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UK / Eurex Module & Addendum / Netting do no harm

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30 October 2014

Dear Sirs,

FIA Europe Netting Opinion and Eurex Module and Addendum Annexes

You have asked us to give an opinion in respect of the laws of England and Wales ("**this jurisdiction**") to supplement our FIA Europe Netting Opinion issued in relation to the FOA Netting Agreements, FOA Clearing Module and ISDA/FOA Clearing Addendum dated 6 December 2013 (the "**FIA Europe Netting Opinion**") in respect of amendments made to a Clearing Agreement (as defined in the FIA Europe Netting Opinion) pursuant to either:

- the Module Annex (including Appendix 1 thereto) published by Eurex Clearing AG dated 16 June 2014 for use with the FOA Clearing Module (the "**Module Annex**"); or
- the Addendum Annex (including Appendix 1 thereto) published by Eurex Clearing AG dated 16 June 2014 for use with the ISDA/FOA Clearing Addendum (the "**Addendum Annex**").

1. TERMS OF REFERENCE AND DEFINITIONS

1.1 In this opinion letter:

1.1.1 terms defined or given a particular construction in the FIA Europe Netting Opinion have the meaning in this opinion letter unless otherwise defined herein or a contrary intention appears;

1.1.2 terms defined in the FOA Clearing Module, the Module Annex, the ISDA/FOA Clearing Addendum or the Addendum Annex have the meanings set out therein;

1.1.3 references in this opinion letter to the singular include the plural and vice versa;

1.1.4 headings in this opinion letter are for ease of reference only and shall not affect its interpretation.

1.2 This opinion letter does not constitute an update of the FIA Europe Netting Opinion, which shall still be considered as being given on its original issue date (that being

6 December 2013) and, with the exception of the modifications to the FIA Europe Netting Opinion set out in paragraph 4 below, we do not express any opinion as to whether the FIA Europe Netting Opinion would require amendments if issued as of today's date.

1.3 This opinion is given in respect of the same types of Parties as the FIA Europe Netting Opinion.

1.4 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.

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

2. ASSUMPTIONS

We assume:

2.1 That no provision of the Module Annex or the Addendum Annex has been altered in any material respect, including by reason of a Mandatory CCP Provision. In our view, the making of any election or the completion of any provision of the Module Annex or the Addendum Annex (as applicable) in the manner contemplated therein would not be considered a material alteration for this purpose.

3. OPINION

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

3.1 No Material Alterations

For the purposes of the opinions set out in Paragraphs 3.1–3.10 and 3.12–3.18 of the FIA Europe Netting Opinion and the assumption set out in Paragraph 2.1 of the FIA Europe Netting Opinion, no amendment made to a Clearing Agreement by means of the incorporation of the Module Annex or the Addendum Annex constitutes a material alteration.

3.2 No Adverse Amendments

For the purposes of the opinions set out in Paragraphs 3.1–3.10 and 3.12–3.18 of the FIA Europe Netting Opinion and the assumption set out in Paragraph 2.6 of the FIA Europe Netting Opinion, no amendment made to a Clearing Agreement by means of

the incorporation of the Module Annex or the Addendum Annex constitutes an Adverse Amendment.

3.3 **Enforceability of the Title Transfer Provisions**

3.3.1 In relation to a Clearing Agreement which includes the Title Transfer Provisions as modified by Paragraph 2.6 of the Module Annex 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 as modified by Paragraph 2.6 of the Module Annex, so that the value of any Transferred Margin (as calculated pursuant to the terms of the Title Transfer Provisions as modified by Paragraph 2.6 of the Module Annex) shall be taken into account for the purposes of calculating the Liquidation Amount pursuant to the FOA Netting Provision.

3.3.2 In relation to a Clearing Agreement which includes the Title Transfer Provisions as modified by Paragraph 2.6 of the Module Annex, 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.

3.3.3 The courts of this jurisdiction would not recharacterise Transfers of margin under the Title Transfer Provisions as modified by Paragraph 2.6 of the Module Annex of a Clearing Agreement as creating a security interest.

3.3.4 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 as modified by Paragraph 2.6 of the Module Annex of a Clearing Agreement.

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 as modified by Paragraph 2.6 of the Module Annex 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 as modified by Paragraph 2.6 of the Addendum 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 value of any Transferred Margin in the calculation of a Liquidation Amount pursuant to the Title Transfer Provisions as described in paragraph 3.3.1 above.

4. MODIFICATIONS TO THE FIA EUROPE NETTING OPINION

4.1 On 1 August 2014, the provisions of the Banking Act were extended to apply to certain other types of entity, including investment firms and banking group companies.

4.2 For this purpose:

4.2.1 a "**Banking Group Company**" is defined Section 81D of the Banking Act as an undertaking which is in the same group as a bank and in respect of which any conditions specified in an order made by the Treasury are met. Any such order should not be made unless it has been approved by a resolution of each House of Parliament, although this requirement can be dispensed with in certain circumstances; and

4.2.2 an "**Investment Firm**" is defined in Section 258A of the Banking Act as a UK institution which is an investment firm for the purposes of the CRR, other than a bank, a building society, a credit institution or any other institution which is of a class or description specified in an order made by the Treasury.

4.3 Accordingly, the qualifications in paragraph 4.2 of the FIA Europe Netting Opinion should be read as if references to "UK bank" in that paragraph included references to Investment Firms and Banking Group Companies.

5. CONCLUDING REMARKS

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

6. RELIANCE

6.1 We hereby consent to members of FIA Europe (other than associate members) and their affiliates which have subscribed to FIA Europe's opinions library and whose terms of subscription give them access to this opinion, (as evidenced by the records maintained by FIA Europe and each a "**subscribing member**") relying on the opinion. This opinion may not, without our prior written consent, be relied upon by or be disclosed to any other person save that it may be disclosed without such consent to:

6.1.1 the officers, employees, auditors and professional advisers of any addressee or any subscribing member;

6.1.2 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; and

6.1.3 any competent authority supervising a subscribing member or its affiliates,

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

6.2 This opinion was prepared by us on the basis of instructions from FIA Europe and we have not taken instructions from, and this opinion does not take account of the specific circumstances of, any subscribing member. In preparing this opinion, we had regard solely to the matters addressed in the opinion and not to any other matters.

6.3 By permitting subscribing members to rely on this opinion as stated above, we accept responsibility to such subscribing members for the matters specifically opined upon in this opinion in the context of the regulatory capital and reporting obligations, but we do not have or assume any client relationship in connection therewith or assume any wider duty to any subscribing member. This opinion has not been prepared in connection with, and is not intended for use in, any specific transaction.

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

Yours faithfully,

Clifford Chance LLP

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