

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

FIA Europe
2nd Floor
36-38 Botolph Lane
London EC3R 8DE

26 November 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 Thailand ("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 This opinion is given in respect of:

- 1.1.1 persons which are limited companies incorporated under the Civil and Commercial Code of Thailand (the "CCC") and public limited companies incorporated under the Public Limited Companies Act B.E 2535 as amended;
- 1.1.2 banks incorporated under the Financial Institutions Business Act B.E. 2551 (the "FIA");
- 1.1.3 finance companies incorporated under the FIA;
- 1.1.4 branches in this jurisdiction of foreign banks and other corporations;

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

- 1.1.5 securities companies¹ licensed under the Securities and Exchange Act B.E. 2535 as amended (the "SEA");
- 1.1.6 registered limited partnerships incorporated under the CCC;
- 1.1.7 insurance companies licensed under the Life Insurance Act B.E. 2535 as amended and the Insurance Against Loss Act B.E. 2535 as amended;
- 1.1.8 individuals being natural persons pursuant to the CCC;
- 1.1.9 mutual funds established under the SEA;
- 1.1.10 government entities established as having a legal personality under relevant specific laws; and
- 1.1.11 the Government Pension Fund established under The Government Pension Fund Act B.E. 2539 as amended.

We are not opining on other Parties who are trusts, public bodies (which do not have legal personality), charitable bodies, pension entities or building societies.

- 1.2 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.
- 1.3 This opinion covers all types of Transaction, except as listed below and subject to the conditions as provided below:

- 1.3.1 for a bank: any of paragraphs (A) (i) to (iv), (B), (C) and (E) of the list of Transactions in Annex 2 to this opinion must fall within the scope of the transactions permitted to be entered into and satisfy the requirements under the relevant notification of the Bank of Thailand (the "BoT") issued under Section 36 of the FIA. A Transaction of the type specified in paragraph (D) is permitted only if the settlement is via cash settlement;
- 1.3.2 for a finance company: any of paragraphs (A) (i) to (iv), (B) and (C) of the list of Transactions in Annex 2 to this opinion must fall within the scope of the transactions permitted to be entered into and satisfy the requirements under the relevant notification of the BoT issued under Section 36 of the FIA. A Transaction of the type specified in paragraph (E) is permitted only if such Transaction is a credit default swap or a credit linked note² and entered into

¹ "Securities companies" means a securities company licensed to engage in securities brokerage, dealing or underwriting, investment advisory, mutual or private fund management, venture capital, or securities finance business in Thailand.

² Based on the BoT Notification No. SorNorSor. 11/2551, a finance company is permitted to enter into a derivatives transaction only in respect of credit default swaps and credit linked notes.

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

with the institutional investors as specified by the BoT (which also include international financial institutions).

- 1.3.3 for a securities company: any of paragraphs (A) (i) to (iv), (B), (C), (D) and (E) of the list of Transactions in Annex 2 to this opinion must fall within the scope of the transactions permitted to be entered into and satisfy the requirements under the Notification of the Capital Market Supervisory Board No. TorThor/Nor/Khor. 24/2553 re: entering into a derivatives contract and providing derivatives services by securities companies dated 1 June 2010 issued under the SEA;
- 1.3.4 for an insurance company: any of paragraphs (A) (i) to (iv), (B), (C) and (D) of the list of Transactions in Annex 2 requires prior approval from the Office of Insurance Commission according to the Notifications dated 30 September 2013 re: investment in other businesses of a life insurance company and the Notification dated 30 September 2013 re: investment in other businesses of a non-life insurance company. A Transaction of the type specified in paragraph (E) is permitted only if entered into with a licensed bank in Thailand;
- 1.3.5 for a mutual fund: any of paragraphs (A) (i) to (iv), (B), (C), and (D) of the list of Transactions in Annex 2 to this opinion must fall within the scope of the transactions permitted to be entered into and satisfy the requirements under the Notification of the Securities and Exchange Commission of Thailand ("SEC") No. SorNor. 24/2552 dated 28 July 2009 re: type of investment where fund can invest in issued under the SEA. A Transaction of the type specified in paragraph (E) is permitted only if entered into with a licensed bank or derivatives broker or dealer in Thailand;
- 1.3.6 for a government entity established as legal personality: any of paragraphs (A) (i) to (iv), (B), (C), (D) and (E) of the list of Transactions in Annex 2 to this opinion must satisfy the requirements under the relevant specific laws under which such government entity is established;
- 1.3.7 for the Government Pension Fund: any of paragraphs (A) (i) to (iv), (B) , (C) and (E) of the list of Transactions in Annex 2 to this Opinion must fall within the scope of the transactions permitted to be entered into and satisfy the requirements under the Government Pension Fund Act B.E. 2539 and the Ministerial Regulation dated 29 November 2010 re: rules and conditions for the management of the Government Pension Fund's assets³; and

³ Section 5(2) of the Ministerial Regulation (re: management condition of the Government Pension Fund's funds/investments) B.E. 2553 stipulates that the Government Pension Fund can only invest in a derivatives transaction having the underlying linked to the following securities:

1. certificate of deposit issued by finance companies;

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

- 1.3.8 for an individual: any of paragraphs (A) (i) to (iv), (B), (C) and (D) of the list of Transactions in Annex 2 to this Opinion must fall within the scope of the transactions permitted to be entered into and satisfies the requirements stipulated by the SEC and the BoT.
- 1.4 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.
- 1.5 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).
- 1.6 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.
- 1.7 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).

2. bill of exchanges being guaranteed (or granting aval) or endorsed by finance companies or credit foncier companies, or promissory notes granting aval or being endorsed by finance companies or credit foncier companies with unlimited liability;
3. debentures issued by finance companies or credit foncier companies, securities companies, or public/limited companies;
4. debentures issued by foreign juristic persons being under the control of Thai juristic persons;
5. debentures issued by off-shore entities who have received permission to make an offering in Thailand;
6. equity instruments; or
7. hybrid instruments.

Based on the above, commodities are not part of the list and we therefore exclude transactions in (D).

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

1.8 **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.

- 1.8.1 **"Insolvency Proceedings"** means the procedures listed in paragraph 3.1;
- 1.8.2 **"Insolvency Representative"** means a liquidator, administrator, receiver or analogous or equivalent official in this jurisdiction; and
- 1.8.3 A reference to a **"paragraph"** is to a paragraph of this opinion letter.

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

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

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 full legal title to such Margin at the time of Transfer, free and clear of any lien, claim, charge or encumbrance or any other interest of the transferring party or of any third person (other than a lien routinely imposed on all securities in a relevant clearance or settlement system).
- 2.10 That all Margin transferred pursuant to the Title Transfer Provision is freely transferable and all acts or things required by the laws of this or any other jurisdiction to be done to ensure the validity of each transfer of Margin pursuant to the Title Transfer Provisions will have been effectively carried out.
- 2.11 That any cash provided as Margin is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.

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: (a) business rehabilitation procedures including an automatic stay of execution against the bankrupt party in the Bankruptcy Act of Thailand B.E. 2483 as amended (the

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

"Bankruptcy Act") which are applicable only to limited companies and public limited companies; and (b) bankruptcy procedures described in the Bankruptcy Act.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, if supplemented as set out in Section 5 of Annex 5.

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 even if neither Party is incorporated or established in England. We would like to draw your attention to the qualification in paragraph 4.4 (*Limitation on the recognition of foreign law*).
- 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. We would like to draw your attention to the qualification in paragraph 4.4 (*Limitation on the recognition of foreign law*).

3.3 Enforceability of FOA Netting Provision

In relation to a FOA Netting Agreement and in relation to a Clearing Agreement where the Client is a Defaulting Party, 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 there is no rule of the law in this jurisdiction, except as stated in paragraph 4.3 (*General limitation on enforceability*), which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of such FOA Netting Provision or which would render those terms ineffective.

Further, there is no rule of the laws of this jurisdiction, except as stated in paragraph 4.3 (*General limitation on enforceability*), which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Non-

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

Defaulting Party. The FOA Netting Provision is allowed under Section 90/33⁴ (in relation to the business rehabilitation process) and Section 102⁵ (in relation to bankruptcy proceeding) of the Bankruptcy Act, which allow set-off after the business rehabilitation proceeding or the bankruptcy process has commenced; provided that such claim is incurred prior to the date on which court issues an order for business rehabilitation or receivership.

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, 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:

⁴ Section 90/33: If the creditor who is entitled to apply for repayment of debt for business reorganisation is indebted to the debtor at the time of issue of business reorganisation order, such creditor may exercise the right of set-off, unless the creditor acquires the claim against the debtor after the court issues a business reorganisation order.

⁵ Section 102: If a creditor who is entitled to claim for repayment of his debt is indebted to the debtor when the court issues the order placing the asset under receivership, even if the grounds for the indebtedness of each of the two parties are not the same, or are subject to conditions or terms as to time, such debts may be set off against each other, unless the creditor's right of claim against the debtor accrued after the order of receivership of the asset.

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

- (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 there is no rule of the law in this jurisdiction, except as stated in paragraph 4.3 (*General limitation on enforceability*), which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of such FOA Set-Off Provisions or which would render those terms ineffective.

It is also desirable, but not necessary, to make amendments to the General Set-Off Clause and the Margin Cash Set-Off Clause specified in Section 2 of Annex 5.

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

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

- (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 there is no rule of the law in this jurisdiction, except as stated in paragraph 4.3 (*General limitation on enforceability*), which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of such FOA Set-Off Provisions or which would render those terms ineffective.

Further, there is no rule of the laws of this jurisdiction, except as stated in paragraph 4.3 (*General limitation on enforceability*), which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Non-Defaulting Party. The FOA Netting Provision is allowed under Section 90/33⁶ (in relation to the business rehabilitation process) and Section 102⁷ (in relation to bankruptcy proceeding) of the Bankruptcy Act, which allow set-off after the business rehabilitation proceeding or the bankruptcy process has commenced; provided that such claim is incurred prior to the date on which court issues an order for business rehabilitation or receivership.

It is also desirable, but not necessary, to make amendments to the General Set-Off Clause and the Margin Cash Set-Off Clause specified in Section 2 of Annex 5.

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

⁶ Section 90/33: If the creditor who is entitled to apply for repayment of debt for business reorganisation is indebted to the debtor at the time of issue of business reorganisation order, such creditor may exercise the right of set-off, unless the creditor acquires the claim against the debtor after the court issues a business reorganisation order.

⁷ Section 102: If a creditor who is entitled to claim for repayment of his debt is indebted to the debtor when the court issues the order placing the asset under receivership, even if the grounds for the indebtedness of each of the two parties are not the same, or are subject to conditions or terms as to time, such debts may be set off against each other, unless the creditor's right of claim against the debtor accrued after the order of receivership of the asset.

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

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 there is no rule of the law in this jurisdiction, except as stated in paragraph 4.3 (*General limitation on enforceability*), which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of such Clearing Module Set-Off Provision or which would render those terms ineffective.

Further, there is no rule of the laws of this jurisdiction, except as stated in paragraph 4.3 (*General limitation on enforceability*), which would impose a moratorium or stay which would prevent, delay or otherwise affect the exercise of such rights by the Non-Defaulting Party. The FOA Netting Provision is allowed under Section 90/33⁸ (in relation to the business rehabilitation process) and Section 102⁹ (in relation to bankruptcy proceeding) of the Bankruptcy Act, which allow set-off after the business rehabilitation proceeding or the bankruptcy process has commenced; provided that such claim is incurred prior to the date on which court issues an order for business rehabilitation or receivership.

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

It is also desirable, but not necessary, to make amendments to the Clearing Module Set-Off Provision specified in Section 2 of Annex 5.

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

⁸ Section 90/33: If the creditor who is entitled to apply for repayment of debt for business reorganisation is indebted to the debtor at the time of issue of business reorganisation order, such creditor may exercise the right of set-off, unless the creditor acquires the claim against the debtor after the court issues a business reorganisation order.

⁹ Section 102: If a creditor who is entitled to claim for repayment of his debt is indebted to the debtor when the court issues the order placing the asset under receivership, even if the grounds for the indebtedness of each of the two parties are not the same, or are subject to conditions or terms as to time, such debts may be set off against each other, unless the creditor's right of claim against the debtor accrued after the order of receivership of the asset.

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

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.
- 3.7.3 In relation to Margin located in this jurisdiction, the courts of this jurisdiction would not recharacterise Transfers of Margin under the Title Transfer Provisions of a FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions as creating a security interest.
- 3.7.4 In relation to Margin located in this jurisdiction, a Party would be entitled to use or invest for its own benefit, as outright owner and without restriction, any Margin Transferred to it pursuant to the Title Transfer Provisions of a FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions.

We are of this opinion because there is no rule of the law in this jurisdiction which would treat the Title Transfer Provisions as creating a security interest.

No amendments to the Title Transfer Provisions are necessary in order for the opinions expressed in this paragraph 3.7 to apply.

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

In relation to a FOA Netting Agreement (with Title Transfer Provisions) and in relation to a Clearing Agreement which includes the Title Transfer Provisions, the opinions expressed above in paragraph 3.7 (*Enforceability of the Title Transfer Provisions*) in relation to the Title Transfer Provisions are not affected by the use of the Non-Cash Security Interest Provisions (used with or without the Rehypothecation Clause) and/or the Client Money Additional Security Clause, provided always that:

- 3.8.1 the agreement unambiguously specifies the circumstances in which the security interest provisions 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 provisions and the Title Transfer Provisions to apply simultaneously to the same item of margin; and

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

3.8.2 the pool of margin subject to a security interest and the pool of margin subject to the Title Transfer Provisions are operationally segregated.

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 not 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 because the Non-Defaulting Party is entitled to set off (through exercise of the FOA Netting Provision) its debt against the debt under the Transaction incurred between the Parties even though the bankruptcy process¹⁰ or business rehabilitation process¹¹ has commenced; provided that such claim is incurred prior to the date on which court issues an order for business rehabilitation or receivership. The Non-Defaulting Party may exercise its right to terminate at any time it sees fit (but before the application of claim for repayment)¹².

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 insofar as the laws of this jurisdiction are concerned.

¹⁰ Section 102 of the Bankruptcy Act: If a creditor who is entitled to claim for repayment of his debt is indebted to the debtor when the court issues the order placing the asset under receivership, even if the grounds for the indebtedness of each of the two parties are not the same, or are subject to conditions or terms as to time, such debts may be set off against each other, unless the creditor's right of claim against the debtor accrued after the order of receivership of the asset.

¹¹ Section 90/33 of the Bankruptcy Act: If the creditor who is entitled to apply for repayment of debt for business reorganization is indebted to the debtor at the time of issue of business reorganization order, such creditor may exercise the right of set-off, unless the creditor acquires the claim against the debtor after the court issues a business reorganization order.

¹² A legitimate claim of creditors (including contingent and prospective claims) at the date of the petition which must be lodged with the official receiver within (i) one month of the planner's appointment in case of rehabilitation or (ii) two months from the date following the date of publication of the order of absolution receivership.

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

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") the Foreign Defaulting Party can be subject to Insolvency Proceedings in this jurisdiction, whether or not Insolvency Proceedings have commenced in another jurisdiction. This is because under Section 177 of the Bankruptcy Act, an insolvency under the laws of other countries has no effect on the assets of such bankrupt debtor in Thailand.

As a result of Section 177, a separate Insolvency Proceeding in this jurisdiction will therefore be necessary in relation to the Foreign Defaulting Party if the receivership of assets of the Foreign Defaulting Party in this jurisdiction is sought.

The authorities in this jurisdiction would not necessarily defer to the proceedings in the Foreign Defaulting Party's Jurisdiction, as judgments of foreign courts will not necessarily be enforced or recognised by the courts of this jurisdiction but may, at the courts' sole discretion, be admissible as evidence in an action in the courts of this jurisdiction.

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

4.1.1 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 is not 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.

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

4.1.2 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" if the two parties are not bound to each other by obligations having subjects of the same kind and both of such obligations are not due (as described in paragraph 4.2 below). 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.

4.2 Availability of set-off

Under the CCC, an obligation of a debtor can be discharged by means of set-off, if the two parties are bound to each other by obligations having subjects of the same kind, when both of such obligations are due, unless¹³ (1) the nature of at least one of the obligations does not admit such set-off¹⁴; (2) the parties have declared a contrary intention; (3) there is a defence against a claim; (4) an obligation arises from an unlawful act; (5) a claim is not subject to judicial attachment e.g. the right to maintenance (i.e. child support or alimony); (6) certain obligations are not permitted by law to be set-off (e.g. a set-off of payment for shares in a company by a shareholder against an issuing company or a transaction is entered into by a bankrupt debtor with his/its creditor within 3 months prior to the application to the court that such debtor be adjudged bankrupt with the knowledge that he/it would prejudice his/its other creditors (or fraudulent act)¹⁵); or (7) an obligation is unenforceable. Such intention in (2), however, cannot be set up against a third person acting in good faith. By virtue of set-off, the obligations of the parties can be discharged only up to the extent to which the amounts of such obligations correspond.

It is uncertain under Thai law whether it is possible to exercise set-off in respect of contingent liabilities.

4.3 General limitations on enforceability

The enforceability of the FOA Netting Provisions, the FOA Set-Off Provisions and the Title Transfer Provisions will be subject to and limited by provisions of law of general application relating to or affecting generally the enforcement of parties' rights and remedies by the provisions of any applicable law relating to bankruptcy, insolvency, reorganisation or moratorium, as discussed in further details as below.

¹³ Sections 341, 344, 345, 346, 1119 and 411 of the CCC, respectively.

¹⁴ This means that both claims must be monetary claims.

¹⁵ The effect of this is that set-off can be voided under Thai law if the debtor commits a Preferential Act as explained under paragraph 4.3 (b) below.

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

Pursuant to the Bankruptcy Act, (i) an automatic stay applies to any civil action in any law court or any submission to arbitration or any bankruptcy action; (ii) the bankrupt debtor is forbidden to dispose of, distribute, transfer, let, repay its debt, create debt or do any act which creates encumbrances over his asset except where such act is essential so that the debtor may carry on his business as normal, unless otherwise ordered by the court with whom the petition is filed; and (iii) a moratorium affecting creditors' rights (including, explicitly, the right to enforce security unless the court approval is granted) comes into force from the date on which the court of jurisdiction accepts a business rehabilitation petition and lasts until the scheduled date for completion of the business rehabilitation plan or actual completion of the plan, or the date of dismissal or discharge of the petition or cancellation of the business rehabilitation order or the date on which the receivership order is cancelled.

Accordingly, in the rehabilitation process, any payment to be made by the Defaulting Party following the determination of an amount due upon close out under the FOA Netting Provisions and the FOA Sett-Off Provisions or a Transfer by the Defaulting Party in accordance with the Title Transfer Provisions (including any substitution of any new Acceptable Margin pursuant to the terms thereof) may not be enforced as an automatic stay as referred to in (i), (ii) and (iii) of the preceding paragraph will apply to the Thai Defaulting Party under the rehabilitation process.

In particular, the cancellation or termination of the Transactions as contemplated in the Agreement and the calculation of the net close-out amount and the set-off amount under the FOA Netting Provisions and the FOA Set-Off Provisions resulting from a premature termination of the Transactions could be challenged and rescinded at the instance of the other creditors or official receiver, planner/plan administrator of the Defaulting Party. The grounds for such challenge include:

- (a) Section 237 of the CCC. Under this provision, the obligations to pay an amount calculated under the Agreement may be subject to challenge and rescission at the instance of the general creditors (or the official receiver pursuant to Section 113 of the Bankruptcy Act or the planner or plan administrator pursuant to Section 90/40 of the Bankruptcy Act) of the Defaulting Party if the Defaulting Party enters into such transactions (not the exercise of set-off rights) with knowledge that they would prejudice the Defaulting Party's creditors and the other parties are aware of this consequence (although lack of knowledge is not a defence where the act is purely gratuitous) ("**Prejudicial Act**"). The period within which the general creditors or the official receiver of the Defaulting Party or such other persons are entitled to bring actions to challenge and rescind a transaction of this sort is one year from the date they acquire knowledge of such unfair discriminatory treatment but in any event not exceeding 10 years from the date the transactions in question are entered into by the Defaulting Party. It will be presumed that

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

both parties knew that such action would prejudice other creditors if the act (i) arose within the period of one year before the filing of the bankruptcy or business rehabilitation petition or (ii) was a gratuitous act or (iii) was an act for which the Defaulting Party received inadequate consideration.

(b) Section 90/41 of the Bankruptcy Act gives any of the planner, plan administrator or official receiver of the Defaulting Party, and Section 115 of the Bankruptcy Act grants the official receiver of the Defaulting Party, the right to bring an action to challenge and obtain a decree to rescind any transactions (not the exercise of set-off rights) entered into by the Defaulting Party within 3 months (one year if such act is done with a connected party) before the date of application to make the Defaulting Party bankrupt or subject to the court order of the business rehabilitation as the case may be or thereafter¹⁶ and done with the Defaulting Party's intention that such transactions would confer undue preference to a creditor of the Defaulting Party over any other creditors of the Defaulting Party ("Preferential Act"). The law does not require that a preferential creditor must be aware of such Preferential Act.

In particular, the operation of the FOA Netting Provisions and the FOA Set-off Provisions may be held unenforceable by the Thai courts if they constitute (i) a Prejudicial Act (however, in our view, the application of this power is unlikely since, upon close out, there is no act done by the debtor (as the operation of the FOA Netting Provisions and the FOA Set-off Provisions will be performed by the Non-Defaulting Party)) or (ii) a Preferential Act (however, it could be argued that any relevant permission in relation to such acts were given when the Agreement and the Transaction were entered into and not at the time of bankruptcy/business rehabilitation).

In addition, any payment made by the Defaulting Party following the determination of an amount due upon close out under the FOA Netting Provisions and the FOA Set-Off Provisions or a Transfer by the Defaulting Party in accordance with the Title Transfer Provisions (including any substitution of any new Acceptable Margin pursuant to the terms thereof) would certainly be at risk from possible challenge on either of the grounds above.

4.4 **Limitation on the recognition of foreign law**

Recognition of foreign law by a Thai court is subject to the extent that such foreign law is:

¹⁶ This law expressly specifies "3 months or thereafter".

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

- (a) proven to the satisfaction of the Thai court; and
- (b) with respect to the essential elements or effects thereof, not considered contrary to the public order or good morals of the people of Thailand.

4.5 No opinion on taxation

No opinion is expressed with respect to law and regulations relating to taxation.

4.6 Interest on late payment

A Thai court will reserve to itself a discretion to review any provision charging interest with respect to late payment of any amounts in the event that the court considers such a provision to be penal in nature in which event the court may decide to reduce the amount payable to the amount considered reasonable by the court.

4.7 Interest on interest

The charging of interest on interest is prohibited, except where a lender and a borrower have agreed in writing that interest on a loan due for not less than one year shall be added to the capital, and that the whole shall bear interest at a specified rate, and where the charging of compound interest is allowed pursuant to commercial usage for the calculation of compound interest on current accounts (for example, overdraft accounts in the case of commercial banks) as well as in other similar commercial transactions.

4.8 Claims for interest in bankruptcy

In a bankruptcy action, it is provided under Section 100 of the Bankruptcy Act that interest or other charge in lieu of interest after the date of the court's control order shall not be a debt for which payment can be claimed.

4.9 Exercise of discretions

Where a party to the FOA Netting Agreement or, as the case may be, the Clearing Agreement, or the Transactions is vested with discretion or may determine a matter in its opinion, Thai law may require that such discretion is exercised reasonably or that such opinion is based upon reasonable grounds.

4.10 Need for Thai translation in Thai proceedings

In any proceedings in a Thai court a Thai translation may be required to accompany any document produced in a foreign language.

4.11 Admissibility of documents in court

A Thai court generally requires that original documents be submitted to the court before they can be admitted in evidence. By way of exception, copies of documents

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

may be submitted by a party to legal proceedings before a Thai court either (a) where the parties to the dispute agree to accept such copy for the purposes of the proceedings or (b) where it can be proven that the original cannot be submitted to the court because it has been damaged by force majeure or lost or due to other causes which are not the circumstances that such party is responsible for or the court deems that it is necessary and in the interests of justice to admit such copied document. In respect of the document to be submitted to the courts of Thailand which is required to be stamped under the Thai Revenue Code and where the copy does not indicate that the original was stamped, then the general requirement is for the copy to be stamped in order to be admitted, although we are aware of a number of Supreme Court decisions which have accepted copies without evidence of stamping.

4.12 Double proceedings not permitted

The taking of proceedings in one court in Thailand may preclude the taking of proceedings in any other court in Thailand on the same subject matter.

4.13 Waiver of immunity

Under Section 1307 of the CCC, no execution of state properties can be affected whether or not such state property forms part of the domain public (which is in use for public interest or reserved for the common benefit).

The right of immunity from execution of any other assets, which are not state properties, may be granted under particular law. For example, the law establishing the specific Thai entity may grant rights of immunity to such entity's assets.

4.14 Meaning of references to Thai law

Insofar as the opinion expressed herein refers to the law or laws of Thailand, such references include Royal Decrees, Ministerial Decrees, Ministerial Regulations and Notifications, and Supreme Court judgments and are limited to those which are published and available to the public as of the date hereof.

4.15 SEC's Powers

Upon the occurrence of certain events (as specified in the Derivatives Act B.E. 2546 as amended (the "**Derivatives Act**") and the SEC's Notification No. GorThor. 9/2556 re: the segregation and management of customers' asset in the case where the derivatives business operator is subject to a receivership order) which may adversely affect the operation of a derivatives business operator, such as (i) a derivatives business operator being subject to a receivership order; or (ii) a failure by the derivatives business operator to maintain the financial condition as required by the SEC, the SEC and the official receiver may be given the power to undertake, or order the derivatives business operator to undertake (as the case may be), certain actions (as specified in the Derivatives Act) in connection with a derivative contract to which the derivatives business operator is a party, which include:

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

- (a) to gather and allocate assets deemed to be owned by the customer in order to return them to the customer;
- (b) to transfer derivatives position/account of the customer and the customer's assets to other derivatives business operator;
- (c) to close out derivatives position/account of the customer if the transfer thereof to other derivatives business operator cannot be made; and
- (d) to undertake or refrain from undertaking any action as the SEC considers appropriate.

Please note that these provisions only apply to Thai licensed derivatives brokers.

4.16 Gambling Transactions

Before the enactment of the Derivatives Act, the legality and validity of a derivatives transaction could be challenged on the ground that it could be regarded as a gambling transaction under Thai law.

Under Section 853 of the CCC, a gambling transaction will not create any obligation for any party and a party will not be able to claim back anything that such party gave in the course of gambling. There is no definition of "*gambling*" in Thai law but prior court decisions and academic authorities have described a gambling transaction as being comprised of the following elements:

- (i) it is a contract between two or more parties;
- (ii) upon an uncertain event, a party who loses has to pay money or deliver assets; and
- (iii) all parties must have a chance to win or lose.

There is no court decision in relation to a derivatives transaction clarifying whether or not it is gambling. However, it is believed amongst leading Thai lawyers that if a derivatives transaction has been entered into for the purpose of hedging (not speculation), it should not be considered to be a gambling transaction. Whilst there is no court decision as to whether both parties are required to be hedging in order for a derivatives transaction not to be regarded as a gambling transaction, we are of the view that if a single party is hedging then the transaction should not be regarded as a gambling transaction (and therefore not unenforceable).

After the enactment of the Derivatives Act, the above uncertainty has been eliminated in respect of a derivatives contract entered into within the scope specified in the Derivatives Act¹⁷, because Section 5 of the Derivatives Act clearly stipulates that any

¹⁷ The products and variations as permitted by the SEC are: (i) 'products' include securities, gold, crude oil, silver, platinum, copper, zinc, metal, aluminium, tin, coal, natural gas, electricity, and plastic; and

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

derivatives contract (having the products or variation as permitted by the SEC) that is conducted (i) with the licensed or registered persons (with the SEC) or (ii) via the derivatives exchange or clearing house established under the Derivatives Act will create legal obligations and be enforceable.

Similarly, a commodities future contract related to rubber, certain types of rice and tapioca chips which is traded in the Agricultural Futures Exchange of Thailand is enforceable under Thai law, and will not be classified as gambling since it has been legalised by the Agricultural Futures Trading Act B.E. 2542 ("AFTA").

As such, there is a high risk that any derivatives contract which (i) is outside of the scope of the Derivatives Act or the AFTA and (ii) has a purpose other than hedging, may not be enforceable because it may be regarded as a gambling transaction.

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

Clifford Chance (Thailand) Limited hereby consents to 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**") relying on the Opinion. This opinion may not, without our prior written consent, be relied upon by or be disclosed to any other person save that it may be disclosed without such consent to:

- (a) the officers, employees, auditors and professional advisers of any addressee or any subscribing member;
- (b) 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; and
- (c) any competent authority supervising a subscribing member or its affiliates

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.

This Opinion was prepared by Clifford Chance (Thailand) Limited on the basis of instructions from FIA Europe in the context of the netting requirements of the Basel III capital rules in the EU and US and Clifford Chance (Thailand) Limited has not taken instructions from, and this Opinion does not take account of the specific circumstances of,

(ii) 'variations' include variation in a currency exchange rate, interest rate, freight, carbon credit, and commodity index.

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Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

any subscribing member. In preparing this Opinion, Clifford Chance (Thailand) Limited had no regard to any other purpose to which this Opinion may be put by any subscribing member.

By permitting subscribing members to rely on this Opinion as stated above, Clifford Chance (Thailand) Limited accepts responsibility to such subscribing members for the matters specifically opined upon in this Opinion in the context stated in the preceding paragraph, but Clifford Chance (Thailand) Limited does not have or assume any client relationship in connection therewith or assume any wider duty to any subscribing member or their affiliates. This Opinion has not been prepared in connection with, and is not intended for use in, any specific transaction.

Furthermore this Opinion is given on the basis that any limitation on the liability of any other adviser to FIA Europe or any subscribing member, whether or not we are aware of that limitation, will not adversely affect our position in any circumstance.

Yours faithfully,

Clifford Chance (Thailand) Limited

CLIFFORD CHANCE (THAILAND) LIMITED

**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**")

C L I F F O R D
C H A N C E

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

16. Professional 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 "**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**")

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Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

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.

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

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/EC¹⁸, 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.

¹⁸ Non-EU counsel should discuss with Clifford Chance if clarification is needed.

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

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.

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Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

"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);

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Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

- (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 Sett-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;
- (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

C L I F F O R D
C H A N C E

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Title Transfer Provisions; and

(e) for the purposes of paragraphs 3.7.3 and 3.7.4, 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

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

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**);

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

- (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*);

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

- (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.

"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).

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

"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***);

C L I F F O R D
C H A N C E

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

- (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***);

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

(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."

C L I F F O R D
C H A N C E

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

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]);

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

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

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

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

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

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.

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

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 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).

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C H A N C E

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

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 Provisionprovided 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

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

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.".

ANNEX 5
NECESSARY OR DESIRABLE AMENDMENTS

1. Necessary amendments

- None -

2. Desirable amendments

(a) For the purposes of paragraphs 3.5.1 and 3.5.2:

(1) the underlined words shown below shall be included in the General Set-Off Clause:

"Set-off: Without prejudice to any other rights to which we may be entitled, you irrevocable and unconditionally consent and agree that 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, at any time regardless of the due date of both such amounts. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained and you will not object to such value ascribed by us."

(2) the underlined words shown below shall be included in the Margin Cash Set-Off Clause:

"Set-off upon default or termination: If there is an Event of Default or this Agreement terminates, you irrevocably and unconditionally consent and agree that 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, at any time regardless of the due date of the cash margin and your Obligations, 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 balance, if any, shall take into account the Liquidation Amount payable under the Netting Module of this Agreement.]"

(b) For the purposes of paragraph 3.6:

(1) the underlined words shown below shall be included in the Clear Module Set-Off Provision:

"Clearing Module Set-Off Provision: You irrevocably and unconditionally consent and agree that Firm may at any time and without notice to Client, set-off any Available Termination Amount

C L I F F O R D
C H A N C E

Thailand / Prudential Regulation / FOA documentation / Netting / Class 2

against any amount (whether actual or contingent, present or future) owed by Firm to Client under the Clearing Agreement or otherwise, at any time regardless of the due date of both such amounts. For these purposes, Firm may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained."

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

- None -

4. Additional events for the purposes of paragraph 3.1:

Commencement of a procedure of seeking or proposing a business rehabilitation and/or the appointment of a planner or plan administrator in respect of the Defaulting Party

5. Alterations which constitute material alterations:

- None -