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6 December 2013

Dear Sirs,

FOA netting opinion issued in relation to the FOA Netting Agreements, FOA Clearing Module and ISDA/FOA Clearing Addendum

You have asked us to give an opinion in respect of the laws of England and Wales ("**this jurisdiction**") in respect of the enforceability and validity of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum 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, the Clearing Module Netting Provision and the Addendum Netting Provision to be substantiated by a written and reasoned opinion. We also opine on the enforceability of the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision and the Title Transfer Provisions.

Structure of this Opinion letter

- Our opinions on the enforceability of the FOA Netting Provision, the Clearing Module Netting Provision and the Addendum Netting Provision are given in paragraphs 3.4, 3.5 and 3.6 of this opinion letter.
- Our opinions on the FOA Set-off Provisions, the Addendum Set-off Provision, the Clearing Module Set-off Provision and the Title Transfer Provisions are given in paragraphs 3.8, 3.9, 3.10 and 3.11 of this opinion letter.
- In certain circumstances, netting may not occur under the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision, but netting takes effect by virtue of the laws of this jurisdiction on the settlement of market contracts under the rules of a recognised investment exchange. We discuss this in paragraph 5 of this opinion letter.

- Modifications of our opinion which apply in respect of particular types of counterparties are set out in the Schedules.

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 Subject as provided at paragraph 1.2, this opinion is given generally in respect of Parties (and in paragraph 5, parties to market contracts) which are English Companies or foreign companies (in both cases, including banks).

1.2 This opinion at paragraph 3 (but not at paragraph 5) 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 applicable Schedule:

1.2.1 individuals (Schedule 1);

1.2.2 building societies (Schedule 2);

1.2.3 OEICs (excluding umbrella companies) (Schedule 3A);

1.2.4 OEICs (sub-funds) (Schedule 3B);

1.2.5 insurers (Schedule 4);

1.2.6 partnerships (Schedule 5);

1.2.7 LLPs (Schedule 6);

1.2.8 parties acting as Trustees of Trusts (other than Charitable Trusts and Pension Schemes) (Schedule 7);

1.2.9 parties acting as Trustees of Pension Schemes (Schedule 8);

1.2.10 parties acting as Trustees of Charitable Trusts (Schedule 9);

1.2.11 Charitable Companies (Schedule 10);

1.2.12 Local Authority as Administering Authority of a pension fund (Schedule 11);

1.2.13 HM Treasury (Schedule 12); and

1.2.14 the Bank of England (Schedule 13).

1.3 For these purposes:

1.3.1 an "**English company**" is a company which is formed and registered under the Companies Act 2006 or the former Companies Acts (as defined in

section 1171 of the Companies Act 2006) and does not include a company formed and registered in Ireland under any of the former Companies Acts;

1.3.2 a "**foreign company**" is a company (other than a "*Societas Europaea*" established pursuant to EU Council Regulation No. 2157/2001 of 8 October 2001 on the European Company Statute) which is incorporated or formed under the laws of another jurisdiction with a branch or branches established or located in this jurisdiction. As to companies registered in Scotland, see paragraph 4.3.5 below,

including, in each case, such persons (banks) which have permission to accept deposits by virtue of Part 4A of FSMA (but not, other than as set out in paragraph 1.2, any bank which is not an English company or a foreign company).

1.4 This opinion is given in respect of the FOA Netting Agreement or the Clearing Agreement when the FOA Netting Agreement or, as the case may be the Clearing Agreement, are expressed to be governed by English law.

1.5 Where Transactions or, as the case may be, Client Transactions are governed by the laws of this jurisdiction, this opinion letter is given in respect of only those Transactions or, as the case may be, Client Transactions which:

1.5.1 fall within any of paragraphs (A)(i) to (iv), (B), (C), (D) and (E) of the list of Transactions or Client Transactions provided in Annex 2 to this opinion letter; or

1.5.2 otherwise, are futures, options, contracts for differences, swaps, spot or forward contracts of any kind in relation to any commodity, metal, financial instrument (including any security), currency, interest rate, index or any combination thereof,

in each case, whether entered into on a recognised investment exchange, any other form of organised market place or multilateral trading facility, or over the counter.

1.6 Where Transactions or, as the case may be, Client Transactions are governed by laws other than the laws of this jurisdiction, the opinions in paragraphs 3.4, 3.5 and 3.6 are given in respect of only such of those Transactions and Client Transactions which, under their governing laws, are legal, valid, binding, enforceable and capable of being terminated and liquidated in accordance with the FOA Netting Provision, the Clearing Module Netting Provision or, as the case may be, the Addendum Netting Provision respectively.

1.7 This opinion is given in respect of margin which consists of cash or transferable securities only.

1.8 In this opinion, references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy.

1.9 We do not opine on the enforceability of any net obligation resulting from any netting or set-off, whether pursuant to the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision or otherwise.

1.10 This opinion letter relates solely to matters of English law and does not consider the impact of any laws (including insolvency laws) other than English law, even where, under English law, any foreign law falls to be applied. This opinion letter and the opinions given in it are governed by English law and relate only to English law as applied by the English courts as at today's date. All non-contractual obligations and any other matters arising out of or in connection with this opinion letter are governed by English law. We express no opinion in this opinion letter on the laws of any other jurisdiction.

1.11 We express no opinion as to any provisions of the FOA Netting Agreement or, as the case may be, Clearing Agreement other than those to which express reference is made in this opinion letter except insofar as any such provision relates to the effectiveness of the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision or the Title Transfer Provisions.

1.12 We do not express any opinion as to any matters of fact.

1.13 **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 an FOA Netting Agreement or, as the case may be, a Clearing Agreement, a term defined in a FOA Published Form Agreement or, as the case may, the FOA Clearing Module and/or the ISDA/FOA Clearing Addendum, or this opinion letter, (a "**defined term**") is referred to in an FOA Netting Agreement, or as the case may be, a Clearing Agreement, by some other term the meaning of which is the same as the defined term, this opinion letter may be read as if a defined term used herein refers to such other term.

1.13.1 "**Insolvency Proceedings**" means the procedures listed in paragraph 3.1 and:

(a) in relation to a UK bank, "**liquidator**" and "**administrator**" include a bank liquidator and bank administrator respectively; and, in relation to a UK investment bank, these terms include an individual appointed as administrator pursuant to the investment bank special administration procedure, the special administration (bank insolvency) procedure or the special administration (bank administration) procedure under the Investment Bank Regulations (each being an "**Insolvency Representative**"); and

(b) in relation to a UK bank, "**liquidation**" and "**administration**" include a bank insolvency and a bank administration respectively; and, in relation to a UK investment bank, these terms include an investment bank special administration, a special administration (bank insolvency) and/or a special administration (bank administration) under the Investment Bank Regulations, as the context may require;

A Party which is insolvent for the purposes of any insolvency law or otherwise subject to Insolvency Proceedings is called the "**insolvent Party**" and the other Party is called the "**solvent Party**";

1.13.2 a reference to "**CASS**" is to the Client Assets Sourcebook of the Financial Conduct Authority Handbook of Rules;

1.13.3 a reference to "**FSMA**" is to the Financial Services and Markets Act 2000;

1.13.4 a reference to the "**Cross-Border Insolvency Regulations**" is to the Cross-Border Insolvency Regulations 2006;

1.13.5 a reference to the "**EU Insolvency Regulation**" is to EU Council Regulation No. 1346/2000 on insolvency proceedings;

1.13.6 a reference to "**EMIR**" is to Regulation (EU) No. 648/2012 on OTC derivatives, central counterparties and trade repositories;

1.13.7 a reference to a "**financial collateral arrangement**" is to an arrangement defined as such in the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "**FCA Regulations**");

1.13.8 a reference to "**Part VII**" is to Part VII of the Companies Act 1989, together with the provisions of Parts II and IV of the Schedule to the Recognition Requirements Regulations;

1.13.9 a reference to "**Part XVIII**" is to Part XVIII of FSMA;

1.13.10 a reference to the "**Recognition Requirements Regulations**" is to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001;

1.13.11 a reference to the "**CRR**" is to Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms;

1.13.12 a reference to the "**Investment Bank Regulations**" is to the Investment Bank Special Administration Regulations 2011;

1.13.13 a reference to the "**Settlement Finality Regulations**" is to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999;

1.13.14 references to a "**Clause**" are to a clause of the FOA Netting Agreement or the Clearing Agreement;

1.13.15 references to "**termination and liquidation of Transactions or, as the case may be, Client Transactions**" are to the termination of obligations to make any further payment or deliveries under (i) such Transactions as would have fallen due for performance on or after the Liquidation Date under an FOA Netting Agreement or (ii) such Client Transactions as would have fallen due for performance on or after the occurrence of a Firm Trigger Event or CCP Default or the date the related CM/CCP Transactions are terminated or Transferred and the obligation to settle the Liquidation Amount or Cleared Set Termination Amount in respect of such Transactions or, as the case may be, Client Transactions, and references to "**terminated Transactions**" or, as the case may be, "**terminated Client Transactions**" or like expressions shall be construed accordingly;

1.13.16 a reference to an "**EEA Credit Institution**" is to an EEA Credit Institution as defined in the Credit Institutions (Reorganisation and Winding Up) Regulations 2004 (the "**Credit Institutions Regulations**"), which means an EEA undertaking which qualifies as a credit institution under Directive 2000/12/EC but which is not a UK Credit Institution; and a reference to a "**UK Credit Institution**" is to a UK Credit Institution as so defined, which means an undertaking whose head office is in the United Kingdom with permission under Part IV of FSMA to accept deposits or to issue electronic money, but does not include insurance companies or credit unions within the meaning of section 31 of the Credit Unions Act 1979;

1.13.17 a reference to a "**UK bank**" is to an undertaking incorporated in or formed under the law of any part of the United Kingdom and having its head office in the United Kingdom, which has permission under Part IV of FSMA to accept deposits; but for the purposes of this opinion does not include insurance companies or credit unions within the meaning of section 31 of the Credit Unions Act 1979;

1.13.18 a reference to a "**UK investment bank**" is to an undertaking to which the Investment Bank Regulations apply (being, broadly, an institution which is incorporated in the United Kingdom, authorised under FSMA to safeguard and administer investments or deal in investments as principal or agent, and holds assets for clients);

1.13.19 any reference to any legislation (whether primary legislation or regulations or other subsidiary legislation made pursuant to primary legislation) shall be construed as a reference to such legislation as the same may have been amended or re-enacted on or before the date of this opinion letter;

1.13.20 a reference to a "**paragraph**" is to a paragraph of this opinion letter (except where the context otherwise requires); and

1.13.21 headings are for ease of reference only and shall not affect the interpretation of this opinion letter.

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

2. ASSUMPTIONS

For the purposes of our opinions at paragraphs 3.2, 3.4 to 3.15 and 3.18 only, we assume:

2.1 That no provision of the FOA Netting Agreement or, as the case may be, 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. We express no view whether an alteration not contemplated in Part 2 (*Non-material Amendments*) of Annex 4 hereto would or would not constitute a material alteration of the FOA Netting Agreement or, as the case may be, the Clearing Agreement.

2.2 That the FOA Netting Agreement or, as the case may be, Clearing Agreement, (apart from the FOA Netting Provision, FOA Set-Off Provisions, Clearing Module Netting Provision, Clearing Module Set-Off Provision, Addendum Netting Provision, Addendum Set-Off Provision and Title Transfer Provisions) and the Transactions or, as the case may be, Client Transactions are legally 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, Clearing Agreement, and the Transactions or, as the case may be, Client Transactions; to perform its obligations under the FOA Netting Agreement or, as the case may be, Clearing Agreement, and the Transactions or, as the case may be, Client 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, 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, Clearing Agreement, and the Transactions or, as the case may be, Client Transactions and to ensure the legality, validity, enforceability or admissibility in evidence of the FOA Netting Agreement or, as the case may be, Clearing Agreement in this jurisdiction.

2.5 That the FOA Netting Agreement or, as the case may be, Clearing Agreement is entered into prior to the formal commencement of any Insolvency Proceedings against either Party.

2.6 That no provision of the FOA Netting Agreement or, as the case may be, Clearing Agreement, or a document of which the FOA Netting Agreement or, as the case may be, Clearing Agreement forms part, or any other arrangement between the Parties, or any rules of a recognised investment exchange, 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 or, as the case may be, Client 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, Clearing Agreement has been properly executed by both Parties.

2.9 That the FOA Netting Agreement or, as the case may be, Clearing Agreement accurately reflects the true intentions of each Party.

2.10 That, in relation to a Clearing Agreement, a Party incorporated in this jurisdiction which acts as "Firm" (as defined in the FOA Clearing Module) or "Clearing Member" (as defined in the ISDA/FOA Clearing Addendum) will be (a) a clearing member in respect of any Agreed CCP Service to which the Clearing Agreement relates, and (b) will be an English Company or foreign company, a UK credit institution, UK bank, UK investment bank or a partnership. That neither Party is a recognised investment exchange or recognised clearing house (as defined in section 285 of FSMA) or a CCP (as defined in EMIR).

For the purposes of our opinions at paragraphs 3.5 and 3.6 only, we assume:

2.11 That each form of Insolvency Proceeding respectively constitutes a Firm Trigger Event or a CM Trigger Event under the relevant Rule Set.

For the purposes of our opinions at paragraphs 3.11 and 3.12 only, we assume:

2.12 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).

2.13 That all margin transferred pursuant to the Title Transfer Provisions 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.

2.14 That each Party which receives margin from the other Party pursuant to the Title Transfer Provisions does not treat that margin any in manner which could indicate that the other Party retains any proprietary interest in that margin.

2.15 That any cash provided as margin is in a currency that is freely transferable internationally under the laws of all relevant jurisdictions.

For the purposes of all the opinions in paragraph 3 of this opinion letter, we also assume:

2.16 That where a Party is incorporated, registered or organised in this jurisdiction and is not a credit institution, an insurance undertaking, an investment undertaking holding funds or securities for third parties, or a collective investment undertaking, it has the "*centre of its main interests*" in the United Kingdom, for the purposes of the EU Insolvency Regulation and the Cross-Border Insolvency Regulations.

2.17 That any party to the FOA Netting Agreement or, as the case may be, Clearing Agreement which is at any time carrying on, or purporting to carry on, a regulated activity in the United Kingdom within the meaning of FSMA will at all relevant times be doing so in circumstances which do not contravene the general prohibition set out in section 19 of FSMA.

2.18 That neither Party is a "*group undertaking*" in relation to the other Party as that phrase is defined in Section 1161(5) of the Companies Act 2006.

2.19 That neither Party is a "*bridge bank*" as defined in section 12 of the Banking Act 2009.

For the purposes of our opinions at paragraphs 3.4 to 3.11, we assume:

2.20 Insofar as any transaction or obligation arising under a Transaction or, as the case may be, a Client Transaction, Transfer of margin under an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, Clearing Agreement which includes Title Transfer Provisions or a payment of cash credited to an account provided by the Firm to its counterparty is a "*transfer order*" under the Settlement Finality Regulations, that there are no provisions in the rules of any relevant designated system which purport to override or are inconsistent with the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions.

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 or other insolvency or reorganisation procedures to which a Party that is an English company or (subject to the comments below) a foreign company (including where such person is a Trustee of a Pension Scheme or Trust) could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are liquidation (including provisional liquidation), administration, bank insolvency, bank administration, investment bank special administration, special administration (bank insolvency), special administration (bank administration), administrative receivership, receivership, voluntary arrangements and schemes of arrangement and, in the case of

a small company (as defined in section 382 of the Companies Act 2006), a moratorium.[1]

The legislation applicable to such Insolvency Proceedings is:

3.1.1 in relation to all Insolvency Proceedings initiated after the date of this opinion letter except schemes of arrangement, the provisions of the Insolvency Act 1986 and the Insolvency Rules 1986;

3.1.2 in relation to schemes of arrangement, sections 895 to 901 of the Companies Act 2006;

3.1.3 in relation to a UK bank, the Banking Act 2009, the Bank Insolvency (England and Wales) Rules 2009, the Bank Administration (England and Wales) Rules 2009, the Banking Act 2009 (Restrictions of Partial Property Transfers) Order 2009 and in relation to a UK investment bank, the Investment Bank Regulations and the Investment Bank Special Administration (England and Wales) Rules 2011;

3.1.4 in relation to an EEA Credit Institution or a UK Credit Institution, the Credit Institutions Regulations; and

3.1.5 in relation to an entity other than a UK Credit Institution, an EEA Credit Institution or a third country credit institution, the Cross-Border Insolvency Regulations.

In relation to an obligation which is a transfer order as defined in the Settlement Finality Regulations, the Settlement Finality Regulations will also be applicable. If the FOA Netting Agreement or, as the case may be, the Clearing Agreement constitutes a financial collateral arrangement or an arrangement of which a financial collateral arrangement forms part, the FCA Regulations will also apply. Furthermore, the EU Insolvency Regulation has direct effect in this jurisdiction.

However, subject to the EU Insolvency Regulation and Section 426 of the Insolvency Act 1986:

3.1.6 a foreign company may not enter administration or make a voluntary arrangement unless it is incorporated in an EEA member state, or has its centre of main interests in an EU member state (other than the United Kingdom or Denmark);

3.1.7 administrative receivership is not available in respect of a foreign company, with the possible exception of foreign companies which have registered particulars under the Overseas Companies Regulations 2009;

[1] Note, the proposed special resolution regime for certain investment firms, banking group companies and central counter parties is expected to be introduced in either late 2013 or early 2014. At this stage, the draft secondary legislation is subject to a consultation that closes on 21 November 2013 as such information available in respect of this proposed regime is not sufficient for this to be addressed in this opinion.

3.1.8 bank insolvency and bank administration are procedures only available in respect of a UK bank;

3.1.9 investment bank special administration is a procedure only available in respect of a UK investment bank which is not a deposit-taking bank with eligible depositors, special administration (bank administration) is a procedure only available in respect of a UK investment bank which is a deposit-taking bank and special administration (bank insolvency) is a procedure only available in respect of a UK investment bank which is a deposit-taking bank with eligible depositors; for these purposes, "*eligible depositors*" has the meaning given in section 93(3) of the Banking Act 2009, being, broadly, depositors who are eligible for compensation under the Financial Services Compensation Scheme; and

3.1.10 in relation to an EEA Credit Institution, liquidation (including provisional liquidation), administration and voluntary arrangements are not available; and a scheme of arrangement in relation to an EEA Credit Institution which is, broadly, intended to enable it to survive, but affects creditors' rights, or to enable its assets to be realised and distributed to creditors, may not be sanctioned by the court unless the relevant insolvency officer or administrative or judicial authority (which would usually be the officer or authority of the EEA Credit Institution's home state) has been notified and has not objected.

Under Part XXIV of FSMA, the appropriate regulator is given specific powers to petition to commence and otherwise to participate in Insolvency Proceedings relating to (a) any person authorised under FSMA and (b) any person carrying on (or who has carried on) a regulated activity without authorisation or exemption under FSMA, other than Insolvency Proceedings which are bank insolvency, bank administration, investment bank special administration, special administration (bank administration) and special administration (bank insolvency), in respect of which the appropriate regulator is given such powers to intervene and rights to participate under the Banking Act 2009 and the Investment Bank Regulations, respectively.

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

3.2 Recognition of choice of law

3.2.1 The choice of English law to govern the FOA Netting Agreement or, as the case may be, Clearing Agreement will be recognised in this jurisdiction, even if neither Party is incorporated or established in England, subject to and in accordance with, the provisions of the Contracts (Applicable Law) Act 1990 in relation to contract entered into prior to 17 December 2009 or Council Regulation (EC) No. 593/2008 of 17 June 2008 on the law applicable to contractual obligations in relation to contract entered into on or after that date. However, there are some matters which are not determined by reference to governing law, but which are mandatory in the forum irrespective of the choice of governing law. In particular, where all the elements relevant to a

situation being adjudicated upon were, at the time the choice of law was made, connected with a particular country, the courts of this jurisdiction may apply rules of law of that country which cannot be derogated from by contract. We express no opinion on the binding effect of the choice of law provisions in the FOA Netting Agreement or, as the case may be, Clearing Agreement insofar as they relate to non-contractual obligations arising from or connected with the FOA Netting Agreement or, as the case may be, Clearing Agreement.

3.2.2 In relation to the enforceability or effectiveness of the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision and the Title Transfer Netting Provisions:

(a) in relation to a UK Credit Institution, by virtue of Regulation 34 of the Credit Institutions Regulations, an Insolvency Representative or court in this jurisdiction would have regard exclusively to English law, as the governing law of the FOA Netting Agreement or, as the case may be, Clearing Agreement, in determining the enforceability or effectiveness of the FOA Netting Provision, Clearing Module Netting Provision, the Addendum Netting Provision or Title Transfer Provisions; and by virtue of Regulation 28 of the Credit Institutions Regulations, where a set-off is permitted by the law applicable to the affected credit institution's claim, a relevant reorganisation or a relevant winding-up shall not affect a solvent Party's right to demand a set-off;

(b) under article 25 of Directive 2001/24/EC of 4 April 2001 on the reorganisation and winding up of credit institutions, netting agreements shall be governed solely by the law of the contract which governs such agreements. By virtue of that article, English law should be recognised in relation to an EEA Credit Institution. However, such recognition is, in an insolvency proceeding affecting an EEA Credit Institution, a matter for the law of the Member State of incorporation of the EEA Credit Institution, and (if application was made to a court in this jurisdiction in respect of the enforceability or effectiveness of such netting provisions in the context of insolvency proceedings in respect of that EEA Credit Institution), a court in this jurisdiction would decline jurisdiction pursuant to Section 3(1) of the Credit Institutions Regulations and would not, therefore, make any determination as to the choice of law which would govern such FOA Netting provision, Clearing Module Netting Provision, Addendum Netting Provision or Title Transfer Netting Provisions;

(c) to the extent that such FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision or Title Transfer Provisions forms part of a financial collateral arrangement, a court in this jurisdiction would (other than in the circumstances contemplated in sub-paragraph 3.2.2(b)) have regard exclusively to English law, as the governing law of the FOA Netting Agreement or, as the case may be, Clearing Agreement, in determining the enforceability or effectiveness of such FOA Netting Provision, Clearing Module Netting

Provision, Addendum Netting Provision or the Title Transfer Netting Provisions;

(d) in relation to an entity to which the EU Insolvency Regulation applies (as to which see paragraph 4.3.8), article 6 of the EU Insolvency Regulation provides that where a set-off is permitted by the law applicable to the insolvent Party's claim, the opening of insolvency proceedings shall not affect a solvent Party's right to demand set-off; and

(e) in other cases, an Insolvency Representative would have regard to English law, as the governing law of the FOA Netting Agreement or, as the case may be, Clearing Agreement, in determining the enforceability or effectiveness of the FOA Netting Provisions, the Clearing Module Netting Provision, the Addendum Netting Provision or the Title Transfer Netting Provisions, but may in certain circumstances (as particularised in paragraph 4 below) have regard to other legal systems.

3.2.3 In relation to the enforceability or effectiveness of the FOA Set-Off Provisions, the Clearing Module Set-Off Provision and the Addendum Set-Off Provision:

(a) in relation to entity which is not an investment undertaking which provides services involving the holding of funds or securities for third parties or a collective investment undertaking (each having the meanings given to them the EU Insolvency Regulation), an Insolvency Representative or court in this jurisdiction would have regard exclusively to English law, as the governing law of the FOA Netting Agreement or, as the case may be, Clearing Agreement, in determining the enforceability or effectiveness of the FOA Set-Off Provisions, the Clearing Module Set-off Provision or the Addendum Set-off Provision;

(b) in other cases, an Insolvency Representative would have regard to English law, as the governing law of the FOA Netting Agreement or, as the case may be, Clearing Agreement, in determining the enforceability or effectiveness of the FOA Set-Off Provisions, the Clearing Module Set-off Provision or the Addendum Set-off Provision, but may in certain circumstances (as particularised in paragraph 4 below) have regard to other legal systems.

3.3 Banking Act 2009

A UK bank may be subject to a "*property transfer instrument*" under sections 11 and 12 of the Banking Act 2009 if the Bank of England is satisfied that the UK bank is failing or likely to fail to satisfy the threshold conditions for authorisation under section 55B(1) of FSMA. However, we do not recommend that an additional event of default be included to cover property transfer instruments. Under section 38 of the Banking Act 2009, a property transfer instrument may disapply a right to terminate the FOA Netting Agreement or Transactions or, as the case may be, the Clearing

Agreement or Client Transactions which is exercisable by virtue of the existence or making of the property transfer instrument. This noted, rights to terminate based on the existence or occurrence of other circumstances should not be affected.

3.4 Enforceability of the FOA Netting Provision

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

3.4.1 the Non-Defaulting Party would be entitled immediately to exercise its rights under the FOA Netting Provision; and

3.4.2 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 or, as the case may be, Client Transactions.

We are of this opinion because there is no rule of the laws of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of the FOA Netting Provision or which would render such terms ineffective. In addition, Regulation 12(1) of the FCA Regulations provides that a close-out netting provision constituting a term of a financial collateral arrangement, or an arrangement of which a financial collateral arrangement forms part, shall take effect in accordance with its terms, notwithstanding that the collateral-provider or collateral-taker under the arrangement is subject to winding-up proceedings or reorganisation measures (as such terms are defined in the FCA Regulations).

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 3.4 to apply.

3.5 Enforceability of the Clearing Module Netting Provision

In relation to a Clearing Agreement which includes the Clearing Module Netting Provision, the Clearing Module Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following (i) a Firm Trigger Event or (ii) a CCP Default, the Parties would be entitled only to receive or obliged to pay a net sum incorporating:

3.5.1 the positive and negative mark-to-market values of the relevant individual Client Transactions that are terminated in accordance with the Clearing Agreement;

3.5.2 any unpaid amounts in respect of such terminated Client Transactions;

3.5.3 any Relevant Collateral Value associated with such terminated Client Transactions; and

3.5.4 any other amounts attributed to such terminated Client Transactions.

We are of this opinion because there is no rule of the laws of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of the Clearing Module Netting Provision or which would render such terms ineffective. In addition, Regulation 12(1) of the FCA Regulations provides that a close-out netting provision constituting a term of a financial collateral arrangement, or an arrangement of which a financial collateral arrangement forms part, shall take effect in accordance with its terms, notwithstanding that the collateral-provider or collateral-taker under the arrangement is subject to winding-up proceedings or reorganisation measures (as such terms are defined in the FCA Regulations).

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.

No amendments to the Clearing Module Netting Provision are necessary in order for the opinions expressed in this paragraph 3.5 to apply.

Effect of Statutory Insolvency Set-Off

However, in the event of a liquidation or administration of a Party under the laws of this jurisdiction, there may be a mandatory Statutory Insolvency Set-Off (as described in paragraph 4.1.2 below) of amounts due between the Parties. The effect of Statutory Insolvency Set-Off would be, subject to the other comments in this paragraph and paragraph 4.1, to aggregate and set off all Cleared Set Termination Amounts together with all other amounts due between the Parties so that only a single net sum is payable, notwithstanding that the Clearing Module Netting Provision provides for each Cleared Set Termination Amount to be payable separately in respect of each Agreed CCP Service. Under the laws of this jurisdiction it is not possible to contract out of Statutory Insolvency Set-off, so that the Clearing Module Netting Provision may be overridden to the extent of inconsistency with Statutory Insolvency Set-off.

It should, however, be noted that Statutory Insolvency Set-off is subject to certain limitations:

(a) Insofar as the Clearing Agreement is a financial collateral arrangement, or an arrangement of which a financial collateral arrangement forms part, Regulation 12 of the FCA Regulations will apply. This provides that a close-out netting provision shall take effect in accordance with its terms notwithstanding that a Party is subject to winding-up proceedings or reorganisation measures. In our view, a Clearing Module Netting Provision ought to be characterised as a close-out netting provision, and liquidation and administration will be winding-up proceedings and/or reorganisation measures. Accordingly, in relation to a financial collateral arrangement, Statutory

Insolvency Set-off should not operate so as to prevent the creation of separate Cleared Set Termination Amounts.

(b) If an amount due between the Parties does not constitute a provable debt, Statutory Insolvency Set-Off does not apply to that amount due. A debt which is secured is not provable unless the secured party chooses to prove its debt rather than enforce its security. Accordingly, if (for example, for the purposes of implementing a mechanism for the transfer of assets and positions upon a clearing member default as mandated by Articles 48(5) or (6) of EMIR) a Cleared Set Termination Amount is secured and such security is not waived, it would fall outside Statutory Insolvency Set-Off to the extent of the security.

(c) If an amount due between the Parties is not "mutual" with any other amount due between them, Statutory Insolvency Set-off does not apply. Mutuality is discussed further in paragraph 4.1.4 below; in particular, a Cleared Set Termination Amount may not be mutual with any other debt, including another Cleared Set Termination Amount, if it is held on trust or subject to a security interest.

(d) Under section 182A(2) of the Companies Act 1989, nothing in the law of insolvency shall enable the setting off against each other of (i) positions and assets recorded in an account at a clearing member and held for the account of an indirect client or a group of indirect clients in accordance with articles 4(2) and (3) of Commission Delegated Regulation No.149/2013 relating to EMIR, and (ii) positions and assets recorded in any other account at the clearing member.

Notwithstanding the observations made above, if Statutory Insolvency Set-Off does apply, the solvent Party would be unlikely to be left in a worse position than in the absence of Statutory Insolvency Set-off. This is because as a practical matter the solvent Party would be able to determine separate mutual amounts equal to amounts which may have been aggregated and set-off under Statutory Insolvency Set-off.

3.6 Enforceability of the Addendum Netting Provision

In relation to a Clearing Agreement which includes the Addendum Netting Provision, the Addendum Netting Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that, following (i) a CM Trigger Event or (ii) a CCP Default, the Parties would be entitled only to receive or obliged to pay a net sum incorporating:

3.6.1 the positive and negative mark-to-market values of the relevant individual Client Transactions that are terminated in accordance with the Clearing Agreement;

3.6.2 any unpaid amounts in respect of such terminated Client Transactions;

3.6.3 any Relevant Collateral Value associated with such terminated Client Transactions; and

3.6.4 any other amounts attributed to such terminated Client Transactions.

We are of this opinion because there is no rule of the laws of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of the Addendum Netting Provision or which would render such terms ineffective. In addition, Regulation 12(1) of the FCA Regulations provides that a close-out netting provision constituting a term of a financial collateral arrangement, or an arrangement of which a financial collateral arrangement forms part, shall take effect in accordance with its terms, notwithstanding that the collateral-provider or collateral-taker under the arrangement is subject to winding-up proceedings or reorganisation measures (as such terms are defined in the FCA Regulations).

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.

No amendments to the Addendum Netting Provision are necessary in order for the opinions expressed in this paragraph 3.6 to apply.

Effect of Statutory Insolvency Set-Off

The analysis set out in paragraph 3.5 above in relation to the effect of Statutory Insolvency Set-Off on the Clearing Module Netting Provision applies equally to the Addendum Netting Provision as if references in that analysis to "Clearing Module Netting Provision" were references to the "Addendum Netting Provision" and references to "Cleared Set Termination Amount" were references to "Available Termination Amount".

3.7 Use of FOA Clearing Module or ISDA/FOA Clearing Addendum not detrimental to the FOA Netting Provision

In relation to a Clearing Agreement, the opinions expressed at paragraph 3.4 above in relation to the FOA Netting Provision upon a Client default are not affected by the inclusion of the FOA Clearing Module or the ISDA/FOA Clearing Addendum in the Clearing Agreement in conjunction with the FOA Netting Agreement.

In a case where a Party, who would (but for the use of the FOA Clearing Module or the ISDA/FOA Clearing Addendum) 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 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.

3.8 Enforceability of the FOA Set-Off Provisions

3.8.1 In relation to an FOA Netting Agreement which includes the FOA Set-Off Provisions, the FOA Set-Off Provisions will without fulfilment of any further

conditions be enforceable in accordance with their terms, so that the Party which is entitled to exercise rights (the "**Exercising Party**") under either or both of the FOA Set-Off Provisions may do so, 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 Exercising Party to the other Party would be set-off against the Liquidation Amount (where such Liquidation Amount is owed by the other Party).

We are of this opinion because there is no rule of the laws of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of the FOA Set-Off Provisions or which would render such terms ineffective.

No amendments to the General Set-Off Clause or the Margin Cash Set-Off Clause are necessary in order for the opinions expressed in this paragraph 3.8.1 to apply.

3.8.2 In relation to a Clearing Agreement which includes the FOA Set-Off Provisions and the Clearing Module Set-Off Provision (insofar as the FOA Set-Off Provisions are not Disapplied Set-Off Provisions) and/or the Addendum Set-Off Provision, the FOA Set-Off Provisions will, to the extent that set-off has not already occurred pursuant to the Clearing Module Set-Off Provision or the Addendum Set-Off Provision, be immediately (and without fulfilment of any further conditions) enforceable in accordance with their terms.

3.9 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, upon the exercise of such rights:

(a) if the Client is a Defaulting Party, so that the value of any cash balance owed by the Firm to the Client would be set-off against any Liquidation Amount owed by the Client to the Firm; and

(b) if there has been a Firm Trigger Event or a CCP Default, so that the value of any cash balance owed by one Party to the other would, insofar as not already brought into account as part of the Relevant Collateral Value, be set off against any Available Termination Amount owed by the Party entitled to receive the cash balance.

Effect of Statutory Insolvency Set-Off

However, in the event of a liquidation or administration of a Party under the laws of this jurisdiction, there may be a mandatory Statutory Insolvency Set-Off (as described in paragraph 4.1.2 below) of amounts due between the Parties. The effect of Statutory Insolvency Set-Off would be, subject to the other comments in this paragraph and paragraph 4.1, to aggregate and set off all amounts in respect of all Transactions and Client Transactions together with all other amounts due between the Parties so that only a single net sum is payable, notwithstanding that the Clearing Module Set-Off Provision purports to apply to the exclusion of any Disapplied Set-Off Provision. Under the laws of this jurisdiction it is not possible to contract out of Statutory Insolvency Set-Off, so that the Clearing Module Set-Off Provision may be overridden to the extent of inconsistency with Statutory Insolvency Set-Off. It should, however, be noted that limitations on Statutory Insolvency Set-Off discussed in paragraph 3.5(b)-(d) above would apply equally to 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 3.9 to apply.

3.10 Set-Off under a Clearing Agreement with an Addendum Set-Off Provision

In relation to a Clearing Agreement which includes the Addendum Set-Off Provision, the Addendum Set-Off Provision will be immediately (and without fulfilment of any further conditions) enforceable in accordance with its terms so that following (i) a CM Trigger Event or (ii) a CCP Default:

(a) in the case of a CM Trigger Event, the Client; or

(b) in the case of a CCP Default, either Party

would be immediately entitled to enjoy the benefit of the Addendum Set-Off Provision, and in particular so that, in the case of a CM Trigger Event, any Available Termination Amount would be reduced by its set-off against any cash balance which constitutes a termination amount payable by the Clearing Member to the Client, insofar as not already brought into account as part of the Relevant Collateral Value.

Effect of Statutory Insolvency Set-Off

The analysis set out in paragraph 3.9 above in relation to the effect of Statutory Insolvency Set-Off on the Clearing Module Set-Off Provision applies equally to the Addendum Set-Off Provision as if references in that analysis to "Clearing Module Set-Off Provision" were references to the "Addendum Set-Off Provision" and the reference to "Disapplied Set-Off Provisions" were omitted.

No amendments to the Addendum Set-Off Provision are necessary in order for the opinions expressed in this paragraph 3.10 to apply.

3.11 **Enforceability of the Title Transfer Provisions**

3.11.1 In relation to an 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) shall be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision.

3.11.2 In relation to a Clearing Agreement which includes the Title Transfer Provisions, and in the case of a Firm Trigger Event, a CM Trigger Event, or a CCP Default, the value of the Transferred Margin would, insofar as it relates to Client Transactions terminated and liquidated as part of a Cleared Transaction Set, be taken into account as part of the Relevant Collateral Value.

3.11.3 The courts of this jurisdiction would not recharacterise Transfers of margin under the Title Transfer Provisions of an 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.

3.11.4 A Party shall 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 an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement which includes the Title Transfer Provisions.

We are of this opinion because there is no rule of the laws of this jurisdiction which would, in our view, apply to prohibit the Parties from entering into a contract upon the terms of the Title Transfer Provisions or which would render such terms ineffective. It has sometimes been suggested that where cash or other assets are transferred from one party to another as collateral for obligations owed by the transferor to the transferee, that the courts may recharacterise such transfer as the creation of a security interest over that collateral rather than as a transfer of title. Generally, however, the courts of this jurisdiction will give effect to the intention of the parties such that, where the terms of the arrangement are that title to the collateral be transferred from

the transferor to the transferee, and that the transferor was to retain no proprietary interest in such collateral but would merely have a contractual right to receive equivalent cash or securities transferred to it by the transferee at some future point in time, such arrangements will not be recharacterised as creating a security interest unless it is demonstrated that the parties are acting in a manner inconsistent with the terms of the arrangement or that the arrangement is otherwise a sham. In this context, the Title Transfer Provisions provide that all right, title and interest in any collateral shall vest in the transferee, and that the parties do not intend to create a security interest over such collateral, and the consequences of such vesting of title in the transferee are reflected in the inclusion of the Default Margin Amount in the calculation of a Liquidation Amount pursuant to the Title Transfer Provisions as described in paragraph 3.11.1 above.

No amendments to the Title Transfer Provisions are necessary in order for the opinions expressed in this paragraph 3.11 to apply.

3.12 Use of security interest margin not detrimental to the Title Transfer Provisions

In relation to an 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 3.11 (*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:

3.12.1 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

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

3.13 Single Agreement

Under the laws of this jurisdiction it is not necessary that the Transactions or, as the case may be, Client Transactions and the FOA Netting Agreement or, as the case may be, Clearing Agreement are part of a single agreement in order for the termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision to be enforceable.

English law would give effect to a clause specifying that the FOA Netting Agreement and Transactions (or, as the case may be, the Clearing Agreement and Client Transactions) constitute a single agreement, assuming that such a clause reflects the intention of the Parties. However, in relation to Transactions or, as the case may be, Client Transactions not governed by the laws of this jurisdiction, the question of effectiveness of such a clause is not solely a question of English law.

3.14 **Automatic Termination**

Under the laws of this jurisdiction, it is not necessary for the Parties to agree to an automatic, rather than an optional, termination and liquidation under the FOA Netting Provision, the Clearing Module Netting Provision and/or the Addendum Netting Provision to ensure the effectiveness of netting under the FOA Netting Agreement or, as the case may be, Clearing Agreement in the event of bankruptcy, liquidation, or other similar circumstances.

3.15 **Multibranch Parties**

We do not consider that the use of the FOA Netting Agreement or, as the case may be, 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 Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision or the Title Transfer Provisions in so far as the laws of this jurisdiction are concerned.

3.16 **Insolvency of Foreign Parties**

Where a Party is incorporated or formed under the laws of another jurisdiction and an Event of Default or a Firm Trigger Event or, as the case may be, a CM Trigger Event occurs in respect of such Party, the foreign company can, subject to the observations at paragraphs 3.1 and 4.3.5 to 4.3.9, be subject to Insolvency Proceedings in this jurisdiction.

3.17 **Special legal provisions for market contracts**

Other than the matters discussed in paragraph 5 below, or as otherwise discussed in this paragraph 3 or in paragraph 4 below, there are no special provisions of law which would affect the opinions at this paragraph 3 which would apply to a Transaction or, as the case may be, Client Transaction between two Parties as a result of the fact that such Transaction or, as the case may be, Client Transaction was entered into on, or is back-to-back with a Transaction or, as the case may be, Client Transaction entered into on an exchange (in this or another jurisdiction), or is cleared at, or is back-to-back with a Transaction or, as the case may be, Firm/CCP Transaction to be cleared by a central counterparty.

3.18 **Limited recourse**

The Limited Recourse Provision will be enforceable in accordance with its terms.

4. QUALIFICATIONS

The opinions in this opinion letter are subject to the following qualifications. In this paragraph 4, the terms "Transaction" and "Client Transaction" include (a) a Transfer of margin under an FOA Netting Agreement (with Title Transfer Provisions) or, as

the case may be, a Clearing Agreement which includes the Title Transfer Provisions and (b) a payment of cash credited to an account on the books of the other Party.

4.1 Liquidation and administration (general)

4.1.1 Paragraphs 4.1.2 to 4.1.8 discuss various issues relating to Statutory Insolvency Set-Off (as defined in paragraph 4.1.2). Statutory Insolvency Set-Off underpins our opinion in paragraphs 3.4 – 3.11. Statutory Insolvency Set-Off is a mandatory provision of English insolvency law in the types of Insolvency Proceeding listed in paragraph 4.1.2 and may therefore apply as an alternative to netting or set-off under the specific terms of an FOA Netting Agreement or, as the case may be, Clearing Agreement. Where there is an inconsistency between the operation of the FOA Netting Agreement or, as the case may be, Clearing Agreement and the rules of Statutory Insolvency Set-Off (as particularised in paragraphs 4.1.2 to 4.1.8), the latter will prevail in such Insolvency Proceedings, so that the effect of netting or set-off under the FOA Netting Agreement, or as the case may be, Clearing Agreement in such Insolvency Proceedings may be constrained in the same fashion as under Statutory Insolvency Set-Off.

4.1.2 The aggregation or set-off of amounts representing mutual dealings between Parties may be implemented, in a winding-up, under Rule 4.90 of the Insolvency Rules 1986 ("**Rule 4.90**"); in an administration, under Rule 2.85 of the Insolvency Rules 1986 ("**Rule 2.85**"); in a bank insolvency, under Rule 72 of the Bank Insolvency (England and Wales) Rules 2009 ("**Rule 72**"); in a bank administration, under Rule 2.85 as applied by the Bank Administration (England and Wales) Rules 2009; in relation to an investment bank special administration, under Rule 164 of the Investment Bank Special Administration (England and Wales) Rules 2011 ("**Rule 164**"); or, in relation to a special administration (bank insolvency) or a special administration (bank administration), under Rule 164 as applied by Rule 165 of the Investment Bank Special Administration (England and Wales) Rules 2011 (each an "**Insolvency Set-Off Rule**"), rather than under the specific provisions of the FOA Netting Agreement or, as the case may be, Clearing Agreement.

Set-off pursuant to an Insolvency Set-Off Rule ("**Statutory Insolvency Set-Off**") would, in our view, result in a net amount payable between the Parties in respect of such amounts, subject to the other qualifications set out in this opinion and subject also to the inclusion in any Statutory Insolvency Set-Off of other mutual obligations between the Parties. This may lead to (i) the net amount payable between the Parties by result of Statutory Insolvency Set-Off being different from the amount that would have been payable under the FOA Netting Provision or (ii) to a single net amount being payable between the Parties by result of Statutory Insolvency Set-Off instead of separate net amounts pursuant to the Clearing Module Netting Provision or the Addendum Netting Provision.

4.1.3 In relation to: (i) a bank insolvency, (ii) a bank administration, (iii) a special administration (bank insolvency); or (iv) a special administration (bank administration) if all or part of a creditor's claim against the UK bank or UK investment bank (as the case may be) is in respect of protected deposits[2], then Rule 72, Rule 2.85 or Rule 164 (as the case may be) applies but the balance of those protected deposits (up to the prescribed maximum compensation payable in respect of protected deposits under Part 15 of FSMA) will be excluded from the set-off and will be payable to the eligible depositor regardless of whether or not the eligible depositor is a net creditor or debtor in respect of the remaining mutual dealings between it and the UK bank or UK investment bank.

4.1.4 Statutory Insolvency Set-Off only applies where the amounts being set-off are "mutual" between the parties. In this context, "mutual" means that the Parties are each personally and solely liable as regards obligations owing by it to the other Party and solely entitled to the benefit of obligations owed to it by the other Party. Circumstances in which the requisite mutuality will not be established include, without limitation:

- where a Party is acting as agent for another person, in which case sums owed by (or to) the agent acting in its capacity as such are not mutual with sums owed to (or by) it arising from obligations such Party incurs as principals;

- where a Party is acting as a trustee, in which case sums owed by (or to) the trustee acting in its capacity as such are not mutual with sums owed to (or by) it arising from obligations such Party incurs in its own interest;

- where a Party has a joint interest (other than where a Party is a partnership organised under the laws of this jurisdiction and then only in relation to the position between the partnership and the other Party to the FOA Netting Agreement or, as the case may be, Clearing Agreement), in which case sums owed by (or to) the partnership are not mutual with sums owed to (or by) a partner acting in his or her or its own interest;

- where a Party's rights or obligations or any interest therein have been assigned, charged or transferred (whether in whole or in part) whether unilaterally, by agreement or by operation of law or by order (including, without limitation, pursuant to Section 111 of FSMA).

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[2] As defined in Rule 73 of the Bank Insolvency (England and Wales) Rules 2009 (in the case of bank insolvency), Rule 47A of the Bank Administration (England and Wales) Rules 2009 (in the case of bank administration) or Rule 165 of the Investment Bank Special Administration (England and Wales) Rules 2011 (in the case of a special administration (bank insolvency) or a special administration (bank administration).

Accordingly, where such mutuality does not exist in respect of any Transactions or Client Transactions (as the case may be), amounts in respect of such Transactions or Client Transactions will not be included in any Statutory Insolvency Set-Off.

4.1.5 Furthermore, where an amount owed by the insolvent party is a secured obligation owed to the non-insolvent party, the amount of such secured obligation which may be included in any Statutory Insolvency Set-Off will be limited to the amount which the non-insolvent party elects to prove for in the insolvency. Except where the non-insolvent party has elected to waive its security, such provable amount will be limited to the amount by which the secured obligation exceeds the proceeds of enforcement of the security. Where the secured obligation is itself a net sum (such as, for example, a Cleared Set Termination Amount), Statutory Insolvency Set-Off would not impair the calculation of that net sum.

4.1.6 Statutory Insolvency Set-Off will be unavailable where an amount to be set off is void. In a winding-up by the courts under the laws of this jurisdiction or a bank insolvency, any dispositions of the insolvent Party's property made after the commencement of winding-up or bank insolvency of such Party (which, in this context, means the time of presentation of the petition for winding-up, or, if earlier, the time of passing a resolution for voluntary winding-up or, if the court makes a winding-up order on hearing an administration application, the making of the order) are void under section 127 of the Insolvency Act 1986 unless the court otherwise orders or the FCA Regulations prevent its application.

By virtue of the FCA Regulations, section 127 of the Insolvency Act 1986 should not apply in relation to the provision of collateral by a Party where such collateral is provided pursuant to a financial collateral arrangement.

Accordingly, transactions or obligations entered into after compulsory winding-up or bank insolvency has commenced in relation to a Party might not be capable of inclusion in the netting or set-off carried out under the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions or a set-off pursuant to a Statutory Insolvency Set-Off, but this would not impair the effectiveness of the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions or a Statutory Insolvency Set-Off in respect of Transactions or, as the case may be, Client Transactions entered into before the commencement of such Insolvency Proceedings.

4.1.7 Statutory Insolvency Set-off may not apply to amounts which arise under Transactions or, as the case may be, Client Transactions entered into at certain

times, and accordingly an English court might not allow such amounts to be included in a netting or set-off pursuant 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, the Addendum Set-Off Provision or the Title Transfer Provisions or a Statutory Insolvency Set-Off. The times referred to are, so far as relevant, as follows:

(a) after the insolvent Party had entered administration;

(b) at a time when the solvent Party had notice that an application for an administration order in respect of the insolvent Party was pending or that any person had given notice of intention to appoint an administrator in respect of the insolvent Party;

(c) where liquidation was immediately preceded by administration, at a time when the solvent Party had notice that a meeting of creditors of the insolvent Party had been summoned under section 98 of the Insolvency Act 1986 (which requires a company which goes into creditors' voluntary winding-up to cause a meeting of creditors to be summoned for a day not later than the fourteenth day after the day on which there is to be held a shareholders' meeting at which the resolution for voluntary winding-up is to be proposed) or that a petition for the winding-up or an application for a bank insolvency order of the insolvent Party was pending; or

(d) during a winding-up which immediately preceded the administration or bank insolvency of the insolvent Party,

and, where the court has made a recognition order in respect of a foreign main proceeding under the Cross-Border Insolvency Regulations in respect of the insolvent Party, it appears that an amount may also be excluded from a netting or set-off pursuant 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, the Addendum Set-Off Provision or the Title Transfer Provisions or Statutory Insolvency Set-Off if the Transaction or, as the case may be, Client Transaction under which such amount arose was entered into after the making of the recognition order, or after the solvent Party had notice that a recognition application was pending.

Furthermore, any debt which has been acquired by the solvent Party by assignment or otherwise pursuant to an agreement between the solvent Party and any other person must be excluded from Statutory Insolvency Set-Off, and may not be included in an aggregation pursuant 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, the Addendum Set-Off Provision or the Title Transfer Provisions where such assignment or other agreement was entered into at any of the times mentioned above.

However, notwithstanding these limitations, if the FOA Netting Agreement or, as the case may be, Clearing Agreement constitutes a financial collateral arrangement, or an arrangement of which a financial collateral arrangement forms part, amounts which arise under Transactions or, as the case may be, Client Transactions entered into at the times mentioned above may still be included in an aggregation or set-off unless at the time the relevant financial obligations came into existence the solvent Party was aware, or should have been aware, that winding up proceedings or reorganisation measures (as such terms are defined in the FCA Regulations) had commenced in relation to the insolvent Party.

4.1.8 In relation to our opinions on the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, and the Addendum Set-Off Provision, it is a requirement for effective Statutory Insolvency Set-Off that the obligations to be set off be "commensurable", which in broad terms means that the obligations must be able to be established in money terms. Insofar as an obligation is an obligation to deliver a thing, the value of that obligation may nonetheless be included in a Statutory Insolvency Set-Off if the obligor has been directed to convert the thing into money, and the direction has not been revoked by the time that Statutory Insolvency Set-Off comes into operation.

4.1.9 Liquidation and, where an administrator is authorised to make a distribution, administration procedures under the Insolvency Rules 1986 are conducted in sterling. Rule 2.86 and Rule 4.91 of the Insolvency Rules 1986 and Rule 166 of the Investment Bank Special Administration (England and Wales) Rules 2011 provide that, for the purposes of Statutory Insolvency Set-Off, a debt incurred in a currency other than sterling shall be converted into sterling at the "*official exchange-rate*" (which is based on the market rate on the date the court makes the winding-up order, or the company concerned goes into liquidation or enters administration). If the FOA Netting Agreement or, as the case may be, Clearing Agreement constitutes a financial collateral arrangement or an arrangement of which a financial collateral arrangement forms part, the limitations imposed by Rule 2.86 and Rule 4.91 of the Insolvency Rules 1986 are disapplied unless the arrangement provides for an unreasonable exchange rate or the collateral taker uses the mechanism provided under the arrangement to impose an unreasonable exchange rate.

4.1.10 In respect of any Transaction or, as the case may be, Client Transaction entered into before the commencement of the winding-up or bank insolvency in respect of the insolvent Party, under which property is to be delivered after the time of such commencement and in respect of which the insolvent Party transfers ownership of the property to the solvent Party after the time of such commencement, it may not be possible for the price payable in respect of such property transferred to be included in the Termination Amount or, as the case may be, Cleared Set Termination Amount. However, if such a Transaction or, as the case may be, Client Transaction is terminated before ownership of the property to be delivered under such Transaction or, as the case may be, Client Transaction is transferred, the gain or loss in respect of the Transaction or, as

the case may be, Client Transaction calculated in accordance with the FOA Netting Provision, the Clearing Module Netting Provision or Addendum Netting Provision should be capable of being included in the Termination Amount or, as the case may be, the Cleared Set Termination Amount. Any action taken by the liquidator of the insolvent Party to recover the price from the solvent Party would not prejudice the effectiveness of the netting pursuant to the FOA Netting Provision, the Clearing Module Netting Provision or Addendum Netting Provision of other, valid, obligations.

4.1.11 In relation to paragraphs 3.4, 3.5 and 3.6 above, Regulation 12(1) of the FCA Regulations does not apply if at the time the relevant financial obligations came into existence:

(a) the solvent Party was aware, or should have been aware, that winding up proceedings or reorganisation measures (as such terms are defined in the FCA Regulations) had commenced in relation to the insolvent Party;

(b) the solvent Party had notice that a meeting of creditors of the insolvent Party had been summoned under section 98 of the Insolvency Act 1986 (as to which see paragraph 4.1.7(c) above) or that a petition for the winding-up of the insolvent Party was pending; or

(c) the solvent Party had notice that an application for an administration order was pending, or that a person had given notice of intention to appoint an administrator, in respect of the insolvent Party,

but the fact that Regulation 12(1) does not apply would not affect the general conclusions expressed at paragraphs 3.4, 3.5 and 3.6 above.

4.1.12 If any creditor of a Party ("**the defendant Party**") were to attach, execute, levy execution or otherwise exercise a creditor's process (whether before or after judgment) over or against any claim owing by the other Party ("**the debtor Party**") to the defendant Party under the FOA Netting Agreement or, as the case may be, Clearing Agreement or a Transaction or, as the case may be, a Client Transaction, then the debtor Party would, following a Termination Date or, as the case may be, a date where each Client Transaction in the relevant Cleared Transaction Set automatically terminates (a "**Cleared Set Termination Date**"), be able to exercise its rights under 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 Title Transfer Provisions or enjoy the benefit of the Addendum Set-Off Provision vis-a-vis the creditor of the defendant Party in respect of claims which existed at the date of the attachment or other process, including the claim which is the subject of the attachment or other process. However, if the attaching creditor has become subject to Statutory Insolvency Set-Off before a Termination Date or, as the case may be, a Cleared Set Termination Date has occurred, it may be possible for the liquidator, administrator or other relevant insolvency official of the attaching creditor to

claim the amounts subject to the attachment free of the debtor Party's rights under the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions. This is because it may be argued that the debtor Party seeks to exercise a set-off right in respect of an amount which is now owed by the debtor Party to the attaching creditor rather than to the defendant Party, and a contractual provision which purports to create a right of set-off between non-mutual claims may not be effective in Statutory Insolvency Set-Off when applied to the attaching creditor.

However, after the commencement of a winding-up in respect of the defendant Party any attachment will be ineffective unless the court otherwise orders, and in our view the court would not be likely to allow an attachment to defeat the rights of the debtor Party under the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions.

4.2 Banking Act 2009

4.2.1 The Banking Act 2009 (the "**Banking Act**") contains various provisions which might affect the effectiveness of the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision and the Title Transfer Provisions. In particular Part I of the Banking Act provides for various remedies for a failing UK bank, which include the ability of the Treasury or the Bank of England to cause the transfer of securities issued by a UK bank or property of a UK bank to another person, by means of a "*share transfer order*", a "*share transfer instrument*", or a "*property transfer instrument*".

4.2.2 Section 75 of the Banking Act gives power to the Treasury to change the law (except the Banking Act itself) for the purpose of enabling the powers granted to the Financial Conduct Authority, the Prudential Regulation Authority, the Treasury and the Bank of England under Part I of the Banking Act to be used effectively. Such changes might affect private law rights and might be used with retrospective effect. Furthermore, under sections 23 and 40, a share transfer instrument or order, or a property transfer instrument, may include incidental, consequential or transitional provisions which might have impact on private law rights.

4.2.3 Insofar as any Transaction or, as the case may be, Client Transaction relates to securities issued by a UK bank or building society or a UK incorporated holding company of a UK bank:

(a) under section 22 of the Banking Act a share transfer instrument or order may disapply a right to terminate the Transaction or, as the case may be, Client Transaction which is exercisable by virtue of the

existence or making of the share transfer instrument or order. However, rights to terminate based on the existence or occurrence of other circumstances, pursuant to the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision should not be affected; and

(b) a share transfer instrument or order may affect the ability to perform an obligation to deliver the securities, and may replace the provisions of the FOA Netting Agreement or, as the case may be, Clearing Agreement or the Transaction or, as the case may be, Client Transaction which relate to the amount payable between the Parties in respect of non-delivery so that a different amount(s), or no amount at all, may be payable, and at a different time from that agreed between the Parties.

4.2.4 A property transfer instrument may apply to only part of a UK bank's assets and liabilities (such a transfer being referred to as a "*partial property transfer*"). This may be the case because the property transfer instrument concerned expressly applies to only part of the UK bank's business or because it is ineffective in relation to foreign property, which may include Transactions or, as the case may be, Client Transactions, or obligations arising under Transactions or, as the case may be, Client Transactions, which are governed by the laws of a non-UK jurisdiction. A partial property transfer could apply so as to cause the transfer of some, but not all, of the Transactions or, as the case may be, Client Transactions (or obligations arising under Transactions or, as the case may be, Client Transactions), with the result that the ability to net the amounts due in respect of different Transactions or, as the case may be, Client Transactions against the amounts due in respect of others is impaired. However, in this regard, Article 3 of the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (the "**Safeguards Order**") prohibits a partial property transfer which applies to some, but not all, of the "*protected rights and liabilities*" between a particular person and a UK bank. "**Protected rights and liabilities**" means rights and liabilities which a party is entitled to set off or net under a set-off arrangement, netting arrangement or title transfer financial collateral arrangement, so long as they are not "excluded rights" or "excluded liabilities". Accordingly, Article 3 of the Safeguards Order protects the Party which is not the affected UK bank against the adverse consequences of a partial property transfer affecting the FOA Netting Agreement or, as the case may be, Clearing Agreement or Transactions or, as the case may be, Client Transactions, except as follows:

(a) if any Transaction or, as the case may be, Client Transaction is not a "*relevant financial instrument*" as defined in the Safeguards Order, Article 3 may not apply in relation to that Transaction or, as the case may be, Client Transaction. For these purposes "*relevant financial instrument*" means: (a) an instrument listed in Section C of Annex I to the Markets in Financial Instruments Directive (2004/39/EC), read with Chapter VI of the Commission Regulation 1287/2006/EC; (b) any

option, future, swap, forward, contract for differences or other derivative contract not falling within (a); and (c) any combination of the foregoing, a deposit, a loan, an instrument falling within article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (disregarding the exclusions in article 77(2)(b) to (d)) or any contract for the sale, purchase or delivery of transferable securities, currency of any country, territory or monetary union, any precious metal or any other commodity; or

(b) if any obligation to which the FOA Netting Provision, FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions is applied relates to a "*retail deposit*", Article 3 does not apply. For these purposes "*retail deposit*" means a deposit in an account of a class or brand which is mainly used by or marketed to eligible claimants, being in broad terms individuals, small companies within section 382 of the Companies Act 2006, or partnerships with net assets of not more than £1.4 million.

4.3 Other insolvency issues

4.3.1 Under section 238 of the Insolvency Act 1986, a Transaction or, as the case may be, Client Transaction entered into by a company at any time within a specified period ending with the onset of insolvency of the company (being, in broad terms, the earliest of: the date of the commencement of winding-up; the date on which an administration application is made; the date of filing with the court of a notice of intention to appoint an administrator; or the date of the company entering administration; or, where the court has made a recognition order in respect of a foreign proceeding under the Cross-Border Insolvency Regulations, the date of opening of the foreign proceeding) with a person on terms that provide for the company to receive either no consideration, or a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by it, may be set aside as a transaction at an undervalue, if at the time the Transaction or, as the case may be, Client Transaction is entered into that company was unable to pay its debts or became unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 in consequence of the Transaction or, as the case may be, Client Transaction. A court would not set aside such a Transaction or, as the case may be, Client Transaction if it were satisfied that the company entered into the Transaction or, as the case may be, Client Transaction in good faith and for the purpose of carrying on its business and that at the time it did so there were reasonable grounds for the belief that it would benefit the company. Transactions or, as the case may be, Client Transactions entered into on arm's length terms and at the then prevailing market rates are unlikely to constitute transactions at an undervalue. In relation to a Transfer of margin under the Title Transfer Provisions, it is theoretically possible that a collateral arrangement such as that constituted

under the Title Transfer Provisions could constitute a transaction at an undervalue; however, the provision of margin on an arms-length basis would not normally result in the over-provision of consideration by the margin provider as compared to consideration received by it. However, the matters referred to in the last three sentences are questions of fact in each case.

4.3.2 Under section 239 of the Insolvency Act 1986 anything done or suffered to be done by a company within a specified period ending with the onset of insolvency (as defined in paragraph 4.3.1 above) of that company may be set aside as a preference. The thing done or suffered will be liable to be set aside if at the time it was done or suffered that company was unable to pay its debts or became unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 in consequence of the thing done or suffered and that thing has the effect of putting any person in a better position, in the event of that company going into insolvent liquidation, than that person would have been in if the thing had not been done or suffered. However, the court would not make such an order if it was satisfied that the company which gave the preference was not influenced to give it by a desire to put that person in such better position. In relation to a Transfer of margin under the Title Transfer Provisions, we assume that the margin provider would not, in providing the margin, be influenced by a desire to put the margin taker in such a better position (although the margin provider's motivation is a matter of fact).

4.3.3 There are provisions in the Companies Act 2006 and the Insolvency Act 1986 for schemes of arrangement or voluntary arrangements in respect of companies to be agreed by creditors or, in some cases, shareholders of the company. The courts will not sanction a scheme of arrangement under sections 895-901 of the Companies Act 2006 unless reasonable efforts were made to notify those creditors whose rights would be affected by the scheme of the meeting to approve that scheme. In relation to voluntary arrangements under Part I of the Insolvency Act 1986, a creditor can be bound by the arrangement even if it has not been given notice of the creditors' meeting to approve the arrangement. In the case of either a scheme of arrangement or a voluntary arrangement, approval at the creditors' meeting of its terms does not require unanimity of the affected creditors, whether or not present at the meeting.

Such arrangements could affect both set-off rights of creditors and the value of claims which the creditors may have against the insolvent Party. If the Liquidation Date or Cleared Set Termination Date has occurred before the approval of such an arrangement, any provision of such an arrangement which purports to unwind the application of the FOA Netting Provision, the FOA Set-off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions would not bind the affected creditor if timely objection to the arrangement is made to the applicable court. An arrangement could, however, affect the value of any resulting net claim.

4.3.4 Where a Party is subject to the EU Insolvency Regulation (see paragraph 4.3.8), Article 9(1) of the EU Insolvency Regulation provides that the effects of insolvency proceedings to which the EU Insolvency Regulation applies on the rights and obligations of the parties to a financial market shall be governed solely by the law of the Member State applicable to that market. The meaning of "*financial market*" in this provision is unclear, but the commentary on a draft instrument which was the predecessor of the EU Insolvency Regulation by Virgos and Schmit indicates that it is understood to be a market where financial instruments, other financial assets or commodity futures and options are traded, and which is subject to supervision by the Member State's regulatory authorities. Where a Party is a UK Credit Institution the effects of a voluntary arrangement, administration, winding-up or provisional liquidation on transactions carried out in the context of a regulated market operating in an EEA State other than the United Kingdom must be determined in accordance with the laws applicable to those transactions. For these purposes "*regulated market*" has the meaning given in the Markets in Financial Instruments Directive (2004/39/EC). Accordingly, the application of the FOA Netting Agreement, or, as the case may be, Clearing Agreement to any Transaction or, as the case may be, Client Transaction effected on a "*financial market*" or a "*regulated market*" in another Member State may be modified by operation of the local laws.

Paragraph 5 of this opinion discusses the application of specific UK legislation to "market contracts" (as more particularly explained in paragraph 5.1).

4.3.5 The courts of Scotland have exclusive jurisdiction in relation to liquidation of a Party incorporated under the laws of Scotland (a "**Scottish Party**"). Accordingly, the courts of this jurisdiction may defer to the courts of Scotland in relation to any question arising in Insolvency Proceedings relating to a Scottish Party.

4.3.6 The courts having jurisdiction in relation to insolvency law in this jurisdiction may give assistance to courts in which concurrent insolvency proceedings have commenced under the laws of another jurisdiction. Such assistance may take the form of, for example, dealing with only those assets located in this jurisdiction or selectively applying provisions of foreign law in Insolvency Proceedings which are otherwise generally governed by English law. The courts of this jurisdiction may accordingly apply foreign systems of law rather than English law where the insolvent Party is subject to insolvency proceedings in another jurisdiction. Under section 426 of the Insolvency Act 1986, a court with insolvency law jurisdiction in England has a discretion to apply the law of one of a list of specified jurisdictions to the insolvency of an entity if so requested by the competent court of that other jurisdiction. Those specified jurisdictions are currently the other parts of the United Kingdom, the Channel Islands, the Isle of Man, Anguilla, Australia, the Bahamas, Bermuda, Botswana, Brunei, Canada, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Ireland, Malaysia, Montserrat, New Zealand, South Africa, St. Helena, Turks and Caicos Islands, Tuvalu and the Virgin Islands. In exercising its

discretion, the English court must have regard to the rules of private international law. In any case where the EU Insolvency Regulation applies (as to which, see paragraph 4.3.8 below) and if the specified jurisdiction concerned is any of the Channel Islands, Isle of Man, or Ireland, the English court's powers under section 426 of the Insolvency Act 1986 would be displaced insofar as inconsistent with the EU Insolvency Regulation.

4.3.7 Under the Cross-Border Insolvency Regulations, a court may recognise a foreign insolvency proceeding, and in consequence of such recognition may limit the application of English insolvency law, or apply certain of the provisions of English insolvency law at times, or in circumstances, where they would not otherwise be available. In particular, where the court has made a recognition order in respect of a foreign main proceeding under the Cross-Border Insolvency Regulations in respect of the insolvent Party, the effects of an Insolvency Proceeding will be restricted to assets located in Great Britain.

4.3.8 Where a Party is not a credit institution, an investment undertaking holding funds or securities for third parties, or a collective investment undertaking, and the centre of its main interests is in an EU Member State other than the United Kingdom or Denmark, the EU Insolvency Regulation will apply. In such a case the English courts have no jurisdiction in respect of Insolvency Proceedings other than:

(a) receivership;

(b) where the Party has a sufficient connection to England and Wales, schemes of arrangement; and

(c) where the Party has an establishment (within the meaning in the EU Insolvency Regulation) in this jurisdiction, to implement certain Insolvency Proceedings governed by English law in relation to the assets situated (or deemed under the EU Insolvency Regulation to be situated) in this jurisdiction.

In cases where a Party is an EEA Credit Institution, the jurisdiction of the English courts is limited by the Credit Institutions Regulations as described in paragraph 3.1.10. In other cases, the jurisdiction of the English courts is as set out in paragraph 3.1.

4.3.9 Further, in relation to paragraph 3.15 only, where the EU Insolvency Regulation applies, an Insolvency Representative may be required to defer to the jurisdiction of the insolvency officer appointed in another state, because particular Transactions or, as the case may be, Client Transactions or the claims of the defaulting Party against the non-defaulting Party arising under the FOA Netting Agreement or, as the case may be, Clearing Agreement may be deemed to be situated outside this jurisdiction.

4.3.10 To the extent that a Transaction or, as the case may be, Client Transaction may be for the supply of gas by a gas supplier within the meaning of Part 1 of the

Gas Act 1986 or for the supply of electricity by an electricity supplier within the meaning of Part 1 of the Electricity Act 1989, to an English company or a foreign company subject to Insolvency Proceedings under section 233 of the Insolvency Act 1986, an Insolvency Representative may request the supplier to continue to make such supply, in which case the supplier shall not make it a condition of the giving of the supply that any outstanding charges in respect of that supply are paid. This may have the effect that a Party is unable to terminate the relevant Transactions or Client Transactions due to a failure to pay and therefore be unable to effect its remedies in respect thereof under the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or Title Transfer Provisions.

4.3.11 In relation to our opinions at paragraphs 3.5, 3.6, 3.9 and 3.10, as far as they relate to a CCP Default, we express no view as to the operation of the Clearing Module Netting Provision, the Addendum Netting Provision, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision in the case where both a CCP Default has occurred and the Client is subject to Insolvency Proceedings.

4.4 General

4.4.1 A bank may be able to transfer the liability it owes to an account holder in respect of an account which has been dormant for a period of 15 years to an authorised reclaim fund, in accordance with the provisions of the Dormant Bank and Building Society Accounts Act 2008. Where a Party is a bank (a "**Bank Party**") and cash collateral provided by the Counterparty to the Bank Party is recorded as a deposit in the name of the Counterparty with the Bank Party, the consequence of the transfer of the deposit liability pursuant to the Dormant Bank and Building Society Accounts Act 2008 may be to render the transferred deposit liability (i.e. the obligation to return such cash collateral to the Counterparty) non-mutual with other obligations owed to the Bank Party by the Counterparty (including pursuant to Transactions or, as the case may be, Client Transactions) and therefore ineligible for effective set-off pursuant to the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or Addendum Set-Off Provision or inclusion in the Liquidation Amount or, as the case may be, Cleared Set Termination Amount pursuant to the Title Transfer Provisions.

4.4.2 A Transaction or, as the case may be, a Client Transaction may be affected by the operation of EMIR in the event of a central counterparty ("**CCP**") taking default action against a Party which is a clearing member of the CCP. In particular:

(a) under articles 48(5) and 48(6) of EMIR, assets and positions of a Party which is a "client" as defined by EMIR (a "**Client Party**") may be transferred to another clearing member of the CCP. If the value of

those assets or positions, or a sum calculated so as to take account of that value, is included in a Liquidation Amount or Cleared Set Termination Amount, the Client Party could receive an overpayment unless an adjustment is made to the Liquidation Amount or Cleared Set Termination Amount. Whether such an adjustment is necessary will depend on the transfer mechanism used by the CCP, but in appropriate cases may take the form of clause 5.2.2(i) of the FOA Clearing Module. If such an overpayment could arise but has not been contractually provided for, the result of netting under the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision may be adjusted by the court or the Insolvency Representative to take account of the overpayment, but we consider that the effectiveness of the FOA Netting Provision, the Clearing Module Netting Provision or the Addendum Netting Provision would not otherwise be impaired.

(b) under article 48(7) of EMIR, an amount may be paid directly by a CCP to a Client Party, notwithstanding that that amount, or a sum calculated so as to take account of that amount, is included in a Liquidation Amount or Cleared Set Termination Amount. In such circumstances the Client Party would receive an overpayment unless a payment adjustment clause (such as clause 6 of the FOA Clearing Module) is included in the FOA Netting Agreement or, as the case may be, Clearing Agreement. Similarly, if an amount owed to a Client Party by the other Party to an FOA Netting Agreement or, as the case may be, Clearing Agreement has purportedly been set off under an FOA Set-Off Provision, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision, but an amount relating to the same obligation has been paid directly by a CCP to a Client Party, an overpayment may also be received by the Client Party. If such an overpayment could arise but has not been contractually provided for, the result of applying the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision or the Addendum Set-Off Provision may be adjusted by the court or the Insolvency Representative to take account of the overpayment, but we consider that the effectiveness of such provisions would not otherwise be impaired.

4.4.3 A Party which is an authorised person under FSMA and has its head office or (where a legal person) its registered office in this jurisdiction ("**a regulated Party**") may be required, pursuant to client money rules made under section 139 of FSMA, to procure the agreement of the other Party not to set off any amount due from it to the regulated Party in respect of Transactions or, as the case may be, Client Transactions made by the regulated Party for the account of any of its clients whose monies are required to be treated by the regulated Party as client money ("**segregated clients**") against any amount due from the regulated Party in respect of other Transactions or, as the case may

be, Client Transactions made between the Parties. In such a case, the FOA Netting Agreement may need to be amended to provide for two discrete Liquidation Amounts to be calculated in order to produce, separately, a net sum payable in respect of Transactions made for the account of segregated clients and a net sum payable in respect of all other Transactions; or the regulated Party may need to enter into two FOA Netting Agreements, one to apply to Transactions made with the other Party for the account of segregated clients and the other to cover all other Transactions. Likewise, a Clearing Agreement may need to be modified to provide, in the case of Client Default, for a separate Liquidation Amount, or in the case of a Firm Trigger Event or CM Trigger Event for a separate Cleared Set Termination Amount, to be calculated in relation to Transactions or, as the case may be, Client Transactions, which relate to segregated clients only.

4.4.4 If the effect of proceedings in a forum outside this jurisdiction is to extinguish claims or liabilities under the governing law of those claims or liabilities, the English courts may recognise the extinction of those claims or liabilities. In particular, in relation to any Transaction or Client Transaction which is governed by a law other than the law of this jurisdiction, such proceedings may affect whether or not that Transaction or Client Transaction is available for inclusion in any netting or set-off pursuant to a FOA Netting Agreement or a Clearing Agreement.

4.4.5 Under the laws of this jurisdiction, interest imposed upon a Party by the FOA Netting Agreement or, as the case may be, Clearing Agreement might be held to be irrecoverable on the grounds that it is a penalty, or to the extent that it accrues on an unsecured debt after the making of a winding-up or bankruptcy order or the passing of a winding-up resolution by the company liable to pay such interest, or after the Party enters into administration, but the fact that it was held to be irrecoverable would not of itself prejudice the legality or validity of any other provision of the FOA Netting Agreement or, as the case may be, Clearing Agreement. If the FOA Netting Agreement or, as the case may be, Clearing Agreement does not provide a contractual remedy for late payment of any amount payable thereunder that is a substantial remedy within the meaning of the Late Payment of Commercial Debts (Interest) Act 1998, the person entitled to that amount may have a right to statutory interest (and to payment of certain fixed sums) in respect of that late payment at the rate (and in the amount) from time to time prescribed pursuant to that Act. Any term of the FOA Netting Agreement or, as the case may be, Clearing Agreement may be void to the extent that it excludes or varies the right to statutory interest, or purports to confer a contractual right to interest that is not a substantial remedy for late payment of that amount, within the meaning of that Act. We express no opinion as to whether any such provisions in the FOA Netting Agreement or, as the case may be, Clearing Agreement do in fact constitute a "*substantial remedy*" in compliance with the conditions set out in section 9 of such Act.

4.4.6 An exchange contract[3] (which in our view may include the FOA Netting Agreement and any Transactions or, as the case may be, the Clearing Agreement and any Client Transactions) is unenforceable in the United Kingdom if (i) it involves the currency of any member of the International Monetary Fund and (ii) it is contrary to the exchange control regulations of any member of the International Monetary Fund maintained or imposed consistently with the International Monetary Fund Agreement. In our opinion the FOA Netting Agreement or, as the case may be, Clearing Agreement is not contrary to any exchange control regulations maintained or imposed by the United Kingdom. Further, there is inconsistent authority on what amounts to an "*exchange contract*" for these purposes. It is not clear whether the term encompasses any contract which in any way affects a country's exchange resources or only a contract for the exchange of one currency for another, although the better view is probably that the latter (narrow) interpretation is correct.

4.4.7 Where any Party to the FOA Netting Agreement or, as the case may be, Clearing Agreement is vested with a discretion or may determine a matter in its opinion, that Party may be required to exercise its discretion in good faith, reasonably and for a proper purpose, and to form its opinion in good faith and on reasonable grounds. Any provision in the FOA Netting Agreement or, as the case may be, Clearing Agreement providing that any calculation, determination or certification is to be conclusive and binding may not be effective if such calculation, determination or certification is fraudulent or manifestly incorrect and an English court may regard any certification, determination or calculation as no more than *prima facie* evidence.

4.4.8 The opinions expressed in this opinion letter are subject to the effects of any United Nations, European Union or UK sanctions or other similar measures implemented or effective in the United Kingdom with respect to any Party which is, or is controlled by or otherwise connected with, a person resident in, incorporated in or constituted under the laws of, or carrying on business in a country to which any such sanctions or other similar measures apply, or is otherwise the target of any such sanctions or other similar measures.

4.4.9 Certain opinions and qualifications in this opinion letter are expressed to apply only where the FOA Netting Agreement or, as the case may be, Clearing Agreement forms part of a financial collateral arrangement pursuant to the FCA Regulations. The FOA Netting Agreement or, as the case may be, Clearing Agreement forms part of a financial collateral arrangement where:

(a) in the case of an FOA Netting Agreement with an FOA Set-off Provision or, as the case may be, Clearing Agreement with an FOA Set-off Provision, a Clearing Module Set-Off Provision or an Addendum Set-Off Provision, the Firm receives cash (other than as

[3] "*Exchange contract*" here has the meaning used in the International Monetary Fund Agreement and related legislation, and is not a reference specifically to on-exchange derivative contracts.

client money pursuant to CASS) from the Counterparty as margin or collateral and such cash is credited to an account on the books of the Firm in this jurisdiction; or

(b) the FOA Netting Agreement or, as the case may be, Clearing Agreement includes the Title Transfer Provisions and Transfers of margin are only made in accordance with those provisions.

We express no opinion as to whether or not an FOA Netting Agreement or, as the case may be, Clearing Agreement would or would not form part of a financial collateral arrangement in circumstances other than those listed at (a) and (b) above.

5. MARKET CONTRACTS

5.1 Background on market contracts

5.1.1 In certain circumstances netting may be achieved by virtue of default rules of a recognised investment exchange (as defined in section 285 of FSMA) rather than under the terms of an FOA Netting Agreement or, as the case may be, Clearing Agreement. This paragraph 5 sets out our opinion on the netting under such default rules, where applicable.

Netting by virtue of default rules will occur, and our opinion at paragraph 5.3 applies, where:

- the recognised investment exchange takes action under its default rules;
- the Transaction, or as the case may be, Client Transaction, constitutes a "market contract" for the purposes of Part VII of the Companies Act 1989;
- the operation of the FOA Netting Provision, or as the case may be the Clearing Module Netting Provision or the Addendum Netting Provision, has been expressly disapplied or it has been agreed (for example by virtue of a clause in the form of clause 1.5 of the Professional Client Agreement 2011) that the rules of the relevant recognised investment exchange will prevail; and
- the default rules of the recognised investment exchange prescribe that the rights and liabilities under the relevant market contracts are to be netted in accordance with the Recognition Requirements Regulations.

Paragraphs 5.1.2 to 5.1.4 explain the obligation of recognised investment exchanges to achieve netting of "market contracts" and which types of market contract fall within the scope of our opinion, and set out further terms of reference. Paragraph 5.2 sets out additional assumptions applicable to our opinion in relation to netting of market contracts under the default rules of a

recognised body, which is given in paragraph 5.3, and which is subject to the qualifications set out in paragraph 5.4.

5.1.2 Part II of the Schedule to the Recognition Requirements Regulations requires that a recognised investment exchange must have default rules which provide for what is to happen in the event of a member of the exchange being or appearing to be unable to meet his obligations in respect of one or more market contracts (a "**defaulter**"). In particular, these rules must provide for:

(a) all rights and liabilities between those parties as principal to unsettled market contracts to which the defaulter is party as principal to be discharged and for there to be paid by one party to the other such sum of money (if any) as may be determined in accordance with the rules;

(b) for the sums so payable in respect of different contracts between the same parties to be aggregated or set off so as to produce a net sum; and

(c) for the certification by or on behalf of the exchange of the net sum payable or, as the case may be, that no sum is payable.

5.1.3 For the purposes of our opinion in this paragraph, only the following types of "market contract" fall within Part II of the Schedule to the Recognition Requirements Regulations and are relevant:

(a) a contract entered into by a member of the exchange on the exchange; and

(b) a contract entered into by a member of the exchange in the making of which the member was subject to the rules of the exchange;

except that we do not give any opinion where either party to the contract is a recognised investment exchange, recognised clearing house, or recognised central counterparty (as those terms are defined in FSMA), or where the head office of the recognised investment exchange is outside the United Kingdom.

5.2 Assumptions in respect of this Paragraph 5

For the purposes of the opinions given in this paragraph 5, we assume:

5.2.1 That each party to a market contract has the capacity, power and authority under all applicable law(s) to enter into the market contract and to be bound by the rules of the relevant recognised investment exchange; to perform its obligations thereunder; and that each party has taken all necessary steps to execute, deliver and perform the same.

5.2.2 That each market contract has been entered into and carried out by each of the parties thereto in good faith, for the benefit of each of them, and for the purpose of carrying on and by way of their respective businesses.

5.2.3 That the rules of the relevant recognised investment exchange house are legally binding and enforceable against the parties to a market contract connected with such recognised investment exchange.

5.2.4 That the default rules of any relevant recognised investment exchange provide for the matters referred to in paragraph 5.1.2 above.

5.2.5 That insofar as any transaction or obligation arising under a Transaction or, as the case may be, a Client Transaction is a "*transfer order*" under the Settlement Finality Regulations, that there are no such provisions in the rules of any relevant designated system which purport to override or are inconsistent with the default rules of the relevant recognised investment exchange.

We also make (and repeat here) the assumptions set out in paragraphs 2.2, 2.16, 2.18 and 2.19.

5.3 Opinions in respect of market contracts

On the basis of the foregoing terms of reference in paragraph 5.1, the assumptions in paragraph 5.2 and subject to the qualifications set out in paragraph 5.4, we are of the following opinion.

In relation to any Transactions or, as the case may be, Client Transactions which are market contracts referred to in paragraph 5.1.3, in the event of a default (including as a result of the opening of any Insolvency Proceedings) of a person party to a market contract in respect of which the relevant recognised investment exchange takes action in respect of such Transactions or, as the case may be, Client Transactions, the action taken by the relevant investment exchange in respect of such Transactions, or as the case may be, Client Transactions, will result in the calculation of a single net sum payable in respect of such Transactions, or as the case may be, Client Transactions.

We are of this opinion because in relation to market contracts of the types identified in paragraph 5.1.3, Part VII provides that:

(a) neither (i) a market contract, (ii) the default rules of a recognised investment exchange or (iii) the rules of a recognised investment exchange for settlement of market contracts not dealt with under its default rules can be held to be invalid at law on the ground of any inconsistency with the law relating to the distribution of assets of a person on winding-up or administration;

(b) the powers of a relevant office-holder and of an English court under the Insolvency Act 1986 shall not be exercised in such a way as to prevent or interfere with the settlement of a market contract in accordance with the rules of a recognised investment exchange or any other action taken under the default rules of a recognised investment exchange;

(c) any debt or other liability arising out of a market contract which is the subject of default proceedings may not be proved in a winding up or administration until the completion of the default proceedings and shall not be taken into account for the purposes of any set-off (which would include a Statutory Insolvency Set-Off) until the completion of such default proceedings. Rather, any net sum arising from those default proceedings shall be taken into account for the purposes of any Statutory Insolvency Set-Off as if it had been a debt due before the commencement of the relevant Insolvency Proceedings.

5.4 Qualifications

The opinions in paragraph 5.3 are subject to the following qualifications.

5.4.1 It is not certain whether a Transaction, or as the case may be Client Transaction, which is also a market contract within the scope of paragraph 5.1.3 would be netted by virtue of default rules of a recognised investment exchange, in the event that the default rules are not expressed to prevail over the FOA Netting Agreement, or as the case may be, the Clearing Agreement; but the preferred view is that the court or the Insolvency Representative would recognise netting to have been achieved under one approach or the other. In addition, where the default rules of a recognised investment exchange make provision for collateral provided by a person party to a market contract to be taken into account in determining the sum payable in respect of the person's market contracts, and the default rules are not expressed to prevail over the FOA Netting Agreement, or as the case may be, the Clearing Agreement, it is not certain whether the collateral would be taken into account by operation of the default rules or the FOA Netting Agreement, or as the case may be, the Clearing Agreement, but the preferred view is that the court or Insolvency Representative would recognise the collateral to have been taken into account under one approach or the other.

5.4.2 Market contracts within the scope of this paragraph may also be affected by action taken by a CCP under its default rules and /or EMIR. Part VII does not cater for the unlikely event of a conflict between action which a CCP wishes to take and operation of default rules of a recognised investment exchange in respect of a market contract, though we would expect the outcome to be either a transfer of the market contract (or a combination of market contracts and/or margin) to a person other than the defaulter under the procedures of the CCP or a close-out and netting.

5.4.3 If a creditor of a defaulter who has attached an amount owed by the other party to a market contract is itself subject to Statutory Insolvency Set-Off, the ability to include that amount in a netting under default rules is not assured by Part VII.

5.4.4 If the subject-matter of a market contract is bank securities or other securities within the scope of paragraph 4.2.3, similar issues to those described in that paragraph may arise, affecting the ability of the recognised investment exchange to deal with the market contract in the manner envisaged by its default rules.

5.4.5 If a defaulter is subject to a scheme of arrangement under the Companies Act 2006, the protections of Part VII would appear not to apply. Accordingly, the issues described in paragraph 4.3.3 might arise in relation to the set-off rights, and the net sum, expected by virtue of default rules.

5.4.6 The English court may be required, or have a discretion, to cooperate with the courts of other jurisdictions in the event of insolvency proceedings affecting a defaulter, as described in paragraphs 4.3.4 to 4.3.8. However, subject to paragraph 5.4.7, by virtue of Section 183 of the Companies Act 1989, the English courts are not, pursuant to section 426 of the Insolvency Act 1986 or any other enactment or rule of law, permitted to recognise or give effect to any order of a court exercising jurisdiction in relation to insolvency law in a country or territory outside the United Kingdom or any act of a person appointed in any such country or territory to discharge any functions under insolvency law, if the English courts would be prevented from making such an order or a relevant office-holder would be prevented from doing such an act by virtue of a provision made by or under Part VII.

However, Section 183 of the Companies Act may afford no protection against:

(a) the acts of a person whose functions do not arise under insolvency law (as defined in section 190(6) of the Companies Act 1989), such as a person exercising regulatory powers of intervention;

(b) acts or orders which are not prohibited by virtue of Part VII, such as the imposition of a moratorium on exercise of rights of set-off pending certain events; or

(c) requests for assistance in exercising insolvency jurisdiction made by courts in other jurisdictions of the United Kingdom.

5.4.7 Regulation 29 of the Credit Institutions Regulations provides, in relation to a UK Credit Institution, that the effects of a relevant reorganisation or winding-up on transactions carried out in the context of a regulated market operating in an EEA State must be determined in accordance with the laws applicable to those transactions. Article 9 of the EUIR provides that the effects of insolvency proceedings on the rights and obligations of the parties to a financial market shall be governed solely by the law of the Member State applicable to that market. Accordingly, in respect of a defaulter which is a UK Credit Institution, or to which the EUIR applies (as to which see paragraph 4.3.8), the rights and obligations of parties to market contracts to which the defaulter is party should be governed by the rules of the relevant recognised

investment exchange, notwithstanding any insolvency laws of a Member State which are inconsistent with such rules.

5.4.8 Under section 164(4) of the Companies Act 1989, the value of any profit arising to the solvent party from any market contract entered into by it or, as the case may be, the amount or value of the margin or default fund contribution can be recovered by the relevant office-holder if the solvent party had notice (within the meaning of section 190(5) of that Act), at the time the relevant market contract was entered into, that a winding-up or bankruptcy petition or sequestration had been presented in relation to the insolvent party.

5.4.9 If the Party has entered into market contracts as principal ("**Segregated Contracts**"), being contracts which correspond to transactions entered into with segregated clients (as defined in paragraph 4.4.1), a recognised investment exchange is obliged to calculate under its default rules a discrete net amount payable in respect of such Segregated Contracts discharged under its default rules and a discrete net amount payable in respect of all other market contracts discharged under its default rules to which the defaulter is party as principal. Furthermore, to the extent that a recognised investment exchange or recognised clearing house is obliged pursuant to its default rules to register other specific types of market contract in separate accounts, the recognised investment exchange or recognised clearing house will be obliged to calculate a separate net sum in respect of each such class of market contract.

5.4.10 A recognised investment exchange is not obliged to take action following the default of a member unless required to do so pursuant to directions given by the appropriate regulator under section 166 of the Companies Act 1989. The appropriate regulator may direct a recognised investment exchange not to take action (or certain types of action) under its default rules in certain circumstances permitted by section 166.

5.4.11 The issues described in paragraphs 4.4.6 (exchange controls) and 4.4.8 (sanctions) may also be relevant to market contracts.

6. CONCLUDING REMARKS

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

7. RELIANCE

7.1 This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options Association's opinions library and whose terms of subscription give them access to this opinion (each a "**subscribing member**").

7.2 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:

7.2.1 any affiliate of a subscribing member (being a member of the subscribing member's group, as defined by the UK Financial Services and Markets Act 2000) and the officers, employees, auditors and professional advisers of such affiliate;

7.2.2 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;

7.2.3 the officers, employees, auditors and professional advisers of any addressee; and

7.2.4 any competent authority supervising a subscribing member or its affiliates in connection with their compliance with their obligations under prudential regulation

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

7.3 We accept responsibility to the Futures and Options Association and 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 Futures and Options Association's members of their affiliates. The provision of this opinion does not create or give rise to any client relationship between this firm and the Futures and Options Association's members or their affiliates.

Yours faithfully,

Clifford Chance LLP

Clifford Chance LLP

SCHEDULE 1
INDIVIDUALS

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.13.1 is deemed deleted and replaced with the following:

"*"**Insolvency Proceedings**" means the procedures listed in section 2.1 of Schedule 1 (Individuals), where governed by English law.*"

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: Individuals

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party that is an individual could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are bankruptcy, interim orders, individual voluntary arrangements, debt relief orders, debt management schemes, deeds of arrangement and administration orders (together, "**Insolvency Proceedings**").

The legislation applicable to such Insolvency Proceedings is:

2.1.1 in relation to bankruptcy, interim orders, individual voluntary arrangements and debt relief orders, the provisions of the Insolvency Act 1986 and the Insolvency Rules 1986;

2.1.2 in relation to deeds of arrangement, the Deeds of Arrangement Act 1914;

2.1.3 in relation to debt management schemes, Tribunals, Courts and Enforcement Act 2007;

2.1.4 in relation to administration orders, the County Courts Act 1984; and

2.1.5 the EU Insolvency Regulation.

Under Part XXIV of FSMA, the appropriate regulator is given specific powers to petition to commence and otherwise to participate in Insolvency Proceedings relating to (a) any person authorised under FSMA and (b) any person carrying on (or who has carried on) a regulated activity without authorisation or exemption under FSMA.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings in relation to individuals without the need for any additions. However, we recommend that an additional event of default be included in relation to a Party that is an individual:

"*The following shall constitute Events of Default:*

[...]

ii. *you die, become of unsound mind, are unable to pay your debts as they fall due or are bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to you; or any indebtedness of yours is not paid on the due date therefore, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings relating to this Agreement are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, the whole or any part of your property, undertaking or assets (tangible and intangible),* ***or an application for ancillary relief relating to your property or an entitlement of a contract you are a party to is made in any matrimonial proceedings relating to you***."

2.2 The opinion at paragraph 3.3 does not apply in relation to individuals. Additionally, the opinions at paragraphs 3.5 to 3.7, 3.9 and 3.10 do not apply to a Clearing Agreement under which the Party acting as Firm or, as the case may be, Clearing Member, is an individual.

2.3 In addition to the above, the references to the FCA Regulations thereunder in the opinions at paragraph 3 do not apply as an arrangement is a financial collateral arrangement only where both parties thereto are non-natural persons (i.e. where neither party is an individual).

2.4 Where the Defaulting Party is an individual who is neither ordinarily resident nor carrying on business in this jurisdiction (a "**foreign individual**"), the foreign individual can be subject to Insolvency Proceedings in this jurisdiction, except that:

2.4.1 if the centre of main interests of the foreign individual is in an EU member state (other than the United Kingdom or Denmark) and the foreign individual has no establishment (within the meaning in the EU Insolvency Regulation) in the United Kingdom, there can be no separate Insolvency Proceedings in this jurisdiction in relation to the foreign individual and the authorities in this jurisdiction would defer to the proceedings in the foreign individual's jurisdiction; and

2.4.2 in any other case, the insolvency jurisdiction of the courts of this jurisdiction would be limited to giving assistance to the courts of, and an insolvency official appointed in, another jurisdiction.

3. ADDITIONAL QUALIFICATIONS

The opinions in this opinion letter are subject to the following additional qualifications. In this section 3, the term "**Transaction**" or "**Client Transaction**" includes a Transfer of margin under an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, a Clearing Agreement (which includes Title Transfer Provisions) and a payment of cash credited to an account provided by the Firm to the Counterparty.

3.1 In a bankruptcy of an individual, any dispositions of the insolvent Party's property made after the day of presentation of a bankruptcy petition in respect of such Party are void under section 284 of the Insolvency Act 1986 unless the court otherwise orders.

3.2 Under section 339 of the Insolvency Act 1986, a Transaction or, as the case may be, Client Transaction entered into by an individual at any time within a specified period ending on presentation of a bankruptcy petition on which the individual is adjudged bankrupt with a person on terms that provide for the bankrupt to receive either no consideration, consideration of marriage or the formation of a civil partnership, or a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by such individual, may be set aside as a transaction at an undervalue, if at the time the Transaction, or as the case may be, Client Transaction is entered into that individual was insolvent within the meaning of Section 341(3) of the Insolvency Act 1986 or became insolvent within the meaning of that section in consequence of the Transaction or Client Transaction. Where the bankrupt is an "*associate*", other than an employee, of the solvent Party, within the meaning of section 435 of the Insolvency Act 1986, insolvency will be presumed for this purpose. Transactions or, as the case may be, Client Transactions entered into on arm's length terms and at the then prevailing market rates are unlikely to constitute transactions at an undervalue. In relation to a Transfer of margin under the Title Transfer Provisions, it is theoretically possible that a collateral arrangement such as that constituted under the Title Transfer Provisions could constitute a transaction at an undervalue; however, the provision of margin on an arms-length basis would not normally result in the over-provision of consideration by the margin provider as compared to consideration received by it. However, the matters referred to in the last three sentences are questions of fact in each case.

3.3 Under section 340 of the Insolvency Act 1986 anything done or suffered to be done by an individual within a specified period ending on the date of the presentation of a bankruptcy petition on which the individual is adjudged bankrupt can be set aside as a voidable preference. The thing done or suffered will be liable to be set aside if at the time it was done or suffered that individual was insolvent within the meaning of section 341(3) of the Insolvency Act 1986 or became insolvent within the meaning of that section in consequence of the thing done or suffered, and that thing has the effect

of putting any person in a better position, in the event of that individual's bankruptcy, than that person would have been in if the thing had not been done. However, the court would not make such an order if it was satisfied that the individual who gave the preference was not influenced to give it by a desire to put that person in such better position. Where the bankrupt is an "*associate*", other than an employee, of the solvent Party, within the meaning of section 435 of the Insolvency Act 1986, such an influence will be presumed for this purpose. Furthermore, in relation to a Transfer of margin under the Title Transfer Provisions, we assume that the margin provider would not, in providing the margin, be influenced by a desire to put the margin taker in such a better position (although the margin provider's motivation is a matter of fact).

3.4 There is provision in the Insolvency Act 1986 for individual voluntary arrangements in respect of individuals to be agreed by creditors of the insolvent Party. A creditor can be bound by the arrangement even if he has not been given notice of the creditors' meeting to approve the arrangement. Approval at the creditors' meeting does not require unanimity of the affected creditors, whether or not present at the meeting.

3.5 A trustee in bankruptcy has power to claim, for the benefit of the insolvent estate, property (which may include entitlements under contract) which is acquired by a bankrupt after the commencement of bankruptcy or, in some circumstances, after the discharge of an individual from bankruptcy. Accordingly, we express no opinion in relation to the ability to include within the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount a value attributable to a Transaction or, as the case may be, a Client Transaction entered into by an undischarged bankrupt or by a discharged bankrupt in respect of whom an order has been made under section 280(2)(c) of the Insolvency Act 1986 or the predecessors of that section under the Insolvency Act 1985 or the Bankruptcy Act 1914.

3.6 In many circumstances death of an individual terminates authority of another person to bind the estate of the individual. Accordingly, we express no opinion in relation to the ability to include within the Termination Amount or, as the case may be, the Cleared Set Termination Amount a value attributable to a Transaction or, as the case may be, Client Transaction purportedly entered into after the death of a Party.

3.7 It is open to the court to make dispositions of an individual's property in favour of an ex-spouse in matrimonial proceedings. If any such disposition were to affect the rights of a Party under any Transaction or, as the case may be, Client Transaction, such rights may no longer be mutual following such a disposition with countervailing rights exercisable by the other Party under other Transactions or, as the case may be, Client Transactions or the FOA Netting Agreement or, as the case may be, Clearing Agreement, and the effectiveness of the FOA Netting Provision, Clearing Module Netting Provision or Addendum Netting Provision as regards such Transaction or, as the case may be, Client Transaction may be impaired.

4. MODIFICATIONS TO QUALIFICATIONS

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

4.1 Paragraph 4.1.2 and 4.1.3 shall be deemed deleted and replaced with the following:

"*4.1.2 In a bankruptcy of an individual under the laws of this jurisdiction, the aggregation or set-off of amounts representing terminated obligations may be implemented under Section 323 of the Insolvency Act 1986 ("**Section 323**") rather than under the specific provisions of the FOA Netting Agreement or, as the case may be, Clearing Agreement.*

*Set-off pursuant to Section 323 ("**Statutory Insolvency Set-Off**") would, in our view, result in a net amount payable between the Parties in respect of such amounts, subject to the other qualifications set out in this opinion and subject also to the inclusion in any Statutory Insolvency Set-Off of other mutual obligations between the Parties.*

4.1.3 In a bankruptcy of an individual, any dispositions of the insolvent Party's property made after the day of presentation of a bankruptcy petition in respect of such Party are void under section 284 of the Insolvency Act 1986 unless the court otherwise orders."

4.2 Paragraph 4.1.6 shall be deemed deleted and replaced with the following:

"*4.1.6 Transactions or, as the case may be, Client Transactions entered into after a bankruptcy petition has been presented in relation to a Party might not be capable of inclusion in the netting under the FOA Netting Provision or a set-off pursuant to a Statutory Insolvency Set-Off, but this would not impair the effectiveness of the FOA Netting Provision or a Statutory Insolvency Set-off in respect of Transactions or, as the case may be, Client Transactions entered into before the commencement of such Insolvency Proceedings.*"

4.3 Paragraph 4.1.7 shall be deemed deleted and replaced with the following:

"*4.1.7 Statutory Insolvency Set-off may not apply to amounts which arise under Transactions or, as the case may be, Client Transactions entered into at certain times, and accordingly an English court might not allow such amounts to be included in an aggregation pursuant to the FOA Netting Provisions or a Statutory Insolvency Set-Off. The time referred to is, when the solvent Party had notice that a bankruptcy petition was pending in relation to the insolvent Party and, where the court has made a recognition order in respect of a foreign main proceeding under the Cross-Border Insolvency Regulations in respect of the insolvent Party, it appears that an amount may also be excluded from an aggregation pursuant to the FOA Netting Provisions or Statutory Insolvency Set-off if the Transaction or, as the case may be, Client Transaction under which such amount arose was entered into after the making of the recognition order, or after the solvent Party had notice that a recognition application was pending.*

Furthermore, any debt which has been acquired by the solvent Party by assignment or otherwise pursuant to an agreement between the solvent Party and any other person must be excluded from Statutory Insolvency Set-Off, and may not be included in an aggregation pursuant to the FOA Netting

Provisions where such agreement was entered into at such time mentioned above."

4.4 Paragraph 4.1.9 shall be deemed deleted and replaced with the following:

"*4.1.9 Bankruptcy procedures under the Insolvency Rules 1986 are conducted in sterling. The rate for conversion of claims owed to the insolvent Party is not specified.*"

4.5 After paragraph 4.1.12, the following is inserted as paragraph 4.1.13:

"*4.1.13 It is not entirely clear how Statutory Insolvency Set-Off under Section 323 operates in certain circumstances where the obligations to be set off are contingent or future. The following two sub-sections of this opinion analyse the position where an obligation of a Party is contingent or future:*

(a) ***Contingent or future liabilities of the insolvent individuals.*** *If an obligation owed by the Individual is construed as a contingent obligation, we believe the Insolvency Rules 1986 will operate to require the trustee in bankruptcy of the Individual to value that obligation. If it is not possible to value the contingency, it may well be that the trustee would wait for the contingent obligation to mature, i.e. to become an actual accrued and quantified payment obligation. In most cases, a valued amount or a mature payment obligation can be the subject of a proof in the bankruptcy and, therefore, would fall to be included in the Statutory Insolvency Set-Off. Note, however, that there is a rule (the rule against double proof) which blocks a proof where another creditor has already proved for effectively the same debt (e.g. if the contingent liability is a counter-indemnity for a guarantee and the creditor has proved against the primary debtor (in bankruptcy), then the guarantor cannot also prove in the bankruptcy for the counter-indemnity). If an obligation of the Individual is construed as a future obligation, it will be taken into account in the Statutory Insolvency Set-Off although there may be some discount applied to take account of "early settlement".*

(b) ***Contingent or future liabilities of the Solvent Party.*** *If an obligation owed by the Solvent Party is construed as contingent or future, the Insolvency Rules 1986 do not specify a method for dealing with contingent or future assets of the bankrupt (in contrast to contingent or future liabilities, discussed in sub-section (a) above). The case of Re a Debtor (No 66 of 1955) [1956] 1 WLR 1226, decided by the Court of Appeal, (which has been generally criticised but not over-ruled) has indicated that certain contingent assets may not be included in a Statutory Insolvency Set-Off if the contingency has not been satisfied by the date of the winding-up order. The contingent asset in that case was a claim on a counter-indemnity by an insolvent guarantor, and it is thought that the decision should be read as restricted to those limited circumstances."*

4.6 The following paragraphs shall be deemed deleted:

(a) Paragraph 4.1.11;

(b) Paragraph 4.2 (apart from 4.2.3);

(c) Paragraphs 4.3.1 to 4.3.3 and 4.3.10; and

(d) Paragraphs 4.4.9.

4.7 In paragraph 4.3.5 the references to "*liquidation*" should be read as references to "*bankruptcy*".

4.8 Paragraph 5.4.5 shall be deemed deleted.

SCHEDULE 2
BUILDING SOCIETIES

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.13.1 is deemed deleted and replaced with the following:

"*"**Insolvency Proceedings**" means the procedures listed in section 2.1 of Schedule 2 (Building Societies), where governed by English law and:*

*(a) "**liquidator**" and "**administrator**" include a building society liquidator and building society special administrator respectively (each being an "**Insolvency Representative**"); and*

*(b) "**liquidation**" and "**administration**" include a building society insolvency and building society special administration respectively.*"

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: Building Societies

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party that is a Building Society could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are liquidation (including provisional liquidation), administration, building society insolvency, building society special administration, administrative receivership[4], receivership and voluntary arrangements, and (if the Building Society qualifies as an "investment bank" under section 232 of the Banking Act 2009) investment bank special administration.

[4] This arises as a result of floating charges being introduced in limited circumstances to qualifying undertakings by the Building Societies (Financial Assistance) Order 2010.

The legislation applicable to such Insolvency Proceedings is:

2.1.1 the Building Societies Act;

2.1.2 the provisions of the Insolvency Act 1986, as modified by Part X and schedules 15 and 15A of the Building Societies Act 1986;

2.1.3 the Banking Act 2009, the Banking Act 2009 (Restrictions of Partial Property Transfers) Order 2009;

2.1.4 the Building Societies (Insolvency and Special Administration) Order 2009;

2.1.5 the Building Society Insolvency (England and Wales) Rules 2010;

2.1.6 the Building Society Special Administration (England and Wales) Rules 2010; and

2.1.7 Building Societies (Financial Assistance) Order 2010.

In relation to an obligation which is a transfer order as defined in the Settlement Finality Regulations, the Settlement Finality Regulations will also be applicable. If the FOA Netting Agreement or, as the case may be, Clearing Agreement constitutes a financial collateral arrangement or an arrangement of which a financial collateral arrangement forms part, the FCA Regulations will also apply. Furthermore, the EU Insolvency Regulation has direct effect in this jurisdiction.

Under Part XXIV of FSMA, the appropriate regulator is given specific powers to petition to commence and otherwise to participate in Insolvency Proceedings relating to (a) any person authorised under FSMA and (b) any person carrying on (or who has carried on) a regulated activity without authorisation or exemption under FSMA, other than Insolvency Proceedings which are building society insolvency or building society special administration in respect of which the Prudential Regulation Authority is given such powers to intervene and rights to participate under the Banking Act 2009, Building Societies Act and Building Societies (Insolvency and Special Administration) Order 2009, respectively.

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

2.2 In paragraph 3.3, the references to a "*UK bank*" should be read as references to a "*Building Society*".

2.3 Additionally, the opinions at paragraphs 3.5 to 3.7, 3.9 and 3.10 do not apply to a Clearing Agreement under which the Party acting as Firm or, as the case may be, Clearing Member, is a Building Society.

3. MODIFICATIONS TO QUALIFICATIONS

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

3.1 Paragraph 4 shall be construed such that references to a "*company*" (other than references to "*company*" incorporated into paragraph 4 by virtue of this Schedule) shall be read as "*Building Society*".

3.2 Paragraph 4.1.2 and 4.1.3 shall be deemed deleted and replaced with the following:

"*4.1.2 In the case of a company in liquidation, the aggregation of amounts representing terminated obligations may in a winding-up under the laws of this jurisdiction be implemented under Rule 4.90 of the Insolvency Rules 1986 ("**Rule 4.90**"). A Rule 4.90 set-off would, in our view, result in a net amount payable between the Parties in respect of such amounts, subject to the other qualifications set out in this opinion. There is no equivalent to Rule 4.90 for a winding-up of a Building Society. In circumstances where the courts would apply Rule 4.90, but for the fact that the entity is a Building Society and not a company, the courts may aggregate the amounts representing the terminated obligations according to: (i) a ruling equivalent to Rule 4.90; (ii) the specific provisions of the FOA Netting Agreement or, as the case may be, Clearing Agreement; or (iii) another method. The better view is that the courts would apply the same treatment to a Building Society as it would to a company, and apply a treatment equivalent to Rule 4.90.*

*Furthermore, the aggregation or set-off amounts representing terminated obligations may be implemented by, in relation to a building society insolvency, Rule 73 of the Building Society Insolvency (England and Wales) Rules 2010 ("**Rule 73**") or, in relation to a building society special administration, Rule 2.85 as applied by the Building Society Special Administration (England and Wales) Rules 2010 ("**Rule 2.85**"), rather than under the specific provisions of the FOA Netting Agreement or, as the case may be, Clearing Agreement.*

*For the purposes of this opinion letter, "**Statutory Insolvency Set-Off**" means set-off pursuant to Rule 63 of the Building Society Special Administration Rules (which apples Rule 2.85) or Rule 73 and includes (in relation to a winding-up) any approach to set-off pursuant to or equivalent to Rule 4.90.*

4.1.3 In relation to a building society insolvency or a building society special administration, if all or part of a creditor's claim against the Building Society is in respect of protected deposits[5], then Rule 73 or Rule 2.85 (as the case may be) applies but for the purposes of determining the sums due from the Building Society to an eligible depositor in respect of protected deposits as part of set-off pursuant to a Statutory Insolvency Set-Off, there shall be deemed to have been no mutual dealings in respect of the sums held by the Building Society for

[5] As defined in Rule 74 of the Building Society Insolvency (England and Wales) Rules 2010 or Rule 49 of the Building Society Special Administration (England and Wales) Rules 2010.

the depositor in respect of protected deposits up to and including the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of FSMA."

3.3 Paragraph 4.3.3 shall be deemed deleted and replaced with the following:

"*4.3.3 There is provision in the Insolvency Act 1986 (as applied by the Building Societies Act 1986) for voluntary arrangements in respect of Building Societies to be agreed by creditors. A creditor cannot be bound by a voluntary arrangement unless it has been given notice of the creditors' meeting to approve the arrangement. Approval at the creditors' meeting of its terms does not require unanimity of the affected creditors, whether or not present at the meeting. Such arrangements could affect both set-off rights of creditors and the value of claims which the creditors may have against the Building Society. If the Liquidation Date occurs before the approval of such an arrangement, any provision of such an arrangement which purports to unwind the application of the FOA Netting Provision, FOA Set-Off Provisions, or the Title Transfer Provisions would not bind the affected creditor if timely objection to the arrangement is made to the applicable court. An arrangement could, however, affect the value of any resulting net claim.*"

3.4 Paragraph 4.1.7 shall be modified by the addition of the following sub-paragraph, at the end of the paragraph:

"*Insofar as the Non-Defaulting Party is a shareholding member of a Building Society which is a Defaulting Party, any mutual dealings in respect of shares held by the Non-Defaulting Party will be excluded from a set-off under Rule 73.*"

3.5 Paragraph 4.1.9 shall be construed such that references to "*Rule 4.91 of the Insolvency Rules 1986*" shall be read as "*Rule 4.91 of the Insolvency Rules 1986 (as applied by Rule 75 of the Building Society Insolvency (England and Wales) Rules 2010 in respect of set-off pursuant to Rule 73)*".

3.6 In paragraphs 4.1, 4.2. and 4.3 the following expressions shall be construed in relation to a Building Society, as follows:

"*bank insolvency*" shall be read as "*building society insolvency*" and "*company*" and "*UK bank*" shall be read as "*Building Society*" (except in paragraph 4.2.3).

In paragraph 4.1.2, a building society is included in the definition of "**Bank Party**".

3.7 Paragraph 5.4.5 shall be deemed deleted.

SCHEDULE 3A
OEICS (EXCLUDING UMBRELLA COMPANIES)

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.13.1 is deemed deleted and replaced with the following:

"*"**Insolvency Proceedings**" means the procedures listed in section 2.1 of Schedule 3A (OEICs (Excluding Umbrella Companies)), where governed by English law.*"

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: OEICs

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

2.1.1 An OEIC may be wound up by the court as an unregistered company under Part V of the Insolvency Act 1986 with certain procedural modifications stated in regulation 31 (Winding up by the court) of the OEIC Regulations.

2.1.2 An OEIC may be wound up voluntarily, provided the OEIC is solvent and the steps required by regulation 21 of the OEIC Regulations and rule 7.3 of the Collective Investment Sourcebook ("**COLL**") made by the Financial Conduct Authority are followed. Under regulation 21 of the OEIC Regulations, the OEIC must give written notice of the proposal to wind up the OEIC to and obtain consent from the Financial Conduct Authority;

2.1.3 A receiver could be appointed as a contractual matter in respect of the property of an OEIC; and

2.1.4 An OEIC may be subject to a scheme of arrangement under part 26 of the Companies Act 2006 (as modified by the OEIC Regulations).

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

2.2 Additionally, the opinions at paragraphs 3.5 to 3.7, 3.9 and 3.10 do not apply to a Clearing Agreement under which the Party acting as Firm or, as the case may be, Clearing Member, is an OEIC.

3. MODIFICATIONS TO QUALIFICATIONS

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

3.1 Paragraph 4 shall be construed such that references to a "*company*" shall be read as being to an "*OEIC (wound up as an unregistered company)*" and all references to administration shall be disapplied.

3.2 References to and discussions in relation to, "*administration*" and "*Rule 2.85*" in Paragraph 4 shall not apply in the case of a Party that is an OEIC.

3.3 Paragraph 4.2 (apart from 4.2.3) does not apply in relation to a Party that is an OEIC.

3.4 Paragraph 5.4.5 shall be deemed deleted.

SCHEDULE 3B
OEICS (SUB-FUNDS)

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.13.1 is deemed deleted and replaced with the following:

"*"**Insolvency Proceedings**" means the procedures listed in section 2.1 of Schedule 3B (OEICs (Sub-Funds)), where governed by English law.*"

2. MODIFICATIONS TO OPINIONS

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

2.1 Insolvency Proceedings: Sub-Funds

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

2.1.1 a Sub-Fund may be wound up by the court as an unregistered company under Part V of the Insolvency Act 1986 with certain procedural modifications stated in regulations 31 and 33C of the OEIC Regulations.

2.1.2 a Sub-Fund may be wound up voluntarily, provided the OEIC is solvent and the steps required by regulation 21 of the OEIC Regulations and rule 7.3 of the Collective Investment Sourcebook ("**COLL**") made by the Financial Conduct Authority are followed. Under regulation 21 of the OEIC Regulations, the OEIC must give written notice of the proposal to wind up the Sub-Fund to and obtain consent from the Financial Conduct Authority;

2.1.3 a receiver could be appointed as a contractual matter in respect of the property of a Sub-Fund;

2.1.4 a Sub-Fund may be subject to a scheme of arrangement under part 26 of the Companies Act 2006 (as modified by the OEIC Regulations);

2.1.5 a Sub-Fund's Umbrella Company may be wound up by the court as an unregistered company under Part V of the Insolvency Act 1986 with certain procedural modifications stated in regulations 31 (Winding up by the court) of the OEIC Regulations;

2.1.6 a Sub-Fund's Umbrella Company may be wound up voluntarily, provided the OEIC is solvent and the steps required by regulation 21 of the OEIC Regulations and rule 7.3 of the Collective Investment Sourcebook ("**COLL**") made by the Financial Conduct Authority are followed. Under regulation 21 of the OEIC Regulations, the OEIC must give written notice of the proposal to wind up the Umbrella Company to and obtain consent from the Financial Conduct Authority;

2.1.7 a receiver could be appointed as a contractual matter in respect of the property of an Umbrella Company; and

2.1.8 a Sub-Fund's Umbrella Company may be subject to a scheme of arrangement under part 26 of the Companies Act 2006 (as modified by the OEIC Regulations.

The events specified in the Insolvency Events of Default Clause do not adequately refer to all Insolvency Proceedings, in relation to Sub-Funds. In order to adequately refer to all Insolvency Proceedings such Insolvency Events of Default would need to be amended as follows, so as to make clear that the events described therein would pertain to events in respect of either or both of the relevant Sub-Fund and Umbrella Company:

"*The following shall constitute Events of Default, **whether it occurs in relation to either or both of the [Sub-Fund][6] and [its Umbrella Company][7]**:*

[...].".

2.2 Additionally, the opinions at paragraphs 3.5 to 3.7, 3.9 and 3.10 do not apply to a Clearing Agreement under which the Party acting as Firm or, as the case may be, Clearing Member, is a Sub-Fund.

3. ADDITIONAL QUALIFICATIONS

3.1 On 20 December 2011 the OEIC Regulations were amended in order to provide for a "protected cell regime" for umbrella companies. Under that regime, each Sub-Fund of an Umbrella Company is generally treated as a separate legal entity, and the assets of a particular Sub-Fund belong exclusively to that Sub-Fund and cannot be used to discharge any liabilities of the Umbrella Company or any other person, except where

[6] Please use appropriate defined term, as per your agreement.

[7] Please use appropriate defined term, as per your agreement.

they were incurred on behalf of (or are attributable to) that Sub-Fund. Regulation 11A(3) of the OEIC Regulations provides that any provision (including a provision of a contract) shall be void to the extent that it is inconsistent with the foregoing.

3.2 Where an Umbrella Company has entered into an FOA Netting Agreement or, as the case may be, a Clearing Agreement and Transactions or, as the case may be, Client Transactions:

3.2.1 the FOA Netting Provision, Clearing Module Netting Provision or Addendum Netting Provision could not be applied to net Transactions or, as the case may be, Client Transactions entered into in respect of one Sub-Fund of an Umbrella Company against Transactions or, as the case may be, Client Transactions entered into in respect of another Sub-Fund of the same Umbrella Company (and *vice versa*); and

3.2.2 the FOA Set-Off Provisions, Clearing Module Set-Off Provision or Addendum Set-Off Provision could not be used to set off liabilities of the Umbrella Company to the Firm entered into in respect of one Sub-Fund of such Umbrella Company with liabilities of the Firm to the Umbrella Company in respect of another Sub-Fund of the same Umbrella Company (and *vice versa*);

3.2.3 the Default Margin Amount or, as the case may be, Relevant Collateral Value in respect of Transferred margin (as each such terms are used in the Title Transfer Provisions and/or FOA Clearing Module and/or ISDA/FOA Clearing Addendum) posted in respect of one Sub-Fund could not be taken into account for the purposes of calculating the Liquidation Amount or, as the case may be, the Cleared Set Termination Amount in respect of (or otherwise netted against) Transactions or, as the case may be, Client Transactions entered into in respect of another Sub-Fund of the same Umbrella Company.

3.3 Given the points made above, we consider that a Firm should ensure that the Sub-Fund with which they are entering into Transactions or, as the case may be, Client Transactions with is clearly identified and that the FOA Netting Agreement or, as the case may be, Clearing Agreement clearly provides that the FOA Netting Agreement or, as the case may be, Clearing Agreement only applies in relation to Transactions or, as the case may be, Client Transactions entered into in respect of that Sub-Fund. Where this is not clear on the face of the FOA Netting Agreement or, as the case may be, Clearing Agreement, we express no opinion as to the effectiveness of the FOA Netting Provisions, FOA Set-Off Provisions, Clearing Module Netting Provision, Clearing Module Set-Off Provision, Addendum Netting Provision, Addendum Set-Off Provision or Title Transfer Provisions. Where the Firm is entering into Transactions or, as the case may be, Client Transactions with more than one sub-fund of an Umbrella Company, we recommend that separate FOA Netting Agreements or, as the case may be, Clearing Agreements are entered into in respect of such sub-fund.

4. MODIFICATIONS TO QUALIFICATIONS

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

4.1 Paragraph 4 shall be construed such that references to a "*company*" shall be read as being to a "*Sub-Fund or Umbrella Fund (wound up as an unregistered company)*" and all references to administration shall be disapplied.

4.2 References to and discussions in relation to, "*administration*" and "*Rule 2.85*" in Paragraph 4 shall not apply in the case of a Party that is a Sub-Fund.

4.3 Paragraph 4.2 (apart from 4.2.3) does not apply in relation to a Party that is a Sub-Fund.

4.4 Paragraph 5.4.5 shall be deemed deleted.

SCHEDULE 4
INSURERS

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 Paragraph 1.13.1 is deemed deleted and replaced with the following:

"*"**Insolvency Proceedings**" means the procedures listed in section 2.1 of Schedule 4 (Insurers), where governed by English law.*"

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

1.2.1 a reference to the "**Insurers Winding Up Regulations**" is to the Insurers (Reorganisation and Winding Up) Regulations 2004;

1.2.2 "**UK Insurer**" and "**EEA Insurer**" have the meaning given to them in the Insurers Winding Up Regulations;

1.2.3 references to "**INSPRU**" and "**GENPRU**" are to the appropriate regulator's Prudential Sourcebook for Insurers and to the General Prudential Sourcebook, respectively (each as amended or modified up to the date hereof); and

1.2.4 the opinion does not apply to any insurance undertakings that are friendly societies, nor in respect of the Lloyd's Insurance Market.

2. MODIFICATIONS TO OPINIONS AT PARAGRAPH 3

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.

2.1 Insolvency Proceedings: Insurers

2.1.1 The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party which is an insurer could be subject under the laws of this jurisdiction, and which are relevant for the

purposes of this opinion letter, are liquidation (including provisional liquidation), administration, administrative receivership, receivership, voluntary arrangements and schemes of arrangement.

The legislation applicable to such Insolvency Proceedings is:

(a) in relation to all Insolvency Proceedings initiated after the date of this opinion letter except schemes of arrangement, the provisions of the Insolvency Act 1986 and the Insolvency Rules 1986;

(b) in relation to schemes of arrangement, sections 895-901 Companies Act 2006;

(c) the Insurers (Winding up) Rules 2001;

(d) the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010;

(e) the Insurers Winding Up Regulations;

(f) INSPRU; and

(g) GENPRU.

2.1.2 In relation to an obligation, which is a transfer order as defined in the Settlement Finality Regulations, the Settlement Finality Regulations will also be applicable. If the FOA Netting Agreement or, as the case may be, Clearing Agreement constitutes a financial collateral arrangement or an arrangement of which a financial collateral arrangement forms part, the FCA Regulations will also apply.

2.1.3 However, subject to Section 426 of the Insolvency Act 1986:

(a) in relation to an EEA Insurer, liquidation (including provisional liquidation), administration and voluntary arrangements are not available; and a scheme of arrangement in relation to an EEA Insurer which is, broadly, intended to enable it to survive, but affects creditors' rights, or to enable its assets to be realised and distributed to creditors, may not be sanctioned by the court unless the relevant insolvency officer or administrative or judicial authority (which would usually be the officer or authority of the EEA Insurer's home state) has been notified and has not objected; and

(b) administrative receivership is not available in respect of a foreign company, with the possible exception of foreign companies which have registered particulars under the Overseas Companies Regulation 2009.

Under Part XXIV of FSMA, the appropriate regulator is given specific powers to petition to commence and otherwise to participate in Insolvency

Proceedings relating to (a) any person authorised under FSMA and (b) any person carrying on (or who has carried on) a regulated activity without authorisation or exemption under FSMA.

2.1.4 In addition an insurer effecting or carrying out contracts of long-term insurance may not be wound up voluntarily without the consent of the appropriate regulator.

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

2.2 **Recognition of Choice of law: additional comments for Insurers**

In relation to an EEA Insurer or a UK Insurer, an Insolvency Representative in this jurisdiction would have regard exclusively to English law, as the governing law of the FOA Netting Agreement or, as the case may be, Clearing Agreement, in determining the effectiveness of the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision and the Title Transfer Provisions. In other cases, an Insolvency Representative would have regard to English law, as the governing law of the FOA Netting Agreement or, as the case may be, Clearing Agreement, in determining the effectiveness of the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision and the Title Transfer Provisions, but may in certain circumstances (as particularised in paragraph 4 to this opinion letter and section 3 of this Schedule 4 (*Insurers*)) have regard to other legal systems.

2.3 Additionally, the opinions at paragraphs 3.5 to 3.7, 3.9 and 3.10 do not apply to a Clearing Agreement under which the Party acting as Firm or, as the case may be, Clearing Member, is an insurer.

3. ADDITIONAL QUALIFICATIONS

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

3.1 The Insurers Winding Up Regulations state that the general law of insolvency of the United Kingdom will determine the conditions under which set-off may be invoked in a relevant winding up of a UK Insurer (regulation 37). In addition, regulation 43 states that a relevant reorganisation or winding up shall not affect the right of creditors to demand the set-off of their claims against the claims of the affected insurer, where such a set-off is permitted by the applicable EEA law. Applicable law means the law of the EEA State, which is applicable to the claim of the affected insurer. An "*affected insurer*" is a UK Insurer, which is the subject of a relevant reorganisation or a relevant winding up.

3.2 The Insurers Winding Up Regulations require that where a long term or a general insurer or a composite insurer (as defined in regulation 17) is wound up, debts are

paid out of the entire assets of the insurer in the following order of priority: preferential debts (after the expenses of the winding up); insurance debts (broadly policyholders debts); and the debts of ordinary creditors (regulation 21). Paragraphs (3) and (4) of this regulation provide that where the assets of an insurer are insufficient to cover all preferential debts, the preferential debts abate in equal proportions and where the assets are insufficient to meet all insurance debts, those debts abate in equal proportions. Paragraph (5) makes provision as to the priority of preferential debts (but only those debts) over property comprised in a floating charge.

3.3 The Insurers Winding Up Regulations deal separately with the implementation of Directive 2001/17/EC on the reorganisation and winding up of insurance undertakings with respect to composite insurers (where there is no arrangement to transfer the long-term business) providing for the separate application of assets representing the fund or funds of the insurer maintained by the insurer in respect of its long term business and those assets representing the fund or funds maintained in respect of its general business. Accordingly, the long-term business assets are to be applied firstly in discharge of certain preferential liabilities (broadly preferential debts and insurance debts) attributable to the long-term business of the insurer, and the general business assets are to be applied in discharge of the same type of preferential liabilities but attributable to the general business. However, any excess in the assets attributable to the long-term business of a composite insurer once all of such preferential liabilities attributable to the long-term business have been met must be applied to meet any shortfall in assets of the general business and vice versa should the excess be in the general business fund and the shortfall in the long-term fund (paragraphs (3) to (8) of regulation 22). The order of priority specified in regulation 21 in relation to long term and general insurers is to be applied in the winding up of the separate types (i.e. general and long-term business) of a composite insurer's business (regulations 23 and 24).

3.4 An insurer carrying on long-term business is required under INSPRU to ensure that it separately identifies and maintains its long-term business assets and that such assets are only applied for the purposes of its long-term business. Creditors who are not creditors of the long-term business do not have access to these assets unless and to the extent there is a surplus of assets in the fund.

3.5 Where a UK Insurer has been proved to be unable to pay its debts, a court in this jurisdiction, if it thinks fit, can reduce the value of one or more of the contracts of the UK Insurer on such terms and subject to such conditions as it thinks just, in place of making a winding-up order pursuant to section 377 of FSMA. The statutory provision from which section 377 of the FSMA is derived is section 58 of the Insurance Companies Act 1982 (now repealed). This provision empowered the Court to reduce the "*amount*" rather than the "*value*" of an insurer's contracts and the case law in relation to this provision determined that it only applied to those sums prospectively payable under the insurer's current contracts and those sums prospectively payable at the date a winding up petition was presented but which had ripened into presently payable debts between the time of the presentation of the petition and the date of the court order. However, it was held that the provision did not apply to debts which had become presently payable debts by the date of presentation of the petition. It is not

clear whether the reference to the "*value*" of the contract in section 377 of FSMA rather than the "*amount*" of the contract will impact on the way in which the contract may be reduced. While the better view is that "*contracts*" for the purposes of section 377 of the FSMA should be interpreted as referring to insurance policies only, we express no view as to the effect on the FOA Netting Provision, the FOA Set-Off Provisions or the Title Transfer Provisions if a liability of a Party under the relevant agreement were able to be reduced under this section.

4. MODIFICATIONS TO QUALIFICATIONS

4.1 References to "*UK Credit Institution*" and "*Credit Institution*" shall be construed so as to read "*UK Insurer*", and "*Insurer*" respectively in each of the following paragraphs:

4.1.1 Paragraph 4.3.4; and

4.1.2 Paragraph 4.3.8.

4.2 Paragraphs 4.2 (apart from 4.2.3) and 4.3.7 do not apply in relation to a Party which is an Insurer.

4.3 Paragraph 5.4.5 shall be deemed deleted.

SCHEDULE 5
PARTNERSHIPS

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 Paragraph 1.13.1 is deemed deleted and replaced with the following:

> "*"**Insolvency Proceedings**" means the procedures listed in section 3.1 of Schedule 5 (Partnerships), where governed by English law.*"

1.2 We do not express any opinion in relation to a UK bank, UK Credit Institution, EEA Credit Institution or person with permission under FSMA to carry out contracts of insurance who is constituted as a partnership.

2. ADDITIONAL ASSUMPTIONS

We assume the following:

2.1 That where the FOA Netting Agreement or, as the case may be, the Clearing Agreement is entered into with a partnership, during the life of the FOA Netting Agreement or, as the case may be, Clearing Agreement, the members of the partnership will remain unchanged.

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 by or added to this Schedule), we are of the following opinion.

3.1 Insolvency Proceedings: Partnerships

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

3.1.1 Under the Insolvent Partnerships Order 1994 (as amended) partnerships are subject to the following:

(a) Voluntary Arrangements:

(i) for insolvent partnerships (Article 4); and

(ii) for members of insolvent partnerships (Article 5);

(b) Administration (Article 6);

(c) Winding up of insolvent partnership as an unregistered company on petition of a creditor where there are:

(i) no concurrent petition(s) against partner(s) (Article 7); and

(ii) concurrent petition(s) presented against one or more partner(s) (Article 8);

(d) Winding up of insolvent partnership as an unregistered company on petition of a partner where there are:

(i) no concurrent petition(s) presented against partner(s) (Article 9);

(ii) concurrent petition(s) presented against all partner(s) (Article 10); and

(e) Where all the partners are individuals (as defined at Schedule 1 (*Individuals*)) bankruptcy by joint petition of partners without winding-up of partnership (Article 11).

3.1.2 Under the Investment Bank Regulations, partnerships that are also UK investment banks are subject to investment bank special administration.

3.1.3 The legislation applicable to Insolvency Proceedings is:

(a) in relation to all Insolvency Proceedings initiated after the date of this opinion letter the provisions of the Insolvency Act 1986 and the Insolvency Rules 1986;

(b) the Insolvent Partnerships Order 1994, which applies, with modifications, certain provisions of the Insolvency Act 1986 to Insolvency Proceedings in respect of partnerships;

(c) in relation to partnerships which are UK investment banks, the Investment Bank Regulations and the Investment Bank Special Administration (England and Wales) Rules 2011;

(d) the EU Insolvency Regulation (subject to paragraph 3.1.5 below); and

(e) the Cross-Border Insolvency Regulations.

3.1.4 In relation to an obligation which is a transfer order as defined in the Settlement Finality Regulations, the Settlement Finality Regulations will also be applicable. If the FOA Netting Agreement or, as the case may be, Clearing Agreement constitutes a financial collateral arrangement or an arrangement of which a financial collateral arrangement forms part, the FCA Regulations will also apply.

3.1.5 However, subject to section 426 of the Insolvency Act 1986:

(a) where a partnership is established in an EEA member state, or has its centre of main interests in an EU member state (other than Denmark), the EU Insolvency Regulation curtails an English court's jurisdiction to implement Insolvency Proceedings. In such a case, an English court may only implement certain Insolvency Proceedings governed by English law in relation to the assets situated (or deemed under the EU Insolvency Regulation to be situated) in this jurisdiction; and

(b) where a partnership is an investment firm which provides services involving the holding or funds or securities for third parties or a collective investment scheme, and the centre of its main interests is in an EU member state (other than Denmark), the EU Insolvency Regulation will not apply. In such a case the EU Insolvency Regulation will not curtail the jurisdiction of the English courts.

3.1.6 Under Part XXIV of FSMA, the appropriate regulator is given specific powers to petition to commence and otherwise to participate in Insolvency Proceedings relating to (a) any person authorised under FSMA and (b) any person carrying on (or who has carried on) a regulated activity without authorisation or exemption under FSMA.

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

4. ADDITIONAL QUALIFICATIONS

The opinions in this opinion letter are subject to the following additional qualifications. In this section 4, "Transaction" and "Client Transaction" includes a Transfer of Margin under an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, Clearing Agreement (with Title Transfer Provisions) and a payment of cash credited to an account provided by the Firm to the Counterparty.

4.1 In relation to the assumption at section 2.1 of this Schedule 5 (*Partnerships*), where there is a change in partnership, incoming partners may have no liability for the acts of their predecessor partner(s) unless they expressly undertake such liability. Section 17 of the Partnership Act 1890 provides that an incoming partner does not become liable to the creditors of the partnership for anything done before he became a partner.

Under English law the introduction of a new partner will constitute a new partnership. Accordingly, it might be argued (a) that the FOA Netting Agreement or, as the case may be, Clearing Agreement is not binding on the incoming partner(s), or (b) that Transactions or, as the case may be, Client Transactions entered into by the former partners are not binding on incoming partner(s), with the consequence that not all obligations are subject to the FOA Netting Agreement or, as the case may be, Clearing Agreement or not all obligations are mutual, so that the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions would not be effective to achieve (a) aggregation of values attributable to Transactions or, as the case may be, Client Transactions entered into after the change in partners; or (b) aggregation of values attributable to Transactions or, as the case may be, Client Transactions entered into before the change in partners against values attributable to Transactions or, as the case may be, Client Transactions entered into after such change.

Accordingly, we recommend that the FOA Netting Agreement or, as the case may be, Clearing Agreement, include an express provision under which the partnership is obliged to ensure that incoming partners adopt the FOA Netting Agreement or, as the case may be, Clearing Agreement, and all outstanding Transactions or, as the case may be, Client Transactions, and an appropriate mechanism for such adoption to take place.

4.2 It is not permissible to set off non-mutual debts or obligations under Statutory Insolvency Set-Off. A debt owed by a partner personally cannot, therefore, be set off under Statutory Insolvency Set-Off against a debt owed by the creditors of the partnership. Under the insolvency laws of this jurisdiction, Statutory Insolvency Set-Off is of mandatory application and will thus override any contractual provision to the extent that such provision is inconsistent with them.

4.3 In the case of Partnerships to which the Insolvency Proceedings described at section 3.1.1(e) are applicable: the additional qualifications set out at section 3, and the modifications to qualifications set out at section 4, of Schedule 1 (*Individuals*) shall apply as if set out herein as if the expression "*individual*" were read as "*partnership*".

4.4 The EU Insolvency Regulation seek to harmonise determinations as to which EU Member State has insolvency jurisdiction in any particular case. Recital 9 of the EU Insolvency Regulation applies to "*insolvency proceedings, whether the debtor is a natural person or a legal person*". Whilst a partnership is not a natural person, the consensus is that the EU Insolvency Regulation does apply to an English partnership. This view is supported by the fact that Parliament amended the Insolvent Partnerships Order 1994 in order to account for the EU Insolvency Regulation coming into force. Accordingly, insolvency proceedings in relation to an English partnership may only be opened in the EU Member State in which the partnership has its centre of main interest ("**COMI**") when the proceedings are opened. Preamble 13 of the EU Insolvency Regulation provides that the COMI "*should correspond to the place where the debtor conducts the administration of his interests on a regular basis*". Therefore, in relation to a limited partnership, the place from which the general partner conducts the business of the limited partnership is likely to be significant in determining its

COMI. The place of the debtor's registered office is presumed to be the COMI in the absence of proof to the contrary and therefore, in the case of a limited partnership, whose principal place of business is registered with the Registrar, this presumption will often arise.

4.5 We express no view as to the operation of the Banking Act 2009 in relation to a Party which is both a UK bank and a partnership.

5. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraphs 4 and 5.4 are deemed modified as follows in the case of Partnerships to which the Insolvency Proceedings described at section 3.1.1(e) are not applicable:

5.1 paragraph 4 shall be construed such that references to a "*Company*" shall be read as being to a "*partnership wound up as an unregistered company*"; and

5.2 paragraph 4.2 (apart from paragraph 4.2.3) does not apply; and

5.3 the reference to "*company entering administration*" in paragraph 4.3.4 shall be read as being to a "*partnership entering administration*";

5.4 paragraph 4.3.3 shall be deemed deleted and replaced with the following:

"Article 4(1) of the Insolvent Partnerships Order 1994 applies the provisions of Part I of and Schedule A1 to the Insolvency Act which govern company voluntary arrangements, with appropriate modifications, to insolvent partnerships so that an insolvent partnership is entitled to propose a partnership voluntary arrangement. Both corporate and individual members of a partnership may enter into voluntary arrangements. The courts may not sanction a partnership voluntary arrangement unless every creditor of the partnership of whose claim and address the person summoning the meeting is aware is invited to the meeting. The partnership voluntary arrangement binds every person who in accordance with the rules had notice of, and was entitled to vote at, the meeting. Approval at the creditors' meeting of its terms does not require unanimity of the affected creditors, whether or not present at the meeting. Furthermore, as a partnership may be wound up as an unregistered company, it may be possible for the court to sanction a scheme of arrangement in respect of its creditors or some of them. The court would not sanction a scheme of arrangement unless reasonable efforts were made to notify the creditors whose rights would be affected by the scheme of the meeting to approve that scheme."; and

5.5 paragraph 5.4.5 shall be deemed deleted.

SCHEDULE 6
LLPs

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.13.1 is deemed deleted and replaced with the following:

> "*"**Insolvency Proceedings**" means the procedures listed in section 3.1 of Schedule 6 (LLPs), where governed by English law.*"

2. ADDITIONAL ASSUMPTIONS

We assume the following:

> That where the FOA Netting Agreement or, as the case may be, Clearing Agreement is entered into with an LLP, such LLP is not a UK bank or an Insurer (as defined in Schedule 4).

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 by or added to this Schedule), we are of the following opinion.

3.1 Insolvency Proceedings: LLPs

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

3.1.1 Under the Investment Bank Regulations, LLPs that are also UK investment banks are subject to investment bank special administration.

3.1.2 Under the Limited Liability Partnerships Regulations 2001, LLPs are subject to liquidation (including provisional liquidation), administration, administrative receivership, receivership, moratorium, voluntary arrangements and schemes of arrangement.

3.1.3 The legislation applicable to Insolvency Proceedings is:

(a) in relation to all Insolvency Proceedings initiated after the date of this opinion letter except schemes of arrangement, the provisions of the Insolvency Act 1986 and the Insolvency Rules 1986 (as modified by the Limited Liability Partnerships Regulations 2001);

(b) in relation to schemes of arrangement, sections 895-901 Companies Act 2006;

(c) the Limited Liability Partnerships Regulations 2001 and the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009, which apply, with modifications, certain provisions of the Insolvency Act 1986 and the Companies Act 2006, respectively, to Insolvency Proceedings in respect of LLPs; and

(d) in relation to LLPs which are UK investment banks, the Investment Bank Regulations and the Investment Bank Special Administration (England and Wales) Rules 2011.

3.1.4 In relation to an obligation which is a transfer order as defined in the Settlement Finality Regulations, the Settlement Finality Regulations will also be applicable. If the FOA Netting Agreement or, as the case may be, Clearing Agreement constitutes a financial collateral arrangement or an arrangement of which a financial collateral arrangement forms part, the FCA Regulations will also apply. Furthermore, the EU Insolvency Regulation has direct effect in this jurisdiction.

3.1.5 However, subject to section 426 of the Insolvency Act 1986:

(a) a person who is party to a market contract is not able to be subject to a moratorium;

(b) where an LLP has an establishment in another EEA jurisdiction (other than Denmark) and the EU Insolvency Regulation applies, an English court may, in the event of territorial insolvency proceedings in that other EEA jurisdiction, only implement certain Insolvency Proceedings governed by English law in relation to the assets situated (or deemed under the EU Insolvency Regulation to be situated) in this jurisdiction.

3.1.6 Under Part XXIV of FSMA, the appropriate regulator is given specific powers to petition to commence and otherwise to participate in Insolvency Proceedings relating to (a) any person authorised under FSMA and (b) any person carrying on (or who has carried on) a regulated activity without authorisation or exemption under FSMA, other than Insolvency Proceedings which are investment bank special administration in respect of which the appropriate regulator is given powers to intervene and rights to participate under the Investment Bank Regulations.

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

3.2 Additionally, the opinions at paragraphs 3.5 to 3.7, 3.9 and 3.10 do not apply to a Clearing Agreement under which the Party acting as Firm or, as the case may be, Clearing Member, is a LLP.

4. MODIFICATIONS TO QUALIFICATIONS

Furthermore, the qualifications at paragraphs 4 and 5.4 are deemed modified as follows.

4.1 Paragraph 4 shall be construed such that references to a "*Company*" shall be read as being to an "*LLP*" and references to "*Shareholders*" shall be read as being to "*members*".

4.2 Paragraph 4.2 (apart from 4.2.3) does not apply in relation to a Party which is an LLP covered by this opinion letter.

4.3 Paragraph 5.4.5 shall be deemed deleted.

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

Subject to the modifications set out in this Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes)*), the opinions, assumptions and qualifications set out in this opinion letter (as modified and added to pursuant to Schedule 1 (*Individuals*) in the case of a Trustee that is an Individual) will also apply in respect of Parties which are acting as Trustees of a Trust (including without limitation an AUT but excluding a Charitable Trust or Pension Scheme).

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

This opinion is not given in respect of any person found or alleged to be a trustee of a constructive, implied, resulting or other trust constituted by operation of law, nor is it given in respect of a person who is a trustee in bankruptcy, or a personal representative as defined in section 68(9) of the Trustee Act 1925 acting in that capacity.

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule (or of Schedule 1 (*Individuals*) in the case of a Trustee that is an individual, as applicable).

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

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

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

2. ADDITIONAL ASSUMPTIONS

We assume the following:

2.1 That each Party has the capacity, power and authority under the terms of any applicable Trust of which a Party is a Trustee to enter into the FOA Netting Agreement or, as the case may be, Clearing Agreement and Transactions or, as the case may be, Client Transactions; to perform its obligations under the FOA Netting Agreement or, as the case may be, Clearing Agreement and Transactions or, as the case may be, Client 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, Clearing Agreement.

2.2 That during the life of any Transaction or, as the case may be, Client Transaction, the Trustee(s) of the relevant Trust in respect of which a Party is acting as Trustee will remain unchanged.

2.3 That the Trustee(s) has entered into the FOA Netting Agreement or, as the case may be, Clearing Agreement and each Transaction or, as the case may be, Client Transaction (and has provided all collateral) in its capacity as Trustee of the same Trust or, in the case of an umbrella AUT, as Trustee of the same sub-fund.

3. 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 by or added to this Schedule), we are of the following opinion.

3.1 Where the defaulting Party acts as a Trustee and is the insolvent Party the operation of the FOA Netting Provision, the FOA Set-Off Provisions or the Title Transfer Provisions will not be affected. The assets of the relevant Trust (which would include obligations owed by the non-defaulting Party) would fall outside the estate of the Trustee as insolvent Party and would therefore not be available for seizure by an insolvency officer or representative appointed to such insolvent Party for the benefit of its creditors. Furthermore, under the laws of this jurisdiction, the obligations "*of a Trust*" are the obligations of the Trustee(s), and it is therefore impossible for a Trust to be subject to Insolvency Proceedings. Accordingly, (a) it is not possible for an Event of Default attributable to non-performance, bankruptcy, liquidation or similar circumstance to occur in relation to a Trust (as opposed to a Trustee of the Trust); and (b) if a Party which is a Trustee fails to perform its obligations under the FOA Netting Agreement or, as the case may be, Clearing Agreement owing to default, bankruptcy, liquidation or any other similar circumstance the FOA Netting Provision would be effective in accordance with its terms.

3.2 As it is not permissible to set off non-mutual debts or obligations under Statutory Insolvency Set-Off, a debt owed by a Trustee personally cannot be set off under Statutory Insolvency Set-Off against a debt owed to the beneficiaries of the Trust. Obligations incurred by a Trustee acting as such will be personal obligations of the Trustee. However, in Insolvency Proceedings in relation to a Trustee, the insolvency

officer would have no power to claim the gross debt (due from the solvent Party) on such grounds, because such debt would fall outside the insolvent estate able to be seized by the relevant insolvency officer or trustee in bankruptcy. In the case of an insolvent Party who is an individual subject to bankruptcy proceedings this principle is laid down expressly in section 283(3) of the Insolvency Act 1986. Accordingly, in our view it should also not be open to seek recovery of a gross sum from a solvent Party who has applied the FOA Netting Provision.

3.3 Additionally, the opinions at paragraphs 3.5 to 3.7, 3.9 and 3.10 do not apply to a Clearing Agreement under which the Party acting as Firm or, as the case may be, Clearing Member, is a Trustee of Trusts (other than charitable trusts and pension schemes.

4. ADDITIONAL QUALIFICATIONS

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

4.1 In relation to the assumption at section 2.2 of this Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes)*) where there is a change of trustees in respect of a Trust, incoming trustees will have no liability for the acts of their predecessors in office unless they undertake such liability. Under English law trustees' obligations under contracts which they enter into are owed by them personally. An incoming trustee, therefore, will not become liable to discharge obligations owed by a former trustee, such as obligations incurred by other trustees before the incoming trustee's appointment, but may agree to undertake such obligations (for example, by novation of contracts entered into by the former trustee). Accordingly, it might be argued that (a) the FOA Netting Agreement or, as the case may be, Clearing Agreement is not binding on the incoming trustees, or (b) Transactions or, as the case may be, Client Transactions entered into by the former trustees are not binding on incoming trustees. If, following a change of trustees, the incoming trustees do not adopt the FOA Netting Agreement or, as the case may be, Clearing Agreement and outstanding Transactions or, as the case may be, Client Transactions, it could be the case that the FOA Netting Provision, Clearing Module Netting Provision or Addendum Netting Provisions would be ineffective to achieve (a) aggregation of values attributable to Transactions or, as the case may be, Client Transactions entered into after the change which are still outstanding upon the occurrence of an Event of Default or CCP Default; or (b) aggregation of values attributable to outstanding Transactions or, as the case may be, Client Transactions entered into before the change against values attributable to Transactions or, as the case may be, Client Transactions entered into after the change.

It may be of assistance in defeating such arguments if the Transactions or, as the case may be, Client Transactions and the FOA Netting Agreement or, as the case may be, Clearing Agreement constitute a single agreement, although we have not evaluated the reliability of this argument, since we recommend that after each change of trustee, the continuing and incoming trustees expressly adopt the FOA Netting Agreement or, as the case may be, Clearing Agreement and all Transactions or, as the case may be, Client Transactions entered into before the change, and which remain outstanding at that time, by way of novation. Accordingly, we recommend that the FOA Netting

Agreement or, as the case may be, Clearing Agreement, be supplemented by provisions similar to those set out in the FOA Trustee Annex to the Netting Module as published by the FOA in July 2011.

We express no opinion as to the effectiveness of the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision and Title Transfer Provisions in relation to any Transaction or, as the case may be, Client Transaction entered into between the time of a change of trustees and the time of operation of the FOA Netting Provision, Clearing Module Netting Provision, Addendum Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision and Title Transfer Provisions where no such adoption has occurred.

4.2 There may also be an argument as to the effectiveness of the FOA Netting Agreement or, as the case may be, Clearing Agreement in a case where a Trustee has lost his right to be indemnified in respect of personal liabilities incurred in carrying out his office. It may be argued that if the Trustee enters into a loss-making Transaction or, as the case may be, Client Transaction which is subject to an FOA Netting Agreement or, as the case may be, Clearing Agreement, then netting under the FOA Netting Agreement or, as the case may be, Clearing Agreement would have an effect as between the Trustee and the beneficiaries similar to recourse by the Trustee to the indemnity, by allowing the Trustee to offset the losses on the Transaction or, as the case may be, Client Transaction against gains on other Transactions or, as the case may be, Client Transactions which would otherwise accrue to the Trust fund. However, provided that it is within the scope of the Trustee's legitimate authority to enter into Transactions or, as the case may be, Client Transactions which might (given fluctuations in the value thereof) be loss-making, and to enter into the FOA Netting Agreement or, as the case may be, Clearing Agreement, such Transactions or, as the case may be, Client Transactions and the FOA Netting Agreement or, as the case may be, Clearing Agreement should be effective notwithstanding the loss of the indemnity by the Trustee.

4.3 It may be argued by an insolvency representative or trustee in bankruptcy of a Trustee (including, in the case of a Trustee that is a UK bank, a bank liquidator appointed under the Bank Insolvency (England and Wales) Rules 2009) that it is the duty of the insolvency representative (or trustee in bankruptcy) to pursue a claim for the gross sum by virtue of his fiduciary responsibilities to the beneficiaries of the Trust, notwithstanding that any sums recoverable by him would fall outside the insolvent estate. The argument upon which such a claim would be made would be based on lack of mutuality under Statutory Insolvency Set-Off. We consider this argument to be incorrect for the following reasons. The successful pursuit of a claim for the gross sum would give the beneficiaries of the Trust a windfall benefit attributable solely to the insolvency of the Trustee. Although there is case law which indicates that trustees are obliged to hand over secret profits gained from their position of trust, in our view the courts are unlikely to extend such a principle so as to create a duty for the Trustee to pursue (and hand over) a pure windfall of this nature to the prejudice of the solvent Party. Furthermore:

4.3.1 the mechanism employed by the FOA Netting Provision and Title Transfer Provisions does not purport to create debts which are to be set off: only a single net debt is payable; and

4.3.2 in the event that the analysis of the FOA Netting Provision or Title Transfer Provisions as creating a single net debt were challenged, and amounts representing terminated obligations and the Default Margin Amount were subject to Statutory Insolvency Set-Off, the insolvency representative or trustee in bankruptcy of a Trustee should not be able to recover such a windfall. The principle underlying Statutory Insolvency Set-Off is "*to do substantial justice between the parties*" in the sense that the solvent Party should not be obliged to pay in full when his counterparty is in default in making a countervailing payment.

While the above reasoning represents our opinion on this question, we should mention that no case-law or other authority is known to us which confirms our view.

4.4 In the event that a UK bank that is a Trustee is subject to a "*property transfer instrument*" as further described in paragraph 3.3 of this opinion letter, section 34(7) of the Banking Act 2009 allows the instrument to provide for the transfer to take effect free from any trust, liability or other encumbrance, to allow the terms on which any property is held on trust to be modified or to allow the trust to be extinguished. It is unclear on the face of the Act whether these provisions were intended to extend to client property held on trust by a UK bank as Trustee, or else only to property that the UK bank has itself placed on trust; however, there remains a risk that the provisions could be used to either modify or extinguish a beneficiary's rights in property held on trust on their behalf by a UK bank, subject to the beneficiary's right to property under Article 1 of Protocol 1 of the European Convention on Human Rights. However, in our view this is unlikely to lead any Party being able to seek recovery of a gross sum from a solvent Party who has applied the FOA Netting Provision, the Clearing Module Netting Provision, the Addendum Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision or the Title Transfer Provisions.

4.5 In relation to an AUT, it is possible for the AUT to become subject to a scheme of arrangement pursuant to the provisions of the Financial Conduct Authority's COLL sourcebook. In broad terms, a scheme of arrangement for these purposes enables all or part of the property of a fund to become the property of another collective investment scheme, with the consent of a majority of the unit-holders in the AUT. We express no view as to the effectiveness of the FOA Netting Provision, the FOA Set-Off Provisions or the Title Transfer Provisions if a scheme of arrangement is implemented in relation to an asset of the AUT comprising a Transaction or, as the case may be, Client Transaction, margin Transferred under an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, Clearing Agreement (which includes Title Transfer Provisions), or cash credited to an account provided by the Firm to the AUT.

5. MODIFICATIONS TO QUALIFICATIONS

5.1 The qualifications at paragraph 4.1 are disapplied insofar as they refer to the applicability of Statutory Insolvency Set-Off in relation to a Party which is a Trustee. It is not permissible to set off non-mutual debts and obligations under Statutory Insolvency Set-Off and it is impossible therefore under Statutory Insolvency Set-Off to set off debts owed by a Trustee against debts owed to the beneficiaries of the Trust (please see further section 3.2 of this Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes*))).

5.2 The qualifications at paragraph 5.3 are disapplied insofar as they refer to Insolvency Proceedings in relation to a Party which is a Trustee.

5.3 Where the Trustee is an individual, the qualifications in paragraphs 4.2 to 4.4 should be read as modified or Supplemented in Schedule 1 (*Individuals*) subject to paragraph 5.1 of this Schedule 7.

5.4 Paragraph 5.4.5 shall be deemed deleted.

SCHEDULE 8
TRUSTEES OF PENSION SCHEMES

Subject to the further additions and modifications set out in this Schedule 8 (*Trustees of Pension Schemes*), the opinions, assumptions and qualifications set out in this opinion letter (as modified and added to pursuant to Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes*), with the exception of section 4.5 thereof) will also apply in respect of Parties which are acting as Trustees of Pension Schemes. For the purposes of this Schedule 8 (*Trustees of Pension Schemes*), a "**Pension Scheme**" means an occupational pension scheme within the meaning of section 1 of the Pension Schemes Act 1993 and which is established as a trust under the laws of this jurisdiction and which is not established by or pursuant to any enactment and which is not sectionalised such that the assets of one section of the scheme may not be used for the purposes of another section of the scheme (and for the avoidance of doubt, excluding personal pension schemes within the meaning of section 1 of that 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 or of Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes)*), as applicable.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

1.1 The words "*a Pension Scheme*," are deemed deleted from section 1.1 of Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes*) for the purpose of this Schedule 8.

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

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

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

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

2. 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 by or added to this Schedule), we are of the following opinion.

2.1 Insolvency Proceedings: Trustees of Pension Schemes

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party that is a Trustee of a Pension Scheme could be subject under the laws of this jurisdiction, and which are relevant for the

purposes of this opinion letter, are as set out in the opinion at paragraph 3.1 (subject, in the case of a Trustee that is an individual, to the modifications and additions set out in Schedule 1 (*Individuals*)).

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. However, we recommend that the following events of default and additional definitions be included:

*"a winding up of the **Pension Scheme** is commenced other than in circumstances where the winding up of the **Pension Scheme** is deferred pursuant to section 38 of the Pensions Act 1995 or a power in the governing documents of the **Pension Scheme** and the **Pension Scheme** continues to be administered by you as a frozen scheme;"*

*"in the event a Pension Protection Fund assessment period (within the meaning of section 132 of the Pensions Act 2004) (an "**Assessment Period**") has commenced:*

*a) the Board of the Pension Protection Fund (the "**PPF**") approves under section 144 of the Pensions Act 2004 a valuation under section 143 of that Act which verifies that the **Pension Scheme**'s protected liabilities (within the meaning of section 131 of that Act) exceed its assets;*

*b) the PPF determines under section 152(2) of the Pensions Act 2004 that it must accept responsibility for the **Pension Scheme**; or*

*c) the PPF approves under section 158(3) of the Pensions Act 2004 an actuarial valuation which verifies that the **Pension Scheme**'s protected liabilities exceed its assets,*

provided that in each case, there will not be an Event of Default if prior to the date on which the Event of Default would otherwise occur the PPF has executed and delivered to us an irrevocable deed in a form satisfactory to us that it will not, following the issue of a transfer notice pursuant to section 160 of the Pensions Act 2004, use its powers under section 161 of that Act (or any regulations made thereunder) to disapply or amend any terms or conditions of the Agreement or terminate the Agreement (unless such disapplication, amendment or termination is permitted under the express terms of the Agreement);"

"the Board of the PPF issues a determination under section 143 of the Pensions Act 2004 during an Assessment Period which is reasonably likely to have a material adverse consequence on your ability to make payments or meet obligations (including future payments or obligations) under the Agreement;"

*"following an Assessment Period, the Board of the PPF determines that the **Pension Scheme** is not an eligible scheme for the purposes of the Part 2 of the Pensions Act 2004 unless the **Pension Scheme** is so determined not to be an eligible scheme because it has sufficient assets to fully secure benefits on wind-up;"*

*"any replacement or additional trustee of the **Pension Scheme** fails to accede to and adopt all of your obligations and liabilities under the Agreement within 5 Business Days of appointment or you are prohibited, suspended or disqualified from acting as trustee of the **Pension Scheme** within the meaning and for the purposes of the Pensions Act 1995 or pursuant to the governing documents of the **Pension Scheme**;"*

*"if any change in applicable law or regulations or in the governing documents of the **Pension Scheme**, would give the beneficiaries of the **Pension Scheme** priority over us in the event of a full or partial winding up of the **Pension Scheme**;"*

*"if an action for the administration of the **Pension Scheme** is initiated pursuant to Rule 64.2 of the Civil Procedure Rules or any replacement of that Rule and, as a result of such action, you are unable to perform any of your material obligations under the Agreement;"*

*"you lose the right to apply the assets of the **Pension Scheme** in order to discharge any obligation undertaken by or liability of you under the Agreement whether as a result of a change of law or otherwise;"*

And, accordingly, we recommend the inclusion of the following additional definition:

*""**Pension Scheme**" means the [insert name of pension scheme] governed by [insert description of the governing documents, e.g. the trust deed and rules dated [·] as amended from time to time]."*

2.2 Additionally, the opinions at paragraphs 3.5 to 3.7, 3.9 and 3.10 do not apply to a Clearing Agreement under which the Party acting as Firm or, as the case may be, Clearing Member, is a Trustee of a Scheme.

3. ADDITIONAL QUALIFICATION

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

3.1 Where a party is the Trustee of a Scheme and the sponsoring employer or employers of the Scheme enter into an insolvency proceeding, the liabilities of the Scheme (i.e. the liabilities of the Trustee of the Scheme) may transfer to the PPF. In such a case, any FOA Netting Agreement or, as the case may be, Clearing Agreement and Transaction or, as the case may be, Client Transactions entered into by the Trustee would normally transfer by operation of law to the PPF. Regulation 2(1) provides that in such circumstances:

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

3.2 In principle the PPF could disapply an FOA Netting Provision, an FOA Set-Off Provision, Clearing Module Set-Off Provision, Addendum Set-Off Provision or a Title Transfer Provision in an FOA Netting Agreement or, as the case may be, Clearing Agreement by use of Regulation 2(1). However, on 8 March 2010, the PPF published guidance on the exercise of its powers under Regulation 2(1) and that guidance contains several statements which, taken together, in our view, make it unlikely that the PPF would make an attempt to disapply an FOA Netting Provision, FOA Set-Off Provision, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provision in an FOA Netting Agreement or, as the case may be, Clearing Agreement.

3.3 Under Regulation 2(1), the test as to whether a contract term is "onerous" is not objective – it is for the PPF to "consider" that the term is "onerous". As such, if the PPF did attempt to apply Regulation 2(1) to an FOA Netting Provision, an FOA Set-Off Provision, Clearing Module Set-Off Provision, Addendum Set-Off Provision or a Title Transfer Provision, a court could not simply overturn this decision on the basis that the court did not agree. The process for challenge would need to be by way of judicial review, which can only succeed in certain circumstances.

4. MODIFICATION TO QUALIFICATIONS

Paragraph 5.4.5 shall be deemed deleted.

SCHEDULE 9
TRUSTEES OF CHARITABLE TRUSTS

Subject to the further additions and modifications set out in this Schedule 9 (*Parties acting as Trustees of Charitable Trusts*), the opinions, assumptions and qualifications set out in this opinion letter (as modified and added to pursuant to Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes*), with the exception of section 4.5 thereof) will also apply in respect of Parties which are acting as Trustees of a Charitable Trust.

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

Except where the context otherwise requires, references in this Schedule to "*paragraph*" are to paragraphs in the opinion letter (but not to its Annexes or Schedules) and references to "*sections*" are to sections of this Schedule or of Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes*)), as applicable.

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

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

2. MODIFICATION TO OPINIONS

2.1 The following is inserted as the penultimate sub-paragraph in paragraph 3.1:

"*Under section 113 of the Charities Act 2011, the Attorney General and the Charity Commission may, in addition to the other persons authorised under the provisions of the insolvency Act 1986 (as stated in the General Opinion Letter), present a petition to wind-up a Charity under the Insolvency Act 1986.*"

2.2 Additionally, the opinions at paragraphs 3.5 to 3.7, 3.9 and 3.10 do not apply to a Clearing Agreement under which the Party acting as Firm or, as the case may be, Clearing Member, is a Trustee of a Charitable Trust.

3. ADDITIONAL QUALIFICATIONS

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

The Charities Act 2011 grants the Charities Commission certain wide powers, in circumstances where, having instituted an inquiry under section 46 of that Act in relation to a Charity, it is satisfied that (a) there is or has been misconduct or mismanagement in the administration of the Charitable Trust; or (b) it is necessary or desirable to act for the purpose of protecting the property of the Charitable Trust or securing proper application of the purposes of the Charitable Trust of that property or

of property coming to the Charitable Trust. It is possible that action taken by the Charity Commission pursuant to such powers might adversely affect the operation of the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions, as it might result in the legal separation of obligations of the Charitable Trust (and, in the case of a Charitable Trust, owed by its Trustee) from entitlements of the Charitable Trust (and to which the Trustee can no longer assert any rights).

4. MODIFICATION TO QUALIFICATIONS

Paragraph 5.4.5 shall be deemed deleted.

SCHEDULE 10
CHARITABLE COMPANIES

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

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

1. MODIFICATION TO OPINION

1.1 The addition to paragraph 3.1 set out in Schedule 9 (*Trustees of Charitable Trusts*) also applies in relation to Charitable Companies.

1.2 Additionally, the opinions at paragraphs 3.5 to 3.7, 3.9 and 3.10 do not apply to a Clearing Agreement under which the Party acting as Firm or, as the case may be, Clearing Member, is a Charitable Company.

2. ADDITIONAL QUALIFICATION

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

The Charities Act 2011 grants the Charities Commission certain wide powers, in circumstances where, having instituted an inquiry under section 46 of that Act in relation to a Charitable Company, it is satisfied that (a) there is or has been misconduct or mismanagement in the administration of the Charitable Company; or (b) it is necessary or desirable to act for the purpose of protecting the property of the Charitable Company or securing proper application of the purposes of the Charitable Company of that property or of property coming to the Charitable Company. It is possible that action taken by the Charity Commission pursuant to such powers might adversely affect the operation of the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Netting Provision, the Clearing Module Set-Off Provision, the Addendum Netting Provision, the Addendum Set-Off Provision or the Title Transfer Provisions, as it might result in the legal separation of obligations of the Charitable Company from entitlements of the Charitable Company.

3. MODIFICATION TO QUALIFICATIONS

Paragraph 5.4.5 shall be deemed deleted.

SCHEDULE 11
LOCAL AUTHORITY AS ADMINISTERING AUTHORITY OF A PENSION FUND

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

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

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

1. MODIFICATIONS TO TERMS OF REFERENCE AND DEFINITIONS

Paragraph 1.13.1 is deemed deleted and replaced with the following:

"*"**Insolvency Proceedings**" means in relation to a local authority the procedures listed at section 3.1 of Schedule 11 (Local Authority as Administering Authority of Pension Fund).*"

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

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

2. ADDITIONAL ASSUMPTIONS

We assume the following:

2.1 That any Transactions or, as the case may be, Client Transactions which are entered into by a Party which is a local authority acting as Administering Authority of a pension fund constitute "investment" within the meaning of regulation 3 of the Local Government Pension Scheme Management Regulations and have otherwise been entered into in accordance with the procedures under those Regulations.

2.2 That any Transactions or, as the case may be, Client Transactions which are entered into by a Party which is a local authority acting as Administering Authority of a pension fund comply fully with the restrictions on investments set out in Schedule 1 (*Table of Limits on Investments*) to the Local Government Pension Scheme Management Regulations.

2.3 That any Party which is a local authority acting as Administering Authority of a pension fund has produced and maintains in place a Statement of Investment

Principles, as required by regulation 12(1) of the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009.

2.4 That any Transactions or, as the case may be, Client Transactions entered into by a Party which is a local authority are entered into by such Party in its capacity as and for the purposes of pursuing its function as an Administering Authority of a pension fund and that all such Transactions or, as the case may be, Client Transactions were, at the time such Transactions or, as the case may be, Client Transactions were entered into and have remained at all times, in compliance with the terms of its Statement of Investment Principles.

2.5 That any Party which is a local authority acting as an Administering Authority is, and has at all times subsequent to entering into the FOA Netting Agreement or, as the case may be, Clearing Agreement, been the Administering Authority of no more than one pension fund.

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 by or added to this Schedule), we are of the following opinion.

3.1 Insolvency Proceedings: Local Authorities

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Local Authority could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter , are, (i) dissolution or winding-up by an Act of Parliament or secondary legislation thereunder; (ii) dissolution, winding-up or re-organisation by an order of the Secretary of State pursuant to statutory powers (other than under the Insolvency Act 1986); and (iii) winding-up pursuant to the Insolvency Act 1986 and the Insolvency Rules 1986 (most likely, although not necessarily, by order of the Secretary of State).

The current legislation applicable to such Insolvency Proceedings is:

3.1.1 the Insolvency Act 1986; and

3.1.2 the Insolvency Rules 1986.

In relation to an obligation which is a transfer order as defined in the Settlement Finality Regulations, the Settlement Finality Regulations will also be applicable. If the FOA Netting Agreement or, as the case may be, Clearing Agreement constitutes a financial collateral arrangement or an arrangement of which a financial collateral arrangement forms part, the FCA Regulations will also apply.

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. However, we recommend that the following event of default be included:

"*The following shall constitute Events of Default:*

[...]

an order is made by the competent Secretary of State or primary or secondary legislation is passed requiring, effecting or authorising your dissolution, winding up or re-organisation."

3.2 Additionally, the opinions at paragraphs 3.5 to 3.7, 3.9 and 3.10 do not apply to a Clearing Agreement under which the Party acting as Firm or, as the case may be, Clearing Member, is an Administering Authority.

4. ADDITIONAL QUALIFICATIONS

The opinions in this opinion letter are subject to the following additional qualifications. For the purposes of this section, "**Transaction**" and "**Client Transaction**" includes a Transfer of Margin under an FOA Netting Agreement (with Title Transfer Provisions) or, as the case may be, Clearing Agreement (with Title Transfer Provisions) and a payment of cash credited to an account provided by the Firm to the local authority acting as Administering Authority.

4.1 Local authorities may be established under or otherwise have constitutions governed by a range of different statutes, orders and other legislative and non legislative bodies of law documents and measures (the "**Constitutional Laws**"). We have not reviewed any such Constitutional Laws (save to the extent specifically identified in this opinion letter). Any such Constitutional Laws may override, annul, complement or provide alternatives to the Insolvency Proceedings and may further restrict the effectiveness of the FOA Netting Provision, the FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or the Title Transfer Provisions or have other imports upon the FOA Netting Agreement or, as the case may be, Clearing Agreement, Transactions or, as the case may be, Client Transactions and the Parties' rights and obligations thereunder. It should also be noted that it is not possible to state with any certainty whether Local Authorities could in fact be wound up pursuant to the Insolvency Act 1986 as an unregistered company. The Court of Appeal in Tamlin v Hannaford [1949] is referred to by some commentators as authority for the fact that statutory corporations cannot be wound up (see Halsbury's Laws of England, Volume 17 (2011) 5th Edition at paragraph 1112,) but the comments made in that case in relation to such corporations were strictly obiter. In the absence of any clear authority on the point, we have therefore included the qualifications below that may be relevant in the event that a Local Authority is wound up pursuant to the Insolvency Act 1986.

4.2 The terms on which a local authority is wound up or dissolved pursuant to an Act of Parliament (or by secondary legislation) or by order of the Secretary of State (other than pursuant to the Insolvency Act 1986) and the consequences thereof would depend on the express terms of such legislation. We would however expect the effect of such winding up or dissolution to be broadly similar to the effect of a winding up pursuant to the Insolvency Act (in particular, in relation to the recognition of Transactions or, as the case may be, Client Transactions entered into prior to the commencement of winding up or dissolution, i.e. the passing of the relevant legislation, and in relation to the set-off of mutual obligations of the Parties), except

where such legislation provided for the transfer of local authority's rights and liabilities to another authority or entity.

An example of such transfer of rights and liabilities would be if, following the recommendation of the Local Government Boundary Commission pursuant to sections 2 or 8 of the Local Government and Public Involvement in Health Act 2007 ("**LGPIHA**"), the Secretary of State were to make an order for the dissolution of the local authority and an order for the transfer of the local authority's property, rights and liabilities to one or more residuary bodies established pursuant to section 17 of the LGPIHA.

There is the risk that such an order (or equivalent legislative requirement) may require the assets and liabilities of the local authority to be transferred to two or more entities (each a "**Recipient Entity**"). In such circumstances, unless the Transactions or, as the case may be, Client Transactions (or the obligations arising thereunder) are terminated or set off pursuant to the FOA Netting Provision, FOA Set-Off Provisions, Clearing Module Set-Off Provision, Addendum Set-Off Provision or Title Transfer Provisions prior to such transfer, the other Party would not have a claim to receive or an obligation to pay only the net sum referable to the Transaction or, as the case may be, Client Transaction; instead the better view is that it would have to calculate separate net sums in respect of Transactions or, as the case may be, Client Transactions with each of the Recipient Entities (assuming that, where Transactions or, as the case may be, Client Transactions have been transferred to different Recipient Entities, each Recipient Entity is deemed to have become party to a separate agreement, on the same terms as the FOA Netting Agreement or, as the case may be, Clearing Agreement, with the other Party). However, we believe the risk of transfer to two or more Recipient Entities to be low and in most circumstances we would expect all rights and obligations in respect of Transactions or, as the case may be, Client Transactions and the FOA Netting Agreement or Clearing Agreement to be transferred to the same Recipient Entity.

4.3 In relation to the assumption at section 2.1 of this Schedule 11 (*Local Authority as Administering Authority of Pension Fund*), regulation 3(1) of the Local Government Pension Scheme Management Regulations provides that "investment" has its "normal meaning" for these purposes, but the remaining provisions of that regulation specify things which count as "investments" although they might not otherwise do so, and exclude things which might otherwise count. In particular, regulation 3(3) of the Local Government Pension Scheme Management Regulations provides that a contract entered into in the course of dealing in "financial futures" or "traded options" is an "investment". A "traded option" means an option quoted on a "recognised stock exchange" within the meaning of section 1005(1) of the Income Tax Act 2007 or on LIFFE. Although "financial future" is not a term defined in the Local Government Pension Scheme Management Regulations, it is our view that the term covers only futures in relation to the assets of a pension fund that are traded on a "recognised stock exchange" or LIFFE. The Local Government Pension Scheme Management Regulations do not expressly provide that any other kind of derivative transactions constitute "investment". In our opinion, derivative transactions which are not either "financial futures" or "traded options" are unlikely to count as "investments" for the

purposes of the Local Government Pension Scheme Management Regulations, and, if a local authority acting as Administering Authority of a pension fund purported to enter into them, such other derivative transactions may be void because the purported entry into them would exceed the authority conferred on the local authority by law (i.e. the entry into them would be *ultra vires* of the local authority).

5. MODIFICATIONS TO QUALIFICATIONS

5.1 The following shall be inserted at the end of paragraph 4.1.4:

"*Although a Local Authority enters into an FOA Netting Agreement or, as the case may be, Clearing Agreement and Transactions or, as the case may be, Client Transactions as Administering Authority of a pension fund, we do not consider that this of itself will mean that mutuality does not exist between the Local Authority and the other Party to the FOA Netting Agreement or, as the case may be, Clearing Agreement (to the extent it acts as administering authority of a pension fund).*".

5.2 The final sub-paragraph of paragraph 4.1.6 shall be deemed deleted and replaced with the following:

"*Transactions or Client Transactions entered into after winding-up has commenced or an order for winding-up has been made by the Secretary of State in relation to a Party might not be capable of inclusion in the netting under the FOA Netting Provision, the FOA Set-Off Provisions, the Clearing Module Set-Off Provision, the Addendum Set-Off Provision or the Title Transfer Provisions, or a set-off pursuant to a Statutory Insolvency Set-Off, but this would not impair the effectiveness of the FOA Netting Provision, the FOA Set-Off Provisions, Clearing Module Set-Off Provisions, Addendum Set-Off Provision or the Title Transfer Provisions or a Statutory Insolvency Set-Off in respect of Transactions or Client Transactions entered into before the commencement of such Insolvency Proceedings.*"

5.3 Paragraph 4.1.7 shall be deemed deleted and replaced with the following:

"4.1.7 *The provisions in the Insolvency Rules 1986 relating to the set-off of mutual credits and debts do not apply to amounts which arise under Transactions or Client Transactions entered into at certain times, and accordingly an English court might not allow such amounts to be included in an aggregation or set-off pursuant to the FOA Netting Provisions, the FOA Set-Off Provisions, Clearing Module Set-Off Provisions, Addendum Set-Off Provision or the Title Transfer Provisions or a Statutory Insolvency Set-Off. The times referred to are, so far as relevant, during a winding-up of the insolvent Party. A similar exclusion may apply in relation to a Transaction or Client Transactions entered into after an order has been made by the Secretary of State for the winding-up of a local authority.*

5.4 Paragraph 4 shall be construed such that references to a "*company*" shall be read as being to a "*local authority (wound up as an unregistered company)*" and all references to administration shall be disapplied.

5.5 Paragraph 4.2 (apart from 4.2.3) does not apply in relation to a Party which is a local authority acting as Administering Authority.

5.6 Paragraph 5.4.5 shall be deemed deleted.

SCHEDULE 12
HM TREASURY

Subject to the modifications and additions set out in this Schedule 12 (*HM Treasury*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of a HM Treasury where it is a Party. For the purposes of this Schedule 12 (*HM Treasury*), "**HM Treasury**" means Her Majesty's Treasury.

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 1.13.1 is deemed deleted and replaced with the following:

"*"**Insolvency Proceedings**" means, in relation to HM Treasury, the procedures listed at section 3.1 of Schedule 12 (HM Treasury).*"

2. ADDITIONAL ASSUMPTIONS

We assume that HM Treasury is not a party to any market contract for the purposes of paragraph 5 of this opinion letter.

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 by or added to this Schedule), we are of the following opinion.

3.1 Insolvency Proceedings: HM Treasury

The only bankruptcy, insolvency or reorganisation procedures to which the Treasury could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, would be proceedings by virtue of a new Act of Parliament because HM Treasury, as a government department, is an emanation of the Crown. The better view is that, in the absence of such an Act, English courts would not have jurisdiction to commence Insolvency Proceedings against the Crown.

In relation to an obligation which is a transfer order as defined in the Settlement Finality Regulations, the Settlement Finality Regulations will be applicable. If the FOA Netting Agreement or, as the case may be, Clearing Agreement constitutes a financial collateral arrangement or an arrangement of which a financial collateral arrangement forms part, the FCA Regulations will also apply.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings in relation to HM Treasury without the need for any additions. However, we recommend that the following event of default be included:

"*you are wound up, merged into another government department or your operations suspended or terminated by virtue of a new Act of Parliament or any other executive or legislative action.*"

3.2 Additionally, the opinions at paragraphs 3.5 to 3.7, 3.9 and 3.10 do not apply to a Clearing Agreement under which the Party acting as Firm or, as the case may be, Clearing Member, is HM Treasury.

4. MODIFICATIONS TO QUALIFICATIONS

4.1 The qualifications at paragraphs 4.1, 4.2 (apart from 4.2.3) and 4.3 do not apply in relation to the Treasury.

4.2 Paragraph 5 shall be deemed deleted.

SCHEDULE 13
BANK OF ENGLAND

Subject to the modifications and additions set out in this Schedule 13 (*Bank of England*), the opinions, assumptions and qualifications set out in this opinion letter will also apply in respect of the Bank of England where it is a Party. For the purposes of this Schedule 13 (*Bank of England*), the "**Bank of England**" means the Governor and Company of the Bank of England established by royal charter.

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 1.13.1 is deemed deleted and replaced with the following:

"*"**Insolvency Proceedings**" means, in relation to the Bank of England, the procedures listed at section 3.1 of Schedule 13 (Bank of England).*"

2. ADDITIONAL ASSUMPTIONS

We assume that the Bank of England is not a party to any market contract for the purposes of paragraph 5 of this opinion letter.

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 by or added to this Schedule), we are of the following opinion.

3.1 Insolvency Proceedings: Bank of England

Generally speaking, chartered corporations may be wound up as unregistered companies. However, given the fact that the Bank of England acts as a central bank and is established for a public purpose, we think that special consideration needs to be given. In particular, we consider that the comments in the Court of Appeal case Tamlin v Hannaford [1914] in relation to statutory companies which are established by an Act of Parliament for public purpose not being liable to winding up under the Insolvency Act, whilst strictly obiter, may equally apply to the Bank of England. However, in the absence of any clear authority we have included liquidation in the relevant Insolvency Proceedings and also the appropriate modifications below.

The only bankruptcy, insolvency or reorganisation procedures to which the Bank of England could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion letter, are liquidation (including provisional liquidation), a scheme of arrangement and receivership.

The legislation applicable to such Insolvency Proceedings is:

(a) in relation to liquidation or receivership initiated after the date of this opinion letter, the provisions of the Insolvency Act 1986 and the Insolvency Rules 1986; and

(b) in relation to a scheme of arrangement, sections 895-901 of the Companies Act 2006,

each as modified up to the date hereof.

In relation to an obligation which is a transfer order as defined in the Settlement Finality Regulations, the Settlement Finality Regulations will be applicable. If the FOA Netting Agreement or, as the case may be, Clearing Agreement constitutes a financial collateral arrangement or an arrangement of which a financial collateral arrangement forms part, the FCA Regulations will also apply.

We confirm that the events specified in the Insolvency Events of Default Clause adequately refer to all Insolvency Proceedings, in relation to the Bank of England.

3.2 Additionally, the opinions at paragraphs 3.5 to 3.7, 3.9 and 3.10 do not apply to a Clearing Agreement under which the Party acting as Firm or, as the case may be, Clearing Member, is the Bank of England.

4. MODIFICATIONS TO QUALIFICATIONS

4.1 Paragraph 4 shall be construed such that references to a "*company*" shall be read as "*Bank of England (wound up as an unregistered company)*" and all references to administration shall be disapplied.

4.2 Paragraph 5 shall be deemed deleted.

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 an 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 AND/OR CLIENT TRANSACTIONS

The following groups of Transactions and/or, as the case may be, Client 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 Inconsistency Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the ISDA/FOA Clearing Addendum) Clause 1(b) (i) of the ISDA/FOA Clearing Addendum.

"**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 Inconsistency Provision**" means (subject to any selections or amendments required or permitted to be made on the face of the FOA Clearing Module) Clause 1.2.1 of the FOA Clearing Module.

"**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):

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

(d) 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):

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

(f) 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 an 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.

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

(a) for the purposes of paragraph 3.2 (*Recognition of choice of law*), the FOA Netting Provision and the Title Transfer Netting Provisions;

(b) for the purposes of paragraph 3.4 (*Enforceability of FOA Netting Provision*) and 3.7 (*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;

(c) for the purposes of paragraph 3.5 (*Enforceability of the Clearing Module Netting Provision*), the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value";

(d) for the purposes of paragraph 3.6 (*Enforceability of the Addendum Netting Provision*), the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value";

(e) for the purposes of paragraph 3.8.1, 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;

(f) for the purposes of paragraph 3.8.2, the Insolvency Events of Default Clause, the FOA Netting Provision, either or both of the General Set-off Clause and the Margin Cash Set-off Clause, and the Clearing Module Set-Off Provision and/or the Addendum Set-Off Provision;

(g) for the purposes of paragraph 3.9.1, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value", and the Clearing Module Set-Off Provision;

(h) for the purposes of paragraph 3.9.2, the Clearing Module Netting Provision together with the defined terms "Aggregate Transaction Value", "Firm/CCP Transaction Value" and "Relevant Collateral Value", the Clearing Module Set-Off Provision and the FOA Set-Off Provision;

(i) for the purposes of paragraph 3.10 (*Set-Off under a Clearing Agreement with Addendum Set-Off Provision*), the Addendum Netting Provision together with the defined terms "Aggregate Transaction Value", "CM/CCP Transaction Value" and "Relevant Collateral Value", and the Addendum Set-Off Provision;

(j) for the purposes of paragraph 3.11.1, (i) in relation to an 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;

(k) for the purposes of paragraphs 3.11.3 and 3.11.4, the Title Transfer Provisions;

in each case, incorporated into an 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.

"**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 Agreement (with Title Transfer Provisions) Agreement 2011 (each as listed and defined at Annex 1).

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

"**FOA Clearing Module**" means the FOA Client Cleared Derivatives Module as first published in 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 Provision, 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 an 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***); and

(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 the Futures and Options Association 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***);

(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***); and

(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):

(a) where the FOA Member's counterparty is not a natural person:

(i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1 (b) to (d) (inclusive) and Clause 1 (h) and (i);

(ii) in relation to the terms of the Short Form One-Way Clauses and Short Form Two-Way Clauses, Clauses 1.1 (a) to (c) (inclusive);

(iii) in relation to the terms of the Master Netting Agreements, Clause 4.1 (i) to (iii) (inclusive);

(iv) in relation to the terms of the Eligible Counterparty Agreements, Clause 9.1 (a) to (c) (inclusive);

(v) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1(a) to (c) (inclusive);

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

(b) where the FOA Member's counterparty is a natural person:

(i) in relation to the terms of the Long-Form Two-Way Clauses and the Long Form One-Way Clauses 2007, Clause 1 (b) to (d) (inclusive) and Clause 1 (h) and (i);

(ii) in relation to the terms of the Master Netting Agreements, Clause 4.1 (i) and (iv);

(iii) in relation to the terms of the Retail Client Agreements and the Professional Client Agreements, Clause 10.1(a) and (d); and

(iv) any modified version of such clauses provided that it includes at least those parts of paragraph 4(b) 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.

"**Limited Recourse Provision**" means Clause 8.1 of the FOA Clearing Module or Clause 15(a) of the ISDA/FOA Clearing Module.

"**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).

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

"**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 an FOA Published Form Agreement.

"**Party**" means, in paragraph 3 and 4 and Schedule 1 to Schedule 13, a party to an 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

(h) 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).

"**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.

"**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.

"**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 Netting 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) clause 5 of the Title Transfer and Physical Collateral Annex to the Netting Module (2007 or 2011 Version).

"**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):

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

(e) 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:

- **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."

- **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."

- **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.]"

- **Insolvency Events of Default Clause:**

a) In the case of a Counterparty that is not a natural person:

"The following shall constitute Events of Default:

i. a party fails to make any payment when due under or to make delivery of any property when due under, or to observe or perform any other provision of this Agreement, [and such failure continues for [one/two] Business Day[s] after notice of non-performance has been given by the Non-Defaulting Party to the Defaulting Party];

ii. 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;

iii. 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."

b) In the case of a Counterparty that is a natural person:

"The following shall constitute Events of Default:

i. a party fails to make any payment when due under or to make delivery of any property when due under, or to observe or perform any other provision of this Agreement, [and such failure continues for [one/two] Business Day[s] after notice of non-performance has been given by the Non-Defaulting Party to the Defaulting Party];

ii. you die, become of unsound mind, are unable to pay your debts as they fall due or are bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to you; or any indebtedness of yours is not paid on the due date therefore, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings relating to this Agreement are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, the whole or any part of your property, undertaking or assets (tangible and intangible)."

- **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."

- **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:

1. 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)];

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 the relevant part thereof;

3. 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]);

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].

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 [Cor 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].

- **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.

- **Addendum Set-Off Provision**

a) 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).

b) 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 Provision, 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 scope of the provision where a Party acts as agent, (iv) the use of currency conversion in case of cross-currency set-off, (v) the application or disapplication of any grace period to set-off, (vi) the exercise of any lien, charge or power of sale against obligations owed by one Party to the other; 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:

    (a) more than one ISDA/FOA Clearing Addendum or Addendum Netting Provision

    (b) more than one FOA Clearing Module or Clearing Module Netting Provision

    (c) 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 a provision in the form of, or with equivalent effect to, clauses 4.3 and/or 4.4 of the FOA Clearing Module is used or the agreement otherwise 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 an 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

1. Necessary amendments for FOA Members entering into an FOA Netting Agreement or, as the case may be, Clearing Agreement with an individual:

   For the purposes of our opinion at paragraph 3.3 where it is given in relation to individuals, the following amendments to the Insolvency Events of Default Clause:

   "*The following shall constitute Events of Default:*

   [...]

   *ii. you die, become of unsound mind, are unable to pay your debts as they fall due or are bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to you; or any indebtedness of yours is not paid on the due date therefore, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such indebtedness before it would otherwise have been due and payable, or any suit, action or other proceedings relating to this Agreement are commenced for any execution, any attachment or garnishment, or distress against, or an encumbrancer takes possession of, the whole or any part of your property, undertaking or assets (tangible and intangible)**, or an application for ancillary relief relating to your property or an entitlement of a contract you are a party to is made in any matrimonial proceedings relating to you**.*".

2. Necessary amendments for FOA Members entering into an FOA Netting Agreement or, as the case may be, Clearing Agreement with a Sub-Fund (as defined in Schedule 3B (*OEICs (Sub-Funds)*):

   a. For the purposes of our opinion at paragraph 3.3 where it is given in relation to OEICs (*Sub-Funds*), the following amendments to the Insolvency Events of Default Clause:

      "*The following shall constitute Events of Default**, whether it occurs in relation to either or both of the [Sub-Fund][8] and [its Umbrella Company][9]**:*

      i. *a party fails...* ".

   b. For the purposes of our opinions at paragraphs 3.4, 3.8 and 3.11 where it is given in relation to OEICs (Sub-Funds), a Firm should ensure that the Sub-Fund with which they are entering into Transactions or, as the case may be, Client Transactions with is clearly identified and that the FOA Netting Agreement or, as the case may be, Clearing Agreement clearly provides that the FOA Netting Agreement or, as the case may be, Clearing Agreement only applies in relation to

[8] Please use appropriate defined term, as per your agreement.

[9] Please use appropriate defined term, as per your agreement.

Transactions or, as the case may be, Client Transactions entered into in respect of that Sub-Fund. Where the Firm is entering into Transactions or, as the case may be, Client Transactions with more than one sub-fund of an Umbrella Company, we recommend that separate FOA Netting Agreements or, as the case may be, Clearing Agreements are entered into in respect of such sub-fund.

3. Desirable amendments for FOA Members entering into an FOA Netting Agreement or, as the case may be, Clearing Agreement with a Partnership (as defined in Schedule 5 (*Partnerships*)):

   For the purposes of our opinions at paragraphs 3.4 to 3.11 where it is given in relation to Partnerships, we recommend that the FOA Netting Agreement or, as the case may be, Clearing Agreement, include an express provision under which the partnership is obliged to ensure that incoming partners adopt the FOA Netting Agreement or, as the case may be, Clearing Agreement, and all outstanding Transactions or, as the case may be, Client Transactions, and an appropriate mechanism for such adoption to take place.

4. Desirable amendments for FOA Members entering into an FOA Netting Agreement or, as the case may be, Clearing Agreement with a Trustee of a Trust (other than Charitable Trusts and Pension Schemes) (as defined in Schedule 7 (*Trustees of Trusts (other than Charitable Trusts and Pension Schemes*)):

   For the purposes of our opinions at paragraphs 3.4 to 3.11 where it is given in relation to Trustees of Trusts (other than Charitable Trusts and Pension Schemes), we recommend that after each change of trustee, the continuing and incoming trustees expressly adopt the FOA Netting Agreement or, as the case may be, Clearing Agreement and all Transactions or, as the case may be, Client Transactions entered into before the change, and which remain outstanding at that time, by way of novation. Accordingly, we recommend that the FOA Netting Agreement or, as the case may be, Clearing Agreement, be supplemented by provisions similar to those set out in the FOA Trustee Annex to the Netting Module as published by the FOA in July 2011.

5. Desirable amendments for FOA Members entering into an FOA Netting Agreement or, as the case may be, Clearing Agreement with a Trustee of a Pension Scheme (as defined in Schedule 8 (*Trustees of Pension Schemes*)):

   For the purposes of our opinion at paragraph 3.3 where it is given in relation to Trustees of Pension Schemes, the following amendments to the Insolvency Events of Default Clause:

   "*The following shall constitute Events of Default:*

   [...]

   i. ***a winding up of the Pension Scheme is commenced other than in circumstances where the winding up of the Pension Scheme is deferred pursuant to section 38 of the Pensions Act 1995 or a power in the governing documents of the Pension Scheme and the Pension Scheme continues to be administered by you as a frozen scheme;***

ii. *in the event a Pension Protection Fund assessment period (within the meaning of section 132 of the Pensions Act 2004) (an "Assessment Period") has commenced:*

a) *the Board of the Pension Protection Fund (the "PPF") approves under section 144 of the Pensions Act 2004 a valuation under section 143 of that Act which verifies that the Pension Scheme's protected liabilities (within the meaning of section 131 of that Act) exceed its assets;*

b) *the PPF determines under section 152(2) of the Pensions Act 2004 that it must accept responsibility for the Pension Scheme; or*

c) *the PPF approves under section 158(3) of the Pensions Act 2004 an actuarial valuation which verifies that the Pension Scheme's protected liabilities exceed its assets,*

provided that in each case, there will not be an Event of Default if prior to the date on which the Event of Default would otherwise occur the PPF has executed and delivered to us an irrevocable deed in a form satisfactory to us that it will not, following the issue of a transfer notice pursuant to section 160 of the Pensions Act 2004, use its powers under section 161 of that Act (or any regulations made thereunder) to disapply or amend any terms or conditions of the Agreement or terminate the Agreement (unless such disapplication, amendment or termination is permitted under the express terms of the Agreement);

iii. *the Board of the PPF issues a determination under section 143 of the Pensions Act 2004 during an Assessment Period which is reasonably likely to have a material adverse consequence on your ability to make payments or meet obligations (including future payments or obligations) under the Agreement;*

iv. *following an Assessment Period, the Board of the PPF determines that the Pension Scheme is not an eligible scheme for the purposes of the Part 2 of the Pensions Act 2004 unless the Pension Scheme is so determined not to be an eligible scheme because it has sufficient assets to fully secure benefits on wind-up;*

v. *any replacement or additional trustee of the Pension Scheme fails to accede to and adopt all of your obligations and liabilities under the Agreement within 5 Business Days of appointment or you are prohibited, suspended or disqualified from acting as trustee of the Pension Scheme within the meaning and for the purposes of the Pensions Act 1995 or pursuant to the governing documents of the Pension Scheme;*

vi. *if any change in applicable law or regulations or in the governing documents of the Pension Scheme, would give the beneficiaries of the Pension Scheme priority over us in the event of a full or partial winding up of the Pension Scheme;*

vii. *if an action for the administration of the Pension Scheme is initiated pursuant to Rule 64.2 of the Civil Procedure Rules or any replacement of that Rule and, as a result of such action, you are unable to perform any of your material obligations under the Agreement;*

viii. ***you lose the right to apply the assets of the Pension Scheme in order to discharge any obligation undertaken by or liability of you under the Agreement whether as a result of a change of law or otherwise;"***

And, accordingly, we recommend the inclusion of the following additional definition:

"'Pension Scheme" means the [insert name of pension scheme] governed by [insert description of the governing documents, e.g. the trust deed and rules dated [·] as amended from time to time]."

6. Desirable amendments for FOA members entering into an FOA Netting Agreement or, as the case may be, Clearing Agreement with a Local Authority as Administering Authority of pension fund (as defined in Schedule 11 (*Local Authority as Administering Entity of pension fund*):

For the purposes of our opinion at paragraph 3.3 where it is given in relation to a Local Authority acting as Administering Authority of a pension fund, the following amendments to the Insolvency Events of Default Clause:

"*The following shall constitute Events of Default:*

i. [...]

iv. ***an order is made by the competent Secretary of State or primary or secondary legislation is passed requiring, effecting or authorising your dissolution, winding up or re-organisation***."

7. Desirable amendments for FOA members entering into an FOA Netting Agreement or, as the case may be, Clearing Agreement with HM Treasury (as defined in Schedule 12 (*HM Treasury*):

For the purposes of our opinion at paragraph 3.3 where it is given in relation to HM Treasury, the following amendments to the Insolvency Events of Default Clause:

"*The following shall constitute Events of Default:*

[...]

you are wound up, merged into another government department or your operations suspended or terminated by virtue of a new Act of Parliament or any other executive or legislative action.".