

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

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

Date: November 26, 2014  
Our Ref.: F81424/M01

Ladies and gentlemen,

**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 the Republic of China ("**ROC**" or "**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 opinions on the enforceability of the FOA Netting Provision are 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.

This opinion letter is given with respect to the laws and regulations of the ROC and the prevailing interpretations thereof as at today's date and the opinions and statements expressed in this opinion letter are limited in all respects to and are to be construed and interpreted in accordance with the laws of the ROC and does not purport to speculate as to future laws or regulations or as to future interpretations of current laws and regulations. Unless otherwise specifically stated herein, we do not express any opinion on public international law or on the rules promulgated under or by any treaty or treaty organisation, except insofar as such rules are directly applicable in the ROC, nor do we express any opinion on the laws of any other jurisdiction or tax law. No undertaking is assumed on our part to revise, supplement, update or amend this opinion letter, in connection with or to notify or inform you of, any developments and/or changes under the applicable laws of the ROC subsequent to today's date or if we become aware of any facts that might change the opinions expressed herein for any other reason.

In this opinion letter, legal concepts are expressed in English terms. The ROC legal concepts concerned may not be identical in meaning to the concepts described by the English terms as they exist under the laws of other jurisdictions. In the event of a conflict or inconsistency, the relevant expression shall be deemed to refer only to the ROC legal concepts described by the English terms.

## 1. TERMS OF REFERENCE AND DEFINITIONS

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

1.1.1 companies incorporated organized, established or formed under the ROC Company Law and branches established or located in the ROC of the foreign companies which are incorporated, organized, established or formed under relevant foreign company law ("**ROC Companies**"); and

1.1.2 securities firms conducting brokerage and/or proprietary dealing business incorporated, organised, established or formed under the ROC Company Law and regulated under the ROC Securities Act and branches established or located in the ROC of the foreign securities firms which are incorporated, organized, established or formed under relevant foreign law and obtained the approval and license from the ROC competent authority for the operation of securities business in the ROC ("**ROC Securities Firms**").

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

1.2.1 banks incorporated, organised, established or formed under the ROC Company Law and regulated under the ROC Banking Act and branches established or located in the ROC of the foreign banks which are incorporated, organized, established or formed under relevant foreign law and obtained the approval and license from the ROC competent authority for the operation of banking business in the ROC ("**ROC Banks**") (Schedule 1);

1.2.2 partnerships organised, established and formed under the ROC Civil Code ("**ROC Partnerships**") (Schedule 2);

1.2.3 insurance companies incorporated, organised, established or formed under the ROC Company Law and regulated under the ROC Insurance Act and branches established or located in the ROC of the foreign insurance companies which are incorporated, organized, established or formed under relevant foreign law and obtained the approval and license from the ROC competent authority for the operation of insurance business in the ROC ("**ROC Insurance Companies**") (Schedule 3);

1.2.4 individuals that are natural persons having the ROC nationality ("**ROC Individuals**") (Schedule 4);

1.2.5 funds including (i) securities investment trust funds established and formed under the ROC Securities Investment Trust and Consulting Act ("**ROC Securities Investment Trust Funds**") (Schedule 5); and (ii) common funds established and formed under the ROC Trust Enterprise Act ("**ROC Common Funds**") (Schedule 6);

1.2.6 sovereign and public sector entities, including (i) ROC central government and local self-governing governments as defined under the ROC Local

Government Act ("**ROC Government Entities**") (Schedule 7); and (ii) Central Bank of the Republic of China (Taiwan) ("**CBC**") organised, established and formed under the Act of Central Bank of the ROC (Schedule 8); (iii) Postal Savings Fund organised, established and formed under the ROC Postal Savings and Remittances Act; (iv) Public Service Pension Fund organised, established and formed under the Statute Governing Management of Public Service Retirement Pension Fund of the ROC; (v) Labor Pension Fund (Old Scheme) organised, established and formed under the ROC Labor Standards Act; (vi) Labor Pension Fund (New Scheme) organised, established and formed under the Statute of Labor Pension Fund of the ROC; (vii) Labor Insurance Fund formed under the ROC Labor Insurance Act (items (iii) to (vii) collectively hereinafter referred to "**ROC Government Funds**") (Schedule 9); and (viii) National Financial Stabilisation Fund ("**NSF**") organised, established and formed under the Statute for Establishment and Administration of National Financial Stabilization Fund of the ROC (Schedule 10);

- 1.2.7 parties acting as trustees of trusts (excluding any charitable trust) established and formed under the ROC Trust Law ("**ROC Trustee Parties**") (Schedule 11); and
- 1.2.8 charitable trusts/bodies organised under the ROC Trust Law ("**ROC Charitable Trustee Parties**") (Schedule 12).
- 1.3 This opinion is given in respect of the FOA Netting Agreement and the Clearing Agreement when the FOA Netting Agreement and the Clearing Agreement are expressed to be governed by English law.
- 1.4 This opinion covers all types of Transaction.
- 1.5 This opinion is given in respect of only such of those Transactions which are capable, under their governing laws, of being terminated and liquidated in accordance with the FOA Netting Provision.
- 1.6 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).
- 1.7 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.
- 1.8 A reference in this opinion to a Transaction is a reference, in relation to the FOA Netting Agreement to a Transaction (as defined therein) and, in relation to FOA Clearing Module and ISDA/FOA Clearing Addendum to a Client Transaction (as defined therein).

## 1.9 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.

1.9.1 "**Insolvency Proceedings**" means the procedures listed in paragraph 3.1;

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

1.9.3 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 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 incorporated, organized, established or formed under the ROC Company Law would be subject in this jurisdiction are the following:

- (a) a composition proceeding under the ROC Bankruptcy Law;
- (b) a bankruptcy proceeding under the ROC Bankruptcy Law;
- (c) a reorganization proceeding under the ROC Company Law; and

(d) a special liquidation proceeding under the ROC Company Law.

A Party that is a branch established or located in the ROC of a foreign company which is incorporated, organized, established or formed under relevant foreign company law will not be subject to the above (a) to (c) proceedings.

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

### **3.2 Recognition of choice of law**

Other than as described in paragraphs 4.1.1 and 4.1.2 of the qualifications below:

- 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.
- 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.

### **3.3 Enforceability of FOA Netting Provision**

Other than as described in paragraph 4.1.3 the qualifications below, 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:

Article 400 of the ROC Civil Code recognizes the legality and validity of a contractual "netting" pursuant to which a single lump-sum amount can be determined by the netting of a series of transactions made between the parties to such contract. Therefore, the legality and validity of a "netting" contractual arrangement as that set forth in the FOA Netting Provision will be recognized pursuant to Article 400 of the ROC Civil Code.

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

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

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

In relation to a Clearing Agreement, the opinions expressed at paragraph 3.3 above in relation to the FOA Netting Provision are not affected by the use of the FOA Clearing Module or the ISDA/FOA Clearing Addendum in conjunction with the FOA Netting Agreement. Other than as described in paragraphs 4.1.1 and 4.1.2 of the qualifications below, 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**

Other than as described in paragraphs 4.1.4 and 4.1.5 of the qualifications below:

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:

- (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:

The ROC Civil Code recognizes a statutory right exercisable by a party to set off its claims against the debts owed by the other party to such party. Therefore, the legality and validity of a contractual right of set-off as prescribed under the FOA Set-Off Provisions will be recognized pursuant to the ROC Civil Code.

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

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

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

We are of this opinion because:

The ROC Civil Code recognizes a statutory right exercisable by a party to set off its claims against the debts owed by the other party to such party. Therefore, the legality and validity of a contractual right of set-off as prescribed under the FOA Set-Off Provisions will be recognized pursuant to ROC Civil Code.



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

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

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

We are of this opinion because:

The ROC Civil Code recognizes the legality and validity of a contractual right of set-off as prescribed under the Clearing Module Set-Off Provision.

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

### **3.7 Enforceability of the Title Transfer Provisions**

Other than as described in paragraph 4.1.3 of the qualifications below:

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

3.7.2 Other than as described in paragraphs 4.1.1 and 4.1.2 of the qualifications below, 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:

If the Transfer of Margin comprising of securities located in this jurisdiction is made in accordance with the formalities required under the laws of the ROC, the Transfer would be respected as an outright transfer and would not be recharacterised; otherwise the Transfer would not be respected as an outright transfer.

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
- 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 not 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 FOA Netting Provision would still be enforceable in the Insolvency Proceedings for both scenarios of automatic and optional termination and liquidation of Transactions.

### 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.

### 3.12 **Insolvency of Foreign Parties**

Where a Party is incorporated or formed under the laws of another jurisdiction and an Event of Default occurs in respect of such Party (a "**Foreign Defaulting Party**") there can be no separate Insolvency Proceedings in this jurisdiction in relation to the Foreign Defaulting Party and the authorities in this jurisdiction would defer to the proceedings in the Foreign Defaulting Party's home jurisdiction; provided that a composition reached or a bankruptcy order issued by a court approving the bankruptcy petition in a jurisdiction other than the ROC is not enforceable against the debtor's assets located in the ROC.

### 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 With regard to the choice of law clause contained in the FOA Netting Agreement and the Clearing Agreement, the courts of the ROC will generally recognize such clauses, provided however that the relevant provisions of English law to govern the FOA Netting Agreement and the Clearing Agreement will not be applied to the extent the ROC courts hold that (i) the application of such provisions would be contrary to the public order or good morals of the ROC or (ii) such provisions would have the effect of circumventing mandatory and/or prohibitive provisions of ROC law. However, it is our view that it is not likely that the ROC courts would hold the relevant provisions in the FOA Netting Agreement and the Clearing Agreement to be contrary to public orders or good morals of the ROC.

4.1.2 The Judicial Yuan of the ROC has held an internal conference and reached the conclusion that a submission to jurisdiction clause is valid in the absence of any of the following circumstances:

- (1) it would be unfair for the subject matter to be adjudicated by the chosen jurisdiction;
- (2) the consent of a party to submit to the chosen jurisdiction is obtained by fraud, duress or other unlawful means;
- (3) the parties are not on equal footing when they enter into the choice of jurisdiction agreement;
- (4) it would be inappropriate or inconvenient for the chosen jurisdiction to adjudicate the subject matter; and
- (5) if the country of the chosen jurisdiction does not recognize and enforce judgments of the ROC courts on a reciprocal basis.

The above conclusion made by the Judicial Yuan is, however, subject to test in court.

4.1.3 The conversion of any cash payment obligation into the Base Currency would be valid under the laws of the ROC and such a provision is not inconsistent with the public policy of the ROC. However, whether the provision is inconsistent with the public policy of the ROC is a factual matter to be ultimately determined by the applicable ROC court on a case by case basis.

4.1.4 Pursuant to Article 113 of the ROC Bankruptcy Law, in a bankruptcy proceeding under the ROC Bankruptcy Law, if a Party owes the debts to the other Party at the time of the bankruptcy adjudication of the Party, the other Party may set off its debt against the claim held by the Party without going through the bankruptcy proceeding, irrespective of whether the debts of the other Party are secured or unsecured. However, before a bankruptcy petition is approved by the court, the court may, at its discretion, issue a freeze order (with the length of its validity to be solely determined by the court) to suspend any creditor's actions (including the enforcement of a pledge or exercise of a set-off), irrespective of whether the claims are secured or unsecured. Notwithstanding the foregoing, the Bankruptcy Law is silent on the issue of whether the right of set-off will be suspended or impacted when a debtor enters into a composition proceeding under the Bankruptcy Law.

In a reorganization proceeding and a special liquidation proceeding under the ROC Company Law, the court approving the reorganization or special liquidation petition of a company may issue an order to restrain the creditors of the company from collecting their claims or enforcing their security interests (as the case may be) by taking any actions against the company or the company's property. In addition, before a reorganization or special liquidation ruling is issued by the court, the court may, at its discretion, issue a freeze order to suspend any creditor's actions (including the enforcement of a pledge or exercise of a set-off), irrespective of whether the claims are secured or

unsecured. The maximum term of a freeze order under the Company Law is 90 days, but may be extended by up to another 90 days upon an application by the company or an interested party or at the court's sole discretion.

The main objective for the court to issue a "freeze order" in a reorganization proceeding under the ROC Company Law is to preserve the assets of the company so as to retain the company as an on-going concern during the interim period pending the ultimate decision by the court for issuing a reorganization approval. The court may issue a "freeze order" for any of the following purposes: (a) freeze the company's assets; (b) restrict the company's business activities; (c) restrict the company's performance of its obligations, and the exercise of rights to claim against the company; (d) impose a stay on the company's bankruptcy, settlement, or compulsory execution proceeding; (e) prohibit the transfer of the company's registered shares; or (f) make assessment of the liabilities of the company's responsible persons for the loss or damage caused, and freeze their assets. There were several precedents that the ROC courts issued the aforementioned "freeze orders" to suspend the exercise of set-off by the creditors.

Notwithstanding the foregoing, in our opinion, the FOA Netting Provision would not be affected or impacted by the aforementioned freeze order if such provision is held by ROC court as a concept of netting arrangement under Article 400 of the ROC Civil Code under which the parties can conclude a final net lump sum in accordance with the netting provisions while the actual payment of such final net lump sum may still be suspended by the freeze order. However, it is our view that there remains a remote possibility that the ROC courts would hold the FOA Netting Provision to fall outside the scope of Article 400 of the Civil Code. If so, the provision will be considered a set-off arrangement by the ROC courts and thus be subject to the aforementioned "freeze order." There were some precedents that the ROC court issued the aforementioned "freeze orders" to suspend the exercise of set-off."

- 4.1.5 Pursuant to Article 335 of the ROC Civil Code, a notice of set-off must be given to the other party by the party exercising the right of set-off in order for the set-off to become effective. In case the debt to be set off is not mature, the party exercising the right of set-off must have been entitled to accelerate the debt to be set off under law or contract.
- 4.1.6 The exercise of any right must not be repugnant to public interest or have a primary purpose to harm another person, and that rights must be exercised in good faith.
- 4.1.7 The statute of limitations for the right of claim against an obligor as to any amount of principal shall be fifteen years from when such principal becomes due, and as to any amount of interest, shall be five years from when such interest becomes due. Any specified period prescribed by a statute of limitations may not be shortened or extended unilaterally or by contract and that any entitlement granted under a statute of limitations may not be waived in advance.

- 4.1.8 Under the current ROC foreign exchange control laws and regulations, (i) an ROC Individual (including each ROC partner of ROC Partnerships) or (ii) an entity in the ROC (including ROC Companies, ROC Banks, ROC Securities Firms, and ROC Insurance Companies) may, upon filing a report with the CBC purchase foreign exchange with New Taiwan Dollars and remit the same out of the ROC for purposes other than trade or service related payments, in an amount up to Five Million United States Dollars (US\$5,000,000) and Fifty Million United States Dollars (US\$50,000,000) respectively, per calendar year without special approval from the CBC. Foreign exchange purchase for purposes other than trade or service related payments exceeding the applicable ceiling would require special approval from the CBC which approval is discretionary and would be decided by the CBC on a case-by-case basis.
- 4.1.9 The ROC court has the sole discretion to accept and rule out any evidence submitted. Should there be any dispute over the existence of a transaction entered into orally by the parties, the ROC court has the sole discretion to determine the existence of an oral transaction between parties (including, but not limited to, the issues of whether (i) it has been expressly agreed by the parties to enter into an oral transaction and (ii) the oral transaction was entered into by the authorized persons of the parties) after investigating the relevant facts and giving weight to the evidence submitted to the ROC court.

If the parties enter into a transaction orally and subsequently confirm the transaction in writing but without referring to relevant agreement or stating anything negative concerning the applicability of the relevant agreement and a dispute arising therefrom, the ROC court needs to explore the real intention of the parties by evaluating all facts investigated and evidence submitted. If there is only one agreement entered into by the parties, it would be easier for the ROC court to determine that such agreement should govern. However, if there were two or more agreements entered into between the parties, there will likely be question as to which agreement should govern the said transaction. The ROC court therefore would need to investigate the relevant facts (e.g., communications between the parties and the past practice of the parties) and give weight to the evidence submitted to the ROC court.

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

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

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

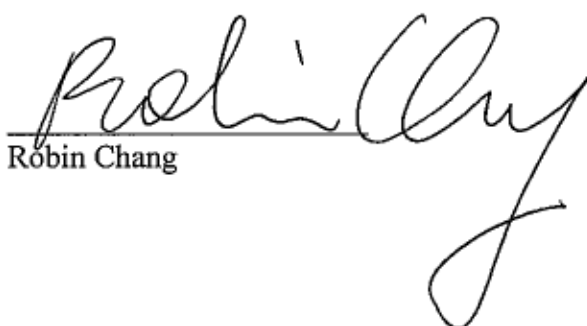
- a) any person to whom disclosure is required to be made by applicable law or court order or pursuant to the rules or regulations of any supervisory or regulatory body or in connection with any judicial proceedings;
- b) the officers, employees, auditors and professional advisers of any addressee or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

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

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

Yours faithfully,

LEE AND LI



Robin Chang

## **SCHEDULE 1**

### **ROC Banks**

Subject to the modifications and additions set out in this Schedule 1 (ROC Banks), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are ROC Banks. For the purposes of this Schedule 1 (ROC Banks), "**ROC Banks**" means banks incorporated, organised, established or formed under the ROC Company Law and regulated under the ROC Banking Act and branches established or located in the ROC of the foreign banks which are incorporated, organized, established or formed under relevant foreign law and obtained the approval and license from the ROC competent authority for the operation of banking business in the ROC.

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

#### **1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

Paragraph 1.9.1 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 1 (ROC Banks)".

#### **2. ADDITIONAL ASSUMPTIONS**

We assume the following:

None.

#### **3. MODIFICATIONS TO OPINIONS**

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

##### **3.1 Insolvency Proceedings: ROC Banks**

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an ROC Bank incorporated, organised, established or formed under the ROC Company Law and regulated under the ROC Banking Act could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

- (a) a composition proceeding under the ROC Bankruptcy Law;
- (b) a bankruptcy proceeding under the ROC Bankruptcy Law;
- (c) a reorganization proceeding under the ROC Company Law;
- (d) a special liquidation proceeding under the ROC Company Law; and



- (e) a special receivership proceeding or a special administration proceeding under the ROC Banking Act.

A Party that is a branch established or located in the ROC of a foreign bank which is incorporated, organized, established or formed under relevant foreign law and obtained the approval and license from the ROC competent authority for the operation of banking business in the ROC will be subject to the above (d) and (e) proceedings only.

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

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

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

None.

#### 5. **ADDITIONAL QUALIFICATIONS**

The opinions in this opinion letter also apply to an ROC Bank subject to the following additional qualifications.

An ROC Bank is not subject to a composition or bankruptcy proceeding under the ROC Bankruptcy Law or a reorganization proceeding under the ROC Company Law when it is subject to a special receivership proceeding under the ROC Banking Act. Nevertheless, the ROC Banking Act is silent on the issue of whether the right of set-off will be suspended or impacted when an ROC Bank is subject to a special receivership proceeding. In addition, the proceedings for corporate reorganization, bankruptcy, composition, and compulsory execution shall automatically stay during the period when an ROC Bank is subject to a special administration proceeding. If an ROC Bank is subject to a special administration proceeding initiated by the ROC competent authority, no third party creditors can exercise any rights of claim against the bank other than by going through such special administration proceeding, except that such third party creditor may still go through an ordinary court proceeding to ascertain its rights of claim against the bank. Moreover, under the ROC Banking Act, (i) the administrator may terminate or void any contract or agreement already entered into by such bank but not yet being performed or fully performed and (ii) the counterparties to such contracts or agreements that suffer any damages arising from such termination or avoidance may seek remedy from the bank as if they were creditors in the special administration proceeding.

The Non-Defaulting Party may exercise its netting rights pursuant to the FOA Netting Provision once a special administration proceeding has commenced in respect of an ROC Bank. Such netting rights in respect of the Transactions will not be affected even if the administrator terminates the FOA Netting Agreement and the Clearing Agreement thereafter.

Notwithstanding the foregoing, exercise of the right of set-off may be suspended if the ROC court issues a "freeze order" in respect of an ROC Bank in a special administration proceeding. The ROC Banking Act however does not specify the maximum term of a freeze order and therefore the length of the validity of a freeze order under the ROC Banking Act will be solely determined by the court. In addition, although no letter has been issued by the Financial Supervisory Commission ("**FSC**") in respect of the impact on a creditor's right of set-off if a special administration proceeding has commenced in respect of an ROC Bank, in our opinion, the ROC court will follow the same approach as prescribed by the FSC in a letter (Ref. No.: Chin-Kuan-Pao-Tsai-Tzu-09802509160) issued with respect to ROC Insurance Companies (as further described in section 5 of Schedule 3) so that once a special administration proceeding has commenced in respect of an ROC Bank, the creditors of such bank should not exercise their right of set-off against such bank.

In our opinion, the FOA Netting Provision would not be affected or impacted by the aforementioned freeze order if such provision is held by ROC court as a concept of netting arrangement under Article 400 of the ROC Civil Code under which the parties can conclude a final net lump sum in accordance with the netting provisions while the actual payment of such final net lump sum may still be suspended by the freeze order.

## **SCHEDULE 2**

### **ROC Partnerships**

Subject to the modifications and additions set out in this Schedule 2 (ROC Partnerships), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are ROC Partnerships. For the purposes of this Schedule 2 (ROC Partnerships), "**ROC Partnerships**" means partnerships organised, established and formed under the ROC Civil Code which shall bear unlimited liabilities to their creditors.

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

#### **1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

Paragraph 1.9.1 is deemed deleted and replaced with the following:

""Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 2 (ROC Partnerships)".

#### **2. ADDITIONAL ASSUMPTIONS**

We assume the following:

None.

#### **3. MODIFICATIONS TO OPINIONS**

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

##### **3.1 Insolvency Proceedings: ROC Partnerships**

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an ROC Partnership could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

- (a) a composition proceeding under the ROC Bankruptcy Law; and
- (b) a bankruptcy proceeding under the ROC Bankruptcy Law.

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

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

Second paragraph of Paragraph 4.1.4 is deemed deleted.

**5. ADDITIONAL QUALIFICATIONS**

The opinions in this opinion letter also apply to an ROC Partnership subject to the following additional qualifications.

An ROC Partnership is not a "corporation" incorporated under the ROC Company Law. Therefore, an ROC Partnership is subject to neither a reorganization proceeding nor a special liquidation proceeding under the ROC Company Law.

In addition, the ROC Civil Code is silent on the issue of whether a partnership is subject to a composition proceeding and bankruptcy proceeding under the ROC Bankruptcy Law. However, the decision of Da Li Yuan (the predecessor of the ROC Supreme Court) (Ref: Da-Li-Yuan 3-Shin-550) held that a partnership can be adjudicated bankrupt only if all partners are unable to repay the debts of the partnership.

### **SCHEDULE 3**

#### **ROC Insurance Companies**

Subject to the modifications and additions set out in this Schedule 3 (ROC Insurance Companies), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are ROC Insurance Companies. For the purposes of this Schedule 3 (ROC Insurance Companies), "**ROC Insurance Companies**" means insurance companies incorporated, organised, established or formed under the ROC Company Law and regulated under the ROC Insurance Act and branches established or located in the ROC of the foreign insurance companies which are incorporated, organized, established or formed under relevant foreign law and obtained the approval and license from the ROC competent authority for the operation of insurance business in the ROC.

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

#### **1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

Paragraph 1.9.1 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 3 (ROC Insurance Companies)".

#### **2. ADDITIONAL ASSUMPTIONS**

We assume the following:

None.

#### **3. MODIFICATIONS TO OPINIONS**

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

##### **3.1 Insolvency Proceedings: ROC Insurance Companies**

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an ROC Insurance Company could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

- (a) a composition proceeding under the ROC Bankruptcy Law;
- (b) a bankruptcy proceeding under the ROC Bankruptcy Law;
- (c) a reorganization proceeding under the ROC Company Law;
- (d) a special liquidation proceeding under the ROC Company Law; and

- (e) a special conservatorship proceeding, a special receivership proceeding, a special administration proceeding or a special dissolution proceeding under the ROC Insurance Act.

A Party that is a branch established or located in the ROC of a foreign insurance company which is incorporated, organized, established or formed under relevant foreign law and obtained the approval and license from the ROC competent authority for the operation of insurance business in the ROC will be subject to the above (d) and (e) proceedings only.

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

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

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

None.

#### 5. **ADDITIONAL QUALIFICATIONS**

The opinions in this opinion letter also apply to an ROC Insurance Company subject to the following additional qualifications.

If an ROC Insurance Company has been placed under a special conservatorship by the competent authority in accordance with the ROC Insurance Act, the ROC Insurance Company shall not perform any of the following without the consent of the conservator: (a) making payments or disposing of property in excess of the limit prescribed by the competent authority; (b) entering into any contract or undertaking any material obligations; and (c) any other matter that would significantly affect its financial conditions.

In addition, when an ROC Insurance Company is placed under a special receivership proceeding or a special administration proceeding, the provisions of the ROC Company Law pertaining to a provisional administrator and inspector will not apply. Also, all petitions for reorganization, bankruptcy, and composition (other than the petitions for special reorganization filed pursuant to the ROC Insurance Act) and compulsory execution proceedings, if any, shall be automatically stayed during a special receivership proceeding or a special administration proceeding. Furthermore, if an ROC Insurance Company is subject to a special administration proceeding initiated by the ROC competent authority, no third party creditors can exercise any rights of claim against the ROC Insurance Company other than going through such special administration proceeding, except that such third party creditor may still go through an ordinary court proceeding to ascertain its rights of claim against the ROC Insurance Company.

The Non-Defaulting Party may exercise its netting rights pursuant to the FOA Netting Provision once a special administration proceeding has commenced in respect of an ROC Insurance Company. Such netting rights in respect of the Transactions will not be affected even if the administrator terminates the Agreement thereafter.

Notwithstanding the foregoing, exercise of the right of set-off may be suspended if the ROC court issues a freeze order in respect of an ROC Insurance Company in a special administration proceeding. In addition, according to a letter issued by the FSC (Ref. No.: Chin-Kuan-Pao-Tsai-Tzu-09802509160), once a special administration proceeding has commenced in respect of an ROC Insurance Company, the creditors of such ROC Insurance Company should not exercise their right of set-off against such ROC Insurance Company. Notwithstanding the foregoing, in our opinion, the FOA Netting Provision would not be affected or impacted by the aforementioned freeze order if such provision is held by ROC court as a concept of netting arrangement under Article 400 of the ROC Civil Code under which the parties can conclude a final net lump sum in accordance with the netting provisions while the actual payment of such final net lump sum may still be suspended by the freeze order.

## **SCHEDULE 4**

### **ROC Individuals**

Subject to the modifications and additions set out in this Schedule 4 (ROC Individuals), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are ROC Individuals. For the purposes of this Schedule 4 (ROC Individuals), "**ROC Individuals**" means individuals that are natural persons having the ROC nationality with full capacity as defined under the ROC Civil Code.

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

#### **1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

Paragraph 1.9.1 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 4"

#### **2. ADDITIONAL ASSUMPTIONS**

We assume the following:

That each Party that is an ROC Individual has full capacity<sup>1</sup> under the ROC Civil Code to enter into, execute and deliver the FOA Netting Agreement and the Clearing Agreement and Transactions; to perform his obligations under the FOA Netting Agreement and the Clearing Agreement and Transactions.

#### **3. MODIFICATIONS TO OPINIONS**

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

##### **3.1 Insolvency Proceedings: ROC Individuals**

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an ROC Individual could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are as follows:

- (a) a composition proceeding under the ROC Bankruptcy Law;
- (b) a bankruptcy proceeding under the ROC Bankruptcy Law;
- (c) a rehabilitation proceeding under the Statute for Consumer Debt Clearance of the ROC; and

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<sup>1</sup> An ROC Individual will be deemed to have full capacity under the ROC Civil Code if (i) such ROC Individual (a) has reached the age of twenty or (b) although has not reached the age of twenty, is married and (ii) such ROC Individual is not subject to an order of assistance or guardianship by the ROC court.



- (d) a liquidation proceeding under the Statute for Consumer Debt Clearance of the ROC.

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

4. **MODIFICATIONS TO QUALIFICATIONS**

Second paragraph of Paragraph 4.1.4 is deemed deleted.

5. **ADDITIONAL QUALIFICATIONS**

The opinions in this opinion letter also apply to an ROC Individual subject to the following additional qualifications.

An ROC Individual is not a "corporation" incorporated under the ROC Company Law. Therefore, an ROC Individual is subject to neither a reorganization proceeding nor a special liquidation proceeding under the ROC Company Law. A composition proceeding and a bankruptcy proceeding under the ROC Bankruptcy Law may be applicable to an ROC Individual that is a debtor. However, a rehabilitation proceeding and a liquidation proceeding under the Statute for Consumer Debt Clearance of the ROC will only be applicable to an ROC Individual who (i) has not engaged in any business operations for the past five years or (ii) engages any business operations with the gross monthly revenue at the average amount of two hundred thousand New Taiwan Dollars (NTD200,000) for the past five years (with the threshold amount to be increased or decreased by an order from the ROC competent authority from time to time).

In a rehabilitation proceeding and a liquidation proceeding under the Statute for Consumer Debt Clearance of the ROC, a rehabilitation or liquidation ruling issued by a court approving the rehabilitation or liquidation petition may restrain the creditors of an ROC Individual from collecting their claims or enforcing their security interests (as the case may be) by taking any actions against the ROC Individual or the ROC Individual's property. Before a rehabilitation or liquidation ruling is issued by the court, the court may issue a "freeze order" to suspend any creditor's actions (including the enforcement of a pledge or exercise of a set-off), irrespective of whether the claims are secured or unsecured.

## **SCHEDULE 5**

### **ROC Securities Investment Trust Funds**

Subject to the modifications and additions set out in this Schedule 5 (ROC Securities Investment Trust Funds), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are ROC Securities Investment Trust Funds. For the purposes of this Schedule 5 (ROC Securities Investment Trust Funds), "**ROC Securities Investment Trust Funds**" means securities investment trust funds established and formed under the ROC Securities Investment Trust and Consulting Act.

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

#### **1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

Paragraph 1.9.1 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 5 (ROC Securities Investment Trust Funds)".

#### **2. ADDITIONAL ASSUMPTIONS**

We assume the following:

None.

#### **3. MODIFICATIONS TO OPINIONS**

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

##### **3.1 Insolvency Proceedings: ROC Securities Investment Trust Funds**

There are no bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an ROC Securities Investment Trust Funds could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter.

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

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

None.

#### **5. ADDITIONAL QUALIFICATIONS**

The opinions in this opinion letter also apply to an ROC Securities Investment Trust Fund subject to the following additional qualifications.

Under the ROC laws, an ROC Securities Investment Trust Fund issued and managed by a securities investment trust enterprise ("**SITE**") has no independent legal capacity. Given this, all relevant transactions to be entered into by the ROC Securities Investment Trust Fund shall be entered into by the SITE acting for and on behalf of the ROC Securities Investment Trust Fund. Subject to the restrictions on trading derivatives transactions by an ROC Securities Investment Trust Fund as set forth under the Regulations Governing Securities Investment Trust Funds ("**Regulations**"), a SITE may enter into an Agreement for and on behalf of the ROC Securities Investment Trust Fund with a non-ROC counterparty. Further, according to Paragraph 1, Article 3 of the Directives for Utilization by Securities Investment Trust Enterprises of Securities Investment Trust Funds for Trading Securities-Related Products ("**Directives**"), for the purposes of hedging or enhancing investment efficiency, an ROC Securities Investment Trust Fund may act as a trading counterparty, taking into consideration the ROC Securities Investment Trust Fund's type, characteristics, and the securities held by the ROC Securities Investment Trust Fund, to trade the following securities-related products: (i) futures or options derived from currencies, securities, interest rates, or indices; (ii) interest rate swaps, or, as approved by the FSC on a case-by-case basis, other off-exchange futures or options derived from currencies, securities, interest rates, or indices or other financial instruments. Under the Regulations, there are some restrictions on the categories of the investments that an ROC Securities Investment Trust Fund may make depending upon the ROC Securities Investment Trust Fund's type and characteristics.

As stated above, an ROC Securities Investment Trust Fund is not a "corporation" incorporated under the ROC Company Law. Therefore, an ROC Securities Investment Trust Fund is subject to neither a reorganization proceeding nor a special liquidation proceeding under the ROC Company Law. An ROC Securities Investment Trust Fund may enter into the FOA Netting Agreement and the Clearing Agreement only through its management company, the SITE which issues such fund. In our opinion, an action (including signing the FOA Netting Agreement and the Clearing Agreement) taken by the SITE in the name of the ROC Securities Investment Trust Fund within the scope of the delegated power of such SITE will be valid and binding directly on the ROC Securities Investment Trust Fund, even in the event of a subsequent change of such signing SITE. Furthermore, according to Article 22 of the standard form of the domestic open-end equity securities investment trust agreement promulgated by the Securities Investment Trust and Consulting Association, in the event of a change of the managing SITE, the new managing SITE shall become a party to the securities investment trust agreement and the new managing SITE shall assume all rights and obligations of the original managing SITE under the securities investment trust agreement. Given the foregoing, the new managing SITE cannot refuse to perform the obligations under the FOA Netting Agreement and the Clearing Agreement signed by the original managing SITE for and on behalf of the ROC Securities Investment Trust Fund.

In addition, the ROC Securities Investment Trust and Consulting Act and the ROC Bankruptcy Law are silent on the issue of whether an ROC Securities Investment Trust Fund is subject to a composition proceeding and bankruptcy proceeding under the ROC Bankruptcy Law. Although some local scholars hold the view that an ROC Securities Investment Trust Fund is not subject to the above two proceedings because it has no independent legal capacity and therefore is not qualified for the insolvency

proceedings under the ROC Bankruptcy Law, this view has never been tested in courts.

Legally, the insolvency or bankruptcy of the SITE will not undermine or affect the netting and set-off analysis in relation to the ROC Securities Investment Trust Fund because the assets of the SITE are segregated from those of the ROC Securities Investment Trust Fund. There may also be contractual arrangements to replace the insolvent SITE with a successor SITE. Nevertheless, if an insolvency proceeding has commenced in respect of the SITE and the successor SITE has not been designated in due course, in practice the operation of the ROC Securities Investment Trust Fund may still be suspended, postponed or adversely affected.

## **SCHEDULE 6**

### **ROC Common Funds**

Subject to the modifications and additions set out in this Schedule 6 (ROC Common Funds), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are ROC Common Funds. For the purposes of this Schedule 6 (ROC Common Funds), "**ROC Common Funds**" means common funds established and formed under the ROC Trust Enterprise Act.

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

#### **1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

Paragraph 1.9.1 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 6 (ROC Common Funds) ".

#### **2. ADDITIONAL ASSUMPTIONS**

We assume the following:

None.

#### **3. MODIFICATIONS TO OPINIONS**

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

##### **3.1 Insolvency Proceedings: ROC Common Funds**

There are no bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an ROC Common Fund could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter.

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

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

None.

#### **5. ADDITIONAL QUALIFICATIONS**

The opinions in this opinion letter also apply to an ROC Common Fund subject to the following additional qualifications.

Under the ROC laws, an ROC Common Fund issued and managed by a trust enterprise ("**Trustee**") has no independent legal capacity. Given this, all relevant

transactions to be entered into by the ROC Common Fund shall be entered into by the Trustee acting for and on behalf of the ROC Common Fund.

An ROC Common Fund is not a "corporation" incorporated under the ROC Company Law. Therefore, an ROC Common Fund is subject to neither a reorganization proceeding nor a special liquidation proceeding under the ROC Company Law. An ROC Common Fund may enter into the FOA Netting Agreement and the Clearing Agreement only through the Trustee. In our opinion, an action (including signing the FOA Netting Agreement and the Clearing Agreement) taken by the Trustee in the name of the ROC Common Trust Fund within the scope of the delegated power of the Trustee will be valid and binding directly on the ROC Common Fund, even in the event of a subsequent change of the Trustee.

In addition, the ROC Trust Enterprise Act and the ROC Bankruptcy Law are silent on the issue of whether an ROC Common Fund is subject to a composition proceeding and bankruptcy proceeding under the ROC Bankruptcy Law. Although some local scholars hold the view that an ROC Common Fund is not subject to the above two proceedings because it has no independent legal capacity and therefore is not qualified for the insolvency proceedings under the ROC Bankruptcy Law, this view has never been tested in courts.

Legally, the insolvency or bankruptcy of the Trustee will not undermine or affect the netting and set-off analysis in relation to the ROC Common Fund because the assets of the Trustee are segregated from those of the ROC Common Fund. There may also be contractual arrangements to replace the insolvent Trustee with a successor Trustee. Nevertheless, if an insolvency proceeding has commenced in respect of the Trustee and the successor Trustee has not been designated in due course, in practice the operation of the ROC Common Fund may still be suspended, postponed or adversely affected.

## **SCHEDULE 7**

### **ROC Government Entities**

Subject to the modifications and additions set out in this Schedule 7 (ROC Government Entities), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are ROC Government Entities. For the purposes of this Schedule 7 (ROC Government Entities), "**ROC Government Entities**" means ROC central government and local self-governing governments as defined under the ROC Local Government Act.

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

#### **1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

Paragraph 1.9.1 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 7 (ROC Government Entities)".

#### **2. ADDITIONAL ASSUMPTIONS**

We assume the following:

None.

#### **3. MODIFICATIONS TO OPINIONS**

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

##### **3.1 Insolvency Proceedings: ROC Government Entities**

There are no bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an ROC Government Entity could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter.

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

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

None.

#### **5. ADDITIONAL QUALIFICATIONS**

The opinions in this opinion letter also apply to an ROC Government Entity subject to the following additional qualifications.

An ROC Government Entity is not a "corporation" incorporated under the ROC Company Law. Therefore, an ROC Government Entity is subject to neither a reorganization proceeding nor a special liquidation proceeding under the ROC Company Law.

In addition, the ROC Local Government Act and the ROC Bankruptcy Law are silent on the issue of whether an ROC Government Entity is subject to a composition proceeding and bankruptcy proceeding under the ROC Bankruptcy Law. Although some local scholars hold the view that an ROC Government Entity is not subject to the above two proceedings because it as a governmental body (rather than a private entity) is not qualified for the insolvency proceedings under the ROC Bankruptcy Law, this view has never been tested in courts.



## **SCHEDULE 8**

### **CBC**

Subject to the modifications and additions set out in this Schedule 8 (CBC), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which is the CBC. For the purposes of this Schedule 8 (CBC), "**CBC**" means the Central Bank of the Republic of China (Taiwan) organised, established and formed under the Act of Central Bank of the ROC..

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

#### **1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

Paragraph 1.9.1 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 8 (CBC)".

#### **2. ADDITIONAL ASSUMPTIONS**

We assume the following:

None.

#### **3. MODIFICATIONS TO OPINIONS**

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

##### **3.1 Insolvency Proceedings: CBC**

There are no bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is the CBC could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter.

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

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

None.

#### **5. ADDITIONAL QUALIFICATIONS**

The opinions in this opinion letter also apply to the CBC because the CBC will be treated as a private entity when entering into an Agreement, subject to the following additional qualifications.

The CBC is not a "corporation" incorporated under the ROC Company Law. Therefore, the CBC is subject to neither a reorganization proceeding nor a special liquidation proceeding under the ROC Company Law.

The Act of Central Bank of the ROC and the ROC Bankruptcy Law are silent on the issue of whether the CBC is subject to a composition proceeding and bankruptcy proceeding under the ROC Bankruptcy Law. Although some local scholars hold the view that the CBC is not subject to the above two proceedings because the CBC as a governmental body (rather than a private entity) is not qualified for the insolvency proceedings under the ROC Bankruptcy Law, this view has never been tested in courts.

## **SCHEDULE 9**

### **ROC Government Funds**

Subject to the modifications and additions set out in this Schedule 9 (ROC Government Funds), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are ROC Government Funds. For the purposes of this Schedule 9 (ROC Government Funds), "**ROC Government Funds**" means the funds including (i) Postal Savings Fund organised, established and formed under the ROC Postal Savings and Remittances Act; (ii) Public Service Pension Fund organised, established and formed under the Statute Governing Management of Public Service Retirement Pension Fund of the ROC; (iii) Labor Pension Fund (Old Scheme) organised, established and formed under the ROC Labor Standards Act; (iv) Labor Pension Fund (New Scheme) organised, established and formed under the Statute of Labor Pension Fund of the ROC; (v) Labor Insurance Fund formed under the ROC Labor Insurance Act..

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

#### **1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

Paragraph 1.9.1 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 9 (ROC Government Funds)".

#### **2. ADDITIONAL ASSUMPTIONS**

We assume the following:

None.

#### **3. MODIFICATIONS TO OPINIONS**

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

##### **3.1 Insolvency Proceedings: ROC Government Funds**

There are no bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an ROC Government Fund could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter.

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

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

None.

**5. ADDITIONAL QUALIFICATIONS**

The opinions in this opinion letter also apply to the ROC Government Funds subject to the following additional qualifications.

Each of the ROC Government Funds is not a "corporation" incorporated under the ROC Company Law. Therefore, an ROC Government Fund is subject to neither a reorganization proceeding nor a special liquidation proceeding under the ROC Company Law. The transactions contemplated under the FOA Netting Agreement and the Clearing Agreement will be entered into by the relevant management committee or the third party investment manager under the management agreement signed by the management committee and such third party manager acting for and on behalf of the relevant ROC Government Funds.

In addition, the relevant acts for establishment and formation of the ROC Government Funds and the ROC Bankruptcy Law are silent on the issue of whether an ROC Government Fund having no independent legal capacity is subject to a composition proceeding and bankruptcy proceeding under the ROC Bankruptcy Law. Although some local scholars hold the view that the ROC Government Funds are not subject to the above two proceedings because they are part of governmental bodies (rather than private entities) and are not qualified for the insolvency proceedings under the ROC Bankruptcy Law, this view has never been tested in courts.

## **SCHEDULE 10**

### **NSF**

Subject to the modifications and additions set out in this Schedule 10 (NSF), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which is the NSF. For the purposes of this Schedule 10 (NSF), "**NSF**" means the National Financial Stabilisation Fund organised, established and formed under the Statute for Establishment and Administration of National Financial Stabilization Fund of the ROC.

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

#### **1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

Paragraph 1.9.1 is deemed deleted and replaced with the following:

""Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 10 (NSF)".

#### **2. ADDITIONAL ASSUMPTIONS**

We assume the following:

None.

#### **3. MODIFICATIONS TO OPINIONS**

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

##### **3.1 Insolvency Proceedings: NSF**

There are no bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is the NSF could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter.

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

Second paragraph of Paragraph 4.1.4 is deemed deleted.

#### **5. ADDITIONAL QUALIFICATIONS**

The opinions in this opinion letter also apply to the NSF because the NSF will be treated as a private entity when entering into an Agreement, subject to the following additional qualifications.

The NSF is a fund established and formed by the ROC government under the Statute for Establishment and Administration of National Financial Stabilization Fund of the ROC ("**Statute**"). Pursuant to Article 15 of the Statute, when the NSF is terminated,

its assets and liabilities shall be assumed by the national treasury of the ROC. Therefore, the NSF, in theory, should be a part of the ROC central government. The NSF is not a "corporation" incorporated under the ROC Company Law. Therefore, the NSF is subject to neither a reorganization proceeding nor a special liquidation proceeding under the ROC Company Law.

In addition, the Statute and the ROC Bankruptcy Law are silent on the issue of whether the NSF is subject to a composition proceeding and bankruptcy proceeding under the ROC Bankruptcy Law. Although some local scholars hold the view that the NSF is not subject to the above two proceedings because the NSF as a governmental body (rather than a private entity) is not qualified for the insolvency proceedings under the ROC Bankruptcy Law, this view has never been tested in courts.

## **SCHEDULE 11**

### **ROC Trustee Parties**

Subject to the modifications and additions set out in this Schedule 11 (ROC Trustee Parties), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are ROC Trustee Parties. For the purposes of this Schedule 11 (ROC Trustee Parties) , "**ROC Trustee Parties**" means parties acting as trustees of trusts (excluding any ROC charitable trust) established and formed under the ROC Trust Law.

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

#### **1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

Paragraph 1.9.1 is deemed deleted and replaced with the following:

""Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 11 (ROC Trustee Parties)".

#### **2. ADDITIONAL ASSUMPTIONS**

We assume the following:

None.

#### **3. MODIFICATIONS TO OPINIONS**

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

##### **3.1 Insolvency Proceedings: ROC Trustee Parties**

There are no bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an ROC Trustee Party could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter.

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

Second paragraph of Paragraph 4.1.4 is deemed deleted.

#### **5. ADDITIONAL QUALIFICATIONS**

The opinions in this opinion letter also apply to an ROC Trustee Party subject to the following additional qualifications.

Under the ROC laws, an ROC trust managed by an ROC Trustee Party has no independent legal capacity. Given this, all relevant transactions to be entered into by the ROC trust shall be entered into by the ROC Trustee Party acting for and on behalf of the ROC trust.

An ROC trust is not a "corporation" incorporated under the ROC Company Law. Therefore, an ROC trust is subject to neither a reorganization proceeding nor a special liquidation proceeding under the ROC Company Law. In our opinion, an action (including signing the FOA Netting Agreement and the Clearing Agreement) taken by the ROC Trustee Party in the name of the ROC trust within the scope of the delegated power of the ROC Trustee Party will be valid and binding directly on the ROC trust, even in the event of a subsequent change of the ROC Trustee Party.

In addition, the ROC Trust Law and the ROC Bankruptcy Law are silent on the issue of whether an ROC trust having no independent legal capacity is subject to a composition proceeding and bankruptcy proceeding under the ROC Bankruptcy Law. Although some local scholars hold the view that an ROC trust is not subject to the above two proceedings because it has no independent legal capacity and therefore is not qualified for the insolvency proceedings under the ROC Bankruptcy Law, this view has never been tested in courts.

Legally, the insolvency or bankruptcy of the ROC Trustee Party will not undermine or affect the netting and set-off analysis in relation to the ROC trust because the assets of the ROC Trustee Party are segregated from the ROC trust assets. Nevertheless, if an insolvency proceeding has commenced in respect of the ROC Trustee Party and the successor ROC Trustee Party has not been designated in due course, in practice the operation of the ROC trust may still be suspended, postponed or adversely affected.



## **SCHEDULE 12**

### **ROC Charitable Trustee Parties**

Subject to the modifications and additions set out in this Schedule 12 (ROC Charitable Trustee Parties), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of Parties which are ROC Charitable Trustee Parties. For the purposes of this Schedule 12 (ROC Charitable Trustee Parties), "**ROC Charitable Trustee Parties**" means parties acting as trustees of charitable trusts/bodies established and formed under the ROC Trust Law.

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

#### **1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS**

Paragraph 1.9.1 is deemed deleted and replaced with the following:

"Insolvency Proceedings" means the procedures listed in section 3.1 of Schedule 12 (ROC Charitable Trustee Parties)".

#### **2. ADDITIONAL ASSUMPTIONS**

Second paragraph of Paragraph 4.1.4 is deemed deleted.

#### **3. MODIFICATIONS TO OPINIONS**

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

##### **3.1 Insolvency Proceedings: ROC Charitable Trustee Parties**

There are no bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an ROC Charitable Trustee Party could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter.

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

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

None.

#### **5. ADDITIONAL QUALIFICATIONS**

The opinions in this opinion letter also apply to an ROC Charitable Trustee Party subject to the following additional qualifications.

Under the ROC laws, an ROC charitable trust managed by an ROC Charitable Trustee Party has no independent legal capacity. Given this, all relevant transactions to be entered into by the ROC trust shall be entered into by the ROC Charitable Trustee Party acting for and on behalf of the ROC charitable trust.

An ROC charitable trust is not a "corporation" incorporated under the ROC Company Law. Therefore, an ROC charitable trust is subject to neither a reorganization proceeding nor a special liquidation proceeding under the ROC Company Law. In our opinion, an action (including signing the FOA Netting Agreement and the Clearing Agreement) taken by the ROC Charitable Trustee Party in the name of the ROC charitable trust within the scope of the delegated power of the ROC Charitable Trustee Party will be valid and binding directly on the ROC charitable trust, even in the event of a subsequent change of the ROC Charitable Trustee Party.

In addition, the ROC Trust Law and the ROC Bankruptcy Law are silent on the issue of whether an ROC charitable trust having no independent legal capacity is subject to a composition proceeding and bankruptcy proceeding under the ROC Bankruptcy Law. Although some local scholars hold the view that an ROC charitable trust is not subject to the above two proceedings because it has no independent legal capacity and therefore is not qualified for the insolvency proceedings under the ROC Bankruptcy Law, this view has never been tested in courts.

Legally, the insolvency or bankruptcy of the ROC Charitable Trustee Party will not undermine or affect the netting and set-off analysis in relation to the ROC charitable trust because the assets of the ROC Charitable Trustee Party are segregated from the ROC charitable trust assets. Nevertheless, if an insolvency proceeding has commenced in respect of the ROC Charitable Trustee Party and the successor ROC Charitable Trustee Party has not been designated in due course, in practice the operation of the ROC charitable trust may still be suspended, postponed or adversely affected.

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

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

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

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

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

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

**ANNEX 2**  
**List of Transactions**

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

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

### ANNEX 3 DEFINITIONS RELATING TO THE AGREEMENTS

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

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

together with the defined terms required properly to construe such Clauses.

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

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

together with the defined terms required properly to construe such Clause.

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

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

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

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

- (a) Clause 5.2 (*Firm Events*), 5.3 (*CCP Default*) and 5.4 (*Hierarchy of Events*) of the FOA Clearing Module; or
- (b) any modified version of such clauses provided that it includes at least those parts of paragraph 6 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

together with the defined terms required properly to construe such Clauses.

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

- (a) Clause 5.5 (*Set-Off*) of the FOA Clearing Module; or
- (b) any modified version of such clause provided that it includes at least those parts of paragraph 7 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow,

together with the defined terms required properly to construe such Clause.

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

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

- (a) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 7.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);
- (b) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);
- (c) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);
- (d) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 7.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);
- (e) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);
- (f) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 7.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);
- (g) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 6.8 (***Additional security***) at module F Option 4 (where incorporated into such Agreement);
- (h) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 6.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement);
- (i) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 6.9 (***Additional security***) at module F Option 1 (where incorporated into such Agreement); or



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

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

- (a) for the purposes of paragraph 3.3 (*Enforceability of FOA Netting Provision*) and 3.4 (*Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to FOA Netting Provision*), the Insolvency Events of Default Clause and the FOA Netting Provision;
- (b) for the purposes of paragraph 3.5 (*Enforceability of the FOA Set-Off Provisions*), the Insolvency Events of Default Clause, the FOA Netting Provision and either or both of the General Set-off Clause and the Margin Cash Set-off Clause;
- (c) for the purposes of paragraph 3.6 (*Set-Off under a Clearing Agreement with a Clearing Module Set-Off Provision*), the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Available Termination Amount", "Disapplied Set-Off Provisions", "Firm/CCP Transaction Value" and "Relevant Collateral Value", the Clearing Module Set-Off Provision and the FOA Set-Off Provisions;
- (d) for the purposes of paragraph 3.7.1, (i) in relation to a FOA Netting Agreement, the Insolvency Events of Default Clause, the FOA Netting Provision and the Title Transfer Provisions; and (ii) in relation to a Clearing Agreement, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value" or, as the case may be, the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Title Transfer Provisions; 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 Provisions) Agreement 2011, the Retail Client (with Title Transfer Provisions) Agreement 2007, the Retail Client (with Title Transfer Provisions) Agreement 2009, the Retail Client (with Title Transfer Provisions) Agreement 2011, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2007, the Eligible Counterparty (with Title Transfer Provisions) Agreement 2009 and the Eligible Counterparty (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1) or a FOA Netting Agreement which has broadly similar function to any of the foregoing.

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

- (a) in relation to the terms of the Long Form One-Way Clauses 2007 and the Long Form Two-Way Clauses, Clause 2.2 (*Liquidation Date*), Clause 2.4 (*Calculation of Liquidation Amount*) and Clause 2.5 (*Payer*);
- (b) in relation to the terms of the Short Form One-Way Clauses and the Short Form Two-Way Clauses, Clause 2.1 (*Liquidation Date*), Clause 2.3 (*Calculation of Liquidation Amount*) and Clause 2.4 (*Payer*);
- (c) in relation to the terms of the Master Netting Agreements, Clause 4.2, Clause 4.4 and Clause 4.5;

- (d) in relation to the terms of the Eligible Counterparty Agreements, Clause 10.1 (***Liquidation Date***), Clause 10.3 (***Calculation of Liquidation Amount***) and Clause 10.4 (***Payer***);
- (e) in relation to the terms of the Retail Client Agreements, Clause 11.2 (***Liquidation Date***), Clause 11.4 (***Calculation of Liquidation Amount***) and Clause 11.5 (***Payer***);
- (f) in relation to the terms of the Professional Client Agreements, Clause 11.2 (***Liquidation Date***), Clause 11.4 (***Calculation of Liquidation Amount***) and Clause 11.5 (***Payer***); or
- (g) any modified version of such clauses provided that it includes at least those parts of paragraph 1 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

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

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

- (a) the **"General Set-off Clause"**, being:
  - (i) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2007 and Professional Client Agreement (with Security Provisions) 2009, clause 15.11 (***Set-off***);
  - (ii) in the case of Agreements in the form of the Professional Client Agreement (with Security Provisions) 2011, clause 15.13 (***Set-off***);
  - (iii) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2007 and the Retail Client Agreement (with Security Provisions) 2009, clause 15.12 (***Set-off***);
  - (iv) in the case of Agreements in the form of the Retail Client Agreement (with Security Provisions) 2011, clause 15.13 (***Set-off***);
  - (v) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2007 and the Eligible Counterparty Agreement (with Security Provisions) 2009, clause 14.8 (***Set-off***);
  - (vi) in the case of Agreements in the form of the Eligible Counterparty Agreement (with Security Provisions) 2011, clause 14.10 (***Set-off***);
  - (vii) in the case of the Agreements in the form of One-Way Master Netting Agreement (1997 version), clause 5 (***Set-Off***);
  - (viii) in the case of the Agreements in the form of Two-Way Master Netting Agreement (1997 version), clause 5 (***Set-Off***); or
  - (ix) any modified version of such clauses provided that it includes at least those parts of paragraph 2 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow; and/or

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

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

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

- (i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1 (b) and (c) (inclusive);
- (ii) in relation to the terms of the Short Form One-Way Clauses and Short Form Two-Way Clauses, Clauses 1.1 (b) and (c) (inclusive);
- (iii) in relation to the terms of the Master Netting Agreements, Clause 4.1 (ii) and (iii) (inclusive);
- (iv) in relation to the terms of the Eligible Counterparty Agreements, Clause 9.1 (b) and (c) (inclusive);
- (v) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1 (b) and (c) (inclusive); or
- (vi) any modified version of such clauses provided that it includes at least those parts of paragraph 4(a) of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

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

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

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

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

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

- (a) the **"Non-Cash Security Interest Clause"**, being:
  - (i) in the case of Agreements in the form of the Professional Client Agreement 2007, clause 8.6 (*Security interest*);
  - (ii) in the case of Agreements in the form of the Professional Client Agreement 2009, clause 8.6 (*Security interest*);
  - (iii) in the case of Agreements in the form of the Professional Client Agreement 2011, clause 8.7 (*Security interest*);
  - (iv) in the case of Agreements in the form of the Retail Client Agreement 2007, clause 8.8 (*Security interest*);
  - (v) in the case of Agreements in the form of the Retail Client Agreement 2009, clause 8.8 (*Security interest*);
  - (vi) in the case of Agreements in the form of the Retail Client Agreement 2011, clause 8.9 (*Security interest*);
  - (vii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2007, clause 7.6 (*Security interest*);
  - (viii) in the case of Agreements in the form of the Eligible Counterparty Agreement 2009, clause 7.6 (*Security interest*);
  - (ix) in the case of Agreements in the form of the Eligible Counterparty Agreement 2011, clause 7.7 (*Security interest*); or
  - (x) any modified version of such clauses provided that it includes at least those parts of paragraph 1 of Part 3 (*Security Interest Provisions*) of Annex 4 which are highlighted in yellow; and

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

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

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

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

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

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

"**Professional Client Agreements**" means each of the Professional Client (with Security Provisions) Agreement 2007, the Professional Client (with Title Transfer Provisions) Agreement 2007, the Professional Client (with Security Provisions) Agreement 2009, the Professional Client (with Title Transfer Provisions) Agreement 2009, the Professional Client

(with Security Provisions) Agreement 2011 or the Professional Client (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1).

**"Rehypothecation Clause"** means:

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

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

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

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

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

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

- (a) clauses 5 and 7.2 of the Title Transfer and Physical Collateral Annex to the Netting Module (2007 or 2011 Version); or
- (b) any modified version of such clauses provided that it includes at least those parts of paragraph 5 of Part 1 (*Core Provisions*) of Annex 4 which are highlighted in yellow.

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

## ANNEX 4

### PART 1 CORE PROVISIONS

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

#### 1. FOA Netting Provision:

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

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

**"Set-off:** Without prejudice to any other rights to which we may be entitled, we may at any time and without notice to you set off any amount (whether actual or contingent, present or future) owed by you to us against any amount (whether actual



or contingent, present or future) owed by us to you. For these purposes, we may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained."

3. **Margin Cash Set-Off Clause:**

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

4. **Insolvency Events of Default Clause:**

"The following shall constitute Events of Default:

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

5. **Title Transfer Provisions:**

- a) **Default:** If a Liquidation Date is specified or deemed to occur as a result of an Event of Default, the Default Margin Amount as at that date will be deemed to be [a gain (if we are the Non-Defaulting Party) or a cost (if you are the Non-Defaulting Party)] [a gain by us] for the purposes of calculating the Liquidation Amount. For this purpose, "**Default Margin Amount**" means the amount, calculated in the Base Currency of the aggregate value as at the relevant Liquidation Date (as determined by us) of the Transferred Margin.
- b) **Clean title:** Each party agrees that all right, title and interest in and to any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest which it Transfers to the other party shall vest in the recipient free and clear of any security interest, lien, claims, charges, encumbrance or other restriction. Notwithstanding the use of terms such as "Margin" which are used to reflect terminology used in the market for such transactions, nothing in these provisions is intended to create or does create in favour of either party a

mortgage, charge, lien, pledge, encumbrance or other security interest in any Acceptable Margin, Equivalent Margin, Equivalent Dividends or Interest Transferred hereunder."

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

a) [Firm Trigger Event/CM Trigger Event]

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

- (a) each Client Transaction in the relevant Cleared Transaction Set will automatically terminate [upon the occurrence of a Firm Trigger Event] [at the same time as the related CM/CCP Transaction is terminated or Transferred] and, following such termination, no further payments or deliveries in respect of such Client Transaction [as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.22 Section 8(b)(ii)];
- (b) the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or the relevant part thereof;
- (c) the applicable Cleared Set Termination Amount will be determined by Client on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the date on which the [Firm/CM] Trigger Event occurred, or (y) if there were outstanding Client Transactions immediately prior to the occurrence of a [Firm/CM] Trigger Event, the day on which the relevant Client Transactions [had all been/were] terminated (in either case, provided that, if [Firm/Clearing Member] gives notice to Client requiring it to determine such amount and Client does not do so within two Business Days of such notice being effectively delivered, [Firm/Clearing Member] may determine the applicable Cleared Set Termination Amount) and, in either case, will be an amount equal to the sum, but without duplication, of (A) the Aggregate Transaction Value, (B) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a

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

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

b) CCP Default

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

1. each Client Transaction in the relevant Cleared Transaction Set will automatically terminate at the same time as the related [Firm/CM]/CCP Transaction and following such termination no further payments or deliveries in respect of such Client Transaction[ as specified in the Confirm] or any default interest, howsoever described, on such payment obligations will be required to be made but without prejudice to the other provisions of the Clearing Agreement, and the amount payable following such termination will be the Cleared Set Termination Amount determined pursuant to this [Clause 5.3 Section 8(c)];
2. the value of each such terminated Client Transaction for the purposes of calculating the applicable Cleared Set Termination Amount and Aggregate Transaction Values will be equal to the relevant [Firm/CM]/CCP Transaction Value or relevant part thereof;
3. the applicable Cleared Set Termination Amount will be determined by [Firm/Clearing Member] on, or as soon as reasonably practicable after, (x) if there were no outstanding Client Transactions immediately prior to the occurrence of a CCP Default, the date on which the CCP Default occurred, or (y) if there were outstanding Client Transactions

immediately prior to the occurrence of a CCP Default, the day on which the relevant Client Transactions had all been terminated and, in either case, will be an amount equal to the sum, but without duplication, of (1) the Aggregate Transaction Value, (2) any amount which became payable, or which would have become payable but for a condition precedent not being satisfied, in respect of any such Client Transaction on or prior to the termination of such transactions but which remains unpaid at the time of such termination, together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing Member]), (3) an amount [(which may be zero)] equal to the Relevant Collateral Value in respect of the relevant Client Transactions and (4) any other amount attributable to the relevant Client Transactions under the Clearing Agreement[ and any related Collateral Agreement], pro-rated where necessary if such amount can be partially [attributable] to transactions other than the relevant Client Transactions, which was payable but unpaid at the time of termination and is not otherwise included in [Clauses 5.3.3(1) to 5.3.3(3)] [Sections 8(c)(iii)(1) to 8(c)(iii)(3)], together with interest on such amount in the same currency as such amount for the period from, and including, the original due date for payment to, but excluding, the date of termination, if applicable (expressed as a positive amount if such unpaid amount is due from [Firm/Clearing Member] to Client and as a negative amount if such unpaid amount is due from Client to [Firm/Clearing member]);

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

c) Hierarchy of Events

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

Or

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

Or

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

d) Definitions

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

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

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

- (a) is attributable to such Client Transactions;
- (b) has been transferred by one party to the other in accordance with the [Agreement/Collateral Agreement or pursuant to Section 10(b)] and has not been returned at the time of such termination or otherwise

applied or reduced in accordance with the terms of the [Agreement/relevant Collateral Agreement]; and

- (c) is not beneficially owned by, or subject to any encumbrances or any other interest of, the transferring party or of any third person.

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

## 7. Clearing Module Set-Off Provision

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

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

## 8. Addendum Set-Off Provision

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

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



## **PART 2**

### **NON-MATERIAL AMENDMENTS**

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



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

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

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

### **PART 3**

#### **SECURITY INTEREST PROVISIONS**

##### **1. Security Interest Clause**

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

##### **2. Power of Sale Clause**

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

##### **3. Client Money Additional Security Clause**

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

##### **4. Rehypothecation Clause**

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

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

None.