related collateral or margin so ported.

## PART 3 SECURITY INTEREST PROVISIONS

### 1. Security Interest Clause

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

### 2 Power of Sale Clause

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

### 3. Client Money Additional Security Clause

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

### 4. Rehypothecation Clause

"You agree and authorise us to borrow, lend, appropriate, dispose of or otherwise use for our own purposes, from time to time, all non-cash margin accepted by us from you and, to the extent that we do, we both acknowledge that the relevant non-cash margin will be transferred to a proprietary account belonging to us (or to any other account selected by us from time to time) by way of absolute transfer and such margin will become the absolute property of ours (or that of our transferee) free from any security interest under this Agreement and from any equity, right, title or interest of yours. Upon any such rehypothecation by us you will have a right against us for the delivery of property, cash, or securities of an identical type, nominal value, description and amount to the rehypothecated non-cash margin, which, upon being delivered back to you, will become subject to the provisions of this Agreement. We agree to credit to you, as soon as reasonably practicable following receipt by us, and as applicable, a sum of money or property equivalent to (and in the same currency as) the type and amount of income (including interest, dividends or other distributions whatsoever with respect to the non-cash margin) that would be received by you in respect of such non-cash margin assuming that such non-cash margin was not rehypothecated by us and was retained by you on the date on which such income was paid.".

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**ANNEX 5**  
**NECESSARY OR DESIRABLE AMENDMENTS**

1. Necessary amendments

None

2. Desirable amendments

None

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

None

4. Additional events for the purposes of paragraph 3.1:

None

5. Alterations which constitute material alterations:

None

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